

## **THE CHILDREN'S BILL**

(No. XXIX of 2019)

### **Explanatory Memorandum**

The main object of this Bill is to repeal the Child Protection Act and replace it with a more appropriate, comprehensive and modern legislative framework so as to better protect children and to give better effect to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

2. The Bill accordingly makes provisions –

- (a) for the better care, protection and assistance to children and their families;
- (b) for the respect and promotion of the rights and best interests of children;
- (c) for the setting up of structures, services and means for promoting and monitoring the sound, physical, psychological, intellectual, emotional and social development of children;
- (d) for children under the age of 12 not to be held criminally responsible for any act or omission;
- (e) for child witnesses and child victims under the age of 14 to be, subject to certain conditions, competent as witnesses without the need for them to take the oath or making solemn affirmation;
- (f) for the setting up of a Children's Court, which shall consist of a Civil Division, a Protection Division and a Criminal Division; and
- (g) for addressing the shortcomings in the Child Protection Act.

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*Vice-Prime Minister, Minister of Local Government  
and Outer Islands, Minister of Gender Equality,  
Child Development and Family Welfare*

13 September 2019

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(No. XXIX of 2019)

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*Clause*

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## **A BILL**

**To make better provisions for the protection of children and their families, and to provide for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows –

### **PART I – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the Children’s Act 2019.

#### **2. Interpretation**

In this Act –

“alternative care”, in relation to a child, means care given to the child by a person or facility, other than the child’s parent or family member;

“ancillary order” means an order made under section 35;

“assessment order” means an order made under section 32;

“authorised officer” means an officer designated by the supervising officer for any purpose under this Act;

“caregiver”, in relation to a child, means the natural person who, or the legal entity which, is entrusted with the care and upbringing of the child;

“child” means a person under the age of 18;

“Civil Division of the Children’s Court” means the Civil Division of the Children’s Court referred to in section 69;

“Convention” means the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989;

“Criminal Division of the Children’s Court” means the Criminal Division of the Children’s Court referred to in section 75;

“diversionary programme” means a programme referred to in section 51;

“exploitation” includes –

(a) all forms of slavery or practices similar to slavery;

- (b) sexual exploitation;
- (c) forced labour; or
- (d) the illegal removal of body organs;

“emergency protection order” means an order made under section 33;

“family member”, in relation to a child –

- (a) means –
  - (i) any parent of the child; or
  - (ii) the grandparent, brother, sister, uncle, aunt or cousin of the child; and
- (b) includes –
  - (i) a person who has parental responsibilities and rights in respect of the child; or
  - (ii) any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship;

“foster home” means a home where 24-hour substitute care is provided to a child, who is placed away from his parent, in a family setting by a duly licensed person;

“group home” means a residence for children, other than children who are victims of crimes, with serious behavioural concerns who require supervision or specialised treatment, including mental health, drug and alcohol treatment;

“harm” includes physical, sexual, psychological, emotional or moral abuse, injury, neglect, ill-treatment, degradation, discrimination, exploitation or impairment of health or development;

“information and communication technologies” has the same meaning as in the Information and Communication Technologies Act;

“juvenile” means a person aged 12 or above but below the age of 18;

“mentoring order” means an order made under section 40;

“Minister” means the Minister to whom responsibility for the subject of child development is assigned;

“Ministry” means the Ministry responsible for child development;

“neglect” means –

- (a) deprivation of a child of –
  - (i) the proper and necessary care, including adequate food, clothing and shelter; or
  - (ii) necessary medical treatment;
- (b) abandonment of a child; or
- (c) refusal to provide –
  - (i) education to a child; or
  - (ii) emotional support and affection to a child, which has caused or is likely to cause significant emotional harm to the child;

“Panel” means the Child Services Coordinating Panel referred to in section 4;

“parent”, in relation to a child –

- (a) means his father, mother, legal guardian or caregiver;
- (b) means his step father or step mother; and
- (c) includes any other person who has the custody, or is in control, of the child;

“parenting aide” means the provision of parenting guidance and other assistance to the parent of a child by an authorised officer;

“place of safety” –

- (a) means such place as may be specified in an order made under Part III; and
- (b) includes a shelter, a foster home, a group home, a convent, a residential care institution, a charitable institution, an educational institution and a hospital;

“placement order” means an order made under section 34;

“Protection Division of the Children’s Court” means the Protection Division of the Children’s Court referred to in section 72;

“residential care institution” means a non-family-based group setting, such as a place of safety for emergency care, a transit centre in emergency situations and any other short-term and long-term residential care facility, including a group home, which provides care;

“supervising officer” means the supervising officer of the Ministry.

### **3. Application of Act**

(1) This Act shall bind the State.

(2) This Act shall, except where otherwise expressly provided in this Act, be in addition to, and not in derogation from –

- (a) articles 371 to 387 of the Code Civil Mauricien; and
- (b) in so far as they relate to a child, the provisions of –
  - (i) the Combating of Trafficking in Persons Act;
  - (ii) the Convention on the Civil Aspects of International Child Abduction Act;
  - (iii) the Divorce and Judicial Separation Act;
  - (iv) the Ombudsperson for Children Act;
  - (v) the Protection from Domestic Violence Act; and
  - (vi) such other enactment as may be prescribed.

### **4. Child Services Coordinating Panel**

(1) (a) There shall be, within the Ministry, a Child Services Coordinating Panel which shall be responsible for the coordination of all activities relating to the implementation of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

- (b) In the discharge of its functions, the Panel –
  - (i) shall coordinate public services in relation to children;

- (ii) shall monitor any administrative arrangements to support coordination of Government's activities in relation to children at national level;
- (iii) shall collaborate with relevant stakeholders with a view to giving better protection to children;
- (iv) shall consider cases referred to it by the Ministry;
- (v) may make recommendations to any Ministry or other organisation; and
- (vi) shall perform such other functions as may be prescribed.

(c) Every Ministry or organisation to which a recommendation is made under paragraph (b)(v) shall, within such time as the Panel may determine, report to the Panel on –

- (i) any action taken on the recommendation;
- (ii) the reason for which partial or no action was taken, as the case may be.

(2) (a) The Panel shall consist of –

- (i) the supervising officer, as Chairperson;
- (ii) a representative of the Ministry from the technical cadre;
- (iii) a representative of the Ministry responsible for the subject of education;
- (iv) a representative of the Ministry responsible for the subject of finance;
- (v) a representative of the Ministry responsible for the subject of health;
- (vi) a representative of the Ministry responsible for the subject of reform institutions;
- (vii) a representative of the Ministry responsible for the subject of social security; and
- (viii) a representative of the Commissioner of Police.



(b) The Panel may co-opt such persons as it considers necessary to assist in its deliberations.

(c) Any person co-opted under paragraph (b) shall have no right to vote.

(d) The Panel shall meet at such place and time as the Chairperson may determine.

(e) At any meeting of the Panel, 5 members shall constitute a quorum.

(f) The Chairperson and other members of the Panel shall be paid such allowance as the Minister may determine.

(g) Subject to this section, the Panel shall regulate its meetings in such manner as it may determine.

## **PART II – BEST INTERESTS AND PROTECTION OF CHILDREN**

### **Sub-Part I – Best Interests of Children**

#### **5. Best interests principles**

(1) The best interests of a child shall, in respect of any matter concerning the child, be paramount and be the primary consideration by any person, Court, institution or other body.

(2) Subject to this Act and any other enactment applicable to children, every person, every Court, every institution or any other body shall, in relation to any matter concerning a child –

(a) respect, protect, promote and fulfil the rights and the best interests of the child;

(b) respect the inherent dignity of the child;

(c) treat the child fairly and equitably;

(d) protect the child from discrimination;

(e) bear in mind the needs of the child for his development, including any special needs which may be due to a disability;

(f) where appropriate, give the child's family member an opportunity to express his views;

- (g) as far as possible, act promptly;
- (h) where the child has to be removed from the custody of his parents, have regard to the desirability of –
  - (i) placing him with a family member;
  - (ii) placing siblings together; and
- (i) where appropriate –
  - (i) adopt an approach which is conducive to conciliation;
  - (ii) have regard to the age, maturity and stage of development of the child and inform the child of the outcome of any proceedings, act or decision relating to him;
  - (iii) have regard to the views and preferences of the child;
  - (iv) inform any person having parental responsibilities and rights in respect of the child of the outcome of any proceedings, act or decision relating to him; and
  - (v) have regard to the capacity of the parents or any other person to provide for the financial, emotional or other needs of the child.

## **6. Recording of statements from children**

(1) Every statement recorded from a child during a criminal investigation shall be recorded by a specially trained police officer, in presence of the parent of a child.

(2) Where the supervising officer has reasonable grounds to believe that the best interests of a child so require, a statement may, in the presence of an authorised officer, be recorded from him in the absence or without the consent of his parent.

## **7. Child whose birth has not been registered**

(1) Notwithstanding any other enactment, a child shall not, as far as reasonably practicable, be denied access to any public service or facility on account of the fact that his birth has not been registered in accordance with the Civil Status Act.

(2) Where the birth of a child of more than 45 days has not been registered and an application under section 14(3) of the Civil Status Act is made by the supervising officer, the Registrar of Civil Status may issue a document to that effect to his parent to enable the child to have access to such public service and facility as the Minister may approve.

## **Sub-Part II – Protection of Children**

### **8. Non-discrimination**

(1) No person shall discriminate against a child on the ground of the child's, or the child's parent's, race, caste, place of origin, political opinion, colour, creed, sex, language, religion, property or disability.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

### **9. Forcing child to be married**

(1) No person shall force a child to be married civilly or religiously.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

### **10. Ill-treatment**

(1) No person shall ill-treat a child, or allow a child to be ill-treated, so that the child suffers, or is likely to suffer, harm.

(2) Any person who, by means of an advertisement, exploits a child in such a way that is likely to cause in that person or in any other child watching the child a reaction which is contrary to morality or detrimental to psychological development, shall be considered to have caused the child to suffer harm.

(3) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

### **11. Corporal or humiliating punishment**

(1) No parent or other person responsible for the care, treatment, education or supervision of a child shall inflict corporal or inflict humiliating punishment on the child as a measure to correct or discipline the child.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) In this section –

“corporal or humiliating punishment” means any form of punishment which causes pain or suffering to a child through, but not limited to, the use of force or use of substances.

## **12. Abandonment of child**

(1) (a) No person shall abandon or expose a child in an open, secluded or isolated place.

(b) Where, as a result of the exposure or abandonment of a child, the child becomes mutilated or lame, the offence shall be considered to be a wound wilfully inflicted on the child by the person who has so exposed or abandoned the child.

