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*SNA*  
*25/4/23*

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION


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**REPORT ON THE RATIFICATION OF:**

1. THE HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION;
2. THE HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND COOPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN; AND
3. THE HAGUE CONVENTION ON INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE.

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL  
PARLIAMENT BUILDINGS  
NAIROBI

 <b>THE NATIONAL ASSEMBLY</b> PAPERS LAID	
DATE: 25 APR 2023	
DAY: TUESDAY	
TABLED BY:	Chairperson, Departmental Committee on Social Protection
CLERK-AT THE-TABLE:	Inzogu mwale

APRIL 2023

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## LIST OF ABBREVIATIONS AND ACRONYMS

NA – National Assembly

UN – United Nations

AG – Attorney-General

UNCRC – United Nations Convention on the Rights of the Child

## ANNEXURES

- Annexure 1: Adoption List
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- Annexure 3: Letter from Ministry of Foreign Affairs committing the conventions to National Assembly
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## CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Social Protection on the Ratification of The Hague Convention on the Civil Aspects of International Child Abduction; Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 and National Assembly Standing Order 170A, the three Conventions were committed to the Committee for consideration and reporting to the House. In compliance with Article 118 (b) of the Constitution, section 8 of the Treaty Making and Ratification Act, 2012 and Standing Order 170A, the Committee placed an advertisement in the print media on 15<sup>th</sup> March, 2023, inviting the public to submit memoranda on the three Conventions. The memoranda were to be received on or before 30<sup>th</sup> March, 2023. At the close of the submission deadline, the Committee had not received any memorandum relating to the Conventions. The Committee also held a meeting on Friday, 14<sup>th</sup> April, 2023 with the Ministry of Labour and Social Protection, Ministry of Foreign and Diaspora Affairs and the Office of the Attorney-General to discuss the conventions.

The Committee observed that The Hague Convention on the Civil Aspects of International Child Abduction was to protect children from the harmful effects of international abduction by encouraging prompt return of abducted children to their country of habitual residence and to organize or secure the effective rights of access to a child. Further, the Committee observed that The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children sought to empower competent authorities to protect children and cooperate in a varied range of cross-border situations, offering States practical means to fulfil international obligations arising from the United Nations Convention on the Rights of the Child. The Committee also observed that The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance sought to ensure the effective international recovery of child support and other forms of family maintenance.

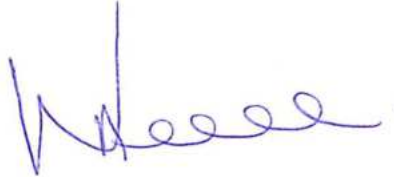
Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 as read together with Standing Order 170A, the Committee recommends that the House approves the Ratification of:

1. The Hague Convention on the Civil Aspects of International Child Abduction;
2. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; and
3. The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

The Committee registers its appreciation to the Speaker of the National Assembly, Clerk of the National Assembly for providing overall guidance and direction, the Office of the Director, Departmental Committees and the Committee Secretariat for the technical and logistical support extended during the consideration of the Conventions.

Finally, I take this opportunity to acknowledge and appreciate the Committee Members for their patience, sacrifice and commitment, which enabled the Committee to consider the conventions within the set timelines.

Pursuant to section 8 of the Treaty Making and Ratification Act, 2012, National Assembly Standing Order 170A and 199, it is my pleasant duty to table the Report of the Committee on the Ratification of the Hague Convention on the Civil Aspects of International Child Abduction; Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children and Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance for debate and adoption by the House.



**Hon. Alice Wambui Nga'nga', MP.**  
**Chairperson, Departmental Committee on Social Protection**



## CHAPTER ONE

### 1. PREFACE

#### 1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Social Protection is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. *To study and review all legislation referred to it;*
- v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. *To examine any questions raised by Members on a matter within its mandate.*

#### 1.2 Committee's subjects

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider social welfare and security, pension matters, gender affairs, equality and affirmative action, affairs of children, youth, persons with disability and senior citizens.
3. In executing its mandate, the Committee oversees the Ministry of Labour and Social Protection, Ministry of Youth, Sports and the Arts and Ministry of Public Service, Gender and Affirmative Action.

### 1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

#### Chairperson

Hon. Alice Wambui Ngángá, MP  
Thika Town Constituency  
UDA Party

#### Vice-Chairperson

Hon. Hillary Kiplang'at Koskei, MP  
Kipkelion West Constituency  
UDA Party

#### Members

Hon. (Dr.) James Wambura Nyikal, M.P.  
Seme Constituency  
ODM PARTY

Hon. Timothy Wanyonyi Wetangula, M.P.  
Westlands Constituency  
ODM PARTY

Hon. (Dr.) Lilian Achieng' Gogo, M.P.  
Rangwe Constituency  
ODM PARTY

Hon. Mark Ogolla Nyamita, M.P.  
Uriri Constituency  
ODM PARTY

Hon. Edith Vethi Nyenze, M.P.  
Kitui West Constituency  
WDM-K PARTY

Hon. Betty Njeri Maina, M.P.  
Murang'a County  
UDA PARTY

Hon. Michael Wambugu Wainaina, M.P.  
Othaya Constituency  
UDA PARTY

Hon. Sulekha Hulbale Harun, M.P.  
Nominated Member  
UDM PARTY

Hon. Amina Abdullahi Dika, M.P.  
Tana River County  
KANU PARTY

Hon. Hussein Abdi Barre, M.P.  
Tarbaj Constituency  
UDA PARTY

Hon. Susan Nduyo Ngugi, M.P.  
Tharaka Nithi County  
TSP PARTY

Hon. Agnes Mantaine Pareiyo, M.P.  
Narok North Constituency  
JUBILEE PARTY

Hon. Linet Chepkorir, M.P.  
Bomet County  
UDA PARTY

#### 1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Ms. Hellen L. Ekadeli  
First Clerk Assistant /Head of Secretariat

Ms. Jemimah Waigwa  
Senior Legal Counsel

Mr. Sakana Saoli  
Third Clerk Assistant

Mr. Abdikafar Abdi Sheikh  
Third Clerk Assistant

Mr. Adan Ahmed Abdi  
Fiscal Analyst II

Ms. Grace Maneno  
Research Officer III

Mr. Boniface Mugambi  
Serjeant-At-Arms

Mr. Kevin Obilo  
Media Relations Officer II

Mr. Collins Mahamba  
Audio Officer III



## CHAPTER TWO

### 2. INTRODUCTION

6. The Cabinet, during a meeting held on 22nd December 2016, approved a Cabinet Memo on the ratification, acceptance and accession of:
  - (1) The Hague Convention on the Civil Aspects of International Child Abduction;
  - (2) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; and
  - (3) The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance
7. The Cabinet decision was communicated to the Principal Secretaries of the Ministry of East African Community, Labour and Social Protection and directed to take appropriate action. The memoranda were tabled in the National Assembly on the 4th April, 2017 and forwarded to the relevant Departmental Committees for further review. The Committees did not conclude the review by the end of the term of the 11th Parliament hence the re-submission of the Conventions for consideration by the House pursuant to section 8 of the Treaty Making and Ratification Act, 2012 and Standing Order 170A.

### SUMMARY OF THE CONVENTIONS

#### A. THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

8. The Hague Convention on the Civil Aspects of International Child Abduction of 25<sup>th</sup> October, 1980 is a multilateral treaty which entered into force on 1<sup>st</sup> December, 1983. One hundred and three (103) States are contracting Parties to the Convention.
9. The Convention has 45 Articles and its principal object is to protect children internationally from the harmful effects of their wrongful removal or retention and establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.

Chapter 1 of the Convention provides for the scope of the Convention. Article 4 of the Convention provides that the Convention applies to any child who was habitually resident in a contracting state immediately before any breach of custody or access rights. However, the Convention ceases to apply when the child attains the age of 16 years.

10. Chapter II of the Convention provides for the central authorities and provides that each State shall designate central authority to discharge the duties which are imposed by the Convention upon such authorities. Article 7 of the Convention obligates the central authorities to among other things, take appropriate measures to initiate or facilitate the institution of judicial or administrative proceedings, with a view to obtaining the return of the child or effective exercise of rights of access.

11. Chapter III of the Convention provides for return of children and provides for the right to apply for return to the relevant central authority seeking assistance in securing the return of the child. This Chapter also provides for transmission of an application from one central authority to the central authority of the Contracting State where the child is believed to be in and the duty of the central authority to inform the applicant or referring central authority. The Chapter also defines the duty of the central authority where the child is, to employ appropriate measures to obtain the voluntary return of the child and the duty of the judicial and administrative authorities to act expeditiously in proceedings for the return of children.
12. Chapter IV of the Convention provides for the rights of access. It provides that an application for exercise of rights of access may be presented to central authorities and the authorities may initiate or assist in the institution of proceedings with a view of protecting the rights of access.
13. Chapter V of the Convention provides for the general provisions which include the provision defining the right to legal aid and advice for the nationals of the contracting states in any other contracting states, for matters concerned with the application of the Convention.

