

**ACTS SUPPLEMENT**

*to The Southern Sudan Gazette No. 1 Volume 1 dated 10th February, 2009.*

Printed by Ministry Legal Affairs and Constitutional Development, by Order of the Government.

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**Act 10**

*Child Act*

**2008**

**THE CHILD ACT, 2008**

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**LAWS OF SOUTHERN SUDAN****THE CHILD ACT, 2008**

**In accordance with the provisions of Article 57(2) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following:—**

**CHAPTER I  
PRELIMINARY PROVISIONS****1. Title and Commencement.**

This Act may be cited as “the Child Act, 2008” and shall come into force on the date of signature by the President.

*Signed on  
13th  
October,  
2008*

**2. Repeal and Saving.**

Any provisions of existing legislation which are governed by this Act, are hereby repealed to the extent they are less protective of the interests of children in Southern Sudan; provided that any orders or regulations issued or actions taken in accordance with such provisions shall continue to be in force until they are repealed or amended in accordance with the provisions of this law.

**3. Purpose.**

The purpose of this Act is to extend, promote and protect the rights of children in Southern Sudan, in accordance with provisions of Article 21 of the Interim Constitution of Southern Sudan, 2005, and as defined in the 1989 United Nations Convention on the Rights of the Child and other international instruments, protocols, standards and rules on the protection and welfare of children to which Sudan is signatory.

**4. Authority and Application.**

- (1) This Act is drafted under the powers granted under Schedule (B) of the Interim Constitution of Southern Sudan, and is part of the effort to establish minimum Southern Sudan standards and uniform norms in the areas of civil and criminal laws and judicial institutions.
- (2) The provisions of this Act represent the minimum standards that shall be applied to all the judicial proceedings in or before any Court in Southern Sudan, except for civil and criminal proceedings under National Laws, which will be governed by national legislation review.
- (3) Except as otherwise expressly provided herein, nothing in this Act shall be deemed to derogate from the provisions of any other written law which relate to matters regarding the protection of the child in Southern Sudan.
- (4) Nothing in this Act shall prevent, discourage or prohibit the application of customary and traditional laws that are protective of the rights of the child except where those laws are contrary to the best interests of the child.
- (5) Where there are provisions of any other law that are contrary hereto or less protective, the provisions of this Act shall prevail.

## 5. Interpretation.

In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

**“Assessment”** means a Social Worker’s evaluation of a child’s state including, but not limited to the child’s development and competencies, family or home circumstances, the nature and circumstances surrounding the socio-economic circumstances of the child, the alleged commission of an offence and its impact upon the victim, the intention of the child to acknowledge responsibility for the alleged offence, and any other relevant circumstances or factors;

**“Abduction”** means to compel by force, by any deceitful means, or otherwise induce any child to go from any place to another without proper consent;

**“Authorized Person”** means an official or body or other person authorized expressly or impliedly by any enactment, custom or otherwise to perform the act in question;

**“Chief”** means the head or leader of a group or body of people, including any chief, sub-chief or headman of a Boma, Payam or of any town, and any other person by whatever title under which he or she is known, appointed by the Government to perform among other things functions similar to those of a policeman or policewoman;

**“Child”** means a human being under the age of eighteen years;

**“Child born out of wedlock”** means a child whose natural parents were not married to each other at the time of such child’s conception;

**“Child labour”** is work undertaken by a child that in some way harms or exploits him or her, whether physically, mentally, morally, or by preventing him or her from education;

**“Child with a disability”** means a child who is affected by a disability of a physical, intellectual, sensory or mental nature or other disability irrespective of its cause, whether temporary or

permanent, to the extent that a child is unable to engage in activities in a normal way and is as a result hampered in his or her normal functions;

**“Community service”** means compulsory work for a community organization or other compulsory work of value to the community, performed by a child with his or her consent and without remuneration;

**“Court”** means any Court in Southern Sudan competent to hear a particular matter;

**“Custodian”** means any person in whose care a child is physically placed;

**“Diversion”** means the referral of a criminal matter, involving an offence alleged to have been committed by a child, away from the adult criminal justice system with or without conditions;

**“Family Group Conference”** means a meeting involving the child, his or her parents and family members, the victim of the offence, his or her parents and any other relevant party to find ways to restore the harm and broken relationships caused by the child’s offending;

**“Female circumcision”** means the cutting and removal of part or all of the female genitalia and includes the practices of clitoridectomy, excision, infibulations or other practice involving the removal of part, or of the entire clitoris or labia of a female child;

**“GoSS”** means the Government of Southern Sudan;

**“Government”** means the GoSS, State government or local government being the level of Government which most effectively deals with the subject matter;

**“Household”** means a place or a house where a family ordinarily resides with a child;

**“Juvenile Court”** means a Court of law that deals with young people below the age of eighteen years;

**“Light work”** means any work that is not likely to be harmful to a child’s health and development and not likely to be detrimental to their attendance at school or vocational training;

“**Natural father**” means the biological father of a child, but does not include a male person whose relationship with the child exists merely because he or she was a gamete donor in artificial fertilization of a person;

“**Parent**” means the mother or father of a child and includes any guardian or person who is liable by law to maintain a child or is entitled to his or her custody;

“**Parental responsibility**” means all the duties, responsibilities, rights, powers, and authority which, in accordance with law, a parent of a child has in relation to the child and the property of the child to enable him or her fulfill those responsibilities in a manner consistent with the evolving capacities of the child;

“**Place of Safety**” means any foster home or any other suitable place designated for the care and protection of the child, the occupier of which is willing temporarily to receive a child;

“**Preliminary inquiry**” means the compulsory procedure which takes place before charges are framed in relation to the alleged offence and which is held in all cases involving a child over the minimum age of criminal responsibility, where diversion, conversion to a Court inquiry or a decision to decline to charge the child has not yet been taken in accordance with this Act;

“**Recruitment**” encompasses compulsory, forced and voluntary recruitment into any kind of regular or irregular armed force or armed group;

“**Relative**” means any person related to a child, whether of the full blood or half blood or where an adoption order has been made in respect of a child, any person who would be a relative of the child within the meaning of this definition if the adopted person was the child of the adopter born inside marriage;

“**Social Worker**” means a person who holds a qualification recognized by an authorized person to conduct social work;

“**Trafficking**” means the recruitment, transportation, transfer, sale, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability

or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation;

**“Work in industrial undertaking”** is an undertaking other than one in commerce or agriculture and includes mines, quarries and other works of the extraction of minerals from the earth; or undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adopted for sale; broken up or demolished, or in the generation, transformation or transmission of electricity or motive power of any kind.

## **CHAPTER II RIGHTS AND DUTIES OF THE CHILD.**

### *General Principles Regarding the Rights of the Child.*

#### **6. The Best Interests of the Child.**

Whenever the Government either at GoSS or State level, a Court, a local authority, legal entity or any person determines any question with respect to the upbringing, care or welfare of a child or the administration of a child’s property or any income arising from it, the best interests of the child shall be the paramount consideration.

#### **7. Determination of Matters Concerning a Child.**

In all matters relating to a child, whether before a Court or before any other person, every effort shall be made to determine the matter expeditiously; provided that, a child has a right to be heard whenever any matters concerning him or her are discussed.

**8. Issues to be Regarded whilst determining Questions Relating to a Child.**

In determining any question relating to circumstances set out in section 6, above, the Court or any other person shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned are considered in the light of his or her age and understanding;
- (b) the child's physical, emotional and educational needs,
- (c) the likely effects on the child of any changes in the child's circumstances;
- (d) the child's age, sex, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at risk of suffering; and
- (f) where relevant the capacity of the child's parents, guardians or any other person involved in the care of the child in meeting his or her needs.

**9. No Discrimination.**

- (1) A child shall not be discriminated on the basis of his or her parent's or guardian's gender, race, age, religion, language, opinion, disability, HIV positive or health status, birth status, custom, ethnic origin, rural or urban background, socio-economic or political status, refugee status, criminal record or any other status.
- (2) Any person who discriminates against a child or his or her parents or guardians in contravention of this section commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding one year or with fine or with both.

**10. Right to Name and Nationality.**

- (1) Every child has a right from birth to a decent name and to acquire nationality.



- (2) Where a child has been deprived of some or all of the elements of his or her identity, the Government shall provide appropriate assistance and protection with a view to re-establishing his or her identity.

**11. Right to Birth Registration.**

- (1) Every child has the right to free birth registration with the appropriate Government agency.
- (2) The Government at its appropriate level shall put in place a birth registration law throughout Southern Sudan.

**12. Right to Life, Survival and Development.**

Every child has an inherent right to life. It shall be the responsibility of the family and the Government to promote and care for the survival and development of the child.

**13. Right to have Knowledge of and Grow with Parents in Family Environment.**

- (1) Every child has the right to live with and be cared for by his or her parents unless it is proven that living with them would—
  - (a) lead to significant harm to the child;
  - (b) subject the child to abuse and neglect; or
  - (c) not be in the best interest of the child.
- (2) Without prejudice to subsection (1), above, where an authorized person determines, as a measure of last resort, that it is in the best interest of the child to be separated from his or her parents, the best alternative care available shall be provided for the child and where possible, siblings shall be kept together.

- (3) Any child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest.
- (4) Every child who has been separated from his or her parents or guardians has a right to be reunified with them and shall be aided to do so by the Government.

**14. Right to Education and Well-Being.**

- (1) Every child has the right to free education at primarily level which shall be compulsory.
- (2) Every child has the right to education regardless of the type or severity of the disability he or she may have.

**15. Right to Health.**

- (1) Every child has the right to free basic health care, the provision of which shall be the responsibility of parents and the Government.
- (2) Every child has the right to free immunization.
- (3) No child seeking medical treatment or care shall be subjected to discrimination.
- (4) No child shall be deprived by any person of medical treatment by reason of religious or other beliefs.

**16. Right to Social Activity.**

Every child has the right to play and to participate in sports, or in positive cultural and artistic activities or other leisure activities that foster the development of the potential of the child.

**17. Right of Opinion.**

- (1) Every child has the right to seek, receive and impart information and ideas of all kinds; provided that, it does not infringe upon the rights of others.
- (2) Every child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting him or her.
- (3) The opinion of every child shall be given due weight in accordance with the age and his or her maturity.

**18. Right of Religious Instruction.**

Every child has the right to religious education and instruction, subject to appropriate parental guidance.

**19. Right to Liberty and Security of the Person.**

Every child has the right to liberty and security of the person, and no child shall be subjected to interference, arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with the procedures prescribed by this Act and any other applicable law.

**20. Right of Inheritance.**

Subject to the laws on inheritance, every child has the right to a reasonable share out of the estate of a parent, whether or not born in wedlock.

*Rights of the Child with Respect to Certain Types of Treatment***21. Right to Protection from Torture, Degrading Treatment and Corporal Punishment.**

Every child has the right to be protected from torture, cruel, inhuman or degrading treatment or punishment, and in particular—

- (a) no child shall be sentenced to capital punishment or life imprisonment;
- (b) no child shall be subjected to corporal punishment by chiefs, police teachers, prison guards or any other person in any place or institution, including schools, prisons and reformatories; and
- (c) no child shall be subjected to a group punishment by chiefs, police, teachers, prison guards or any other person in any place or institution, including schools, prisons and reformatories.

**22. Right to Protection from Abuse.**

- (1) The Government shall take concrete measures to protect children from all forms of abuse and to ensure that any child who becomes the victim of abuse, as set out in this section shall be accorded appropriate treatment and rehabilitation.
- (3) Every child has the right to be protected from the following types of treatment and abuse while in the care of parents, legal guardians, teachers, police or any other person who has care of a child—
  - (a) all forms of physical or mental violence, injury, abuse, negligent treatment, maltreatment or exploitation;
  - (b) abduction and trafficking, for any purpose or form, by any person including parents or guardians;
  - (c) sexual abuse, exploitation and harassment including, but not limited to rape, incest, inducement or coercion of a child to witness or engage in a sexual activity; the use of a child in prostitution or other sexual practices; and
  - (d) the use of a child in pornographic performances and materials.
- (4) Whoever commits such an offence shall on conviction, be sentenced to imprisonment for a term not exceeding fourteen years.

**23. Right to Protection from Marriage and other Negative and Harmful Cultural and Social Practices.**

- (1) Every child has the right to be protected from early marriage, forced circumcision, scarification, tattooing, piercing, tooth removal or any other cultural rite, custom or traditional practice that is likely to negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development.
- (2) Every child has the right to be protected from inheriting debts or fines and being held as a ransom in a family dispute.

**24. Right to Protection from Harmful Substances.**

- (1) Every child has the right to be protected from drug abuse and the use of hallucinogens, narcotics, alcohol, tobacco products, drugs and any other substances declared harmful and from being involved in their production, trafficking or distribution.
- (2) It is an offence to sell drugs, hallucinogens, narcotics, alcohol, tobacco products or any other substances declared harmful to children.
- (3) Whoever commits such an offence shall on conviction, be sentenced to imprisonment for a term not exceeding fourteen years.

*Rights of the Child with Respect to Labour***25. Right to Protection from Child Labour.**

- (1) Every child has the right to be protected from exposure to economic exploitation and child labour.

- (2) For the purposes of this section, “child labour” includes—
- (a) work and activities related to mining and quarrying;
  - (b) portage of heavy loads and storage;
  - (c) heavy agricultural labour;
  - (d) construction work;
  - (e) work in industrial undertakings;
  - (f) work in places where heavy machines are used;
  - (g) work in places such as bars, hotels and places of entertainment, where a person may be exposed to immoral behaviour;
  - (h) work in electricity, gas, sanitary and water works;
  - (i) service with the police, prison or military forces;
  - (j) night work which constitutes work between the hours of six o’clock in the evening to six o’clock in the morning;
  - (k) driving or touting in vehicles;
  - (l) herding which jeopardizes the interest of the child;
  - (m) any type of sexual work; and
  - (n) tobacco production and trafficking.
- (3) Subject to the provisions of section 25 (2), the minimum age for the admission of a child to a paid employment shall be fourteen years.
- (4) The minimum age for the engagement of a child in light work shall be twelve years which constitutes work that is not likely to be harmful to the health or development of the child and does not affect the child’s attendance at school or the capacity of the child to benefit from school.
- (5) A child engaged in a paid employment, has the right to be paid fairly, work reasonable hours in accordance with their age and capabilities, have at least 24 hours weekly mandatory leave, annual leave and to take regular recreational breaks.

- (6) No employer shall engage a child in employment without satisfactory proof of the child's age.
- (7) The Government shall undertake to provide for an appropriate regulation of hours and conditions of employment for a child and penalties or other sanctions to ensure the effective enforcement of this section.
- (8) The Government shall undertake to ensure that employers of a child strictly adhere to the following requirements—
  - (a) maintain registers containing the names of children employed, ages, salaries, commencement dates of employment, assigned duties, working hours, duration of breaks and annual leave;
  - (b) display in a highly visible place, the terms and conditions of the employment;
  - (c) inform employees who are children of all professional hazards and precautionary measures to protect them from accidents and profession-induced illness.
- (9) Any person or organization which has a reasonable suspicion that a child is engaged in an industrial undertaking, shall report such an activity to the Ministry of Labour, Public Service and Human Resource Development.
- (10) The Ministry of Labour, Public Service and Human Resource Development shall investigate cases of a child engaged in industrial undertakings and take appropriate action.
- (11) The Ministry of Labour, Public Service and Human Resource Development shall in the course of investigation of cases under subsection (9), above, request medical officers, Social Workers and other professionals to provide any expert information necessary.