(2) No person shall, for remuneration or by gift, for promise, by threat or through abuse of authority, incite any parent to abandon his child.

(3) No person shall, for remuneration or any other consideration, act as an intermediary between a person wishing to adopt a child and any parent willing to abandon his child.

(4) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

## **13. Abduction of child by parent**

(1) A parent of a child or a person with whom a child is to be domiciled pursuant to, or mentioned in, an order made by a Court, who, without appropriate consent –

- (a) takes away or removes the child from Mauritius;
- (b) decoys or entices the child to move away from Mauritius;
- (c) causes the child to be taken away or removed from Mauritius; or
- (d) retains a child in Mauritius,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 5 years.

(2) Any person who removes, retains or fails to deliver or present a child in breach of any rights attributed by law, a Court order or an agreement to a person or an institution in relation to that child, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(3) In this section –

“appropriate consent”, in relation to a child, means –

- (a) written consent of the other parent of the child; or
- (b) an order of the Court.

#### **14. Abduction of child by other person**

Any person who, by force, fraud or without the written consent of a parent of a child –

- (a) takes away the child or causes the child to be taken away; or
- (b) leads away, decoys, entices the child or causes the child to be led away, decoyed or enticed out of the keeping of his parent or from any place where the child has been placed, or is, with the consent of his parent,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years.

#### **15. Removal of child from place of safety**

Where a child is in a place of safety, any person who, without lawful authority or reasonable excuse –

- (a) takes, or keeps the child away, from that place of safety;
- (b) does any act for the purpose of enabling the child to stay, or run, away from that place of safety,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

#### **16. Causing, inciting or allowing child under age of 16 to be sexually abused**

(1) No person shall cause, incite or allow a child under the age of 16 to be sexually abused by another person.

(2) For the purpose of subsection (1), a child under the age of 16 shall be deemed to be sexually abused by another person where he has taken part whether as a willing or unwilling participant or observer in any act which is sexual in nature for the purposes of –

- (a) another person's gratification;
- (b) any activity of pornographic, obscene or indecent nature;
- (c) any other kind of exploitation by any person.

(3) Any person who commits an offence under subsection (1) shall, on conviction, be liable –

- (a) where the victim is physically or mentally handicapped, to penal servitude for a term not exceeding 30 years;
- (b) in any other case, to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 20 years.

(4) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (3).

## **17. Child prostitution and access to brothel**

(1) No person shall –

- (a) offer, obtain, procure or provide a child for prostitution;
- (b) cause, coerce or force a child to participate in prostitution;
- (c) profit from, or otherwise exploit, a child's participation in prostitution; or
- (d) have recourse to child prostitution.

(2) No person shall cause, incite or allow a child to have access to a brothel.

(3) Any person who commits an offence under this section shall, on conviction, be liable –

- (a) to penal servitude for a term not exceeding 10 years; or
- (b) where the victim is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years.

(4) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply in the case of a person convicted under this section.

(5) In this section –

“child prostitution” means the use of a child in sexual activities for any form of consideration.

## **18. Child pornography**

(1) No person shall –

- (a) knowingly obtain access, through information and communication technologies, to child pornography;
- (b) produce, possess, procure, obtain, import, export or distribute child pornography, whether or not through information and communication technologies, for himself or for another person;
- (c) view, supply, disseminate, offer or make available child pornography;
- (d) coerces, forces or otherwise induces a child to view, including a pornographic performance, or to witness a sexual act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Any person who commits an offence under this section shall, on conviction, be liable where the victim is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years.

(3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply in the case of a person convicted under this section.

(4) In this section –

“child pornography” means any representation by whatever means –

- (a) which is, or appears to be, of a child engaged in real or simulated explicit sexual activities; or
- (b) of the sexual parts of a child primarily for sexual purposes.

## **19. Child grooming**

- (1) Any person who –
  - (a) having met or communicated with a child under the age of 16 on one earlier occasion –
    - (i) intentionally meets the child;
    - (ii) travels, in any part of the world, with the intention of meeting the child in any part of the world; or
    - (iii) makes arrangements, in any part of the world, with the intention of meeting the child to travel in any part of the world; and
  - (b) at the time he does so, intends to engage in unlawful sexual activity with the child or in the presence of the child during or after the meeting,

shall commit an offence.

(2) Any person who commits an offence under this section shall, on conviction, be liable –

- (a) to penal servitude for a term not exceeding 10 years; or
- (b) where the victim is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years.

(3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply in the case of a person convicted under this section.

(4) It shall be a defence to any prosecution under subsection (1) that the person charged had reasonable grounds to believe that the child was aged 16 or above.

## **20. Unlawful access to licensed premises**

(1) (a) No person shall sell any liquor, rum or compounded spirits to a child.

(b) Any person who causes or allows a child to have access to premises in respect of which a licence has been issued for the sale of liquor, rum or compounded spirits for consumption on the premises other than in a restaurant or hotel, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.



(2) It shall be a defence to any person prosecuted under subsection (1) that the offence was committed without his knowledge or consent and that he took all necessary steps to prevent the commission of the offence.

(3) In this section –

“liquor”, “rum” and “compounded spirits” have the same meaning as in the Excise Act.

## **21. Mendicity**

(1) No person shall cause or allow a child under his care to beg.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

## **22. Bullying, intimidation or harassment**

(1) Every educational institution shall, with a view to promoting the educational ability and well-being of children, adopt policies to prevent acts of bullying, intimidation or harassment which are likely to result in the substantial disruption of a child’s educational ability.

(2) No student shall intentionally commit any act of bullying, intimidation or harassment against another student.

(3) In this section –

“act of bullying, intimidation or harassment” includes any act committed through information and communication technologies.

## **23. Right to privacy**

(1) No person shall do an act which affects the privacy of a child.

(2) Notwithstanding any other enactment and subject to subsection (3), no person shall, in relation to a child witness, child victim or child offender, publish in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which will tend to identify the child.

(3) A Court may, in order to protect the privacy of a child, order that the child be referred to by his initials or a pseudonym in any part of any legal proceedings which is made public.

(4) Notwithstanding any other enactment, no person shall, in relation to a child witness, child victim or child offender who has passed away, publish in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies the child, unless expressly authorised by –

- (a) the parent of the child, where no Court proceedings have been instituted; or
- (b) any Court, where the matter is pending before a Court.

(5) This section shall not apply in a case where a child has been declared missing by the police publishing, disseminating or otherwise sharing personally identifying information or visual depiction of the child that may be of legitimate use in locating the child.

(6) In this section –

“media” –

- (a) means any print, broadcast or online media, regardless of whether or not these are incorporated or otherwise legally registered; and
- (b) includes online periodicals, television and radio broadcasts, blogs and other social media unless restricted to members only.

## **24. Causing or inciting child to do unlawful act**

Any person who causes or incites a child to do an unlawful act shall commit an offence and shall, on conviction, be liable to the sentence provided for that unlawful act.

### **Sub-Part III – Aggravating Circumstances**

## **25. Aggravating circumstances**

(1) For the purpose of sentencing under this Act, aggravating circumstances shall, where an offence is committed on a child, be deemed to exist where –

- (a) the child is physically or mentally handicapped;
- (b) the offender is in a position of responsibility or trust in relation to the child;

- (c) the offender is in a position of authority concerning the child;
- (d) the child has been adopted for the purpose of trafficking;
- (e) the offender has been previously convicted for the same or similar offences;
- (f) the offence exposed the child to a life-threatening illness, including HIV and AIDS; or
- (g) medications, drugs or weapons were used in the commission of the crime.

(2) In this section –

“AIDS” has the same meaning as in the HIV and AIDS Act;

“HIV” has the same meaning as in the HIV and AIDS Act.

#### **Sub-Part IV – Interdiction from Guardianship**

### **26. Interdiction from guardianship**

(1) Any person who is convicted of an offence in respect of a child under this Part or under section 249 or 250 of the Criminal Code shall be interdicted from any guardianship –

- (a) for a period not exceeding 5 years in the case of any offender; or
- (b) for a period not exceeding 10 years where the offender is the parent of the child.

(2) Where an offence has been committed by the father or mother of the child under this Part, the offender shall also be deprived of the rights and advantages which are granted to him or her, upon the person and property of the child, by articles 371 to 387 of the Code Civil Mauricien.

### **PART III – CHILDREN IN NEED OF CARE AND PROTECTION**

#### **Sub-Part I – Care and Protection**

### **27. Care and protection**

For the purposes of this Act, a child shall be considered to be in need of care and protection where –

- (a) the child is abandoned or orphaned without any visible means of support;
- (b) the child lives in, or is exposed to, circumstances which may seriously harm his physical, mental or social well-being;
- (c) the child is neglected or ill-treated;
- (d) the child has been, or is likely to be, exposed to harm;
- (e) the child is exploited or lives in circumstances which expose him to exploitation;
- (f) the child is found begging or receiving alms; or
- (g) the child's parent is convicted of an offence under this Act or under section 249 or 250 of the Criminal Code.

## **28. Reporting procedure**

(1) Where a person has reasonable grounds to believe that a child has been, or is likely to be, exposed to harm, he shall forthwith report the matter to the police.

(2) Where a matter is reported to the police under subsection (1), the matter shall, as soon as possible, be referred to the supervising officer for investigation and assessment of the child's need of care and protection.

(3) (a) Where the supervising officer has reasonable grounds to suspect that an offence has been or is being committed, he shall refer the matter to the police for the purpose of conducting a criminal investigation.

(b) A criminal investigation by the police shall not preclude the supervising officer from also referring the matter to an authorised officer for assessment of the child's need of care and protection.

- (c) Notwithstanding the fact that –
  - (i) the police refers the matter to the supervising officer under subsection (2);
  - (ii) the child is not willing to make a disclosure or to give a statement to the police; or

(iii) a report is made to the police anonymously,

the police shall conduct a criminal investigation where it has reasonable grounds to suspect that an offence has been or is being committed.

(4) An authorised officer shall submit a report of his investigation and assessment to the supervising officer not later than 15 days after the matter is referred to him.

(5) The supervising officer may, pending the report of an authorised officer, take such measures or provide such assistance as he considers necessary, in the circumstances, for the care and protection of the child.

(6) (a) On receipt of a report from an authorised officer, the supervising officer shall consider the report and where possible and in the best interests of the child, take such measures, or provide such assistance to the child and his family, as he considers necessary.

(b) The supervising officer may refer the matter to the police where he has reasonable grounds to suspect that an offence may have been committed.

(7) For the purpose of this section, the police or an authorised officer shall interview a child in the presence of his parent.