Chapter VI of the Convention provides for the final clauses which include provisions on signing, ratification, acceptance, approval and accession to the Convention by States.

#### **B. THE HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND COOPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN;**

14. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children entered into force on 1<sup>st</sup> January, 2002 and fifty-four (54) states are contracting parties to the Convention. The Convention has a total of sixty-three (63) Articles.
15. Chapter I of the Convention provides for the scope of the Convention. The principal objects of the Convention are:
  - (a) to determine the State whose authorities, have jurisdiction to take measures directed to 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
  - (e) Contracting States;
  - (f) 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.



16. The Convention applies to children from the moment of their birth until they reach the age of eighteen years. The Convention does not apply to the establishment or contesting of a parent-child relationship; decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; and the name and forenames of the child among other things.
17. Chapter II of the Convention provides that the judicial or administrative authorities of the Contracting State which is the child's habitual resident, have the jurisdiction on protection of the child's person or property.
18. Chapter III of the Convention provides for the exercise of parental responsibility which is governed by the law of the State of the child habitual residence and if the child habitual residence changes, it is governed by the law of the State of the new habitual residence
19. Chapter IV of the Convention provides for recognition and enforcement of measures taken by authorities and provides that the measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States. However, recognition may be refused on among other things, if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child.
20. Chapter V of the Convention provides for the designation of central authorities by states, cooperation of central authorities and spells out the functions of the authorities which include to 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.
21. Chapter VI of the Convention provides for the general provisions of the Convention which include provisions on personal data gathered or transmitted under the Convention and confidentiality.
22. Chapter VII of the Convention provides for the final clauses which include provisions on signing, ratification, acceptance, approval and accession to the Convention by States.

### **C. THE HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE.**

23. The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance was entered into force on 23<sup>rd</sup> November, 2007 and forty-six (46) states are contracting parties to the Convention. The Convention has a total of sixty-five (65) Articles.
24. Chapter I of the Convention provides for the scope of the Convention. The principal objects of the Convention are to ensure the effective international recovery of child support and other forms of family maintenance, in particular by establishing a comprehensive system of cooperation between the authorities of the Contracting states; by making available applications for the establishment of

maintenance decisions; and providing for the recognition and enforcement of maintenance decisions.

25. The Convention shall apply to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.
26. Chapter II of the Convention for administrative cooperation by obligating states to designate central authorities and provides for the functions of central authorities which include to transmit and receive applications and initiate or facilitate the institution of proceedings in respect of such applications.
27. Chapter III of the Convention provides for the procedure for making applications through the central authorities and further provides that the requested State shall provide free legal assistance in respect of all child support applications.
28. Chapter IV of the Convention provides for restrictions on bringing proceedings and provides that 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.
29. Chapters V and VI of the Convention provides for recognition and enforcement of decisions made in one contracting state in another contracting state. Article 34 of the Convention provides that the contracting States shall make available in internal law effective measures to enforce decisions under the Convention. The measures may include –
  - i. wage withholding;
  - ii. garnishment from bank accounts and other sources;
  - iii. deductions from social security payments;
  - iv. lien on or forced sale of property;
  - v. tax refund withholding;
  - vi. withholding or attachment of pension benefits;
  - vii. credit bureau reporting;
  - viii. denial, suspension or revocation of various licenses (for example, driving licenses);
  - ix. the use of mediation, conciliation or similar processes to bring about voluntary compliance.
30. The Convention further provides that Contracting States shall promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.
31. Chapter VII of the Convention provides for 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.



32. Chapter IX of the Convention provides for the general provisions of the Convention which include provisions on personal data gathered or transmitted under the Convention and confidentiality.
33. Chapter X of the Convention provides for the final provisions which include provisions on signing, ratification, acceptance, approval and accession to the Convention by States.



## CHAPTER THREE

### 3. CONSIDERATION OF THE CONVENTIONS

34. Pursuant to Article 118 (b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012 and Standing Order 170A, the Clerk placed an advertisement in the print media on 15<sup>th</sup> March, 2023, inviting the public to submit memoranda on the three Conventions. The memoranda were to be received on or before 30<sup>th</sup> March, 2023. At the close of the submission deadline, the Committee had not received any memorandum relating to the Conventions.
35. The Committee also held a meeting on Friday, 14<sup>th</sup> April, 2023 with the Principal Secretary, State Departmental of Social Protection, the Registrar of Treaties, Ministry of Foreign and Diaspora Affairs and the Office of the Attorney-General.

#### A. SUBMISSIONS BY THE PRINCIPAL SECRETARY, DEPARTMENTAL OF SOCIAL PROTECTION

**Mr. Joseph Mogosi Motari, MBS Principal Secretary, State Department of Social Protection informed the Committee as follows in relation to The Hague Convention on the Civil Aspects of International Child Abduction:**

36. The Hague Convention of 25th October 1980 on the Civil Aspects of International Child Abduction, also known as, The Hague Abduction Convention is a multilateral treaty which was concluded on 25th October 1980 and entered into force between the signatories on 1st December 1983. One Hundred and three (103) states are contracting parties to the convention (as of November, 2022). The Convention contains 45 articles.
37. The purpose of the convention is to protect Children from the harmful effects of international abduction by encouraging the prompt return of abducted children to their country of habitual residence and to organize or secure the effective rights of access to a child. Custody and visitation matters should generally be decided by the proper court in the Country of the child's habitual residence. Once a Country ratifies the Convention, it is obligated to establish a Central Authority to assist in locating the child and if possible, facilitate the voluntary return of the child or amicable resolution of disputes and make administrative arrangements to secure the child's safe return.
38. The Convention provides for a procedure for the prompt return of children, who have been wrongfully removed or retained, to the State of their habitual residence, unless it is not in the best interest of the child.
39. The return order is designed to restore the status quo that existed prior to the wrongful removal or retention and to deprive the taking persons of any advantage gained as a result of the wrongful removal or retention as a deterrence to international abductions. A return order is not a decision on the merits of custody. It is simply an order that a child be returned to the jurisdiction that is most appropriate to determine custody and access.

40. The Convention provides for certain exceptions to return:

- a) Where it is demonstrated that the child is settled in the new environment.
- b) If the person or institution having care of the person of the child was not actually exercising the custody rights at the time of removal or retention.
- c) If the person had consented or subsequently agreed to the removal or retention of the child.
- d) Where there is a grave risk that the return would expose the child to physical or psychological harm.
- e) If the child has attained an age and degree of maturity at which it is appropriate to take the child's views and he or she objects to the return.
- f) If the return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

#### ***Justification for Ratification***

41. Kenyan Court orders may not be recognized internationally therefore; ratification of the Convention will provide a framework for Kenya to work with other countries to resolve international child abduction cases.

42. The Convention is in tandem with the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Constitution of Kenya and the Children Act 2022 on right to parental care and protection of children from abduction.

#### ***Constitutional and Legislative Implication***

43. The ratification of this Convention will not call an amendment for the Constitution. However, Kenya may need to undertake the review of existing policies and develop cohesive protocols to enable participation and harmonization activities.

#### ***Obligations Imposed by The Hague convention***

44. Each Contracting State is required to designate a Central Authority to discharge duties under the Convention and to promote cooperation, collaboration and a harmonious working relationship with Central Authorities in other countries to achieve the objects of the Convention.

#### ***Financial Implications***

45. The financial requirements during implementation of the Convention will be catered for during the normal budgetary estimates of the relevant Ministries, Departments and Agencies.

#### ***Ministerial Responsibility***

46. The Ministry of Labour and Social Protection will be responsible for the implementation of the convention. The Office of the Attorney General and Ministry of Foreign and Diaspora Affairs will coordinate the reporting process.



### ***Recommendations to the National Assembly***

47. The Ministry of Labour and Social Protection recommends that the National Assembly considers and approves Kenya's ratification/accession of the 25th October 1980 Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention).

**The Principal Secretary, State Department of Social Protection informed the Committee as follows in relation to The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;**

48. The Convention enables competent authorities to protect children and cooperate in a varied range of cross-border situations, offering States practical means to fulfil international obligations arising under the United Nations Convention on the Rights of the Child (UNCRC). It applies to a wide range of civil measures for the protection of a child and a child's property. This includes; orders concerning parental responsibility and contact, public measures of protection and care; and matters of protection of children's property. The Convention applies to children from birth to the age of 18. Its purpose is to;
- a) determine the competent authority to take measures directed to the protection of the person or the property of the child;
  - b) designate the law applicable to measures of protection and parental responsibility;
  - c) provide for a framework enabling the recognition and enforcement of measures of protection among Contracting Parties, and
  - d) establish a cooperation mechanism between the authorities of the Contracting Parties.
49. The Convention provides frameworks for the resolution of disputes relating to custody and contact that may arise when parents are separated and living in different countries. The cooperation provisions provide for exchange of information where necessary and offer a structure through which, by mediation or other means, voluntarily agreed solutions may be found.
50. The Convention reinforces the 1980 Child Abduction Convention by underlining the primary role played by the authorities of the child's habitual residence in deciding the matters that affect the child in the long term. It also adds to the efficacy of any urgent protective measures ordered by a judge when returning a child to their State of habitual residence.
51. The cooperation procedures provided for by the Convention are helpful in the growing number of circumstances in which unaccompanied minors cross borders and find themselves at risk. The Convention protects refugee and internationally displaced children in different ways. The Convention provides for cooperation between Contracting Parties in order to locate the child. The authorities competent to take any necessary measures of protection, including the placement of the child in alternative care. The Convention also provides the framework for the exchange of any necessary information between the authorities in the receiving States and the States of origin.

