Macau Special Administrative Region of the People's Republic of China

Response to the questionnaire concerning the practical operation of The Hague Convention on the Civil Aspects of International Child Abduction and views on possible recommendations

Introduction

The Macau Special Administrative Region of the People's Republic of China (MSAR) enjoys a high degree of autonomy except for defence and foreign affairs, which are at the responsibility of the Central People's Government (CPG) of the People's Republic of China (PRC).

Although the MSAR's Basic Law stipulates that the CPG can authorise the Region to conduct some external affairs regarding certain appropriate fields, this does not apply to the case of The Hague conventions, which are reserved to sovereign States.

The application to the MSAR of international treaties to which the PRC is a party is decided by the CPG upon seeking the views of the MSAR's government and according to the circumstances and the MSAR's needs. After the handover, some of the previous treaties in force in Macau to which the PRC is not a party have continued to apply in the MSAR. Thus, The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Convention) was extended to Macau with effect to 1 March 1999. On 10 December 1999, the PRC notified the Netherlands's Ministry of Foreign Affairs that it would assume, regarding the MSAR, the responsibility for the international rights and obligations that are placed on a Party to the Convention.

The Questionnaire

(1) The role and functioning of Central Authorities

General questions:

- 1. Have any difficulties arisen in practice in achieving effective communication or cooperation with other Central Authorities in accordance with Article 7 of the Convention? If so, please specify.
- 2. Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice?

As explained above, the Convention only entered into force for the MSAR on March 1999 and no cases have been filed under the Convention until now. Therefore, effective communications between the MSAR's Central Authority and other Central Authorities have not yet taken place.

Particular questions:

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

Under the MSAR's legal system, cases regarding regulation of parental power over minors may be resolved either through consent or judicial means. The Central Authority has the power/duty to interfere in order to obtain an amicable resolution without delaying the process.

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

In the MSAR, everyone is entitled to have access to the law, to the courts, to legal advice in protecting their lawful rights and interests and to judicial remedies. Justice cannot be denied on any grounds, namely lack of financial resources. The requirements to obtain legal aid and its forms are indicated in (3) 9 and (4) 1 below.

Specifically regarding Convention cases, the MSAR's Central Authority certifies the applicant's financial position for the purpose of requesting legal aid. Upon that certificate the court decides whether the requirements for obtaining legal assistance are met.

The legal aid proceedings are expeditious and generally do not result in delays.

5. Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?

The Central Authority may represent the applicant's parents every time it is required to do so. However, the MSAR's legal system provides that minors, absent and incompetent persons who do not have any other legal representative are all represented by the MSAR's Procuratorate, which is an independent and autonomous judiciary entity.

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

The MSAR's Central Authority can make arrangements with any other MSAR's entities in order to ensure that the child receives the appropriate protection.

In fact, one of the most important aims of the MSAR's Central Authority is to protect families or people at risk, who, whenever necessary, can request for any kind of help including that of police protection.

b) provide information to either parent in respect of legal, financial, protection and other resources in your State;

The MSAR's Central Authority can provide counselling and financial assistance or any other sort of assistance. There is a department within the Central Authority that provides, specifically, assistance and counselling to families at risk. The department works with a team of technical specialists composed of one social worker, one lawyer, one kindergarten teacher and one psychologist. This department not only provides legal, psychological, financial and educational assistance but may also provide shelters. It can still make arrangements with other MSAR's entities, if needed.

In the MSAR there are five shelters supported and supervised by the Central Authority, which may take in children with all types of needs.

c) facilitate contact with bodies providing such resources;

As explained above, the MSAR's Central Authority can establish and promote contacts with other entities of the Region, making suggestions or recommendations or, in some cases, giving instructions to provide assistance.

d) assist in providing any necessary care for the child pending custody proceedings;

If the child is living with relatives, the MSAR's Central Authority may provide assistance (legal, financial, psychological, educational, etc.) or, otherwise, in case the child is not living with relatives, it may direct him/her to one of the entities under its supervision.

e) provide any other support, advice or information to a parent who accompanies the child on return;

The same assistance and information mentioned above (in b)) can be provided to a parent accompanying the child.

f) provide any assistance in ensuring that undertakings attached to a return order are respected.

