

# 2006 Compliance Report

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## **2006 Report on Compliance with the Hague Abduction Convention**

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### **INTRODUCTION**

Parental child abduction is a tragedy and an unfortunate reality. Abducted children can suffer both physical and emotional harm. When abductions occur across borders, victim parents are often left to overcome legal, financial, cultural and language barriers in their attempts to recover or gain access to their children. The Department of State places the highest priority on the protection of U.S. citizens abroad, and especially on the welfare of our country's children. When children become the victims of international parental child abduction, the Department takes seriously its responsibility to help parents seeking the return of, or access to, their children through lawful means. For many parents, the Hague Convention on the Civil Aspects of International Child Abduction ("Convention") is a viable remedy to the trauma of a child abduction. With each passing year, the number of U.S. left-behind parents filing for the return of or access to their children under the terms of the Convention has grown.

During the period covered by this report, the Department assisted in the return to the United States of 288 children abducted or wrongfully retained overseas. Of this number, 151 children returned in cases in which a Convention application was filed, while 137 returns were involved in non-Convention cases. As a mechanism for promoting the return of children to their habitual residence, the Convention continues to be an invaluable tool.

The Convention is an international treaty that provides a mechanism to bring about the prompt return of children who have been wrongfully removed or retained outside their country of habitual residence in violation of rights of custody existing and actually exercised in the child's country of habitual residence. Along with the other signatories of the Convention, the United States believes that children must be protected against the harmful effects of international abduction. The United States was a major force in preparing and negotiating the Convention, which was finalized in 1980 and entered into force for the United States on July 1, 1988. Since then, the Convention has been an important tool for reuniting families across international borders and in deterring potential abductions. Currently, 75 countries are party to the Convention.

Today, the United States has a treaty relationship under the Convention with 55 other countries.

When a new country accedes to the Convention, the Department of State undertakes an extensive review of that country's accession to determine whether the necessary legal and institutional mechanisms are in place to fully implement the Convention. Once the Department concludes that a country has the capability to be an effective treaty partner, its accession is recognized and the

Convention comes into force between the United States and that country. The Convention applies to the wrongful removal or retention of a child that occurred on or after the date the Convention came into force between the United States and the other country concerned. The date on which the United States entered into a treaty relationship with its many Convention partner countries varies, and more countries are considering becoming parties to the Convention all the time. The United States has actively encouraged countries to accede to the Convention, recognizing its potential effectiveness not only in resolving cases of international parental child abduction, but also in deterring future abductions.

As mandated by Section 2803 of Public Law 105-277, (the Foreign Affairs Reform and Restructuring Act of 1998), as amended by Section 202 of Public Law 106-113 (the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for Fiscal Years 2000 and 2001) and Section 212 of the Foreign Relations Authorization Act for Fiscal Year 2003, the Department of State submits this report on compliance with the Convention by other party countries. The individual cases summarized in Attachment A of the present report remained unresolved as of September 30, 2005.

This report identifies the Department's concerns about those countries in which implementation of the Convention is incomplete or in which a particular country's judicial or executive authorities do not properly apply the Convention's requirements. Where known, the report notes country-specific reasons for compliance failure and attempts to indicate varying degrees of compliance.

The Department of State serves as the U.S. Central Authority (USCA) for the Convention; one of its functions is to assist parents in filing applications for return and access under the terms of the Convention with the Central Authority of the country where the child is located. Under the Convention, return and access applications may also be filed either with the Central Authority of the country in which the child is located or directly with a properly empowered court in that country.

Because of this, left-behind parents may (and frequently do) pursue the return of a child under the Convention without involving the USCA. In these circumstances, the USCA may never learn of such applications or their eventual disposition. This report therefore cannot give a complete picture of the outcome of all Convention applications for the return of children to the United States.

As has been the practice in previous reports, the Department is reporting as "resolved" cases that are determined by the USCA to be "closed" as Convention cases or that are "inactive." This is a technical designation, and does not necessarily mean an end to the Department's support of a left-behind parent's efforts to resolve a dispute involving an abduction or wrongful retention. As in other countries party to the Convention, the USCA closes or inactivates Convention cases for a variety of reasons. These include: return of the child; parental reconciliation or agreement; a parent's withdrawal of the request for assistance; inability to contact the requesting parent after numerous attempts over a two-year period; exhaustion of all judicial remedies available under the Convention; the child attaining 16 years of age; or (in appropriate cases) the granting and effective enforcement of access rights. In all such cases, regardless of the outcome, no further proceedings pursuant to the Convention are anticipated. Treating these cases as "resolved" and closing them as Convention cases is consistent with the practice of other Convention party countries. The Department marks a case as

“inactive” when, in the absence of such definitive circumstances, the facts of the case do not allow, or the applicant parent does not permit, a further reasonable pursuit of the case. One year after inactivation, and in the absence of additional relevant requests for assistance by the left-behind parent, the Department closes inactive cases. Should a relevant change in material circumstances occur thereafter, the Department would always consider reopening a case.

The exhaustion of all judicial remedies available under the Convention may result in a case being “closed” that has been resolved in a way that is unsatisfactory to the applicant parent and the USCA. Even when a case for the return of a child under the Convention has been closed, however, the USCA continues to provide assistance to the left-behind parent by helping to facilitate access to a child (which may be sought under or independently of the Convention), reporting on the welfare of the child, or assisting the parent to achieve a more satisfactory solution through non-Convention remedies. In such instances, the USCA treats the case as an open “non-Convention” case for return or access, depending on the parent’s goals. When a foreign court decision on the Convention aspects of a case indicates a misunderstanding of, or a failure to properly apply the Convention’s terms, the Department may register its concern and dissatisfaction with the decision through both the foreign Central Authority and diplomatic channels. The same is true in circumstances involving the failure by administrative or other executive officials to effectively enforce court or other relevant orders arising out of applications under the Convention. The Secretary of State, other senior Department officials, U.S. Ambassadors abroad, and U.S. Consuls frequently raise international parental child abduction issues and specific cases with appropriate foreign government officials.

Attachment A is a list by country of the cases submitted pursuant to the Convention that remained unresolved for more than 18 months as of September 30, 2005. Specific details that might identify the parties to a case or relevant others have been removed to protect the privacy of the child and the applicant parent.

This report identifies specific countries and individual cases in which countries party to the Convention have not complied with its terms, or in which the results for applicant parents in the United States have been inconsistent with the purposes and objectives of the Convention. The Department continues to take steps to promote better sharing of information and more consistent practices among countries party to the Convention. The Department works in close cooperation with the Hague Permanent Bureau on judicial education issues and the formulation of Best Practices guides for states party to the Convention.

## **REPORTING PERIOD**

This report covers the period from October 1, 2004, to September 30, 2005. The information provided herein is that available to the USCA within these dates. In some instances, the report provides updates to include developments subsequent to September 30, 2005.

## **RESPONSE TO SECTION 2803 (a)**

Section 2803 (a)(1) of Public Law 105-277, as amended, requires that we report “the number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing.”

Taking into account the above clarifications, as of September 30, 2005, there were 39 applications for return in USCA records that remained open and active 18 months after the date of filing with the relevant foreign Central Authority. This total includes several cases that became known to the USCA through contacts with parents or local and state officials, but that were actually filed by California authorities directly with a foreign Central Authority.

Section 2803 (a)(2) requests “a list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of the United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States.”

The 39 applications identified above that remained unresolved 18 months after the date of filing, as of September 30, 2005, involved 11 countries: Argentina, Australia, Colombia, Ecuador, Greece, Honduras, Israel, Mauritius, Mexico, Poland, and Spain. The extent to which these countries and others appear to present additional, systemic problems of compliance with the Convention is discussed further in the passages concerning Sections 2803 (a)(3), (a)(4) and (a)(6), below.

In considering the question of compliance with the Convention and the treatment of court orders of custody, it should be noted that adjudications of return applications under the Convention are not custody proceedings. Rather, the basic obligation under the Convention to return a child arises if a child is removed to or retained in a country party to the Convention in violation of rights of custody existing and actually exercised in (and under the law of) the child’s country of habitual residence.

Most Convention cases filed by parents seeking the return of a child to the United States are premised on the existence of rights of custody held by the applicant parent that arise by operation of law, typically because the applicable state law creates joint rights of custody in both parents. A court order of custody in favor of a left-behind parent is not a requirement for pursuing a return application under the Convention. In effect, the Convention requires that foreign countries recognize rights of custody arising under U.S. law (if the child is habitually resident in the United States) to the extent that such rights provide the basis for an application and the rationale for return. Courts adjudicating applications for return under the Convention should not examine or rule on the merits of an underlying custody dispute.

Section 2803 (a)(3) requests “a list of countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to the applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United States.”

There are many factors relevant to evaluating whether a country has properly implemented and is effectively applying the Convention, not least because the executive, legislative and judicial branches of each member country have important and varying roles. A country may thus perform well in some areas and poorly in others. The Department of State, building on the recommendations of an inter-agency working group on international parental child abduction, has identified certain elements of overall performance relating to the Convention's most important requirements and has used these as factors to evaluate each country's compliance.

The Department used analysis of the following four elements to reach its findings on compliance: 1) the existence and effectiveness of implementing legislation; 2) Central Authority performance; 3) judicial performance; and 4) enforcement of court orders. Analysis of "implementing legislation" examines whether, after ratification of the Convention, the Convention is given the force of law within the domestic legal system of the country concerned, enabling the executive and judicial branches to carry out the country's Convention responsibilities. "Central Authority performance" involves the speed of processing applications; the existence of and adherence to procedures for assisting left-behind parents in obtaining knowledgeable, affordable legal assistance; the availability of judicial education or resource programs; responsiveness to inquiries by the USCA and left-behind parents; and success in promptly locating abducted children. "Judicial performance" comprises the timeliness of a first hearing and subsequent appeals of petitions under the Convention and whether courts apply the law of the Convention appropriately. "Enforcement of court orders" involves the prompt enforcement of civil court or other relevant orders issued pursuant to applications under the Convention by administrative or law enforcement authorities and the existence and effectiveness of mechanisms to compel compliance with such orders. Countries in which failure to enforce orders is a particular problem are addressed in the passages concerning Section (a)(6) below.

This report identifies those countries that the Department of State has found to have demonstrated a pattern of noncompliance, or that, despite a small number of cases, have such systemic problems that the Department believes a larger volume of cases would demonstrate a pattern of noncompliance. In addition, the Department recognizes that countries may demonstrate varying levels of commitment to and effort in meeting their obligations under the Convention. The Department considers that countries listed as noncompliant are not taking effective steps to address serious deficiencies.

