



PRESIDENT van de REPUBLIEK SURINAME  
Telefoon: 420102

**Aan: de Voorzitter van  
De Nationale Assemblée  
de heer M. Bee, MSc, LLB**

Kenmerk: secpres/4449/23

Paramaribo, 18 november 2023

**Onderwerp:** aanbieding ontwerpwet houdende goedkeuring van de toetreding van de Republiek Suriname tot de 4 (vier) Haagse Kinderbeschermende Verdragen

Geachte Voorzitter,

Hierbij doe ik u ter behandeling door De Nationale Assemblée toekomen de ontwerpwet, als in hoofde genoemd, met de bijbehorende Memorie van Toelichting.

De President van de Republiek Suriname



Chandrikapersad Santokhi

Bijlagen: ontwerpwet met onderliggende documenten

<b>DE NATIONALE ASSEMBLEE</b>	
Ingek.	20 november 20 23
Agenda no.	2067/23
Verwezen	
Naar	

WET van .....  
houdende goedkeuring van de  
toetreding van de Republiek Suriname  
tot de 4 (vier) Haagse Kinderbeschermende Verdragen

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ONTWERP

DE PRESIDENT VAN DE REPUBLIEK SURINAME,

In overweging genomen hebbende, dat het noodzakelijk is de toetreding van de Republiek Suriname tot de 4 (vier) Haagse Kinderbeschermende Verdragen aan de goedkeuring van De Nationale Assemblée te onderwerpen, welke goedkeuring ingevolge artikel 104 lid 1 Grondwet van de Republiek Suriname bij wet moet worden verleend;

Heeft, de Staatsraad gehoord, na goedkeuring door De Nationale Assemblée, bekrachtigd de onderstaande wet:

Artikel 1

De toetreding van de Republiek Suriname tot de volgende 4 (vier) Haagse Kinderbeschermende Verdragen wordt goedgekeurd:

- a) het verdrag inzake de burgerrechtelijke aspecten van de internationale ontvoering van kinderen, 's Gravenhage 25 oktober 1980, kort gezegd "het Haags Kinderontvoeringsverdrag";
- b) het verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van de interlandelijke adoptie, 's Gravenhage 29 mei 1993, kort gezegd "het Haags Adoptieverdrag";
- c) het verdrag inzake de bevoegdheid, het toepasselijk recht, de erkenning, de tenuitvoerlegging en de samenwerking op het gebied van ouderlijke verantwoordelijkheden, en maatregelen ten behoeve van de bescherming van kinderen, 's Gravenhage, 19 - 10 - 1996, kort gezegd "het Haags Kinderbeschermingsverdrag";
- d) het verdrag inzake de internationale inning van levensonderhoud voor kinderen en andere familieleden, 's Gravenhage 23 november 2007, kort gezegd "het Haags Kinderalimentatieverdrag".

Artikel 2

1. Deze wet wordt in het Staatsblad van de Republiek Suriname afgekondigd.
2. Zij treedt inwerking met ingang van de dag volgende op die van haar afkondiging.
3. De Minister van Justitie en Politie en de Minister van Buitenlandse Zaken, International Business en Internationale Samenwerking zijn belast met de uitvoering van deze wet.

Gegeven te Paramaribo, .....

**CHANDRIKAPERSAD SANTOKHI**

WET van .....  
houdende goedkeuring van de  
toetreding van de Republiek Suriname  
tot de 4 (vier) Haagse Kinderbeschermende Verdragen

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## MEMORIE VAN TOELICHTING

### Algemeen

Suriname heeft relatief veel jongeren, waaronder kinderen en adolescenten. Per juli 2021 is ongeveer 26% van de totale bevolking – geschatte mid-jaarlijkse bevolking van Suriname 616.500 inwoners – jonger dan vijftien (15) jaar (zie het Algemeen Bureau voor de Statistiek: februari 2023-Demografische data 2018- 2021). Suriname kent daarnaast verschillende bevolkingsgroepen, welke allen hun eigen tradities in opvoeding en ontwikkeling kennen. De kinderen en adolescenten zijn belangrijk als het gaat om de toekomst van het land. Bedoelde groepen moeten derhalve de mogelijkheid krijgen om veilig en beschermd op te groeien en optimale ontplooiingskansen beschikbaar te hebben, teneinde zich te ontwikkelen tot competente volwassenen. In 1993 tekende Suriname het Kinderrechtenverdrag en verkreeg het in 1999 interne werking na publicatie in het Verdragenblad. Thans zijn 196 landen wereldwijd partij bij dit verdrag en heeft zulks tot gevolg dat deze landen verplicht zijn de rechten van het kind te beschermen en te waarborgen.

Op basis van de artikelen 3, 10, 18, 23 en 27 van het Kinderrechtenverdrag zijn er 4 (vier) Haagse Kinderbeschermende Verdragen totstandgekomen, die een ruimere uitwerking zijn van de kinderrechten en hun bescherming.

De 4 (vier) Haagse Kinderbeschermende Verdragen ook wel de HCCH verdragen genoemd, betreffen:

- a) het verdrag inzake de burgerrechtelijke aspecten van de internationale ontvoering van Kinderen. 's Gravenhage 25 oktober 1980, kort gezegd "het Haags Kinderontvoeringsverdrag";
- b) het verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van de interlandelijke adoptie. 's Gravenhage 29 mei 1993, kort gezegd "het Haags Adoptieverdrag";
- c) het verdrag inzake de bevoegdheid, het toepasselijk recht, de erkenning, de tenuitvoerlegging en de samenwerking op het gebied van ouderlijke verantwoordelijkheden, en maatregelen ten behoeve van de bescherming van kinderen. 's Gravenhage, 19 - 10 - 1996, kort gezegd "het Haags Kinderbeschermingsverdrag";
- d) het verdrag inzake de internationale inning van levensonderhoud voor kinderen en andere familieleden. 's Gravenhage 23 november 2007, kort gezegd "het Haags Kinderalimentatieverdrag"

De verdragen hebben betrekking op het internationale privaatrecht, dat privaatrechtelijke rechtsverhoudingen met een grensoverschrijdende karakter regelt.

Het internationaal privaatrecht kent vier hoofd(rechts)vragen. Deze hebben betrekking op:

- het internationale bevoegdheidsrecht,
- het toepasselijk recht,
- het recht inzake erkenning en tenuitvoerlegging van beslissingen uit het buitenland en

- internationale samenwerking.