*Rights of the Child in Special Circumstances***26. Rights of the Female Child.**

- (1) Every female child has a right to be protected from sexual abuse and exploitation and gender-based violence, including rape, incest, early and forced marriage, female circumcision and female genital mutilation.
- (2) Every female child has the following rights—
  - (a) the right of equal participation on a non-discriminatory basis as partners with a male child in social, economic and political activities;
  - (b) equal rights to succession and inheritance to property and reasonable provision out of the estate of a deceased parent without discrimination; and
  - (c) the right to develop their full potential and skills through equal access to education and training
- (3) No female child shall be expelled from school due to pregnancy or motherhood or hindered from continuing her education after one year of lactation.

**27. Rights of Children with Disabilities.**

Every child with a disability has the right to free and special care, medical treatment, rehabilitation, to found a family, sports and recreation, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest possible degree of self-reliance and social integration.

**28. Minority Rights.**

Every child whose origin is from an ethnic, religious and cultural minority has the right to freely enjoy and develop his or her culture, belief, use his or her language and observe his or her religion.



**29. Rights of a Refugee and a Displaced Child.**

- (1) A refugee and a displaced child is entitled to the protection of his or her rights, and the Government shall ensure that he or she has access to assistance in the provision of basic services, and in tracing his or her parents in a manner consistent with his or her dignity and without discrimination.
- (2) Where no parents, legal guardians or close relatives can be found, every refugee and displaced child shall be accorded the same care and protection as any other child permanently or temporarily deprived of his or her family environment for any reason.

**30. Penalties of Infringing any of the Rights of a Child.**

Notwithstanding penalties contained in any other law, anyone who willfully or as a result of culpable negligence infringes any right of a child commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding seven years or with a fine or with both, and may be liable to pay such compensation to the child as the Court deems fit and just.

**31. The Child and Armed Conflict.**

- (1) The minimum age for conscription or voluntary recruitment into armed forces or groups shall be eighteen years.
- (2) The Government shall ensure that no child shall be used or recruited to engage in any military or paramilitary activities, whether armed or un-armed, including, but not limited to work as sentries, informants, agents or spies, cooks, in transport, as labourers, for sexual purposes, or any other forms of work that do not serve the interests of the child.

- (3) The Government shall provide protection, rehabilitation, care, recovery and reintegration into normal social life for children formerly associated with armed conflict including children from regular and other armed groups and children victims of armed conflict, having due regard to the special needs of girls and their dependents.
- (4) Where armed conflict occurs, the Government shall ensure that children's rights are protected in accordance with the provisions of this Act and international humanitarian law.

### **32. Penalties for Recruitment of a Child into an Armed Force.**

Any person involved in the recruitment of a child into an armed force or use of a child in any activity set forth above, commits an offence and shall upon conviction, be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both.

### **33. Rights of a Child in an Institution.**

- (1) Any child placed in any institution for the purposes of care and protection or mental treatment has the right to periodic review of the treatment provided as well as all the circumstances relevant to his or her placement.
- (2) The Court, on the application of a Social Worker, the person in charge of the institution, the parent or guardian of a child, the child, or any person who has information, may amend, vary or revoke any order made under this Act—
  - (a) if it is satisfied that it is in the best interest of the child to do so; or
  - (b) upon proof that the circumstances under which the order was made have since changed after the making of the order.

*Duty to Report and Penalties***34. Duty to Report Infringement of a Child's Right.**

- (1) Subject to subsection (2), below, it shall be the general duty of any member of the community, who reasonably suspects that a child's rights have been, or are being, or likely to be infringed upon, to report the matter to a Chief or Social Worker, a Local Government official, the police, or the Public Attorney who shall promptly investigate the case and take appropriate action, including submitting it to the Court for redress on behalf of the child.
- (2) The Court may hear and determine an application made by any person in pursuance of subsection (1), above, and may impose penalties or sanctions and make such orders and give such directives, as it may consider appropriate for the purpose of enforcing or securing a child's rights.

**35. Penalties for Failure to Report the Infringement of a Child Right.**

Any member of the community, who fails to comply with section 34 of this Act, commits an offence and shall, on conviction be sentenced to imprisonment for a term not exceeding six months or with fine or with both.

*Duties of the Government***36. Recognition of the Child Rights Enshrined in this Act.**

- (1) All levels of Government shall recognize, respect and ensure the child's rights enshrined in this Act.
- (2) All levels of Government shall engage all sectors of society and undertake all necessary legislative, administrative and other measures to expeditiously; implement the rights in this Act and shall, in particular undertake to—

- (a) protect a child from any form of discrimination and take positive action to promote their rights;
- (b) promote the welfare of families and protect the family as the fundamental unit of society;
- (c) provide appropriate assistance for raising a child when parents, or others charged with that responsibility, fail to do so;
- (d) promote recreational and sports facilities for a child to aid and to develop his or her full potential;
- (e) ensure child's survival and development through access to primary health care facilities and measures to reduce infant mortality, as well as free and compulsory primary education;
- (f) promote the development of education at all levels;
- (g) take action to raise awareness on vulnerable children and those children in need of special care and protection;
- (h) take action to raise awareness on the rights of the female child and those children with disabilities, including on their equality, needs, potential and contributions to the society;
- (i) ensure the provision of community-based rehabilitation and support devices, equal education opportunities in an integrated setting, full participation in family life and equal opportunities in recreation and sports for children with disabilities;
- (j) ensure the accessibility of a child to information and materials from a diversity of sources, encourage the media to disseminate information which is of social and cultural benefit to the child, and take steps to protect him or her from harmful information and material;
- (k) protect the child from all forms of exploitation, abuse and neglect by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of such exploitation and abuse and the treatment of the victims;

- (l) take concrete measures to prevent the sale, trafficking and abduction of children and abolish slavery and servitude;
  - (m) ensure that children do not take part in hostilities, are not recruited into armed forces and provide rehabilitation, protection and care for child victims of armed conflict;
  - (n) ensure that corporal punishment in schools and institutions is prohibited;
  - (o) ensure that child marriage and other harmful cultural and social practices are abolished;
  - (p) provide special protection for children deprived of a family environment and ensure that appropriate alternative family care or as a last resort, institutional placement, is available in such cases;
  - (q) ensure that all activities of the private sector respect the rights of a child;
  - (r) regulate child employment;
  - (s) take concrete measures to ensure that a child is protected from land-mines and unexploded ordinances;
  - (t) disseminate information on a child's rights within Southern Sudan; and
  - (u) provide effective remedies to redress violations of the rights in this Act, including through access to child-friendly, independent complaints procedures and competent Courts.
- (3) Relevant sectoral laws, budgets and policies, including education, health and justice, shall reflect the Government's commitment to a child's rights.

### **37. The Duties and Responsibilities of a Child.**

Every child, subject to his or her age and ability, has a duty and responsibility to—

- (a) work for the cohesion of the family;
- (b) respect his or her parents, guardians, superiors and elders and to assist them in case of need;
- (c) serve the community by placing his or her physical and intellectual abilities at its service;
- (d) preserve and strengthen social and national solidarity; and
- (e) uphold the positive values of his or her community and maintain good and cordial relations with other members of the community.

### CHAPTER III

#### RIGHTS AND DUTIES OF PARENTS

##### *Parental Responsibility*

#### **38. Rights of Parents.**

- (1) In order to enable him or her to fulfill his or her parental responsibilities with respect to his or her child, a parent has the following rights—
  - (a) to render parental guidance on religious, moral, social, cultural and other values in a manner appropriate to the stage of development of the child;
  - (b) to determine the name of a child;
  - (c) to appoint a guardian in respect of a child;
  - (d) to receive, recover, administer and otherwise deal with the property of a child for the benefit and in the best interests of the child;
  - (e) to have the child living with him or her or otherwise to regulate the child's residence;
  - (f) to arrange or restrict the immigration of the child outside Southern Sudan or Sudan; and
  - (g) upon the death of a child arrange for his or her burial or cremation.

- (2) The fact that a person has or does not have parental responsibility, shall not affect any obligation which such person may have in relation to the child (such as statutory duty to maintain the child); or any rights which in the event of the child's death, such person or any other person may have in relation to the child's property.
- (3) A person who does not have parental responsibility for a particular child but has care and control of the child may subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

### **39. Duties of Parents.**

- (1) Parents have duties and responsibilities, whether imposed by law or customs to each of their children without discrimination which include the responsibility to—
  - (a) register their children at birth;
  - (b) protect their children from neglect, discrimination, violence, abuse, exploitation, exposure to physical and moral hazards and oppression;
  - (c) provide good guidance, care, assistance and maintenance to ensure survival and development;
  - (d) ensure that their children receive full time education suitable to their ages, ability and aptitude; and
  - (e) to any special education needs they may have by regular attendance at school, ensuring that during any absence, alternative care is to be provided by a competent person.
- (2) A person who has a parental responsibility for a child at any time shall not cease to have that responsibility for the child, except as otherwise provided in this Act.

**40. Parental Responsibility.**

- (1) Where a child's father and mother were married to each other at the time of his or her birth, both parents shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.
- (2) Where a child's father and mother were not married to each other at the time of the child's birth, but have subsequently married each other, they shall both have a parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.
- (3) Where a child's father and mother were not married to each other at the time of the child's birth and have not subsequently married each other, the mother shall have parental responsibility of the child at the first instance. The father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Act.

**41. Acquisition of Parental Rights by Natural Father not Married to the Mother.**

Where a child's father and mother were not married to each other at the time of his birth, the Court may, on the application of the father, order that he shall have parental rights over the child; provided that, an application for securing parental right is made before the child reaches seven years of age, unless it is deemed in the best interests of the child to grant custody to the father after the child has attained seven years of age.



**42. Parental Responsibility Upon Death of Parents.**

- (1) Where both the mother and father of a child are deceased, parental responsibility shall be assumed by—
  - (a) relatives of the child;
  - (b) a guardian appointed by either of the parents; or
  - (c) a guardian appointed by the Court.
  
- (2) Where the father of the child is deceased, parental responsibility shall be exercised by the mother of the child alone or jointly with her relatives and the relatives of the deceased father, or with a guardian appointed by the father and likewise where the mother of the child is deceased, parental responsibility shall be exercised by the father either alone or jointly with his relatives and the relatives of the deceased mother, or a guardian appointed by the mother unless it is not in the best interest of the child.

**43. Extension of Responsibility beyond Eighteenth Birthday**

- (1) Parental responsibility with respect to a child may be extended by the Court beyond the date of the child's eighteenth birthday. If the Court is satisfied upon application or of its own motion that special circumstances exist with regard to the welfare of the child that would necessitate such extension being made, provided that, the order may be applied for after the child's eighteenth birthday.
  
- (2) An application under this section may be made by the parents or relatives of a child, and any person who has parental responsibility for him or her.

*Declaration of Parentage***44. Parentage of a Child.**

- (1) A child either by himself or herself, or with the assistance of a counsel or a relative, may make an application for a declaration of parentage by affirmation or oath.
- (2) An application for a declaration of parentage may be made—
  - (a) during pregnancy;
  - (b) at any time before the child attains eighteen years of age; or
  - (c) within three years after the death of the alleged father or mother.
- (3) With leave of the Court, an application for a declaration of parentage may be made after three years following the death of the alleged father or mother. In exercising its discretion under this section, the Court shall primarily consider—
  - (a) the welfare of the child;
  - (b) the time that the applicant became aware of the identity of the alleged father or mother; and,
  - (c) the conduct of the alleged father or mother where he or she knew of the birth of the child alleged to be his or her child, or
  - (d) his or her conduct towards any other person having the custody or control of the child.
- (4) An application for a declaration of parentage may be made whether the child or the alleged father or mother is in or outside Southern Sudan.

**45. Legal Procedure for Declaration of Parentage.**

- (1) The Court to whom an application is lodged for declaration of parentage shall issue summons to the person alleged to be the father or mother of the child to appear before the Court on a day named in the summons.

- (2) On the appearance of the person summoned, or on proof that the summons was duly served on him or her at his or her place of residence, seven days or more before the hearing, the Court shall hear the evidence of the applicant and shall also hear any evidence tendered by or on behalf of the alleged father or mother.
- (3) If the evidence of the applicant is corroborated by additional evidence, which is to the satisfaction of the Court, the Court may decide that the person summoned, should be the mother or father of the child as the case may be.
- (4) In proceedings for the declaration of parentage, the Court may, on application of any party to the proceedings or on its own motion, make an order, upon such terms as may be just, requiring any person to give any evidence which may be material to the question, including a blood sample for the purpose of blood tests (DNA).

**46. Burden of Proof of Paternity.**

- (1) The burden to prove parentage shall lie on the person alleging it.
- (2) The Court may direct blood tests (DNA) in any civil proceedings in which the paternity of any person is to be determined.
- (3) Any person sought to be tested must be made a party to the proceedings.

**47. Presumption of Paternity.**

Where a child's father and mother were not married to each other at the time of his or her birth, but have subsequent to such birth cohabited for a period or periods amounting to not less than six months, or where the father has acknowledged paternity of the child or has maintained the child there shall be a rebuttable presumption of paternity.

**48. Proof of Parentage from Register of Births.**

- (1) Where the name of the father or mother of a child is entered in the register of births in relation to a child, a certified copy of that entry shall be *prima facie* evidence that the person named as the father is the father and that the person named as the mother is the mother of the child.
- (2) An instrument signed by the mother of a child and by any person acknowledging that he is the father of the child, and any instrument signed by the father of a child and by any person acknowledging that she is the mother of the child shall—
  - (a) if the instrument is executed as a deed; or
  - (b) if the instrument is signed jointly or severally by each of those persons in the presence of a witness, shall be *prima facie* evidence that the person named as the father is the father of the child or that the person named as the mother is the mother of the child.

**49. Maintenance as an Evidence of Parentage.**

An order of a Court for maintenance made against a person under any written law shall be *prima facie* evidence of parentage in subsequent proceedings, whether or not between the same parties.

**50. Declaration of Parentage by the Court.**

- (1) A declaration of parentage by the Court under this chapter shall for all purposes be conclusive proof of parentage.
- (2) An order made by a competent Court outside Southern Sudan in any affiliation or similar proceedings declaring or having the effect of declaring a person to be the father of a child or the mother of a child shall be *prima facie* evidence that the person is the father of that child or is the mother of the child.

**51. A Written or Oral Will or Statement as a Reference of Parentage.**

Any reference, whether express or implied contained in a will, written or oral, of any person to the effect that a child is his or her son or daughter, shall be *prima facie* evidence that the person mentioned in that order is the father of the child or the mother of the child.

**52. Statement Written or oral by the deceased Person.**

- (1) A statement, written or oral, made by a deceased person, confided to a person in a position of authority, indicating that the deceased was the father or mother of a particular child, is *prima facie* evidence that the deceased person was the father or the mother of the child.
- (2) For the purposes of this section a “**person in a position of authority**” means a person holding a position in society carrying responsibility in matters of succession, administration of justice or law enforcement and includes a Minister of religion and any person placed in such a position of interest in the welfare of the child either because of a family relationship or by appointment as a guardian or foster parent by the deceased.

**53. Effect of Declaration of Parentage.**

- (1) A declaration of parentage by a Court shall have the effect of establishing a blood relationship of father and child or of mother and child and accordingly, the child shall be in the same legal position as a child actually born in lawful wedlock towards the father or the mother.
- (2) A declaration of parentage shall not, by itself, confer rights of custody of the child upon the declared father or mother.

**54. Custody of Children.**

- (1) The Court may, in the same proceedings for the declaration of parentage, grant custody of the child to an applicant on such conditions as it may deem fit.
- (2) The Court may at any time revoke the grant of custody to one person and make the grant to another person, institution or organization.
- (3) In reaching its decision under subsections (1) or (2), above, the Court shall primarily consider the welfare of the child.

