

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE CONVENTION AND VIEWS ON POSSIBLE RECOMMENDATIONS

1.

Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention?

1.1

Panama has not encountered difficulties in communicating with other central authorities of the Agreement. Nevertheless, it is important that the General Secretariat of the Conference periodically forwards to the State Parties, copies of the list of the central authorities of new State Parties, or of any other that has communicated changes of central authority. Because there are State countries that we have not dealt with for cases of restitution, and at the moment of making such a request, we will not know who is the central authority, this process of investigation will delay sending of the request.

In consideration of the above, it is important that the countries who have ratified the Agreement report which is their central authority in their country that receives the requests, and that The Hague Convention communicate this information to the rest of the State Parties.

1.2

Have any of the duties of the Central Authorities, as established in Article 7, raised any problems in practice?

Within the obligations of the central authority pointed out in Article 7, the Panamanian Central Authority is confronting the following problems:

- a) Paragraph (b) of Article 7 establishes: "prevent the minor from suffering greater damages, therefore provisional measures will be adopted". In this point, the Panamanian Central Authority is not allowed to take said measures because it is not contemplated in our national legislation. Notwithstanding, at the moment the Panamanian Central Authority sends the requests to the judicial authority, they in turn, take the provisional measures as appropriate.
- b) Guarantee an amicable solution. This point is left for the parties and the judicial authority to decide, and the central authority acts as guarantor for the Compliance of the Convention.

1.3

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?

In accordance to the national legislation, the Panamanian central authority is not allowed to take measures to make the parent who illegally abducted the minor to voluntarily return the minor, or achieve an amicable solution to the conflict. The Judicial authority, through the Child and Adolescent Courts has the capacity for the parties to reach a voluntary arrangement, or agreement, whenever said arrangement is not detrimental to the minor.

It is important to point out that most of the restitution cases received and requested by the Panamanian central authority are cases that become contentious, since the parties travel with the children mainly because of problems surrounding the family. Notwithstanding, the Panamanian authorities comply by proposing to the parties the possibility of an amicable solution.

1.4

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?

The Panamanian legislation contemplates free procedural assistance. The party, who does not have the necessary economic resources, requests assistance to the Judge, in order that the Judge appoints a free Defense Counsel.

1.5

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?

Solely the legal representatives of the applicants will hold the representation of the parents within the restitution proceedings or visitation rules presented to the Panamanian Central Authority based on Hague proceedings. The Panamanian Central Authority is unable to represent any of the parties, since this will cause prejudice its position. The Central Authority can, however, counsel the applicant party as to the documentation required and proceedings.

1.6

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:

The Panamanian Central Authority after the children are restituted does not have contact with the parties, except if the parties present a request. In this sense there is no obligation or measure contemplated.

- a) ensure that appropriate child protection bodies are alerted;

Once the restitution request is received, the documentation is sent to the judicial authority, if they consider that the minor is in the form in danger of violence by the parent who abducted, the judicial authority will take the necessary measures so that the minor suffers no harm whatsoever.

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

The applicant is always assisted and informed of the application proceedings in Panama, In addition to indicating the documentation required for the application. The Central Authority furnishes legal, financial, protection and others resources to the requesting party.

- c) facilitate contact with bodies providing such resources;

the Central Authority is the conduct with other national authorities.

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

coordinates with the judicial authority and the branches they appoint for the care of the minor.

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

cooperates and offers every assistance to the applicant in coordination with other agencies.

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

ensures that the return order of the child is carried out.

1.7

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

The Panamanian Central Authority upon receiving the application for visiting rules, based on the Hague Convention, forwards this to the Judicial Authority requesting them to initiate the process..

- a) provide information or advice;

At the moment of receiving a request, the Panamanian Central Authority informs to the requesting State central authority the procedures in Panama for said request.

- b) facilitate the provision of legal aid or advice;

In the event that the requesting party does not have the means to cover a lawyer's fee, the Panamanian Central Authority, in coordination with the Panamanian Central Authority shall provide free legal assistance. For this purpose, the requesting party must give proof of lack of economic means.

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

The Panamanian Central Authority is unable to judicially represent the requesting Party, therefore he/she must hire the services of a lawyer, or otherwise prove that He/she lacks the economic means, in order to appoint a free defense counsel.