Deze (rechts)vragen komen aan de orde in de 4 (vier) Haagse Kinderbeschermende verdragen.

#### **Ad a. Het “Haags Kinderontvoeringsverdrag”**

Het “Haags Kinderontvoeringsverdrag” heeft als doel:

- de onmiddellijke terugkeer van kinderen die ongeoorloofd zijn overgebracht of worden vastgehouden in een verdragsluitende Staat te verzekeren;
- het in een verdragsluitende Staat bestaande recht betreffende het gezag en het omgangsrecht in de andere verdragsluitende Staten daadwerkelijk te doen eerbiedigen.

Het Haags Kinderontvoeringsverdrag is van toepassing op ieder kind dat onmiddellijk voorafgaande aan de inbreuk op het recht betreffende het gezag of omgangsrecht zijn gewone verblijfplaats had in een verdragsluitende Staat. Het verdrag is niet van toepassing op kinderen die de leeftijd van 16 jaar reeds hebben bereikt.

Dit verdrag heeft voorts betrekking op vier Internationaal Privaat Recht (IPR) -gebieden, te weten, het toepasselijk recht, de internationale bevoegdheid, het internationale omgangsrecht en de samenwerking tussen de verdragsluitende Staten. Dit verdrag geeft ook aan, dat er een centrale autoriteit in ieder verdragsluitende Staat in het leven wordt geroepen, die er voor moet zorgdragen dat de bepalingen van het verdrag worden uitgevoerd.

#### **Ad b. Het “Haags Adoptieverdrag”**

De aanleiding van de ondertekening van het Haags Adoptieverdrag, is gelegen in de erkenning dat het voor een volledige en harmonieuze ontwikkeling van de persoonlijkheid van een kind noodzakelijk is dat het opgroeit in een gezinsverband, in een sfeer van geluk, vrede, liefde en begrip en behoort elke Staat daarom bij voorrang passende maatregelen te nemen, opdat het kind in zijn familie van herkomst kan blijven. Voorts dient bij de toepassing van interlandelijke adoptie een vast gezinsverband te worden geboden aan een kind, waarvoor er geen geschikt gezin kan worden gevonden in zijn Staat van herkomst. Het is in dit kader noodzakelijk maatregelen te nemen, teneinde te waarborgen dat interlandelijke adopties plaatsvinden op een zodanige wijze dat het hoogste belang van het kind daarmee is gediend en dat zijn grondrechten worden geëerbiedigd. Zulks ter voorkoming van ontvoering, verkoop van of handel in kinderen.

Het Haags Adoptieverdrag beoogt derhalve de bescherming van kinderen en hun familie tegen de risico's van illegale, onrechtmatige, voorbarige en slecht voorbereide adopties naar het buitenland. De juridische consequenties van de interlandelijke adoptie zijn:

- de familierechtelijke betrekking tussen de biologische ouders en het kind wordt door de adoptie verbroken.
- een adoptiekind na het adoptievonnis van de rechter, niet meer het kind van de biologische ouders is, doch wel van zijn adoptie - ouders.
- een nieuwe juridische familieband tussen de adoptie - ouders en het kind ontstaat met alle rechten en plichten die daarbij horen.

#### **Ad c. “het Haags Kinderbeschermingsverdrag”**

Het Haags Kinderbeschermingsverdrag beschrijft 4 (vier) Internationaal Privaat Recht (IPR)-onderwerpen: de internationale bevoegdheid, het toepasselijk recht, de erkenning en



tenuitvoerlegging tussen verdragsluitende Staten, alsook de samenwerking tussen verdragsluitende Staten.

Het verdrag houdt zich voorts bezig met de bescherming van kinderen in grensoverschrijdende situaties. Het kindbeschermingsverdrag bevestigt de idee dat de primaire rol in het nemen van beschermingsmaatregelen is voorbehouden aan de autoriteiten in het land waar het kind zijn gewone verblijfplaats heeft. Het algemeen principe van het verdrag houdt in dat alle mogelijke stappen moeten worden genomen om de rechten van kinderen op een persoonlijke relatie en regelmatig contact met hun ouders veilig te stellen. Dit geldt uiteraard omgekeerd ook.

Het verdrag heeft daarnaast betrekking op het regelen van allerlei zaken die gerelateerd zijn met ouderlijke verantwoordelijkheid en kindbeschermingsmaatregelen en is dan ook slechts van toepassing op kinderen die de leeftijd van 18 jaar nog niet hebben bereikt.

Het verdrag is niet gericht op het creëren van een uniform internationaal kindbeschermingsrecht. De ontstaansreden van het kindbeschermingsverdrag is enerzijds omwille van het feit dat men juridische of administratieve geschillen tussen de verschillende Staten wil vermijden en anderzijds omdat men in een structuur wil voorzien om een effectieve en efficiënte internationale samenwerking tussen de verschillende rechtssystemen te bevorderen.

Het kindbeschermingsverdrag voorziet opnieuw, net zoals bij de eerder besproken verdragen in een samenwerkingssysteem dat is gebaseerd op centrale autoriteiten, waardoor efficiënt en effectief kan worden ingespeeld op kwesties waarbij het belang van kind in gevaar komt.

Het Haags Kinderbeschermingsverdrag is van toepassing op kinderen van 0 - 18 jaar.

#### **Ad d. "het Haags Kinderalimentatieverdrag"**

Het Haags Kinderalimentatieverdrag geeft precies aan wanneer en wie rechthebbende is van levensonderhoud d.q. alimentatie.

De doelstelling van "het Haags Kinderalimentatieverdrag" is de effectieve internationale inning van levensonderhoud voor kinderen en andere familieleden te waarborgen, in het bijzonder door:

- een allesomvattend systeem van samenwerking tussen de autoriteiten van de verdragsluitende Staten in te stellen;
- verzoeken met het oog op de vaststelling van beslissingen inzake levensonderhoud mogelijk te maken;
- te zorgen voor de erkenning en tenuitvoerlegging van beslissingen inzake levensonderhoud;
- effectieve maatregelen te eisen voor de snelle tenuitvoerlegging van beslissingen inzake levensonderhoud. (artikel 1)

Het verdrag is van toepassing op

- onderhoudsverplichtingen die voortvloeien uit een ouder - kindrelatie jegens een persoon jonger dan 21 jaar;
- de erkenning en tenuitvoerlegging dan wel de tenuitvoerlegging van een beslissing tussen echtgenoten en ex - echtgenoten;
- de onderhoudsverplichtingen tussen echtgenoten en ex - echtgenoten.