52. The Convention provides for cooperation between Contracting Parties in relation to cases in which children are being placed in alternative care, such as foster care, kinship care and Kafala (Islamic) across borders.

### ***Justification for Ratification***

53. The Convention establishes a framework for the co-ordination of legal systems, and for international judicial and administrative cooperation on issues of parental disputes over custody and contact; unaccompanied minors and alternative care placement of children across borders. It also reinforces the 1980 Child Abduction Convention by outlining the critical role that the authorities of the child's habitual residence play in making decisions that will have a long-term impact on the child. The Convention is in tandem with the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Constitution of Kenya and the Children Act 2022 on the right to parental care and protection of the child.

### ***Constitutional & Legislative Implications***

54. The ratification of this Convention will not cause an amendment to the Constitution. However, Kenya may need to review existing legislations, policies and develop cohesive protocols to enable participation and harmonization activities and promote cooperation, collaboration and harmonious working relationship with Central Authorities in other countries to achieve the objects of the Convention.

### ***Financial Implications***

55. The financial requirements during implementation will be catered for during the normal budgetary estimates of the relevant Ministries, Departments and Agencies.

### ***Ministerial Responsibility***

56. The Ministry of Labour and Social Protection will be responsible for the implementation of the convention. The Office of the Attorney General and Ministry of Foreign and Diaspora Affairs will coordinate the accession and reporting processes.

### ***Recommendations to the National Assembly***

57. The Ministry of Labour and Social Protection recommends that the National Assembly considers and approves Kenya's ratification/accession of the 19th October 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and measures for the Protection of Children or Hague Convention 1996 (**The Hague Convention on Parental Responsibility and Protection of Children, or Hague Convention 1996**)

The Principal Secretary, State Department of Social Protection informed the Committee as follows in relation to The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance:



58. The Convention applies to child support cases. The Convention also applies to the recognition and enforcement of spousal support when made together with claim for child support. The object of the Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by -
- establishing a comprehensive system of co-operation between the authorities of the Contracting States;
  - making available applications for the establishment of maintenance decisions;
  - providing for the recognition and enforcement of maintenance decisions; and
  - requiring effective measures for the prompt enforcement of maintenance
59. Maintenance decisions that can be recognized and enforced by the Contracting Parties include a settlement or agreement concluded before, or approved by, a judicial or administrative authority. It may also include payment of arrears, backdated maintenance, interest payable and a determination of costs and expenses. Maintenance obligations prior to the signing of the Convention will be applicable so long as person is under the age of 21 years.
60. The Convention provides for a system of Central Authorities in all Contracting Parties and imposes general obligations on these authorities, such as cooperating with one another; transmitting and receiving applications (i.e., applications for recognition, enforcement, establishment, or modification of a decision); initiating or facilitating the institution of proceedings; assisting in locating a debtor or creditor or obtaining information about the resources of either; and encouraging amicable solutions, among others.

#### ***Justification for Ratification***

61. The Convention ensures effective recovery of child support and other forms of family maintenance in Contracting States.

#### ***Constitutional and legislative implication***

62. Ratification of the Convention will not necessitate amendments to the Constitution of Kenya. However, Kenya may need to undertake the review of existing legislations, policies and develop cohesive protocols to enable participation and harmonization activities.

#### ***Obligations Imposed by The Hague convention***

63. Each Contracting State is required to designate a Central Authority to discharge duties under the Convention and to promote cooperation, collaboration and a harmonious working relationship with Central Authorities in other countries to achieve the objects of the Convention.

#### ***Financial Implications***

64. The financial requirements during implementation of the Convention will be catered for during the normal budgetary estimates of the relevant Ministries, Departments and Agencies.

#### ***Ministerial Responsibility***

65. The Ministry of Labour and Social Protection will be responsible for the implementation of the convention. The Office of the Attorney-General and Ministry of Foreign and Diaspora Affairs will coordinate the reporting process.

#### ***Recommendations to the National Assembly***

66. The Ministry of Labour and Social Protection recommends that the National Assembly considers and approves Kenya's ratification/accession of the 23rd November 2007, Convention on the



international recovery of child support and other forms of family maintenance (Hague Maintenance Convention).

## **B. SUBMISSIONS BY THE REGISTRAR OF TREATIES AT THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS, AMBASSADOR JAMES WAWERU**

The Registrar of Treaties at the Ministry of Foreign and Diaspora Affairs informed the Committee as follows in relation to The Hague convention of 25 October 1980 on the civil aspects of international child abduction (Hague Abduction Convention):

67. The Convention aims to stop the improper removal of minors. Children are being abducted internationally at an increasing rate. All children have the right to continue having frequent, intimate relationships with both parents under the United Nations Convention on the Rights of the Child. A parent who abducts their child is violating the right.
68. The Convention attempts to reduce the rising number of child abductions. The United Nations General Assembly is concerned about the increasing number of parental kidnappings of children in cases of discord or separation between couples of different nationalities, as well as the numerous difficulties that parents and appropriate authorities face in locating these children and ensuring their safe return.
69. The Convention facilitates the prompt and safe return of children among State parties to the Convention. Abducted children are cut off from the parents and relatives; they are alienated from their cultural heritage. The UN Convention on the Rights of the Child, which has been ratified by over 150 countries including Kenya, states that children have the right to maintain personal relations and direct contact with both parents on a regular basis even in cases where they are separated by borders (Articles 9, 10 and 11).

**The Registrar of Treaties at the Ministry of Foreign and Diaspora Affairs further informed the Committee as follows in relation to The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children:**

70. The Convention offers a chance to forge links between legal systems with various cultural and religious traditions. The Convention establishes a framework for the co-ordination of legal systems, and for international judicial and administrative co-operation.
71. The Convention offers a framework for resolving custody and violation issues that may arise when parents are divorced and reside in different countries. The Convention prevents the issues that might develop if courts from multiple nations had jurisdiction to decide certain cases, giving primacy to the authorities where the child is a habitual resident.

72. The Child Protection Convention strengthens the Child Abduction Convention of 1980 by emphasizing the crucial role that the authorities of the child's habitual residence play in making decisions that will have a long term impact on the child.
73. The Convention provides cooperation procedures that are helpful in the increasing number of situations in which unaccompanied minors cross borders and find themselves at risk. It also provides for cooperation in locating the child, identifying which country's authorities are qualified to take any necessary protective measures, and providing for cooperation between national authorities in the receiving country and country of origin in exchanging necessary information, whether the unaccompanied minor is a refugee, asylum seeker, displaced person, or simply a teenage runaway.
74. The Convention provides for co-operation between States in relation to the growing number of cases in which children are being placed in alternative care across frontiers such as fostering or other long-term arrangements falling short of adoption. In circumstances where children are placed in alternative care, such as foster care or kinship care, across boundaries, the Convention calls for collaboration between Contracting Parties.

**The Registrar of Treaties at the Ministry of Foreign and Diaspora Affairs further informed the Committee as follows in relation to The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance:**

75. The Convention ensures the effective international recovery of child support and other forms of family maintenance while the Protocol is designed to offer greater legal certainty and predictability to maintenance creditors and debtors.
76. The Hague Maintenance Convention governs the extraterritorial enforcement of judicial decisions regarding child support and other forms of family support extraterritorially.

**The Registrar of Treaties further informed the Committee as follows in relation to the three Hague Conventions:**

***Obligations imposed by the three Hague Conventions***

77. States parties are obligated to *inter alia*: -
- a. To coordinate national Central Authorities in the discharge of their duties under the Conventions; and
  - b. To promote cooperation, collaboration and a harmonious working relationship amongst the competent authorities in their respective States to achieve the objects of these Conventions.
78. There are no foreseeable adverse challenges of ratification/accession of these Convention save that:
- a) There is need to sensitize the Judiciary and key Government Ministries and Departments on the obligations under these Conventions.



- b) The key Ministries will also be required to streamline administrative processes to ensure the objectives of the Convention are met.
- c) Cultures and family law vary greatly from one country to the next. Lack of legislation concerning shared custody in some countries with which Kenya will be expected to cooperate may hinder full implementation.
- d) There is need for harmonization/comparative law analysis to be undertaken.

79. The signing and ratification/accession by Kenya will demonstrate Kenya's commitment to the collective action to the improved regulation of subject matter of the Conventions and this will bring about positive consequences both to the Country and Contracting States.

### ***Constitutional and Legislative Implications***

80. The Conventions are consistent with the Constitution and promote constitutional values and objectives. They do not allude to an amendment of the Constitution. Kenya will have to enact domestic legislation; or amend existing relevant legislation and policies to enable implementation of the Conventions. Other non-legislative, yet practical measures that Kenya may need to undertake include: the review of existing policies and develop cohesive protocols to enable participation in harmonization activities.

