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LEGAL SUPPLEMENT – C

BILL No. 5 of 2008

Thursday 19th June, 2008

PARLIAMENT OFFICE
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Georgetown,
Guyana.

19th June, 2008.

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

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



GUYANA

BILL No. 5 OF 2008

VISITING FORCES BILL 2008

ARRANGEMENT OF SECTIONS

SECTION

1

**PART 1
PRELIMINARY**

1. Short title.
2. Interpretation.
3. Application of Act.
4. Orders designating States, etc.

PART II**JURISDICTION AND IMMUNITIES RELATING TO VISITING FORCES**

5. Primary right of civil courts to exercise jurisdiction.
6. Previous trial by civil court.
7. Primary right of service court in certain cases.
8. Arrest, custody, etc. of offenders against Laws of Guyana.
9. Previous trial by service court.
10. Waiver of primary rights.
11. Immunities and privileges of members of service court and witnesses.
12. Sentence, detention and proof.
13. Order of arrest by Defence Board.
14. Place of imprisonment or detention.
15. Police functions.
16. Summons.
17. Death sentence.
18. Firearms and drilling.
19. Restrictions on proceedings relating to service of members of visiting force.
20. Immunity from prosecution of civil and criminal proceedings.
21. Evidence regarding official duties.

PART III**CLAIMS FOR PERSONAL INJURIES AND PROPERTY DAMAGE**

22. Claims against designated State.
23. Prohibition of proceedings where compensation is payable.
24. Ships.
25. Settlement of claims against visiting forces.

PART IV
TAXATION

- 26. Exemption from income tax.
- 27. Service vehicles and licences.
- 28. Import duty.
- 29. Personal effects and motor vehicles.
- 30. Fuel, oil, et.

PART V
CORONER'S INQUEST

- 31. Provision as to coroner's inquest.

PART VI
ATTACHMENTS TO AND FROM GUYANA DEFENCE FORCE

- 32. Temporary attachments to Guyana Defence Force and to forces of another country.

PART VII
MISCELLANEOUS

- 33. Power of Defence Board to make regulations.
- 34. Repeal of Visiting Forces Act 1952 by Order.

**A BILL
Intituled**

AN ACT to make provision for armed forces of certain States visiting Guyana
and for related purposes.

A.D.2008 Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title. 1. This Act may be cited as the Visiting Forces Act 2008.

Interpretation. 2. In this Act, unless the context otherwise requires-

- Cap.15:01
- (a) "civil court" means a court of ordinary criminal jurisdiction in Guyana and includes a court of summary jurisdiction;
 - (b) "civil prison" means any prison, gaol or other place in Guyana in which offenders sentenced under this Act by a civil court can be confined;
 - (c) "Defence Board" means the Defence Board established by section 9 of the Defence Act;
 - (d) "dependant", with reference to a member of a visiting force or a member of the armed forces of a designated State, means-
 - (i) the wife or husband of the member; or
 - (ii) any other person wholly or mainly maintained by the member or in the member's custody, charge or care;
 - (e) "designated State" means a State, other than Guyana, that is designated under section 4;
 - (f) "Guyana Defence Force" means the Guyana Defence Force

Cap.15:01

established by the Defence Act;

- (g) “military establishment” means a military prison or any other establishment under the control of the Defence Board where persons may be required to serve military sentences of imprisonment or detention.
- (h) “regulations” means regulations made under this Act;
- (i) “service authorities” means naval, military or air force authorities;
- (j) “service court” means a court martial of a visiting force and includes the service authorities of a designated State who are empowered by the laws of that State to deal with charges brought against persons subject to service law of that State;
- (k) “service law”, in relation to a designated State, means the law governing all or any of the forces of that State;
- (l) “visiting force” means any of the armed forces of a designated State present in Guyana in connection with official duties, and includes civilian personnel designated under section 4 as a civilian component of a visiting force.

Application of Act. 3. This Act applies in respect of a designated State-

- (a) when the Defence Board has declared it to be applicable in respect of that State under section 4; and
- (b) only to the extent declared by the Defence Board under section 4.

Orders designating States, etc.,

4. The Defence Board may by order-

- (a) designate any country as a designated State for the purposes of this Act;
- (b) declare the extent to which this Act is applicable in respect of any designated State;
- (c) designate civilian personnel as a civilian component of a visiting force

PART II
JURISDICTION AND IMMUNITIES RELATING TO VISITING
FORCES

Primary right
of civil courts
to exercise
jurisdiction.