**55. Appeals and Revocations.**

- (1) A party to proceedings for a declaration of parentage may appeal against the findings of a Court and the appropriate appellate Court may confirm or revoke the declaration or make any other lawful order that it thinks fit.
- (2) A declaration of parentage may be revoked for sufficient cause by the Court on the application of the person against whom it was made.

**56. Ill-Treatment, Neglect, Abandonment or Exposure of Children to Abuse.**

- (1) A father, mother or a person who takes care of a child under the age of twelve years, who exposes such child to danger, or leaves such child in any place with the intention of wholly abandoning him or her, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with a fine or with both.
- (2) A parent or guardian or other person legally obliged to maintain a child shall be deemed to have neglected the child in a manner likely to cause the child physical, psychological or emotional injury if, being able to so provide from his or her own needs, he or she fails to provide adequate food, clothing, medical treatment, lodging, care, guidance and protection to the child.

**57. Cruelty to Children.**

- (1) Whoever having the charge or care of a child of under eighteen years of age or being in a position of authority over him or her willfully ill treats or neglects him in such a way as to cause him unnecessary suffering, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding three years or with fine or with both.
- (2) In the event that the ill-treatment or neglect results in serious injury to the health of such a child, the offender shall be punished with imprisonment for a term not exceeding five years or with a fine or with both.

**58. Concealment of Birth by Secret Disposal of Child or Dead Body.**

Whoever, by secretly burying or otherwise disposing of the child or dead body of a child whether such child dies before or after or during its birth, intentionally conceals or attempts to conceal the birth of such child, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding five years or with a fine or with both.

**59. Child not to be Used for Begging.**

Any person who causes or procures any child or, being a person having the care of a child, allows that child to be on any street, premises or place for the purposes of begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale; or, carrying out illegal hawking, lotteries, gambling or other illegal activities detrimental to the health, welfare and educational advancement of the child, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding three months, or with a fine or with both.

**CHAPTER IV**  
**GUARDIANSHIP**

**60. The Meaning of Guardianship.**

For the purposes of this Act the term “guardian” means a person appointed by will or deed or customarily by a parent of a child, or by an order of a Court to assume parental responsibility for a child upon the death of a parent, either alone or in collaboration with a surviving parent of the child.

**61. Appointment of Guardian.**

Without prejudice to the provisions of section 60 above, a guardian may be appointed in respect of the person, or the estate of a child or both.

**62. Powers and Duties of an Appointed Guardian.**

- (1) Where a guardian is appointed only in respect of the estate of a child, he or she needs not have legal custody of the child.
- (2) A guardian of the child’s estate shall have the following powers and duties—
  - (a) the powers and duties to administer the estate of the child and in particular to receive and recover and invest the property of the child for his or her benefit;
  - (b) the duty to take all reasonable care to safeguard the estate of the child from loss or damage;
  - (c) the duty to produce and avail accounts in respect of the child’s estate to the parent or custodian of the child or to such other person as a Court may direct, or to the Court, as the case may be, on every anniversary of the date of his or her appointment; and
  - (d) to produce any account or inventory in respect of the child’s estate when required to do so by a Court.



**63. Nationality of the Guardian.**

A guardian needs not to be a Southern Sudan citizen or a resident in Southern Sudan.

**64. Appointment of Guardianship by Will or Deed.**

- (1) A guardian shall act jointly in the best interests of a child with a surviving parent of a child as long as that parent remains alive, unless the parent objects to his or her so acting.
- (2) If the surviving parent objects to such guardianship, or if the guardian appointed considers that a parent is unfit to have legal custody of a child, the guardian or parent of the child may apply to a Court which may, acting in the best interests of the child—
  - (a) refuse to make any order in which case the parent shall remain the sole guardian;
  - (b) make an order that the guardian shall act jointly with the parent; or
  - (c) make an order that the guardian shall be the sole guardian of the child, in which case the Court shall make such order regarding the custody of the child and a maintenance order may be issued against the parent of the child.

**65. Appointment of Guardians by both Parents.**

Where guardians are appointed by both parents, the guardians shall, after the death of the surviving parent, act jointly, provided that—

- (a) the Court shall not appoint a guardian sole guardian for a child if he or she is not a relative of the child, unless exceptional circumstances exist with regard to the welfare of the child; and

- (b) if a guardian has been appointed by a Court to act jointly with a surviving parent, he or she shall continue to act as guardian after the death of that parent, but if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the parent.

**66. Revocation of the Appointment of the Guardian.**

- (1) Any appointment of a guardian may be revoked at any time by an order of a Court on the application of—
  - (a) the child concerned;
  - (b) a parent or guardian;
  - (c) a relative; or
  - (d) if the Court considers that it should be brought to an end even though no application has been made.
- (2) Where a Court revokes an appointment of a guardian, the Court shall, prior to doing so, ascertain who shall have guardianship of a child.
- (3) The appointment of a guardian shall cease upon a child attaining the age of eighteen years, unless exceptional circumstances exist that require a Court to make an order that the appointment be extended.

**67. Extension of the Appointment of the Guardian.**

- (1) Where an order is made that the appointment of a guardian shall be extended after a child's eighteenth birthday, it shall be made on an application by the child, parent or guardian of the child, or a relative of the child.
- (2) No such order shall be made without the consent of the child, if the child is capable of giving such consent, and of the guardian whose appointment is required to be extended.

**68. Procedure where Disagreement Affects the Child's Welfare.**

Where a surviving parent and a guardian act jointly and they are unable to agree on any question affecting the welfare of a child, either of them may apply to the Court for its direction, and the Court may make orders regarding the matters of difference in accordance with the best interests of the child.

**69. Penalty for Negligently or Intentionally Causing Loss or Damage to a Child's Estate.**

- (1) Where a guardian of the estate of a child, whether or not that guardian is also a guardian of the person of the child, neglects to recover or safeguard or misplaces any asset forming part of the estate of a child, or subjects the estate to loss or damage, the guardian shall, whether or not proved guilty of an offence on that account, be liable for compensation of such estate.
- (2) A guardian is liable under this section if he engages in the following types of activities—
  - (a) willfully or recklessly neglects to receive and safeguard any asset forming part of the estate, misapplies any such asset or subjects any such asset to loss, waste or damage;
  - (b) willfully fails to produce to a cCourt, or the parent or guardian of the child any requested account or inventory; or
  - (c) willfully or recklessly produces false inventory or account.
- (3) A guardian who contravenes this section commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding ten years or with fine or with both.

**CHAPTER V****FOSTER-CARE AND ADOPTION***General***70. The Duty of the Government to a Parentless Child.**

- (1) The Government shall ensure that any child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment, shall be provided with alternative family care in his or her community, including care by relatives, a foster placement or an adoptive family.
- (2) Where possible, a child being adopted or placed in foster-care shall not be separated from his or her sibling(s).
- (3) Where possible a permanent solution shall be found for children who fall under subsection (1), above.

*Foster-Care***71. Foster Family Care.**

For the purposes of this Act, “foster parent” means a person not being the natural parent of a child who willingly assumes parental responsibility of such child by way of a foster-care order or application to an authorized person.

**72. Application to Foster a Child.**

An application to provide foster care to a child shall be made to an authorized person, except that a relative of a child may foster the child without first applying the provisions of this section.

**73. Persons Entitled to be Appointed as Foster Parents.**

- (1) Any of the following persons may apply to be appointed as a foster parent—

- (a) spouses of a marriage;
  - (b) a single woman not under the age of twenty-five years;  
and
  - (c) a single man not under the age of twenty-five years.
- (2) No single man may qualify to foster a female child and no single woman may qualify to foster a male child, unless an authorized person or Court is satisfied that special circumstances prevail.
- (3) A foster placement order shall not be made if the applicant or, in the case of joint applicants, both or either of them—
- (a) is not of sound mind;
  - (b) has been charged and convicted by a Court of a criminal offence; or
  - (c) is homosexual or lesbian.

**74. Responsibility of a Foster Parent.**

A foster parent under whose care a child is placed shall, while a child remains in his or her care, have the same responsibilities in respect of the child as if he or she were a natural parent of the child.

**75. Extension of the Care of a Foster Family.**

Foster family care, though temporary in nature, may extend, if necessary, until adulthood but should not preclude either prior return to a child's own parents or adoption.

**76. Parental Involvement in all Matters of Foster Family Care.**

In all matters of foster family care, the prospective foster parents and as appropriate, the child and his or her own parents shall be properly involved.

**77. Supervision of the Care of a Foster Parent.**

- (1) When a child has been placed in the care of a foster parent, it shall be the duty of an authorized person to supervise and assess the condition of the child periodically and to take such steps as shall be necessary to safeguard the welfare and the best interests of the child.
- (2) An authorized person shall keep a record of the following details, if known—
  - (a) information on the identity, sex, age and place of birth of a child;
  - (b) information on the location of the child's family, chief and tribe before and after the foster placement;
  - (c) reasons for the foster care placement and the authority therefore; and
  - (d) the date and duration of the foster care placement.

**78. Enforcement of the Payment of Maintenance for the Child's Care.**

On the request of a foster parent, or parent or guardian of a child, an agreement may be reached between a foster parent and a parent or guardian providing for the maintenance payable for the child's care, which may be enforced by a Court.

**79. Prohibition to Remove a Child from Jurisdiction of Southern Sudan without Leave**

- (1) A foster parent shall not remove a child from the jurisdiction of Southern Sudan without the leave of a Court or authorized person.
- (2) Where such leave is granted, a Court or an authorized person may impose such conditions and restrictions as it shall deem appropriate having regard to the best interests of the child.

**80. Making and Revocation of the Foster Care Placement.**

- (1) Foster-care placements shall be made in accordance with the rules established by an authorized person which may be amended in accordance with the law.
- (2) A foster-care order may, on application, be revoked by a Court if the order is proved not to be in the best interests of a child and the Court has determined who shall have legal custody of the child.

**81. Termination of Foster Placement Provisions.**

The provisions of foster placements shall cease to have effect in relation to a child—

- (a) upon the expiry of the period specified by the authorized person or Court for the duration of the foster placement;
- (b) upon the child attaining the age of eighteen years, unless otherwise directed by an authorized person or Court; and
- (c) upon termination of the placement in the best interests of the child.

**82. Application to extend the appointment of a Foster Parent.**

- (1) Where an order is made that the appointment of a foster parent shall be extended after a child's eighteenth birthday, it shall be made on an application by the child, a parent or guardian of the child, or a relative of the child.
- (2) No order shall be made under subsection (1), above, without the consent of the child, if he or she is capable of giving such consent, and of the foster-parent whose appointment is required to be extended.

*Adoption***83. Adoption and Adoption Order.**

- (1) An application for an adoption order shall be made to a Court, which may, subject to the provisions of this Act, grant the application; provided that, no arrangement shall be commenced for the adoption of a child unless the child has been declared available for adoption by an authorized person.
- (2) An adoption order shall include the following particulars if known—
  - (a) the full name, sex, date and place of birth of the child;
  - (b) information on the location of the child's family, Chief and tribe before the adoption;
  - (c) the full name(s), age(s), location, nationality and occupation of the adopting parent(s), and if the adopting parents are Southern Sudanese, their Chief and tribe;
  - (d) the reasons for the adoption order and the authority thereof; and
  - (e) the date of the adoption order, unless otherwise directed by a High Court.
- (3) Any child who is residing within Southern Sudan may be adopted, whether or not the child is a Sudanese citizen or was born in Southern Sudan.
- (4) An adoption order may be granted to a sole applicant or jointly to spouses where the applicant or at least one of the joint applicants has attained the age of twenty five years and the applicant is at least twenty-one years older than the child and the Court is satisfied that he or she has sufficient means of livelihood to support a child.
- (5) Unless the Court is satisfied that there are special circumstances that justify the making of such an adoption order, an adoption order shall not be made in favour of—



- (a) a sole male applicant in respect of a female child, and
  - (b) a sole female applicant in respect of a male child.
- (6) An adoption order shall not be made if the applicant or, in the case of joint applicants, both or either of them—
- (a) is not of sound mind;
  - (b) has been charged and convicted by a Court of a criminal offence; or
  - (c) is homosexual or lesbian.

**84. Assistance of a Social Worker to Court in respect of Adoption.**

- (1) A Social Worker shall be required to submit a report to assist a Court in considering an application for an adoption order and the Court may, in addition, require some other person or a local authority to make a report in respect of an application.
- (2) The report shall include information, where known, on the identity, adoptability, background, social environment, family and medical history of the child and any special needs of the child.
- (3) Adequate counseling shall be given by an authorized person to a child's natural parents, prospective adopting parents and, as appropriate, the child.

**85. An Adoption Order requires written Consent.**

- (1) The following written consents shall be required by a Court for an adoption order to be granted—
  - (a) the consent of the mother of the child after the birth of the child;
  - (b) the consent of the father or guardians of the child or any other person who is responsible by virtue of any order or agreement to contribute to the maintenance of the child;

- (c) where it appears to the Court that any person who is not the parent of the child has any rights or obligations in respect of the child under customary law or otherwise, the Court may require the consent of that person;
  - (d) in the case of a child born out of wedlock whose mother is herself a child, with the consent of the parents or guardians of the mother of the child;
  - (e) on the application of one of the spouses, with the consent of the other spouse; and
  - (f) where an application for an adoption order is made in respect of a child who has attained the age of ten years, the consent of the child shall be sought and if the child is below ten years, his or her opinion shall be taken into consideration.
- (2) A Court may dispense with a required consent if satisfied that a spouse or guardian cannot be found, is incapable of giving consent, that the person in question has neglected or persistently ill-treated a child, or that the consent is unreasonably withheld.

**86. The Required Conditions for Making an Adoption Order.**

- (1) A Court shall, before making an adoption order, be fully satisfied that every person whose consent is required and is not dispensed with, has consented and understands the nature and effects of the adoption.
- (2) The order, if made, shall be in the best interest of the child, and due consideration shall be given to the wishes of the child having regard to his or her age and understanding.
- (3) The applicant has not received or agreed to receive, and that no person has made or agreed to make to the applicant, any payment or other reward in consideration of the adoption.

- (4) The applicant or any person on behalf of the applicant has not paid or agreed to pay money or anything in place of money to the parents, guardians or any other person in charge of the child in consideration of the adoption of the child.

**87. The Consequence of Claiming back by Parents or Guardians after the Adoption Order is Made.**

Where an application for adoption is made in respect of a child who has been abandoned and his or her parents or guardians cannot be traced for an extended period, the parents or guardians shall have no power to claim back the child from the adoptive parents.

**88. Effects of an Adoption Order.**

Upon an adoption order having been made—

- (a) parental responsibility of natural parents of a child, or of any other person connected with the child ceases;
- (b) the adopter assumes the parental responsibility for the child, as if the child was born by the adopter; and,
- (c) the adopted child becomes a member of the adopter's tribe, clan lineage or other group, and as such has all the rights to the family rituals in accordance with customary law.

**89. The Revocation of the Consent of a Child's Natural Parents.**

- (1) The consent of a child's natural parents may be revoked at any time before the pronouncement of an adoption order.
- (2) While an application for an adoption order is pending before the Court, a parent who has given his or her consent to the adoption is not entitled, except with the leave of the Court, to remove the child from the care and custody of an applicant.

- (3) A Court may refuse to grant leave to remove a child from the care and custody of the applicant under subsection (2), above, if it considers it harmful to the welfare of the child.

**90. Circumstances in Which a Foreigner May Adopt a Southern Sudanese Child.**

- (1) In exceptional circumstances a person who is not Southern Sudanese may on application to the High Court adopt a Southern Sudanese child, if he or she—
  - (a) has established residence in Southern Sudan for a minimum of three years;
  - (b) has fostered the child for at least one year;
  - (c) does not have a criminal record;
  - (d) has an accredited recommendation concerning his or her suitability to adopt a child from his or her country's authorized person;
  - (e) has satisfied the High Court that his or her country of origin will respect and recognize the adoption order; and
  - (f) has satisfied the High Court that the adopted child will be authorized to enter and reside permanently in that country.
- (2) A High Court may, in an adoption order, include additional terms and conditions as it deems fit.