### ***Implications to the Counties***

81. The obligations imposed under the Protocols are under the purview of the National Government.

### ***Financial Implications***

82. The financial requirements during implementation will be catered for during the normal budgetary estimates of the relevant Ministries, Departments and Agencies.

### ***Ministerial Responsibility***

83. The Ministry that will be responsible for the implementation and any activity in regard to the Conventions is the Office of the Attorney-General and Department of Justice being the Central Authority. The Office of the Attorney-General and Department of Justice and the Ministry of Foreign and Diaspora Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45. of 2012.

### ***Reservations***

84. The Conventions permit States to submit reservations and declarations when ratifying/acceding the Conventions on condition that it is compatible with the objects and purpose.

***Recommendations to the National Assembly***

85. On consideration of the aforementioned facts, the National Assembly is invited to:

- (i) Note the contents of the Memorandum;
- (ii) Consider and approve Kenya's Ratification/accession of the:
  - i. 25 October 1980 Convention on the Civil Aspects of International Child Abduction (*Hague Abduction Convention*).
  - ii. 19 October 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996 (*The Hague Convention on parental responsibility and protection of children, or Hague Convention 1996*).
  - iii. 23 November 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (*Hague Maintenance Convention*); and
- (iii) Direct the Cabinet Secretary for Foreign and Diaspora Affairs to prepare and deposit the relevant instruments with the relevant Depository.



## CHAPTER FOUR

### 4. OBSERVATIONS

86. Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 as read with Standing Order 170A and having considered the conventions, the Committee made the following observations:

- (1) The Hague Convention on the Civil Aspects of International Child Abduction shall protect children from the harmful effects of their wrongful removal or retention and ensure their prompt return to the country, as well as secure the protection for the rights of access.
- (2) With the rising cases of child abduction, The Hague Convention on the Civil Aspects of International Child Abduction shall protect children from abduction by allowing cooperating between Kenyan authorities and the authorities of other contracting states to ensure safe return of children to the country.
- (3) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of children shall ensure the recognition and enforcement of decisions made by Kenyan courts relating to parental responsibility in other contracting states.
- (4) The Conventions create structures for co-operation and sharing of information between Kenya and the authorities of other Contracting States relating to applications for custody and access rights, parental responsibility and maintenance orders.
- (5) The Hague Conventions eliminate existing legal and administrative challenges and allow for international civil cooperation in child protection issues.
- (6) The Conventions provide for the right to legal aid and advice for Kenyan nationals as if they were nationals of the other contracting states, for matters concerned with the application of the Conventions.
- (7) The recognition and enforcement provisions avoid the need for re-litigating custody and access issues and shall ensure that decisions taken by the Kenyan courts are recognized and enforceable in other contracting states hence promoting the right of access to justice for Kenyan nationals.
- (8) The Conventions shall enable the Ministry of Labour and Social Protection to protect children and cooperate in a varied range of cross-border situations, offering the country practical means to fulfil international obligations arising under the United Nations Convention on the Rights of the Child (UNCRC).
- (9) The Conventions provide for various remedies relating to custody, access rights, parental responsibility and maintenance cases that may arise when parents are separated and living in different countries. The remedies include wage withholding; garnishment from bank accounts and other sources; deductions from social security payments; tax refund withholding; withholding or attachment of pension benefits; credit bureau reporting; denial, suspension or



revocation of various licenses and the use of mediation and conciliation to ensure voluntary compliance.

- (10) The Conventions shall ensure the promotion of rights of children as enshrined under Article 53 of the Constitution including the right to be protected from neglect and abuse and the right to parental care and protection.
- (11) The Conventions shall ensure that the country fulfill its international commitments as espoused in the UN Conventions on the rights of children.
- (12) The Conventions are in line with the Constitution. However, there may be need to review the Children Act, 2022 to ensure the provisions of the Conventions have been fully implemented.
- (13) There are many pending cases relating to custody, access rights, parental responsibility and maintenance and once the Conventions are ratified, it shall facilitate the expeditious disposal of the cases through the prescribed recognition and enforcement procedures provided for in the Conventions.
- (14) The Conventions provide for exchange of information between Kenya and authorities of other countries and create structures through which disputes shall be resolved amicably through judicial and non-judicial procedures including through the application of alternative dispute resolution mechanisms.
- (15) The Cabinet Secretary, Ministry of Labour and Social Protection and the Office of the Attorney should ensure the full implementation of the Conventions, upon ratification.
- (16) There is need for the Cabinet Secretary, Ministry of Labour and Social Protection and the Office of the Attorney to inform the public of the provisions of the Conventions to allow Kenyans who may have pending custody, parental responsibility and maintenance related cases to make applications under the Conventions, for prompt and effective disposal of the cases.
- (17) There is need for consultation and cooperation between the Ministry of Labour and Social Protection, the office of the Attorney-General, the Ministry of Foreign and Diaspora Affairs, the Judiciary and Kenyan Foreign Missions in seeking to facilitate the effective recognition and enforcement of court decisions relating to children matters in other contracting states.

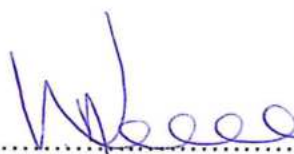
## CHAPTER FIVE

### 5. RECOMMENDATIONS

87. Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 as read with Standing Order 170A, the Committee recommends that the House **APPROVES** the Ratification of:

- (1) The Hague Convention on the Civil Aspects of International Child Abduction;
- (2) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; and
- (3) The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.


SIGNED.....



HON. ALICE WAMBUI NG'ANGA, M.P.

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION

 <b>THE NATIONAL ASSEMBLY</b> PAPERS Laid	
DATE: 25 APR 2023	
DAY: TUESDAY	
TABLED BY:	Chairperson, Departmental Committee on Social protection
CLERK-AT-THE-TABLE:	Inzofu Mwale

THE NATIONAL ASSEMBLY

13<sup>TH</sup> PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION






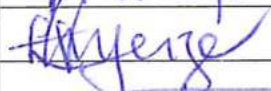




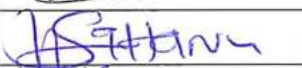




MEMBERS ATTENDANCE SCHEDULE


Date: 20/4/2023

Venue: Bourghavillea hall, Serena Hotel

Start Time: 4:00pm End Time: 5:00pm

Agenda: Adoption of Report on Three (3) Hague Treaties/Conventions

	NAME	SIGNATURE
1	Hon. Ng'ang'a Alice Wambui, MP. - Chairperson	
2	Hon. Kosgei Hilary Kiplangat, MP. - Vice Chairperson	
3	Hon. Wetangula Timothy Wanyonyi, MP.	
4	Hon. (Dr.) James Wambura Nyikal, MP.	
5	Hon. Pareyo, Agnes Mantaine, MP.	
6	Hon. Nyenze Edith Vethi, MP.	
7	Hon. (Dr.) Gogo Lilian Achieng', MP.	
8	Hon. Maina Betty Njeri, MP.	
9	Hon. Mark Ogolla Nyamita, MP.	
10	Hon. Linet Chepkorir, MP.	
11	Hon. Suleka Hulbale Harun, MP.	
12	Hon. Wainaina Michael, Wambugu, MP.	
13	Hon. Barre Hussein Abdi, MP.	
14	Hon. Nduyo Susan Ngugi, MP.	
15	Hon. Abdullahi Amina Dika, MP.	

Submitted by: Sakana Saoli Sign: 

(Committee Clerk)

Approved By:  Sign: 25/4/23

(Director, Directorate of Departmental Committees)





**MINUTES OF THE 37<sup>th</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION HELD ON THURSDAY, 20<sup>TH</sup> APRIL, 2023 AT BOURGAINVILLEA HALL IN SERENA BEACH HOTEL, MOMBASA COUNTY AT 4.00 PM.**

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**PRESENT**

1. **Hon. Alice Ng'ang'a Wambui, M.P.** - Chairperson
2. Hon. Suleka Hulbale Harun, M.P.
3. Hon. Michael Wambugu, M.P.
4. Hon. Edith Nyenze, M.P.
5. Hon. Barre Hussein Abdi, M.P.
6. Hon. Susan Ngugi, M.P.
7. Hon. Agnes Pareyio, M.P.
8. Hon. Linet Chepkorir, M.P.
9. Hon. Amina Abdullahi Dika, M.P.
10. Hon. (Dr.) James Nyikal, M.P.

**APOLOGIES**

1. **Hon. Hilary Kiplang'at Koskei, M.P.** - Vice Chairperson
2. Hon. Mark Nyamita, M.P.
3. Hon. Timothy Wanyonyi, M.P.
4. Hon. Betty Njeri, M.P.
5. Hon. (Dr.) Lilian Gogo, M.P.