De verdragsluitende Staten kunnen voorts voorbehouden maken met betrekking tot het beperken van de toepassing van het verdrag tot personen, die de leeftijd van 18 jaar nog niet hebben bereikt. De bepalingen van dit verdrag zijn voorts van toepassing op kinderen ongeacht de burgerlijke staat van de ouders.

Elke verdragsluitende Staat wijst een centrale autoriteit aan die is belast met de haar door dit verdrag opgelegde taken.

Suriname heeft de 4 (vier) Haagse Kinderbeschermende Verdragen nog niet geratificeerd en kan derhalve geen beroep hierop doen onder andere bij de interlandelijke adoptie, problemen bij het innen van kinderalimentatie of andere vormen van gezinsonderhoud in het buitenland, bescherming van kinderen die naar het buitenland zijn ontvoerd, alsmede in andere grensoverschrijdende kwesties.

Aangezien de ratificatie van de vier voornoemde Haagse kinderbeschermende verdragen in de eerste plaats het gezin in het algemeen en in het bijzonder het kind ten goede zal komen en ook de daarvoor in aanmerking komende instanties die bij de kinderrechten en kinderbescherming betrokken zijn, is het van eminent belang dat Suriname tot deze verdragen toetreedt.

De onderhavige wet is noodzakelijk, ter voldoening aan het bepaalde in artikel 104 lid 1 van de Grondwet van de Republiek Suriname.

Paramaribo, .....



**CHANDRIKAPERSAD SANTOKHI**

### 33. CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION<sup>1</sup>

(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.

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<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions" or under the "Intercountry Adoption Section". For the full history of the Convention, see Hague Conference on Private International Law, *Proceedings of the Seventeenth Session (1993)*, Tome II, *Adoption – co-operation* (ISBN 90 399 0782 X, 659 pp.).

### Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph 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 competent 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 competent 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 competent 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 competent 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 competent 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 competent 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 competent 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 competent 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 competent 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 competent authority of the State of origin.

#### 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 sub-paragraph *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.

### 38. CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE<sup>1</sup>

(Concluded 23 November 2007)

The States signatory to the present Convention,  
 Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,  
 Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair,  
 Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956,  
 Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,  
 Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,

- in all actions concerning children the best interests of the child shall be a primary consideration,
- every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,
- the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and
- States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,

Have resolved to conclude this Convention and have agreed upon the following provisions –<sup>1</sup>

#### CHAPTER I – OBJECT, SCOPE AND DEFINITIONS

##### Article 1

##### Object

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by –

- a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;
- b) making available applications for the establishment of maintenance decisions;
- c) providing for the recognition and enforcement of maintenance decisions; and
- d) requiring effective measures for the prompt enforcement of maintenance decisions.

<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Proceedings of the Twenty-First Session* [to be published].

Article 2  
Scope

- (1) This Convention shall apply –
  - a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
  - b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and
  - c) with the exception of Chapters II and III, to spousal support.
- (2) Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 a), to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation.
- (3) Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.
- (4) The provisions of this Convention shall apply to children regardless of the marital status of the parents.

Article 3  
Definitions

For the purposes of this Convention –

- a) "creditor" means an individual to whom maintenance is owed or is alleged to be owed;
- b) "debtor" means an individual who owes or who is alleged to owe maintenance;
- c) "legal assistance" means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;
- d) "agreement in writing" means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;
- e) "maintenance arrangement" means an agreement in writing relating to the payment of maintenance which –
  - i) has been formally drawn up or registered as an authentic instrument by a competent authority; or
  - ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority;
- f) "vulnerable person" means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

CHAPTER II – ADMINISTRATIVE CO-OPERATION

Article 4  
Designation of Central Authorities

- (1) A Contracting State shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.
- (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 shall 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.
- (3) The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a



declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes.

#### Article 5 General functions of Central Authorities

Central Authorities shall –

- a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;
- b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

#### Article 6 Specific functions of Central Authorities

- (1) Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –
  - a) transmit and receive such applications;
  - b) initiate or facilitate the institution of proceedings in respect of such applications.
- (2) In relation to such applications they shall take all appropriate measures –
  - a) where the circumstances require, to provide or facilitate the provision of legal assistance;
  - b) to help locate the debtor or the creditor;
  - c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;
  - d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
  - e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
  - f) to facilitate the collection and expeditious transfer of maintenance payments;
  - g) to facilitate the obtaining of documentary or other evidence;
  - h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
  - i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
  - j) to facilitate service of documents.
- (3) The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.
- (4) Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State.

#### Article 7 Requests for specific measures

- (1) A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2) *b), c), g), h), i)* and *j)* when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated.
- (2) A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.

Article 8  
Central Authority costs

- (1) Each Central Authority shall bear its own costs in applying this Convention.
- (2) Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7.
- (3) The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

CHAPTER III – APPLICATIONS THROUGH CENTRAL AUTHORITIES

Article 9  
Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.

Article 10  
Available applications

- (1) The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this Convention –
  - a) recognition or recognition and enforcement of a decision;
  - b) enforcement of a decision made or recognised in the requested State;
  - c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;
  - d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition and enforcement under Article 20, or on the grounds specified in Article 22 b) or e);
  - e) modification of a decision made in the requested State;
  - f) modification of a decision made in a State other than the requested State.
- (2) The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision –
  - a) recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State;
  - b) modification of a decision made in the requested State;
  - c) modification of a decision made in a State other than the requested State.
- (3) Save as otherwise provided in this Convention, the applications in paragraphs 1 and 2 shall be determined under the law of the requested State, and applications in paragraphs 1 c) to f) and 2 b) and c) shall be subject to the jurisdictional rules applicable in the requested State.

Article 11  
Application contents

- (1) All applications under Article 10 shall as a minimum include –
  - a) a statement of the nature of the application or applications;
  - b) the name and contact details, including the address and date of birth of the applicant;
  - c) the name and, if known, address and date of birth of the respondent;
  - d) the name and date of birth of any person for whom maintenance is sought;
  - e) the grounds upon which the application is based;
  - f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;
  - g) save in an application under Article 10(1) a) and (2) a), any information or document specified by declaration in accordance with Article 63 by the requested State;
  - h) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.