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

The Panamanian Central Authority shall view with interest that the decision on visitation rulings is respected.

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

The Central Authority shall counsel the party that wishes to amend the visitation regulations.

1.8

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 Panamanian Central Authority is currently carrying on international restitution requests without the forms, nevertheless, the Panamanian Central Authority is in the process of regulating the Agreement in accordance with the Panamanian law. For this purpose,

a form shall be presented to the Office of the International Conference of the Hague, for their subsequent remittance to the rest of the countries.

1.9

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?

The Panamanian Central Authority currently has the necessary resources for the best application of the Agreement, such as qualified lawyer for counseling, in addition to modern communication systems.

1.9

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?

We would support any other recommendations if we consider that they are advisable for the best application of the Agreement for the benefit of the interest of the minors.

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

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

2.1

Since 1995, the Panamanian Law includes Family and Minor's Courts. There are twelve (12) Children and Adolescents Courts and six (6) Family Sectional Courts, in first instance, one (1) Superior Court for Children and Adolescents and one (1) Superior Family Court. Currently the Courts that have authority to resolve the proceedings for international restitution are the Children and Adolescents Courts, in first instance and in second instance the Children and Adolescents Superior Courts.

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?

2.2

The Family and Minors Panamanian legislation points out restrictively which are the subjects of competence for each one of the Courts in first and second instance. Actually, there is a legislation gap insofar as to international restitution cases, nevertheless, in actual practice the Children's and Adolescents Courts handle these cases, this does not mean that the Family Courts are not competent.

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?

It is important to point out that documentary evidence is valid in our legislation, and if there are no other proofs the judge may appraise them, nevertheless our judicial system admits both

the documentary and oral proofs.

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

In Panama the Family proceedings are oral, nevertheless, compliance with the judicial proceedings established by law is required, which points out several forms of appreciation to the oral proof.

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

Before presenting the application to the Judicial institution, the authority responsible is the Central Authority, but once the application enters the Judicial institution, they are responsible for the control of the process up to its completion.

- 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?;

Panama allows Appeals for international restitution cases, two days following the personal notification of the sentence or Resolution to the parties or representatives. Once the Recourse is presented the appellant party has three days to support it, and the opposing party also has three days. This appeal shall be admitted by the Court of first instance and forwarded to the Court of second Instance.

2.4

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.)

The Judge responsible for the process makes the decision, using as basis the Convention on the rights of the Children, which has as basic principle that the children must be heard. By the same token, the Family Regulations of the Republic of Panama in its Article 489, paragraph 10 establishes the possibility that in every due process in which a minor may be affected, he should be heard directly or through a representative. The Judge shall determine discretionary if the child should be heard, considering age or mental maturity. The Judge shall value the arguments and proofs.

2.5

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

If the opposing party bases his defense on Articles 13 and 20 of the Agreement, the facts must be proven. We consider the fact that the opposing party bases his defense on the cited article delays the process because it requires that the necessary proofs must be exhausted in order for the judge to reach a decision.

2.6

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? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

Actually the Panamanian Central Authority sends the requests for international restitution or visit rulings to the Courts of Children and Adolescents. These Courts initiate these processes and decide whether or not to grant.

The decisions of the Courts of first instance are appealable and the Superior Court for Children and Adolescents has competence to decide on the appeals.

The decisions made by the Higher Courts may be appealed to the Supreme Court of Justice, Civil Court, when errors in form are adduced.

Any of these decisions might entail not granting the order of return.

In reference to the return orders, once the parties are notified the opposing party is warned of the obligation to reconstitute the child and the central authority is advised of the decision, in the event that within a reasonable period the minor has not been reconstituted, the judicial authority shall open an order of contempt by request of a party or on its own and shall apply the measures that the judicial legislation contemplates to uphold compliance of the decision.

2.7 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.
- b) underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.
- c) Calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.
- d) calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.
- e) calling upon States Parties to enforce return orders promptly and effectively
- f) recommending that the "grave risk" defense under Article 13 should be narrowly construed.
- g) Proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced.