**91. Appeal Against an Adoption Order.**

- (1) A party to the proceedings for an adoption order may appeal against the findings of the Court.
- (2) An adoption order may, on application, be revoked by an appellate Court, if the adoption is proved not to be in the best interests of a child and the Court has determined who shall have legal custody of the child.

**92. An Adopted Child has the Right to Inherit as a Natural Child.**

- (1) Where an adopter dies intestate, his or her property shall devolve in all respects as if the adopted child were the natural child of the adopter.
- (2) If it appears to a High Court on a claim made, that the disposition of property devolving on intestacy has been exercised unfairly against an adopted child, the Court may order such provision as it thinks equitable to be made for him or her out of the property.
- (3) In any testamentary disposition of property, whether or not in writing, made after the date of an adoption order, any reference, whether expressed or implied, to the child or children of the adopter, shall be construed as including a reference to the adopted child.
- (4) Where any disposition made by the adopter prior to the adoption order makes no provision for the adopted child, the adopted child may apply to a High Court to vary the disposition by ordering such provision as the Court thinks equitable to be made for him or her.

**93. An Adopted Child is not Entitled to Inherit from Natural Parents.**

An adopted person shall not be entitled to inherit from or through his or her natural parents if they die intestate.

**94. Maintaining of Adopted Child's Register.**

- (1) An Adopted Child Register shall be kept and maintained by an authorized person.
- (2) An authorized person shall make rules regarding all matters under this section and the procedure to be followed by the Courts in adoption proceedings.

**95. Adopted Child shall be Informed That he or she is Adopted.**

- (1) It is the duty of the adopting parent(s) to inform a child that he or she is adopted as soon as the child is of an age of understanding.
- (2) Where a child has attained the age of eighteen years or, at an earlier age, on the child's own request or at the discretion of the adopter, the child shall be informed by the adopting parent(s) of the identity of his or her natural parents unless it is not in the child's best interest to do so.

**CHAPTER VI****CUSTODY AND MAINTENANCE***Custody***96. Persons Entitled to be Granted Custody.**

A Court may grant custody of a child to the following person(s)—

- (a) a parent;
- (b) a guardian;
- (c) a member of the child's extended family;
- (d) any person who, while not falling within (a), (b) or (c) above, can show cause why an order shall not be made awarding that person custody of a child.

**97. Issues to be Considered before Granting Custody.**

- (1) In determining whether or not a custody order should be made in favour of an applicant, the best interest of the child shall be the paramount consideration of the Court.
- (2) In making its decision, the Court shall also consider—
  - (a) the wishes of the child;
  - (b) the sex and age of the child;

- (c) the applicant's ability and willingness to care and maintain the child;
  - (d) the ascertainable wishes of the extended family of the child;
  - (e) the ascertainable wishes of any foster parent, or any person who has had care of the child and under whom the child has made home in the previous three years preceding the application;
  - (f) the customs and religion of the community to which the child belongs;
  - (g) whether any judicial order has been made in relation to the child and whether that order remains in force; and
  - (h) the circumstances of any sibling of the child concerned, and of any other children of the home.
- (3) No agreement made between parents of a child, shall be held to be invalid by reason only of its providing that the father shall give custody to the mother.

**98. Directives Given by a Court as to rights of Contact and Maintenance.**

Whenever a Court makes a custody order with respect to a child it shall, in addition, give such directives as to rights of contact with the child, and with regard to the maintenance of the child as it may deem it fit and necessary.

**99. Loss of Custody in Consequence of Willfully Neglecting the Child.**

- (1) Where a Court is satisfied that a parent who has custody of a child is willfully neglecting or mistreating the child, that parent shall lose custody.
- (2) Where a parent or guardian is deemed unfit by the Court to have legal custody of a child, that parent shall not, upon the death of the other parent, be entitled to legal custody of the child except with leave of the Court.

**100. Custody Given to one Party of a Marriage.**

- (1) Where a custody order is made giving custody to one party to a marriage, or in the case of a child born out of wedlock to one of the parents, the Court may order that the person not awarded custody, shall nevertheless have all or any rights and duties in relation to the child, other than the right of actual custody, jointly with the person who is given custody of the child.
- (2) Any order in relation to contact with, or maintenance of, a child who is the subject of a custody order, shall not cease to have effect on the revocation of a custody order, unless otherwise directed by the Court.

**101. Settlement of Disagreements between Persons having Joint Custody.**

Where two or more persons have joint custody of a child, and cannot agree on its exercise or performance, either of them may apply to a Court for its directives, and the Court may make orders regarding the matters of difference, in accordance with the best interests of the child.

**102. Access to Custody and Guardianship of Children Born out of Wedlock by Natural Fathers.**

- (1) A Court may, on application by the natural father of a child born out of wedlock, make an order giving the natural father access, rights to custody or guardianship of the child on such conditions as the Court deems it appropriate.
- (2) Application referred to in subsection (1), above, shall not be granted, unless the Court is satisfied that it is in the best interest of the child



**103. Interim Custody Order.**

A Court shall have power to make interim custody orders and may from time to time review, suspend, revoke or vary such orders.

**104. Revocation of Custody Order.**

- (1) A custody order may, on application, be revoked by a Court if the order is proved not to be in the best interests of the child and the Court has determined who shall have legal custody of the child.
- (2) The custodian of a child may apply to the Court for the revocation of any order made with regard to contact with, or maintenance of the child.

**105. Ending and Extension of Custody.**

- (1) A custody order made in respect of a child, and any order in respect of contact with or maintenance of a child, who is the subject of a custody order, shall cease to have effect when the child attains eighteen years of age, or unless otherwise directed by the Court.
- (2) Where an order is made that the appointment of custody shall be extended after a child's eighteenth birthday, it shall be made on an application by a child, a parent or guardian of the child, or a relative of the child.
- (3) No extension of a custody order shall be granted under subsection (1) above, without the consent of the child, if the child is capable of giving such consent, or that of the guardian whose appointment is required to be extended.

**106. Penalty of a Person who Removes a Child from Lawful Custody.**

A person, who removes a child from the lawful custody of another person or institution, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding three years or with fine or with both.

*Maintenance Orders***107. Maintenance Order.**

- (1) Any parent, guardian, foster-parent or any other person who has the care of a child may apply to the Court to determine any matter relating to the maintenance of the child and to have an order made that a parent shall make such periodical or lump sum payment for the maintenance of the child, referred to in this Act as “a maintenance order”.
- (2) A child may make an application for a maintenance order through a relative or a guardian.
- (3) Maintenance shall include the provision of food, clothing, shelter, education and the general welfare of the child.

**108. Application for Maintenance Order.**

- (1) An application for a maintenance order may be made—
  - (a) during a marriage;
  - (b) during or after proceedings for divorce, separation or nullity of marriage;
  - (c) during or after a separation;
  - (d) during or after proceedings for a declaration of parentage;
  - (e) at any time during pregnancy; and
  - (f) at any time before a child attains eighteen years of age.
- (2) Any person who has custody of a child who is the subject of a maintenance order is entitled to receive and administer on behalf of a child the maintenance paid.

**109. Order of Maintenance Payment.**

- (1) A Court may order reasonable maintenance payments to be made by a parent to a child, including a child of the other parent who has been accepted as a child of the family, and

in deciding to make such an order a Court shall have regard to the circumstances of the case and shall be guided by the following—

- (a) the income or earning capacity, property and other financial resources the parties have or are likely to have in the foreseeable future;
  - (b) the financial needs, obligations or responsibilities which each party has or is likely to have in the foreseeable future;
  - (c) the financial needs of the child and the child's current circumstances;
  - (d) the income or earning capacity, if any, property or other financial resources of the child;
  - (e) any physical or mental disabilities, illness or medical condition of the child;
  - (f) the circumstances of the child's siblings; and
  - (g) the liability of any party to maintain other children.
- (2) Upon an application at any time by an applicant for a maintenance order or by the person against whom a maintenance order is made, a Court may make an order either increasing or decreasing the amount of money to be paid.

#### **110. Procedure to Enforce Payment of Maintenance.**

- (1) If at any time after making a maintenance order, the sum due is not paid, the amount may be recovered, as the Court deems appropriate, through the sale or redistribution of the property of the defaulting party.
- (2) An order for maintenance may be made and enforced against the estate of a deceased person who is the parent of a child, regardless of whether born within wedlock or not.

- (3) A Court may order that maintenance money shall be paid into Court and then paid to the applicant or custodian in a manner and subject to any condition as the Court may direct.

**111. Appointment of a fit Person instead of that Person in whose Favour the Order of Maintenance is Made.**

Whenever a maintenance order is made, a Court may at any time, appoint any other person whom it considers fit and responsible to receive and administer any maintenance monies required to be paid, if it becomes aware that the existing person—

- (a) is not a fit or proper person to receive any maintenance funds specified in the order;
- (b) has left the jurisdiction of the Court for an indefinite period;
- (c) is dead, is incapacitated, has become of unsound mind or has been imprisoned; or,
- (d) has misappropriated, misapplied or mismanaged any maintenance monies paid to him for the benefit of the child.

*Note: A Court shall have power to make an interim maintenance order.*

**112. Divorce, Separation or Nullity.**

- (1) In all cases of divorce, separation or nullity, both parents shall continue to be responsible for the maintenance of their child.
- (2) In separation, divorce and nullity cases, there shall be joint consultation between parents in bringing up their child where circumstances permit and wherever possible.

**113. Right of a Parent to Have Contact With the Child.**

- (1) Where a child is in the custody of one parent, the other parent shall have the right to reasonable contact with the child unless it is not in the best interests of the child.

- (2) Where a child is in the custody of a legally appointed guardian or foster parent, both natural parents, shall have the right to reasonable contact with the child, unless it is not in the best interests of the child.

**114. The Right of the Separated Parent to Apply to Court when the Child's Welfare is Affected.**

Where divorced or separated parents of a child are unable to agree on any question affecting the welfare of their child, either of them may apply to a Court for directives, and the Court may make orders regarding matters of difference, in accordance with the best interests of the child.

## CHAPTER VII

### DUTIES OF LOCAL GOVERNMENT

#### *General Support for Children*

**115. Mediation of Local Government on Behalf of Children.**

Government officials shall mediate on behalf of a child in any situation where his or her rights have been infringed and especially in regard to the protection of the child.

**116. The Duty of Government at the County Level.**

- (1) It is the duty of every Local Government at the County level to—
  - (a) safeguard and promote the welfare of children within its locality; and
  - (b) promote the good upbringing of children by their families through the establishment of suitable family-oriented programmes.

- (2) Every Government at any level shall make every effort, including through the media to trace the parents or guardians of any displaced or abandoned child and to return the child to the place where he or she ordinarily resides, unless it is not in the child's best interests to do so.
- (3) Every Government at any level shall provide temporary assistance and accommodation for any child in need of special care and protection within its area of jurisdiction.
- (4) Every Government at any level shall incur expenditure in or about the temporary care of any child in need of special care and protection, including but not limited to food, clothing, accommodation, medical care, education and any other items or services necessary for the well-being of a child, or the return of displaced children to parents or guardians.

**117. Registration of Children in need of particular Material or Assistance.**

Every Government at any level shall keep a register of orphans, child-headed households, disabled and other children in particular need of material and other assistance within each area of jurisdiction and monitor and assist them in order to protect them from abuse and enable them to grow with dignity and develop their potential and self-reliance

*Safeguarding of Property of Orphans by Government Officials*

**118. Duties of the Office of Local Government to Safeguard the Property of an Orphan.**

- (1) It shall be the duty of every Government at any level to safeguard the property of any orphan or child without parental care within its jurisdiction, including through an application to the Court for the appointment of a guardian.

- (2) The power given to Government at any level to protect the property of orphans and children without parental care shall not include any power to dispose of, or distribute the property.
- (3) Any person within the Government at any level who is responsible for safeguarding a child's property, if he or she engages in one or more of the following—
  - (a) willfully or recklessly neglects to receive or safeguard any asset forming part of the estate;
  - (b) misapplies any such asset or subjects any such asset to loss, waste or damage;
  - (c) willfully fails to produce to a Court any requested account or inventory; or
  - (d) willfully or recklessly produces any such inventory or account which is false in any material particular, commits an offence and shall on conviction be sentenced to two years imprisonment or with fine or both.

## CHAPTER VIII

### CARING FOR CHILDREN WRONGFULLY TAKEN

#### *Trafficking and Abduction of a Child*

#### **119. Unlawful Transfer of Possession, Custody or Control of a Child.**

- (1) Any person who takes part in any transaction, the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration, commits the offence of trafficking and shall on conviction, be sentenced to imprisonment for a term not exceeding ten years.

- (2) Any person who without lawful authority or excuse, harbours or has in his or her possession, custody or control of a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any person within or outside Southern Sudan, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding ten years.
- (3) For the purposes of subsection (2) above, if any person harbors or has in his or her possession, custody or control of a child without lawful authority or excuse, the child shall, until the contrary is proved, be presumed to be a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration.

#### **120. Trafficking of Child by False Pretences.**

Any person who by or under any false pretence or representation made, or by fraudulent or deceitful means, used either within or outside Southern Sudan, brings or assists in bringing a child who is not his or hers into Southern Sudan, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding ten years or with fine or with both.

#### **121. Examination of Child and Person in Charge.**

A Social Worker or any person authorized in writing by a Social Worker may require, that a child who has entered or brought into Southern Sudan, or who has been moved into Southern Sudan to be examined at a reasonable time and convenient place. Similarly, any person who appears to have custody or control of that child may also be required to appear before the Social Worker.



**122. Security Required by a Social Worker.**

- (1) A Social Worker shall immediately cause the arrest of any person, and assist the police in investigation, if he or she has reasonable cause to believe that a child—
  - (a) has been brought into Southern Sudan or a different area in Southern Sudan after having been transferred for valuable consideration or by fraud, misrepresentation or any false pretence;
  - (b) has been transferred to the custody or control of any person for valuable consideration either within or outside Southern Sudan; or
  - (c) is being detained against his or her will by person other than his or her parent or guardian.
- (2) The Social Worker shall place such a child in a safe place.

**123. Taking a Child without Appropriate Consent.**

- (1) Any person, parent or guardian who does not have the lawful custody of a child, and takes that child, without appropriate consent, whether within or outside Southern Sudan, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years.
- (2) A person has lawful custody of a child under this section, if he or she has been conferred custody of the child by virtue of any written law, custom or by an order of a Court.
- (3) It shall be a defence under this section if a person takes or sends a child away without the consent of the person having lawful custody of the child, if the person—
  - (a) does it in the belief that the other person consented, or would have consented, if he or she was aware of all the relevant circumstances;

- (b) has taken all reasonable steps to communicate with the other person but has been unable to communicate with him or her;
- (c) has reasonable grounds to believe that the child has been abused, neglected, abandoned or exposed in a manner likely to cause physical, psychological or emotional injury to him or her; or
- (d) the other person has unreasonably refused to consent although he or she was aware of all the relevant circumstances.

**124. Inquiries and Placement of a Child Brought or Acquired under False Pretences.**

- (1) A Social Worker may order a child to be removed to and temporarily placed in a place of safety, if he or she has reasonable cause to believe that the child—
  - (a) has been brought into or is to be sent out of Southern Sudan and the custody of the child has been acquired either after having been procured or by fraud, false representation or false pretence, whether or not for the purpose of prostitution;
  - (b) has been procured either within or outside Southern Sudan for the purpose of being used, trained or disposed of as a prostitute;
  - (c) is being detained against his or her will for the purposes of—
    - (i) prostitution or immoral purposes; or
    - (ii) being sent out of Southern Sudan for the purposes of prostitution or immoral purposes, the Social Worker may order the child to be removed to a place of safety and the child shall be temporarily placed in such place of safety.