5. Except in respect of offences mentioned in subsection (1) of section 7, the civil courts have the primary right to exercise jurisdiction in respect of any act or omission constituting an offence against any law in force in Guyana alleged to have been committed by a member of a visiting force or a dependant.

Previous trial
by civil court.

6. (1) Where a member of a visiting force or a dependant has been tried by a civil court and has been convicted or acquitted, no service court may try the member or dependent within Guyana for the same offence.

(2) A certificate signed by the Registrar or Deputy Registrar of the High Court, a sworn clerk of the Registry of the High Court, a judge, or a magistrate stating-

- (a) that a member of a visiting force or a dependant has been tried before a civil court for an offence specified in the certificate;
- (b) the result of the trial; and
- (c) the judgment or order of the court,

shall, for the purposes of this section, be evidence of the matters stated in the certificate.

(3) Nothing in this section prevents a service court from trying within Guyana a member of a visiting force or a dependant for any violation of rules of discipline arising from an act or omission that constituted an offence for which the member or dependant was tried by a civil court.

Primary right
of service
court in
certain cases.

7. (1) A service court of a visiting force has the primary right to exercise jurisdiction in relation to an alleged commission, by a member of the visiting force or a dependant, of-

- (a) an offence in respect of the property or security of the designated State;
- (b) an offence in respect of the person or property of another member of the visiting force or a dependant; or
- (c) an offence in respect of an act done or anything omitted in the performance of an official duty.

(2) Subject to this Act, the service authorities and service courts of a visiting force may exercise within Guyana, in relation to members of that force and dependants, all the criminal and disciplinary jurisdiction that is conferred upon them by the laws of the designated State to which they belong.

(3) Nothing in this section affects or limits any other written law (including a provision of this Act) restricting the prosecution of any proceedings or requiring the consent of any authority to the prosecution of any proceedings.

Arrest,
custody, etc.
of offenders
against laws of
Guyana.

8. (1) In this section, "offence" means an offence committed or believed to have been committed by a person against the laws of Guyana.

(2) Nothing in section 7 affects or limits-

- (a) any power of arrest, search, entry, seizure or custody exercisable under the laws of Guyana with respect to offences;
- (b) any obligation of any person in respect of a recognizance or bail bond entered into as a result of an arrest for an offence; or
- (c) any power of any court to remand (whether on bail or in custody) a person brought before the court in connection with an offence.

(3) Subject to subsections (4) and (5), a police constable who, without warrant, takes a person into custody for an offence, may detain that person in custody for a period not exceeding three days without bringing that person before a court of summary jurisdiction if there is reasonable ground for believing that that person is subject to the jurisdiction of the service court of a designated State under section 7.

(4) The power of detention under subsection (3) may be exercised only for the purpose of determining whether that person is to be dealt with for that offence under the laws of Guyana or dealt with by the courts of the designated State for an offence under the laws of that designated State.

(5) If the person referred to in subsection (3) is not delivered into the custody of an authority of the designated State within the period of three days referred to in that subsection, that person shall be released on bail or brought before a court of summary jurisdiction as soon as practicable after the expiry of that period.

Previous trial
by service
court.

9. (1) Where a member of a visiting force or a dependant has been tried by a service court of that visiting force and has been convicted or acquitted, no civil court may try the member or dependant, as the case may be, for the same offence.

(2) For the purposes of this section, a certificate signed by the officer presiding over a service court, or the officer in command of a visiting force, stating-

- (a) that a member of a visiting force or a dependant has been tried before a service court for an offence specified in the certificate;
- (b) the result of the trial; and
- (c) the judgment or order of the court,

is evidence of the matters stated in the certificate.

Waiver of
primary rights.

10. (1) The civil court or service court that has the primary right to exercise jurisdiction under section 5 or section 7 has the right to deal with charges against alleged offenders in the first instance and subject to subsection (2), the court not having the primary right has no jurisdiction in the matter.

(2) A court having jurisdiction under subsection (1) may, in accordance with the regulations, waive its jurisdiction in favour of the court not having jurisdiction under subsection (1), and the latter court shall then have jurisdiction in the matter.

Immunities
and privileges
of members of
service court
and witnesses.
Cap.15:01.

11. The members of a service court exercising jurisdiction under this Act and the witnesses appearing before the service court have the immunities and privileges of a court-martial exercising jurisdiction under the Defence Act and the witnesses appearing before the court-martial, respectively.

