

THE OFFICIAL GAZETTE 11TH NOVEMBER, 2020

LEGAL SUPPLEMENT — C

BILL No. 15 of 2020

Wednesday 11th November, 2020

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

11th November, 2020.

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 2020

ADOPTION OF CHILDREN (AMENDMENT) BILL 2020

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Insertion of new Part IVA in the Principal Act.
3. Amendment of the Principal Act.
4. Insertion of new Second Schedule to the Principal Act.

SECOND SCHEDULE – The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

A Bill**Intituled**

AN ACT to amend the Adoption of Children Act.

A.D. 2020 Enacted by the Parliament of Guyana:-

Short title. 1. This Act, which amends the Adoption of Children Act, may be cited as the
Cap.46:04 Adoption of Children (Amendment) Act 2020.

Insertion of 2. The Principal Act is amended by inserting immediately after section 35 the
new Part following Part as Part IVA-
IVA in the
Principal
Act.

**“PART IVA
INTERCOUNTRY ADOPTION**

Interpretation. 35A. (1) In this Part-
“Central Authority” means the Central Authority of Guyana;
“Convention” means the Hague Convention of 29 May 1993 on
Protection of Children and Co-operation in Respect of
Inter-country Adoption, the text of which is set out in the
Second
Schedule. “Convention country” means a country that is a Contracting State
to the Convention;
“intercountry adoption” means the placement, for the purposes of
adoption, of a child habitually resident in one country in the
permanent care of a person habitually resident in another

country in accordance with the Convention and the provisions of this Act.

(2) Any other term and expression used in this Part and not defined in this Act shall have the same meaning as in the Convention.

Convention
to have
force of
law.

35B. (1) The Convention in the Second Schedule shall have the force of law in Guyana.

Second
Schedule

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

Central
Authority.

35C. For the purposes of discharging the duties imposed by the Convention-

- (a) the Central Authority is the Agency; and
- (b) the Director of the Agency shall function as the head of the Central Authority.

Accreditation
to provide
intercountry
adoption
services.

35D. (1) The Central Authority may, on an application by an accredited body of a Convention country, accredit that body to provide intercountry adoption services in Guyana for any period and conditions as may be prescribed by this Act and regulations made under this Act.

(2) A body accredited under subsection (1) shall-

- (a) provide the prospective adoptive parent of a child in a prospective adoption with a copy of the medical records of the child at least two weeks before-
 - (i) the adoption; or

- (ii) the date on which the prospective adoptive parent will travel to Guyana or another country to complete all procedures relating to adoption;
- (b) ensure that a home study report on the prospective adoptive parent has been completed and transmitted to the Agency and each report shall include-
 - (i) a criminal background check; and
 - (ii) a full and complete statement of all facts relevant to the eligibility of the prospective adopting parent under the Convention;
- (c) provide the prospective adoptive parent with training that includes counselling and guidance for the purposes of promoting a successful intercountry adoption before the parent travels to adopt the child or the child is placed with the parent for adoption;
- (d) disclose fully its policies and practices to the Central Authority;
- (e) have, directly or through arrangements with other persons, appropriately trained and qualified personnel, sufficient financial resources and appropriate procedures to enable the accredited body to provide all the adoption services in cases subject to the Convention;
- (f) have established procedures designed to ensure social service functions requiring the application of clinical skills and judgment are performed only by professionals with appropriate qualifications and credentials;
- (g) maintain records and make any records as may be required by the Central Authority;

- (h) cooperate with reviews, inspections and audits;
- (i) safeguard adoption records and any other document relevant to adoptions under this Part; and
- (j) report annually to the Central Authority on adoption services it has undertaken in Guyana.

(3) The Central Authority may suspend or cancel the accreditation of a body accredited under subsection (1) or impose any other penalty, as may be prescribed by regulations, where the body has not complied with the requirements under this section, the Convention or any regulations made under this Act.

Adoption
under this
Part.

