

BRAZILIAN GUIDE

ON THE POST-RETURN OF CHILDREN IN CASES OF INTERNATIONAL CHILD ABDUCTION

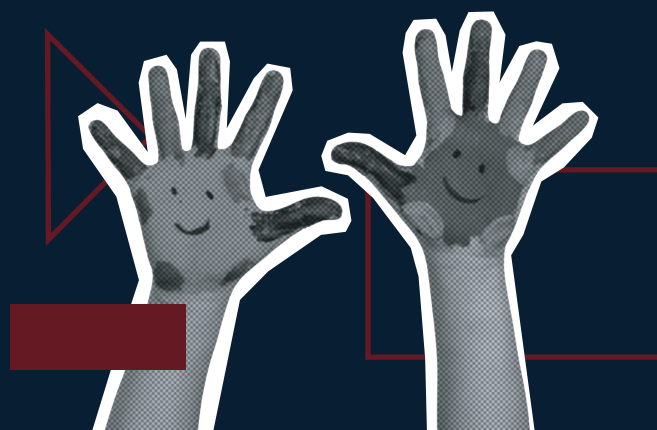
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ON THE POST-RETURN OF CHILDREN IN CASES OF INTERNATIONAL CHILD ABDUCTION

This guide provides information for the safe return of children and, occasionally, of the abducting parent, in cases where Brazil is the requesting State.

In Brazil, the request for the return of the child must be made to the Federal Central Administrative Authority [Autoridade Central Administrativa Federal - ACAF], using a form to be completed in Portuguese or in the language of the country where the child is located ([link to the Form](#)), with the appropriate documentation.

The processing of requests for cooperation based on the Hague Convention (1980) and the Inter-American Convention on the Return of Children (1989), within the scope of the Ministry of Justice and Public Security, is currently provided for by Ordinance No. 688/2024 of the Ministry of Justice and Public Security.





INTERNATIONAL HAGUE NETWORK OF JUDGES

Network judges are members of the International Hague Network of Judges, which aims to facilitate communication between the States involved in the child restitution request. In Brazil, they are provided for in Resolution 449/2022 of the National Council of Justice and Resolution 852/2024 of the Brazilian Supreme Federal Court.



BRAZILIAN JUDICIAL STRUCTURE

Brazil is a federation, and the judicial branch is divided into two types of Justice: Common and Special (Labor, Electoral and Military), the former being composed of the State and Federal Justice. Article 109 of the Constitution provides for the cases under the jurisdiction of the federal justice system, which include, in item III, those based on a treaty or contract between the Federation and a foreign State or international organization, which includes compliance with the Convention.

The jurisdiction of the state justice systems is residual and includes the application of federal legislation. The following list includes some of the cases in which the State Justice system acts and in which cooperation/communication may be necessary in cases of abduction:

- a)** Family Lawsuits: Divorce, Custody and Cohabitation;
- b)** Proceedings on Child Protection Measures;
- c)** Proceedings on Women's Protection Measures.

Usually, the State Justice system of the child's habitual residence is also competent to decide on child support, according to art. 148, sole paragraph, item g,

of the Child and Adolescent Statute (Estatuto da Criança e do Adolescente - ECA - Law No. 8,069/90). However, if the collection is based on the 2007 Hague Convention on Alimony, according to Decree No. 9,176/2017, jurisdiction is transferred to the Federal Court.



FREE LEGAL ASSISTANCE

Free legal assistance is a constitutional right provided for in Article 5, LXXIV, of the Federal Constitution, for those who prove insufficient resources. According to the same Constitution, the public defender's office is the constitutionally provided body (Articles 134 and 135 of the Code of Civil Procedure) for this role, regulated by Complementary Law No. 80/1994. However, if the body does not operate in the location, it is possible to appoint public defenders, paid by the State.

Free legal assistance is regulated by articles 98 to 102 of the Code of Civil Procedure, which establishes which expenses shall be exempt, as well as limits and consequences of the benefit.



CONCILIATION AND MEDIATION

In the event of a foreign agreement regarding a child who was taken from Brazil, the Superior Court of Justice is competent to approve it, according to article 105, item I, Alinea i, of the Federal Constitution. The procedure is provided in articles 960 to 965 of the Code of Civil Procedure.

