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THE OFFICIAL GAZETTE 21ST NOVEMBER, 2024
LEGAL SUPPLEMENT — C

BILL No. 15 of 2024

Thursday 21st November, 2024

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

21st November, 2024.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 15 of 2024

INTERNATIONAL MEASURES FOR THE PROTECTION OF CHILDREN (HAGUE CONVENTION) BILL 2024

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SCHEDULE – The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

A BILL

Intituled

AN ACT to give effect to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, and for other related matters.

A.D. 2024 Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the International Measures for the Protection of Children (Hague Convention) Act 2024.

Interpretation.

2. In this Act –

"Central Authority" means the Central Authority of Guyana established or designated by the Minister to perform the functions conferred on it by this Act and the Convention;

"competent authority of a Convention country" means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child;

"Convention" means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at The Hague on October 19, 1996, the text of which is set out in the Schedule;

Schedule.

"Convention country" means a country that is a Contracting State to the Convention;

"Court" means the High Court of Guyana;

"measure" means a judgment or decision which is made in accordance with Chapter II of the Convention, and references to the taking of a measure shall be construed as references to the making of such judgment or decision;

"Minister" means the Minister responsible for children's services.

Convention to have force of law.

Schedule.

3. (1) The Convention in the Schedule shall have the force of law in Guyana.

(2) Where there is any inconsistency between the provisions of the Convention and the operation of any other law other than the Constitution, the provision of the Convention shall prevail.

PART II

CENTRAL AUTHORITY

Central Authority of Guyana.

4. (1) For the purposes of discharging the duties imposed by the Convention, the Minister shall, by order, establish the Central Authority or designate an entity to carry out the functions of the Central Authority.

(2) In accordance with Chapter V of the Convention, the Central Authority shall co-operate with other central authorities and competent authorities of Convention countries to achieve the purposes of the Convention.

PART III

JURISDICTION

Jurisdiction.

5. (1) The Court has the jurisdiction to hear and determine –

(a) any proceedings to which Chapter II of the Convention, which concerns jurisdiction, relates;

(b) any application –

(i) under Chapter IV of the Convention for the recognition, enforcement or non-recognition of a measure; or

(ii) under Article 35(2) for a finding on the suitability of a parent to exercise access to the child and on the conditions under which access is to be exercised; and

(c) in relation to a request to the Court under Article 32(b), 34(1) or 35(1).

(2) Notwithstanding subsection (1), in any case of urgency the jurisdiction of the Court may be exercised where the Court is of the opinion that the best interests of the child concerned require that the jurisdiction be so exercised.

(3) In any case not provided for by the foregoing provisions of this section the jurisdiction of the Court under the Convention may be exercised.

(4) For the purposes of Article 35 (2) of the Convention, a parent residing in Guyana may make an application to the Court for obtaining or maintaining access to the parent's child that does not habitually reside in Guyana.

(5) The Court, on hearing the application by a parent made pursuant to subsection (4), shall by order declare either –

(a) that in its opinion the person is suitable to exercise access to the child, in which case the Court may, where appropriate, specify the conditions under which access should be exercised; or

(b) that the person is not suitable to exercise access to the child.

Applicable law.

6. (1) The Court shall apply the laws of Guyana in exercising jurisdiction under section 5.

(2) Notwithstanding subsection (1), where the Court considers the protection of the child and the child's property to be necessary, the Court may in exceptional circumstances take into account the law of the country with which the –

(a) child has a substantial connection; or

(b) child's property is substantially connected.

PART IV

RECOGNITION AND ENFORCEMENT

Recognition and enforcement of measures.

7. (1) The Court shall, pursuant to Chapter IV of the Convention, recognise measures taken by the authorities of Convention countries.

(2) The Court, upon receiving a request for –

(a) the recognition or enforcement of a measure, may order that –

(i) the measure be recognised or enforced in whole or in part; or

(ii) the request be refused for any reason mentioned in subsection (4);

(b) the non-recognition of the measure, may order that–

(i) the measure not be recognised for any reason mentioned in subsection (4); or

(ii) it be recognised or enforced in whole or in part.