In order to ensure that undertakings attached to a return order are respected, the MSAR's Central Authority can follow up the case. Generally, it is done through home studies and reports on the child drawn up by a social worker. The report is then sent to the court. If required to do so, the MSAR's Central Authority may also request special police protection for the child.

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

The type of arrangements to organise or secure the effective exercise of rights of access depends on the concrete circumstances of each case. The MSAR's Central Authority may contact other MSAR's entities as well as give information to the court or provide other material conditions, like financial support, legal counselling or request police protection.

In particular, in the case of an applicant from abroad, does your Central Authority:

a) provide information or advice;

If an applicant is from abroad, the MSAR's Central Authority may provide him/her with information or advice, namely regarding practical aspects of life, such as accommodation, food, health facilities, etc. It may also advise on legal procedures, namely immigration applications to enter the Region, etc..

b) facilitate the provision of legal aid or advice;

The MSAR's legal aid system covers the non-payment of judicial costs as well as free of charge legal counselling. It is available for everyone under the same terms, extensive to non-residents of the MSAR. For more detail please consult (3) 9 and (4) 1.

c) initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;

The MSAR's Central Authority may assist the institution of proceedings where it deems appropriate but it cannot initiate, on its own, the institution of proceedings on behalf of the applicant.

d) assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;

Please see our reply to question 7 above.

e) assist in cases where modification of existing access provisions is being sought.

In cases where modification of existing access provisions is being sought, the MSAR's Central Authority tries to reach an amicable agreement between the parties, which, if successful, is submitted to court. Furthermore, whenever it is required by the court, the Central Authority drafts a social report that describes the child's social, psychological, and educational background and environment.

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

The Central Authority does not have any statistical data concerning its operation, since the Convention did not have yet any practical implementation in the MSAR. Nevertheless, it has the means and will, in the future, provide the annual statistics in accordance with the Hague standard forms.

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

In principle, the MSAR's Central Authority can reaffirm the conclusions reached by the first, second and third Special Commissions. However, one believes that some consideration should be given to the available resources and financial implications.

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

Since we lack in experience in this field, it is difficult to propose any other recommendations with regard to the aforementioned matters.

- (2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretations
- 1. How many courts and how many judges potentially have jurisdiction to hear an application for the return of a child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level.

There are six courts at first instance that have jurisdiction to hear an application for the return of a child. Each court has two judges. There is only one level of jurisdiction at first instance.

2. Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts? Are such arrangements being contemplated?

There are no special arrangements in the MSAR whereby jurisdiction to hear return applications is concentrated in a limited number of courts. Lately, some arrangements are being contemplated for the establishment of family courts that, probably, might include the jurisdiction to hear return applications.

- 3. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:
- a) Is it possible for the application to be determined on the basis of documentary evidence alone?

According to the MSAR's code of civil procedure law, all means of proof are generally admissible. The applications for the return of children and for making arrangements for organising or securing the effective exercise of rights of access are no exceptions. Which means that the applicant is allowed to bring about documentary evidences alone.

The court, in this particular kind of proceedings, is free to investigate on its own initiative the facts and to refuse any evidences requested by the applicant or the defendant. In any case, the judge should always appreciate the evidences without restraint and decide upon them, according to his prudent belief.

b) What special measures/rules exist to control or limit the evidence (particularly the oral evidence) which may be admitted in Hague proceedings?

As we mentioned before, the court, in these proceedings, is free to investigate on its own initiative the facts and also to refuse any evidences requested by the applicant or the defendant. Therefore, there are no special measures in these procedures to control or limit, in general, the evidences or, particularly, the oral evidences. Nevertheless, there are some rules that restrain the

presentation of evidences in all civil procedures. Such is the case with the number of witnesses each litigant may submit to court, being the maximum number twenty or five for each fact presented, and with the evidences obtained through unlawful means.

c) Who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is that control exercised?