Applying the criteria identified above, and as discussed further below, the Department of State considers Austria, Ecuador, Honduras, Mauritius, and Venezuela to be "Noncompliant" and Brazil, Chile, Colombia, Greece, Mexico, Panama, and Turkey to be "Not Fully Compliant" with their obligations under the Convention. The Department of State has also identified several "Countries of Concern" that have inadequately addressed significant aspects of their obligations under the Convention. These "Countries of Concern" are Hungary, Poland, Romania, Spain, and The Bahamas.

#### **NOTE REGARDING COMPARISONS TO THE 2005 REPORT**

In several countries during this reporting period, the USCA saw either improvements or increasing problems with Convention implementation that has led to a change in the Department's findings in this report, as compared to last year's report.

Colombia has passed Convention implementing legislation and the Colombian Central Authority has continued to exhibit greater cooperation with the USCA than in past reporting periods. Consequently, Colombia has been upgraded from "noncompliant" to "not fully compliant." Panama also showed a higher degree of cooperation on Convention cases and improvement in Convention education initiatives. For the reporting period, Panama is likewise rated as "not fully compliant," as is Turkey, a result of demonstrated improvement in judicial case processing.

Switzerland, rated a "country of concern" in the last report, is now seen as compliant, although enforcement problems persist. France exhibited improved enforcement performance and is no longer cited.

Due to slow processing and adjudication of cases, Spain has been added to the list of countries we have identified with compliance problems for the first time, as a "country of concern." Brazil and Venezuela are also mentioned in the report for the first time. Brazil's performance is rated as "not fully compliant" due to delays in processing and adjudication of Convention cases as well as a general lack of responsiveness by the Brazilian Central Authority. Venezuela's performance is rated as "noncompliant" due to lack of responsiveness by the Venezuelan Central Authority, severe delays in case processing and adjudications, and a lack of judicial training.

## **NONCOMPLIANT COUNTRIES**

### **AUSTRIA**

As in the past, the United States continues to view Austria as "noncompliant" in its implementation of the Convention. Our primary concern in the past has been with the capabilities and willingness of the Austrian authorities and legal system to enforce judicial orders for return or for access. These concerns are best exemplified in a long-outstanding access case that resulted from earlier compliance problems (as outlined in previous Compliance Reports). In this case, the left-behind parent has taken the matter to the European Court of Human Rights (ECHR) twice and won on both occasions. In one such ruling in April 2003, the ECHR determined that Austria had violated the rights of both the left-behind parent and the child to a family life under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In April 2005, on the advice of the Austrian government representatives to the ECHR, and the Austrian Central Authority (ACA), the left-behind parent filed an access application under the Convention in order to secure enforceable access rights to his child. Once the Convention access application was

filed the ACA responded quickly and the left-behind parent was appointed a pro bono attorney. A judge was appointed to the case and a hearing date was promptly scheduled. Although the case was processed in a timely manner, the left-behind parent's access was temporarily suspended. The case is still ongoing and results at this point cannot be determined. As it has for many years, the Department of State will continue to engage the Government of Austria and urge a resolution to this case that fully respects the parental rights of the left-behind parent and the ability of the child to have a meaningful relationship with the parent.

We note that the Government of Austria is addressing the difficult challenges to create suitable Convention compliance mechanisms and effective enforcement procedures. In November 2003, the Austrian Parliament passed new implementing legislation that, effective January 1, 2005, limited the number of courts empowered to hear Convention return cases to 16, down from more than 200 (Convention access cases were not restricted to these courts). This legislation also provided left-behind parents with free legal counsel in Convention abduction and access cases. Meanwhile, the Austrian Ministry of Justice (MOJ) is conducting in-depth training for the judges at the sixteen Austrian courts that will be handling all Convention return cases. The MOJ has also instituted a pilot program to train bailiffs in child psychology in order to sensitize them to complications that may arise during enforcement procedures. As there were no new abduction cases in the reporting period covered by this report, more time is needed before we can determine whether the above measures are having a positive effect on enforcing returns; however, the Austrian Government, particularly the new head of the Austrian Central Authority, has proven to be extremely cooperative and communicative with the USCA and U.S. Embassy Vienna on specific and general Convention matters

## **ECUADOR**

Ecuador's performance in implementing the Convention was previously cited as "noncompliant" due to the lack of a functioning Central Authority and lack of progress in resolving cases. This designation is likewise appropriate for the current report. The Government of Ecuador (GOE) abolished its Central Authority in April 2003. Although U.S. Embassy Quito and the USCA were advised of the establishment of temporary central authorities during the reporting period, all the functions normally fulfilled by a Central Authority were not performed; for example, assisting left-behind parents, educating judges on their Convention responsibilities, liaising with law enforcement agencies, and keeping the USCA apprised on developments in Convention cases. These issues were raised by U.S. Embassy Quito officials with GOE counterparts during the review period.

The USCA was very encouraged by the appointment of the Consejo Nacional de Ninez y Adolescencia as the new Central Authority for Ecuador (ECA). Although no cases were processed by this office during the 2005 reporting period, the new Central Authority for Ecuador accepted the first new Convention application in December 2005. The USCA hopes a review of ECA performance in the next rating period will demonstrate improvements in Ecuador's implementation of the Convention.

## **HONDURAS**

During most of the rating period covered in this report, Honduras had no functioning Central Authority and no designee with whom to communicate on Convention issues. Consequently, functions normally fulfilled by a Central Authority were not performed, such as assisting left-behind parents, educating judges on their Convention responsibilities, liaising with law enforcement agencies, and keeping the USCA apprised of developments in Convention cases. In June 2005, a Central Authority was officially designated and an attorney was appointed to lead the office. Under her leadership the Honduran Central Authority (HCA) has become very responsive to inquiries from the USCA, and since the re-establishment of the HCA, there has been some recent progress in informing judges of their responsibilities under the Convention. Although concerns still exist with respect to a remaining shortage of staff and resources, it is important to note that since the end of reporting period the HCA has acted on all open cases, and the USCA is encouraged by this progress.

The Department of State has taken actions to assist Honduras to resolve these issues. U.S. Embassy Tegucigalpa hosted a conference with the HCA and the Hague Permanent Bureau Representative to discuss Honduras' implementation of the Convention. Discussions were also held between U.S. Embassy Tegucigalpa and the Honduran Ministry of Foreign Relations. During the most recent reporting period no new Convention abduction cases were opened, the Honduran Central Authority only existed for the final three months of the rating period, and there was little progress made in old cases. For these reasons, Honduras must still be regarded as "noncompliant" for the year ending September 30, 2005.

## **MAURITIUS**

In the 2005 Convention compliance report, Mauritius was designated as "noncompliant." There is no basis for changing our assessment of Mauritius' performance under the Convention for the current rating period. Since 1993, when Mauritius became a party to the Convention, only two cases have been forwarded to the Mauritian Central Authority (MCA), one in 1998 and the other in 1999. In June 2004, six years after the initial filing of a Convention application, the Mauritian Supreme Court decided in the first case to deny the application for return on the grounds that no domestic implementing legislation was in effect at the time the application was filed (1998). This decision placed Mauritius in violation of its obligation to the United States under international law, because Article 35 of the Convention obliges a signatory country to apply the Convention to all abductions occurring as of the country's signing of the Convention.

With regard to the second case, the 2005 Report mentioned a scheduled hearing on June 28, 2005. That hearing was continued until July 5, 2005. On July 5, the hearing was again continued and set for October 7, 2005, outside of the current rating period. During the reporting period, no visible progress was made on this case in Mauritian courts, despite efforts by the USCA and U.S. Embassy Port Louis to work with Mauritian officials to provide information about our position as well as to provide education on Convention obligations. Four demarches were delivered in 2005 to Mauritian officials,



and a letter was sent by U.S. Embassy Port Louis in July 2005 requesting guidance for the October hearing. The Mauritian lack of responsiveness to the USCA and U.S. Embassy Port Louis outreach on this issue was the primary cause for a meeting, on August 10, 2005, between the Mauritian Chargé d'Affaires to the United States and the Deputy Assistant Secretary of State for Overseas Citizen's Services.

Removal of Mauritius from the category of "noncompliant" countries will require concrete action to resolve cases in a manner consistent with Mauritius' Convention obligations. The first case discussed above is not listed in Attachment A as a long-outstanding case. The Department believes such a listing would be misleading because, while we do not believe Mauritius is in compliance with its obligations and we are not satisfied with the outcome of the case, the case has been resolved in the sense that the applicant has exhausted all possible remedies in the Mauritian courts.

After the reporting period, U.S. Embassy Port Louis informed the USCA that the Mauritius State Attorney's office has begun pursuing the second case on behalf of the left-behind parent, based on that Office's position that Mauritius should honor its obligation as a Convention signatory. U.S. Embassy Port Louis has shared with the USCA its belief that current efforts made by the State Attorney's Office to pursue the case are the result of our combined actions taken to invigorate the MCA's efforts toward their responsibilities under the Convention.

## **VENEZUELA**

Venezuela was not mentioned in the 2005 Convention compliance report because there were no active cases during the time frame covered by the report. For the period covered by the 2006 report, however, serious compliance problems became evident. The Venezuelan Central Authority (VCA) typically failed to be responsive to inquiries by the USCA, U.S. Embassy Caracas, or left-behind parents. The USCA is not aware of any judicial training program for judges or prosecutors. Applications are not handled by the VCA in an expeditious manner nor are any measures being taken to improve processing of applications. Long delays in case proceedings are indicative of larger systemic problems in the Venezuelan court system. For neither of the two outstanding cases during the period of review was a court hearing scheduled. One case, now more than a year old, has never been heard in court, and in another case, a voluntary return was accomplished after ten months (no court hearing was held). With regard to enforcement of return orders, under Venezuelan law, parents can be subject to imprisonment and fines for not complying with court orders. With no cases heard during the rating period, however, there were no return orders issued or enforced. U.S. Embassy Caracas met with officials from the Ministry of Foreign Relations twice during the reporting period to discuss problems with case proceedings, once in May 2005 and again in September 2005, but no substantive information was received as a result of these efforts. As a result the USCA has determined that, during the most recent rating period, Venezuela was "noncompliant" with regard to its duties under the Convention.