Another possibility is for the parties to formalize a request in accordance with the same terms agreed upon in the Brazilian court competent to decide on the custody of the child (mirror decision).



PROTECTIVE MEASURES UNDER BRAZILIAN LAW

Brazil has not signed the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

Therefore, protective measures are provided for by domestic legislation.

These measures are regulated mainly by the Child and Adolescent Statute (Law No. 8,069/1990) and can be triggered when there is vulnerability or situations of violence, abuse, neglect, or risk to the healthy development of the child. Art. 101 of the Statute lists the following possible protective measures:

I - transfer to the parents or guardian, by means of a statement of responsibility ;

II - temporary guidance, support, and monitoring;

III - compulsory enrollment and attendance at a public elementary school;

IV - inclusion in community or government services and programs for the protection, support, and promotion of the family, children and adolescents;

(As amended by Law No. 13,257 of 2016)

V - request for medical, psychological or psychiatric treatment, in a hospital or outpatient setting;

VI - inclusion in a government or community program for assistance, guidance, and treatment for alcoholics and drug addicts;

VII - institutional foster care; *(As amended by Law No. 12,010 of 2009)*

VIII - inclusão em programa de acolhimento familiar;

(As amended by Law No. 12,010 of 2009)

IX - placement in a foster family.

(As amended by Law No. 12,010 of 2009)

And art. 129 of the ECA provides for the following measures applicable to parents or guardians:

- I - to be sent to government or community services and programs for the protection, support, and promotion of the family *(As amended by Law No. 13,257 of 2016)*
- II - inclusion in a government or community program of assistance, guidance and treatment of alcoholics and drug addicts;
- III - to be sent for psychological or psychiatric treatment;
- IV - to be sent to guidance courses or programs;
- V - obligation to enroll the child or ward and monitor his school attendance and achievement ;
- VI - obligation to send the child or adolescent for specialized treatment;
- VII - admonition;
- VIII - loss of custody;
- IX - removal from guardianship;
- X - suspension or removal of family power.
(Expression replaced by Law No. 12,010 of 2009)

There is also the following provision:

Art. 130. Once the case of maltreatment, oppression or sexual abuse imposed by parents or guardian has been found to exist, the judicial authority, as a precautionary measure, may determine the removal of the aggressor from the common residence.

Sole paragraph. The precautionary measure shall also include the provisional determination of the maintenance needed by the child or adolescent dependent on the aggressor.

(Included by Law No. 12,415 of 2011)



Law 12,318/2010 specifically provides for measures to inhibit parental alienation in Brazil, providing for:

Art. 6º Characterized typical acts of parental alienation or any conduct that hinders the contact between the child or adolescent and their parent, in an autonomous or incidental judicial suit, combined or not, besides any civil or criminal responsibility and a wide utilization of procedure instruments able to inhibit or minimize the effects, according to the gravity of the case, the Judge can:

I - declare there is an occurrence of parental alienation and warn the alienator;

II - increase the family contact in favor of the alienated parent;

III - impose a fine to be paid by the alienator ;

IV - determine psychological or/and biopsychosocial monitoring;

V - determine the change from single custody to shared custody or its reversal;

VI - determine the child or adolescent provisional judicial domicile;

§ 1º Characterized abuse change of residence, blocking or obstructing the family contact, the Judge may also reverse the obligation to take the child or adolescent to or from the parent's home, during alternating periods of family cohabitation. (Included by Law No 14,340 of 2022)

§ 2º Psychological or biopsychosocial monitoring must be subject to periodic assessments, with at least one initial report containing an assessment of the case and an indication of the methodology to be used, and a final report at the end of the monitoring

(included by Law No 14,340 of 2022)

Law No. 14,344/2022 (Henry Borel Law) also provides for urgent protective measures to be taken in cases of

domestic and family violence against children and adolescents:

Art. 21: The judge may, when necessary, without prejudice to other measures, order:

I - the prohibition of contact, by any means, between the child or adolescent victim or witness of violence and the aggressor;

II - the removal of the aggressor from the residence or place of cohabitation;

III - the preventive detention of the aggressor, when there is sufficient evidence of a threat to the child or adolescent victim or witness of violence;

IV - the inclusion of the victim and their natural, extended or surrogate family in the social assistance services to which they are entitled;

V - the inclusion of the child or adolescent, family member or notifier or complainant in a victim or witness protection programme;

VI - in the event that the aggressor cannot be removed from the home or is arrested, the case must be referred to the competent court in order to assess the need for family or institutional foster care or placement with a substitute family;

VII - the enrolment of the child or adolescent in an educational institution closest to their home or the place of work of their legal guardian, or their transfer to a similar institution, regardless of the existence of a vacancy.