Following the filing of the application with the court and until the final decision or its enforcement, the procedures are controlled by the judge indicated for the case.

In addition, the MSAR's Procuratorate (an independent and autonomous judiciary entity within the MSAR's legal system) has the responsibility of protecting the rights of the child over the procedures and, sometimes, even before the filing of the application with the court, initiating or assisting in the institution of proceedings where it is appropriate.

d) What appeal is possible from the grant or refusal of a return application, within what time limits do appeals operate, on what grounds and subject to what limitations?

The party against whom the primary court grants or refuses the return application may appeal from that decision, within a period of ten days, to the court of second instance. No additional appeals are allowed, except for those appeals that may be submitted in very exceptional circumstances.

The judge of the primary court is free to determine the effectiveness of the appeal. That means that he may suspend the execution of the decision in regard to the child's return until the court of second instance takes its own decision or, alternatively, order the immediate return in spite of the appeal.

Moreover, the procedures whose delay may cause damages to the interest of the child can be carried out during the judicial holidays.

The appeal is admitted on any grounds, including judgements of convenience or opportunity, but the appellant is not allowed to produce, in general, new evidences. Yet, the court of second instance can determine the renewal of the oral evidences that were submitted to the primary court.

Besides the appeal, the decisions of the primary court may always be modified by that same court, without prejudicing the effects already produced, when supported by supervening circumstances that justify its alteration. It is considered as supervening the circumstances either occurred after the decision has been taken, or the previous ones, those that were not alleged due to unawareness or any other considerable motive.

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

In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please, indicate the statutory basis, if any).

Any decision must be given in consideration to the interests of the child and his/her social protection statute. Furthermore, as we referred, the court must adopt the most convenient and

befitting solution for each case. According to this, the objection of the child to be returned may be taken into consideration but, legally, the court is not compelled to hear the child or even to take account of their views.

In practice, the objections of the child can contribute to justify a refusal to return if it helps to contradict the facts asserted by the applicant or to show its lack of competence in securing the guardian of the child. Moreover, the same objections may justify by itself a refusal by the court to order the return, since the judge is free to adopt the most convenient and befitting solution for each case.

Even if the person or entity that has sheltered the minor has not been drawn an opposition, or should it be apparently groundless, it is still possible for the court to order the hearing of the child.

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

According to the MSAR's civil procedure law, following the filing of the application with the court and when the judicial procedures have to continue, the Procuratorate and the person or entity that has sheltered the child will be given notice to draw an opposition within the period of five days. The aforementioned individuals can contradict the facts that ground the request or claim that there is a decision capable of hindering the execution of the delivery of the child or that a request has been made to set the minor as the preliminary or incidence of the procedures to the removal of custodial functions. The second part of this provision, in regard to Convention cases, should be interpreted together with its Article 17. Similarly, in all Convention cases, the defendants may raise any other defences under Article 13 or Article 20.

The defendants are requested to offer, together with its opposition, the corresponding means of proof. The burden of proof, in this case, falls on the person opposing the return, except for the facts that the court investigates on its own initiative.

The hearing can only be postponed once, by reason of absence of intervening parties, judicial attorneys and witnesses. The judge decides after all the allowed evidence has been presented. If the opposition is groundless, the delivery is then ordered.

The raising of defences under Articles 13 or 20 might lead to a delay but, even in these cases, the procedures may be processed within a relatively short period of time.

Finally, the procedures whose delay might originate prejudicial effects on the child interests are processed even during the court's vacation period.

6. Please specify the procedures in place in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected. Do return orders require separate enforcement proceedings? Is there appeal from such proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

The return orders are enforced by the same procedure whereby the decision is taken. The delivery is stipulated, whereas the place, date and time of delivery is designated, being the judge the only person allowed to assist to this diligence in case it becomes necessary. The defendant is notified in order to proceed with the delivery that obeys to the predetermined method, while failure to comply might result in criminal charges for qualified disobedience.

Apart from pending appeals, there are no circumstances in which execution of a return order may not be effected. Even in pending appeals, the judge of the primary court is free to order the immediate return. As the return orders do not require separate enforcement proceedings, the parties are only allowed to appeal from the decision that grants or refuses the return.