**COMMITTEE SECRETARIAT**

1. Ms. Hellen L. Ekadeli - First Clerk Assistant
2. Ms. Jemimah Waigwa - Senior Legal Counsel
3. Mr. Abdikafar Abdi - Clerk Assistant III
4. Mr. Sakana Saoli - Clerk Assistant III
5. Ms. Grace Maneno - Research Officer III
6. Mr. Kevin Obilo - Media Relations Officer
7. Mr. Boniface Mugambi - Sergeant-at-arms



## **AGENDA**

1. Prayers
2. Preliminaries
3. Matters Arising
4. **Adoption of report on three Hague treaties**
5. Any Other Business
6. Adjournment/Date of the Next Meeting

### **MIN. NO. NA/DC-SP/2023/195: PRELIMINARIES**

The Chairperson called the meeting to order ten minutes past four o'clock (4.10 p.m.) and prayers said by the Chairperson.

### **MIN.NO. NA/DC-SP/2023/196: ADOPTION OF THE AGENDA**

The agenda was adopted having been proposed by Hon. Michael Wambugu, M.P. and seconded by Hon. Amina Dika, M.P.

### **MIN. NO. NA/DC-SP/2023/197: COMMITTEE OBSERVATIONS IN THE THREE HAGUE TREATIES FOR RATIFICATION.**

The Committee in its deliberations and meetings held with stakeholders made the following observations. That;-

- (1) The Hague Convention on the Civil Aspects of International Child Abduction shall protect children from the harmful effects of their wrongful removal or retention and ensure their prompt return to the country, as well as secure the protection for the rights of access.
- (2) With the rising cases of child abduction, The Hague Convention on the Civil Aspects of International Child Abduction shall protect children from abduction by allowing cooperating between Kenyan authorities and the authorities of other contracting states to ensure safe return of children to the country.
- (3) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of children shall ensure the recognition and enforcement of decisions made by Kenyan courts relating to parental responsibility in other contracting states.
- (4) The Conventions create structures for co-operation and sharing of information between Kenya and the authorities of other Contracting States relating to applications for custody and access rights, parental responsibility and maintenance orders.
- (5) The Hague Conventions eliminate existing legal and administrative challenges and allow for international civil cooperation in child protection issues.

- (6) The Conventions provide for the right to legal aid and advice for Kenyan nationals as if they were nationals of the other contracting states, for matters concerned with the application of the Conventions.
- (7) The recognition and enforcement provisions avoid the need for re-litigating custody and access issues and shall ensure that decisions taken by the Kenyan courts are recognized and enforceable in other contracting states hence promoting the right of access to justice for Kenyan nationals.
- (8) The Conventions shall enable the Ministry of Labour and Social Protection to protect children and cooperate in a varied range of cross-border situations, offering the country practical means to fulfil international obligations arising under the United Nations Convention on the Rights of the Child (UNCRC).
- (9) The Conventions provide for various remedies relating to custody, access rights, parental responsibility and maintenance cases that may arise when parents are separated and living in different countries. The remedies include wage withholding; garnishment from bank accounts and other sources; deductions from social security payments; tax refund withholding; withholding or attachment of pension benefits; credit bureau reporting; denial, suspension or revocation of various licenses and the use of mediation and conciliation to ensure voluntary compliance.
- (10) The Conventions shall ensure the promotion of rights of children as enshrined under Article 53 of the Constitution including the right to be protected from neglect and abuse and the right to parental care and protection.
- (11) The Conventions shall ensure that the country fulfill its international commitments as espoused in the UN Conventions on the rights of children.
- (12) The Conventions are in line with the Constitution. However, there may be need to review the Children Act, 2022 to ensure the provisions of the Conventions have been fully implemented.
- (13) There are many pending cases relating to custody, access rights, parental responsibility and maintenance and once the Conventions are ratified, it shall facilitate the expeditious disposal of the cases through the prescribed recognition and enforcement procedures provided for in the Conventions.
- (14) The Conventions provide for exchange of information between Kenya and authorities of other countries and create structures through which disputes shall be resolved amicably through judicial and non-judicial procedures including through the application of alternative dispute resolution mechanisms.
- (15) The Cabinet Secretary, Ministry of Labour and Social Protection and the Office of the Attorney should ensure the full implementation of the Conventions, upon ratification.
- (16) There is need for the Cabinet Secretary, Ministry of Labour and Social Protection and the Office of the Attorney to inform the public of the provisions of the Conventions to allow Kenyans who may have pending custody, parental responsibility and maintenance related cases to make applications under the Conventions, for prompt and effective disposal of the cases.
- (17) There is need for consultation and cooperation between the Ministry of Labour and Social Protection, the office of the Attorney-General, the Ministry of Foreign and Diaspora Affairs, the Judiciary and Kenyan Foreign Missions in seeking to



facilitate the effective recognition and enforcement of court decisions relating to children matters in other contracting states.

**MIN. NO. NA/DC-SP/2023/198: COMMITTEE RESOLUTION**

The Committee in considering its findings, resolved unanimously **ADOPT** the report of the Committee and to **APPROVE** the Ratification of –

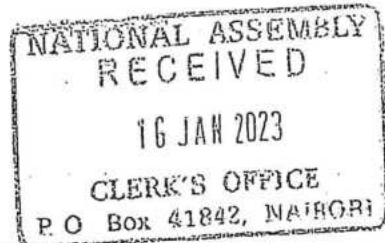
- (1) The Hague Convention on the Civil Aspects of International Child Abduction;
- (2) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children; and
- (3) The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

**MIN. NO. NA/DC-SP/2023/199: ADJOURNMENT**

There being no other business the meeting was adjourned at ten minutes to five o'clock (4:50 PM).

Signed.......... Date.....

**HON. ALICE WAMBUI NGÁNGÁ, M.P.**  
(Chairperson)



**OFFICE OF THE CABINET SECRETARY**

MFA/RT/TCA/29 VOL. I

4th January, 2023

Mr. Samuel Njoroge  
Clerk of the National Assembly  
Parliament Buildings  
**NAIROBI**

*DDLPS*

*For taking*

*17/01/23*

*(2) H/10*

*17/1/23*

*Hellen Ekadeli*

*to facilitate consideration*

*15/2/23*

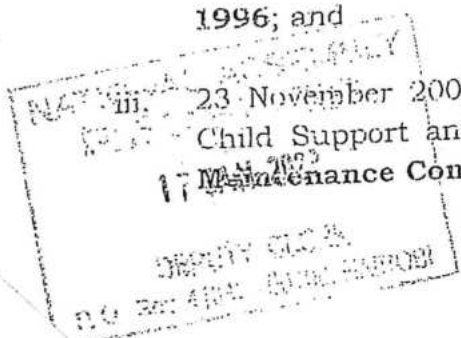
Dear *Samuel Njoroge,*

RE: RATIFICATION, ACCEPTANCE, AND ACCESSION OF HAGUE  
CONVENTIONS ON PRIVATE INTERNATIONAL LAW

The above subject matter refers.

The Cabinet, during a Meeting held on 22<sup>nd</sup> December, 2016, approved the ratification, acceptance, and accession of The Hague Conventions on Private International Law, namely:

- i. 25 October 1980 Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention);
- ii. 19 October 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996 (The Hague Convention on parental responsibility and protection of children, or Hague Convention 1996; and



- iii. 23 November 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Maintenance Convention)



The Memoranda were tabled in the National Assembly on 4<sup>th</sup> April 2017 and forwarded to the relevant Departmental Committees for further review. The Committees, however, did not conclude the review by the end of the term of the 11<sup>th</sup> Parliament.

I, therefore, resubmit the memoranda and copies of the Conventions to the National Assembly for consideration in accordance with Section 8 of the Treaty Making and Ratification Act, 2012.

Submitted for your further guidance.

Yours Sincerely,

A handwritten signature in dark ink, appearing to be 'A. Mutua', written in a cursive style.

**DR. ALFRED N. MUTUA, EGH  
CABINET SECRETARY**



NATIONAL ASSEMBLY

DATE: 14 FEB 2023

DAY:

WEDNESDAY

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

TABLED  
BY:

LEADER OF MINORITY PARTY

CLERK-AT  
THE-TABLE:

IMZOV MWALE

## MEMORANDUM

ON THE

RATIFICATION OF OF THE HAGUE CONVENTIONS ON  
PRIVATE INTERNATIONAL LAW

**MEMORANDUM ON THE RATIFICATION OF THE HAGUE CONVENTIONS  
ON PRIVATE INTERNATIONAL LAW**

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**1.0 OBJECTIVE OF THE MEMORANDUM**

- 1.1 The objective of this Memorandum is to seek approval for Kenya's ratification of the following Hague Conventions:
- i. 25 October 1980 Convention on the Civil Aspects of International Child Abduction (*Hague Abduction Convention*).
  - ii. 19 October 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996 (*The Hague Convention on parental responsibility and protection of children, or Hague Convention 1996*).
  - iii. 23 November 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (*Hague Maintenance Convention*).
- 1.2 The ratification process was approved by the Cabinet during its Ninth Meeting held on 22<sup>nd</sup> December, 2016.
- 1.3 The Conventions and their memoranda were tabled before the National Assembly on 4<sup>th</sup> April, 2017 and forwarded to the relevant Committees for further review. However, the Committees had not concluded their review by the end of the term of the 11<sup>th</sup> Parliament.