§ 1º The police authority may request and the Guardianship Council may request the Public Prosecutor's Office to file a precautionary action to anticipate the production of evidence in cases involving violence against children and adolescents, subject to the provisions of Law No. 13,431 of 4 April 2017. (See ADI 7192)

§ 2º The judge may order the adoption of other precautionary measures provided for in the legislation in force, whenever the circumstances so require, with a view to maintaining the integrity or safety of the child or adolescent, their family members and the notifier or complainant.

These measures may be applied ex officio by the competent judge or at the request of the Public Prosecutor's Office, as a party or enforcer of the law. The Public Prosecutor's Office is the institution responsible for defending the legal order, the democratic regime and social and individual interests, such as those of children and adolescents (art. 127, Federal Constitution of 1988 and art. 178, item II, Code of Civil Procedure).



SPECIAL TESTIMONY AND SPECIALIZED LISTENING

A special procedure is put in place to listen to children and adolescents who are victims or witnesses of violence (including psychological violence or risk situations), which aims to protect them from re-victimization and ensure that the court procedure takes place in a more humane and careful manner. The testimony takes place in a controlled environment, generally in prepared rooms (such as the “special testimony rooms”), and with the mediation of a qualified professional, such as a psychologist or social worker.

In Brazil, special testimony and specialized listening are regulated by Law No. 13,431/2017, which establishes the system for guaranteeing the rights of children and adolescents who are victims or witnesses of violence.



DOMESTIC VIOLENCE

If the abducting mother is a victim of domestic violence, the Brazilian system has mechanisms to protect her in the event of her return, as provided for in the Maria da Penha Law (Law No. 11,340/2006, art. 22):

- I** - suspension of ownership of weapon or restriction of weapon carrying license, with communication to the competent agency, in the terms of Law No 10,826, of December 22, 2003;
- II** - removal from the home, domicile or place of relationship with the victim;
- III** - prohibit certain behaviors, among which:
 - a)** approaching the victim, members of her family and the witnesses, establishing a minimum distance between them and the aggressor;
 - b)** contact with the victim, members of her family and witnesses through any means of communication;
 - c)** going to certain places in order to preserve the physical and psychological integrity of the victim;
- IV** - restriction or suspension of visits to dependent minors, after hearing the multidisciplinary assistance team or similar service;
- V** - provision of provisional or temporary alimony;
- VI** - attendance by the aggressor at recovery and re-education programmes; and (Included by Law No. 13,984 of 2020)
- VII** - psychosocial monitoring of the aggressor, through individual and/or support group counselling. (Included by Law No. 13,984 of 2020)

The Public Prosecutor's Office is the body that works to prevent and combat domestic violence (art. 8, item I, Law 11,340/2006).

The Public Defender's Office also has the legitimacy to

act in cases where the mother is a victim of domestic violence, offering her free legal assistance and requesting protective measures for the victim, in accordance with the Maria da Penha Law (No. 11,340/2006).

There are measures that can be adopted by the police authorities when domestic violence is detected:

Art. 10. In case of imminent or actual domestic and family violence against women, the police authority that learns of the occurrence shall immediately adopt the appropriate legal measures.

Sole paragraph. The provision in the heading of this article applies to failure to comply with urgent protective measure that has been determined.

Art. 10-A. Women in situations of domestic and family violence have the right to receive specialised and uninterrupted police and expert assistance, provided by previously trained - preferably female - personnel (Included by Law No. 13,505 of 2017).

