

## Questionnaire concerning the practical operation of the Convention and views on possible recommendations

### (1). The role and functioning of Central Authorities

General questions:

1. Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention? If so, please specify.

A. **NO**

2. Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice?

A. ***Our principal problem is the integration of the files, Because many central authorities send the Hague petition via fax or simple copy without spanish translation.***

***To begin the proceedings the Mexican law requires, original documents or certified copy with its proper translation into spanish.***

Particular questions:

3. What measures are taken by your Central Authority or others to secure the voluntary return of a child or to bring about an amicable resolution of issues (article 7c)? Do these measures lead to delay?

A. ***The Local Family Court encourages the abductor parent to voluntarily return the child to the place of habitual residence (the place of the customary residence prior to the removal), pursuant to article 7 (c) of the Hague Convention. If the abductor parent refuses to voluntarily return the child, the Judge is able to restrain either the parent or the child, or both, from removing themselves from the Local Family Court's jurisdiction until a decision is made as the result of a trial.***

4. What measures does your Central Authority take to provide or facilitate the provision of legal advice in Hague proceedings, including the participation of legal counsel and advisor (Article 7g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?

A. ***The Mexican Central Authority will not assign an attorney to take charge of the case. As family judges in Mexico are authorized to intervene ex-officio in matters involving the family an they have ample powers to enforce the measures decreed, the Hague application will be directly forwarded to them. However, applicants***

**may wish to hire a Mexican attorney to represent their interests in a Hague case.**

5. Does your Central Authority represent applicant parents in Hague proceedings?

A. **NO**

If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?

A. **N/A**

6. What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protection, especially where issues of (alleged) abuse or violence have arisen? In particular, does your Central Authority:

**A. The Mexican Central Authority is in charge to supervise the enforcement of the Hague Convention on the Civil Aspects of International Child Abduction around Mexico, providing information to the competent Court concerning the operations, implementation and interpretation of the Hague Convention, and work together with all authorities to coordinate the logistic of the return of the child.**

- a. ensure that appropriate child protection bodies are alerted?

**A. The Mexican Federal Health Law, establishes that the National Welfare System should be responsible for the social and economic development of the Family, providing free legal assistance to families and minors between others. To accomplish those objectives, the Mexican government has created a special agency, the “National System for the Integral Development of the Family” (DIF). This agency is a national entity, administered by federal state and municipal governments.**

**According whit the article 6, of the Hague Convention of the Civil Aspects of International Child Abduction, DIF was established as Central Authority in each of the 29 states of Mexico, in coordination with the Legal Department of the Mexican Ministry of Foreign Affaires.**

1.- Aguascalientes	11.- Guerrero	21.- Quintana Roo
2.- Baja California	12.- Hidalgo	22.- San Luis potosí
3.- Campeche	13.- Jalisco	23.- Sinaloa
4.- Coahuila	14.- Michoacán	24.- Tabasco
5.- Colima	15.- Morelos	25.- Tamaulipas

6.- Chiapas	16.- Nayarit	26.- Tlaxcala
7.- Chihuahua	17.- Nuevo León	27.- Veracruz
8.- Durango	18.- Oaxaca	28.- Yucatan
9.- Estado de México	19.- Puebla	29.- Zacatecas
10.- Guanajuato	20.- Querétaro	

***This agency (DIF) ensures an appropriate child protection, it hires lawyers, psychologists, social workers, physicians, each others.***

b. Provide information to either in respect of legal, financial, protection and other resources in your State.

A. **Yes**

c. Facilitate contact with bodies providing such resources;

A. **Yes**

d. Assist in providing any necessary care for the child pending custody proceedings;

A. **Yes**

e. Provide any assistance in ensuring that undertakings attached to a return order are respected.

A. **Yes**

7. What arrangements does your Central Authority make for organizing or securing the effective exercise of right of access (Article 7 f)?