(8) Where there are reasonable grounds to believe that consent obtained under subsection (7) may increase the threat of harm to the child or another person, the police shall interview the child in the presence of an authorised officer.

(9) An interview carried out under this section may take place at an educational institution, a hospital, a police station or such other place where the child is present.

(10) Where a child is present at an educational institution, the person in charge of the educational institution shall, upon request of the police or the authorised officer, allow him to meet with and interview the child.

## **29. Mandatory reporting by person performing professional or official duties**

(1) (a) Any person who performs professional or official duties with respect to children and who has reasonable grounds to believe that a child is in contact with has been, or is likely to be, exposed to harm, shall report the matter to the police.

(b) Where a matter is reported to the police under paragraph (a), the police shall forthwith notify the supervising officer where it considers that the child is in need of care and protection.

(2) Any person who fails to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) In this section –

“professional or official duties” means duties performed by –

- (a) health care professionals, including medical practitioners, nurses, dentists, pharmacists and occupational therapists and administrators of hospital facilities;
- (b) psychologists;
- (c) employees of educational institutions, reform institutions, places of safety or childcare institutions;
- (d) social workers and family counsellors, psychotherapists, probation officers, mediators, guardians ad litem, support persons and intermediaries; or
- (e) any other person who, by virtue of his employment, profession or occupation, has a responsibility to discharge a duty of care and support towards a child.

### **30. Disclosure of reporter’s identity**

(1) (a) Where a matter is reported to the police or to the supervising officer, as the case may be, under section 28 or 29, the confidentiality of the report shall be maintained.

(b) Subject to subsection (2), the identity of the reporter shall be specifically protected from disclosure.

(c) The protection under paragraph (b) shall be maintained even if other information from the report is disclosed.

(2) The release of the reporter’s identity shall be allowed where –

- (a) a Court decides that it is necessary in the interests of justice for his identity to be disclosed;
- (b) the reporter knowingly made a false report; or
- (c) the reporter has waived confidentiality and given consent to the disclosure of his identity.

(3) No civil, criminal, or disciplinary proceedings shall be instituted against any person in respect of the disclosure or supply by that person of information under this section concerning a child, whether or not that information also concerns any other person or witness, unless the information was disclosed or supplied in bad faith.

### **31. Referral by Court to supervising officer or police**

Where it appears to any Court in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection, the Court shall order that the question of whether the child is in need of care and protection be referred to the supervising officer or to the police for an investigation.

## **Sub-Part II – Care and Protection Orders**

### **32. Assessment order**

(1) The supervising officer may, in such form as may be prescribed, make an application to the Protection Division of the Children’s Court for an assessment order where he has reasonable grounds to believe that –

- (a) an assessment of a child’s health or development, or the way in which the child has been treated, is required to enable him to determine the type of assistance to be provided to the child or his family; and
- (b) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an assessment order made under this section.

(2) Where the Magistrate is satisfied, pursuant to subsection (1), that it is in the best interests of the child, he may make an assessment order in such form as may be prescribed.

(3) An assessment order may provide for –

- (a) an authorised officer to –
  - (i) enter, at any reasonable time and with or without prior notice, any premises where the child is or was living, or such other place that the child usually visits;
  - (ii) interview the child without the consent of, or in the absence of, his parent;

- (iii) require any person who provides health, social, educational or other services to the child or to the parent of the child to provide information in relation to those services;
  - (iv) arrange for an examination of the physical, mental or emotional condition and development of the child;
  - (v) request, with the consent of the parent of the child, that parent to undergo an examination of his physical, mental or emotional condition or any other assessment related to the parenting and care of the child;
  - (vi) direct the parent of the child not to have any direct or indirect contact with the child on his own, unless a specified person or a person of a specified category is present;
  - (vii) require the parent of the child or any other person who cares for the child to attend an interview;
  - (viii) take such other appropriate action as the authorised officer considers to be in the best interests of the child; and
- (b) any other direction or the imposition of any other condition which he considers to be in the best interests of the child.

(4) Where the parent of a child rejects, ignores or resists a lawful request by an authorised officer made under the assessment order, the authorised officer may refer the matter to the police for assistance in order to compel the parent with the request made under the assessment order.

(5) An assessment order shall be valid for a period of 14 days but may, on an application made by the supervising officer, be extended by the Magistrate for a further period of 14 days.

(6) (a) An application for an assessment order shall be reviewed and a decision shall be made by the Magistrate not later than 48 hours after the date of submission of the application.

(b) An application for the extension of an assessment order shall be reviewed and a decision shall be made by the Magistrate not later than 72 hours after the date of submission of the application.

(7) Notwithstanding this section, where, on an application made for an assessment order, the Magistrate is satisfied, pursuant to section 33(1), that it is



in the best interests of the child, he shall make an emergency protection order in lieu of an assessment order.

(8) Any medical examination carried out under this section may include the taking and analysis of samples or the use of any device to assist in the examination.

### **33. Emergency protection order**

(1) The supervising officer may, in such form as may be prescribed, apply to the Protection Division of the Children's Court for an emergency protection order where he has reasonable grounds to believe that –

- (a) a child is suffering or is likely to suffer harm; and
- (b) the placement of the child in alternative care is necessary.

(2) Where the Magistrate is satisfied, pursuant to subsection (1), that it is in the best interests of the child, he may make an emergency protection order in such form as may be prescribed.

(3) An emergency protection order may provide for –

- (a) an authorised officer to –
  - (i) summon any person to provide information for the purpose of verifying whether the child is suffering or is likely to suffer harm;
  - (ii) remove the child from, or return the child to, or prevent the child's removal from, a place of safety;
  - (iii) cause, where necessary for the welfare of the child, the child to be submitted to medical examination or urgent treatment;
  - (iv) request police or medical assistance for the exercise of any power under the order;
  - (v) take such other appropriate action as the authorised officer considers to be in the best interests of the child;
- (b) the supervising officer to submit details to the Magistrate on the place of safety;
- (c) the child to be placed with a family member who is willing and able to care for the child; or

- (d) such other direction, or the imposition of such other condition, as the Magistrate considers to be in the best interests of the child.

(4) Where the parent of a child rejects, ignores or resists a lawful request by an authorised officer made under the emergency protection order, the authorised officer may refer the matter to the police for assistance in order to compel the parent with the request made under the assessment order.

(5) The owner, occupier or person in charge of any premises which an authorised officer enters under this section shall provide all reasonable facilities and assistance to the authorised officer for the exercise of his powers under the emergency protection order.

(6) An emergency protection order shall be reviewed and a decision shall be made by the Magistrate not later than 48 hours after the date of the submission of the application.

(7) (a) An emergency protection order shall be valid for a period of 21 days.

(b) An emergency protection order may, on an application made by the supervising officer, be renewed for a further period of 21 days where the Magistrate is satisfied that it is in the best interests of the child.

(c) Where the need for protection is reasonably likely to continue beyond the expiry of the emergency protection order, an application shall be made for a placement order under section 34.

(8) (a) The parent of a child may, at any time, apply for the discharge of the emergency protection order made under this section.

(b) The Magistrate may discharge the emergency protection order where he is satisfied that it is in the best interests of the child to do so.

### **34. Placement order**

(1) The supervising officer may, in such form as may be prescribed, apply to the Protection Division of the Children's Court for a placement order where he has reasonable grounds to believe that –

- (a) a child is in need of care and protection; and
- (b) it is in the best interests of the child to be in a place of safety.

(2) On an application under subsection (1), the Magistrate –

- (a) may make an interim placement order for the child to be placed in a place of safety for a period not exceeding 14 days and he may extend the interim placement until the final determination of the application;
- (b) shall order an investigation and report by an authorised officer regarding the child's family background, general conduct and home surroundings, to enable him to deal with the case in the best interests of the child; and
- (c) may request that the child be medically examined.

(3) The Magistrate shall, when considering an application for a placement order –

- (a) consider the care plan prepared under section 38(1)(b);
- (b) consider any arrangement which the supervising officer has made, or proposes to make, for affording any person contact with the child; and
- (c) invite any party to the proceedings to comment on those arrangements.

(4) Where, after hearing evidence, including that of the parent of the child, the Magistrate is satisfied, pursuant to subsection (1), that it is in the best interests of the child, he may make a placement order, in such form as may be prescribed, for the child to be placed in a place of safety for an initial period not exceeding one year.

(5) A Magistrate may, on the application of the supervising officer, the child concerned or the parent of the child, vary or discharge an order made under this section where he is satisfied that it is in the best interests of the child to do so.

(6) Subject to section 36, a placement order –

- (a) may be renewed, provided the total placement period does not exceed 3 years;
- (b) shall not be made more than 3 months after the date of lodging of the application, except where it is in the best interests of the child to do so.

(7) As far as possible, preference shall be given to placement in non-institutional alternative care, including, but not limited to, a foster home.

(8) Where an application for a placement order indicates that the child shall be placed in institutional alternative care, the supervising officer shall provide evidence to the Magistrate's satisfaction that placement in non-institutional alternative care cannot be found within a reasonable period of time.

(9) Where a child is placed in institutional alternative care under a placement order and an opportunity arises during the period of validity of the placement order for transfer to non-institutional alternative care, the supervising officer shall immediately apply to the Magistrate for a variation of the placement order so that the child can be transferred to non-institutional alternative care.

### **35. Ancillary orders**

A Magistrate of the Protection Division of the Children's Court may, further to an assessment order, an emergency protection order or a placement order, make any of the following ancillary orders –

- (a) a placement in alternative care, including an order for placing the child in the care of a person designated by the Magistrate to be the foster parent of the child;
- (b) a parenting aide order, providing such parenting aide as may be designated by the supervising officer;
- (c) a supervision order of such duration as the Magistrate may determine, placing the child, or the parent of the child, or both, under the supervision of an authorised officer;
- (d) an order –
  - (i) giving consent to medical treatment of, or to an operation to be performed on, the child;
  - (ii) instructing the child or his parent to undergo professional counselling, or to participate in mediation, a family group conference or any other appropriate problem solving forum;
  - (iii) instructing the child or his parent, or any other person involved in the matter concerning the child, to under a professional assessment;
  - (iv) limiting access of a person to the child or prohibiting a person from contacting the child; or
  - (v) allowing a person to contact the child subject to such conditions as may be specified in the order.

### **36. Long-term care order**

(1) Where the supervising officer considers that it is in the best interests of a child to stay in alternative care placement for a period exceeding 3 years, the supervising officer shall, in such form as may be prescribed, apply to the Protection Division of the Children's Court for a long-term care order for the child to be placed in long-term care.