- (2) As appropriate, and to the extent known, the application shall in addition in particular include –
  - a) the financial circumstances of the creditor;
  - b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;
  - c) any other information that may assist with the location of the respondent.
- (3) The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1) a) and (2) a), the application shall be accompanied only by the documents listed in Article 25.
- (4) An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

#### Article 12

#### Transmission, receipt and processing of applications and cases through Central Authorities

- (1) The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.
- (2) The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any document specified under Articles 16(3), 25(1) a), b) and d) and (3) b) and 30(3).
- (3) The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.
- (4) Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.
- (5) Requesting and requested Central Authorities shall keep each other informed of –
  - a) the person or unit responsible for a particular case;
  - b) the progress of the case,
 and shall provide timely responses to enquiries.
- (6) Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.
- (7) Central Authorities shall employ the most rapid and efficient means of communication at their disposal.
- (8) A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal.
- (9) The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

#### Article 13

#### Means of communication

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned.

Article 14  
Effective access to procedures

- (1) The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.
- (2) To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.
- (3) The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge.
- (4) Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.
- (5) No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

Article 15  
Free legal assistance for child support applications

- (1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.
- (2) Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) *a*) and *b*) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

Article 16  
Declaration to permit use of child-centred means test

- (1) Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) *a*) and *b*) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.
- (2) A State shall, at the time of making such a declaration, provide information to the Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test.
- (3) An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.
- (4) If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided.

Article 17  
Applications not qualifying under Article 15 or Article 16

- In the case of all applications under this Convention other than those under Article 15 or Article 16 –
- a*) the provision of free legal assistance may be made subject to a means or a merits test;
  - b*) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

## CHAPTER IV – RESTRICTIONS ON BRINGING PROCEEDINGS

### Article 18 Limit on proceedings

- (1) Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.
- (2) Paragraph 1 shall not apply –
  - a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;
  - b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
  - c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or
  - d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

## CHAPTER V – RECOGNITION AND ENFORCEMENT

### Article 19 Scope of the Chapter

- (1) This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term "decision" also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.
- (2) If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.
- (3) For the purpose of paragraph 1, "administrative authority" means a public body whose decisions, under the law of the State where it is established –
  - a) may be made the subject of an appeal to or review by a judicial authority; and
  - b) have a similar force and effect to a decision of a judicial authority on the same matter.
- (4) This Chapter also applies to maintenance arrangements in accordance with Article 30.
- (5) The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

### Article 20 Bases for recognition and enforcement

- (1) A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if –
  - a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;
  - b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
  - c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;
  - d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;



- e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or
  - f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.
- (2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 c), e) or f).
  - (3) A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.
  - (4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) b).
  - (5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 c), e) or f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.
  - (6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

#### Article 21

##### Severability and partial recognition and enforcement

- (1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.
- (2) Partial recognition or enforcement of a decision can always be applied for.

#### Article 22

##### Grounds for refusing recognition and enforcement

Recognition and enforcement of a decision may be refused if –

- a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("*ordre public*") of the State addressed;
- b) the decision was obtained by fraud in connection with a matter of procedure;
- c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
- d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
- e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin –
  - i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or
- f) the decision was made in violation of Article 18.

#### Article 23

##### Procedure on an application for recognition and enforcement

- (1) Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –



- a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or
  - b) if it is the competent authority take such steps itself.
- (3) Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.
  - (4) A declaration or registration may be refused only on the ground set out in Article 22 a). At this stage neither the applicant nor the respondent is entitled to make any submissions.
  - (5) The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.
  - (6) A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.
  - (7) A challenge or appeal may be founded only on the following –
    - a) the grounds for refusing recognition and enforcement set out in Article 22;
    - b) the bases for recognition and enforcement under Article 20;
    - c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) a), b) or d) or (3) b).
  - (8) A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.
  - (9) The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.
  - (10) A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.
  - (11) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 24  
Alternative procedure on an application for  
recognition and enforcement

- (1) Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.
- (2) Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –
  - a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or
  - b) if it is the competent authority, take such a decision itself.
- (3) A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.
- (4) The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 a), c) and d) of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) c) if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.
- (5) A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.
- (6) Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.
- (7) In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

Article 25  
Documents

- (1) An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following –
  - a) a complete text of the decision;
  - b) a document stating that the decision is enforceable in the State of origin and, in the case

- of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;
- c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;
  - d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;
  - e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;
  - f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.
- (2) Upon a challenge or appeal under Article 23(7) c) or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly –
- a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;
  - b) by the applicant, where the request has been made directly to a competent authority of the State addressed.
- (3) A Contracting State may specify in accordance with Article 57 –
- a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;
  - b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or
  - c) that it does not require a document stating that the requirements of Article 19(3) are met.

Article 26  
Procedure on an application for recognition

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

Article 27  
Findings of fact

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 28  
No review of the merits

There shall be no review by any competent authority of the State addressed of the merits of a decision.

Article 29  
Physical presence of the child or the applicant not required

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

Article 30  
Maintenance arrangements

- (1) A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.
- (2) For the purpose of Article 10(1) *a*) and *b*) and (2) *a*), the term "decision" includes a maintenance arrangement.
- (3) An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following –
  - a*) a complete text of the maintenance arrangement; and
  - b*) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.
- (4) Recognition and enforcement of a maintenance arrangement may be refused if –
  - a*) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;
  - b*) the maintenance arrangement was obtained by fraud or falsification;
  - c*) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.
- (5) The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that –
  - a*) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 *a*);
  - b*) a challenge or appeal as referred to in Article 23(6) may be founded only on the following –
    - i*) the grounds for refusing recognition and enforcement set out in paragraph 4;
    - ii*) the authenticity or integrity of any document transmitted in accordance with paragraph 3;
  - c*) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 *a*) of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.
- (6) Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.
- (7) A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.
- (8) A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

Article 31  
Decisions produced by the combined effect  
of provisional and confirmation orders

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State ("the confirming State") confirming the provisional order –

- a*) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;
- b*) the requirements of Article 22 *e*) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;
- c*) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and
- d*) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

CHAPTER VI – ENFORCEMENT BY THE STATE ADDRESSED

Article 32  
Enforcement under internal law

- (1) Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.
- (2) Enforcement shall be prompt.
- (3) In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.
- (4) Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.
- (5) Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

Article 33  
Non-discrimination

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

Article 34  
Enforcement measures

- (1) Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.
- (2) Such measures may include –
  - a) wage withholding;
  - b) garnishment from bank accounts and other sources;
  - c) deductions from social security payments;
  - d) lien on or forced sale of property;
  - e) tax refund withholding;
  - f) withholding or attachment of pension benefits;
  - g) credit bureau reporting;
  - h) denial, suspension or revocation of various licenses (for example, driving licenses);
  - i) the use of mediation, conciliation or similar processes to bring about voluntary compliance.