***A. The rights of access in Mexico under The Hague Convention carry on analogously the minor return proceeding, before the Local Family Court. The Local Family Court has to encourage the defendant parent to voluntarily grant right of access, pursuant to article 21 of The Hague Convention. If the defendant parent refuses to give voluntary access, the Judge is able to order the recognition of the access time form and place.***

A. Provide information or advice

A. **Yes**

B. Facilitate the provision of legal aid or advice

A. **See topic 1 answer 4.**

C. Initiate or assist in the institution of proceeding, where appropriate, on behalf of the applicant;

A. **Yes**

D. Assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected

A. **Yes**

E. Assist in cases where modification of existing access provisions is being sought.

A. **Yes**

8. Please comment on any developments in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? If not, please explain why?

A. **Yes**

9. Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions, as set out in footnotes 11 and 12.

A.

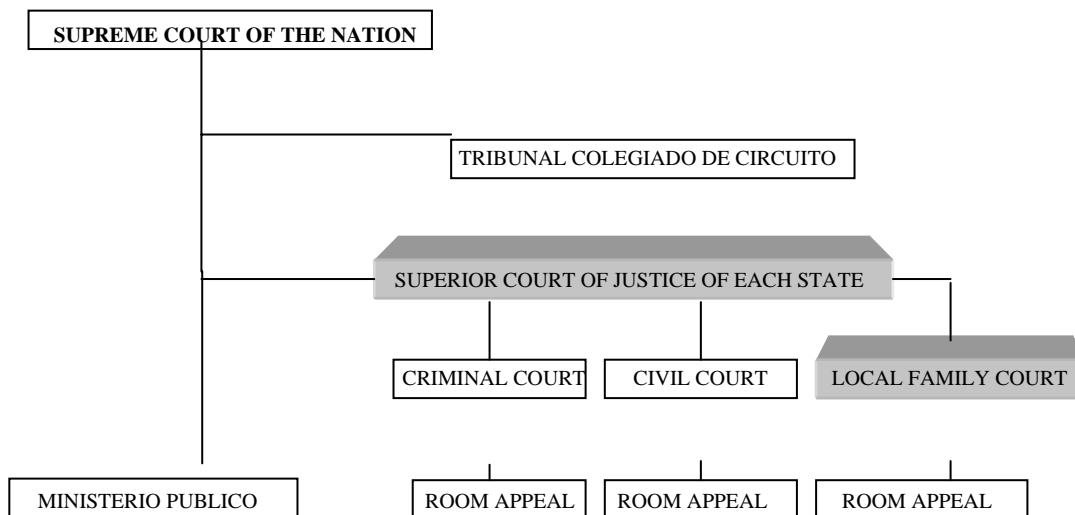
10. Would you support any other recommendations in respect of the particular functions which Central Authorities do or might carry out, especially with regard to the matters raised in questions 6 and 7 above?

A. **No.**

**(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation**

1. How many courts and how many judges potentially have jurisdiction to hear an application for the return of a Child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level.

***A. Local Mexican Family Courts are in charge to resolve family matters. However, the laws of the 32 states are very similar, therefore Mexican Family Law regarding protection of minors is almost uniform throughout the country.***



***There are 42 Judges in the Family Court in the Federal District and 1 or 2 per county in the rest of the states.***

2. Do you have any special arrangement whereby jurisdiction to hear return application is concentrated in a limited number of courts? Are such arrangements being contemplated?
  - A. **No**
  
3. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:
  - A. Is it possible for the application to be determined on the basis of documentary evidence alone?
    - A. **No, See topic 1, answer 2**
  
  - B. What special measures/rules exist to control or limit the evidence (particularly the oral evidence) which may be admitted in Hague proceedings?
    - A. **None**
  
  - C. Who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is that control exercised?
    - A. **The Mexican Central Authority supervises the enforcement, operation, implementation, interpretation and fulfillment of the Hague Convention.**

D. What appeal is possible from the grant or refusal of a return application, within what times do appeals operate, on what grounds and subject to what limitations?