(2) On an application under subsection (1), the Magistrate –

(a) shall order an investigation and report by an authorised officer regarding the child's family background, general conduct and home surroundings, to enable him to deal with the case in the best interests of the child; and

(b) may order the child to be medically examined.

(3) The Magistrate shall, when considering an application for a long-term care order –

(a) consider the care plan prepared under section 38(1)(b);

(b) consider any arrangement which the supervising officer has made, or proposes to make, for affording any person contact with the child; and

(c) invite any party to the proceedings to comment on those arrangements.

(4) Where, after hearing evidence, including that of the parent of the child, the Magistrate is satisfied that it is in the best interests of the child, he may make a long-term care order, in such form as may be prescribed, for the child to be placed in a place of safety for a period not exceeding 3 years.

(5) A Magistrate may, on the application of the supervising officer or the parent of the child, vary or discharge an order made under this section where he is satisfied that it is in the best interests of the child to do so.

(6) As far as possible, preference shall be given to placement in non-institutional alternative care, including, but not limited to, a foster home.

(7) Where an application for a long-term care order indicates that the child shall be placed in institutional alternative care, the supervising officer shall provide evidence to the Magistrate's satisfaction that placement in non-institutional alternative care cannot be found within a reasonable period of time.

(8) Where a child is placed in institutional alternative care under a long-term care order and an opportunity arises during the period of validity of the order for transfer to non-institutional alternative care, the supervising officer shall immediately apply to the Magistrate for a variation of the long-term care order so that the child can be transferred to non-institutional alternative care.

### **37. Contact order**

- (1) Any –
- (a) parent, unless that parent can no longer exercise his parental rights;
  - (b) person having parental responsibility in respect of a child;
  - (c) person who, by order of a Court, had a child's custody or care immediately before a placement order or a long-term care order was made;
  - (d) other person,

who wishes to have contact with a child who has been placed pursuant to a placement order or long-term care order, may apply to the Protection Division of the Children's Court for a contact order authorising him to have contact with the child.

(2) (a) The supervising officer may, where he considers that it is in the best interests of a child who has been placed pursuant to a placement order or long-term care order, apply to the Protection Division of the Children's Court for –

- (i) such order as he considers appropriate with respect to the contact which is to be allowed between the child and any person;
- (ii) an order authorising him to refuse contact between a child and any person referred to in subsection (1).

(b) The Magistrate shall, when considering an application under this subsection, consider the care plan prepared under section 38(1)(b).

(3) On an application made under this section, a Magistrate may, where he is satisfied that it is in the best interests of the child, make –

- (a) such order as he considers appropriate with respect to the contact which is to be allowed between the child and any

person, specifying the conditions of such contact, where appropriate; or

- (b) an order authorising the supervising officer to refuse to allow contact between the child and any person referred to in subsection (1)(a) to (d).

(4) A decision to allow contact under this section shall not be made against the will of the child depending on the age, the maturity and the mental capacity of the child to understand the benefits, risks, social and other implications, as assessed by a psychologist of the Ministry.

(5) Where a contact order has been granted by the Magistrate and at the time of executing the order, it is no longer in the best interests of the child, the supervising officer may refuse to allow contact with the child and seek a variation or discharge of the order.

(6) A Magistrate making an order under this section may impose such conditions as he may determine.

(7) A Magistrate may, on the application of the supervising officer or a person named in the order, vary or discharge an order made under this section where he is satisfied that it is in the best interests of the child to do so.

(8) An order under this section may be made at the same time or after a placement order or a long-term care order is made.

### **38. Care plan**

(1) The supervising officer shall cause an authorised officer to prepare a care plan in relation to the child where –

- (a) an assessment order or emergency protection order has been made; and
- (b) the supervising officer intends to make an application for a placement order, for contact to be allowed between a child and any person or for a long-term care order.

(2) The care plan referred to in subsection (1) shall specify –

- (a) the needs of the child; and
- (b) the measures to be taken to address those needs.

(3) Any care plan prepared under subsection (1)(b) shall be submitted to the Magistrate, together with the application for a placement order, contact order or a long-term care order, as the case may be.

### **Sub-Part III – Child in Need of Direction and Support**

#### **39. Child mentor**

(1) No person shall act as a child mentor under this Sub-part unless he is registered as such with the supervising officer.

(2) Every person who wishes to act as a child mentor shall apply to the supervising officer, in such form and manner as may be prescribed, for registration as a child mentor.

(3) (a) A potential child mentor shall, by the order of the supervising officer, undergo a medical examination and mental health screening.

(b) The mental health screening referred to in paragraph (a) shall be carried out by a Government psychiatrist or psychologist of the Ministry as may be designated by the supervising officer.

(4) The supervising officer shall register a person as child mentor where that person –

(a) meets such requirements as may be prescribed; and

(b) is found to be physically and psychologically fit following the medical examination and mental health screening carried out under subsection (3).

(5) (a) Participation in a mentoring scheme as a child mentor shall be voluntary.

(b) The supervising officer shall only apply for a mentoring order after he has received the informed consent form duly signed by the proposed child mentor.

(c) A child mentor shall not mentor more than 3 children at a time.

(6) A child mentor shall –

(a) receive mandatory training by the Ministry prior to commencing responsibilities as a child mentor; and

(b) be paid such allowance as may be prescribed.



#### 40. Mentoring order

(1) The supervising officer may, in such manner as may be prescribed, apply to the Protection Division of the Children's Court for a mentoring order where he has reasonable grounds to believe that a child exhibits mild behavioural concerns and –

- (a) the child does not receive assistance or support;
- (b) the parent of the child is refusing, or unable, to provide the child with the assistance and support that he needs; and
- (c) there is no alternative means of providing assistance and support to the child.

(2) Subsection (1) shall not apply to a child with psychiatric condition.

(3) An application under subsection (1) shall, where appropriate, be accompanied by –

- (a) a social enquiry report;
- (b) a psychological report;
- (c) the name of the proposed child mentor; and
- (d) such other information or document as may be relevant in the circumstances.

(4) On receipt of an application, the Magistrate shall cause a notice of the application to be served on the parent of the child, requiring him to appear before the Children's Court on such day and time as may be specified in the notice, to show cause why the mentoring order applied for should not be made.

(5) The Magistrate may, for the purpose of determining the application, summon and examine –

- (a) the parent of the child;
- (b) the proposed child mentor identified in the application in order to ascertain his suitability as a child mentor in the particular case;
- (c) such other person as he may determine in order to obtain any other information or report which he considers necessary.

(6) The Magistrate shall, in determining an application, have regard to any relevant factor, including –

- (a) whether it is imperative that the child should be subject to the mentoring order;
- (b) whether there is any alternative means of providing assistance and support to the child;
- (c) any undertaking given or measures taken by the parent of the child to provide the child with the required assistance and support; and
- (d) any hardship that may be caused to the child or the parent of the child as a result of the mentoring order.

(7) (a) Where the Magistrate is satisfied that it is in the best interests of the child, he may make a mentoring order which shall –

- (i) specify the name of the child mentor;
- (ii) specify the details of the mentoring plan, including its overall duration, the frequency of meetings between the mentor and the child and the time and place where the meetings shall take place; and
- (iii) where appropriate, make provision for such other orders and give such directions as he may consider appropriate to the supervising officer, the child mentor or the parent of the child.

(b) (i) A mentoring order shall remain in force for such period not exceeding 12 months as the Magistrate may determine.

(ii) Upon application made to the Magistrate, a mentoring order may be extended by such further period, not exceeding 12 months, as the Magistrate may determine.

(c) (i) The supervising officer or the parent of the child may, at any time, apply for a variation or discharge of the mentoring order, including the substitution of a child mentor by another child mentor.

(ii) The Magistrate may vary or discharge a mentoring order, or substitute a child mentor by another child mentor, where he is satisfied that it is in the best interests of the child to do so.

(8) (a) During the period of validity of a mentoring order, the supervising officer or an authorised officer may enter any premises for the purpose of supervising any mentoring.

(b) Any owner, occupier or person in charge of any premises shall make available to the supervising officer or an authorised officer all reasonable facilities and assistance to enable him to effectively supervise any mentoring.

(9) The parent of a child, or any person having an influence, control or authority on a child subject of a mentoring order shall, where so requested, provide such assistance as is possible to the child mentor to enable him to effectively discharge his duties.

(10) A Magistrate may, where he considers appropriate, direct that a report on compliance with a mentoring order shall be filed with the Children's Court at such regular intervals as he may determine or at the expiry of the order.

#### **Sub-Part IV – Children with Serious Behavioural Concerns**

#### **41. Children with serious behavioural concerns**

(1) Where –

- (a) a child has exhibited a pattern of serious hostile, aggressive or disruptive behaviour to such an extent that the said behaviour seriously interferes with the care and development of the child; and
- (b) (i) the child has exhibited antisocial behaviour;
- (ii) the child absents himself regularly from his residence without the permission of his parent; or
- (iii) the child has exhibited a pattern of frequent or extended unjustified absences from school,

the child's parent or the police, as the case may be, may, subject to subsection (2), apply, in such form as may be prescribed, to the Protection Division of the Children's Court for a finding that serious behavioural concerns exist which need to be addressed.

(2) (a) The child's parent or the police shall, before making an application under subsection (1), lodge, with the supervising officer, an application for parenting support intervention so as to assist the parent in discharging his parental duties with respect to the management of the child's behaviour.

(b) The Ministry shall –

- (i) conduct an initial assessment of the situation;
- (ii) draw up a parenting support intervention plan including at least 2 home visits by a parenting aide; and
- (iii) conduct a follow-up assessment not later than 21 days.

(c) The supervising officer shall, at the end of the period of 21 days referred to in paragraph (b)(iii), issue a letter certifying that a parenting support intervention has been completed, whether or not such intervention has been successful.

#### **42. Determination of serious behavioural concerns**

(1) Where the parenting support intervention under section 41 has not been successful, the Magistrate shall hear the parties concerned, in the presence of the Ministry, and determine whether there are serious behavioural concerns which need to be addressed.

(2) (a) Where the Magistrate finds that there are serious behavioural concerns, he shall order a comprehensive psycho-social enquiry of the child and his family environment.

(b) The enquiry referred to in paragraph (a) shall be conducted by the Ministry responsible for the subject of probation and aftercare.

(3) The Magistrate shall consider the report of the psycho-social enquiry to determine whether the child has serious behavioural concerns which needs to be addressed.