Article 35  
Transfer of funds

- (1) Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.
- (2) A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

CHAPTER VII – PUBLIC BODIES

Article 36  
Public bodies as applicants

- (1) For the purposes of applications for recognition and enforcement under Article 10(1) *a*) and *b*) and cases covered by Article 20(4), "creditor" includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits

- provided in place of maintenance.
- (2) The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.
  - (3) A public body may seek recognition or claim enforcement of –
    - a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
    - b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.
  - (4) The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph 2 and that benefits have been provided to the creditor.

## CHAPTER VIII – GENERAL PROVISIONS

### Article 37

#### Direct requests to competent authorities

- (1) The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seise directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified.
- (2) Articles 14(5) and 17 *b*) and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State.
- (3) For the purpose of paragraph 2, Article 2(1) *a*) shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment.

### Article 38

#### Protection of personal data

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

### Article 39

#### Confidentiality

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

### Article 40

#### Non-disclosure of information

- (1) An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person.
- (2) A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.
- (3) Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention.

### Article 41

#### No legalisation

No legalisation or similar formality may be required in the context of this Convention.



Article 42  
Power of attorney

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 43  
Recovery of costs

- (1) Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance.
- (2) A State may recover costs from an unsuccessful party.
- (3) For the purposes of an application under Article 10(1) *b*) to recover costs from an unsuccessful party in accordance with paragraph 2, the term "creditor" in Article 10(1) shall include a State.
- (4) This Article shall be without prejudice to Article 8.

Article 44  
Language requirements

- (1) Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.
- (2) A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.
- (3) Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article 62, object to the use of either English or French.

Article 45  
Means and costs of translation

- (1) In the case of applications under Chapter III, the Central Authorities may agree in an individual case or generally that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If there is no agreement and it is not possible for the requesting Central Authority to comply with the requirements of Article 44(1) and (2), then the application and related documents may be transmitted with translation into English or French for further translation into an official language of the requested State.
- (2) The cost of translation arising from the application of paragraph 1 shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.
- (3) Notwithstanding Article 8, the requesting Central Authority may charge an applicant for the costs of translation of an application and related documents, except in so far as those costs may be covered by its system of legal assistance.

Article 46  
Non-unified legal systems – interpretation

- (1) 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 –
  - a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;
  - b) any reference to a decision established, recognised, recognised and enforced, enforced or modified in that State shall be construed as referring, where appropriate, to a decision



- established, recognised, recognised and enforced, enforced or modified in the relevant territorial unit;
- c) any reference to a judicial or administrative authority in that State shall be construed as referring, where appropriate, to a judicial or administrative authority in the relevant territorial unit;
  - d) any reference to competent authorities, public bodies, and other bodies of that State, other than Central Authorities, shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;
  - e) any reference to residence or habitual residence in that State shall be construed as referring, where appropriate, to residence or habitual residence in the relevant territorial unit;
  - f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the location of assets in the relevant territorial unit;
  - g) any reference to a reciprocity arrangement in force in a State shall be construed as referring, where appropriate, to a reciprocity arrangement in force in the relevant territorial unit;
  - h) any reference to free legal assistance in that State shall be construed as referring, where appropriate, to free legal assistance in the relevant territorial unit;
  - i) any reference to a maintenance arrangement made in a State shall be construed as referring, where appropriate, to a maintenance arrangement made in the relevant territorial unit;
  - j) any reference to recovery of costs by a State shall be construed as referring, where appropriate, to the recovery of costs by the relevant territorial unit.
- (2) This Article shall not apply to a Regional Economic Integration Organisation.

#### Article 47

##### Non-unified legal systems – substantive rules

- (1) A Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.
- (2) A competent authority in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a decision from another Contracting State solely because the decision has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.
- (3) This Article shall not apply to a Regional Economic Integration Organisation.

#### Article 48

##### Co-ordination with prior Hague Maintenance Conventions

In relations between the Contracting States, this Convention replaces, subject to Article 56(2), the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* and the *Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children* in so far as their scope of application as between such States coincides with the scope of application of this Convention.

#### Article 49

##### Co-ordination with the 1956 New York Convention

In relations between the Contracting States, this Convention replaces the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention.

#### Article 50

##### Relationship with prior Hague Conventions on service of documents and taking of evidence

This Convention does not affect the *Hague Convention of 1 March 1954 on civil procedure*, the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in*

Article 51

Co-ordination of instruments and supplementary agreements

- (1) This Convention does not affect any international instrument concluded before this Convention to which Contracting States are Parties and which contains provisions on matters governed by this Convention.
- (2) Any Contracting State may conclude with one or more Contracting States agreements, which contain provisions on matters governed by the Convention, with a view to improving the application of the Convention between or among themselves, provided that such agreements are consistent with the objects and purpose of the Convention and do not affect, in the relationship of such States with other Contracting States, the application of the provisions of the Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.
- (3) Paragraphs 1 and 2 shall also apply to reciprocity arrangements and to uniform laws based on special ties between the States concerned.
- (4) This Convention shall not affect the application of instruments of a Regional Economic Integration Organisation that is a Party to this Convention, adopted after the conclusion of the Convention, on matters governed by the Convention provided that such instruments do not affect, in the relationship of Member States of the Regional Economic Integration Organisation with other Contracting States, the application of the provisions of the Convention. As concerns the recognition or enforcement of decisions as between Member States of the Regional Economic Integration Organisation, the Convention shall not affect the rules of the Regional Economic Integration Organisation, whether adopted before or after the conclusion of the Convention.

Article 52

Most effective rule

- (1) This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a reciprocity arrangement in force in the requested State that provides for –
  - a) broader bases for recognition of maintenance decisions, without prejudice to Article 22 *f*) of the Convention;
  - b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions;
  - c) more beneficial legal assistance than that provided for under Articles 14 to 17; or
  - d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State.
- (2) This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph 1 a) to c). However, as regards simplified, more expeditious procedures referred to in paragraph 1 b), they must be compatible with the protection offered to the parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal.