## **COUNTRIES NOT FULLY COMPLIANT**

### **BRAZIL**

Brazil was not cited in the 2005 Convention compliance report because the Convention was not in effect for Brazil during the entire assessment period. However, the current rating period, October 2004 through September 2005, has revealed serious problems with Brazil's compliance, both in the Brazilian Central Authority (BCA) and in the Brazilian courts. Long delays occur at most steps of the processing and adjudication of Convention applications and the BCA is consistently not responsive to inquiries by the USCA. Additionally, during the rating period there was no judicial education available for Brazilian judges deciding Convention cases. Finally, Interpol Brasilia does not confirm the location of abducted children in Brazil in an expeditious manner.

The USCA has raised these concerns with the Brazilian Central Authority on several occasions. U.S. Embassy Brasilia delivered a demarche in May 2005 and the Assistant Secretary of State for Consular Affairs Maura Harty addressed these concerns on two occasions: in a March 2005 letter to Undersecretary Ruy Nogueira of the Brazilian Ministry of Foreign Affairs, as well as during a September 2005 bilateral meeting with her Brazilian counterpart held in Washington. The USCA is encouraged by plans to organize a judicial seminar on the Convention in Brazil in August 2006 and has offered the assistance of a U.S. state court or Federal judge. As a relative newcomer to the Convention, we determine Brazil's performance to be "not fully compliant," with the understanding that without improvement this designation may be downgraded in subsequent reports.

### **CHILE**

The responsiveness and competence of the Chilean Central Authority continue to be commendable, and Convention applications are processed expeditiously. It is with the Chilean judicial performance that the USCA continues to observe the same serious problems that have been cited in earlier compliance reports. Chilean courts consistently handle Convention return cases more as custody determinations than as decisions regarding wrongful removal and habitual residence of the child, in clear contradiction of the letter and spirit of the Convention. The courts often order psychological or social evaluations of abducted children and in some instances of the left-behind parent, and in most cases in the absence of any evidence of risk or harm to the child. Chilean courts have allowed taking parents to submit unsubstantiated affidavits regarding the character of the left-behind parent and have ordered that left-behind parents respond to interrogatories (*pliego de posiciones*) relating to their fitness as a parent. Such evaluations, unless part of a carefully circumscribed inquiry in response to a taking parent's assertion of exceptions to return under Article 13(b) of the Convention, are inappropriate in context of a Convention proceeding. As they go directly to merits of custody, they properly should be left to the courts in the country of habitual residence.

Chile is also a signatory of the UN Convention on the Rights of the Child. The Chilean courts seem to be using the UN Convention as a basis for introducing custody-related issues, and inappropriately applying the "best interests of the child" standard. A nationalistic bias also continues to be reflected in court decisions on Convention cases, where Chilean nationals are apparently favored over foreign left-behind parents.

Although there was no Convention training available for Chilean judges during the reporting period, it is hoped that a 2006 judicial seminar, planned in cooperation with the USCA, U.S. Embassy Santiago, and the Chilean Central Authority, will be the start of a better understanding by Chilean judges of the Convention and their responsibilities under it. There was not, however, sufficient progress during the reporting period to merit a shift in the rating of "not fully compliant."

## **COLOMBIA**

As indicated in last year's report, the Colombian Central Authority, located in the Colombian Family Welfare Institute (ICBF), continues to show a greater degree of cooperation on Convention cases. In 2005, the ICBF facilitated a consular officer's welfare/whereabouts visit with two abducted children and successfully mediated a voluntary return in a Convention case. The Colombian Congress likewise completed work on new Convention implementing legislation, clarifying which courts have jurisdiction over Convention cases. The law, which was signed by President Uribe in January 2006, assigns administrative responsibility for Convention cases to the ICBF and judicial responsibility for Convention cases to Colombia's family courts, or to civil courts in those locations outside the geographic range of family courts. The USCA hopes that the law will end the chronic delays that occurred in the past, when courts would avoid assuming jurisdiction and Convention cases languished for years in the judicial system.

Despite these developments, serious problems with Colombian compliance remain at all levels, including delays experienced once cases reach the regional ICBF offices, misapplication of the Convention by the courts and Interpol Bogotá's inability to locate abducted children. ICBF insistence on holding conciliation hearings and conducting home studies in Convention cases demonstrates a lack of understanding of the Convention and results in a misperception by the court that Convention cases are to be treated as custody cases. The resulting delay further provides Colombian judges with an improper rationale for determining that a change in habitual residence has occurred, even in cases in which a Convention application was filed within one year of abduction or wrongful retention, which is inconsistent with Article 12 of the Convention.

Colombian judges have been inclined to make their decisions based on "the best interests of the child," drawing on language in the UN Convention on the Rights of the Child, rather than basing their decision solely on the more precise and binding language found in the Convention that requires an initial determination on the issue of whether a child has been wrongfully removed. Furthermore, judges tend to presume that a child is better off remaining in Colombia, even in the absence of evidence of risk if the child were to be returned to the United States. Although steps have been taken to educate judges about the Convention, including a May 2005 conference hosted by the Ministry of

Foreign Relations in coordination with the Colombian and U.S. Central Authorities and U.S. Embassy Bogotá, far more needs to be done. The ICBF recognizes the problem and has initiated a series of workshops around the country for judges and family welfare officials. Until Colombian courts customarily apply the principles of the Convention, however, Colombia cannot be considered fully compliant with its Convention responsibilities. We do recognize, however, the positive strides taken by the executive and legislative branches of the Colombian government and therefore upgrade Colombia's rating for the most recent reporting period to "not fully compliant."

## **GREECE**

As in the 2005 compliance report, Greece remains a country "not fully compliant" with its Convention obligations. While the Greek Central Authority processes Convention applications in a satisfactory manner, court hearings are seriously delayed. Of particular concern is the inordinately long period of time that elapses between a hearing and notification of the court's decision. Such delays violate Article 11 of the Convention requiring expeditious proceedings, and exacerbate the impact of child abductions.

In addition, rather than restricting their consideration to the question of habitual residence of abducted children, Greek courts typically treat Convention cases as custody matters, and base their decisions on the best interests of the child or other criteria outside the boundaries of the Convention. Moreover, the courts exhibit a nationalistic bias in favor of Greek parents and take into account other inappropriate considerations of the home environment, such as the alleged benefits of the child living surrounded by his or her extended Greek family. We also find that Article 13(b) is used excessively to refuse returns. Greek courts frequently accept taking parents' claims that the left-behind parent was abusive or generally unfit to be a parent without clear evidence in support of these assertions. Courts do not fully investigate these claims or consider alternative methods – such as the availability of social services – to protect the child and the taking parent so that a return can be ordered and custody can be properly determined in the child's country of habitual residence. As a result, we see a very low rate of Convention return decisions.

Institutionally, the legal framework in Greece seems to support the necessary mechanisms for the Convention to function effectively. The Convention has force of law and has primacy over domestic law; first instance courts can hear Convention cases under expedited procedures (provisional or "emergency" measures); and enforcement mechanisms exist. Despite the legal status of the Convention, however, USCA experience over the last few years indicates that Greek courts, consistently circumventing the Convention by using expansive interpretations of the allowable defenses, are extremely reluctant to order children to leave Greece and return to their country of habitual residence.

U.S. Embassy Athens, with the cooperation of the Greek Central Authority, has taken many steps to attempt to ameliorate this problem in the Greek courts, including: numerous discussions with Ministry of Justice officials; a visit from the U.S. Ambassador to the Greek Minister of Justice on this subject;

and an address by the American Citizen's Services Chief to over 300 judges, prosecutors, and legal scholars at the Greek Continuing Legal Education conference, on the specific subject of Greek courts' problematic record in compliance with the principles of the Convention, as seen from the U.S. perspective. However, until judicial performance complies with the articles of the Convention, Greece will continue to be deemed "not fully compliant" with its Convention obligations.

## **MEXICO**

Over the course of the latest reporting period, we have seen some notable improvements in the performance of the Mexican Central Authority (MCA). The MCA is continuing to forward Convention applications to judges much more expeditiously than before; whereas previously delays of three to six months were common, cases are now being forwarded to the courts as early as four to eight weeks after being received. MCA responsiveness has also improved. USCA case officers are in weekly if not daily contact with the MCA, a welcome change compared to past years. Relations between the MCA and U.S. Embassy Mexico City have significantly improved during the last year as well. They have held joint meetings and telephone conference calls with Mexican state representatives and left-behind parents, and have worked together to review the status of long outstanding cases. The training opportunities and judicial conferences organized by the Department for Mexican officials seem to be reaping benefits; the past year again saw a high number of court-ordered returns from Mexico to the United States.

Many of the systemic problems mentioned in previous compliance reports persist, however. Primarily, our greatest concern remains the inability to locate missing children and taking parents in Mexico. Although it does seem that the MCA is beginning to work more closely with the various branches of local law enforcement, including Interpol, there has not been a substantial change in the frequency with which children are found. Secondly, cases continue to experience lengthy court delays, especially due to the excessive use of a special appeal process (the "*amparo*") to block Convention proceedings almost indefinitely, and also due to the ability of the Mexican courts to reconsider factual determinations made by a lower court. These case delays could be dealt with through the passage of implementing legislation to integrate the Convention into the Mexican legal system, something that we have urged Mexico to do in the past. Finally, Mexico has participated in Department-sponsored training and conferences, but the Government of Mexico (GOM) has not taken sufficient lead to broaden the amount of training offered within its borders to judges, or to provide additional resources to the Mexican Central Authority. As a result, we continue to see Convention cases mishandled as custody cases and not strictly as Convention (i.e. habitual residence) determinations. As for enforcement of judicial orders for return, it seems the record in Mexico is mixed. Although some mechanisms do exist to enforce court orders, they are not utilized consistently.

We have made numerous appeals to the Mexican Government to invest greater funding and attention towards international child abduction-related issues, including strengthening the MCA by increasing resources and adding additional staff, offering more training for judges, and improving coordination with local resources for locating children. The U.S. Embassy and Consulates in Mexico have worked

closely throughout the year with Mexican officials and judges to explain roles and obligations under the Convention. Assistant Secretary of State for Consular Affairs Maura Harty has repeatedly raised U.S. Government concerns over Mexico's compliance problems with senior Mexican officials, including during the November 2004 Binational Commission meetings and during Secretary of State Rice's first trip to Mexico in March 2005. Mexican judges participated in Department-sponsored training and conferences, including a December 2004 Latin American Judicial Seminar, at which judges from 19 countries shared experiences and worked through cases studies using Convention principles. Nevertheless, the MCA has not taken a sufficient lead to broaden the amount of judicial training offered within its borders.