(4) Where the Magistrate determines that the child has serious behavioural concerns, he may issue an order, with or without a requirement that the child shall –

- (a) attend school or a specified place on specified days;
- (b) not leave the place where he is to reside outside permitted hours and without the permission of his parent or intervention supervisor, as the case may be;
- (c) follow, where applicable, such drug or alcohol treatment or mental health counselling plan as may be specified;
- (d) refrain from associating with such persons as may be specified;

- (e) refrain from engaging in such behaviour as may be specified;
- (f) participate in such group activities, including counselling, as may be specified;
- (g) be allowed to have contact with his parent; and
- (h) comply with such other order as the Magistrate may determine.

(5) (a) In determining the requirements of a preventive intervention order, the Magistrate shall give priority consideration not to remove the child from his usual household insofar as it is in the best interests of the child.

(b) Where, pursuant to paragraph (a), the Magistrate does not remove a child from his usual household, preventive intervention shall –

- (i) be conducted by an officer of the Ministry responsible for the subject of probation and aftercare; and
- (ii) follow an individualised supervision plan based on the specific needs and risks of the child.

(6) Where the Magistrate considers that it would not be in the best interests of the child to continue to reside at his usual household, he may direct that the child resides at a specified place.

(7) In this section –

“specified place” –

- (a) means a group home specialised in handling children with behavioural issues, mental health problems, drug or alcohol related issues; and
- (b) does not include institutions for juvenile offenders.

## **PART IV – CHILD OFFENDERS, CHILD VICTIMS AND CHILD WITNESSES**

### **Sub-Part I – Child Offenders**

#### **Section A – Criminal Responsibility of Children**

#### **43. Child under 12 not criminally responsible**

A child under the age of 12 shall not be held criminally responsible for any act or omission.

#### **44. Procedure regarding child under 12 suspected of having committed an offence**

(1) Where a police officer has reasonable grounds to suspect that a child under the age of 12 has committed an offence, he shall, notwithstanding any other enactment, not arrest the child but shall conduct an enquiry and shall immediately –

- (a) hand over the child to –
  - (i) his parent; or
  - (ii) a probation officer, where his parent is not available or where it is not in the best interests of the child to be handed over to his parent;
- (b) refer the child to a probation officer for assessment; and
- (c) refer the child to a psychologist of the Ministry to assess the state of mind of the child at the time of the commission of the offence.

(2) Where a child is referred to a probation officer under subsection (1)(b), the probation officer shall, not later than 7 days after the child has been referred to him, conduct an assessment in accordance with section 45 to establish the circumstances which led the child to commit the offence.

(3) After assessing the child, the probation officer may –

- (a) refer the child for counselling or therapy;
- (b) arrange for the child to access support services designed specifically to suit the needs of children under the age of 12, other than psychological services;
- (c) arrange a meeting, which shall be attended by the child and his parent, and which may be attended by any other person likely to provide information for the purpose of the meeting; or
- (d) decide to take no action.

(4) The purpose of the meeting referred to in subsection (3)(c) shall be to –

- (a) assist the probation officer in establishing more comprehensively the circumstances which led the child to commit the offence; and
  - (b) develop and adopt a written plan of intervention which shall meet the specific needs of the child concerned given the circumstances established under paragraph (a).
- (5) The plan of intervention referred to in subsection (5)(b) shall –
- (a) specify the objectives to be achieved for the child and the period within which they shall be achieved;
  - (b) contain details of the services to be provided to the child and specify the person or organisation that shall provide those services; and
  - (c) state the responsibilities of the child and the parent of the child, or such other responsible adult as may be specified in the plan.
- (6) The probation officer shall record, with reasons, the outcome of the assessment and the decision made in accordance with subsection (3).

## **Section B – Assessment of Child Offenders**

### **45. Assessment by probation officer**

- (1) Every child who is alleged to have committed an offence shall be assessed by a probation officer in accordance with subsections (2) and (3).
- (2) Where a probation officer is notified by the police that a child has been served with a summons or arrested, the probation officer shall assess the child before the child appears before the Criminal Division of the Children’s Court.
- (3) Where a child under the age of 12 has been referred to a probation officer under section 44(1)(b), the probation officer shall, not later than 7 days after the child has been referred to him, conduct an assessment of the child.
- (4) The purpose of assessing a child shall be to –
- (a) establish whether the child is in need of care and protection in order to refer the child to the Children's Court;
  - (b) assess the age of the child if the age is uncertain;

- (c) formulate recommendations regarding the release or detention and placement of the child;
- (d) where appropriate, establish the prospects of the child to be enrolled into a diversion programme;
- (e) in the case of a child under the age of 12, establish the circumstances which led the child to commit the offence so as to be able to make a decision under section 44(3);
- (f) in the case of a child who is 12 or above but less than 14, assess the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child for the purpose of section 49(2)(a);
- (g) determine whether the child has been used by an adult to commit the offence; and
- (h) provide any other relevant information regarding the child which the probation officer may consider to be in the best interests of the child or which may further any objective which this Act intends to achieve.

**46. Confidentiality of information obtained during assessment**

(1) Any information obtained during an assessment shall –

- (a) subject to subsection (2), remain confidential;
- (b) not be admissible as evidence during any bail application, plea, trial or sentencing proceedings in which a juvenile is charged as an offender or a child appears as an alleged victim or witness.

(2) Any information obtained during an assessment may only be used for the purpose specified in section 51(4).

(3) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 6 months.

**47. Place where assessment to be conducted**

(1) The assessment of a child may be conducted at any suitable place identified by the probation officer, which may include a room at a police station, the Children’s Court or a hospital.



(2) The place identified pursuant to subsection (1) shall, as far as possible, be conducive to privacy.

#### **48. Persons to attend assessment**

(1) The parent of a child to be assessed shall attend the assessment of the child, unless he has been –

- (a) exempted by the probation officer from attending; or
- (b) excluded by the probation officer from attending because he has disrupted, undermined or obstructed the assessment or it is in the best interests of the child that he does not attend.

(2) A probation officer may allow any person whose presence is necessary or desirable for the assessment.

(3) A probation officer may, where there is any risk that the child may escape or endanger the safety of the probation officer or any other person, request a police officer to be present at the assessment.

(4) A probation officer may, where appropriate, elicit the views of the child in private regarding the presence of any person who is attending the assessment.

(5) (a) A probation officer shall make every effort to locate any of the parent of a child in order to conclude the assessment of the child and may request a police officer to assist in the location of that parent.

(b) A probation officer may conclude the assessment of a child in the absence of his parent where all reasonable efforts to locate the parent have failed or where the parent has been notified of the assessment and has failed to attend.

### **Sub-Part II – Juvenile Offenders**

#### **Section A – Discretion to Prosecute Juvenile Offender Aged 12 or Above But Below the Age of 14**

#### **49. Discretion to prosecute juvenile aged 12 or above but below the age of 14**

(1) The Director of Public Prosecutions shall, in determining whether or not to prosecute a child aged 12 or above but below the age of 14, take into consideration –

- (a) the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child;

- (b) the nature and seriousness of the offence;
- (c) the impact of the offence on any victim and the community;
- (d) the appropriateness of diversion; and
- (e) such other relevant factor as he may, in the circumstances, determine.

(2) For the purpose of subsection (1)(a), the Director of Public Prosecutions –

- (a) may call for an assessment of the child by a probation officer in accordance with section 45; and
- (b) may apply for an evaluation of the criminal capacity of the child in accordance with subsection (3).

(3) (a) A Magistrate of the Criminal Division of the Children’s Court may, on his own motion, or at the request of the Director of Public Prosecutions or the child's legal representative, order an evaluation of the criminal capacity of a child aged 12 or above but below the age of 14 by a suitably qualified person.

(b) The evaluation referred to in paragraph (a) shall include an assessment of the cognitive, moral, emotional, psychological and social development of the child.

(c) A suitably qualified person referred to in paragraph (a) shall be a mental health professional, including a Government psychiatrist or psychologist of the Ministry.

(4) Where an order is made by the Magistrate under subsection (3), the person identified to conduct the evaluation of the criminal capacity of the child shall furnish the Magistrate with a written report of the evaluation not later than 30 days after the date of the order.

### **Section B – Best Interests of Juvenile Not to Be Prosecuted or Criminal Proceedings Against Juvenile to Be Discontinued**

#### **50. Juvenile not to be prosecuted or criminal proceedings against juvenile to be discontinued**

(1) Notwithstanding section 49, where the Director of Public Prosecutions considers that it is in the best interests of a juvenile and in the public interest that –

- (a) the juvenile shall not be prosecuted for an offence; or
- (b) criminal proceedings instituted against the juvenile shall be discontinued,

he shall request a probation officer to assess whether it is in the best interests of the juvenile to enrol in a diversion programme.

(2) (a) Where, further to a request made under subsection (1), the probation officer makes an assessment to the effect that enrolling in a diversion programme will be in the juvenile's best interests, the Director of Public Prosecutions may offer the juvenile to enroll in such programme.

(b) The probation officer shall make his assessment in a social enquiry report to the Director of Public Prosecutions not later than 21 days after the request is made.

(3) Where a probation officer makes an assessment to the effect that enrolling in a diversion programme will not be in the juvenile's best interests, the Director of Public Prosecutions may –

- (a) where criminal proceedings have not been instituted, institute criminal proceedings against the juvenile; or
- (b) where criminal proceedings have been instituted and discontinued, reinstitute criminal proceedings against the juvenile.

(4) Notwithstanding subsections (1) and (2), the Director of Public Prosecutions shall not offer a juvenile to enrol in a diversion programme where –

- (a) the juvenile is suspected to have committed an offence under –
  - (i) section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 249 or 250 of the Criminal Code;
  - (ii) section 30 of the Dangerous Drugs Act; or
  - (iii) such other offence as may be prescribed; or
- (b) a probation officer makes an assessment to the effect that enrolling in a diversion programme will not be in the juvenile's best interests.

## **51. Diversion programme**

(1) A diversion programme shall be an individualised non-residential supervision and rehabilitation scheme implemented by the Ministry responsible for the subject of probation and after care services for the purpose of rehabilitating the juvenile without resorting to formal criminal proceedings.

(2) A diversion programme may be implemented by an eligible provider, based on a contract between the Ministry responsible for the subject of probation and after care services and the eligible provider, and under the supervision of that Ministry.

(3) A diversion programme shall be an individualised programme to meet the specific needs of the juvenile and shall be conducted based on an individual diversion plan prepared by the officer assigned to the programme and approved by the Ministry responsible for the subject of probation and after care services.

(4) A diversion programme shall be for a defined period of time and shall not exceed 3 years in duration.

(5) (a) The progress of the juvenile in completing the requirements of the diversion programme shall be monitored by the officer assigned to the programme.