35E. An adoption under this Part shall only take place where the Central Authority-

- (a) has established that the child is adoptable;
- (b) has determined that domestic adoption is not possible and an intercountry adoption is in the best interests of the child;
- (c) has ensured that-
 - (i) any person, institution and authority whose consent is necessary for adoption, has been counselled and informed of the effect of giving consent;
 - (ii) any person, institution and authority has given consent freely, in the required legal form, and expressed or evidenced in writing;
 - (iii) the consent has not been induced by payment or compensation of any kind and has not been withdrawn; and
 - (iv) the consent of the mother, where required, has been given only after the birth of the child;

(d) has ensured, having regard to the age and degree of maturity of the child, that-

- (i) the child has been counselled and informed of the effects of the adoption and of his or her consent to the adoption, where consent is required;
- (ii) consideration has been given to the child's wishes and opinions;
- (iii) the child's consent to the adoption, where consent is required, has been given freely, and expressed or evidenced in writing; and
- (iv) the consent was not induced by payment or compensation of any kind.

Adoption of child from Guyana by a person in a Convention country.

35F. (1) A person habitually resident in a Convention country who wishes to adopt a child who is habitually resident in Guyana shall apply to the central authority of that Convention country.

(2) If the central authority of that Convention country is satisfied that the applicant is eligible and suited to adopt, it shall prepare a report on the applicant in accordance with the requirements of the Convention and any prescribed requirements and transmit the report to the Central Authority.

(3) If an eligible and suitable child is available for adoption, the Central Authority shall prepare a report on the child in accordance with the requirements of the Convention and any prescribed requirements and forward it to the central authority of the receiving Convention country.

(4) If the Central Authority and the central authority of the receiving Convention country both agree to the adoption, the Central Authority shall process and assess the documents and reports contemplated in subsections (2) and (3) in accordance with the provisions of this Act and any subsidiary legislation made under this Act.

(5) The Court may make an order for the adoption of the child if the requirements of section 17 regarding persons who may adopt a child are complied with and the Court having considered the restrictions imposed by section 18, is satisfied in accordance with section 23 and has determined that-

- (a) the adoption is in the best interests of the child;
- (b) the child is in Guyana;
- (c) the child is not prevented from leaving Guyana-
 - (i) under the laws of Guyana; or
 - (ii) because of a court order;
- (d) the arrangements for the adoption of the child are in accordance with the requirements of the Convention and any prescribed requirements;
- (e) the Central Authority and the central authority of the receiving Convention country have agreed to the adoption of the child and have not withdrawn consent.

Issue of
adoption
compliance
certificate by
Central
Authority.

35G. Where the Court makes an order approving the adoption of a child, the Central Authority shall issue an adoption compliance certificate in accordance with Article 23 of the Convention.

Adoption of
child from
convention
country by
person in
Guyana.

35H. (1) A person habitually resident in Guyana who wishes to adopt a child habitually resident in a convention country shall apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is suitable and eligible to adopt a child, the Central Authority shall prepare a report on that person in accordance with the requirements of the Convention and any prescribed requirements and transmit the report to the central authority of the Convention country concerned.

(3) If an adoptable child is available for adoption, the central authority of the Convention country concerned shall prepare a report on the child in accordance with the requirements of the Convention and transmit it to the Central Authority.

(4) If the Central Authority and the central authority of the Convention country concerned both agree to the adoption, the central authority in that country shall refer the application for adoption for the necessary consent in that country.

Recognition
of adoption
certificate
from
Convention
country.

35I. Subject to section 35J, an adoption compliance certificate by the central authority of another Convention country made in accordance with the Convention shall be recognised and effective in Guyana, from the day the certificate became effective in that Convention country.

Refusal to
recognise
adoption.

35J. (1) The Central Authority may apply to the Court for a declaration that an adoption made in accordance with the Convention that does not terminate a pre-existing legal parent-child relationship is not recognised.

(2) The Court may make the declaration if satisfied that the adoption is manifestly contrary to public policy, taking into account the best interests of the child.

(3) Where the Court declares that it does not recognise the adoption, the adoption shall have no effect in Guyana.

Order
terminating
legal
relationship
between child
and parent.

35K. (1) Where an adoption is granted by a Convention country to a person habitually resident in Guyana and the laws of that Convention country does not provide that the adoption terminate the pre-existing legal parent-child relationship, the Central Authority may, on the behalf of the adoptive parent, apply to the Court for an order that the pre-existing legal parent-child relationship be terminated.