In the last report, Mexico was upgraded to "not fully compliant" from an earlier designation of "noncompliant" to reflect an increase in the number of successful returns and the GOM's efforts to address some of the Department's long-held concerns. We continue to be optimistic regarding Mexico. However, due to the persistence of the above-mentioned problems, we believe that Mexico should again be listed as "not fully compliant." Further improvements to Mexico's ranking in upcoming reports will require continued progress in resolving the remaining issues that complicate Convention case processing.

## **PANAMA**

Panama's performance in implementing the Convention was previously cited as "noncompliant."

However, progress has been noted in Panama's handling of its Convention responsibilities during the 2005 reporting period and the United States presently considers Panama to be "not fully compliant" in its implementation of the Convention. The Panamanian Central Authority (PCA), located in the Ministry of Foreign Affairs (MFA), has shown a higher degree of cooperation on Convention cases in 2005. Communication among the MFA, U.S. Embassy Mexico City and the USCA has improved.

During the rating period, the Government of Panama additionally provided training to over sixty officials involved in Convention cases during a seminar in August 2005, which was attended by the Latin American Liaison from the Hague Permanent Bureau. Supplementing this training is the website of the PCA where information on the Convention and its operation is published.

Despite the training offered, court decisions in Panama continued to be slow and inefficient. In contradiction to the goals of the Convention, courts also continued to treat Convention cases as custody matters, ordering psychological evaluations of the left-behind parent and interviews of the child. Judicial delays are likewise problematic, with cases pending in the court of first instance for six months with no decision. More proactive involvement by the PCA could improve compliance efforts. Although the USCA continues to have serious concerns with regard to judicial performance in Panama, we are encouraged by the steps taken by the PCA in the area of education. It is imperative that Panama continue efforts to strengthen compliance. We anticipate that an additional judicial training planned for 2006 will aid these efforts.

## **TURKEY**

In the last compliance report, Turkey was cited as “noncompliant.” We find that some of the same problems remained during the most recent period. For example, the USCA finds that the Turkish Central Authority is only responsive when U.S. Embassy Ankara intervenes. Turkey continues to lack implementing legislation for the Convention, although such legislation is currently on the Turkish Parliament agenda. Locating children continues to be problematic and Turkish law requires the prosecutor to locate the children before a court case can be opened in that geographic district. Taking parents may file for divorce in one court and custody in a different court, inhibiting the Convention process. Return orders are often not enforced which requires continued close monitoring.

Several favorable initiatives must also be mentioned. As part of a new criminal code passed for EU accession that went into effect in June 2005, Turkey criminalized parental child abduction for the first time. Turkey has also consolidated abduction cases into new family courts, which are more familiar with all aspects of family law, including the Convention. We likewise acknowledge the speed with which two recent cases have been favorably resolved, even though one was resolved outside of the current rating period. In that case, the presiding judge ordered the return of the abducted children to the United States within a month from the initial hearing date. We are encouraged by the apparent improvement in the judicial processing of Convention cases and hope this is the beginning of a new trend in Turkey.

During the reporting period the EU sponsored two training programs on Convention implementation for Turkish judges and prosecutors. Turkish attorneys and judges are becoming more familiar with the Convention and we would encourage any efforts to expand judicial education. We also note that the Turkish Central Authority, located in the Ministry of Justice, is taking a more active role in resolving cases more rapidly. In recognition of these improvements, the USCA has upgraded Turkey’s compliance rating from “noncompliant” to “not fully compliant.” The Government of Turkey will hopefully sustain the momentum needed to fully implement, and carry out its obligations under the Convention.

## **COUNTRIES OF CONCERN**

### **HUNGARY**

In the 2005 Convention compliance report, Hungary was listed as “a country of concern.” During the rating period for the 2006 report, the USCA continued to find the Hungarian Central Authority (HCA) responsive to inquiries from the USCA, U.S. Embassy Budapest, and left-behind parents. Over the course of the rating period, the HCA has taken notable steps to improve its judicial training outreach. Annual, multi-day training sessions, as well as one-day sessions to review any changes in applicable laws, are now available for judges who hear Convention cases. The USCA commends the HCA for

taking proactive steps to improve Hungary's performance, and is optimistic that enhanced training will have a positive impact over the course of the next rating period.

The USCA did not see the same level of inappropriate use of psychological evaluations, although the light Convention caseload with Hungary makes it difficult to identify trends. The USCA remains concerned about the broad interpretation of Article 13(b) and an inconsistency with regard to evaluating and defining the term "habitual residence." There has been a history in Hungarian Courts of favoring Hungarian mothers over non-Hungarian fathers, especially in cases where the children are under the age of five. In the few cases heard during the reporting period this trend did not seem to continue.

The USCA is also concerned that the judicial process in Hungary makes return orders difficult to enforce. If the taking parent elects not to comply with a return order, the burden rests on the left-behind parent to demonstrate that the taking parent was properly served with a return order and is willfully not complying, so that the left-behind parent may obtain an enforcement order. The left-behind parent, the prevailing party, is unlikely to have the resources or wherewithal to meet the burdens of enforcement.

Overall, there are signs that Hungary's compliance may improve. The USCA finds it encouraging that the HCA and U.S. Embassy Budapest, with guidance from the USCA, have established a semi-annual working group geared towards improving cooperation with the United States under the Convention. There were too few cases during the reporting period, however, to represent a sustained change. The USCA therefore considers it premature to upgrade Hungary's classification in the 2006 report and continues to designate Hungary a "country of concern."

## **POLAND**

In the 2005 Convention compliance report, Poland was designated as a "country of concern."

Although some improvements in Poland's compliance with its Convention obligations were made during the reporting period, there was not sufficient progress to merit a shift in the "country of concern" rating. One long-outstanding Polish case, detailed in Attachment A, remains one of the most egregious cases with which the USCA has dealt. More than six years have passed since a Convention return application was filed in this case and it is still unresolved despite regular and repeated engagement on this issue. This case is indicative of many of the flaws in Polish compliance with the Convention.

However, the USCA was encouraged to note that application of the convention in regard to Article 13(b) exceptions appears to be improving. Of the two cases filed in the reporting period, an appellate court overturned the original ruling for a psychological evaluation in one instance, and, in the second, the court rejected the taking parent's motion for psychological studies and also refused to hear testimony related to the current condition of the child as custody was not to be decided at the Convention hearing. We will continue to monitor and express concern about appropriate application of



the Convention and suggest that more systemic improvements could be made by making judicial training available.

Although judicial processing times have significantly decreased, Convention cases continue to move slowly, averaging approximately nine months during the reporting period. Of greater concern is the enforcement of court orders in cases in which parents win return orders. Polish authorities lack the ability to conduct nationwide searches of missing children, thus impacting judicial processing and enforcement of orders. Even in cases where the left-behind parent has provided specific information about where the child is located, the ability of the Polish authorities to verify it is ineffective. Further, once a child is located, there does not appear to be any mechanism to ensure that the taking parent cannot further abscond or conceal the child's whereabouts. This is largely due to the fact that international parental child abduction is merely a civil offense in Poland. Because the violation of a left-behind parent's rights is not a criminal act, and there is no other legislative tool in place to engage investigative resources; Polish law enforcement authorities' ability to search for a child is extremely limited.

Officials from the Department of State in Washington and U.S. Embassy Warsaw continue to raise compliance issues and individual abduction cases with high-ranking officials from the Polish Government through diplomatic notes, formal demarches, and ongoing communications with the Polish Central Authority. Assistant Secretary of State for Consular Affairs Maura Harty also regularly raises these issues during bilateral meetings with her Polish counterpart.

We note that a new Polish government has recently been elected. Several high-level meetings between U.S. Embassy Warsaw and the Polish Ministry of Justice (MOJ) have been held since the close of the reporting period. Polish MOJ representatives have indicated an intent to address many of these compliance issues and improve Poland's Convention performance. Although we continue to designate Poland as a "country of concern" for the most recent reporting period, the USCA is optimistic about Poland's renewed dedication to address Convention compliance.

## **ROMANIA**

In the 2005 Convention Compliance Report, Romania was judged to be a "country of concern;" an upgrade from "not fully compliant," as Romanian performance in the 2004 Report was rated. During the most recent rating period, we saw encouraging signs that Romania might continue to improve its compliance. Although the USCA has concerns with the Romanian Central Authority's (RCA) responsiveness to direct inquiries and ability to provide timely status updates and court determinations, U.S. Embassy Bucharest has assisted the USCA in evaluating the RCA as having good cooperation and performance. At the beginning of the rating period, Romania passed new legislation that will serve as a best practices guide for the judiciary. There is a possibility, however, that the new legislation may support the previously cited flaw in Romanian compliance of courts requiring psychological and home evaluations, because the legislation requires that a psychologist be present and prepared to submit a report at the court's request. It is still too early to discern whether the new

legislation will correct a bias in the courts in favor of the Romanian parent, especially mothers with young children. The lack of new cases during the reporting period makes it impossible to tell whether there has been an improvement in the timely movement of cases through the Romanian court system. Due to the lack of new cases upon which to base a change in rating, the USCA continues to designate Romania as a "country of concern."

## **SPAIN**

The Government of Spain continued during this rating period to not provide the resources required to completely meet its Convention obligations. During the reporting period the Spanish Central Authority (SCA) had only one individual to handle both incoming and outgoing Convention cases, in addition to other non-Convention duties. As a result, the short-staffed SCA has not been rapidly or directly responsive to inquiries made by the USCA. Resources to locate children are insufficient, and the judicial processing and adjudication of Convention return applications is slow. The SCA has met with U.S. Embassy Madrid representatives on Convention issues and cases, and was proactive in preparing for a judicial bilateral conference scheduled for January 2006. For these reasons, we designate Spain as a "country of concern." The USCA does recognize that several positive developments have taken place after the reporting period, including an increase in SCA staff to two case officers, the fruition of a bilateral judicial Convention conference, and the appointment of a new Director General for International Legal Cooperation at the Ministry of Justice. We will remain watchful for tangible improvements resulting from these changes during the 2006 rating period.