(3) Any measure in respect of which an order has been made under subsection (2)(a)(i) or (b)(ii) shall, to the extent to which recognition or enforcement of the measure is authorised by the order, be of the same force and effect as if it were an order of the Court.

(4) The Court may refuse to recognise a measure from a Convention country –

(a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II of the Convention;

(b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided

the opportunity to be heard, in violation of fundamental principles of procedure of Guyana;

(c) on the request of any person claiming that the measure infringes the person's parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

(d) if such recognition is manifestly contrary to the public policy of Guyana, taking into account the best interests of the child;

(e) if the measure is incompatible with a later measure taken in a non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in Guyana;

(f) if the procedure provided in Article 33 of the Convention has not been complied with.

Enforcement and registration of measures.

8. (1) For the purpose of enforceability in Guyana, an interested person may make an application to the Court for registration of any measure taken by a Convention country.

(2) A measure registered under subsection (1) –

(a) has the same force and effect as a measure issued in Guyana, relating to a child; and

(b) prevails over an earlier measure in force in Guyana to the extent that the measure is inconsistent with the earlier measure.

(3) An interested person may take legal proceedings in the Court to enforce a measure registered under subsection (1).

(4) An application for registration of any measure under subsection (1), shall be made in accordance with the procedure set out in the Civil Procedure Rules 2016.

No. 2 of 2016

PART V

MISCELLANEOUS

Provision of certain court documents.

9. The Court shall, at the request of a person who wishes to make an application under the Convention in another Convention country in respect of a measure taken by the Court and subject to any conditions that may be specified by rules of court, give to the person all or any of the following documents –

(a) a copy of the measure duly authenticated;

(b) a certificate signed by the Registrar of the Court stating–

(i) the nature of the proceedings;

(ii) the article of the Convention by virtue of which the Court assumed jurisdiction;

(iii) the date on which the time for lodging an appeal against the measure will expire or, if it has expired, the date on which it expired;

(iv) whether notice of appeal against the measure, or in case the measure was taken in default of appearance, a notice to set it aside, has been entered;

(v) whether the measure was taken in a case of urgency;

(vi) if the measure was not so taken, that the court has taken such account of the wishes of the child concerned as it thought appropriate and practicable having regard to the child's age and understanding; and

(vii) such other particulars, if any, as may be specified by rules of court;

(c) in case the measure, other than where a measure taken on an application made *ex parte* was taken in default of appearance, the original or a copy, certified by the registrar or clerk of the Court to be a true copy, of a document establishing that notice of the institution of the proceedings was served on the person in default.

Evidence in proceedings.

10. (1) Any document purporting to be a document forwarded or delivered under the Convention may be admitted as evidence that it is such a document and as evidence of any matter to which it relates, subject to it being a duly authenticated copy as the Court may require and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

(2) A document purporting to be a translation of a document mentioned in subsection (1) and certified as correct by a person competent to do so may be admitted as evidence of the translation.

(3) Subject to subsection (1) a document purporting to be a copy of a measure taken by a competent authority of a Convention country shall, for the purposes of this Act, be regarded as being duly authenticated if it purports –

(a) to bear the seal of the authority; or

(b) to be certified by a person in the person's capacity as a judge or officer of the authority to be a true copy of a measure.

(4) For the purposes of the Convention, any certified copy of any such document, shall be sufficient evidence of anything stated in the document.

Requests.

11. The Court may, either directly or with the assistance of the Central Authority, address requests for the purposes of Article 8 or 9 of the Convention, to the appropriate authority in a Convention country.

Reports.

12. Where the Central Authority is requested to provide information relating to a child under Article 31, 32 or 34 of the Convention, it may –

(a) request any person to make a report in writing with respect to any matter which appears to it to be relevant;

(b) request any court to which a written report relating to the child has been made to send a copy of the report, and such a request shall be duly complied with.

Rules of court.

Cap. 3:02

13. (1) The Rules Committee established under section 67 of the High Court Act may make rules to give effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Rules Committee may make rules–

(a) with respect to the procedure on applications to a court under any provision of this Act and with

respect to the documents and information to be furnished;

(b) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Act and for safeguarding its welfare.