Sentence,
detention and
proof.

12. (1) Where a service court in Guyana or elsewhere has passed any sentence upon a member of the armed forces of a designated State or upon a dependant, then for the purposes of any legal proceedings in Guyana-

- (a) the service court shall be deemed to have been properly constituted;
- (b) its proceedings shall be deemed to have been regularly conducted;
- (c) the sentence shall be deemed to have been within the jurisdiction of the service court and in accordance with the laws of the designated State; and
- (d) subject to section 17, if the sentence has been executed according to its tenor, it shall be deemed to have been lawfully executed.

(2) For the purposes of any legal proceedings in Guyana, a member of a

visiting force or a dependant who is detained in custody shall be deemed to be in lawful custody if the member or dependant is in custody-

- (a) under a sentence mentioned in subsection (1); or
- (b) pending the determination by a service court of a charge brought against that member or dependant.

(3) For the purposes of any legal proceedings within Guyana,-

- (a) a certificate signed by the officer in command of a visiting force stating that the persons specified in the certificate sat as a service court, is receivable in evidence and is conclusive proof of that fact; and
- (b) a certificate signed by the officer in command of a visiting force stating that a member of that force or a dependant is being detained in either of the circumstances described in subsection (2), is receivable in evidence and is conclusive proof of the cause of the detention, but not of the person concerned being a member of the visiting force or a dependant.

Order of arrest
by Defence
Board.

13. (1) For the purposes of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers given to them by this Act, the Defence Board may from time to time by general or special order direct officers and soldiers of the Guyana Defence Force-

- (a) to arrest members of the visiting force or dependants alleged to have been guilty of offences against the laws of the designated State; and
- (b) to hand over any person so arrested to the appropriate authorities of the visiting force.

(2) The Defence Board may exercise the power under subsection (1) only if requested by the officer in command of the visiting force or by the

designated State.

Place of
imprisonment
or detention.

14. (1) Where a member of a visiting force or a dependant has been sentenced by a service court to undergo a punishment involving incarceration, the officer in command of the visiting force may make a request to the Defence Board that the incarceration be served wholly or partly in a civil prison or military establishment.

(2) The Defence Board shall determine whether the offender's punishment is to be served in whole or in part in a civil prison or military establishment-

(a) having regard to the nature of the place of incarceration to which the offender would have been committed under the laws of the designated State; and

(b) in any event, in accordance with the regulations.

Cap.15:01.

(3) Where the offender's punishment is to be served in whole or in part in a civil prison or military establishment, the provisions of the Defence Act relating to the carrying out of punishments of imprisonment or detention imposed upon officers and soldiers of the Guyana Defence Force shall apply with necessary modifications.

Police
functions.

15. (1) Members of a visiting force have the same power to exercise police functions (including the power of arrest), in relation to any member of that force or dependant, as provided by the service law of that force.

(2) Nothing in subsection (1) empowers a member of a visiting force to exercise police functions in respect of a person who is neither a member of the visiting force nor a dependant.

Summons.
Cap.15:01

16. (1) Sections 64(1)(a) and 106(1)(a) of the Defence Act apply with necessary modifications in relation to a court-martial under this Act as if it

were a court-martial under that Act.

(2) A court-martial under this Act shall not summon any person other than a member of a visiting force except by process issued by a magistrate or a justice of the peace in accordance with the regulations.

Death
sentence.

17. Notwithstanding anything in this Act, a sentence of death passed by a service court shall not be carried out in Guyana unless a sentence of death could have been passed in a similar case under the laws of Guyana.

Firearms and
drilling.

18. Members of a visiting force acting in the course of their duties (except civilian personnel)

- (a) may, if authorized to do so by orders of service authorities of the visiting force, possess and carry explosives, ammunition and firearms; and
- (b) are not subject to the criminal law relating to unlawful drilling, the making or possessing of explosives or the possession of ammunition and firearms.

Restrictions
on
proceedings
relating to
service of
members of
visiting force.

19. (1) In this section, "service" means service as a member of a visiting force.

(2) No proceedings shall be entertained by any court in Guyana in relation to any of the following-

- (a) the pay of any person in respect of service;
- (b) the terms of service of any person;
- (c) the discharge of any person from service.

Immunity
from
prosecution of
civil and
criminal

20. (1) Notwithstanding any other provision of this Act, members of a visiting force shall be immune from the prosecution of civil and criminal proceedings in respect of actions taken in the course of their official duties.

proceedings.