## **THE BAHAMAS**

The Bahamas was designated a "country of concern" in the 2005 Convention Compliance Report, and likewise is designated a "country of concern" in the 2006 Report. While timeliness of responses from the Bahamian Central Authority (BCA) has improved, the USCA's earlier concerns about The Bahamas' Convention compliance remain. In the only case that was decided during the rating period, the Bahamian court appears to have ordered a home study of the left-behind parent and his family in the United States, suggesting that the court is treating the Convention case as a custody determination, and in so doing contravening Convention guidelines. In addition, the BCA continues to require unacceptably rigid requirements for documentation submitted in Convention applications. For example, the BCA requires authentication or certification of documents submitted by left-behind parents, including certified copies of the laws of the jurisdiction from which the child was taken, in direct contravention of Article 14 of the Convention. A left-behind parent must draft an affidavit in support of the Convention application and submit the draft to the Bahamian Central Authority for vetting. Only after the BCA approves the affidavit, returns it to the applicant for a notarized signature, and the left-behind parent re-submits it to the BCA, is a case forwarded for further processing. The delays that can be caused by these extraordinary requirements contravene the Convention's Article 2 requirement to use the "most expeditious procedures available." Such delays have the potential to cause significant harm to all parties to the dispute, especially the children.

## **UNRESOLVED RETURN CASES**

Section 2803 (a)(4) requests “[d]etailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.”

The information requested under this section is provided in Attachment A.

## **ENCOURAGING USE OF THE CONVENTION**

Section 2803 (a)(5) requests “information on efforts by the Department of State to encourage other countries to become signatories to the Convention.”

The Department avails itself of appropriate opportunities that arise in bilateral contacts to persuade other countries of the advantages that would derive from becoming parties to the Convention. The Assistant Secretary for Consular Affairs consistently raises the Convention in talks with foreign officials on other bilateral consular matters. The Department maintains a library of talking points and materials for its overseas posts to use in explaining to foreign governments the advantages of adhering to the Convention.

When a country accedes to the Convention, the Department does not automatically accept it as a Convention partner. The Department assesses whether the country has established the necessary legal and institutional framework for carrying out its Convention responsibilities. In 2004, the United States completed its assessments of Bulgaria and Uruguay and accepted their accessions.

Assessments are currently underway of all other countries whose accessions to the Convention have not yet been recognized by the United States

The Assistant Secretary for Consular Affairs formally discussed the Convention this year with several countries, including India, Japan, Russia, Saudi Arabia, and Ukraine, which have not yet acceded to the Convention. The state that most recently acceded to the Convention was the Dominican Republic (November 2004).

## **ENFORCEMENT PROBLEMS**

Section 2803 (a)(6) requests “[a] list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Convention proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in

the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.”

The Convention directs contracting states to ensure that rights of custody and/or access are effectively respected. The Convention requires that other countries recognize U.S. custody rights, including rights of access and visitation, to the extent that such rights provide the basis for applications and the rationale for return. Adjudication of a return case by a foreign court under the Convention is not a decision whether to enforce a custody order.

In the context of a return application, the Convention specifically limits consideration of custody matters to the question of whether the applying parent was actually exercising rights of custody (under the applicable law in the child’s country of habitual residence) at the time the child was wrongfully removed to or retained in another country. Our evaluation of compliance with the Convention’s requirements concerning the return of abducted or wrongfully retained children and corresponding enforcement issues does not, therefore, evaluate the extent to which U.S. court orders are recognized and enforced as such.

## **GERMANY**

Since 2000, Germany has demonstrated strong performance regarding applications for the return of children to the United States. Despite this, we continue to observe unwillingness on the part of some judges, law enforcement personnel and others within the child welfare system in Germany to vigorously enforce German orders granting parental access in both Convention and non-Convention access cases. American parents often obtain favorable court judgments regarding access and visitation, but the German courts’ decisions can remain unenforced for years. A taking parent can defy an access order with relative impunity. As a result, a number of U.S. parents still face problems obtaining access to and maintaining a positive parent-child relationship with their children who remain in Germany.

In one particularly high-profile access case, which was noted in the previous report, the parent living in Germany, a non-German until early 2004 with physical custody of two children, defied for nearly ten years valid German court orders permitting visitation by the U.S. parent. Local authorities temporarily removed the children from the foreign parent’s care and the U.S. parent began establishing a relationship with the children after their prolonged separation. In December 2004, the foreign parent again defied German officials by removing the children from a court-ordered group home and again terminated all access by the U.S. parent. The court order removing the children from the foreign parent’s custody was later temporarily suspended, and the children remain in her care. In May 2005, the German court awarded legal custody of the children to the U.S. parent, with the exception of the right to decide where the children live. This legal right remains with the children’s former guardian who also has the responsibility of carrying out the U.S. parent’s wishes. While the left-behind parent pursues another round of court cases, U.S. officials continue to press German authorities for a resolution of this vexing case.

## **ISRAEL**

The Israeli Central Authority has been cooperative and responsive in its dealing with the USCA.

However, in one long outstanding case, a failure to locate the child and the taking parent (despite evidence of the child's whereabouts) prevented the enforcement of the order for the child's return to the United States.

## **POLAND**

Poland's domestic legal framework does not permit the consistent, effective enforcement of orders for return. As a practical matter, a taking parent who flees or hides a child in defiance of a final return order cannot be compelled to comply with the order unless the parent is first stripped of his/her parental rights. Additionally, refusing to obey return orders seems to carry few negative consequences for the taking parent. In one long outstanding Polish case, where the court is reexamining whether it is in the child's best interests to be returned because so much time has elapsed, the parent's refusal to comply with a return order proved to be advantageous.

## **SWEDEN**

Sweden's significantly improved record on enforcing return orders has been noted in previous Compliance Reports. Enforcement problems, however, remain a barrier to access. Arrest or physical removal of the child from the violator's care is rarely used, and Sweden does not have the equivalent of a "contempt of court" mechanism. In the Department of State's experience, Swedish courts have enforced very few of the access rulings favorable to American fathers.

## **SWITZERLAND**

Although Switzerland has a range of available legal mechanisms for enforcing court orders for return or for access, Swiss authorities are generally reluctant to use any coercive means of enforcement out of a concern for a child's well-being and the preservation of his/her relationship with both parents.

This reluctance creates conditions that make it easier for taking parents to evade compliance with court orders. Cantonal independence can also complicate the enforcement of orders. Although cantons generally will respect decisions issued in other cantons, taking parents can use procedural differences to delay the enforcement of an order by moving to another canton where the left-behind parent may then have to formally request that their return or access order be enforced.

## **NON-GOVERNMENTAL ORGANIZATIONS**

Section 2803 (a)(7) requests “[a] description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of non-governmental organizations within their countries that assist parents seeking the return of children under the Convention.”

The USCA works in close partnership with non-governmental organizations, particularly the National Center for Missing and Exploited Children (NCMEC), to promote education and training and to resolve cases of international child abduction. The degree of cooperation continues to expand. The International Center for Missing and Exploited Children, NCMEC's international arm, has run a series of training programs targeted at law enforcement officers over the last year in such places as Argentina, Jordan, New Zealand, and Russia, among others. This training, which includes a component on locating missing children, addresses a particular concern we have had with many of our treaty partners.

International Social Services (ISS) works with U.S. and foreign officials and parents to facilitate contact with and return of children. ISS currently has national branch offices or bureaus in 143 countries (including most of our Convention partner countries) to assist families who are separated, including separation resulting from child abduction. When appropriate, the Department and U.S. consular officials refer parents to ISS for additional support or work directly with ISS. In some cases, ISS has been actively involved in arranging escorts for returning children and in working to establish better communication between parents or between a parent and child.

In our diplomatic efforts, the Department of State has encouraged Convention parties to utilize the services and expertise of local NGOs, particularly in countries trying to develop or expand their capacity to more effectively implement the Convention.

## — ATTACHMENT A —

### **List by country of applications for the return of children submitted to the Central Authority for the United States that remained unresolved more than 18 months after date of filing.**

The following acronyms are used throughout:

**CI** – Office of Children’s Issues, part of Overseas Citizen Services of the Bureau of Consular Affairs, U.S. Department of State. Acts as the U.S. Central Authority.

**CA** – Foreign Central Authority responsible for Hague Abduction Convention Issues in the Foreign country.

**LBP** – Left-behind parent from whom a child has been abducted or wrongfully retained abroad.

**TP** – Taking parent, who abducted or wrongfully retained the child abroad.

Please note that, in addition to the actions described in the case summaries below, the U.S. Department of State and our overseas Embassies and Consulates (“posts”) maintain frequent and ongoing conversations and meetings with left-behind parents.

## **ARGENTINA**

Date of abduction or wrongful retention: April 27, 2003

Date Convention application filed: April 28, 2003

Has child been located? Yes

An application for return was filed by the LBP directly with the Argentine Central Authority in April 2003. The LBP’s private attorney presented the application to the appropriate Argentine Court in October 2003. Although the Court of First Instance issued an order for the children’s return to the United States, the case has been delayed due to numerous appeals made by the TP. In addition to delays in lower court proceedings, the Argentine courts inappropriately considered criteria outside the Convention in deciding the case, including psychological examinations and home studies. At the end of the reporting period, the case was pending before the Argentine Supreme Court for a decision on whether the children’s return to the United States would violate their rights under the UN Convention on the Rights of the Child. After the end of the reporting period the Argentine Supreme Court made a final ruling for the return of the children.

In 2005 U.S. Embassy Buenos Aires delivered one demarche and two diplomatic notes about this case to the Argentine Central Authority requesting the issuance of an expeditious decision in compliance with the Convention.

## **AUSTRALIA CASE 1**

Date of abduction or wrongful retention: August 21, 2003

Date Convention application filed: March 29, 2004

Has child been located? Yes

Following the order for return, the taking parent stated she did not have the financial resources to return the child herself. The Court would not allow the then-nine-year-old child to travel alone from Australia to the United States. The taking parent was agreeable to a pick-up by the left-behind parent. However, in spite of repeated urging by the U.S. Central Authority, the left-behind parent failed to arrange the child’s return before the end of the reporting period. The LBP did maintain weekly contact with the child by telephone and, at the LBP’s request the U.S. Consulate in Sydney made a welfare visit with the now-eleven-year-old child. After the close of the reporting period the LBP

traveled to Australia, and has since had several unsupervised visits with the child. The case is, however, back in the courts and the LBP plans to remain in Australia until the court action is resolved.