- (2) Any child who is temporarily placed in a place of safety under subsection (1) above, shall be brought before a Court within 24 hours, exclusive of the time necessary for the journey from the place where the child was so removed to the Court.
- (3) If it is not possible to bring the child before the Court within the time specified under subsection (2) above, the child shall be placed in a place of safety until such time as is reasonably possible.
- (4) The Court before which a child is brought shall order the child to be detained in a place of safety until such time as an inquiry into the circumstances of the child's case has been completed; and the report of the inquiry has been submitted to the Court by the Social Worker under subsection (5) below.
- (5) The Social Worker shall complete the inquiry and submit the report of the inquiry to the Court within a period not exceeding one month from the date of the admission of the child into the place of safety.
- (6) If after considering the report submitted under subsection (5) above, the Court is satisfied that the child brought before it is in need of protection and rehabilitation, the Court may order the child to be kept in a place of safety for such period not exceeding three years from the date of the order as the Court may in the best interest of the child deem it fit; alternatively the Court may make an order placing the child under supervision of the Social Worker for a period not exceeding three years from the date of the order as the Court may in the best interest of such child deem it fit.
- (7) The order made under subsection (6) may have the effect of extending the period of such placement or supervision, as the case may be, until the date on which the child attains the age of eighteen years.

- (8) If the Court is not satisfied that the child brought before it is in need of protection and rehabilitation, the Court shall order the child to be returned to the care and custody of the parent or guardian.

### **125. Recovery Order.**

- (1) If it appears to the Court that there is a reasonable ground to believe that a child had been taken or sent away without the consent of the person who has lawful custody of the child as prescribed in this Act, the Court may make a recovery order.
- (2) A recovery order may be made by the Court on application being made by or on behalf of any person who has the lawful custody of the child.
- (3) For the purposes of this section, a recovery order may—
  - (a) direct any person who is in a position to do so to bring the child on request to any authorized person;
  - (b) authorize the removal of the child by any authorised person;
  - (c) require any person who has information as to the whereabouts of the child to disclose that information to the authorized person; and, or
  - (d) authorize any police officer to enter into any premises specified in the order and search for the child.
- (4) Any person who intentionally obstructs an authorized person from exercising the power under subsection (1) above, commits an offence and shall on conviction, be sentenced to imprisonment for a term not exceeding ten years.

## CHAPTER IX

## A CHILD IN NEED OF SPECIAL CARE AND PROTECTION

**126. Classification of Children in Need of Special Care and Protection.**

Every child is deemed to be in need of special care and protection, if he or she is or has been, or is likely to be—

- (a) used for illegal activities;
- (b) threatened with, or subjected to, any violence, injury, abuse, negligent treatment or maltreatment prohibited under this Act;
- (c) threatened with, or subjected to, any form of sexual abuse or exploitation prohibited under this Act;
- (d) forced to marry;
- (e) prevented from completing his or her primary education;
- (f) subjected to labour that is prohibited under this Act;
- (g) forced to undergo harmful social or cultural practices that are prohibited under this Act;
- (h) without parents or guardians, is displaced, abandoned, separated or has run away from home;
- (i) without parents or guardians due to the parents' imprisonment;
- (j) uncared for because the parents or guardians do not, or are unable by reason of illness, old age, disability or any other reason, to exercise proper care or guardianship;
- (k) trafficked, abducted or enslaved;
- (l) homeless;
- (m) disabled and or is being confined or detained by another person;
- (n) pregnant, suicidal or rejected by his or her family;
- (o) HIV/AIDS positive, and cannot have access to an appropriate medical care;

- (p) terminally or seriously ill, or whose parent is terminally or seriously ill; or
- (q) any other circumstances prevail that are, or are likely to be, harmful to the child's life, education, health or well-being.

**127. Security of Care and Protection of a Child.**

- (1) A Social Worker, Chief or other authorized person shall, when it appears to be in the best interests of a child, endeavor to establish that the care and protection of the child is being exercised by a parent, guardian or any other person who has parental responsibility for the child.
- (2) Where measures under subsection (1) above, fail, a child in urgent need of special care and protection may be taken to a place of safety within his or her community by a Social Worker or government official in accordance with procedures established for that purpose, where the best substitute care available shall be provided.
- (3) Any child who is taken to a place of safety shall be brought before a Court within twenty four hours; the Court shall hear and determine the application and may impose penalties or sanctions and make such orders and give such directives, as it may consider appropriate for the purpose of providing special care and protection.
- (4) Government authorities, the Ministry of Gender, Social Welfare and Religious Affairs, and where necessary the police, and Public Attorney shall be promptly notified of any case of a child within their jurisdiction being taken to a place of safety under subsection (2) above, and or a Court under subsection (3) above.
- (5) A child in need of special care and protection shall not be housed with child offenders or suspected offenders.

- (6) A child in need of special care and protection shall not be criminalized or subjected to judicial sanctions and shall be protected from harassment and abuse from any person, including the police.

### 128. Judicial Orders

- (1) Persons qualified to apply for a judicial order for the protection of a child include—
  - (a) the child through a parent, relative or guardian;
  - (b) a parent, guardian or custodian of the child;
  - (c) a relative of the child;
  - (d) a Social Worker; or
  - (e) any other authorized person.
- (2) The Court may make any of the following orders if a child is suffering or is likely to suffer significant harm and if the harm, or probability of harm, is attributable to the care given to the child, or likely to be given to the child if the order were not made—
  - (a) a “contact order” which shall require the person with whom the child is residing to allow the child to visit, or to stay periodically with a named person in the order or to allow such person to have contact with the child as may be directed by the Court;
  - (b) a “foster-care order” which shall require a child to reside with and be cared for by a named person, as set out in Chapter V;
  - (c) a “custody order” which shall require a child to be placed in the custody of a named person, as set out in Chapter VI;
  - (d) a “guardianship order” in respect of the child’s person, or estate, or both, as set out in Chapter 1V;

- (e) an “exclusion order” requiring a person who has used violence or threatened to use violence against a child, to depart from the home in which the child is residing or to restrain the person from entering the home or from a specified area in which the home is included, or to restrain any other person from taking the child to the person against whom the child needs protection for such period as the Court may specify;
- (f) a “supervision order” placing a child under the supervision of designated person while leaving the child in the custody of his or her parents or guardians;
- (g) a “child assessment order” requiring a child to be investigated or evaluated by a person appointed by the Court to assist it in determining any matter concerning the welfare and upbringing of the child;
- (h) a “family assistance order” requiring a person appointed by the Court to provide advice, counseling or guidance to a child, parents, guardians, relatives or any person who has care of the child or with whom the child is residing, as the Court may specify;
- (i) a “wardship order” requiring that a child be placed under the temporary protection and custody of the Court;
- (j) a “production order” requiring any person who is harbouring, concealing or otherwise unlawfully detaining a child, or who intends to remove a child from Southern Sudan or from the local limits of the jurisdiction of the Court to disclose any information regarding the child’s whereabouts and/or to produce the child before the Court and/or to restrain the person from removing the child from the jurisdiction of the Court for such period as the Court may specify; and
- (k) a “maintenance order”, as set out in Chapter VI.



**129. Principles Applicable to Court Orders.**

- (1) A Court shall not make an order in response to an application with respect to a child unless it considers that doing so would be better for the child than making no order at all.
- (2) A Court shall not make more than one order in response to an application if to do so would be detrimental to the interests of the child, or if the desired effect of the orders sought by an applicant may be achieved by making only one order.
- (3) A Court may make an order containing directives as to how a judicial order shall be carried out, including by—
  - (a) imposing conditions that must be complied with;
  - (b) defining its duration; and attaching such supplementary; or
  - (c) consequential provisions as the Court may deem appropriate.
- (4) An application for an order under this section may be made separately or as part of any other proceedings under this Act.

**130. Power of Arrest by the Court Pursuant to Contravention of Stipulation Stated in an Order.**

- (1) Where a Court makes an order pursuant to section 129 of this Act, the Court may attach a power of arrest to the order and the person named in the order shall be liable to arrest if he or she contravenes any stipulation or condition contained in the order.
- (2) Any person who contravenes an order made under section 128 paragraphs (e), (h) and (i) of or who obstructs or unlawfully interferes with a person appointed by a Court in the execution of his or her duties under an order made pursuant to provisions of section 128 paragraph (j) commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding five years or with a fine or with both.

- (3) A Court may, at any time, review, vary, suspend or discharge any order made pursuant to section 128 or revive an order after it has been suspended or discharged.
- (4) Any judicial order shall cease to have effect when a child attains eighteen years of age, unless otherwise directed by the Court.

### **131. Charitable Children's Home.**

- (1) Institutional care for a child shall be a measure of last resort, to be used only when a child has no one to take care of him or her, and for the shortest possible period.
- (2) For the purposes of this Act, a "child's home" is any home or institution, either governmental or non-governmental that has been approved by an authorized person to provide substitute family care for a child as follows—
  - (a) it shall provide substitute family care for a child until such time as the parents of the child are able to provide adequate care to meet the child's basic needs;
  - (b) it shall be the responsibility of the staff of a child home to assist a child to become reunited with his or her parents or guardians; and
  - (c) where a child is unable to return to his or her parents or guardians or to go to foster parents, or has no parents, guardians or foster parents, the child shall be encouraged and assisted by the staff of a child home to become independent and self reliant.

### **132. Application for Recognition to Operate a Children's Home.**

Any person or organization wishing to operate a child's home shall apply for recognition with an authorized person; provided that, recognition shall be granted on a one-year basis and may be revoked at any time in accordance with procedures developed by an authorized person.

**133. Registration of Non-Governmental Children's Home.**

- (1) Applications for registration of all non-governmental children's home shall be submitted to the Chief Registrar of Companies, Business Names, Non-Governmental Organizations and Associations at the Ministry of Legal Affairs and Constitutional Development.
- (2) Where recognition of a home has been refused, the home shall be closed down within one week of refusal, and the child residents move to more suitable accommodations.
- (3) An authorised person shall determine the requirements, standards and regulations to be met by all the child homes and shall not register any such place unless and until the child home meets minimum standards with regard to shelter, water, sanitation, nutrition, health, education, quality of care and recreation for children.

**134. Powers of the Authorized Person for Monitoring, Inspection and Supervision.**

- (1) An authorized person shall maintain a directory of all the registered child homes and be responsible for monitoring, inspection and supervision.
- (2) An authorized person shall have the power to convene an inspection committee to investigate any such child home, should the need arise.
- (3) An authorized person shall reserve the right to do regular and on-the-spot inspections of all recognized child homes.

**CHAPTER X****CHILD IN CONFLICT WITH THE LAW***Applicable Principles***135. Objectives of the Juvenile Justice System.**

The main objectives of the juvenile justice system are—

- (a) reformation, social rehabilitation and reintegration of the child, while emphasizing individual accountability for crimes committed; and
- (b) the restoration of harmonious relationships between the child offender and the victim through reconciliation, restitution and compensation.

**136. Purposes of Co-ordination between the Law Enforcement Agencies and the Child.**

- (1) All contacts between law enforcement agencies and a child shall be managed in such a way as to promote the well-being of the child and to avoid harm to him or her.
- (2) Any proceedings involving a child shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express himself or herself freely.
- (3) No child accused of infringing the law shall be removed from parental supervision, either partly or entirely, unless the circumstances of a case make it absolutely necessary.

**137. The Protection of Child Witnesses and Victims.**

Child witnesses and victims shall be afforded protection where necessary, including protection from intimidation.

**138. Minimum Age of Criminal Responsibility.**

- (1) No child under the age of twelve years shall be prosecuted for a criminal offence as it shall be conclusively presumed that he or she is incapable of committing an offence.
- (2) There is a rebuttable presumption that a child who is not less than twelve years, but younger than fourteen years of age is incapable of committing an offence because, the child did not have the capacity to know that the act or omission concerned was wrong.
- (3) Subject to the provision of subsection (2) above, no prosecution for a criminal offence may be instituted against a child between the ages of twelve and fourteen unless a Judge is satisfied that the child possesses the capacity to appreciate the difference between right and wrong and has the ability to act in accordance with that appreciation.
- (4) An inquiry to establish whether a child appreciates the difference between right and wrong and is able to act in accordance with that appreciation, must be conducted by a Judge.
- (5) Subject to the provision of subsection (2), above, it is to be presumed that a child between the ages of twelve and fourteen lacks, the capacity to appreciate the difference between right and wrong, and cannot act in accordance with full appreciation, unless it is proved beyond reasonable doubt that such a child has that appreciation and is able to act in accordance with such appreciation.
- (6) Evidence of the intellectual, emotional, psychological and social development of a child is relevant to any inquiry into whether such a child possesses the capacity to appreciate the difference between right and wrong and has the ability to act in accordance with that appreciation.

- (7) The evidence referred to in subsection (5), above, may be challenged by any person and any evidence in rebuttal may be adduced.

**139. Arrest of a Child.**

- (1) The police shall arrest a child only if there is reasonable suspicion that the child has committed a serious crime and no alternative to arrest can be found.
- (2) The effect of arrest, for the purposes of this Act, is that a child arrested is in lawful custody until lawfully discharged or released from such custody.
- (3) The purpose of arrest is to allow for a preliminary inquiry into a case.
- (4) An arrest shall be made with due regard to the dignity, well-being and special status of the child.
- (5) Subject to the provision of subsection (4) above, in effecting arrest, the police officer arresting the child shall use the minimum force which is reasonably necessary and proportional in the circumstances.
- (6) The police officer arresting or attempting to arrest a child under this section is not justified in using deadly force that is intended or is likely to cause death or serious bodily harm to such a child.
- (7) Where a police officer uses deadly force against a child he or she must prove that—
  - (a) the force is immediately necessary for the purposes of protecting himself or herself, any person lawfully assisting him or her, or any other person from eminent death or serious bodily harm;

- (b) there is a substantial risk that the suspect will cause eminent death or serious bodily harm if the arrest is delayed; or
  - (c) the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause serious bodily harm.
- (8) Upon the arrest of a child, his or her parents or guardians shall immediately be notified of such arrest.

*Police Powers and Duties*

**140. Powers of Arresting a Child without a Warrant.**

- (1) A policeman or policewoman may arrest, without warrant, any child—
- (a) who commits or attempts to commit any serious offence in the presence of the policeman or woman;
  - (b) whom the policeman or policewoman reasonably suspects of having committed an offence, including the offence of escaping from lawful custody;
  - (c) who willfully obstructs the policeman or policewoman in the execution of his or her duty;
  - (d) who is reasonably suspected of having failed to observe any condition imposed in the passing of sentence or in postponing or suspending the operation of any sentence under this Act.
- (2) Any policeman or policewoman may arrest any child referred to under subsection (1) above, whose age is above the minimum age of prosecution but below the age of eighteen years for the purposes of bringing that child for assessment by a Social Worker.

- (3) In deciding whether to effect an arrest, with the directives from the Public Prosecution Attorney, a policeman or policewoman is obliged to consider whether an alternative method of securing the appearance of the child at assessment, can be used, or whether an informal caution can be used.