Article 53

Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 54

Review of practical operation of the Convention

- (1) 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 and to encourage the development of good practices under the Convention.
- (2) For the purpose of such review, Contracting States shall co-operate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of information, including statistics and case law, concerning the practical operation of the Convention.

Article 55  
Amendment of forms

- (1) The forms annexed to this Convention may be amended by a decision of a Special Commission convened by the Secretary General of the Hague Conference on Private International Law to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.
- (2) Amendments adopted by the Contracting States present at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States.
- (3) During the period provided for in paragraph 2 any Contracting State may by notification in writing to the depositary make a reservation, in accordance with Article 62, with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn, be treated as a State not Party to the present Convention with respect to that amendment.

Article 56  
Transitional provisions

- (1) The Convention shall apply in every case where –
  - a) a request pursuant to Article 7 or an application pursuant to Chapter III has been received by the Central Authority of the requested State after the Convention has entered into force between the requesting State and the requested State;
  - b) a direct request for recognition and enforcement has been received by the competent authority of the State addressed after the Convention has entered into force between the State of origin and the State addressed.
- (2) With regard to the recognition and enforcement of decisions between Contracting States to this Convention that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if the conditions for the recognition and enforcement under this Convention prevent the recognition and enforcement of a decision given in the State of origin before the entry into force of this Convention for that State, that would otherwise have been recognised and enforced under the terms of the Convention that was in effect at the time the decision was rendered, the conditions of that Convention shall apply.
- (3) The State addressed shall not be bound under this Convention to enforce a decision or a maintenance arrangement, in respect of payments falling due prior to the entry into force of the Convention between the State of origin and the State addressed, except for maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

Article 57  
Provision of information concerning laws, procedures and services

- (1) A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with –
  - a) a description of its laws and procedures concerning maintenance obligations;
  - b) a description of the measures it will take to meet the obligations under Article 6;
  - c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;
  - d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods;
  - e) any specification referred to in Article 25(1) b) and (3).
- (2) Contracting States may, in fulfilling their obligations under paragraph 1, utilise a country profile form recommended and published by the Hague Conference on Private International Law.
- (3) Information shall be kept up to date by the Contracting States.

## CHAPTER IX – FINAL PROVISIONS

### Article 58

#### Signature, ratification and accession

- (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 Twenty-First 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.
- (3) Any other State or Regional Economic Integration Organisation may accede to the Convention after it has entered into force in accordance with Article 60(1).
- (4) The instrument of accession shall be deposited with the depositary.
- (5) 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 12 months after the date of the notification referred to in Article 65. 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

#### Regional Economic Integration Organisations

- (1) A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Convention.
- (2) The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.
- (3) At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with Article 63 that it exercises competence over all the matters governed by this Convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the Organisation.
- (4) For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration in accordance with paragraph 3.
- (5) Any reference to a "Contracting State" or "State" in this Convention shall apply equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 3, any reference to a "Contracting State" or "State" in this Convention shall apply equally to the relevant Member States of the Organisation, where appropriate.

### Article 60

#### Entry into force

- (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 second instrument of ratification, acceptance or approval referred to in Article 58.
- (2) Thereafter the Convention shall enter into force –
  - a) for each State or Regional Economic Integration Organisation referred to in Article 59(1) subsequently ratifying, accepting or approving it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance or approval;

- b) for each State or Regional Economic Integration Organisation referred to in Article 58(3) on the day after the end of the period during which objections may be raised in accordance with Article 58(5);
- c) for a territorial unit to which the Convention has been extended in accordance with Article 61, on the first day of the month following the expiration of three months after the notification referred to in that Article.

#### Article 61

##### Declarations with respect to non-unified legal systems

- (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 in accordance with Article 63 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 shall extend to all territorial units of that State.
- (4) This Article shall not apply to a Regional Economic Integration Organisation.

#### Article 62

##### Reservations

- (1) Any Contracting 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 61, make one or more of the reservations provided for in Articles 2(2), 20(2), 30(8), 44(3) and 55(3). 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 paragraph 2.
- (4) Reservations under this Article shall have no reciprocal effect with the exception of the reservation provided for in Article 2(2).

#### Article 63

##### Declarations

- (1) Declarations referred to in Articles 2(3), 11(1) *g*), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1), may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.
- (2) Declarations, modifications and withdrawals shall be notified to the depositary.
- (3) A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.
- (4) A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

#### Article 64

##### Denunciation

- (1) A Contracting State to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a multi-unit State to which the Convention applies.
- (2) The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall



take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 65  
Notification

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 58 and 59 of the following –

- a) the signatures, ratifications, acceptances and approvals referred to in Articles 58 and 59;
- b) the accessions and objections raised to accessions referred to in Articles 58(3) and (5) and 59;
- c) the date on which the Convention enters into force in accordance with Article 60;
- d) the declarations referred to in Articles 2(3), 11(1) *g*), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1);
- e) the agreements referred to in Article 51(2);
- f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3) and 55(3), and the withdrawals referred to in Article 62(2);
- g) the denunciations referred to in Article 64.

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

Done at The Hague, on the 23rd day of November 2007, 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 Members of the Hague Conference on Private International Law at the date of its Twenty-First Session and to each of the other States which have participated in that Session.



## 28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION<sup>1</sup>

(Concluded 25 October 1980)

The States signatory to the present Convention,  
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,  
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,  
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

### CHAPTER I – SCOPE OF THE CONVENTION

#### Article 1

The objects of the present Convention are –

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

#### Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

#### Article 3

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.

<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions" or under the "Child Abduction Section". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

#### Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

#### Article 5

For the purposes of this Convention –

- a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

### CHAPTER II – CENTRAL AUTHORITIES

#### Article 6

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

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

#### Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d) to exchange, where desirable, information relating to the social background of the child;
- e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

### CHAPTER III – RETURN OF CHILDREN

#### Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child. The application shall contain –

- a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b) where available, the date of birth of the child;
- c) the grounds on which the applicant's claim for return of the child is based;
- d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

- e) an authenticated copy of any relevant decision or agreement;
- f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- g) any other relevant document.

#### Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

#### Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

#### Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

#### Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

#### Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

#### Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

#### Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

#### Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

#### Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

#### Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

#### Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.



#### Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

#### CHAPTER IV – RIGHTS OF ACCESS

#### Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

#### CHAPTER V – GENERAL PROVISIONS

#### Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

#### Article 23

No legalisation or similar formality may be required in the context of this Convention.

#### Article 24

Any application, communication or other document sent to the Central Authority of the requested 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 requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

#### Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

#### Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

#### Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

#### Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

#### Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

#### Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

#### Article 31

In relation to a State which in matters of custody of children has two or more systems of law 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 the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

#### Article 32

In relation to a State which in matters of custody of children 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 33

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

#### Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

#### Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

#### Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

### CHAPTER VI – FINAL CLAUSES

#### Article 37

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 Fourteenth Session.

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.

#### Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

#### Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

#### Article 40

If a Contracting 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 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.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

#### Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

#### Article 42

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 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

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 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force –

- (1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- (2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

#### Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

#### Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
- (2) the accessions referred to in Article 38;
- (3) the date on which the Convention enters into force in accordance with Article 43;
- (4) the extensions referred to in Article 39;
- (5) the declarations referred to in Articles 38 and 40;
- (6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
- (7) the denunciations referred to in Article 44.

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

Done at The Hague, on the 25th day of October, 1980, 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 Fourteenth Session.





**34. CONVENTION ON JURISDICTION, APPLICABLE LAW,  
RECOGNITION, ENFORCEMENT AND CO-OPERATION  
IN RESPECT OF PARENTAL RESPONSIBILITY AND  
MEASURES FOR THE PROTECTION OF CHILDREN<sup>1</sup>**

(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.

<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Proceedings of the Eighteenth Session (1996)*, Tome II, *Protection of children* (615 pp.).

### 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.



Secretariaat Directeur  
 Ingek: 12/6/23  
 S.D. no :

DE RAAD VAN MINISTERS  
 MISSIVE

No. 757/RvM

Paramaribo, 24 mei 2023

Aan: de Minister van Justitie en Politie

Hierbij deel ik U mede dat de Raad van Ministers, naar aanleiding van Uw voorstel van 15 mei 2023 No. MJP 139/23, in zijn vergadering van woensdag 24 mei 2023 zijn goedkeuring heeft gehecht aan de ontwerp-wet houdende goedkeuring van de toetreding van de Republiek Suriname tot de vier (4) Haagse Kinderbeschermende Verdragen, met name:

- het verdrag inzake de burgerrechtelijke aspecten van de internationale ontvoering van kinderen, 's Gravenhage 25 oktober 1980, kort gezegd "het Haags Kinderontvoeringsverdrag";
- het verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van de interlandelijke adoptie, 's Gravenhage 29 mei 1993, kort gezegd "het Haags Adoptieverdrag";
- het verdrag inzake de bevoegdheid, het toepasselijk recht, de erkenning, tenuitvoerlegging en de samenwerking op het gebied van ouderlijke verantwoordelijkheden, en maatregelen ten behoeve van de bescherming van kinderen, 's Gravenhage 19 oktober 1996, kort gezegd "het Haags Kinderbeschermingsverdrag";
- het verdrag inzake de internationale inning van levensonderhoud voor kinderen en andere familieleden, 's Gravenhage 23 november 2007, kort gezegd "het Haags Kinderalimentatieverdrag"; alsmede aan de bijbehorende Memorie van Toelichting.

De Vice President,  
 Voorzitter van de Raad van Ministers,

R. BRUNSWIJK MBA

*Mr. Hoypal (Hd BvK)*  
*15m Mr. Scavina*  
*13/6/23*

cc: - de overige Ministers  
 - de Voorzitter van de Rekenkamer van Suriname

BUREAU  
 VROUWEN- EN KINDERENBELEID  
 Ingek. d.d.: 13-6-23

*- Dir Just ✓*  
*- Sebajo (Sec Min)*  
*u aangeboden*  
*12/6*  
*Sm23/02933*

SD 23/01554

BvK 74/23



PRESIDENT van de REPUBLIEK SURINAME

Telefoon: 420102

Aan: de Minister van Buitenlandse  
Zaken, International Business  
en Internationale  
Samenwerking  
Dhr. Albert Ramd/in

Kenmerk: secpres/449/23  
Paramaribo, 13 september 2023

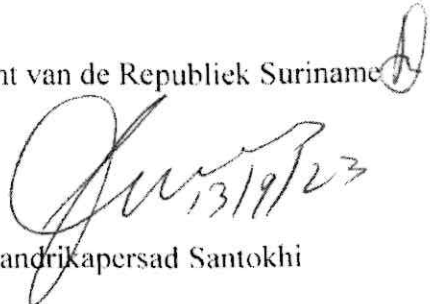
**Onderwerp:** aanbieding advies Staatsraad inzake de ontwerpwet  
houdende goedkeuring van de toetreding van de  
Republiek Suriname tot de 4 (vier) Haagse Kinder-  
beschermende Verdragen

Geachte Minister,

Bijgaand doe ik u toekomen het advies van de Staatsraad betreffende de ontwerpwet, als  
in hoofde genoemd, met bijbehorende Memorie van Toelichting.

Gaarne wordt gevraagd het advies ter zake ter hand te willen nemen.

De President van de Republiek Suriname

  
Chandrikapersad Santokhi

Bijlagen: 1x

Ingeken... Min.  
d.d.: 14-9-23  
No: mbubis 1891

DBZ  
Ald Juvied } sup  
                  } - vln  
19/9/23



STAATSRAAD

Adres : Zeelandialaan 8

Telefoon : 411281/411421

E-mail : staatsraad@sr.net

Inyik 11 09. 23  
secpres/4449/23

Paramaribo, 08 september 2023

Aan : de President van de Republiek Suriname,  
tevens Voorzitter van de Staatsraad  
Z.E. Chandrikapersad Santokhi

Nummer : 213/SR/2023

Bijlage (n) : 1

Onderwerp: Advies inzake de ontwerpwet houdende goedkeuring van de toetreding van de Republiek Suriname tot de 4 (vier) Haagse Kinderbeschermende Verdragen, met bijbehorende Memorie van Toelichting

Excellentie,

Refererend naar uw schrijven d.d. 31 augustus 2023, kenmerk secpres/4449/23, doe ik u toekomen, het advies inzake "de ontwerpwet houdende goedkeuring van toetreding van de Republiek Suriname tot de 4 (vier) Haagse Kinderbeschermende Verdragen, met bijbehorende Memorie van Toelichting".