(b) Where the juvenile consistently demonstrates unwillingness to comply with the requirements of the diversion programme, the officer assigned to the programme shall refer the case to his supervisor and shall propose that the juvenile undergoes psychological assessment and such other evaluation as may be appropriate.

(c) Where any assessment or evaluation conducted under paragraph (b) concludes that continued participation in the diversion programme is not in the juvenile's best interests, the Ministry responsible for the subject of probation and after care services shall refer the assessment or evaluation to the Director of Public Prosecutions for the Director of Public Prosecutions to decide whether or not the criminal proceedings against the juvenile ought to be initiated or reinstated, as the case may be.

## **Section C – Detention of Juvenile Offenders**

### **52. Pre-trial detention of juvenile offender**

(1) Subject to any other enactment, pre-trial detention of a child shall, as far as possible, be imposed only as a measure of last resort.

(2) Whenever possible, pre-trial detention shall be replaced by alternative measures, such as release on parental recognisance or probationary supervision.

### **53. Bail or detention**

(1) Where a juvenile is arrested with or without warrant and cannot be brought forthwith before a Court, the police officer in charge of the station to which that person is brought shall inquire into the case, and may release him on a recognisance being entered into by his parent, with or without sureties, for such an amount as shall, in the opinion of the officer, secure his attendance upon the hearing of the charge, and shall release him, unless –

- (a) he has been arrested in relation to an offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 249 or 250 of the Criminal Code or section 30 of the Dangerous Drugs Act; or
- (b) the officer has reason to believe that the release of the juvenile would defeat the ends of justice.

(2) Where a juvenile has been arrested and is not released, the police officer shall cause him to be detained in a place of remand until he may be brought before any Court unless the officer certifies that –

- (a) it is impracticable to do so;
- (b) he is of such bad character that he may not safely be so detained; or
- (c) by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him,

and the certificate shall be produced to the Court.

(3) Where a juvenile is arrested, the police officer in charge of the station to which the juvenile is brought shall, immediately, take all reasonable steps to inform his parent of his arrest and the place where he may be seen by the parent.

### **54. Committal to custody in lieu of prison**

(1) (a) Subject to paragraph (b), the Court on remanding or committing for trial a juvenile who is not released on bail, shall, instead of committing him to prison, commit him to custody in a place of remand and named in the commitment, to be detained for the period for which he is remanded or until he is released in due course of law.

(b) This section shall not affect any power of a Court under section 57 of the District and Intermediate Courts (Criminal Jurisdiction) Act, to commit a person who has attained the age of 16 to prison until the next Assizes.

(2) (a) A commitment under this section may be varied, or, in the case of a juvenile who proves to be of so bad a character that he may not be safely detained in a place of remand, or to be found not to be a fit person to be so detained, revoked by a Court.

(b) Where a commitment is revoked under paragraph (a), the juvenile may be committed to prison.

#### **55. Separation of juvenile offender from adult**

(1) The Commissioner of Police shall make arrangements to prevent a juvenile while –

- (a) detained in a police station;
- (b) being conveyed to and from any criminal Court;
- (c) waiting before or after attendance in any criminal Court,

from associating with an adult, other than a relative, who is charged with any offence other than an offence with which the juvenile is jointly charged, or of which he has been jointly convicted.

(2) The Commissioner of Police shall ensure that a girl, being a juvenile, while so detained under subsection (1), whether being conveyed or waiting, is under the care of a police woman officer.

#### **56. Attendance of parent**

(1) Where a juvenile is charged with an offence or is for any other reason brought before a Court, his parent shall be required to attend at the Court before which the case is to be heard during all stages of the proceedings, unless the Court is satisfied that it would be unreasonable to require his attendance.

(2) Where a juvenile is arrested, the police officer by whom he is arrested, or the officer in charge of the police station to which he is brought, as the case may be, shall cause the parent of the juvenile where he can be found, to be warned to attend the Court before which the juvenile is to appear.

(3) For the purpose of enforcing the attendance of a parent and enabling him to take part in the proceedings and enabling orders to be made against him, the Court may issue a summons to the parent directing him to appear before it at a time and place specified, and, where the parent fails to appear in obedience to

the summons, the Court may issue a warrant for his arrest.

(4) The attendance of the parent of a juvenile shall not be required under this section where the juvenile was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of a Court.

## **Section D – Sentencing of Juvenile Offenders**

### **57. Pre-sentence report**

(1) Before deciding on how to deal with a juvenile who has been convicted of an offence other than a contravention, a Court shall require a probation officer to prepare a pre-sentence report regarding the best way to deal with the juvenile.

(2) A pre-sentence report shall be in writing and shall contain such information as to –

- (a) the juvenile, including his age, character, attitude, antecedents, home surroundings, school attendance and performance record, any employment history, medical history;
- (b) whether it is expedient or necessary for his reform that he should undergo a period of training in a Correctional Youth Centre or a Rehabilitation Youth Centre, as the case may be; and
- (c) such other matter as the Court thinks fit.

(3) The Court may, while any information required for the purpose of subsection (2) is being sought, or for the purpose of any special medical examination or observation, remand the juvenile to the appropriate institution.

(4) A copy of the pre-sentence report shall be given to the juvenile and his parent.

(5) The Court may, where a juvenile is convicted of an offence –

- (a) discharge the juvenile absolutely or conditionally in accordance with the Criminal Procedure Act;
- (b) order the offender to pay a fine and costs;
- (c) commit the juvenile to the care of his parent, close relative or other fit person and order the carer to give security for the good behaviour of the juvenile;

- (d) commit the juvenile to custody in a place of detention and training as provided under the Reform Institutions Act;
- (e) where it considers that an order under this subsection would not be appropriate in the circumstances, sentence him to undergo a term of imprisonment; or
- (f) deal with the case in any other manner in which it may be legally dealt with.

(6) Subject to subsection (7), where the Court is satisfied that it is necessary for the reform of a juvenile that he should undergo training in a reform institution for juveniles, it may direct that the juvenile be sent to that institution as appropriate.

(7) Subject to this section, any sentence of training in a reform institution for juveniles shall include supervision under section 49 of the Reform Institutions Act.

#### **58. Punishment of certain serious crimes**

- (1) Where a juvenile is convicted of –
  - (a) an offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 249 or 250 of the Criminal Code;
  - (b) an offence under section 30 of the Dangerous Drugs Act; or
  - (c) an attempt or complicity in respect of any of the offence referred to in paragraph (a) or (b),

and the Court is of opinion that none of the other methods in which the case may be legally dealt with is suitable, the Court may sentence the offender to be detained for such period as may be specified in the sentence.

(2) Where a sentence has been passed under subsection (1)(a), the juvenile shall, during that period, notwithstanding any other enactment Act, be liable to be detained in such place and on such conditions as the President may direct.

#### **59. Probation orders**

(1) (a) Where a juvenile is convicted of an offence, other than an offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 249 or 250 of the Criminal Code or section 30 of the Dangerous Drugs Act, the Court may make an order discharging the juvenile conditionally on his parent entering into a recognisance, with or without sureties, to be of good behaviour and to



appear for sentence when called upon during such period, not exceeding 3 years, as may be specified in the order.

(b) A recognisance entered into under this section shall, where the Court so orders, contain a condition that the juvenile be under the supervision of such person as may be named in the order during the period specified in the order, and such other conditions for securing such supervision as may be specified in the order.

(c) Nothing in this section shall affect the Criminal Procedure Act.

(2) The Court may, after notice to the juvenile's parent, vary the conditions of the recognisance and may, on being satisfied that the conduct of the juvenile has been such as to make it unnecessary that the recognisance remain in force, discharge the recognisance.

(3) (a) Where the Court is satisfied by information on oath that the juvenile has failed to observe any condition of his recognisance, it may issue a warrant for his arrest, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the juvenile, to any of his sureties, and to any person appointed to supervise the offender, requiring him or them to attend the Court and at such time as may be specified in the summons.

(b) The Court, on being satisfied that the juvenile has failed to observe any condition of his recognisance, may forthwith, without any further proof of his guilt, deal with the juvenile as for the original offence.

#### **60. Restrictions on imprisonment of juvenile in default of payment of fine or costs**

(1) A juvenile shall not be ordered to be imprisoned or sentenced to penal servitude for any offence, or be committed to prison in default of payment of a fine or costs.

(2) A juvenile shall not be ordered to be imprisoned for any offence, or be committed to prison in default of payment of a fine or costs, where he can be suitably dealt with in any other way, whether by recognisance to be of good behaviour and to appear for sentence when called upon, by committal to a place of detention or otherwise.

(3) A juvenile sentenced to imprisonment or committed to prison in default of payment of a fine or costs, shall not, as far as is practicable, be allowed to associate with adult prisoners.

#### **61. Substitution of custody for imprisonment**

Where a juvenile –

- (a) is convicted of an offence punishable, in the case of an adult, with penal servitude or imprisonment; or
- (b) would, if he were an adult, be liable to be imprisoned in default of payment of any fine or costs,

the Court may, where it considers that none of the other methods in which the case may legally be dealt with is suitable, order that he be committed to custody in a place of detention provided under this Act and named in the order for such time as may be specified in such order, not exceeding the term for which he might, but for this Act, be ordered to be imprisoned or committed to prison, nor in any case exceeding 6 months.

## **62. Powers of Court**

The Court may –

- (a) order that any juvenile found undergoing imprisonment shall be transferred to a Rehabilitation Youth Centre to be detained there for a period equal to that of the unexpired period of his sentence or until he has attained the age of 18, whichever is the shorter, or for any shorter period;
- (b) relieve any juvenile from the whole or any part of the period of detention in a Rehabilitation Youth Centre to which the juvenile has been adjudged.

## **63. Places of remand and of detention**

(1) The Commissioner of Police shall, subject to the approval of the President notified in the *Gazette*, provide such places of remand and such places of detention as may be required for the purposes of this Act.

(2) The authority or persons responsible for the management of any institution other than a prison may, whether the institution is supported out of public funds or by voluntary contributions, but subject in the case of an institution supported out of public funds to the consent of the President, agree with the Commissioner of Police for the use of the institution or any part of it as a place of detention on such terms as may be agreed.

(3) In selecting the place of remand or the place of detention to which a juvenile is to be sent, the Court or police officer shall have regard, where practicable, to the religious belief of the juvenile.

(4) The President shall cause places of detention provided under this Act to be inspected and may make regulations in relation to –

- (a) the inspection of those places of detention;
- (b) the classification, treatment, employment and control of juveniles detained in custody in those places of detention; and
- (c) the visit of juveniles in detention.