#### **141. Alternatives to Arrest.**

- (1) Alternatives to arrest shall include the following—
  - (a) requesting the child in a language that the child understands to accompany the policeman or policewoman to the place where an assessment can be made;
  - (b) written notification to the child and, if available, the parents, guardian or family of that child to appear for an assessment at a place and on a date and at a time specified in the written notice;
  - (c) the issuance of a citation by a policeman or policewoman at the place of arrest, to be noted in the case diary of the police officer concerned, informing the child to appear for an assessment at a specified date, time and place; provided that, the police officer must as soon as is reasonably possible notify the Social Worker of the issuance of such citation;
  - (d) accompanying the child to his or her home, where a written notice can be given to the child and parents, guardian or family;
  - (e) opening a case diary for the purposes of consideration by the Public Prosecution Attorney as to whether the matter should be set down for the holding of a preliminary inquiry or whether the child should be charged; and
  - (f) summoned to appear at assessment at a place on a date and time specified in the summon upon application by an attorney to the Court.



- (2) Where an alternative to arrest has been effected, a child must be required to appear for an assessment within twenty four hours of such alternative, having been carried out, or in the case of the issuing of summons, within 24 hours of the summons being served on the child.

#### **142. Arrest by Private Person without Warrant**

- (1) Any private person may without warrant arrest any child whom the private person reasonably believes to be above twelve years and below the age of eighteen years—
  - (a) who commits or attempts to commit in his or her presence or whom the private person reasonably suspects of having committed a serious offence;
  - (b) who the private person reasonably believes to have committed any offence and to be escaping from and being freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence;
  - (c) who the private person is by any law authorized to arrest without warrant in respect of any offence specified under or in accordance with that law;
  - (d) minimum force, where necessary, must be used in effecting an arrest under this section.
- (2) The provisions relating to the use of force and deadly force by policemen or policewomen, also apply to this section to private persons effecting arrest as they do to policemen or policewomen effecting arrests.
- (3) Any private person who has effected arrest as referred to in this section must hand the child over to the chief, police or Social Worker as soon as possible; upon handing the child over to the police, the police officer shall decide whether to re-arrest the child, or use an alternative to arrest.

*Issue of Warrant of Arrest***143. The Situations of Issuance of an Arrest Warrant of a Child.**

- (1) Any inquiring Public Prosecution Attorney or a Judge during the course of investigation, may issue a warrant for the arrest of any child presumed to be under eighteen years of age and above twelve years, upon a written order from a Public Prosecution Attorney or a Judge which sets out—
  - (a) the offence alleged to have been committed;
  - (b) that such offence was committed within the jurisdiction of such Public Prosecution Attorney or a Judge.
  - (c) which alleges that the child in respect of whom the order is made, is known or is on reasonable grounds suspected to be within such jurisdiction; and
  - (d) states that from information taken upon oath, there is a reasonable suspicion that the child in respect of whom the warrant is applied has committed the alleged offence.
- (2) A warrant of arrest issued under this section must direct that the person described in that warrant be arrested by a police officer in respect of the offence set out in the warrant and that he or she must be brought before a Social Worker for assessment.
- (3) A warrant of arrest may be issued on any day and must remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed.
- (4) A warrant of arrest may be suspended by any Public Prosecution Attorney or presiding officer, and the officer required to execute such warrant, may, instead of arresting a child, use one of the alternatives to arrest.

*Duties of Policeman or policewoman upon Arrest.***144. Procedure after Arrest of a Child above the Minimum Age of Prosecution.**

- (1) Where an arrest of a child above the age of twelve years, being the minimum age of prosecution, has taken place, the policeman or policewoman must observe the following procedures—
  - (a) if the child is in detention in police custody, bring such child to the Social Worker in whose area of jurisdiction the arrest of the child has taken place promptly for assessment, but not later than 24 hours after arrest; provided that, if by the expiry of this period a Social Worker cannot practically be traced, the police officer must request the prosecutor to set the matter down for the holding of a preliminary inquiry as soon as possible;
  - (b) notify the child in a language that the child understands of the allegation against him or her; and
  - (c) notify the child in a language that the child understands of the following rights—
    - (i) the right to remain silent;
    - (ii) the right to have the child's parent, guardian, chief or any appropriate adult contacted;
    - (iii) the right to have a person referred to under subparagraph (ii) or a legal representative present during the taking of a confession, admission, pointing out or identification parade;
    - (iv) the right to choose and to be represented by a legal representative at his or her own cost; and
    - (v) the right to be provided with a legal representative by the state in serious offences.

- (2) Where an alternative to arrest as referred to above has been used, the policeman or policewoman must explain the rights set out in subsection (1)(c)(i), above.
- (3) Where an arrest has been effected, the arresting officer must provide an attorney or judge with a written report within twenty four hours, giving reasons why alternatives to arrest as referred to under section 141 could not be carried out.

**145. Duty of a Policeman or a Policewoman to Inform a Social Worker.**

- (1) The police officer must inform the Social Worker in whose area of jurisdiction the arrest of a person under the age of eighteen years but above the minimum age of prosecution has taken place, of such arrest within 12 hours.
- (2) If an alternative method of securing the attendance of the child at assessment as referred to under section 142 of this Act, has been used, the Social Worker concerned shall inform the police officer in whose area the assessment will take place as soon as possible and not later than 72 hours.

**146. Duty of a Policeman or a Policewoman to notify Parents, Guardian or Family Member.**

- (1) Where a child has been arrested, the police officer who has arrested the child, must notify the child's parents, guardian or a family member of the arrest within twelve hours, and give the relevant person or persons a written notice requiring such person to attend an assessment at a specified time and place.
- (2) If one of the persons referred to under subsection (1), above, is not available, or cannot be traced, the policeman or policewoman must request the child to identify another appropriate adult, and if such adult is identified, the police officer must request that person to attend the assessment at a specified time and place.

- (3) Where an alternative method to arrest as referred to under section 141 of this Act, has been effected, the person carrying out such alternative method of arrest shall, as soon as possible thereafter, notify the child's parent, guardian or a member of the family of the use of the procedure referred to under section 141 of this Act, and give the relevant person notice requiring the person to attend the assessment at a specific time, place and date.
- (4) If one of the persons referred to under subsection (3), above, is not available, or cannot be traced, the person carrying out an alternative method to arrest shall request the child to identify another appropriate adult, and if such adult is identified, the policeman or policewoman shall request that person to attend the assessment at a specific time and place.

#### **147. Duties of the Police Upon Request.**

An arresting policeman or policewoman or another policeman or policewoman may be required by a Social Worker, as a matter of urgency, to—

- (a) notify a specific person of the appearance of a child under the age of eighteen years at the assessment;
- (b) give the relevant person a written notice to attend the assessment at a specified time, place and date;
- (c) obtain documents relevant to proof of age from a specified address or place; or
- (d) transport a specified person or persons to the place where assessment is to be effected.

#### **148. Cautioning by a Policeman or a Policewoman.**

- (1) A policeman or policewoman may apply an informal caution instead of arresting a child.

- (2) A formal cautioning, where recommended by a Social Worker, Public Attorney or a judge, may be administered by a policeman or policewoman to a child in the presence of the parent or guardian and victim of the child's unlawful conduct.
- (3) A formal cautioning shall be administered in private, whether in a police station or elsewhere, in the presence of a Social Worker, if available, and a person listed in subsection (2), above.
- (4) The policeman or policewoman referred to in subsection (2) shall cause a record of the cautioning to be kept at the applicable police station and must forward a record to the Commissioner of Police who shall cause a register of caution to be kept.
- (5) The record of a formal caution referred to in subsection (4) shall be expunged after a period of one year from the date of which the caution was administered.
- (5) The register referred to under subsection (4) may be made available to—
  - (a) any member of the police;
  - (b) any Social Worker;
  - (c) any Judge;
  - (d) the Public Attorney; and
  - (e) any person for *bona-fide* research purposes with the permission of the policeman or policewoman.

#### **149. Pre-trial Procedures and Presence of a Parent or Guardian.**

- (1) A corroborated confession or admission made by a child may be admitted as evidence in a Court where such confession or admission was made to a Judge.

- (2) No evidence obtained at an identification parade may be admitted as evidence in a Court unless a legal representative, parent or guardian was present at the time of such procedure.
- (2) Fingerprinting of a child should be regarded as a measure which should not be resorted to before the finalization of a preliminary inquiry: provided that the fingerprints of a child may be taken during the period after arrest and before appearance of the child before the preliminary inquiry if—
  - (a) it is essential for the investigation of the case;
  - (b) it is required for the purposes of establishing the age of the child in question; or
  - (c) it is necessary to establish the prior convictions of a child for the purposes of making a decision on diversion, release from detention in police custody or placement in a particular place of safety.

**150. Detention in Police Custody before Appearance at Assessment.**

- (1) Detention of a child in police custody, whether in a police cell, police vehicle, lock-up or any other place shall be used as a measure of last resort and for a period not exceeding twenty four hours.
- (2) Any police officer in charge of police station shall cause a separate cell to be kept, in which details regarding the detention in police cells of all persons under the age of eighteen years must be recorded.
- (3) The register referred to under sub-section (2) above, may be examined by a parent, guardian, legal representative, Prosecutor, Judge , Social Worker, health worker or any other person authorized by the police officer in charge of police station to examine the register.

- (4) While in detention in police custody, a child shall—
- (a) be held in conditions and treated in a manner that takes account of his or her age;
  - (b) be held separately from adults and boys must be held separately from girls;
  - (c) be held, as far as possible, in conditions which will minimize the risk of harm to that child, including the risk of harm from other children;
  - (d) have the right—
    - (i) to adequate food;
    - (ii) to medical treatment when required;
    - (iii) of access to reasonable visits by parents, guardians, legal representatives, registered Social Workers, health workers and religious counselors;
    - (iv) of access to reading material;
    - (v) to adequate exercise; and
    - (vi) access to adequate clothing, including sufficient blankets and beddings.
- (5) No child shall be held in detention in police custody for a period exceeding 48 hours prior to appearing before a Public Attorney or Judge.
- (6) A child shall be remanded in police custody for a period of 48 hours and for one further period of a maximum of twenty four hours where no alternative action can be taken.
- (7) No police officer shall admit, or allow a child to remain, in detention in the police custody after the expiry of the periods of time set in subsections (5) and (6) above, and any police officer admitting or allowing such child to remain in police custody longer than the said periods of time, commits an offence and on conviction shall be sentenced to imprisonment for a term not exceeding six months and shall also be personally liable for the payment of damages incurred.



- (8) Where a child in police custody makes a complaint regarding injury sustained by that child during arrest or whilst in detention, the police officer to whom such complaint is made, must report the complaint to the station commander who must, within a reasonable time cause the child to be taken to the medical officer for examination and treatment and attach the report of the medical officer to the police case diary relating to the child concerned.
- (9) A police officer or police officer in charge of a police station who fails to comply with the provisions of subsection (8) commits an offence and on conviction, shall be sentenced to imprisonment for a term not exceeding six months or with a fine or with both.
- (10) A police officer of a gender different from that of the detained child shall not have any physical contact with such a child while in detention except in the presence of a police officer of the same gender as that of the child.
- (11) A police officer who contravenes the provisions of subsection (10), commits an offence and shall, on conviction, be sentenced to imprisonment for a term not exceeding six months or with a fine or with both.

**151. Powers of Police to Release a Child from Detention before Preliminary Inquiry.**

- (1) In respect of a child accused of any offence, consideration should be given to the release of such child from detention in police custody pending a preliminary inquiry.
- (2) A child shall, unless there are substantial reasons not to do so, be released from detention in police custody by a police officer on own cognizance, or into the care of a parent or guardian on one or more conditions as set out under subsection (4), below.

- (3) Where a child is alleged to have committed a serious offence, a child may be released from police custody by a police officer, in consultation with the Public Attorney on one or more conditions as set out under subsection (4), below.
- (3) Conditions of release of a child for the purposes of this section include the following—
  - (a) the obligation to appear at a specified time and place for assessment not later than forty eight hours after the arrest;
  - (b) the obligation to report periodically to a specified person or place;
  - (c) the prohibition not to interfere with witnesses, or tamper with evidence or to associate with a person, persons or group of specified people; and
  - (d) the obligation that the child shall return to his or her home or to a specified address.
- (5) Where a child has not been released from police custody prior to the holding of a preliminary inquiry, the arresting officer shall provide the Public Prosecution Attorney or Judge with a written report giving reasons why such a child could not be released from detention in police custody.
- (6) The police officer shall provide transport costs or transport assistance in respect of a child who is released from police custody.
- (7) The Police officer may recover transport costs from the child to whom such costs had been provided if it appears that such a child or his or her family is able to pay for such costs.

**152. A Child is not Charged Until the Preliminary Investigation is Complete.**

For the purposes of judicial proceedings under this Act, a child is deemed not to be charged until, the preliminary investigation has been finalized and the Public Attorney submits the case to the Court under the provisions of this Act and the charges are read and explained to the child.

*Restorative Justice and Diversion***153. Restorative Justice.**

Crimes committed by a child shall be dealt with in accordance with the principle of restorative justice which aims to—

- (a) provide an opportunity to the person(s) or community affected by an offence to express their views regarding the impact of such harm;
- (b) encourage restitution of a specified object or symbolic restitution;
- (c) promote reconciliation between a child and the person(s) or community affected by the harm caused; and
- (d) empower communities to address children at risk of offending without resorting to criminal justice.

**154. Restorative Justice Processes.**

The restorative justice processes include—

- (a) family conference;
- (b) victim - offender mediation; and
- (c) any other restorative justice processes

**155. Family Conference.**

- (1) A family group conference shall be convened by the Chairperson of the Child Justice Committee in consultation with the families of the children concerned.

- (2) The Chairperson of the Child Justice Committee who convenes a family conference shall notify all persons who are entitled to attend the conference of the date, the time and the venue of the conference.
- (3) No notice is required to be given pursuant to subsection (1) above, to any person whose whereabouts cannot, after reasonable enquiries, be ascertained.
- (4) A notice required under subsection (2), above, shall be served seven days before the convening of the conference.
- (5) Failure to notify any person in accordance with the provisions of subsection (4) above, shall not affect the validity of the proceedings of a family group conference unless it is shown that the failure is likely to affect the outcome of that conference.
- (6) The following persons shall constitute the Child Justice Committee and are entitled to attend the Family Group Conference—
  - (a) the child in respect of whom the conference is being held;
  - (b) the parent(s) or guardians of the child;
  - (c) members of the families of the children concerned;
  - (d) a Social Worker, where the conference is convened on the basis of a report from him or her, and he/she shall be the Chairperson of the Child Justice Committee in that area;
  - (e) legal representatives of the children concerned;
  - (f) any relevant body or organization which the concerned families may recommend as appropriate to attend the conference; and
  - (g) any person, body or organization whose attendance at the conference is recommended by the Chairperson of the Child Justice Committee working in consultation with the concerned families.

- (7) The Chairperson of the Child Justice Committee who convenes a family conference shall take all reasonable steps to ensure that all information and advice required by the conference to carry out its functions are made available to the conference.
- (8) Where it is appropriate and with the permission of the conference, any person may attend a family conference for the purpose of conveying to that conference any information or advice required by that conference to carry out its functions.
- (9) A family group conference shall regulate its own procedure in such manner as it deems fit.
- (10) The Chairperson of the Child Justice Committee shall provide such administrative services as may be necessary to enable a family group conference to discharge its functions.
- (11) The functions of the family conference as pertaining to the child with respect to which the conference has been convened are as follows—
  - (a) to consider such matters relating to the care and protection of the child as the conference deems appropriate;
  - (b) to consider the need of care or protection, to make such decisions or recommendations and to formulate plans as the conference considers necessary in the best interests of that child; and
  - (c) to review from time to time the decisions and recommendations made and the plans formulated by that conference and their implementation.
- (12) The Chairperson of the Child Justice Committee who convenes a family group conference shall cause to be made a written record of the details of the decisions and recommendations made and the plans formulated by the conference pursuant to this subsection.