**2.0 THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (HAGUE ABDUCTION CONVENTION).**

**Background**

- 2.1 The Hague Convention of 25 October 1980 on The Civil Aspects of International Child Abduction, also known as, *The Hague Abduction Convention*, is a multilateral treaty which was concluded on 25 October 1980 and entered into force between the signatories on 1



December 1983. One Hundred and Three (103) States are Contracting Parties to this Convention (*as of November, 2022*).

- 2.2 The Convention aims to protect children worldwide from the negative effects of their unjustified removal or retention from the state of their habitual residence by establishing a system of cooperation between Contracting Parties and a speedy process for the return of the child to their State of Habitual Residence.
- 2.3 The Convention provides an expeditious method to return a child abducted by a parent from one member country to another. It was designed to ensure the prompt return of children who have been abducted from their country of habitual residence or wrongfully retained in a contracting state not their country of habitual residence.
- 2.4 The Convention's primary goal is to uphold the custody arrangement that was in place before an alleged wrongful removal or retention of a child, preventing a parent from traveling across borders in search of a court that will be more sympathetic.
- 2.5 The Convention does not alter any substantive rights. According to the Convention, the court where a Hague Convention action is filed must choose which nation will hear the underlying child custody issues rather than weighing their merits. Instead of expressly going to the parent who was left behind, the child is returned to the member country.
- 2.6 The Convention requires the return of a child who was a "habitual resident" in a contracting party immediately before an action that constitutes a breach of custody or access rights.
- 2.7 The Convention further provides that all Contracting States, as well as any judicial and administrative bodies of those Contracting States, "shall act expeditiously in all proceedings seeking the return of a child" and that those institutions shall use the most expeditious procedures available to ensure that a final decision is made within six weeks from the date of commencement of the proceedings.
- 2.8 The Convention stipulates that the removal or retention of a child is "wrongful" whenever:
  - a) it violates the custody rights granted to a person, institution, or other entity under the legislation of the State where the child was a habitual residence immediately before the removal or retention, either jointly or alone; 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.
- 2.9 The Convention mandates state parties to adopt national law provisions that prevent child abduction.

### **3.0 Justification for Ratification**

- 3.1 The Convention aims to stop the improper removal of minors. Children are being abducted internationally at an increasing rate. All children have the right to continue having frequent, intimate relationships with both parents under the United Nations Convention on the Rights of the Child. A parent who abducts their child is violating this right.
- 3.2 The Convention attempts to reduce the rising number of child abductions. The United Nations General Assembly is concerned about the increasing number of parental kidnappings of children in cases of discord or separation between couples of different nationalities, as well as the numerous difficulties that parents and appropriate authorities face in locating these children and ensuring their safe return.
- 3.3 The Convention facilitates the prompt and safe return of children among State parties to the Convention. Abducted children are cut off from the parents and relatives; they are alienated from their cultural heritage.
- 3.4 The UN Convention on the Rights of the Child, which has been ratified by over 150 countries including Kenya, states that children have the right to maintain personal relations and direct contact with both parents on a regular basis even in cases where they are separated by borders (Articles 9, 10 and 11).

**4.0 CONVENTION OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN OR HAGUE CONVENTION 1996 (THE HAGUE CONVENTION ON PARENTAL RESPONSIBILITY AND PROTECTION OF CHILDREN, OR HAGUE CONVENTION 1996)**

**Background of the Subject Matter**

- 4.1 The Convention entered into force on 1<sup>st</sup> January, 2002. Fifty-Four (54) States are Contracting Parties to this Convention (*as of October, 2022*).
- 4.2 The Child Protection Convention provides States with practical methods to fulfill their international commitments arising under the United Nations Convention on the Rights of the Child by enabling competent authorities to safeguard children and collaborate in a variety of cross-border scenarios.
- 4.3 The Child Protection Convention covers a broad range of civil measures for the protection of children and their property, including orders governing parental responsibility and contact, public measures of protection and care, as well as representational issues pertaining to the protection of children's property.
- 4.4 The 1996 Convention is based on a view that child protection provisions should constitute an integrated whole. This is why the Convention's scope is broad, covering both public and private measures of protection or care. It seeks to overcome the uncertainty that otherwise arises if separate rules apply to different categories of protective measure when both may be involved in the same case.
- 4.5 The Convention eliminates legal and administrative problems while taking into account the great range of legal institutions and protection systems that exist around the world, allowing for efficient international civil cooperation in child protection issues.
- 4.6 The Convention provides a structure for the resolution of issues of custody and contact which may arise when parents are separated and living in different countries. The Convention avoids the problems that may arise if the courts in more than one country are competent to decide these matters.



- 4.7 The recognition and enforcement provisions avoid the need for re-litigating custody and contact issues and ensure that decisions taken by the authorities of the country where the child has his or her habitual residence enjoy primacy.
- 4.8 The co-operation provisions of the Convention provide for any necessary exchange of information and offer a structure through which, by mediation or other means, agreed solutions may be found.

#### **5.0 Justification for Ratification**

- 5.1 The Convention offers a chance to forge links between legal systems with various cultural and religious traditions. The Convention establishes a framework for the co-ordination of legal systems, and for international judicial and administrative co-operation as follows:

##### **Parental disputes over custody and contact**

- 5.1.1 The Convention offers a framework for resolving custody and violation issues that may arise when parents are divorced and reside in different countries. The Convention prevents the issues that might develop if courts from multiple nations had jurisdiction to decide certain cases, giving primacy to the authorities where the child is a habitual resident.

##### **Reinforcement of the 1980 Child Abduction Convention**

- 5.1.2 The Child Protection Convention strengthens the Child Abduction Convention of 1980 by emphasizing the crucial role that the authorities of the child's habitual residence play in making decisions that will have a long term impact on the child.

##### **Unaccompanied minors**

- 5.1.3 The Convention provides cooperation procedures that are helpful in the increasing number of situations in which unaccompanied minors cross borders and find themselves at risk. It also provides for cooperation in locating the child, identifying which country's authorities are qualified to take any necessary protective measures, and providing for cooperation between national authorities in the receiving country and country of origin in exchanging necessary information, whether the unaccompanied minor is a refugee, asylum seeker, displaced person, or simply a teenage runaway.

### **Cross-frontier placements of children**

5.1.4 The Convention provides for co-operation between States in relation to the growing number of cases in which children are being placed in alternative care across frontiers such as fostering or other long-term arrangements falling short of adoption. In circumstances where children are placed in alternative care, such as foster care or kinship care, across boundaries, the Convention calls for collaboration between Contracting Parties.

### **6.0 23 NOVEMBER 2007 CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (HAGUE MAINTENANCE CONVENTION)**

#### **Background of the Subject Matter**

6.1 The Hague Maintenance Convention is a multilateral treaty governing the enforcement of judicial decisions regarding child support (and other forms of family support) extra territorially. It was signed on 23 November 2007 and entered into force in 1<sup>st</sup> January 2013. Forty-Six (46) States are Contracting Parties to this Convention (*as of November, 2022*).

6.2 The goal of the Convention is to ensure the effective international recovery of child support and other forms of family maintenance through:

- i. Establishing a system of cooperation between the authorities of the contracting parties;
- ii. Providing for the recognition and enforcement of maintenance decisions; and
- iii. Provision of effective measures for the prompt enforcement of maintenance decisions

6.3 The Convention applies on a mandatory basis to child support cases.

#### **7.0 Justification for Ratification**

7.1 The Convention ensures the effective international recovery of child support and other forms of family maintenance while the Protocol is designed to offer greater legal certainty and predictability to maintenance creditors and debtors.

7.2 The Hague Maintenance Convention governs the extraterritorial enforcement of judicial decisions regarding child support and other forms of family support extra territorially.

## **8.0 OBLIGATIONS IMPOSED BY THE HAGUE CONVENTIONS**

- 8.1 The obligations of the Conventions are forward looking. States parties are obligated to *inter alia*: -
- a. To coordinate national Central Authorities in the discharge of their duties under the Conventions; and
  - b. To promote cooperation, collaboration and a harmonious working relationship amongst the competent authorities in their respective States to achieve the objects of these Conventions.
- 8.2 There are no adverse foreseeable challenges of ratification/accession of these Convention save that:
- a) There is need to sensitize the Judiciary and key Government Ministries and Departments on the obligations under these Conventions.
  - b) The key Ministries will also be required to streamline administrative processes to ensure the objectives of the Convention are met.
  - c) Cultures and family law vary greatly from one country to the next. Lack of legislation concerning shared custody in some countries with which Kenya will be expected to cooperate may hinder full implementation.
  - d) The need for harmonization/comparative law analysis will need to be undertaken.
- 8.3 The signing and ratification/accession by Kenya will demonstrate Kenya's commitment to the collective action to the improved regulation of subject matter of the Conventions and this will bring about positive consequences both to the Country and Contracting States.