7. Would you support any of the following recommendations?

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

The concentration of all Convention cases in specifically designated courts should not imply its exclusive jurisdiction to hear return applications. In fact, we do not anticipate that, in the MSAR, the total number of international return applications would be enough to place a court with exclusive jurisdiction in Convention cases.

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

The procedure for the child's return is, in theory, processed expeditiously. However, in practice, the raising of defences may lead to a delay. Any recommendations, which may expedite the proceedings, would help to render effective and optimize the implementation of the Convention.

c) Calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.

Making provisions to set timetables that ensure the speedy determination of return applications might, in certain circumstances, bring some disadvantages in disregard to the interests of the child. The courts should have the mechanisms to ensure the use of expeditious procedures, yet they should not be compelled to decide when the judge is not in a position to do so.

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

The MSAR's courts are already responsible for the management of the progress of return cases.

e) Calling upon States Parties to enforce return orders promptly and effectively.

The return orders, within the MSAR's legal system, are enforced in the same procedures where the decisions are taken. Therefore, return orders are, in general, enforced promptly and effectively.

f) Recommending that the "grave risk" defence under Article 13 should be narrowly construed.

The return orders are subject to criteria of equity, being it appropriate for the court to adopt the most convenient and befitting solution while considering the best interest of the child. A restrictive interpretation of the "grave risk" defence under Article 13 would restrain, in that sense, the independence of the court in deciding according to equity.

g) Proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced.

Since the Convention entered into force for Macau only on 1 March 1999 and, until now, no return application has been filed in the MSAR's courts, it is difficult to propose any other measures that might improve the efficiency and speed with which applications are processed and orders enforced.

- 8. Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following:
 - rights of custody (Article 3 a and Article 5 a);
 - habitual residence (Article 3 a and Article 4);
 - rights of access (Article 5 b);
 - the actual exercise (of rights of custody) (Article 3 b and Article 13 a);
 - the settlement of the child in its new environment (Article 12);
 - consent or acquiescence to the removal or retention of the child (Article 13 a);
 - grave risk (Article 13 b);
 - exposure to physical or psychological harm (Article 13 b);
 - intolerable situation (Article 13 b);
 - fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).

The MSAR's jurisdiction has never constructed interpretations on any of the Convention concepts.

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

The "undertakings" employed by the courts are limited in scope to the protection of the child and are only used as a tool to facilitate arrangements for his/her return. Consequently, they should not be employed as means of settling the exercise of parental authority. The exercise of the custody is determined in a different procedure with distinct requirements.

The subject-matter of the "undertakings" can be of any kind, provided the interest of the child is secured.

The parties are allowed to submit to the court any proposals agreed upon by them as a means of overcoming obstacles to the prompt return of a child. The "undertakings" may be raised at any stage of the proceedings but, when a hearing for discussion and trial takes place, the judge must, specifically, look for reconciliation or for an agreement. When looking for a reconciliation, the judge is free to suggest the "undertakings" he might believe would help overcome obstacles as to the prompt return of the child. With the same purpose, "undertakings" may be required of the applicant. In any case, the court should only order those "undertakings" that might correspond to the interests of the child.

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

The "undertakings" incorporated in the return order cannot be enforced as such in the MSAR jurisdiction since, as foreign judgements, they require judicial recognition. For the same reason the MSAR courts cannot assist in the implementation of such "undertakings".

The Convention concerning the Power of Authorities and the Law Applicable in respect of the Protection of Infants, concluded at the Hague 5 October 1961, is applicable in the MSAR. However, according to its article 7, the recognition and enforcement in the MSAR's jurisdiction of the measures taken by the competent authorities by virtue of that Convention are also governed by the domestic law of the country in which enforcement is sought. This means that they also require judicial recognition in the MSAR's jurisdiction.

No differentiation is made between "undertakings" by agreement among the parties and those made at the request of the court. In fact, the agreements reached during the procedures have the same legal force of a judicial decision, since they are subject to judicial homologation.

