

## What Judges Need to Know About Mexican Nationals in Dependency Cases: Service, Placement, Adoption and Other Challenges

Mexican Ministry of Foreign Affairs  
Family Law Directorate

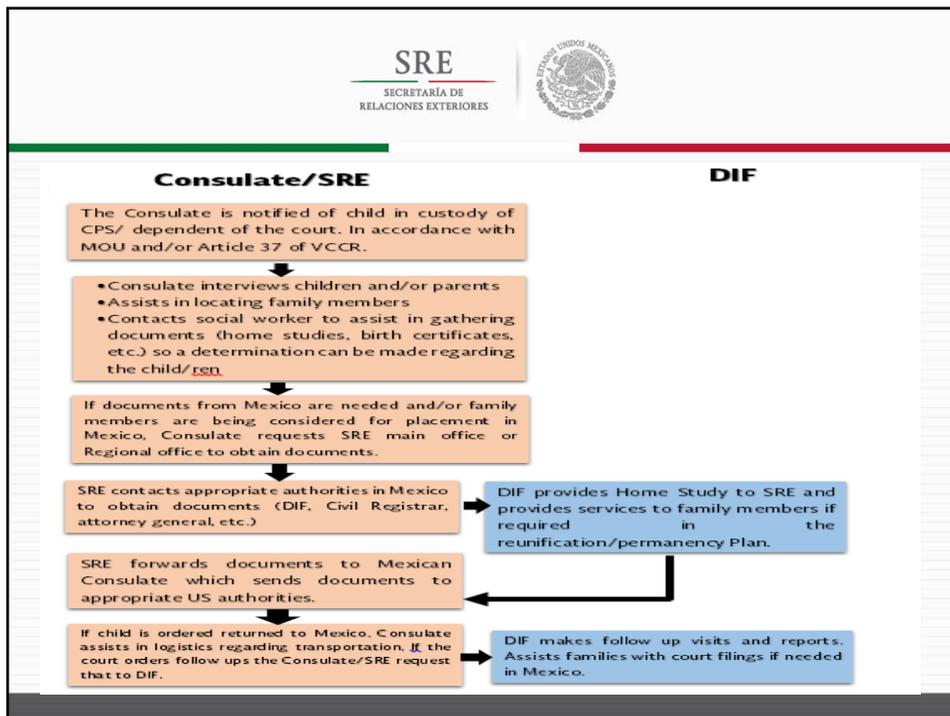
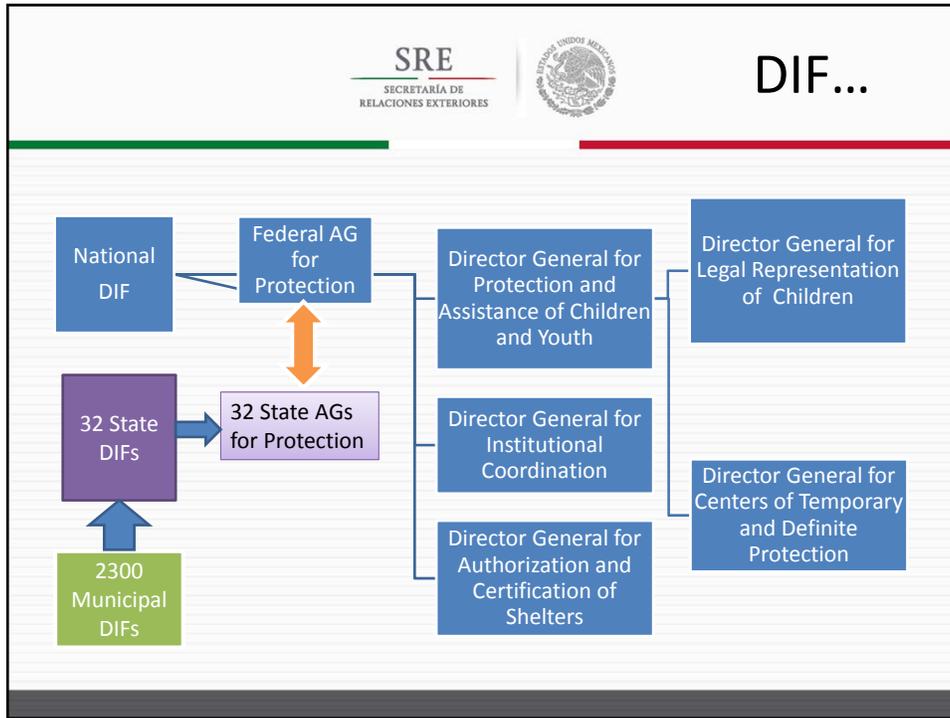
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The Family Law Directorate (FLD) of the Ministry of Foreign Affairs oversees 4 types of international cases:

1. Child Support (UN Convention on the Recovery Abroad of Maintenance, the Interamerican Convention on Support Obligations and Reciprocity under UIFSA)
2. Child Abduction (Hague Convention on the Civil Aspects of International Child Abduction and Interamerican Convention on the International Return of Children)
3. Adoptions (Hague Convention on the Protection of Children and co-operation in Respect of Intercountry Adoption)
4. Custody (No treaty in force, collaboration based on 31 MOUs signed locally by Mexican Consulates in the US)

- FLD serves as the Central Authority under the treaties and collaborates with all local, state and federal Mexican authorities to carry out its duties.
- In custody cases **FLD works jointly with DIF** which is the Agency in charge of childwelfare in the Country.
- There are National, State and Local DIFs. **Only State DIFs serve as Central Authorities for Adoption purposes**
- On December 4th, 2014 a new law was enacted that changed the welfare system, the human rights of the children are at the center of all actions by Mexican authorities. Best interest of the Child is a **constitutional principle**.
- However regulations for the law were enacted on December 3rd, 2015.

- National DIF (SNDIF) was created in 1977 as an independent agency of the Ministry of Health to serve as an outlet of social services for families. States modeled their own DIFs following the National model, however each state has autonomy.
- Given the growth of demand for services also local (municipal) DIFs were created. Currently there are **32 state DIFs** (including Mexico City) and **2300 municipal DIFs**. Municipal DIFs also are autonomous but in most instances coordinate with state DIFs.
- Most State and Municipal DIF Directors are political appointees, therefore turnover in personnel is not uncommon. Services provided vary by DIF but there are 5 blanket programs in the following areas: Assistance for vulnerable population; social inclusion and rehabilitation of people with disabilities; attention to families; comprehensive food strategy and protection and development of children.
- The new Law and its regulations created a new Federal Attorney General for Protection of children and adolescents and encourages states to adopt a model law and create state attorney generals that will have to coordinate with the Federal AG. In the states there are AGs for the Defense of Minors and Family but they will transform in to the AGs for Protection of children and adolescents in order to have a uniform system throughout the country.



- Legal issues: no common legal standard, legal standing of local DIFs to sign agreements, recognition of foreign sentences, custody vs adoption.
- Services: Different services are provided among DIFs may not be exact to services provided in the US. Not all DIFs can provide toxicology/medical reports or criminal background checks.
- Follow ups: no legal basis for extensive follow ups, adoption follow ups usually carried out every 6 months for 2 years after completion. US position: it is a privacy matter people cannot be compelled to complete follow up.

### **Other issues: Immigration +Dual Nationality of Children?**

#### Article 30 (Mexican Constitution)

Mexican nationality is acquired by birth or by naturalization. The Mexican nationals by birth are:

- I. Those born in the Mexican territory, regardless of their parents' nationality;
- II. Those born in a foreign country of Mexican parents born in national territory, of Mexican father born in national territory, or of Mexican mother born in national territory;
- III. Those born in a foreign country of Mexican parents by naturalization, of Mexican father by naturalization, or of Mexican mother by naturalization;
- IV. Those born on board of Mexican military or merchant vessels or aircrafts.

## US policy on dual nationals and cases involving children

“...allowing consular assistance will be particularly important in cases involving children, including those with two nationalities, who have no relatives in the United States.” (US Department of State Consular Notification and Access Manual p. 14)

“Q. Who is responsible for notifying consular officers of appointments of guardians?”

A. Notification should be made by probate or family court officials or by any other appropriate official involved in the guardianship process. In cases involving abuse, neglect, or abandonment of children, this may be the agency or entity acting to protect the child. (Idem p. 16)

## So What the Consulate/FLD can do in cases involving children?

- a) Assist in locating relatives. Foster communication between parent/child
- b) Request home studies and forward to appropriate authorities.
- c) Assist in obtaining birth certificates.
- d) Travel assistance/ issuance of documents for minors to be repatriated.

*Currently working on:*

- Developing a model homestudy for binational cases (University of Ciudad Juarez/University of El Paso)
- Standards for intra-family adoptions (SRE/DIF National/State DIFs)
- There have been 2 trainings by County Counsel of Orange County (webinars) and 3 extensive trainings by SRE.
- Shared best practices: Arizona (Pima and Santa Cruz counties) Transnational families and the dependency system training. Bench book.

**Current Challenges and Barriers among  
Latino Children Reunifying with Their Parents**

1. Cultural Barriers
2. Family Barriers
3. Community Barriers
4. Resource Barriers
5. Systemic Barriers
6. Internal Barriers

## Reverse thinking

- What would happen if child sent back to the US?
- Experience in child abduction cases: when children are sent back to the US there has been no authority willing to follow up.

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