#### **64. Custody of juveniles**

(1) The order or judgment in pursuance of which a juvenile is committed to custody in a place of detention provided under this Act shall be delivered with the juvenile to the person in charge of the place of detention and shall be sufficient authority for his detention in that place in accordance with its tenor.

(2) A juvenile who is detained in a place of remand or in a place of detention and whilst being conveyed to and from any such place shall be deemed to be in legal custody.

(3) A juvenile who escapes from legal custody may be arrested without warrant and any person who knowingly assists or induces a juvenile to escape or knowingly harbours or conceals a juvenile who has so escaped, or prevents him from returning, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and imprisonment for a term not exceeding 5 years.

### **Sub-Part III – Guardian Ad Litem**

#### **65. Appointment of Guardian Ad Litem**

(1) Where a child is a victim of, or witness in, a serious offence, including physical or sexual abuse, or where a child is an offender, the supervising officer may, where –

- (a) there is a conflict of interest between the child victim and his parent;
- (b) there is a dispute of custody or visitation rights in relation to the child; or
- (c) where no parent is available or is unwilling or unable to act in the best interest of the child,

apply to the Protection Division of the Children’s Court for the appointment of a guardian ad litem for the victim, witness or offender.

(2) Where the Protection Division of the Children's Court is satisfied that it is in the best interests of the child to do so, it shall appoint a guardian ad litem.

(3) The guardian ad litem shall –

- (a) advocate for the child's best interests before a Court;
- (b) monitor the child's best interests, including any impact thereon caused by the involvement in the justice process, throughout the investigation and the judicial proceedings; and
- (c) make recommendations related to the child's best interests to the police, prosecutor and any other person or body in relation to any Court proceedings involving the child.

## **PART V – CHILDREN'S COURT**

### **Sub-Part I – Establishment of Children's Court**

#### **66. Establishment of Children's Court**

(1) There shall be a specialised Court to be known as the Children's Court, which shall be a Court of record and shall have an official seal.

(2) The Children's Court shall consist of –

- (a) a Civil Division;
- (b) a Protection Division; and
- (c) a Criminal Division.

(3) The Chief Justice shall designate, from among the Judges assigned to the Children's Court under section 70(1), a President of the Children's Court to preside over that Court.

#### **67. Sitting of Court**

The Children's Court shall sit in such place and at such time as the Chief Justice may direct.

#### **68. Staff of Children's Court**

The Master and Registrar shall post to the Children's Court such number of Court officers, Court Ushers and other public officers as may be required for the proper discharge of the Court's functions.

**Sub-Part II – Civil Division, Protection Division and Criminal  
Division of Children’s Court**

**Section A – Civil Division of Children’s Court**

**69. Jurisdiction and proceedings before Civil Division**

(1) The Civil Division of the Children’s Court shall, notwithstanding any other enactment, have, where children are involved, exclusive jurisdiction to try –

- (a) any action entered under the Code Civil Mauricien for adoption, sale of minor’s rights, *ouverture de la tutelle*, appointment of guardian and sub guardian, *recherche de maternité, recherche de paternité* and *désaveu de paternité*;
- (b) any other civil action as the Chief Justice may direct.

(2) Subject to this Act, and to any specific procedural provisions in any other enactment, all proceedings before the Civil Division of the Children’s Court shall be instituted and conducted in the same manner as proceedings in a civil matter before a Judge of the Supreme Court.

**70. Judge of Civil Division**

(1) The Chief Justice shall designate one or more Judges of the Supreme Court to exercise jurisdiction in the Civil Division of the Children’s Court.

(2) The designation of a Judge of the Supreme Court to the Civil Division of the Children’s Court shall not affect his –

- (a) tenure as a Judge of the Supreme Court; or
- (b) rank, title, status, remuneration or other rights or privileges as a Judge of the Supreme Court.

(3) A Judge of the Civil Division of the Children’s Court shall have and exercise all powers conferred upon a Judge of the Supreme Court.

**71. Appeal against decision of Civil Division**

An appeal against a decision or order of the Civil Division of the Children’s Court shall be made to the Court of Civil Appeal in the same manner specified in section 3 of the Court of Civil Appeal Act.

## **Section B – Protection Division of Children’s Court**

### **72. Jurisdiction and proceedings before Protection Division**

(1) The Protection Division of the Children’s Court shall, notwithstanding any other enactment, have exclusive jurisdiction to try any application under Part III.

(2) Subject to this Act, and to any specific procedural provisions in any other enactment, all proceedings before the Protection Division of the Children’s Court shall be instituted and conducted in the same manner as proceedings in a civil matter before a Magistrate of the Intermediate Court.

### **73. Magistrate of Protection Division**

(1) The Chief Justice shall designate one or more Magistrates of the Intermediate Court to exercise jurisdiction in the Protection Division.

(2) The designation of a Magistrate of the Intermediate Court to the Protection Division of the Children’s Court shall not affect his –

- (a) tenure as a Magistrate of the Intermediate Court; or
- (b) rank, title, status, remuneration or other rights or privileges as a Magistrate of the Intermediate Court.

(3) A Magistrate of the Protection Division of the Children’s Court shall have and exercise all powers conferred upon a Magistrate of the Intermediate Court.

### **74. Appeal against decision of Protection Division**

(1) Notwithstanding any other enactment, the supervising officer or the parent of a child may appeal to the Judge in Chambers against any order made by a Magistrate of the Protection Division of the Children’s Court under section 34(4) or 36(4) or any variation made under section 34(5) or 36(5).

(2) Notwithstanding any other enactment, the Judge in Chambers may, upon the application in writing of any interested party, appoint a guardian ad hoc to appeal on behalf of the child.

(3) Subject to subsection (4), an appeal under subsection (1) shall be lodged within a period of 21 days of the making of the order.

(4) Where a guardian ad hoc has been appointed to appeal on behalf of the child, the Judge in Chambers may entertain an appeal lodged outside the time limit specified in subsection (3).

(5) An appeal under this section shall be made in the same manner as an application is made to a Judge in Chambers under the Supreme Court (Judge in Chambers) Rules 2002.

### **Section C – Criminal Division of Children’s Court**

#### **75. Jurisdiction and proceedings before Criminal Division**

(1) The Criminal Division of the Children’s Court shall, notwithstanding any other enactment, have, where children are involved, exclusive jurisdiction to try –

- (a) in the case of a child victim, any of the following offences committed on the child –
  - (i) an offence committed under this Act;
  - (ii) an offence under section 228, 230, 231, 249, 250, 254, 260, 262, 303, 304, 305, 307, 310, 330, 331 or 343 of the Criminal Code;
  - (iii) an offence under the Combatting of Trafficking in Persons Act; or
  - (iv) an offence under the Protection from Domestic Violence Act;
- (b) in the case of a child witness, any of the following offences where the child is a witness thereto –
  - (i) an offence under this Act;
  - (ii) an offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 230, 231, 249, 250, 303, 304, 305 or 310 of the Criminal Code;
  - (iii) an offence under the Combatting of Trafficking in Persons Act; or
  - (iv) an offence under the Protection from Domestic Violence Act;
- (c) in the case of a juvenile offender, any criminal offence committed by the child, other than –

- (i) an offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 249 or 250 of the Criminal Code;
  - (ii) an offence under section 30 of the Dangerous Drugs Act;
  - (iii) an offence where the child is charged jointly with an adult;
  - (iv) such other offence as may be prescribed; or
- (d) such other case as the Director of Public Prosecutions may, depending on the seriousness of the case and where he considers it to be in the best interests of a child victim, child witness or juvenile offender, lodge before it.

(2) Subsection (1)(c) shall apply where the offender, when formally charged before the Criminal Division of the Children's Court, is still a juvenile.

(3) A Magistrate of the Criminal Division of the Children's Court shall, where children are involved, have jurisdiction to hold a preliminary inquiry in relation to offences specified in section 116(2) of the Courts Act.

(4) Subject to this Act, and to any specific procedural provisions in any other enactment, all proceedings before the Criminal Division of the Children's Court shall be instituted and conducted in the same manner as proceedings in a criminal matter before a Magistrate of the Intermediate Court.

## **76. Magistrate of Criminal Division**

(1) The Chief Justice shall designate one or more Magistrates of the Intermediate Court to exercise jurisdiction in the Criminal Division of the Children's Court.

(2) The designation of a Magistrate of the Intermediate Court to the Criminal Division of the Children's Court shall not affect his –

- (a) tenure as a Magistrate of the Intermediate Court; or
- (b) rank, title, status, remuneration or other rights or privileges as a Magistrate of the Intermediate Court.

(3) A Magistrate of the Criminal Division of the Children's Court shall have and exercise all powers conferred upon a Magistrate of the Intermediate Court.



## **77. Prosecution for rape or sodomy on child**

Where a person is prosecuted for the offence of rape under section 249(1) of the Criminal Code or for sodomy under section 250 of the Criminal Code on a child, the case shall be heard –

- (a) by 2 Magistrates of the Criminal Division of the Children’s Court; or
- (b) where the President of the Children’s Court so directs, by more than 2 Magistrates.

## **78. Appeal against decision of Criminal Division**

(1) An appeal against an order or final judgment of a Magistrate of the Criminal Division of the Children’s Court shall, subject to subsection (2), be made to the Supreme Court in the same manner specified in section 92 of the District and Intermediate Court (Criminal Jurisdiction) Act.

(2) An appeal against an order or judgment of a Magistrate of the Criminal Division of the Children’s Court may be made –

- (a) in the case of an order or judgment committing a juvenile to custody in a Rehabilitation Youth Centre or in a place of detention provided under this Act, or to the care of an institution, by the juvenile or his parent on his behalf;
- (b) in the case of an order requiring the parent of a juvenile to give security for his good behaviour, by the person required to enter into the recognisance;
- (c) in the case of an order requiring a person to contribute in respect of a juvenile committed to the care of an institution, by the person required to contribute.

## **Sub-Part III – Proceedings before Children’s Court or any Other Court**

### **79. Child-friendly environment**

(1) Any Court proceedings involving a child shall be conducted in the following manner –

- (a) the proceedings shall be conducted in a language which is simple and comprehensible to the child, having due regard to the age and level of maturity of the child;
- (b) the Court shall ensure that appropriate arrangements are made –

- (i) in the courtroom to hear his evidence;
- (ii) for the child to be accompanied by his parent, unless the Court designates another person to accompany the child where –
  - (A) the parent is the alleged perpetrator of the offence committed on the child;
  - (B) the child expresses a concern about being accompanied by his parent; or
  - (C) the Court considers that it is not in the best interests of the child to do so.