- (13) The Chairperson of the Child Justice Committee who has convened a family conference shall communicate the decisions, recommendations and the plans made by the family conference to every person that will be directly involved in the implementation of decisions, recommendations or plans and seek their consent.
- (14) Where the Chairperson of the Child Justice Committee is unable to secure consent to a decision, recommendation or plan referred to under subsection (13), the Chairperson of the Child Justice Committee may, for the purpose of enabling the conference to reconsider that decision, recommendation or plan, reconvene that conference.
- (15) A Family Group Conference reconvened under subsection (14), above, may confirm, rescind or modify its previous decision, recommendation or plan.
- (16) Any decision, recommendation or plan confirmed or modified under subsection (15) above, and any new decision, recommendation or plan made or formulated under that section, shall be deemed to have been made in the previous conference.
- (17) The Chairperson of the Child Justice Committee who convenes a Family Conference shall ensure that copies of the proceedings of the conference, where the proceedings were recorded, are given to all persons present at the conference.
- (18) Information, statement or admission made or disclosed in the course of a family conference shall not be admissible in any Court.
- (19) No person shall publish any report of the proceedings of a family conference except the publication of statistical information relating to family conferences.

- (20) A Family Group Conference shall be convened in rural areas where all parties under section 155 (6) are present.
- (21) The Chairperson of the Child Justice Committee shall have the power to refer a child, who after several Family Group Conferences, fails to follow the decisions of the Family Conference, to a Family or Child Court to impose sentence of diversion or probation.

**156. Victim-Offender Mediation.**

- (1) Victim-offender mediation shall be convened by the Chairperson of the Child Justice Committee in consultation with the victim and offender.
- (2) The victim and the offender shall meet in a safe and structured setting with the assistance of a trained mediator or Chairperson of the Child Justice Committee.
- (3) The functions of the victim-offender mediation are to—
  - (a) enable the victim and offender to talk about the crime, express their feelings and concerns;
  - (b) participate directly in developing options for trying to make things right; and
  - (c) the offender an opportunity to make apologies, provide information and develop reparative plans and gain insight for personal growth.
- (4) The Chairperson of the Child Justice Committee who convenes the victim-offender mediation shall cause to be made a written record of the details of the decisions and recommendations made and the plans formulated in the victim-offender mediation.
- (5) The Chairperson of the Child Justice Committee who has convened victim-offender mediation shall communicate the decisions, recommendations and the plans made by the victim-offender mediation to every person that will be directly involved in the implementation of decisions, recommendations or plans and seek their consent.

- (6) A Victim Offender Mediation shall be convened, where the offence has been committed in an urban area and all Family and Committee Members are not available to attend a Family Group Conference.
- (7) The Chairperson of the Child Justice Committee shall have the power to refer a child, who does not abide by the agreement made in the Victim - Offender Mediation, to a Family or Child Court to impose sentence of diversion or probation
- (8) The Chairperson of the Child Justice Committee shall have the power to refer a child, who after several Family Group Conferences, fails to follow the decision of the family Conference, to a Family or Child Court to impose sentence of diversion or probation as he or she may deem appropriate

#### **157. Referral to Restorative Justice Process.**

- (1) Referral to restorative justice process may be made by the—
  - (a) child or his/her parent, guardian or any appropriate adult;
  - (b) Chief;
  - (c) police;
  - (d) Public Prosecution Attorney; and
  - (e) Court; or
  - (f) social worker.
- (2) Whoever makes referral to Restorative Justice Process under section 157(1), shall take the child before the Chairperson of the Child Justice Committee who shall further refer the child to either the Family Group Conference or Victim - offender Mediation.



- (3) Referral to restorative Justice in Rural areas shall be to a Family Group Conference; provided that in urban areas, where all family and community members are not available to attend a Family Group Conference, a Victim-Offender Mediation shall be convened.
- (4) Where the case is referred to restorative justice process by a Court, Public Prosecution Attorney, the police or Social Worker, and the victim and offender do not agree on the decision to be made at such a forum, the case shall go back to the Court, public attorney, the police or Social Worker for further action.

*Diversion*

**158. Purpose of Diversion.**

- (1) The purposes of diversion in terms of this Act are to—
  - (a) encourage the child to be accountable for the harm caused by him or her;
  - (b) promote an individualized response to the harm caused which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the harm caused;
  - (c) promote the reintegration of the child into the family and community; and
  - (d) prevent stigmatization of a child which may occur through contact with the criminal justice system.
- (2) Where possible and appropriate, diversion shall include ingredients of the restorative justice process which aim at healing relationships, including the relationships of the victim(s) and offender(s).
- (3) In making a decision whether to or not to divert a child, consideration must be given to whether, this would be in the best interest of the child.

- (4) No child may be unfairly discriminated against on the basis of race, gender, sex, ethnic or social origin, colour, sexual orientation, religion, conscience, belief, culture, language, birth or socio-economic status in the selection of a diversion programme, process or option and all children must have equal access to diversion options.
- (5) Corporal punishment and public humiliation shall not be parts of diversion.
- (6) A child under the age of thirteen years shall not be permitted to perform community service or other work as a part of diversion.

**159. Diversion Programmes Standards.**

- (1) All diversion programmes must meet the following standards—
  - (a) promote the dignity and well-being of the child and the development of his or her sense of self-worth and ability to contribute to society;
  - (b) not be exploitative, harmful or hazardous to the child's physical or mental health;
  - (c) be appropriate to the age and maturity of the child;
  - (d) not interfere with a child's schooling;
  - (e) where possible impart useful skills;
  - (f) where possible and appropriate, include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including the victims of the offence; and
  - (g) where possible and appropriate, be presented in a location reasonably accessible to children, and children who do not have the means to afford transport in order to attend a selected diversion programme, should be provided with the means to do so.

- (2) No child shall be required to pay for admission to a diversion programme.

**160. Circumstances to be Considered for Diversion.**

- (1) A child suspected of having committed an offence may only be referred for diversion by a Social Worker, Public Attorney, Judge or a police officer if—
  - (a) such a child acknowledges responsibility for the alleged offence and consents to diversion;
  - (b) there are reasons to believe that there is sufficient evidence for the matter to proceed to trial;
  - (c) there is no risk of infringement of the child's procedural rights; and
  - (d) the child has a fixed address.
- (2) Where circumstances as referred to in subsection (1), above exist, diversion must be considered as a matter of first resort to institutionalization of children being a measure of last resort.

*Age Assessment*

**161. Age Assessment.**

- (1) The purpose of age assessment is to—
  - (a) establish the probable age of the child;
  - (b) establish the prospects of the child being able to be diverted by a Social Worker;
  - (c) establish the prospects for diversion by a Public Prosecution Attorney or Judge;
  - (d) provide information to support recommendations to the Public Prosecution Attorney and the judge regarding release of the child into the care of a parent or guardian or placement in a place of safety; and

- (e) in the case of children below the minimum age of prosecution, to establish what measures, if any, need to be taken.
- (2) Assessment is effected by a Medical Officer and may take place in a hospital or any other suitable place.
- (3) Attendance to an age assessment of the child is restricted to the following—
  - (a) the child in respect of whom the assessment is conducted;
  - (b) the child's parent or guardian;
  - (c) the Public Prosecution Attorney in whose jurisdiction the assessment is being conducted;
  - (d) a legal representative;
  - (e) the police officer responsible for arresting the child;
  - (f) a medical officer; and
  - (g) any person whose presence is necessary or desirable for the completion of the assessment process.

#### **162. Duties of a Police Officer in Relation to Age Assessment.**

If a police officer is uncertain about the exact age of the person suspected of having committed an offence, but has reason to believe that the age of that person would render that person subject to protections under this Act, he or she shall take such person to a Social Worker for assessment into the age within twenty four hours or, if a Social Worker is not readily available, to a medical officer; provided that where a police officer has reasonable grounds to believe that a child is below the minimum age of prosecution as prescribed in this Act, he or she shall not arrest the child.

#### **163. Age estimation by a Medical Officer.**

- (1) Any Police Officer or a Social Worker may refer a child to a Medical Officer for assessment of his or her age in accordance with directives from a Public Prosecution

Attorney or a Judge, provided that the assessment shall be conducted by a medical officer of the same sex of the child or in the presence of an officer of the same sex.

- (2) Where a medical officer concludes that a child or person referred to him or her for assessment of age is—
  - (a) over the age of eighteen years, that person shall be deemed to be an adult and shall not be subject to the provisions of this Act;
  - (b) below the minimum age of prosecution, that child shall be referred to a social worker for further attention; or
  - (c) over the minimum age of prosecution and under the age of eighteen years,  
that child shall be referred to the social worker concerned, together with the record of estimation of age for further prosecution under this Act
- (3) Where a medical officer concludes that he or she is unable to make accurate assessment of a person's age, and it is not clear as to whether that person is subject to the provisions of this Act, he or she shall refer such person back to the social worker concerned for purposes of determination of age by a Judge.

**164. Age Assessment and Determination by a Judge Presiding in Criminal Court.**

- (1) Where a person appearing in a criminal Court other than for a preliminary inquiry, or the Court alleges that such person is below the age of eighteen years at any stage in a criminal trial before sentence, or where it appears to such a Court that the person may be below the age of eighteen years, the Judge presiding in that Court may conduct an inquiry as to the age in accordance with the provisions of this Act.

- (2) If the age of the person referred to under subsection (1), above, is found to be less than eighteen years of age and the trial has not yet commenced, the investigating Public Attorney concerned shall transfer the matter to the judge for further proceedings under this Act.
- (3) If the age of the person referred to under subsection (1) above, is found to be under eighteen years of age and the trial has commenced, the proceedings shall continue before the presiding Judge concerned but the remainder of the proceedings shall be conducted in accordance with the provisions of this Act.

**165. Age Determination to be effected at Preliminary Inquiry.**

- (1) The Social Worker to whom a child has been referred to by a medical officer for an age assessment, shall cause that child or person to appear before the Judge for purposes of determination of the age of that child or person and shall make sure the Judge is in possession of a completed assessment of age documents.
- (2) The Judge shall, on the available evidence and with due regard to the provision dealing with age assessment, make a determination as to the age of a child or person which shall be entered into the record as the age of the child, and shall be considered to be the correct age until such time as any contrary evidence is placed before the cCourt in which the judge presides or any other cCourt.
- (3) For the purposes of the determination referred to under subsection (2), above, the judge may require any documentation, evidence or statements relevant to age determination from any person, body or institution to be placed before him or her.

- (4) If a Judge determines that a person is over the age of eighteen years, he or she must close the preliminary inquiry and direct that the matter be transferred to the proper Court.
- (5) Where a Judge makes a determination under subsection (2), he or she must cause a record of the determination to be forwarded to the Ministry of Health for the purposes of issuing relevant identification documents.
- (6) Where necessary, a Judge may cause a subpoena to be served on any person to produce the documentation, evidence or statements referred to under subsection (3), above.

**166. Parent or Guardian to Attend Age Assessment.**

- (1) Any parent or guardian who has been served with a written notice or a summons to appear at an age assessment of the child shall attend such an assessment unless exempted from the obligation to do so under subsection (3), below.
- (2) If a person referred to under subsection (1), above, has not been notified to attend the assessment, the Social Worker concerned may at any time before such assessment direct a police officer to issue a written notice to such person to appear at an assessment.
- (3) A person who has been notified under subsection (1) or (2) above may apply to the Social Worker concerned for exemption from the obligation to attend the assessment in question, and if such Social Worker exempts such person, he or she shall do so in writing.
- (4) A person who has been notified under subsection (1) or (2), above, and who has not been exempted from the obligation to attend the assessment under subsection (3) and who fails to attend the assessment in question, commits an offence and shall on conviction be sentenced to a term not exceeding three months or a fine, or with both.

*Preliminary Investigation***167. Preliminary Investigation.**

- (1) A preliminary investigation shall be conducted into any case involving a child within twenty four hours of his or her arrest by the police officer under the directives and supervision of the Public Attorney.
- (2) The purpose of a preliminary investigation is to establish whether a matter can be diverted before charges are instituted before the Court, and assess whether there is sufficient evidence to warrant a prosecution.
- (3) A preliminary investigation shall be conducted in an informal manner, and the police officer responsible for conducting proceedings shall ask the necessary questions, interviewing any person(s) and so eliciting any information required.

**168. The Duty of a Police Officer after Preliminary Investigation.**

- (1) Following an age assessment and preliminary inquiry into the facts of a case, a Judge shall undertake one of the following options—
  - (a) divert the case in accordance with the provisions of this Act;
  - (b) release the child into the care of a parent or guardian;
  - (c) order the temporary placement of a child in a place of safe custody;
  - (d) transfer the child to a Court; or
  - (e) take no further action.
- (2) A decision made under subsection (1) above, shall be recorded, as well as the reasons for such decision.



*Issues of Arrest***169. Arrest and Release of Children.**

- (1) Where a child is arrested and cannot immediately be taken before a cCourt, unless in the most serious cases or if it is in the child's best interest to remove him or her from association of any person, the child shall be released, if necessary on bail.
- (2) Where release is not granted, a child shall be detained in police custody for a maximum of twenty four hours or until the child is taken before a Court, whichever is sooner.

**170. Conditions of Releasing a Child.**

- (1) Conditions of releasing a child may include the following—
  - (a) the obligation to appear on a specified time, date and place before the Court;
  - (b) the obligation to report periodically to a specified person or place;
  - (c) the prohibition not to interfere with witnesses, to tamper with evidence or to associate with a person or persons; or
  - (d) the obligation that a child has to return to his or her home or to a specified address.
- (2) The terms of release of a child whether on bail or not shall be reasonable and in accordance with the seriousness of the crime committed as well as the financial capacity of a child and his or her parents or guardians.

**171. Procedure where Bail is not Granted.**

- (1) Where release on bail is not granted, a Court shall record the reasons for refusal and inform the child of his or her right to appeal against the decision.

- (2) Where bail is not granted, a Court shall make an order as to the detention of a child in a place of safe custody.
- (3) Each case involving a child shall be prioritized and handled as expeditiously as possible from the outset, without any unnecessary delays.

#### **172. Procedural Safeguards.**

- (1) Every child accused of committing an offence or involved in legal proceeding in any manner; such a child reporting an offence or reporting himself or herself as a victim of an offence shall be subject to the following considerations—
  - (a) shall be presumed innocent until duly proved guilty according to law;
  - (b) shall be informed at the time of arrest in a language that he or she understands and in detail of the charge against him or her, and if appropriate, through his or her parents or guardians;
  - (c) shall be entitled to the assistance of a free interpreter if he or she cannot understand the language used;
  - (d) shall not be compelled to give testimony or confess guilt;
  - (e) shall be interviewed only in the presence of a parent, guardian or other authorized person;
  - (f) shall have access to legal counsel for the preparation and presentation of his or her defence;
  - (g) shall have the right to defend himself or herself in person under conditions of equality;
  - (h) shall have the matter determined, where a case has not been diverted by a Court in the presence of legal counsel and according to the principles of a fair and just trial;
  - (i) shall have the matter determined in his or her presence and in the presence of parents or guardians unless the presence of parents or guardians would be detrimental to the case;

- (j) shall have the chance to examine hostile witnesses on his or her behalf under conditions of equality; and
  - (k) may have any decisions and measures imposed in consequence thereof reviewed by a higher independent and impartial authority or judicial body in accordance with the law.
- (2) No confession or admission of a child may be admitted as evidence in a Court where such confession or admission was made to a police officer unless a legal counsel or a parent or guardian of such a child was present at the time.
- (3) No evidence obtained at an identification parade may be admitted as evidence in a Court unless a legal counsel, parent or guardian was present at the time.