**A. The application documents are forwarded to the competent Superior Court of Justice. The Superior Court of Justice will then forward the petition to the Local Family Court having jurisdiction where the child has been taken to in Mexico.**

**The Local Family Court has to encourage the abductor parent to voluntarily return the child to the place of habitual residence (the place of the customary residence prior to the removal), pursuant to article 7 (c) of the Hague Convention. If the abductor parent refuses to voluntarily return the child, the Judge is able to restrain either the parent or the child, or both, from removing themselves from the Local Family Court's jurisdiction until the Hague decision is made as a result of a trial.**

**A return trial could start with a provisional decree ordering the child reside in a facility managed by the DIF until the court decides whether the child may be return to the country of habitual residence. The abductor parent will be notified of the date of the court hearing.**

**After hearing the parties and if the Judge orders the return of the child, the Mexican Central Authority will be informed and it will work together with the requiring Central Authority to coordinate the logistics of the return. In most cases, the applicant travels to Mexico to escort the child home.**

**The Judge could refuse the return of the minor if he/she considers a grave risk that his/her return would expose the child to physical or psychological harm or if the child objects being returned and has attained an age and degree of maturity at which it is appropriate to take account of him/her he its views, previous psychological test made by DIF.**

**If the applicant does not agree with the decision, he could appeal the order before the competent Appeals Room (between 3-9 days), if this decision is not favorable to the applicant, he could follow the resource known as "amparo" before the "Tribunal Colegiado de Circuito", and finally if the applicant does not agree with this decision, he could request a review before the Supreme Court of the Nation .**

4. In what circumstance, and by what procedures/methods, will a determination be made as to whether a child objects to being returned?

**A. It has to determine the legal basis of the Hague request, such as if the removal is in breach of rights of custody (under Mexican law the custody "Patria Potestad" confers daily care and the duty to safeguard the child's education and good conduct on the parent, it is exercised by the father and the mother jointly, and in the case both parents have died or were interdicted, custody will be exercised by the paternal or maternal grand parents).**

In what circumstances in practice will the objections of the child be held to justify a refusal to return?

**A. The Judge could refuse the return of the minor if he/she considers a grave risk that his/her return would expose the child to physical or psychological harm or if the child objects being returned and has attained an age and degree of maturity at which it is appropriate to take account of his/her views, previous psychological test made by DIF.**

(Please indicate the statutory basis, if any)

See Attach 1

5. Where the person opposing return raises any other defenses under Article 13 or Article 20, what are the procedural consequences? What burden of proof rest on the defendant? Does the raising of defenses under Articles 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?

**A. See Topic 2. Answer 4.**

6. Please specify the procedures in place in your jurisdiction to ensure that return **orders are enforced promptly and effectively?**

**A. See topic 1. Answer 6.**

Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected. Do return orders require separate enforcement proceedings? Is there appeal from such proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

**A. Yes, when the defendant file some resource (known as Amparo)**

7. Would your support any of the following recommendations?

A. calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.

**A. Not possible under Mexican laws**

- B. Underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.

A. **No, because of the particularities of the Mexican legal system**

- C. Calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determinations of returns applications.

A. **Not possible under Mexican laws**

- D. Calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.

A. **Not always possible**

- E. Calling upon State Parties to enforce return orders promptly and effectively

A. **Yes, with respect to local laws.**

- F. Recommending that the “grave risk” defense under Article 13 should be narrowly with which applications are processed and orders enforced.

A. **Yes**

8. Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

- rights of custody (Article 3 a and Article 5 a).  
A. **The concept was clearly defined before 1996.**
- habitual residence (Article 3 a and Article 4)  
A. **The concept was clearly defined before 1996.**
- rights of access (article 5 b)  
A. **The concept was clearly defined before 1996.**
- the actual exercise (of rights of custody) (Article 3 b and Article 13 a)  
A. **The concept was clearly defined before 1996.**
- the settlement of the child in its New environment (article 12)  
A. **The concept was clearly defined before 1996.**
- consent or acquiescence to the removal or retention of the child (Article 13 a)  
A. **The concept was clearly defined before 1996.**
- grave risk (article 13 b)  
A. **The concept was clearly defined before 1996.**
- exposure to physical or psychological harm (Article 13 b).  
A. **There is a new law regarding “interfamily violence”**
- intolerable situation (Article 13 b)  
A. **NONE**
- fundamental principles relation to the protection of human rights and fundamental freedom (article 20)



A.NONE

**(3). Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)**

1. To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (i.e. promises offered by, or, required of the applicant) as a means of overcoming obstacles to the prompt return of a child? Please describe the subject-matter of undertakings required/requested. At what point in return proceedings are possible undertakings first raised, and how?