Panama has a limited number of Courts of first instance specialized in children and adolescence, the same applies for Superior Courts on appeals, who are competent therefore, the most important recommendation that we could make is that the serious risk of the defense under Article 13 must be analyzed carefully, with promptness and effectiveness; this entails specialized courts, jointly with simple procedures for this type of proceedings, in order to carry out the procedures promptly, and that the decision should be the most accurate.

2.8

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 3b 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);
- exposure to physical or psychological harm (Article 13b);
- intolerable situation (Article 13b);
- fundamental freedoms (Article 20).

The family legislation came into force in Panama on 1995, therefore all the concepts of family , minors, and adolescents, such as rights of custody and others were regulated in agreement with the international Agreements on the subject matter.

Below we summarize the most important concepts established in our legislation;

RIGHTS OF CUSTODY:

Article 328 of the Family Code establishes: “As a general rule, that under equal conditions, the children shall remain with the parent who has their care at the moment the disagreement is produced, **giving preference to the mother, if they were under the care of both parents**, except that for special reasons another solution is indicated.”

If circumstances merit, the custody may be granted also to third parties”.

The Supreme Court of Justice declared this article partially unconstitutional, in the highlighted part. Actually, custody and raising shall be given to the parent that the judge considers more appropriate in the best interest of the child.

HABITUAL RESIDENCE

Our legislation does not define habitual residence, nevertheless, the Panamanian civil code contains several definitions to the term domicile, thus, it is left to the criteria of the judge. In actual practice, habitual residence is considered the place where it is proven that the minor has points of connection with that State, such as school assistance, medical history, among others.

RIGHT OF ACCESS

Article 329 of the Family Code points out:

“The competent authority shall decide what is convenient for the other parent that does not have the custody and raising of the children or minors, to keep the right of communication and visits, and heir regulation, as to manner and place as the case may require, always to the benefit and interest of the minors. Noncompliance of the decisions in this regard, may give cause to amendments of the guardianship resolution, without prejudice of the penal responsibility that such conduct may cause.

The competent authority may extend communication and visiting rights to ascendants or other relatives of the minor.”

ACTUAL EXERCISE (RIGHTS OF CUSTODY):

In Panama the rights of custody is exercised by both parents, or by one, with the implicit consent of the other, without excepting the latter from his responsibility.

As to the application of Article 13^a of the Agreement, the Panamanian legislation points out that noncompliance of the Rights of Custody, may give cause to its amendment, therefore if this is proven, restitution may be denied.

As to Article 3, paragraph B of the Agreement, the Panamanian legislation establishes that in the event of a separation, and if there is no custody agreement between the parties, the courts shall determine custody.

GRAVE RISKS

In case the opposing party bases its restitution request on Article 13B of the Agreement, he must prove such situation and the judge shall decide, in accordance with the capacity of the child, if he might be heard or not. In the event the minor cannot be heard the judge, taking into consideration the proofs received and the investigations carried out, shall decide if the minor is truly in a grave risk situation with the abducting parent.

EXPOSURE TO PHYSICAL OR PSYCHOLOGICAL HARM AND INTOLERABLE SITUATION

Article 500 of the Family Code points out:

“A minor is considered victim of physical harm when he is placed or inferred in risk of suffering harm or prejudice in his physical or mental health, or his well being, by actions or omissions on the part of his parents, tutors, responsible parties, officials or responsible agencies for his care and attention.”

FUNDAMENTAL PRINCIPLES RELATING TO THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

These principles are founded in the Constitution of the Republic of Panama.

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

3.1

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?

In Panama the undertakings mentioned above are not allowed. The Panamanian authority only allows agreements between the parties, whenever it is for the benefit of the minor. For this reason, said agreements shall be presented personally by the parties, in the presence of the judge handling the process. These agreements avoid delay in the process. These agreements may be presented, before or during the hearing of restitution or at any stage that the judge resolves.

3.2

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?

In Panama said undertakings are not allowed.

3.3

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?

At the moment the family court issues a resolution, either for custody, guard or raising, this is of strict compliance, therefore at the moment the child is returned to Panama the decisions issued by the courts must be adhered to. In the event that the parties reach an agreement and the competent authority ratifies it, the same is compulsory in Panama.