## **AUSTRALIA CASE 2**

Date of abduction or wrongful retention: June 28, 2002

Date Convention application filed: February 10, 2004

Has child been located? No

The child was abducted to Norway in June 2002. In October 2002 a Convention application was filed in Norway and a Norwegian court ordered a return on February 3, 2003. Following the Norwegian Court's decision to return the child to the U.S., the taking parent and child disappeared. On January 30, 2004, the U.S. Central Authority was notified by Australian immigration authorities that the taking parent and child entered Australia on August 7, 2003 and were considered visa overstays. The Australian authorities have been searching for the taking parent and child ever since with no results. A new Convention application package was submitted on February 10, 2004 to the Australian Central Authority and a "port stop" is in place. The left-behind father has had regular contact with the U.S. Consulate and has been very involved in the search.

## **COLOMBIA CASE 1**

Date of abduction or wrongful retention: August 23, 1998

Date Convention application filed: March 11, 1999

Has child been located? Yes

This case has been in litigation for years. The child was ordered returned in March 2000, but the decision was reversed in October 2000, upon appeal. Since then, the case has moved through five different courts without resolution. U.S. Embassy Bogotá and CI have approached Colombian authorities at various times on behalf of the LBP. In August 2003, a diplomatic note was forwarded to the Colombian CA seeking assistance in gaining consular access to the child. To date, there has been no consular access to the child. In March 2004, U.S. Ambassador Wood discussed abduction issues with Colombia's President Uribe. Since February 2001 six diplomatic notes have been sent to the Colombian Ministry of Foreign Affairs regarding the case. U.S. Embassy Bogotá officials regularly meet with Colombian authorities to urge resolution of outstanding cases and to promote speedier, improved Convention case procedures.

## **COLOMBIA CASE 2**

Date of abduction or wrongful retention: July 19, 2002



Date Convention application filed: May 30, 2003

Has child been located? Yes

The U.S. Central Authority forwarded the Convention application to the Colombian Central Authority on May 30, 2003. The LBP advised that the case is still pending before the 10 th Civil Circuit Court in Bogotá. The Court has conducted home studies with the children, but has yet to issue a decision. U.S. Embassy Bogotá officials regularly meet with Colombian authorities to urge resolution of outstanding cases and to promote speedier, improved Convention case procedures.

## **ECUADOR**

Date of abduction/wrongful retention: May 9, 2003

Date Convention application filed: July 2, 2003

Has child been located? Yes

The U.S. Central Authority forwarded the application to the Corte Nacional de Menores in July 2003. No action was taken on the case and it was determined that the Corte Nacional de Menores was no longer acting as the Ecuadorian Central Authority. In January and July 2005, copies of the application and supporting documentation were sent to the designated temporary Ecuadorian Central Authority, yet still no action has been taken on the case.

U.S. Embassy Quito and U.S. Consulate Guayaquil urged Ecuadorian officials for the appointment of a new Central Authority. On two occasions temporary Central Authorities were designated. In January 2005, the U.S. Embassy Quito presented a copy of the application to the office designated to act temporarily as the Central Authority. In July 2005, a new office was designated to act as the Central Authority and the Consulate again presented the application with a request that the case be resolved expeditiously.

## **GREECE**

Date of abduction/retention: July 19, 2003

Date Convention application filed: August 28, 2003

Has child been located? Yes

At the time that the TP abducted the child in July 2003, the child's mother had recently passed away, and the TP father and maternal aunt were engaged in a custody dispute. A California court granted the aunt sole custody and she filed a Convention application for the child's return. The Greek court denied the aunt's Convention application for return in May 2004, but did grant her access to the child. She

submitted an appeal, and the TP continues to refuse to allow the access that the Greek court ordered. After the close of the reporting period, on

October 13, 2005, an appeal hearing occurred, but neither the child's aunt nor CI has been informed of the outcome.

## **HONDURAS CASE 1**

Date of abduction/retention: April 1, 1997

Date Convention application filed: May 1998

Has child been located? Yes

The Instituto Hondureño de la Niñez y la Familia (IHFNA), the Honduran CA, has at no point addressed the return of this child to the United States. IHFNA has, at the request of Post, conducted welfare visits with the child and reports on these visits have been provided to the LBP. The TP, who is Honduran-American, re-entered the United States without the child in 2003. The child's abduction to Honduras violated a U.S. court order issued in December 1997 that mandated that the child not be removed from the court's jurisdiction. The U.S. civil court that issued the order held the TP in jail on contempt of court charges and indicated that the TP would remain in custody until the child returned to the United States. The TP also faced pending criminal charges under the International Parental Kidnapping Act. The Government of Honduras (GOH) closely monitored the TP's U.S. civil court case. At one hearing the GOH, through hired legal representation, submitted an Amicus Curiae brief in support of the TP's release. The brief stated that the GOH would not relinquish the child to the authority of the Court in the United States, and therefore the contempt charges against the TP could not have any coercive effect. After the reporting period, through the coordination of the U.S. Embassy Tegucigalpa, the LBP and the TP's attorney in the United States, the child returned to the United States in the care of her Honduran-American grandparents. The TP was released from jail, was arraigned the same day for an International Parental Kidnapping charge, and is out on bond. The child is in the temporary custody of her maternal grandparents and the TP has some visitation.

Before and during the reporting period, U.S. Embassy Tegucigalpa officials frequently engaged IHFNA and Honduran officials to encourage the ratification of the Convention and the development of a functioning Central Authority. Honduras officially ratified the Convention in January 2004 and formally designated IHFNA to act as the Central Authority in June 2005. In June 2005, U.S. Embassy Tegucigalpa organized a conference with IHFNA and a representative of the Hague Permanent Bureau to establish procedures for processing Convention cases.

## **HONDURAS CASE 2**

Date of abduction or wrongful retention: December 1, 1998

Date Convention application filed: July 10, 2003

Has child been located? Yes

No action was taken in this case by Instituto Hondureño de la Niñez y la Familia (IHFNA), the Honduran CA, until October 2005. At that time, IHFNA indicated to the U.S. Central Authority that they will begin work to arrange a voluntary return and if not successful to file a motion in support of the application for return with the appropriate Honduran court.

### **HONDURAS CASE 3**

Date of abduction or wrongful retention: July 8, 2003

Date Convention application filed: September 30, 2003

Has child been located? Yes

No action was taken in this case by Instituto Hondureño de la Niñez y la Familia (IHFNA), the Honduran CA, until September 2005. At that time, IHFNA assisted in initiating proceedings by presenting a motion in support of the Convention application to the appropriate Honduran court. The LBP is represented by a private attorney; however IHFNA has monitored the case and reported on developments.

### **ISRAEL CASE 1**

Date of abduction or wrongful retention: April 18, 1997

Date Convention application filed: October 6, 1997

Have children been located? No

On November 24, 1998, the court ordered that the children be returned to the United States. On January 13, 1999, after attempts to locate the TP and the children had failed, the Court issued another order instructing the police to locate the children. Unfortunately, efforts undertaken by police also failed.

CI has regular, ongoing contact with the LBP, U.S. law enforcement, the Israeli CA (ICA), and through the ICA, contact with foreign law enforcement. In an effort to help the ICA and foreign law enforcement locate the TP, CI and federal law enforcement provided them with the TP's Department of Motor Vehicles photograph. At the request of CI, the director of the ICA has had several meetings with law enforcement officials regarding their efforts to locate the children. ICA informed CI that search efforts had been expanded, but whereabouts of the children remain unknown. CI maintains contact with the LBP.

## **ISRAEL CASE 2**

Date of abduction or wrongful retention: June 2, 1997

Date Convention application filed: May 5, 2002

Has child been located? Yes

The Israeli Central Authority (ICA) accepted the Convention application for return since the exact location of the child and TP had been confirmed. In August 2002, at the request of an Israeli judge, LBP traveled to Israel to allow Israeli social services to do a full evaluation of the situation. In January 2003, the judge accepted the social worker's recommendation that as part of the reunification process with the child, the LBP should come to Israel for longer periods and each visit between the LBP and child during this time would be extended. The social worker and the court would monitor the reunification process, before making any decision concerning travel to the United States. Visitation in Israel between the child and LBP continues; the most recent visit occurred in summer 2005. The LBP also telephones the child regularly. The LBP still wants the child returned to the U.S. ICA has informed CI that the judge told the LBP's attorney that a mutually agreed visitation arrangement was the best solution, adding no return would be ordered unless the TP agrees to cooperate on establishing a visitation agreement. To date, this case is still pending in court. CI has regular, ongoing contact with the LBP. The ICA closed their file on this case, but continues to respond to inquiries from CI.

## **MAURITIUS**

Date of abduction or wrongful retention: December 4, 1997

Date Convention application filed: February 3, 1999

Has child been located? Yes

This is one of two cases in Mauritius in which the applications were filed after the country became a party to the Convention (October 1993) but before the country's legislative body incorporated the Convention into Mauritian law (October 2000). The lower court rejected the petition in 1999, ruling that the Convention had not yet been incorporated into domestic law through implementing legislation. The Mauritian Supreme Court affirmed this decision. In October 2000, Mauritius passed legislation which implemented the Convention. In light of the passage of implementing legislation, and at the prompting of CI and U.S. Embassy Port Louis, the LBP's case was re-filed, but was again denied by the lower court on grounds that the implementing legislation had no retroactive effect. A procedural hearing for submission of both parents' affidavits before a Supreme Court judge occurred in February 2004. A hearing originally scheduled for October 2004 was first continued until June 2005, continued again until July 2005, and continued a third time until October 2005. After two years of no access to the two retained children, in 2005 U.S. officials did conduct one successful visit.

After the reporting period, the Mauritius State Attorney's Office began pursuing a resolution on behalf of the LBP based on the fact that the Government of Mauritius became a signatory and, in 1993, was accepted as such by the United States. The position of the Mauritius State Attorney's Office is that Mauritius should honor its obligation as a signatory. We will continue to monitor this case.

### **MEXICO CASE 1**

Date of abduction or wrongful retention: May 2, 2003

Date Convention application filed: February 13, 2004

Has child been located? Yes

In May 2004, the LBP subjected himself to the jurisdiction of the Mexican court by taking a drug test in which no drugs were found to be present. He also paid for and provided a psychological evaluation at the judge's request. The judge then postponed the hearing and requested a police report on the LBP. A hearing originally scheduled for June 8, 2005 was rescheduled for June 28, 2005. The LBP retained an attorney and has communicated with his child by phone. The TP's application for return was denied, but the TP filed an appeal for review that is expected to delay the case at least four months.