§ 1º The inquiry of a woman in a situation of domestic and family violence or of a witness to domestic violence, in the case of a crime against women, shall comply with the following guidelines: (Included by Law No. 13,505 of 2017)

I - to safeguard the physical, psychological and emotional integrity of the deponent, taking into account her particular condition as a person in a situation of domestic and family violence; : (Included by Law No. 13,505 of 2017)

II - to ensure that under no circumstances will women in situations of domestic and family violence, family members and witnesses have direct contact with the investigated or suspected perpetrators and people related to them; (Included by Law No. 13,505 of 2017)

III - not to re-victimising the deponent, avoiding

successive inquiries about the same fact in the criminal, civil and administrative spheres, as well as questions about her private life. (Included by Law No. 13,505 of 2017)

§ 2° When inquiring a woman in a situation of domestic and family violence or a witness to the offences referred to in this Law, the following procedure shall preferably be adopted: (Included by Law No. 13,505 of 2017)

I - the inquiry will be carried out in a room specially designed for this purpose, which will contain the proper equipment and appropriate to the age of the woman in a situation of domestic and family violence or witness and to the type and severity of the violence suffered; (Included by Law No. 13,505 of 2017)

II - where appropriate, the inquiry will be mediated by a professional specialising in domestic and family violence appointed by the judicial or police authority; (Included by Law No. 13,505 of 2017)

III - the testimony will be recorded in electronic or magnetic media, and the recording and the media will be part of the investigation. (Included by Law No. 13,505 of 2017)

Art. 11. In assisting the woman in a situation of domestic and family violence, the police authority shall, among others measures:

I - guarantee police protection, when necessary, communicating the occurrence immediately to the Prosecutor's Office and the Judiciary Branch;

II - direct the victim to the hospital or health center and to the Legal Medical Institute;

III - provide transport to the victim and her dependents to a shelter or safe place, in case of risk of life;

IV - if necessary, to accompany the victim to assure removal of her belongings from the site of the occurrence or from the family home;

V - inform the victim of the rights conferred to her in this in this Law and the available services, including legal aid for the eventual filing with the competent court of an

action for judicial separation, divorce, annulment of marriage or dissolution of a stable union. (As amended by Law No. 13,894 of 2019)

Art. 12. In all cases of domestic and family violence against women, after registering the occurrence, the police authority shall immediately adopt the following procedures, without loss to those provided for under the Penal Procedure Code:

I - hear the victim, register the police report and take the representation to term, if presented;

II - collect all the evidence that can serve to clarify the fact and its circumstances;

III - send, within 48 (forty-eight) hours, separate communication to the judge with the victim's request, for the concession of urgent protective measures;

IV - determine the victim's examination of body of the offense and request other necessary expert examinations;

V - hear the aggressor and the witnesses;

VI - command the identification of the aggressor and the addition of the aggressor's criminal record to the judicial proceedings, indicating the existence of arrest warrant or record of other police occurrences against him;

VI-A - verify whether the aggressor has a registration of carrying or possessing a firearm and, if so, attach this information to the case file, as well as notify the institution responsible for granting the registration or issuing the right to carry, under the terms of Law No. 10,826 of 22 December 2003 (Disarmament Statute);
(As amended by Law No. 13,880 of 2019)

VII - send, within the legal period of time, the judicial proceedings of the police inquiry to the judge and the Prosecutor's Office.

§ 1º The victim's request shall be taken to term by the police authority and shall contain:

I - qualification of the victim and the aggressor;

II - name and age of the dependents;

III – brief description of the fact and the protective measures requested by the victim.

IV – information on whether the victim is a person with a disability and whether the violence suffered has resulted in a disability or aggravation of a pre-existing disability.

(As amended by Law No. 13,836 of 2019)

§ 2° The police authority shall attach to the document referred to in paragraph 1 the police report and copy of all the available documents of the victim.

§ 3° The medical findings or records provided by hospitals and health centers shall be accepted as evidence.

Art. 12-A. The states and the Federal District, when formulating their policies and plans to assist women in situations of domestic and family violence, shall give priority, within the Civil Police, to the creation of Specialised Women's Police Stations (Deams), Femicide Investigation Centres and specialised teams to assist and investigate serious violence against women.

Art. 12-B. (VETOED). (Included by Law No. 13,505 of 2017)

§ 1° (VETOED). (Included by Law No. 13,505 of 2017)

§ 2° (VETOED). (Included by Law No. 13,505 of 2017)

§ 3° The police authority may request the public services necessary for the defence of women in situations of domestic and family violence and their dependents.