**A. *The judge has full power to decide over undertakings regarding the fulfillment of the return of a child.***

2. Will your courts/authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement among the parties and those made at the request of the court?

**A. *Yes, as far as they come un the proper form.***

3. To what extent are your courts entitled and prepared to seek or require, or as the case may be to grant, safe harbor orders or mirror orders (advance protective orders made in the country to which the child is to be returned) to overcome obstacles to the prompt return of a child?

**A. *N/A***

4. Is consideration being given to the possible advantages of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the protection of Children, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the Child (Article 34)?

**A. *N/A***

5. Have you experience of cases in which questions have arisen as to the right of the child and/or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

**A. *No***

6. Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

**A. *Returning proceedings are “family matters”. Criminal changes have to follow criminal proceedings.***

7. Please comment on any experience, as a requesting or as a requested State, of cases in which the deciding judge has, before determining an application for return, communicated with a judge or other authority in the requesting State and, if so, for what purposes. What procedural safeguards surround such communications?

**A. *N/A***

8. Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction /access cases?

**A. *Yes. Mexico-United State of America***

9. Where a child is returned to your Country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child?

**A. *See topic 1 answer 6 (a)***

10. Where a custody order has been granted in the jurisdiction of, and in favour of, the left behind parent, is the order subject to review if the child is returned, upon application of the abducting parent?

**A. *No.***

11. Would you support any of the following recommendations?

**A.** That Contracting States should consider ratification of or accession to the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders.

**A. *Yes***

**B.** That Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child.

**A. *Yes***

**C.** That Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.

**A. *Yes***

**D.** That Contracting States should provide a rapid procedure for the review of any criminal charges, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceeding concerning custody or protection of the child.

**A. Yes**

**E.** That Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between a judge and another authority.

**A. Not possible in the Mexican Judicial structure.**

**F.** That the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.

**A. Yes**

**(4) Procedures for securing cross-frontier access/contact between parent and child**

1. What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction?

On what basis do your courts at present exercise jurisdiction to:

A. grant and

B. modify access/contact orders?

2. What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has been made by a court or other authority of the country of the child's habitual residence? In this context is consideration being given to implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children?

3. What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously?

4. What facilities/procedures are in place to promote agreement between parents in international access/contact cases?

5. Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent?

6. What conditions are likely to be imposed on access in respect of a non-custodial abducting parent?

7. What information concerning services and what other facilities are available to overseas applicants for access/contact orders?

8. What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of:

A. The effective exercise of rights of access in your/in the other jurisdiction

B. The granting or maintaining of access rights to a parent residing abroad/in your jurisdiction

C. the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (e.g. financial guarantees, surrender of passports)?

9. How in practice are access orders enforced?

10. Would you support recommendations in respect of any of the particular issues raised in the preceding questions? If so, please specify.

**A. See topic 1 answer 6 and 7, topic 2**

### **(5) Securing State compliance with Convention obligations**

1. Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention.

**A. None**

2. What measures, if any, do your authorities take, before deciding whether or not to accept a New accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations?

**A. None**

3. Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting them to decide whether or not to accept the accession? What questions would you include?

**A. Yes**

4. Are you in favour of an increase in the number of Special Commissions (or similar meeting) to review the practical operation of the Convention? Would you also favor the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?

**A. Yes**

5. Are there any other measures or mechanisms which you would recommend:

A. to improve the monitoring of the operation of the Convention;

B. to assist States in meeting their Convention obligations;

C. to evaluate whether serious violations of Convention obligations have occurred?

**A. None**

**(6) Miscellaneous and general**

1. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning on the Convention, and on the funding of such activities?  
A. **None**
  
2. Are there any additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and task that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?  
A. ***The list might be helpful for better knowledge of the PB functions and activities.***
  
3. Would you favour a recommendation that States Parties should, on regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?  
A. **Yes**