De Vice-voorzitter

Mr. Drs. Urmila/Ramlagansing





## STAATSRaad

Adres: Zeelandiaaan # 8  
Telefoon: 411281/ 411421  
E-mail: Staatsraad@sr.net

Datum : 08 september 2023  
Nummer : 213/SR/2023  
Bijlage :  
Onderwerp : **Advies inzake de ontwerpwet houdende goedkeuring van de toetreding van de Republiek Suriname tot de 4 (vier) Haagse Kinderbeschermende Verdragen, met bijbehorende Memorie van Toelichting**

### INLEIDING

Onderhavig ontwerpwet is ontvangen bij de Staatsraad op 31 augustus 2023. Op 07 september 2023 is in de reguliere vergadering van Staatsraad het onderhavige plenair behandeld en is besloten de President advies te doen toekomen.

### BEVINDINGEN van de RAAD

#### **A. Uit de Memorie van Toelichting blijkt dat:**

1. in 1993 Suriname het Kinderrechtenverdrag tekende en in 1999 interne werking na publicatie in het Verdragenblad verkreeg.
2. thans 196 landen wereldwijd partij zijn bij dit verdrag en zulks tot gevolg heeft dat deze landen verplicht zijn de rechten van het kind te beschermen en te waarborgen.
3. de 4 (vier) Haagse Kinderbeschermende Verdragen ook wel de HCCB verdragen genoemd, betreffen:
  - a. het verdrag inzake de burgerrechtelijke aspecten van de internationale ontvoering van kinderen;
  - b. het verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van de interlandelijke adoptie;
  - c. het verdrag inzake de bevoegdheid, het toepasselijk recht, de erkenning, de tenuitvoerlegging en de samenwerking op het gebied van ouderlijke verantwoordelijkheden en maatregelen ten behoeve van de bescherming van kinderen;
  - d. het verdrag inzake de internationale inning van levensonderhoud voor kinderen en andere familieleden.
4. aangezien de ratificatie van de vier voornoemde Haagse kinderbescherming verdragen in de eerste plaats het gezin in het algemeen en in het bijzonder het kind ten goede zal komen en ook de daarvoor in aanmerking komende instanties hierbij de kinderrechten en kinderbescherming betrokken zijn, het van eminent belang is dat Suriname tot deze verdragen toetreedt.

#### **B. De Raad heeft nota genomen van het ontwerp en de motivering zoals opgenomen in de Memorie van Toelichting.**

### ADVIES

De Raad onderschrijft het belang van onderhavig ontwerpwet en adviseert de President, mee te werken aan de totstandkoming van het ontwerp zoals in hoofde is aangegeven.

Aldus gegeven in zijn vergadering van 07 september 2023.

De voorzitter  
Namens deze,

De Vice-voorzitter

  
Mr. Drs. Urmia Ramlagansing

De wvd Secretaris

  
Cherin Koffie

1. Advies inzake ontwerpwet Haagse Kinderbeschermende Verdragen

REPUBLIEK SURINAME



MINISTERIE VAN BUITENLANDSE ZAKEN,  
INTERNATIONAL BUSINESS EN INTERNATIONALE SAMENWERKING

De President van de Republiek Suriname  
Z.E. Chandrikapersad Santokhi

Paramaribo, 22 augustus 2023  
Kenmerk: MBIBIS/7.226/Jurved/23

Betreft: Documenten betreffende de toetreding van  
de Republiek Suriname tot de vier (4)  
Haagse Kinderbeschermende Verdragen

Excellentie,

Bijgaand doe ik u toekomen de relevante documenten betreffende de toetreding van de Republiek Suriname tot de vier (4) Haagse Kinderbeschermende Verdragen.

Ik mag u informeren dat de Raad van Ministers in zijn vergadering van woensdag 24 mei 2023, goedkeuring heeft gehecht aan de ontwerp-wet met Memorie van Toelichting, houdende goedkeuring van de toetreding van de Republiek Suriname tot de vier (4) Haagse Kinderbeschermende Verdragen middels missive no. 757/RvM, de dato 24 mei 2023, te weten:

1. *Het Haags Verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van de Interlandelijke adoptie, 's-Gravenhage 29 mei 1993 oftewel "het Haags Adoptieverdrag";*
2. *Het Haags Verdrag inzake de internationale inning van levensonderhoud voor kinderen en andere familieleden, 's-Gravenhage 23 november 2007 oftewel "het Haags Kinderalimentatieverdrag";*
3. *Het Haags Verdrag inzake de burgerrechtelijke aspecten van internationale ontvoering van kinderen, 's-Gravenhage 25 oktober 1980 oftewel "het Haags Kinderontvoeringsverdrag" en*
4. *Het Haags Verdrag inzake de bevoegdheid, toepasselijk recht, erkenning, tenuitvoerlegging en samenwerking op het gebied van ouderlijke verantwoordelijkheden en maatregelen ter bescherming van kinderen, 's-Gravenhage 19 oktober 1996 oftewel "het Kinderbeschermingsverdrag".*

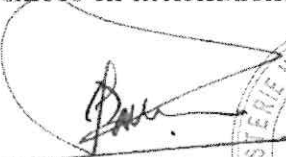
REPUBLIEK SURINAME

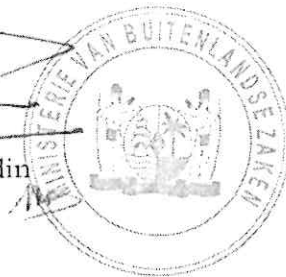


MINISTERIE VAN BUITENLANDSE ZAKEN,  
INTERNATIONAL BUSINESS EN INTERNATIONALE SAMENWERKING

Dezerzijds wordt aanbevolen de bedoelde Verdragen alsmede de ontwerp-wet met bijbehorende Memorie van Toelichting terzake, voor advies aan de Staatsraad voor te leggen, overeenkomstig het bepaalde in artikel 115 sub b van de Grondwet van de Republiek Suriname.





De Minister van Buitenlandse Zaken,  
International Business en Internationale Samenwerking.

  
Albert R. Ramdin



*Bijlagen:*

- De tekst van de vier (4) Haagse Kinderbeschermende Verdragen;
- Ontwerpwet en daarbij behorende Memorie van Toelichting;
- Kopie Missive van de Raad van Ministers No. 757/RuM, de dato 24 mei 2023

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