(2) The Central Authority shall give written notice of the application to the central authority of the Convention country that granted the adoption.

(3) The Court may make the order only if satisfied that-

- (a) an adoption compliance certificate issued in the Convention country is in force for the adoption;
- (b) the law of the Convention country does not provide that the adoption of the child terminates the legal relationship between the child and the pre-adoption parents;
- (c) the child is allowed to enter Guyana and reside permanently in Guyana; and
- (d) notice has been given as required by subsection (2).

(4) For the purposes of subsection (3) (c), a child is not allowed to enter or reside permanently in Guyana if the child is affected by a

law or an order of a court, the effect of which is to prevent the child from entering or residing permanently in Guyana.

Effect of adoption compliance certificate.

35L. Subject to section 35I, an adoption compliance certificate issued in a Convention country is evidence that the adoption to which the certificate or order relates was-

- (a) agreed to by the central authorities of the countries mentioned in the certificate; and
- (b) carried out in accordance with the Convention and the law of that country.

Maintenance of Convention database.

35M. In addition to the confidentiality requirements under section 35(1), the Central Authority shall maintain a database of all documents and adoption records relating to intercountry adoptions which shall be kept confidential.

Access to Convention database.

35N. (1) The following entities or persons may have access to any document or records referred to in section 35M to the extent necessary to administer the provisions of the Convention or this Act-

- (a) the Central Authority;
- (b) an accredited body;
- (c) a central authority of another Convention country;
- (d) the Court;
- (e) the child or the legal representative of the child.

(2) The Court may, in the interest of the administration of justice, allow any other person to have access to any document and record referred to in section 35M.

(3) Any person who unlawfully discloses any document or record maintained by the Central Authority in accordance with section 35M

commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and imprisonment for one year.

Entering into
adoption
working
agreements.

35O. (1) The Central Authority may enter into an adoption working agreement with the central authority of another Convention country.

(2) A body accredited under section 35D may enter into an adoption working agreement with a recognised accredited adoption agency in another country.

(3) The body accredited referred to in subsection (2)-

(a) shall provide the Central Authority with certified copies of all adoption working agreements entered into by the body; and

(b) shall not act in terms of any adoption working agreements before it has been approved by the Central Authority.”.

Amendment
of the
Principal
Act.

3. The Principal Act is amended by substituting for the word “Schedule” the words “First Schedule” wherever it appears.

Insertion of
new Second
Schedule to
the
Principal
Act.

4. The Principal Act is amended by inserting after the “FIRST SCHEDULE” the following Schedule as the “SECOND SCHEDULE”-

**“SECOND SCHEDULE (section 35B)
CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION
IN RESPECT OF INTERCOUNTRY ADOPTION**

(Concluded 29 May 1993)

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are -

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, subparagraph *c*, have not been given before the child attains the age of eighteen years.

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the Central authorities of the State of origin -

- a)* have established that the child is adoptable;
- b)* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c)* have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d)* have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the Central authorities of the receiving State -

- a)* have determined that the prospective adoptive parents are eligible and suited to adopt;
- b)* have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c)* have determined that the child is or will be authorised to enter and reside permanently in that State.

CHAPTER III - CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon 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 7

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the Central authorities in their States to protect children and to achieve the other objects of the Convention.
- (2) They shall take directly all appropriate measures to -
 - a)* provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b)* keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to -

- a)* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b)* facilitate, follow and expedite proceedings with a view to obtaining the adoption;

- c)* promote the development of adoption counselling and post-adoption services in their States;
- d)* provide each other with general evaluation reports about experience with intercountry adoption;
- e)* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall -

- a)* pursue only non-profit objectives according to such conditions and within such limits as may be established by the Central authorities of the State of accreditation;
- b)* be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c)* be subject to supervision by Central authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the Central authorities of both States have authorised it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV - PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their

identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -

- a)* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b)* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c)* ensure that consents have been obtained in accordance with Article 4; and
- d)* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if -

- a)* the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b)* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c)* the Central Authorities of both States have agreed that the adoption may proceed; and
- d)* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular -

a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the Central authorities of that State, also by bodies or persons who -

a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V - RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

(1) An adoption certified by the Central authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c)*, were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are Central to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- (1) The recognition of an adoption includes recognition of
- a)* the legal parent-child relationship between the child and his or her adoptive parents;
 - b)* parental responsibility of the adoptive parents for the child;
 - c)* the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

Article 27

- (1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect -
- a)* if the law of the receiving State so permits; and
 - b)* if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.
- (2) Article 23 applies to the decision converting the adoption.