## **7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS**

- 7.1 The Conventions are consistent with the Constitution and promotes constitutional values and objectives. They do not allude to an amendment of the Constitution.
- 7.2 Kenya will have to enact domestic legislation; or amend existing relevant legislation and polices to enable implementation of the Conventions.



- 7.3 Other non-legislative, yet practical measures that Kenya may need to undertake include: the review of existing policies and develop cohesive protocols to enable participation in harmonization activities.

#### **8.0 IMPLICATIONS RELATING TO COUNTIES**

- 8.1 The obligations imposed under the Protocols are under the purview of the National Government.

#### **9.0 FINANCIAL IMPLICATIONS**

- 9.1 The financial requirements during implementation will be catered for during the normal budgetary estimates of the relevant Ministries, Departments and Agencies.

#### **10. MINISTERIAL RESPONSIBILITY**

- 10.1 The Ministry that will be responsible for the implementation and any activity in regard to the Conventions is the Office of the Attorney General and Department of Justice being the Central Authority.
- 10.2 The Office of the Attorney General and Department of Justice and the Ministry of Foreign & Diaspora Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

#### **11. RESERVATIONS**

- 11.1 The Conventions permit States to submit reservations and declarations when ratifying/acceding the Conventions on condition that it is compatible with the objects and purpose.

#### **12. RECOMMENDATION TO THE NATIONAL ASSEMBLY**

- 12.1 In consideration of the aforementioned facts, the National Assembly is invited to:
1. Note the contents of the Memorandum;
  2. Consider and approve Kenya's Ratification/accession of the:
    - i. 25 October 1980 Convention on the Civil Aspects of International Child Abduction (*Hague Abduction Convention*).
    - ii. 19 October 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996 (*The Hague Convention*

*on parental responsibility and protection of children, or  
Hague Convention 1996).*

- iii. 23 November 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (*Hague Maintenance Convention*); and
- 3. Direct the Cabinet Secretary for Foreign & Diaspora Affairs to prepare and deposit the relevant instruments with the relevant Depository.

SIGNED.....



DATED.....

12<sup>th</sup>

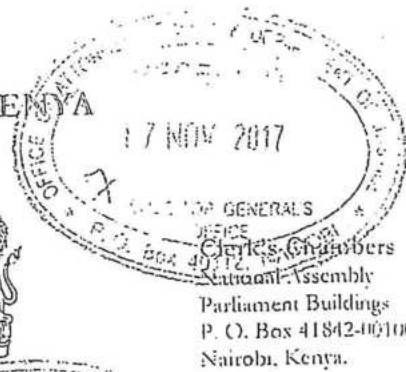
JANUARY, 2023

DR. ALFRED MUTUA, EGH  
CABINET SECRETARY  
MINISTRY OF FOREIGN & DIASPORA AFFAIRS

REPUBLIC OF KENYA



Telegram 'Bunge'  
Telephone: +254 20 2221 291  
Fax: +254 20 2243 694  
E-mail: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)  
When replying please quote



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NA/L&P/CORR/2017/VOL. II (053)

November 15, 2017

Mr. Njee Muturi, CBS

Solicitor General

Office of the Attorney-General & Department of Justice

Sheria House

NAIROBI

Dear Mr. Njee,

**RE: CABINET MEMORANDUM ON RATIFICATION OF THE HAGUE CONVENTIONS**

Reference is made to your letter, Ref. No. AG/CONF/19/186/VOL.I (19) dated 8<sup>th</sup> September 2017, on the above subject matter.

This is to notify you that the seven Hague conventions and their memoranda were tabled in the House on Tuesday, April 4, 2017 and forwarded to the relevant Departmental Committees for further review. However, the Committees had not concluded their review by the end of the term of the 11<sup>th</sup> Parliament. As such, the conventions are still awaiting the formation of Committees for finalization of their scrutiny, before consideration and approval of ratification by the National Assembly.

Yours Sincerely,

**MICHAEL R. SIALAI, EBS**  
**CLERK OF THE NATIONAL ASSEMBLY**







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**THE PRESIDENCY**  
**EXECUTIVE OFFICE OF THE PRESIDENT**  
**CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE**

Telegraphic Address  
Telephone: +254-20-2227436  
When replying please quote

STATE HOUSE  
P.O. Box 40530-00100  
Nairobi, Kenya

Ref. No. .... **OP/CAB:58/4A** .....  
and date

**22<sup>nd</sup> December, 2016** ..... 20.....

**Dr. Khadijah Kassachoon, CBS** ✓  
Principal Secretary/Labour  
Ministry of East African Community,  
Labour & Social Protection  
**NAIROBI.**

**Mrs. Betty C. Maina, CBS**  
Principal Secretary/EAC  
Ministry of East African Community,  
Labour & Social Protection,  
**NAIROBI.**

**Ms. Susan Mochache, CBS**  
Principal Secretary/Social Protection  
Ministry of East African Community,  
Labour & Social Protection,  
**NAIROBI.**

Dear *Dr. Kassachoon*

**RATIFICATION OF THE HAGUE CONVENTIONS ON PRIVATE  
INTERNATIONAL LAW (THE HAGUE CHILDREN'S CONVENTIONS)**

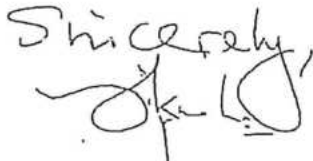
I refer to the Ninth Cabinet Meeting 2016, held on 22<sup>nd</sup> December 2016, during which Cabinet Memorandum CAB(16)94, jointly submitted by the Cabinet Secretary for East African Community, Labour & Social Protection; and the Attorney-General was presented and discussed.

I wish to inform you that Cabinet **considered** the Memorandum and;

- (i) **Noted** the contents of the Memorandum and:
- (ii) **Approved** the 25th October, 1980, Convention on the Civil Aspects of International Child Abduction (*Hague Abduction Convention*), which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return.
- (iii) **Approved** the 19th October, 1996, Convention of Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996( *The Hague Convention on parental responsibility and protection of children, or Hague Convention 1996*).
- (iv) **Approved** the 23rd November, 2007, Convention on the International Recovery of Child Support and other forms and Family Maintenance (*Hague Maintenance Convention*).
- (v) **Directed** the Cabinet Secretary for East African Community, Labour & Social Protection; and the Attorney General to take appropriate action.

Please proceed and take action as directed by Cabinet.

Yours




**JOSEPH K. KINYUA, EGH, CBS**  
**CHIEF OF STAFF & HEAD OF THE PUBLIC SERVICE**

**Copy to:**

**Mrs. Phyllis J. Kandie, EGH**  
Cabinet Secretary  
Ministry of East African Community,  
Labour & Social Protection,  
**NAIROBI.**

**Hon. (Prof.) Githu Muigai, EGH, SC**  
Attorney-General,  
**NAIROBI**



 <b>THE NATIONAL ASSEMBLY</b>	
DATE: 14 FEB 2009	
TUESDAY	
TABLED BY:	LEAD OF MINISTRY
CLERK-AT THE-TABLE:	38. CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE <sup>1</sup>



**HCCH**

Connecter Protéger Coopérer Depuis 1992  
Connecting Protecting Cooperating Since 1992

(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 –

#### 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.



## 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

#### 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.





## OUTLINE

### HCCH 1996 CHILD PROTECTION CONVENTION



## **Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children**

Increasing rates of international mobility have been accompanied by growing concerns for the protection of children in cross-border situations. Children represent half of the global population on the move between borders. Issues of concern include the cross-border trafficking and exploitation of children and their global displacement as a result of war, civil disturbance, or natural disaster. Children are also affected by cross-border disputes relating to custody and relocation. The number of transnational families has also led to the increased susceptibility of children to international abduction and to having contact with their parents severed, and a growth in the necessity of the cross-border placement of children and the provision of alternative care.

The Child Protection Convention enables competent authorities to protect children and cooperate in a varied range of cross-border situations, offering States practical means to fulfil international obligations arising under the United Nations Convention on the Rights of the Child (UNCRC). The Child Protection Convention applies to a wide range of civil measures for the protection of a child and a child's property, ranging from orders concerning parental responsibility and contact, to public measures of protection and care, as well as to matters of representation to the protection of children's property. Based on the principle that child protection provisions should constitute an integrated whole, the Convention has a broad scope, covering both public and private measures of protection or care. The Convention overcomes the uncertainty that may otherwise arise were separate rules to apply to different categories of protective measures applicable to a child. It takes account of the wide variety of legal institutions and systems of protection that exist around the world and avoids legal and administrative conflicts, enabling effective international civil cooperation in child protection matters. The Convention therefore provides an opportunity to build bridges between legal systems with diverse cultural and religious traditions.

### **Principal features of the Convention**

#### *Scope and mechanism of the Convention*

The Child Protection Convention applies to children from birth to the age of 18. Its purpose is a) to determine the competent authority to take measures directed to the protection of the person or the property of the child; b) to designate the law applicable to measures of protection and parental responsibility; c) to provide for a framework enabling the recognition and enforcement of measures of protection among Contracting Parties, and d) to establish a cooperation mechanism between the authorities of the Contracting Parties (Art. 1).