(2) The service authority to which a member of a visiting force belongs may waive the immunity specified in subsection (1) in respect of the member.

(3) Nothing in this section affects or limits any other provision of this Act that restricts or excludes proceedings in relation to a member of a visiting force.

Evidence
regarding
official duties.

21. A certificate of the service authority to which a member of a visiting force belongs stating that anything alleged to have been done or omitted by the member was or was not done or omitted in the performance of an official duty-

- (a) is receivable in evidence in any civil court; and
- (b) for the purposes of this Act, is *prima facie* proof of that fact.

PART III

CLAIMS FOR PERSONAL INJURIES AND PROPERTY DAMAGE

Claims against
designated
State.
Act No.20 of
1984.

22. Subject to section 24, for the purposes of the State Liability and Proceedings Act 1984-

- (a) a tort committed by a member of a visiting force while acting within the scope of the member's duties or employment shall be deemed to have been committed by a servant of the State while acting within the scope of the servant's duties or employment;
- (b) property owned, occupied, possessed or controlled by a visiting force shall be deemed to be owned, occupied, possessed or controlled by the State; and
- (c) a service motor vehicle, aircraft or vessel of a visiting force shall be deemed to be owned by the State.

Prohibition of proceedings where compensation is payable. **23.** No proceeding shall lie against the State by virtue of section 22 or against any member of a visiting force who is deemed to be a servant of the State under section 22, in respect of a claim by a member of a visiting force or a dependant (or the personal representative of the member or the dependant) arising out of death or injury to the member or the dependant if compensation has been paid or is payable for the death or injury, by a designated State, or out of any funds administered by an agency of a designated State.

Ships. **24.** Section 22 does not apply in respect of a claim arising out of or in connection with the navigation, operation or salvage of a ship or the loading, carriage or discharge of a cargo, unless-

- (a) the Minister otherwise orders in respect of ships of a specified designated State; or
- (b) the claim is a claim arising out of the death of or injury to a person.

Settlement of claims against visiting forces. **25.** (1) The Minister may make arrangements to satisfy claims in respect of acts or omissions of-

- (a) members of visiting forces; or
- (b) other persons connected to those forces and specified in these arrangements.

(2) The arrangements shall include-

- (a) a description of the acts or omissions to which they relate; and
- (b) a description of the method of satisfying those claims, which may include the payment of amounts-

- (i) adjudged by any court or other authority in Guyana;

or

(ii) agreed between the claimant and the Minister.

(3) Any expenses of the Minister incurred in satisfying claims under arrangements made under this section or otherwise in connection with the arrangements shall be defrayed out of moneys provided by Parliament.

(4) The Minister shall take any step required to ensure that persons affected by any arrangements under this section are informed of the nature and operation of the arrangements.

PART IV TAXATION

Exemption
from income
tax.

26. (1) In this section, “member of a visiting force” excludes any citizen of Guyana resident or ordinarily resident in Guyana.

(2) A member of a visiting force shall be exempt from income tax in Guyana on the salary and emoluments paid to that member as a member of the visiting force.

Service
vehicles and
licences.

27. (1) No tax or fee shall be payable in respect of the licensing or registration of service vehicles of a visiting force.

Cap.51:02

(2) Notwithstanding the Motor Vehicles and Road Traffic Act, a member of a visiting force may drive a service vehicle on any road in Guyana without being the holder of a driver’s licence issued under that Act if the member is the holder of a valid driver’s licence issued under any law of the designated State to which that member belongs.

Import duty.

28. (1) Subject to the regulations, a visiting force may import into Guyana free of duty and tax, for the exclusive use of the visiting force.-

(a) any equipment;

(b) a quantity of provisions, supplies and other goods that the Commissioner-General considers reasonable.

(2) The Commissioner-General may authorize the import into Guyana, free of duty and tax, of goods for use by dependants of members of a visiting force.

Personal effects and motor vehicles.
Cap.82:01

29. (1) A member of a visiting force may, in accordance with the regulations made under this Act or the Customs Act, import, free of duty and tax-

- (a) the member's personal effects and furniture, if the importation is made within six months of the first arrival of that member to take up service in Guyana;
- (b) the personal effects of a dependant of the member, if the importation is made within six months of the first arrival of the dependant to join that member; and
- (c) the private motor vehicle of that member for the temporary personal use of that member and dependants.