#### **173. Mechanism for Investigation of an Accused Child**

Every case involving a child shall be determined in an individualized manner with due investigation into the background and circumstances in which the child is living, the intellectual, emotional, psychological and social development of a child, the material situation of his or her family, and the conditions under which an offence was committed.

#### **174. The Power of a Judge to discontinue Proceedings**

A Judge shall have the power to discontinue proceedings involving a child at any time and at any stage of the proceedings for lack of evidence.

#### *Duties of a Social Worker*

#### **175. Duties of a Social Worker in Relation to Social Assessment.**

- (1) A Social Worker shall conduct an assessment of all children—

- (a) who have been arrested and who remain in detention in police custody, within forty eight hours of such arrest subject to the proviso set forth in sub-section 2 below;
  - (b) who have been arrested and released from detention in police custody within forty eight hours of arrest;
  - (c) in respect of whom an alternative method of securing attendance at assessment has been effected, within seventy two hours of such an alternative having been employed.
- (2) The Social Worker shall make every effort to locate a parent or a guardian for the purposes of concluding the assessment process of the child; provided that, where all reasonable efforts to locate such person or persons have failed, the Social Worker may conclude the assessment in the absence of such person or persons.
- (3) The Social Worker shall explain to the child in the language that he or she understands—
- (a) the purposes of the assessment; and
  - (b) that the child has the right to—
    - (i) contradict or challenge any information against the child;
    - (ii) remain silent;
    - (iii) have the parent or guardian contacted;
    - (iv) have a person referred to under paragraph (iii) or a legal representative present during the noting by a police officer or a Judge of a confession, admission, pointing out or during an identification parade;
    - (v) choose and to be represented by a Legal Practitioner at his or her own cost; and
    - (vi) be provided with legal representation by the Ministry of Legal Affairs and Constitutional Development.

- (4) The Social Worker shall interview the child, the child's parents or guardian in order to effect the necessary assessment.
- (5) The Social Worker may contact or consult with any other person who has any information relevant to the assessment of the child.
- (6) Unless the child is below the minimum age of prosecution, the Social Worker shall make a report with the following recommendations—
  - (a) the prospects of diversion;
  - (b) the possible release of the child into the care of a parent or guardian; or
  - (c) the placement 'where applicable' of the child in a place of safety.
- (7) Transfer or conversion of a matter to the Court may be considered by the Social Worker.
- (8) If the Social Worker recommends that the matter be referred to the Court the report shall reflect his or her recommendation and reasons as well as recommendations as to the temporary placement of the child pending the opening of the Court inquiry.
- (9) The report mentioned in subsection (6) above, shall be submitted to the prosecutor for opening of the preliminary investigation.

#### **176. Procedure to Arrest a Child.**

A Social Worker, with leave from the Public Attorney may, issue a notice requiring the arresting officer or any other police officer to—

- (a) bring a child forthwith from police custody for assessment;
- (b) obtain documentation relevant to proof of a child's age from a specified place or person; and
- (d) to notify a specific parent or guardian to appear at the assessment.

**177. Children Below the Age of Prosecution.**

- (1) After conducting an age assessment, the Social Worker concerned may, with respect to a child determined to be below the minimum age of prosecution—
  - (a) refer the child or the family of the child for counseling or therapeutic intervention;
  - (b) arrange the provision of support services to the child or family of the child;
  - (c) arrange a conference, which shall be attended by the child, parents or an appropriate adult, and which may be attended by any other person likely to be able to provide information material for the purposes of the conference; or
  - (d) decide to take no action.
- (2) The purpose of the conference convened by the Social Worker under subsection (1)(c) above, is to assist such Social Worker to—
  - (a) establish fully the circumstances surrounding the allegations against the child;
  - (b) formulate a written plan appropriate to the child and relevant to the circumstances; or
  - (c) make an order in terms of this section.
- (3) The written plan under subsection (2)(b) shall—
  - (a) specify the objectives to be achieved for the child concerned and the period within which those objectives should be achieved;
  - (b) contain details of the service and assistance to be provided for the child and for any parent or guardian;

- (c) specify the persons or organizations which will provide such services and assistance;
  - (d) state the responsibilities of the child and of such child's parent or guardian;
  - (e) state personal objectives for the child and of such child's parent or guardian; and
  - (f) contain such other matters relating to the education, employment, recreation and welfare of the child as are relevant.
- (4) The Social Worker must record the outcome of the assessment and the decision made or given under subsection (1) above, as well as the reasons for such decision or order.

**178. Children above the Minimum Age of Prosecution.**

- (1) After conducting an age assessment, and where the child is determined to be above the minimum age of prosecution, and subject to the provisions of this Act, and in those cases where the child is alleged to have committed a crime of a non-violent nature, the Social Worker shall—
- (a) refer the child to the Court for appropriate action;
  - (b) take no further action; or
  - (c) if the child acknowledges responsibility for the alleged offence, refer the child to a diversion option where there are no factors mitigating against such decision.
- (2) A decision taken by a Social Worker under subsection (1) above, may be effected in his or her sole discretion.
- (3) The Social Worker concerned must record any decision taken under subsection (1), as well as the reasons for such decision.

- (4) If the Social Worker does not make a decision under subsection (1), above, he or she may recommend that the matter be referred to the prosecutor for the opening of the preliminary inquiry in which case the Social Worker shall produce an age assessment and an assessment report.

**179. Child Accused of Committing an Offence.**

- (1) After conducting an age assessment, and the child is deemed to be above the minimum age of prosecution, the Social Worker concerned must, where the child is alleged to have committed an offence of a violent nature, make an age assessment and an assessment report, which together with supporting information, must be submitted to the prosecutor for the opening of the preliminary inquiry.
- (2) If it appears to the Social Worker that the child concerned does not intend to accept responsibility for the alleged offence, that fact shall be indicated in the assessment report referred to under subsection (1) above.
- (3) After an assessment referred to under subsection (1) above, the Probation officer may recommend—
  - (a) the diversion of the child to a specified process programme or appropriate alternative order;
  - (b) that no further action be taken in respect of the alleged offence;
  - (c) that the matter be transferred to the Court for appropriate action;
  - (d) that the matter not be diverted and be referred to the Public Attorney;
  - (e) that the child be released to a parent or guardian, or on his or her own consent;
  - (f) an appropriate placement, including placement in the care of a fit and proper person; or



- (g) detention in a secure care facility or prison with due regard to the circumstances referred to under section 160 of this Act.

**180. Privacy and Records.**

- (1) A child's right to privacy shall be respected at all stages of proceedings.
- (2) No information that may lead to the identification of a child offender or accused shall be published.
- (3) Records on child offenders shall be kept strictly confidential and closed to third parties, and access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized person.

*Sentencing***181. Penalties and Sanctions.**

- (1) Sentencing of a child shall be reasonable and proportionate to the circumstances and gravity of the offence as well as the circumstances and needs of the child.
- (2) Sentencing shall be non-custodial where possible and may include orders for any of the following reliefs in respect of a child against whom an offence is proved—
  - (a) reconciliation;
  - (b) compensation, restitution or fine;
  - (c) apology;
  - (d) caution;
  - (e) a probation order; or
  - (f) sending him or her to reformatory.
- (3) Sentencing of expectant mothers under eighteen years of age and mothers of infants who have been accused or found guilty of violating the law, non-custodial sentencing shall be considered.

**182. Sentence of a Child under Sixteen Years of Age.**

- (1) No child under sixteen years of age shall be sentenced to imprisonment.
- (2) No child shall be arrested, detained or imprisoned where a financial penalty, imposed by any authority or in a settlement of any case, has not been paid, including by his or her family.

**183. Suspension of Sentence or Penalty by the Court.**

- (1) Any sentence or penalty may be completely or partially suspended by the Court.
- (2) Requests for suspension of sentences shall be considered before the enforcement of a penalty on medical, vocational or scholastic grounds.

*Detention***184. Limitations on Detention.**

- (1) Detention of a child pending trial shall take place only in exceptional circumstances, for most serious cases, as a measure of last resort and for the shortest possible period.
- (2) Detention shall not be imposed unless a child is convicted of a serious offence involving violence against another person or persistence in committing other serious offences, and unless there is no other appropriate response.
- (3) Detention of a child shall take place in a reformatory, where possible, which shall be administered by an authorized person, where this is not possible small residential units shall be created within communities as places of detention, which shall also be administered by an authorized person.

- (4) Detention of a child shall be undertaken in a manner suitable to the child's legal status and age and in conditions and circumstances which ensure respect for the rights of the child.

**185. Procedure of Receiving a Child into a Detention Facility.**

- (1) No child shall be received in any detention facility without a valid order from the Public Prosecution Attorney or judicial order from the Court.
- (2) Before making a judicial order on detention, a Court shall be satisfied that a suitable place is readily available.
- (3) In every place where children are detained, including police custodies, every child shall be separated from adults and—
  - (a) remanded and convicted children shall be separated from remanded and convicted adults;
  - (b) female children shall be separated from males, and in the care of female staff, and
  - (c) equipped with the necessary requirements for their care and treatment.
- (4) A police or prison officer of a sex different from that of a detained child shall not have any physical contact with such a child, except in the presence of a police or prison officer of the same sex as that of the child.

**186. Principles to be Observed upon Admission of a Detained Child.**

- (1) Upon admission to a place of detention, a Social Worker may request that a child be examined by a medical practitioner for the purpose of recording any illness or injury.

- (2) Upon admission to a place of detention, every child shall have the right to appeal against his or her case and shall be assisted to do so by the prison authorities.
- (3) Upon admission to a place of detention, every child shall be informed of the rules governing the detention facility and his or her rights and obligations in a language he or she can understand, including the following—
  - (a) conduct constituting a disciplinary offence;
  - (b) type and duration of disciplinary sanctions that may be inflicted;
  - (c) the authority competent to impose such sanctions; and
  - (d) the authority competent to consider appeals.
- (4) As soon as possible after admission to detention, a full report and relevant information on the personal situation and circumstances of each child shall be drawn up.

#### **187. The Rights of a Child in Detention.**

- (1) Every child in detention has the right to—
  - (a) adequate and nourishing food and clean drinking water;
  - (b) regular and adequate medical care;
  - (c) adequate clothing;
  - (d) bedding;
  - (e) keep personal effects;
  - (f) basic sanitation;
  - (g) education, vocational training, reading materials and employment with remuneration in order to facilitate the rehabilitative process;
  - (h) all necessary individual assistance that is required in view of a child's age, sex and personality;
  - (i) regular recreation and exercise;
  - (j) practice any religion;
  - (k) be detained as close as possible to family and to have regular contact with family and guardians;

- (l) defend him or herself if accused of an infringement of a rule or committing a crime;
  - (m) make requests or complain if discontented; and
  - (n) access to legal counsel.
- (2) Where a child in police custody or detention makes a complaint regarding injury sustained during arrest or while in detention, the person to whom the complaint was made must promptly report the complaint to the highest relevant authority, have the child examined by a medical officer for treatment and take action against the person accused in accordance with the law.
- (3) A police or prison official who fails to comply with the provisions of subsection (2), above, commits an offence and shall be dealt with in accordance with the law.

**188. The Required Information to be Recorded During Detention.**

In every place where children are detained, a complete and secure record of the following information shall be kept—

- (a) information on the identity, age and sex of the child;
- (b) information on the location of the child's family, chief and tribe;
- (c) reasons for the commitment and the authority thereof;
- (d) details of known physical and mental health problems, including drug and alcohol abuse;
- (e) the day of admission and release; and
- (f) details concerning any appeal process.

**189. The Right of Parents or Guardians to be Informed About their Detained Child's Health.**

The parents and guardians of a child have the right to be immediately informed of the state of health of their child on request and in the event of any changes or death.

**190. Disciplinary Sanctions Against a Child.**

- (1) No child in detention shall be disciplinarily sentenced more than once for the same infraction except in accordance with the law; he or she shall be fully informed of the alleged infraction and given a proper opportunity to present his or her defence, including the right of appeal to a competent authority .
- (2) Complete records shall be kept of all disciplinary proceedings in places of detention.
- (3) Recourse to instruments of restraint and use of force in places of detention shall be reasonable and proportionate and shall only be used in exceptional circumstances and in accordance with the law.
- (4) The carrying and use of weapons shall be prohibited in any facility where children are detained.
- (5) All disciplinary measures in places of detention constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including chaining, whipping, placement in a dark cell, closed or solitary confinement or any other treatment or punishment that may compromise the physical or mental health of the child.
- (6) The reduction of diet or medicines and the restriction or denial of contact with family members shall be prohibited.
- (7) Early, temporary or conditional release may be granted to a child detainee in accordance with his or her behavior.

**191. The Rights of a Child Born in Prison.**

- (1) Where practicable, female detainees who are pregnant shall be taken to deliver their babies in hospitals and if a child is born in a prison or detention facility, every effort shall be made to secure the assistance of a mid-wife or traditional birth attendant and no mention of the same shall be made in any registries.
- (2) A baby born in a prison or detention facility has a right to be suckled and cared for by his or her mother for two years.

**CHAPTER XI****INSTITUTIONAL ARRANGEMENTS****192. Establishment of Permanent Courts.**

- (1) Juvenile Courts shall be established to hear and determine—
  - (a) all applications relating to criminal charges against children subject to the provisions of this Act;
  - (b) all applications relating to child care and protection; and
  - (c) any other competence conferred upon them by this Act or any other written law.
- (2) The President of the Supreme Court may make rules prescribing the procedures to be followed in Courts established under subsection (1) above, and the manner in which they shall be considered.
- (3) Pending the establishment of such Courts, criminal cases involving children shall be determined in the County Courts in accordance with the provisions of this Act.

- (4) The procedures of Courts established under subsection(1) above, and Courts determining child matters pending the establishment of juvenile Courts shall be subject to the following—
  - (a) procedural and other safeguards for children outlined in this Act;
  - (b) the Courts shall sit as often as necessary;
  - (c) proceedings shall be held in camera; and
  - (d) proceedings shall be as informal as possible and not of an adversarial nature.
- (5) Apart from members and officers of the Court, only the following persons may, at the discretion of the Judge, attend any sitting of a Court established under subsection (1) above—
  - (a) parties to a case before the Court, their legal counsels, witnesses and other persons directly concerned with the case;
  - (b) parents or guardian of the child ; and
  - (c) any other person who the Court authorizes to be present.
- (6) A Juvenile Court established under subsection (1) above, may appoint *a guardian ad litem* to any child for the purposes of the proceedings and to safeguard the interest of that child.
- (7) Judges serving in Juvenile Courts established under subsection (1) shall receive in-service training and or other appropriate methods of instruction on child's rights.

**193. Establishment and Functions of an Independent Child Commission.**

- (1) There shall be established an independent Child Commission.
- (2) The Functions of the independent Commission shall include the following—



- (a) to investigate on its own motion or on a complaint made by any person or group of persons violations of any rights of a child;
  - (b) to visit reformatories and places of detention or related facilities with a view to assessing and inspecting conditions of children and make recommendations to the relevant authority;
  - (c) to establish a continuing programme of research, education and information to enhance respect for child's rights;
  - (d) to recommend to the Southern Sudan Legislative Assembly effective measures to promote child's rights;
  - (e) to create and sustain within society awareness of this Act;
  - (f) to monitor compliance of all levels of Government in South Sudan with the United Nations Convention on the Rights of the Child; and
  - (g) to express opinion or present advice to Government organs on any issue related to child's rights; and
  - (h) to perform such other functions as may be provided by law.
- (3) The composition, rules of operation and other aspects of the Child Commission shall be governed by a separate law.

## CHAPTER XII

### MISCELLANEOUS PROVISIONS

#### **194. Authority to Promulgate Rules and Regulations.**

The Minister for Gender, Social Welfare and Religious Affairs shall issue rules and regulations for the proper implementation of the provisions of this Act.