Regulations.

14. The Minister may make regulations for the purpose of carrying out the provisions of this Act.

Savings.

15. Nothing in this Act shall affect the jurisdiction of the Court to –

(a) take measures directed to the protection of the person or property of a child who is not habitually resident in a Convention country save and except as provided for in Articles 11 and 12 of the Convention; or

(b) order the recognition, enforcement or non-recognition of measures which are directed to the protection of the person or property of a child and which have been taken by the authorities of a non-Convention country.

Transitional provision.

16. Nothing in this Act shall affect any proceedings which were instituted before the commencement of any relevant provision of this Act and relate to measures within the scope of the Convention.

SCHEDULE Sections 2, 3

CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

(Concluded 19 October 1996)

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors* is in need of revision,

Desiring to establish common provisions to this effect, taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989,

Have agreed on the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

(1) The objects of the present Convention are -

a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
c) to determine the law applicable to parental responsibility;
d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

(2) For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

Article 3

The measures referred to in Article 1 may deal in particular with -

a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;
c) guardianship, curatorship and analogous institutions;
d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
e) the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;
f) the supervision by a public authority of the care of a child by any person having charge of the child;
g) the administration, conservation or disposal of the child's property.

Article 4

The Convention does not apply to -

a) the establishment or contesting of a parent-child relationship;
b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
c) the name and forenames of the child;
d) emancipation;
e) maintenance obligations;
f) trusts or succession;
g) social security;
h) public measures of a general nature in matters of education or health;
i) measures taken as a result of penal offences committed by children;
j) decisions on the right of asylum and on immigration.

CHAPTER II - JURISDICTION

Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 6

(1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

(2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

Article 7

(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.
(2) The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.
(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

a) a State of which the child is a national,
b) a State in which property of the child is located,
c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
d) a State with which the child has a substantial connection.
(3) The authorities concerned may proceed to an exchange of views.

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

(1) If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.
(2) The authorities concerned may proceed to an exchange of views.

(3) The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

Article 10

(1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and
b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.
(2) The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

Article 11

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 12

(1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Article 13

(1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

(2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III - APPLICABLE LAW

Article 15

(1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

(2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

(3) If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

Article 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

Article 18

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

Article 19

(1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative

under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

(2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

(1) In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

(2) However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

CHAPTER IV - RECOGNITION AND ENFORCEMENT

Article 23

(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

(2) Recognition may however be refused -

a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;
b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;
d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;
e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;
f) if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

CHAPTER V - CO-OPERATION

Article 29

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

(2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to -

a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;
b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

a) provide a report on the situation of the child;
b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

(2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Article 34

(1) Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

(2) A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

(1) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

(2) The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

(3) An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

(4) Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

(1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

(2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States

which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI - GENERAL PROVISIONS

Article 40

(1) The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

(2) The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

(3) Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

(1) The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

(2) The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units -

(1) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

(2) any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

(3) any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

(4) any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

(5) any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

(6) any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

(7) any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

(8) any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

(9) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

(10) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply -

a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply -

a) if there are rules in force in such a State identifying which among such laws applies, that law applies;
b) in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and the *Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

(1) This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

(3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

(4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

(1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

(2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

(1) Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

(2) However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

(1) A Contracting State may, in accordance with Article 60,

a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;
b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.
(2) The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII - FINAL CLAUSES

Article 57

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such

an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

(1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

(2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

(3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

(2) Thereafter the Convention shall enter into force -

a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;
c) for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for

the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following -

a) the signatures, ratifications, acceptances and approvals referred to in Article 57;
b) the accessions and objections raised to accessions referred to in Article 58;
c) the date on which the Convention enters into force in accordance with Article 61;
d) the declarations referred to in Articles 34, paragraph 2, and 59;
e) the agreements referred to in Article 39;
f) the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
g) the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

EXPLANATORY MEMORANDUM

The purpose of this Bill is to give the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the Child Protection Convention) the force of law in Guyana. The Child Protection Convention enables competent authorities to protect children and cooperate in a varied range of cross-border situations, offering States practical means to fulfil international obligations arising under the United Nations Convention on the Rights of the Child.