The Convention has uniform rules that determine which authorities are competent to take the necessary measures of protection. These rules, which avoid the possibility of conflicting decisions, give the primary responsibility to the authorities of the country where the child has their habitual residence (Arts 5 and 7). However, the Convention recognises certain situations where another authority will be competent. For example, the Convention allows the authority of any Contracting Party where the child is present to take necessary urgent or provisional measures of protection (Arts 11 and 12). This is also the case for refugee children and children who, due to disturbances in their country, are internationally displaced (Art. 6).

The Convention designates the applicable law and provides for the recognition and enforcement of measures by operation of law among the Contracting Parties. As a general rule, authorities must apply

their own law when exercising their jurisdiction (Art. 15). Exceptionally, the law of another State can be considered or applied in so far as the protection of the person or the property of the child requires. *Renvoi* is expressly excluded (Art. 21).

#### *Parental disputes over custody and contact*

The Convention provides frameworks for the resolution of disputes relating to custody and contact that may arise when parents are separated and living in different countries. The Convention enables the avoidance of problems that may arise if the courts in more than one State are competent to decide these matters. The recognition and enforcement provisions in the Convention avoid the need to re-litigate custody and contact issues, and ensure that decisions taken by the authorities of the State where the child has their habitual residence enjoy primacy. The cooperation provisions provide for exchange of information where necessary and offer a structure through which, by mediation or other means, voluntarily agreed solutions may be found.

#### *Reinforcement of the HCCH 1980 Child Abduction Convention*

The Child Protection Convention reinforces the 1980 Child Abduction Convention by underlining the primary role played by the authorities of the child's habitual residence in deciding the matters that affect the child in the long term. It also adds to the efficacy of any urgent protective measures ordered by a judge when returning a child to their State of habitual residence (Art. 11). These protective measures lapse as soon as the authorities of the child's State of habitual residence have taken the measures required by the situation (Art. 11(2)).

#### *Unaccompanied minors*

The cooperation procedures provided for by the Convention are helpful in the growing number of circumstances in which unaccompanied minors cross borders and find themselves at risk. For example, the Convention protects refugee and internationally displaced children in different ways. First, if necessary, the Convention provides for cooperation between Contracting Parties in order to locate the child. Secondly, the authorities competent to take any necessary measures of protection, including the placement of the child in alternative care, are identified by the Convention. Thirdly, the Convention provides the framework for the exchange of any necessary information between the authorities in the receiving States and the States of origin.

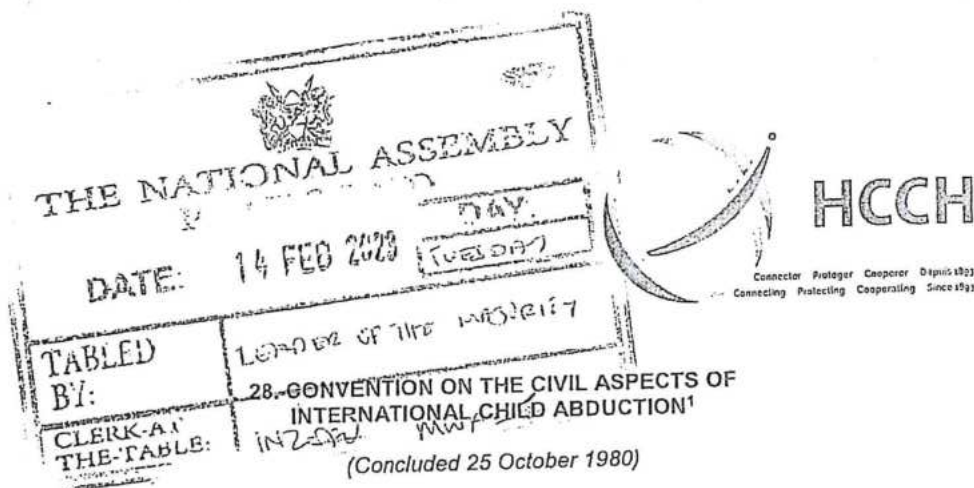
#### *Alternative care across borders*

The Convention provides for cooperation between Contracting Parties in relation to cases in which children are being placed in alternative care, such as foster care or kinship care, across borders. The Convention also recognises alternative care placements made by way of the Islamic law institution of *kafala* (Art 3(e)).

#### **Additional resources**

The [Child Protection Section](#) of the HCCH website contains the latest information about the Child Protection Convention. This includes:

- Text of the Convention
- Status table of Contracting Parties
- List of Central Authorities and practical information
- Explanatory Report on the Child Protection Convention
- Practical Handbook on the Operation of the Convention
- An Implementation Checklist



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.

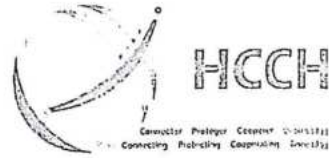
Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.





## OUTLINE

### HCCH 1980 CHILD ABDUCTION CONVENTION



## Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Being wrongfully removed from or retained outside of their State of habitual residence has a detrimental impact on a child. The habitual residence of a child is the focal point of that child's life prior to the wrongful removal or retention. Taking the child abruptly from the environment in which he or she has the strongest familial and social ties therefore has serious consequences. The increase in the number of families that are mobile across borders has unfortunately also led to a growth in the number of international child abductions. Locating, recovering, and returning these children can be complex and difficult.

The Child Abduction Convention aims to protect children internationally from the harmful effects of their wrongful removal or retention by providing a system of cooperation between Contracting Parties and a rapid procedure for the return of the child to their State of habitual residence. Although it pre-dates the United Nations Convention on the Rights of the Child (UNCRC), the Child Abduction Convention provides practical procedures that allow for the implementation of the international obligations enshrined in the UNCRC, in particular Articles 9, 10, 11 and 35. The Child Abduction Convention also provides for the protection of rights of access to the child. The Convention applies to children until the age of 16 (Art. 4).

### Principal features of the Convention

#### *The return mechanism*

The Convention provides for a procedure to bring about the prompt return of children, who have been wrongfully removed or retained, to the State of their habitual residence (Art. 1). The Convention is based on the principle that, save in exceptional circumstances, the wrongful removal or retention of a child across international borders is not in the interests of the child (Preamble). The return of the child to their State of habitual residence protects the right of the child to have contact with both parents (see, e.g., Art. 9.3 UNCRC), supports continuity in the child's life (Art. 8 UNCRC), and ensures that any determination of custody or access is made by the most appropriate court. The return order is designed to restore the status quo that existed prior to the wrongful removal or retention, and to deprive the taking person of any advantage gained as a result of the wrongful removal or retention. In so doing, the prompt return of the child also serves as a deterrent to international abductions.

A return order is not a decision on the merits of custody (Art. 19). It is simply an order that the child be returned to the jurisdiction that is most appropriate to determine custody and access. The limited scope of return decisions under the Convention therefore justifies the requirements that the return order be made forthwith (Art. 12), and that a court dealing with an abduction case is not permitted to decide on rights of custody until it has been determined that the child is not to be returned or unless an application under the Convention is not filed within a reasonable time (Art. 16).

An application for a return order requires the applicant to establish the following: that the child was habitually residing in the other Contracting Party (Art. 4), that the removal or retention of the child constituted a breach of custody rights attributed by the law of that Party (Art. 3(a)), and that the applicant was actually exercising those rights at the time of the wrongful removal or retention (Art. 3(b)).



### *Exceptions to return*

The Convention provides for certain exceptions in which the authority seized with the return application has discretion not to order the return of the child. Where it is demonstrated that the child is now settled in the new environment, the authority has the discretion to not make the return order (Art. 12). If the person or institution having care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented or subsequently acquiesced to the removal or retention, the authority is not bound to order the return of the child (Art 13(1)(a)). Where there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, the authority is similarly not bound to order the return of the child (Art. 13(1)(b)). The 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 the child's views (Art. 13(2)). Return may also be refused if it would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms (Art. 20).

### *Role of authorities*

The Convention provides for a system of Central Authorities in all Contracting Parties. Central Authorities in each Contracting Party have an integral role as the focus for administrative cooperation in the practical operation of the Convention. Central Authorities in each Contracting Party assist in locating the child and in achieving, if possible, a voluntary return of the child or an amicable resolution of disputes. They also cooperate to prevent further harm to the child by initiating, or helping to initiate, proceedings for the return of the child, and by making necessary administrative arrangements to secure the child's safe return. The Central Authorities are also obliged to promote the peaceful enjoyment of rights of access and to take steps to remove, as far as possible, obstacles to the exercise of such rights (Art. 21).

### *Additional resources*

The Child Abduction Section of the HCCH website contains the latest information about the Child Abduction Convention. This includes:

- Text of the Convention
- Status table of Contracting Parties
- List of Central Authorities and practical information (incl. Country Profiles)
- Explanatory Report on the Child Abduction Convention
- Guides to Good Practice: Parts I - VI
- Model Application Form
- Information on the International Hague Network of Judges (IHNJ)
- Information on the International Child Abduction Database (INCADAT)