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

The MSAR's courts may, without particular restraints, seek, require or grant safe harbour orders or mirror orders to overcome obstacles to the prompt return of a child. However, in practice, the courts do not have the means to enforce the orders in the country to which the child is to be returned.

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

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children is not applicable in the MSAR.

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

As already mentioned, until now no return applications were filed under the Convention in the MSAR's courts.

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

Please refer to our preceding answer.

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

Please refer to our preceding answers.

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

Until the present moment, no judge or other person has been appointed to act as a focus or channel for communication between judges at the international level in child abduction/access cases.

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

The jurisdiction of the MSAR does not contain provisions for legal aid and advice to specially assist the accompanying parent in any subsequent legal proceedings. However, if for any reason the accompanying parent files an application concerning the custody or protection of the child, he is entitled to make use of the provisions that provide, in general, legal aid and advice in all the proceedings. In fact, according to the Basic Law of the MSAR, all persons in the Region other than the Macau residents shall, in accordance with the law, enjoy the rights and freedoms of Macau residents. Therefore, the accompanying parent shall have the right to resort to law and to have access to the courts and to lawyer's assistance for protection of their lawful rights and interests.

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

A custody order granted in the MSAR's jurisdiction may be reviewed when both the parents do not comply with the agreement or the decision over the exercise of parental power or when the supervening circumstances make it necessary to modify the established clauses. That being the

case, either of the parents or the Procuratorate is allowed to request the review of the custody order. Therefore, the abducting parent may request the review of the custody order if the abduction and the subsequent return of the child would be understood as supervening circumstances that make it necessary to modify the terms of the order.

11. Would you support any of the following recommendations?

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

The MSAR cannot, by itself, be a party of the Convention. The application to the MSAR of international treaties reserved for sovereign states is decided by the CPG of the PRC, upon seeking the views of the MSAR's Government and according to the circumstances and the MSAR's needs. If the PRC decides to accede to the mentioned Convention, it is expected that Macau would also favour its implementation in the Region.

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

Provided that a custody order has been granted, the parents are already entitled to request protective measures prior to the return of the child through a swift and accessible procedure. When one of the parents does not comply with what has been agreed or decided upon, the MSAR's provisions allows the other parent to request the judge the necessary measures for the coercive compliance and the conviction of the parent who breached the rights of custody in the payment of a compensation in favour of the child, of the applicant or both.

As the abducting parent breaches, necessarily, the rights of custody, its holder may always require the protective measures for the coercive compliance of what has been decided upon. But, in theory, the abducting parent can also require protective measures if the holder of the custody wasn't carrying out, prior to the abduction, the terms of the custody order.

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

The abducting parent is not prevented to enter the MSAR for the purpose of taking part in legal proceedings concerning custody or protection of the child. However, criminal charges of the minor's abduction may arise against that parent, while he/she stays in the MSAR's jurisdiction.

d) That Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child's abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement.

The holding of criminal proceedings for the crime of a child's abduction/unlawful retention depends on the lodging of a complaint. That means that until the sentence of the primary court is pronounced, the holder of the custody is authorised to withdraw the complaint. Where the return of the child is to be effected by judicial agreement, the complaint will be, in general, withdrawn. But even if the complaint is not withdrawn, the judge will take into consideration in the event of the application of the penalty the fact that the child has already been returned by agreement. He may even order the suspension of the penalty, however, he is not allowed to acquit the abducting parent when reviewing the criminal charges. In any case, once the accused has been sentenced, the criminal charges should not be reviewed.

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

According to the Basic Law of the MSAR, only with the assistance or authorisation of the CPG of the PRC, may the MSAR make the appropriate arrangements with foreign states for reciprocal judicial assistance. Therefore, the MSAR may not support this recommendation without, beforehand, requiring the necessary permissions.

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

Please refer to our preceding answer.