3.4

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)?

Panama is not part of the Hague Convention dated October 19, 1996.

3.5

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?

The Panamanian Central Authority has not limited the entrance to the country to children or their parents, after the child was illegally retained in Panama and restituted to another.

3.6

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.

Panama does not classify as crime when a parent illegally abducts his child, therefore it is not possible for the other parent presents criminal charges in Panama

In the event that the abducting parent has a criminal cause open for another crime, this situation may be utilized as proof by the authority of the requesting State in a due process.

3.7

Please comment on any experience, as 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?

The Panamanian judges never had contacts with judges from other jurisdictions regarding the restitution processes.

3.8

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?

Panama has not appointed officials to act channel for communication with judges at the international level in cases of international restitution or visits regulation.

3.9

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 Panamanian Central Authority offers counsel to all the parents seeking this service, so that they have first-hand knowledge of the application procedures for restitution, as well as the judicial proceedings.

3.10

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?

This review is not carried out by the competent Panamanian courts, but the process for granting custody may be reviewed, at any moment, if new elements have arisen that were not valued in the previous process.

3.11

Would you support any of the following recommendations?

(a, b, c, d, e, f)

Panama would support that the Permanent Bureau for the Hague Conference on the Private International Law should continue exploring practical mechanisms that would facilitate direct judicial communications, taking into consideration the legal and administrative aspects of this development.

4. Procedures for securing cross-frontier access/contact between parent and child 24

4.1

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

This jurisdiction does not expressly states legal assistance or advice for foreign applicants, but does apply the content of the Agreement that obliges the States to offer assistance or legal advice to the foreign applicants. It is also important to point out that our legislation contemplates free legal assistance for the persons with scarce economic resources to pay the legal services, including Panamanian nationals and foreigners.

4.2

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

- a. grant and
- b. modify access/contact orders?

Our courts exercise jurisdiction to grant or modify orders of access/contact based on the Family Code, regulations in force in Panama, and in the Convention regarding the Rights of the child, and other international Conventions regarding children ratified by Panama..

4.3

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?

Considering the nature of the process and the content of the Agreement, these processes are given the greatest promptness possible. Actually, we are working in a Regulation of the Agreement, with the intent of establishing criteria of celerity and promptness, although in actual practice it is being done.

4.5

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

In Panama friendly agreements between the parents or ascendants of the children, in reference to custody rights or Visiting Regulations are accepted. In reference to international proceedings, friendly agreements between the parties are also accepted, whenever the parties appear for the process or are duly represented for such decision. Our authorities apply the Agreement, whenever there is willingness by the parties, since the Judge by disposition of the law must offer to the parties the alternative of reaching an agreement. This is contemplated in our National Law and in the Convention.

4.6

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

Whenever the kinship is proven and there is no duly proven impediment, contact between the child and the parent or non-custodial parent is allowed. In the case of accusations against the parent or non-custodial parent, a supervised or restricted contact may be allowed, until the investigations are completed to determine if the contact is advisable or not.

4.7

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

In accordance to our legislation many conditions can be imposed, depending on the case, the risk to the child and the conduct of the parents. The Judge may restrict the visits, supervise or suspend the visits, if it is demonstrated that said visits are harmful to the child or children, or that grave danger may exist.

4.8

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

Our legislation grants the same facilities to a resident parent in Panamanian territory as to a parent residing abroad. In addition, we comply with the Agreement and comply offering legal assistance and counseling services to foreign applicants.

4.9

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.

Panama currently admits access and restitution application carried through the Central Authority of the country where the applicant resides, or through our central authority, when the applicant transfers to our jurisdiction to carry out the procedures personally or grants power of attorney to a lawyer in Panama for his representation.

When dealing with granting or maintaining rights of access to a parent residing abroad, the actual exercise or practice of the right becomes difficult, since the authorities of other States do not always cooperate to adequately guarantee the exercise of the right. Sometimes the States do not render co-operation, because they consider that their national is also the father or mother of the minor. Nonetheless, this produces juridical uncertainty, when applying the

Agreement, because we do not know if the other States will comply with the functions that the Agreement imposes upon him.