(2) Nothing in paragraph (c) of subsection (1) grants or authorizes the granting of any exemption from taxes or fees in respect of-

- (a) the licensing or registration of private vehicles; or
- (b) the use of the roads by private vehicles in Guyana.

Fuel, oil, etc. 30. Subject to compliance with any condition prescribed by the regulations, no duty or tax is payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting force.

PART V
CORONER'S INQUEST

Provision as to coroner's inquest.

Cap.44:01

31. In this section,-

- (a) "homicide" includes murder, manslaughter, infanticide and any offence under the laws of the country in question which is analogous to any of those offences;
- (b) "inquest" includes an inquiry;
- (c) "Registrar General" has the meaning given to it by section 2 of the Registration of Births and Deaths Act;
- (d) references to persons having at any time a relevant association with a visiting force are references to that person being at that time-
 - (i) a member of that visiting force;
 - (ii) a person, not being a citizen of Guyana or ordinarily resident in Guyana, who is a dependent of a member of that visiting force; and
- (e) in determining whether a person is, or was at any time, ordinarily resident in Guyana, no account shall be taken of any period during which the person has been or intends to be present in Guyana while being a member of a visiting force or a dependant.

(2) If any coroner having jurisdiction to hold an inquest into a death is satisfied that the deceased person at the time of death had a relevant association with a visiting force, the coroner-

- (a) shall not start the inquest; or
- (b) if the inquest has been started but has not been completed, the coroner shall-
 - (i) adjourn the inquest; and
 - (ii) if a jury has been summoned, discharge the jury.

(3) Subject to subsection (2), if on an inquest into a death, a coroner is satisfied-

(a) that a person who in accordance with section 7 is subject to the jurisdiction of the service courts of a designated State has been charged before a court of that State with the homicide of the deceased person (whether or not that charge has been dealt with); or

(b) that such a person is being detained by an authority of that State with a view to being so charged,

the coroner shall take the actions specified in subsection (4).

(4) Subsection (3) refers to the following actions-

- (a) adjourn the inquest;
- (b) if a jury has been summoned, discharge the jury; and
- (c) give the Registrar General a certificate stating the particulars necessary for the registration of the death to the extent that these have been ascertained at the inquest.

(5) Where an inquest is adjourned under this section,-

- (a) the coroner may resume it only on the direction of the Minister responsible for legal affairs; and
- (b) if the coroner resumes it under paragraph (a), the coroner shall proceed in all respects as if the inquest had not previously been started, but the coroner need not (as the case may be) again view the body or again give the Registrar General a certificate.

(6) Subsections (2) and (3) shall not apply where the Minister responsible for justice by order directs otherwise.

PART VI

ATTACHMENTS TO AND FROM GUYANA DEFENCE FORCE

Temporary
attachments to
Guyana
Defence Force
and to forces
of another
country.

32. (1) The Defence Board-

- (a) may attach temporarily to the Guyana Defence Force a member of another force who is placed at the disposal of the Defence Board by the service authorities of the country to which the other force belongs; and
- (b) subject to anything to the contrary in the conditions applicable to the member's service, may place any member of the Guyana Defence Force at the disposal of the service authorities of another country for the purpose of being attached temporarily by those authorities to a force of that country.

(2) While a member of another force is under this section attached temporarily to the Guyana Defence Force, the member-

- (a) is subject to the law relating to the Guyana Defence Force in like manner as if that member were a member of the Guyana Defence Force; and
- (b) shall be treated, and shall have the like powers of command, punishment, and (notwithstanding section 15) arrest over members of the Guyana Defence Force, as if that member were a member of the Guyana Defence Force of relative rank.

(3) The Minister may direct that the written law of Guyana relating to the Guyana Defence Force shall apply in relation to members of another force to which this section applies, subject to any adaptations and modifications specified by the Minister.

(4) When the Guyana Defence Force and another force to which this section applies are serving together, whether alone or not,-

(a) any member of the other force shall be treated and shall have over members of the Guyana Defence Force the like powers of command as if that member were a member of the Guyana Defence Force of relative rank; and

(b) if the forces are acting in combination, any officer of the other force appointed, by agreement between the Government of Guyana and the government of the designated State to which that force belongs, to command all or any part of the combined force,-

(i) shall be treated;

(ii) shall have over members of the Guyana Defence Force the like powers of command, punishment, and arrest ;
and

(iii) may be invested with the like authority,

as if that officer were an officer of the Guyana Defence Force of relative rank and holding the same command.