Article 1 of the Child Protection Convention sets out that the purpose of the Convention is to –

(a) determine the competent authority to take measures directed to the protection of the person or the property of the child;
(b) designate the law applicable to measures of protection and parental responsibility;
(c) provide for a framework enabling the recognition and enforcement of measures of protection among Contracting Parties; and
(d) establish a cooperation mechanism between the authorities of the Contracting Parties.

The Child Protection Convention applies to children from birth to the age of eighteen. It applies to a wide range of civil measures for the protection of a child and a child's property, ranging from orders concerning parental responsibility and contact, to public measures of protection and care, as well as to matters of representation to the protection of children's property.

Part I of the Bill is inclusive of **Clauses 1 to 3** and provides for preliminary matters such as the short title and interpretation. **Clause 3** of the Bill gives the Convention the force of law in Guyana.

Part II includes **Clause 4. Clause 4** makes provision for the establishment of a Central Authority for the purpose of discharging the duties imposed by the Convention. The Convention provides for authorities to be designated in each Convention country as central authorities in order to facilitate international communication and co-operation between courts and other competent authorities under the Convention.

Part III deals with jurisdiction and applicable law. It includes **Clauses 5 and 6. Clause 5** makes provision for the High Court to exercise its jurisdiction under the Convention to take measures directed to the protection of children. However, in exceptional circumstances a court may apply the law of another country to which the child or the child's property is substantially connected. **Clause 6** provides that the Court shall apply the laws of Guyana in exercising jurisdiction under the Convention.

Part IV which is inclusive of **Clauses 7** to **8** deals with the recognition and enforcement of measures. **Clause 7** provides for the manner in which the High Court is to exercise jurisdiction in the recognition and enforcement of a measure taken in another Convention country. **Clause 7(2)** provides that a measure in respect of which an order has been made shall, to the extent to which recognition or enforcement of the measure is authorised by the order, be of the same force and effect as if it were an order of the High Court. Importantly, clause 7(4) provides for exceptions justifying the non-recognition or non-enforcement of a measure of protection. These exceptions include lack of jurisdiction, violation of fundamental principles of procedure and lack of right to be heard, and the application being manifestly contrary to public policy and the best interests of the child.

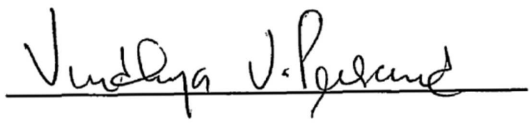
Clause 8 deals with the registration and enforcement of measures in Guyana. It provides that a registered measure has the same effect as a measure issued in Guyana and it prevails over any prior inconsistent measure.

Part V which is inclusive of **Clauses 9** to **16** sets out the miscellaneous provisions. **Clause 9** provides for the issuance of certain court documents by the High Court, in respect of any measure taken by the said Court. **Clause 10** deals with the provision of evidence in court proceedings for the purposes of the Convention. **Clause 11** makes provision for the High Court, either directly or with the help of the Central Authority, to address letters of request for the purposes of Articles 8 and 9 of the Convention, to Courts or other appropriate authorities in other Convention countries. **Clause 14** authorises the Central Authority to provide information relating to a child under Article 31, 32 or 34 of the Convention. **Clause 13** enables the Rules Committee established under section 67 of the High Court, to make rules of court in order to carry out or give effect to the provision of the Act.

Clause 14 enables the Minister to make regulations to give effect to the provisions of the Act.

Clause 15 provides that nothing in the Act shall affect the existing jurisdiction of the High Court to take measures directed to the protection of the person or property of the child, who is not habitually resident in a Convention country, except where the Convention specifically governs the taking of such measures, for example, in cases of urgency. The jurisdiction of the High Court in the recognition, enforcement or non-recognition of measures taken in non-Convention countries will remain similarly unaffected.

Clause 16 sets out the transitional provision which is intended to take effect upon the commencement of this Act.



Hon. Dr. Vindhya V. Persaud, MP.

Minister of Human Services and Social Security