Our legislation recognizes the rights of contact or relationship between the parent and child, independently where he resides, but the experience with certain States do worry us because at the moment the foreign applicant non-complies, they do not collaborate in causing an effective restitution, although it is part of the Agreement.

When the measure is taken to restrict the access rights to a parent, there should be elements of proof that demand this measure or, in the worst of the cases, the termination of the rights of access.

4.10

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 assistance to the parents is given through the Central authority, but our judicial system allows the assignment of free judicial assistance, to the party who proves lack of economic resources to pay the costs of a lawyer. This right is encompassed in our Code of Procedures. Also, our Family, Children and Adolescents Court offer psychological and social assistance for the parties who request it; also, right for appropriate orientation, when the parties accept to reach friendly arrangements or agreements. Regarding the conditions to comply with the right of access, it is important to point out that Panama does not demand the consignment of bail or financial guarantees, since this might be considered as a violation to the right of identity of the child, because it conditions the family relationship to an economical guarantee, that not all the parties can assign. The same occurs with the retention or delivery of the passport, since this is a personal document and might be seen as a violation to the fundamental rights and guarantees of the individual, contemplated in the National Constitution.

11 How in practice are access orders enforced?

In actual practice, the compliance with access orders is required through the judicial authority, ratifying the decision previously issued by the competent authority, recognizing the legal right of access or contact of one of the parents. In demanding compliance there must be a previous decision, on the contrary, what may be required is the establishment of a system of access or contact, crediting the parenthood.

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

We would support those recommendations that contribute to solve the existent difficulties for the application of the Agreement on the Civil aspects of the International Abduction of Minors, such as the necessary guarantees to ensure compliance of the conditions of access and any other that may assist in unifying or facilitating the application of the Agreement.

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.

The late presentation of the documents required by the Agreement to formalize the request for International Restitution, causes delay in the procedure, in many occasions due to incomplete document presentations. This demands the central authorities endeavors in knowing the requisites that other central authorities require, in addition to those established in the agreement, to start processing a request for restitution. Another difficulty encountered is the insistence of certain parents in requesting the

child's restitution, even though he does not have the custody, and it is not recognized by the legislation of the requesting country, at the moment of making the request for international restitution. Thus, the central authority of the requiring country has the responsibility of guiding the person to promote a process of Visits Regulation and not an international restitution. The lack of economic resources of some parents to present the documentation duly translated, hinders the possibility of processing the applications for international restitution, since our central authorities do not have the sufficient economic resources to guarantee the offer of translation services to the applicants.

- 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?

Panama does not apply any measures before deciding acceptance of a new State, but does value the convenience of applying the Agreement to the newly acceding State.

- 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?

It might be useful to have a questionnaire that may be used by all the State Parties to decide whether or not to accept the accession of the new State, on the contrary we find it 's unpractical to have several questionnaires.

We would ask:

a- What has motivated the signing and ratification of the Agreement?

- 4 Are you in favour of an increase in the number of Special commissions 25 (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?)

We would favor the idea of additional Special Commissions to review specific aspects such as, direct communications between judges at international levels; compliance of the return orders by the Contracting States; and other subjects that arise when presenting arguments of abuse, domestic violence or risks to the minor in restitution processes.

- 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?

We consider that a measure to improve the review of the operation of the Convention would be to carry out tours allowing a in-depth review with the authorities in charge of applying the Convention in those States. That is, the Special commissions or members of the Permanent Bureau should travel to the different countries parties to

the Convention to evaluate, guide and train the authorities of those States in the mentioned application.

Insofar as to possible accusations of serious violations or noncompliance of the Convention obligations, we consider advisable creating a Commission to receive and resolve whether or not there is noncompliance of Convention obligations by a State Party. Thus, these events may be taken to the general meetings or at any other competent instance, whenever the situation requires for measures or comments.

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?

In regard to the activities of the Permanent Bureau, we submit to your consideration the possibility of carrying out comparisons of certain articles, since there might be confusion at the moment of interpreting the same ruling, in two different languages, thus creating difficulties in the application and compliance of the Convention.

- 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?

- 3 Would you favor 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 consider that it is advisable for each State to present their annual statistics and that these should be published on the Hague Conference website.