CHAPTER VI - GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a)* to *c)*, and Article 5, sub-paragraph *a)*, have been met, unless

the adoption takes place within a family or unless the contact is in compliance with the conditions established by the Central authority of the State of origin.

Article 30

(1) The Central authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A Central authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the Central authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The Central authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units -

- a)* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b)* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c)* any reference to the Central authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d)* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

(1) The 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) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

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

CHAPTER VII - FINAL CLAUSES

Article 43

- (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 Seventeenth Session and by the other States which participated in that 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 44

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, 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 subparagraph *b*) of Article 48. 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 45

- (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 the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this 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 46

- (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 43.
- (2) Thereafter the Convention shall enter into force -
 - a*) for each State ratifying, accepting or approving it subsequently, or acceding to it, 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 a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(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 after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following -

- a)* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b)* the accessions and objections raised to accessions referred to in Article 44;
- c)* the date on which the Convention enters into force in accordance with Article 46;
- d)* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e)* the agreements referred to in Article 39;
- f)* the denunciations referred to in Article 47.

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

Done at The Hague, on the 29th day of May 1993, 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 Seventeenth Session and to each of the other States which participated in that Session.”.

EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the Adoption of Children Act, Cap 46:04 to give the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption the force of law in Guyana. The Convention gives effect to Article 21 of the United Nations Convention on the Rights of the Child by adding substantive safeguards and procedures to the broad principles and norms laid down in the Convention on the Rights of the Child.

This Convention recognises that growing up in a family is of primary importance and is essential for the happiness and healthy development of the child. It also recognises that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin. The Convention provides greater security, predictability and transparency for all parties to the adoption, including prospective adoptive parents. The Convention also establishes a system of co-operation between authorities in countries of origin and receiving countries, designed to ensure that intercountry adoption takes place under conditions which help to guarantee the best adoption practices and elimination of abuses.

Clause 2 of the Bill provides for the insertion of Part IVA in the Principal Act. Part IVA sets out the provisions procedurally related to intercountry adoption. It begins by establishing that the Convention shall have force of law in Guyana. It further designates the Childcare and Protection Agency to be the Central Authority and sets out the extent of the functions of the Agency with respect to the Convention. This Part also provides that the Central Authority has the power to accredit bodies to provide intercountry adoption services and sets out the requirements that accredited bodies must comply with.

Part IVA further sets out the procedural requirements for an adoption, the effect of and issuance of an adoption certificate as well as, the adoption of a child from Guyana by a person in a Convention country. It further sets out provisions for the recognition of an adoption certificate from a Convention country. This Part also empowers the Central Authority to apply to the Court for the refusal to recognise an adoption. It provides that the Court may in such instances review the application and make a declaration if it is satisfied that the adoption is manifestly contrary to public policy, taking into account the best interests of the child. This Part also empowers the Central Authority to apply to the Court for an order that the pre-existing legal parent-child

relationship be terminated. Further, this Part sets out that the Central Authority shall maintain a Convention database which shall be kept confidential. This Part also sets out that the Central Authority and an accredited body may enter into working agreements with another Convention country and another accredited adoption agency, respectively.

Clause 3 of the Bill provides for an amendment to the Principal Act. The amendment allows for the substitution for the word “Schedule” the words “First Schedule” wherever it appears throughout the Act.

Clause 4 of the Bill provides for the insertion of a new Second Schedule into the Principal Act which sets out the text of the Convention.



Dr. the Hon. Vindhya Vasini Persaud, M.P.
Minister of Human Services and
Social Security