### **MEXICO CASE 2**

Date of abduction or wrongful retention: April 2002

Date Convention application filed: April 23, 2003

Has child been located? No

The original case file was lost in the mail between the court and the Mexican Central Authority (MCA) in 2003. The MCA was to certify a copy of the Convention application and send it to the tribunal in the Mexican state of Jalisco.

The case was assigned to a family court in the state of Jalisco. On March 7, 2006, the LBP's attorney advised that the LBP could not travel to Mexico because she is an undocumented alien. A hearing was set; the LBP, however, cannot be located. The MCA and the court have offered to postpone the hearing to allow efforts to locate the LBP and notify her of the hearing date.

### **MEXICO CASE 3**

Date of abduction or wrongful retention: November 2, 2001

Date Convention application filed: February 6, 2002

Has child been located? No

The U.S. Department of Justice requested extradition of the TP in February 2005; however the TP and the child remain in Mexico. The maternal grandmother is believed to be hiding the child. The Mexican authorities issued a provisional arrest warrant for the TP in May 2005 and the Federal Bureau of Investigations (FBI), and CI are coordinating efforts for safe recovery of the child should the TP be arrested.

Interpol Mexico is investigating school records but hasn't been able to discover the TP's whereabouts. On November 19, 2005, the FBI advised Interpol by letter that the TP was in Mexico, and provided an exact location. On Nov 22, 2005, the FBI informed Interpol that the child was in yet another location in Mexico. Interpol has searched for the TP and the child on the basis of this information, however, has not been able to locate them. It may be possible that the TP and child are no longer in Mexico and have moved to Guatemala. U.S. Embassy Mexico City has advised U.S. Embassy Guatemala City of this possibility. Efforts are being made to obtain more information for confirmation.

#### **MEXICO CASE 4**

Date of abduction or wrongful retention: August 2000

Date Convention application filed: September 2001

Has child been located? Yes

A Convention hearing in this case was scheduled for June 17, 2005 but the TP could not be located when representatives from the Desarrollo Integral de la Familia (DIF), Mexico's department of children and family services, went to pick up the child. Efforts are now being made to ascertain the location of the TP. Interpol is also working on the case and in April 2005 confirmed an address where the TP and child were living. Although Interpol found the TP and child in April 2005, court staff was unable to locate them for a hearing in June 2005. On

January 24, 2006, Interpol advised U.S. Embassy Mexico City that the MCA needed to submit a new official request to locate the child in Veracruz, where according to the LBP, the TP and child reside. The MCA has submitted the request to Interpol.

Assistant Secretary of State Maura Harty raised this case at the Binational Committee meeting in November 2003 and again in January 2004 when she met with her counterpart at the Mexican Ministry of Foreign Affairs

#### **MEXICO CASE 5**

Date of abduction or wrongful retention: February 17, 2003

Date Convention application filed: December 3, 2003

Has child been located? No

In its May 2005 meeting with U.S. Embassy Mexico City, Interpol Mexico reported that it had received the addresses provided by CI and had found a possible address for a paternal aunt. The case has been reassigned to a new judge, who is not familiar with the Convention, and the Mexican CA (MCA) has since forwarded to the presiding judge Convention instructional materials. No hearing date has been set.

On July 5, 2005 the Agencia Federal de Investigaci ó n (AFI), Mexico's equivalent of the Federal Bureau of Investigation, informed Interpol Mexico that it could not locate the child. Interpol then researched school records, and found that the child is not enrolled in school in the state where the TP and child were thought to be located, and subsequently informed the MCA of its findings by letter. CI is attempting to obtain additional information from the LBP regarding the possible whereabouts of the TP and child.

#### **MEXICO CASE 6**

Date of abduction or wrongful retention: May 12, 2003

Date Convention application filed: September 24, 2003

Has child been located? Yes

A hearing in this case was scheduled for February 11, 2005, however, the judge, who requested an Article 15 certification, abruptly cancelled it. At a May 2005 meeting with U.S. Embassy Mexico City and the Mexican CA (MCA), the MCA reported that it sent a letter on May 13 to the judge stating that the U.S. Government could not provide Article 15 certification. The MCA asked the state tribunal to reassign the case. A welfare and whereabouts visit was conducted in May 2005 at which time the children seemed to be in good condition. After the close of the reporting period, the court to which the case was reassigned denied the return of the children. It is unknown whether the LBP appealed the decision. U.S. Embassy Mexico City has requested a copy of the judge's order. The MCA considers this case as being closed.

#### **MEXICO CASE 7**

Date of abduction or wrongful retention: October 2, 2001

Date Convention application filed: July 2002

Has child been located? No

This case was filed directly with the Mexican CA by the District Attorney's Office in California. The TP is allegedly fleeing domestic abuse. On May 20, 2005 Interpol Mexico investigated a state of Veracruz address with negative results. U.S. Embassy Mexico City provided to Interpol photographs of the child.

The Mexican Education Department informed Interpol that the child is not enrolled in public schools. Agencia Federal de Investigacion (AFI) is currently investigating another address in the state of Veracruz.

#### **MEXICO CASE 8**

Date of abduction or wrongful retention: October 14, 2002

Date Convention application filed: January 6, 2003

Has child been located? Yes

At the May 2005 meeting between U.S. Embassy Mexico City and the Mexican CA (MCA), the MCA reported that it was about to send forward the case to the relevant Mexican state authorities for court assignment. On November 9, 2005, the clerk of the court stated that a psychological evaluation of the child was completed and provided it to the presiding judge. Also after the reporting period, a hearing was held and U.S. Embassy Mexico City received a copy of the court order denying the return of the child because the TP had custody at the time of the child's removal to Mexico. This case is now closed.

#### **MEXICO CASE 9**

Date of abduction or wrongful retention: February 2002

Date Convention application filed: June 2002

Has child been located? No

The child in this case has been retained by her paternal grandmother since February 2002, the same month in which the left-behind mother was awarded sole legal custody of the child in a U.S. court. In July 2004 the child's grandmother sought, and was denied custody of the child in a Mexican court. The grandmother has since gone into hiding with the child. Both the Mexican Agency of Federal Investigation and Interpol Mexico have been involved in locating grandmother and child.

#### **MEXICO CASE 10**

Date of abduction or wrongful retention: May 16, 2001

Date Convention application filed: October 4, 2001

Has child been located? No

The children in this case cannot be located, possibly because of a temporary move away from their grandmother's home following an earthquake. The Mexican CA (MCA) reported that the judge has not yet returned the case file. The MCA was to have sent a certified copy of the Convention application to



the state of Colima tribunal, however, the MCA reports that it has not received a certified copy of the entire file from its legal department. As a result, it has also not submitted the case to the State Tribunal in Colima for assignment to a judge. In March 2006 the MCA requested from CI a copy of the entire file.

#### **MEXICO CASE 11**

Date of abduction or wrongful retention: October 4, 2000

Date Convention application filed: November 19, 2003

Has child been located? No

On October 22, 2004, U.S. Embassy Mexico City sent a letter to the presiding judge with a new address where the child might be located as well as a description and tag number of a car seen at that address. The judge never responded to the letter. In April 2005 the U.S. Embassy Mexico City requested Interpol's assistance locating the child at a house which, according to the LBP father, belongs to the child's maternal family. Interpol responded that an official request from the MCA is required to begin working on the case. CI facilitated correspondence between the U.S. Embassy Mexico City and the MCA advising the MCA to make a formal request to Interpol. Attempts continued after the reporting period to locate the child. The child could not be found at any of the three addresses provided by the MCA. Most recently Interpol requested information from the education department and is awaiting results. The MCA has since informed U.S. Embassy Mexico City that because the child reportedly is living at the same address, the case will be forwarded to the judge requesting that a visit to the residence take place and that force be used to enter if access is denied.

#### **MEXICO CASE 12**

Date of abduction or wrongful retention: May 15, 1999

Date Convention application filed: August 29, 2001

Has child been located? No

The Riverside County District Attorney's office in California filed this case directly with the Mexican CA (MCA). Although the Convention application was filed in August 2001, a judge had still not been assigned to the case by August 2002 because the MCA was concerned that the applicant was a government entity rather than a person. The MCA did, however, proceed with the case and forwarded the file and several addresses to Interpol so that the TP and child could be located. Since that time, a judge was assigned to the case who opposed making a ruling because the case was brought by a government entity. The case remains unresolved as the judge indicated that he could not locate the child and returned the file to Interpol.

### **MEXICO CASE 13**

Date of Abduction: August 1, 1996

Date Convention Application filed: July 30, 1998

Has child been located? No

This case has primarily been delayed due to the Mexican CA's (MCA) repeated requests for documentation that had been previously provided, but that apparently was never made part of the official MCA file. U.S. Consulate officials in Ciudad Juarez went to various addresses provided by the LBP in 1999 and in 2002 in attempts to conduct welfare/whereabouts visits with the child. The officials were unable to locate the TP or child at the addresses provided.

In February 2001, the U.S. Ambassador to Mexico brought this case to the attention of Mexican officials. U.S. Assistant Secretary of State Maura Harty again raised the case with Mexican officials during a Special Commission on the operation of the Convention that occurred in March 2001 in The Netherlands.

Eventually, CI lost contact with the LBP and placed the case in "inactive" status. In 2004 CI re-established contact with the LBP, and later investigated and located the TP in the state of Chihuahua. CI forwarded this information to the MCA with a request to reactivate the case. The MCA requested documentation that CI had already sent on three previous occasions. The LBP provided the documents once again.

In March 2005 the MCA reported that in December 2004 the judge assigned to the case decided that the LBP should have access to the child. In April 2005 the MCA reported that it contacted the regional social service agency to facilitate a visit between the LBP and child. To date, the neither CI, nor U.S. Embassy Mexico City, has received a copy of the judge's decision. The LBP was never notified that he could visit the child and the MCA has not responded to the U.S. Embassy's request for a copy of its April 2005 letter to the Mexican social service agency requesting assistance. CI made another request for this documentation in February 2006.

### **MEXICO CASE 14**

Date of Abduction: April 6, 2003

Date Convention application filed: October 3, 2003

Has child been located? Yes

In December 2005, the court summoned the children to court to hear their case. According to the Mexican Central Authority (MCA), the children stated that they did not want to return to the LBP. The

LBP chose not to appear at the hearing because her immigration status in the United States is not resolved. The MCA has closed this case; however, CI has not yet received a copy of the judge's ruling.