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

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

As we referred before, all persons in the Region other than the Macau residents shall, in accordance with the law, enjoy the rights and freedoms of Macau residents. Therefore, the Macau non-residents (including any foreign applicants), alike the Macau residents, shall have the right to resort to law and to have access to the courts and to lawyer's assistance for protection of their lawful rights and interests. The judicial support comprises the total or partial exemption from the payment of legal fees or their postponement and also the legal counsel support. Right to judicial support is given to all those who reveal not to have the sufficient economic means to totally or partially back the normal fees of a judicial lawsuit.

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

a) grant and

b) modify access/contact orders?

The MSAR courts exercise jurisdiction to grant and modify access orders when the defendant abodes or resides in Macau or, having the defendant no habitual residence in Macau or being it uncertain or absent, the applicant abodes or resides in Macau. The jurisdiction is still exercised when the right cannot become effective unless by means of an application proposed at the

MSAR's courts, as long as there is a considerable personal or real connection element between the application to be proposed and Macau.

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

The Macau Civil Procedure Code stipulates that any judicial decision made outside of Macau will only be recognised and enforced if it fulfils the following conditions:

(a) there is no doubt as to the authenticity and comprehension of the document that sets out the decision; (b) the decision has acquired the force of "res judicata" in the place where it was rendered; (c) the jurisdiction of the court in which the decision was made has not been produced with fraud of law and it doesn't contain decisions on matters that are at the exclusive jurisdiction of the Macau courts; (d) there is no possibility of invoking the pendency or "res judicata" by reason of lawsuit submitted to the Macau courts, except if, before the lawsuit has been initiated in the Macau courts, it has been submitted to the court in which the decision was made; (e) the party against whom the decision is invoked was given proper notice of judicial proceedings under the law of the place where the decision was made and the adversary system has been duly respected; (f) the decision doesn't contain matters whose confirmation would be contrary to the public order of Macau.

The confirmation of the judicial decision may be refused only if it doesn't fulfil the conditions aforementioned and if:

(a) the party against whom the decision is invoked shows through some other sentence or judicial decision carrying the force of "res judicata" that the first mentioned decision was made by means of prevarication, concussion or corruption of the judge or judges who interfere in the proceedings; (b) the party against whom the decision is invoked files new documents which were not known or could not be filed earlier and whose subject is sufficient enough to change the decision in favour of the said party; (c) the party against whom the decision is invoked files a sentence contrary to the first mentioned one with the force, between the parties, of "res judicata"; (d) the party against whom the decision is invoked is a Macau resident and the result of the judicial conflict would be more favorable to that person if the law of Macau was applied, while the dispute should be solved by this law according to the Macau rules of conflicts.

Concerning the implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, please refer to our answer to question 11. a) from group (3).

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

The jurisdiction of the MSAR does not contain provisions that, specifically, deal with international access/contact cases.

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

Please refer to our preceding answer.

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

According to MSAR's civil law, in cases of divorce, de facto separation, marriage annulment or lack of consensus between non-married parents, the destiny of the child is regulated by an agreement established by the parents, subject to court approval. The approval may be refused if the agreement does not correspond to the child's interests, including the interest of the minor at maintaining a relationship of great proximity with the parent to whom he was not trusted into care. In the absence of an agreement, the court decides in conformity with the child's best interest, being it possible for the latter to be trusted into the care of one of the parents. In this case, a visiting program is established for the parent to whom the child was not trusted into care, unless and exceptionally the child's interest does not recommend it.

The procedure law, likewise, states that the court should organize the exercise of the custody in harmony with the interest of the child, being it possible for the child to, and in which concerns his destiny, be trusted to the guardianship of either of the parents. In this case, a visiting program is established for, or of, the parents, unless and exceptionally the minor's interest does not recommend it.

Therefore, unless there are exceptional circumstances, the MSAR's courts always allow access to the non-custodial parent.

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

In the MSAR's jurisdiction, the access rights are organised together with the custody order. As we said, the custody order must correspond to the child's interest, including the interest of the child at maintaining a relationship of great proximity with the parent to whom he was not trusted into care. Therefore, only in very exceptional circumstances will the courts not allow access to the non-custodial parent.