(5) For the purposes of this section,-

(a) forces shall be deemed to be serving together or acting in combination only if they are declared to be so serving or so acting by order of the Defence Board; and

(b) the relative rank of members of the Guyana Defence Force and

of other forces shall be prescribed by regulations.

PART VII
MISCELLANEOUS

Power of
Defence
Board to make
regulations.

33. (1) The Defence Board may make regulations to better carry out the purpose and provisions of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for-

- (a) the summoning of civilian witnesses before a service court;
- (b) waiving of the primary right of jurisdiction by a service court or a civil court;
- (c) determining where a sentence of imprisonment shall be served;
- (d) prescribing anything that is required or authorized by the Act to be prescribed.

Repeal of
Visiting
Forces Act
1952 by order.
15 and 16 Geo.6
and 1 Eliz.2.

34. The Minister may by order repeal all or any part of the Visiting Forces Act 1952 (U.K.) to the extent that Act is in force in Guyana.

EXPLANATORY MEMORANDUM

In connection with the staging of ICC Cricket World Cup West Indies 2007, the Visiting Forces Act 2007 (Act No.15 of 2007) was enacted as a sunset legislation. The Act expired on 30th June 2007. The provisions have been found to be very useful and the Thirteenth Special Meeting of the Conference of Heads of Government held at Port of Spain, Trinidad and Tobago in April 2008 also favoured such a measure. It is, therefore, proposed to reenact the legislation so as to provide an enabling law for the presence, activities, privileges and immunities to the members of the forces of designated foreign countries visiting on duty in Guyana and their dependants on any occasion in the future.

The Bill seeks to make provision for the armed forces of certain designated State visiting Guyana and for related purposes.

The Bill is divided into seven **Parts**.

Part I (Preliminary) sets out the short title of the proposed legislation and defines certain expression used in it. It also provides for the Defence Board to designate foreign States to which the Act would apply and the extent to which the Act would apply to those States.

Part II (Jurisdiction and Immunities relating to Visiting Forces) provide for civil courts in Guyana, or service courts of visiting forces, to have the primary right to exercise jurisdiction over members of visiting forces and their dependants in different circumstances. To facilitate the exercise of jurisdiction by service court, this Part –

- (a) authorizes the Defence Board to order the arrest of a member of a visiting force or a dependant at the request of the officer in command of the visiting force;

- (b) authorizes the Defence Board to allow a sentence of incarceration imposed by a service court to be served in a civil prison or military establishment;
- (c) gives members of a visiting force in Guyana the same police powers they have under the service law of the designated State to which the visiting force belongs;
- (d) allows courts martial of the visiting forces to issue summonses.

Part II also allows members of visiting forces to possess and carry explosives, ammunition, and firearms. Finally, this Part restricts proceedings relating to the service of members of visiting forces and grants members of visiting forces immunity from civil and criminal proceedings in respect of actions taken by them in the course of their official duties.

Part III (Claims for Personal Injuries and Property Damage) deals with torts committed by members of visiting forces. In effect, it provides for the State of Guyana to be substituted for a designated State in respect of liability for certain torts. In this regard, the Minister is empowered to make arrangements to satisfy claims in respect of acts or omissions of members of visiting forces and related persons.

Part IV (Taxation) exempts members of visiting forces from certain taxes and duties (including import duties and income tax), and also exempts service vehicles, equipment, and supplies of visiting forces from certain fees, taxes and duties.

Part V (Coroner's Inquest) provides for a coroner not to hold an inquest, and to adjourn an inquest (if started), if the deceased person has a relevant connection with a visiting force or any person subject to the jurisdiction of a service court has been or will be charged by the court with the homicide of the deceased person. **Clause 31(a)** of the Bill defines "homicide" to include murder, manslaughter, infanticide and any offence under the laws of the country concerned which is analogous to those offences as in the laws of Guyana

Part VI (Attachment to and from Guyana Defence Force) provides for temporary attachments of a member of another force to the Guyana Defence Force, and *vice versa*. It also provides for situations where the Guyana Defence Force and other forces are serving together or acting in combination.

Part VII (Miscellaneous) provides for the Defence Board to make regulations to carry out the purpose of the proposed legislation. It also provides for the Minister to make an order to wholly or partly repeal the Visiting Forces Act 1952 (U.K.) to the extent that Act is in force in Guyana.



Minister of Home Affairs.