#### **MEXICO CASE 15**

Date of Abduction: August 1, 2003

Date Convention Application filed: November 25, 2003

Has child been located? No

The Mexican CA (MCA) forwarded this case to the family court of the Federal District of Mexico. U.S. Embassy Mexico City wrote to the judge in August 2004 indicating its interest in the case with a request to be kept informed of any developments. The judge replied in September 2004 that court representatives were not able to locate the TP and child at the address provided by the LBP. In July 2005 U.S. Embassy Mexico City wrote a letter to Interpol Mexico providing additional leads on where the mother and child might be located.

On October 4, 2005, Interpol informed the U.S. Embassy Mexico City that it had confirmed the TP and child were at one of the addresses provided by the LBP. U.S. Embassy Mexico City immediately asked the MCA to share this information with the court so a hearing date could be set. A hearing date was set for

February 8, 2006, however, when the court representatives went to the address provided by the LBP, and subsequently confirmed by Interpol, the TP and child were not found. A new search will commence at a time of the judge's discretion.

#### **MEXICO CASE 16**

Date of Abduction: November 26, 2001

Date Convention Application filed: May 21, 2003

Have children been located? No

The children in this case have never been located. On October 28, 2004, the Mexican CA (MCA) reported to U.S. Embassy Mexico City that they had referred the case to Interpol to search for the children. In May 2005 the MCA reported that the children were known to be at a location in the state of Guanajuato. In November 2005 the court attempted to serve the TP but she was not at the location Interpol had given. Neither CI nor the MCA currently have any information about where the TP and child may be located.

#### **MEXICO CASE 17**

Date of Abduction: December 2, 1997

Date Convention application filed: January 31, 1998

Has child been located? No

The Mexican authorities have never been able to locate the TP or child. In February 2001, the U.S. Ambassador to Mexico, in a discussion with Mexican officials about their lack of success in locating abducted children, discussed this case, among others. Assistant Secretary of State Maura Harty discussed this case with the Mexican delegation to the Special Commission on the operation of the Convention in the Netherlands in March 2001.

The case had reached a dead-end until March 2005 when the National Center for Missing and Exploited Children shared with CI and U.S. Embassy Mexico City a lead it received that the TP and child were in Mexico City. The U.S. Embassy provided the address to the Mexican CA (MCA). Judicial representatives did not go to the address until September 2005, however, when they found the house empty. Neighbors confirmed that, until August, the TP and child still lived there. The MCA representative, who accompanied the judge and police to the house, asked the judge to continue the search and send police to the local elementary school. The judge refused to do so, stating that an official written request was required.

#### **MEXICO CASE 18**

Date of Abduction: August 5, 2003

Date Convention application filed: September 18, 2003

Has child been located? Yes

The Los Angeles County Department of Child and Family Services (LACDCFS) has had custodial rights to the child since 2001. In 2003, LACDCFS gave the foster mother, who is the biological aunt of the child, permission to take the child on vacation to her grandmother's house in Mexico. The foster mother claimed that the biological mother appeared in Mexico and took the child at gunpoint.

In May 2004, representatives of Mexico's Social Service Agency (Desarrollo Integral de la Familia) visited the grandmother's house. They found the biological mother and child residing there. The TP told the social service representatives that if authorities were to come to take the child, she would take the child into hiding.

The LACDCFS still seeks the return of the child. The Mexican Central Authority required additional documentation for the Convention case, which was delivered in January 2005. Since then, the Mexican Central Authority has provided no information on the case.

#### **MEXICO CASE 19**

Date of Abduction: December 15, 1998

Date Convention Application filed: March 8, 1999

Has child been located? Yes

After many years the TP and child were located and a hearing date set. To date, a decision has still not been made in this case.

## **MEXICO CASE 20**

Date of Abduction: October 5, 1999

Date Convention Application filed: December 2, 1999

Has the child been located? No

The TP and child are believed to be living at the maternal grandmother's home in Mexico but the court is unable to verify this. In June 2000, the Department provided the TP's address to the Mexican CA (MCA). The judge to whom the case was assigned initially refused to take jurisdiction. While the jurisdictional issue was under review by the Mexican courts, CI discussed alternate non-Convention remedies with the TP in conjunction with the U.S. Department of Justice. The jurisdictional issue in Mexico was eventually resolved and a hearing was scheduled, but the TP disappeared with the child. After the TP failed to appear at three separate hearings between March and June 2001, the judge, in an unprecedented move in a Convention case in Mexico, issued a warrant for the TP's arrest. The case remained with the judge pending location of the child. The TP was never arrested, even though the LBP's contact reported sighting the TP and child in November 2002, and the judge himself visited the presumed residence, and found a room containing the child's belongings, but not the child.

On October 19, 2005, U.S. Embassy Mexico City sent a letter to the MCA providing information on a possible location of the TP and child in the Mexican state of Puebla. Interpol reported that they were investigating three possible addresses in Puebla, including one provided earlier by the Embassy. To date, Interpol has not located the TP or child, but has confirmed that the child is not enrolled in Puebla public schools. Recently, the MCA reported that the LBP's Mexican attorney, stated in October 2005, that she had located the TP and child, however the attorney's "legal strategy" would take some time to resolve the case. The MCA suggests that this case illustrates the conflict caused when an attorney presents custodial issues in a case, rather than limiting it to the jurisdictional issues inherent in the Hague Convention on the Civil Aspects of International Child Abduction.

## **MEXICO CASE 21**

Date of Abduction: May 12, 2000

Date Convention Application filed: June 16, 2000

Has child been located? No

In a Convention hearing held in July 2000 the judge ordered the TP to return the child to the United States. The TP fled with the child before the order could be enforced. In August 2004 the National Center for Missing and Exploited Children (NCMEC) received a lead indicating the TP's likely whereabouts in Mexico. NCMEC forwarded this information to the Mexican CA. In October 2004 U.S. Embassy Mexico City wrote a letter to Interpol Mexico providing this same information and seeking assistance in investigating this lead. To date, neither the Embassy nor CI has received a response.

#### **MEXICO CASE 22**

Date of Abduction: March 1, 2002

Date Convention Application filed: July 26, 2002

Has child been located? No

The children in this case have not been located. The judge to whom the case was assigned asked for Interpol's assistance in locating the children in 2003, but the case has been dormant since then as neither Interpol nor the LBP have information on the TP or child's whereabouts. In March 2006, U.S. Embassy Mexico City officials investigated and located a possible address for the TP and shared the information with Mexican officials.

#### **MEXICO CASE 23**

Date of Abduction: July 11, 2001

Date Convention Application filed: August 9, 2002

Has child been located? Not known

The San Diego District Attorney's Office filed this case directly with the Mexican CA (MCA). CI received an informational copy only. In December 2004 the San Diego District Attorney's Office told CI that it had not heard anything from the MCA since the application was filed more than two years earlier. In March and July of 2005 CI sent inquiries to the California Attorney General's office asking for updates on the case. CI did not receive a response.

#### **MEXICO CASE 24**

Date of Abduction: October 1, 2001

Date Convention Application filed: May 28, 2002

Has child been located? No

The Mexican CA (MCA) sent the case to the State Court of Guanajuato in August 2002. The judge made two visits to the address provided by the LBP but was not able to locate the TP or child. Finally, in May 2005, Interpol Mexico located them, but when Court representatives went to the address provided by Interpol, the TP and child were not found. The LBP has provided another possible address. U.S. Embassy Mexico City reported this new information to the MCA in January 2006, and the MCA has in turn submitted the new information to Interpol.

## **POLAND**

Date of abduction or wrongful retention: November 28, 1998

Date Convention application filed: August 4, 1999

Has child been located? No

On March 28, 2001, the local Court of Justice in Poland denied the return of the two children. The LBP appealed the decision, and on July 11, 2001, the Court of Appeals overturned the lower court decision and ordered the return of the children. On November 9, 2001 the TP was ordered to return the children to the LBP within three days. At that time the TP disappeared with the children and they have been missing ever since. The LBP traveled to Poland several times, employed the services of a private investigator, and they both worked with the Polish regional prosecutor to locate the children.

Ambassador Skolimowski and Assistant Secretary of State Maura Harty discussed this case during a meeting in Washington in September 2003. In February 2004 and again in February 2005, Assistant Secretary Harty discussed Poland's implementation of the Convention with Polish Undersecretary of State Wolski. CI staff has discussed this case with Polish officials in March 2005 and in September 2005.

U.S. Embassy Warsaw officials have repeatedly brought this case to the attention of the Polish Central Authority (PCA). Actions include a diplomatic note in 2001, a meeting with the Minister of Justice in 2002, four diplomatic notes and a letter to the court in 2003, four diplomatic notes in 2004, a letter in 2004 from the Consul General to the Polish Minister of Foreign Affairs, four diplomatic notes in 2005, a letter in 2005 from the Ambassador to the Polish Minister of Justice, and meetings between U.S. Embassy Warsaw and the PCA on a monthly to bi-monthly basis.

In September 2005 CI became aware that a Polish court, as part of a divorce case filed by the TP, ordered a stay of enforcement of the Convention order, citing that it may no longer be in the children's best interest to be returned because of the length of time that has elapsed. The court then ordered psychological evaluations be conducted so it can make a ruling on child custody. The USCA views this as being in direct contravention to the Convention. Although the LBP has since appealed the court's suspension of the Convention order to the Polish Supreme Court, stating a violation of proper civil court procedure, he has elected to cooperate thus far, including traveling to Poland to meet with the court ordered psychologist. Neither the TP nor the children appeared for the evaluation as ordered.

## **SPAIN**

Date of abduction or wrongful retention: April 18, 2001

Date Convention Application filed: February 4, 2003

Has child been located? Yes, but then subsequently disappeared.

The TP, in contravention of an existing U.S. court order, removed the child from the United States to Spain. The LBP filed a Convention application and after the child was located in Spain in July 2004, a hearing was scheduled for August 11, 2004. The TP disappeared with the child in advance of being served with notice of the hearing date and they were believed to be in the Canary Islands. Spanish authorities later reported that the TP and child had departed Spain for Venezuela. CI has requested updates from the Spanish Central Authority, despite the lack of contact with the LBP since that time. The TP is a Venezuelan foreign national, and no attempts at finding the TP and child in Spain have been successful. It is therefore inconclusive that the TP and child remain in Spain.