The abduction of the child by the non-custodial parent may, clearly, be considered as one of those exceptional circumstances. Yet, the court, instead of refusing the access right to an abducting parent, is allowed to impose conditions for the exercise of the access itself. In fact, alike the return orders, the court, whenever deciding an access application, should adopt the most convenient and befitting solution while considering the best interest of the child.

The law doesn't anticipate the kind of conditions that may be imposed, which means they can be of any sort, provided it helps to protect the interests of the child.

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

Presently, there are no information concerning services and other facilities available to overseas applicants for access orders.

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

- a) the effective exercise of rights of access in your/in the other jurisdiction;
- b) the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;
- c) the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

The MSAR's jurisdiction did not have any experience as to what regards co-operation with other jurisdictions in respect of the aforementioned subjects. Further, there aren't in the MSAR's jurisdiction any procedures regarding the same matter.

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

The MSAR's jurisdiction does not contain provisions concerning any special measures available to the courts to help guarantee adherence by parents to access conditions. However, the court is free to order or require of the parents some measures, like, for example, police protection, that might contribute to ensure adherence to access conditions.

11. How in practice are access orders enforced?

As we mentioned, the access rights are organised together with the custody order. When, regarding the custody order, the parent who holds the custody does not comply with what has been agreed or decided upon in respecting the access rights, the parent to whom the access is conferred may request the judge the necessary measures for the coercive compliance. The request having been made part of the process, the judge then convenes the parents for a conference or notifies the defendant who should submit other statement deemed as convenient within the period of five days. In the conference, the parents can agree to alter the previously established clause relating to the exercise of custody, taking into consideration the best interests of the child. If a conference has not been convened, or should the parents not arrive at a consensus while in conference, the judge than demands for a social report, orders other applications that he deems are necessary and provides a decision that grants or denies the measures for the coercive compliance.

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

Since no return applications have been filed in the MSAR's courts, it is difficult to suggest any other recommendations.

(5) Securing State compliance with Convention obligations

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

As explained above, the Convention did not have practical implementation in the MSAR's jurisdiction and we do not have any information regarding the difficulties experienced by other Parties to the Convention.

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

Unless it is evident that the newly acceding State does not comply, repeatedly, with other international obligations, we do not oppose its accession.

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

We dot not oppose the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State.

The questionnaire should, particularly, regard information concerning the legal and social welfare system of the acceding State.

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

In our opinion, the current schedule of special commissions seems appropriate. However, we would favour the holding of meetings that deal with specific topics concerning the operation of the Convention.

- 5. Are there any other measures or mechanisms which you would recommend:
- a) to improve the monitoring of the operation of the Convention;
- b) to assist States in meeting their Convention obligations;
- c) to evaluate whether serious violations of Convention obligations have occurred?

Considering the wide accession of States to the Convention and the diversity of legal systems involved, as its is the case with other international treaties, it would be advisable to establish a specific secretariat for this Convention. The secretariat could facilitate the exchange of information between the Parties and assist them in complying with the obligations set by the Convention.

(6) Miscellaneous and general

1. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities?

We believe that the Permanent Bureau role is very important, as, *inter alia*, it co-ordinates and conveys information between the Parties to the Convention, the Central Authorities and the judiciary and legal profession members (as it is the case of the "Incadat" Database). Thus, we support that it should be adequately financed.

2. Are there any additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?

We favour the preparation of a list of potential Permanent Bureau functions and tasks for the reasons explained in (6) 1.

3. Would you favour a recommendation that States Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?

We fully support this recommendation.

4. Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject-matter of the Convention?

We also fully support this recommendation.

5. Are there any particular measures which you would favour to promote further ratifications of and accessions to the Convention?

The dissemination of the Convention at all levels, including its diffusion through the media, will certainly contribute in further ratifications to the Convention.

6. Please provide information concerning any bilateral arrangements made with non-Hague States with a view to achieving all or any of the objectives set out in Article 1 of the Convention.

Up to this moment, the MSAR has not entered into any such bilateral arrangements.

7. Do you have any comments on the following proposition:

"Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention

was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention."

It is a fact that a highly restrictive approach can adversely affect, if not prevent in its entirety, the operation of the Convention.