(Included by Law No. 13,505 of 2017)

Art. 12-C. If there is a current or imminent risk to the life or physical or psychological integrity of a woman in a situation of domestic and family violence, or of her dependents, the aggressor will be immediately removed from the home, domicile or place of relationship with the victim: (As amended by Law No. 14,188 of 2021)

I - by the judicial authority; (Included by Law No. 13,827 of 2019)

II - by the precinct chief, when the Municipality is not the seat of a district; or (Included by Law No. 13,827 of 2019)

III - by the police officer, when the Municipality is not the

action for judicial separation, divorce, annulment of marriage or dissolution of a stable union. (As amended by Law No. 13,894 of 2019)

§ 1º In the cases of items II and III of the heading of this article, the judge will be notified within a maximum of 24 (twenty-four) hours and will decide, within the same period, on the maintenance or revocation of the measure applied, and must inform the Public Prosecutor's Office at the same time. (Included by Law No. 13,827 of 2019)

§ 2º In cases of risk to the physical integrity of the victim or to the effectiveness of the emergency protective measure, the prisoner will not be granted provisional release. (Included by Law No. 13,827 of 2019)

As a public policy for prevention and care for children and adults in situations of violence, Brazil has a vast network of shelter structures, which include:

- i) Child Protective Councils: Agencies that work directly to protect the rights of children and adolescents, with competence to apply protective measures and take legal action if necessary.
- ii) Specialized Social Assistance Reference Centers: They offer psychosocial assistance to children and adolescents in vulnerable situations and their families, as well as to the victims of domestic violence.
- iii) Shelters and Shelter Homes: Shelters that temporarily receive both children and victims of domestic violence.
- iv) Women's Reference Centers and Shelter Homes: For women who are victims of domestic violence, Brazil has specialized support centers and shelter homes to protect those at risk.



NATIONAL BANK OF PENAL MEASURES AND PRISONS

The National Council of Justice created the National Bank of Penal Measures and Prisons, which centralizes information, monitors and aims to improve the management of the Brazilian prison system, verifying whether penal measures are being complied with, including inspection warrants for protective or precautionary measures granted based on the Maria da Penha Law and the Henry Borel Law. The Bank can assist the liaison judge with information on the existence of measures issued against the abducting parent.



HEALTH, EDUCATION AND SOCIAL ASSISTANCE

The 1988 Federal Constitution establishes in art. 227 that it is the duty of the family, society and the State to ensure children and adolescents, with absolute priority, the right to health, among other fundamental rights. Furthermore, the Unified Health System [*Sistema Único de Saúde – SUS*], guaranteed in art. 196 of the Constitution, provides that health is everyone's right and a state's duty, ensured through social and economic policies aiming to reduce the risk of disease and universal and equal access to health services. It is governed by law no. 8,080/90, currently regulated by Decree No. 7,508/2011. Information about the health services available to the child upon his/her return can be obtained from the health department of the municipality of residence.

Children who return to Brazil have the right to immediate care through the Unified Health System, without discrimination, with the right to preventive,

diagnostic and treatment services, whether their care is basic or specialized. In addition, children may be referred to psychosocial care services, through units of the Psychosocial Care Center [*Centro de Atenção Psicossocial – CAPS*].

The right to education is also guaranteed by the Constitution in the same article 227 and detailed in the Child and Adolescent Statute, specifically in article 53, which guarantees children and adolescents the right to education, aiming at the full development of the person, preparation for the exercise of citizenship and qualification for work.

Children who return to Brazil have the right to be enrolled in the public school system immediately, even if the child was deprived of schooling abroad or is in a situation of adaptation. If the child has a disability or has suffered trauma that impacts his/her learning, Brazil offers inclusive education, as provided for in the Brazilian Law for the Inclusion of Persons with Disabilities (Law No. 13,146/2015). Likewise, information can be obtained with the education department of the municipality of residence.



Finally, the Unified Social Assistance System [Sistema Único de Assistência Social - SUAS] guarantees social protection to all people in situations of vulnerability or social risk. Children who return to Brazil as a result of international abduction may have access to social assistance services, regulated by Law No. 8,742/93.

Working Group (WG):

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