(2) Every Court shall ensure that no person shall, in the course of proceedings –

- (a) treat a child in a manner that is disrespectful of the child's dignity, taking into account the child's personal situation and immediate and special needs, age, gender, disability, if any, and level of maturity;
- (b) require a child to give evidence against his will or without the knowledge of any of his parents.

(3) Every Court shall ensure that a child is treated in a caring and sensitive manner which is respectful of his dignity throughout the proceedings, taking into account his personal situation and immediate and special needs, age, gender, disability, if any, and level of maturity.

## **80. Live video and television link**

(1) Notwithstanding any other enactment, any Court may, in its discretion and on motion made by the prosecution, allow a child victim or child witness in relation to an offence referred to in section 75(1) to appear before it, and depose, through such live video or live television link system as may be approved in writing by the Chief Justice.

(2) In exercising its discretion under subsection (1), the Court shall ensure that there is a fair hearing in the matter.

## **Sub-Part IV – Procedural Proceedings, Enforcement and Rules**

### **81. Procedural proceedings**

(1) The law of evidence in force in Mauritius shall apply to proceedings

before the Children's Court.

(2) Service of any summons or order of the Children's Court may be effected by an usher or a police officer.

## **82. Enforcement of order or judgment**

Every order or judgment of the Children's Court shall be enforced as if it were an order or judgment of a Judge of the Supreme Court or Magistrate of the Intermediate Court, as the case may be.

## **83. Rules**

(1) The Chief Justice may make such rules as he thinks fit for the purposes of this Part.

(2) Any rules made under subsection (1) may provide for the payment of fees or the levying of charges.

## **PART VI – MISCELLANEOUS**

## **84. Confidentiality**

No officer of the Ministry or member of the Panel shall disclose to any unauthorised person any matter which comes to his knowledge in the performance of his functions.

## **85. Offences and jurisdiction**

(1) Any person who molests, hinders or obstructs the supervising officer, an authorised officer or any person assisting him in the exercise of his powers under this Act shall commit an offence.

(2) Any person who without reasonable cause fails to comply with a summons issued under this Act or wilfully refuses to give evidence or gives material evidence that is false or grossly misleading shall commit an offence.

(3) Any person who otherwise commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

(4) The Court before which a person is convicted of an offence under this Act may, in addition to any penalty imposed, order –

- (a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence; or

- (b) that the material subject matter of the offence be no longer stored on and made available through a computer system, or that the material be deleted.

(5) No prosecution shall be instituted in relation to an offence referred to in section 75(1) except on information filed with the consent of the Director of Public Prosecutions.

(6) (a) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate (Criminal Jurisdiction) Act, a Magistrate of the Criminal Division of the Children's Court shall have jurisdiction to try an offence under this Act and may impose any penalty provided in this Act.

(b) Where an act alleged to constitute an offence under section 16, 17, 18 or 19 occurred outside Mauritius, the Criminal Division of the Children's Court shall, regardless of whether or not the act constitutes an offence at the place of its commission, have jurisdiction in respect of that offence if the person to be charged –

- (i) is a citizen of Mauritius;
- (ii) is ordinarily resident in Mauritius; or
- (iii) was arrested in Mauritius or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offence was committed.

(c) Any act alleged to constitute an offence under section 16, 17, 18 or 19 and which is committed outside Mauritius by a person, other than a person referred to in paragraph (b) shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in Mauritius if that –

- (i) person is found to be in Mauritius;
- (ii) person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

(d) An offence under section 16, 17, 18 or 19 committed in a country outside Mauritius shall, for the purpose of determining the jurisdiction of the Criminal Division of the Children's Court to try the offence, be deemed to have been committed –

- (i) at the place where the accused is ordinarily resident; or

- (ii) at the accused person's principal place of business.

## **86. Regulations**

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for –

- (a) the payment of fees;
- (b) the registration, operation, supervision and control of, and procedure for placement in, places of safety, excluding hospitals and educational institutions;
- (c) measures to be taken by services, institutions and associations providing services to children to ensure that persons charged with a criminal offence do not come into contact with children; and
- (d) any other matter which may be prescribed.

## **87. Repeal**

The Child Protection Act and the Juvenile Offenders Act are repealed.

## **88. Consequential amendments**

(1) The Combating of Trafficking in Persons Act is amended –

(a) in section 2 –

(i) in the definition of “trafficking”, by repealing paragraph (b) and replacing it by the following paragraph –

(b) the adoption or custody of a person, including any act done by another person as intermediary for the purpose of an adoption or custody, where such adoption or custody has been facilitated or secured through illegal means;

(ii) by inserting, in the appropriate alphabetical order, the following new definition –

“illegal means” includes through payment or other form of consideration;

(b) in section 3, by deleting the words "Child Protection Act" and replacing them by the words "Children's Act 2019";

(c) in section 11(1), by adding the following new paragraph –

(c) Where the trafficked person is a child, an offence shall be committed notwithstanding that none of the means referred to in the definition of "trafficking" have been employed.

(d) by inserting, after section 13, the following new section –

### **13A. Aggravating circumstances**

(1) For the purpose of section 14(2A), aggravating circumstances shall exist where –

(a) the offence involves a victim who is particularly vulnerable, including a pregnant woman or an elderly person;

(b) the offence exposed the victim to a life-threatening illness, including HIV and AIDS;

(c) the victim is physically or mentally handicapped;

(d) the victim is a child;

(e) drugs, medications or weapons were used in the commission of the offence;

(f) a child has been adopted for the purpose of trafficking;

(g) the offender has been previously convicted for the same or similar offences;

(h) the offender is the spouse or partner of the victim;

(i) the offender is in a position of responsibility or trust in relation to the victim; or

(j) the offender is in a position of authority concerning the child victim.

(2) In this section –

“AIDS” has the same meaning as in the HIV and AIDS Act;

“HIV” has the same meaning as in the HIV and AIDS Act.

(e) in section 14, by inserting, after subsection (2), the following new subsection –

(2A) Any person who is convicted of an offence under section 11 or 12 shall, where any aggravating circumstance specified in section 13A exist, be liable to penal servitude for a term not exceeding 20 years.

(2) The Community Service Order Act is amended, in section 3(1)(a), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2019”.

(3) The Courts Act is amended –

(a) in section 32(1)(b), by deleting the words “or Industrial Court” wherever they appear and replacing them by the words “, Industrial Court or Children’s Court”;

(b) in section 34(1), by deleting the words “and Industrial Courts” and replacing them by the words “, the Industrial Court, the Civil Division of the Children’s Court and the Protection Division of the Children’s Court”;

(c) in section 38, by deleting the words “, District and Industrial Courts” and replacing them by the words “and District Courts, the Industrial Court and the Criminal Division of the Children’s Court”;

(d) in section 69(1), by inserting, after paragraph (a), the following paragraph –

(b) the Children’s Court;

(e) in section 112(d), by deleting the words “Criminal Code” and replacing them by the words “Criminal Code, other than an

offence committed on a child under the age of 18 which is triable by the Criminal Division of the Children's Court";

- (f) in section 116 –
  - (i) by numbering the existing provision as subsection (1);
  - (ii) in the newly numbered subsection (1), by deleting the words "A District" and replacing them by the words "Subject to subsection (2), a District";
  - (iii) by adding the following new subsection –
    - (2) Notwithstanding subsection (1), a Magistrate of the Criminal Division of the Children's Court shall have no jurisdiction to convict, but shall proceed to hold a preliminary inquiry and, if necessary, to commit for trial in accordance with the law to preliminary inquiries and commitment for trial if an accused, being juvenile aged 12 or above but below the age of 18, is charged with any of the following offences –
      - (a) an offence under section 249(1) and (4) of the Criminal Code;
      - (b) offences which, under any other enactment, are punishable by penal servitude for life.
- (g) in section 124(2), by deleting the words "or Intermediate Court" and replacing them by the words "Court, Intermediate Court, Protection Division of the Children's Court or Criminal Division of the Children's Court".
- (h) in section 161, by deleting the definition of "sexual offence case";
- (i) in section 161B, by deleting the words "in a sexual offence case or";
- (j) in section 188B(5), by adding the following new paragraphs, the full stop at the end of paragraph (d) being deleted –
  - (e) in the case of the Civil Division of the Children's Court, by any Judge of that Division;



- (f) in the case of the Protection Division of the Children’s Court, by any Magistrate of that Division;
- (g) in the case of the Criminal Division of the Children’s Court, by any Magistrate of that Division.

(4) The Criminal Appeal Act is amended, in section 16(3)(d)(iii), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2019”.

(5) The Criminal Code is amended –

- (a) by repealing sections 44 and 45;
- (b) in section 249 –
  - (i) in subsection (1A), by inserting, after the words “Intermediate Court”, the words “or the Criminal Division of the Children’s Court, as the case may be,”;
  - (ii) in subsection (1B), by inserting, after the word “Notwithstanding”, the words “the Children’s Act 2019 and”;
- (c) by repealing sections 251 and 252.

(6) The Criminal Procedure Act is amended –

- (a) in section 106, by deleting the words “Any person” and replacing them by the words “Subject to section 110, any person”;
- (b) by inserting, after section 108, the following new section –

**108A. Child victim or child witness aged 14 or above**

A child victim or child witness aged 14 or above shall be presumed to understand the nature and implication of taking the oath or making a solemn affirmation.

- (c) by repealing section 109 and replacing it by the following section –

**109. Child victim or child witness under the age of 14 admissible as witness**

(1) A child victim or child witness under the age of 14 shall, before taking the oath or making a solemn affirmation, satisfy the Judge or Magistrate that he understands the nature and implication of taking the oath or making a solemn affirmation.

(2) Where a child victim or child witness under the age of 14 does not understand the nature and implication of taking the oath or making a solemn affirmation, that child shall be admissible as a witness where the Judge or Magistrate is satisfied that the child is able to understand questions put to him as a witness and give answers which can be understood.

- (d) by repealing section 110 and replacing it by the following section –

**110. Child victim or child witness under the age of 14 not to be sworn or take solemn affirmation**

A child victim or child witness under the age of 14 who is heard as a witness under section 109(2) shall not be examined on oath or solemn affirmation.

- (e) in section 111 –
- (i) in the heading, by adding the words “**under the age of 14**”;
  - (ii) by deleting the words “sections 109 and 110” and replacing them by the words “the age of 14 pursuant to section 109(2)”;
- (f) in section 132A, in paragraph (a)(iii), by deleting the words “the fact that the victim is an elderly person, a minor or a person with physical or mental impairment” and replacing them by the words “any aggravating circumstance”;
- (g) by inserting, after section 132A, the following new section –

**132B. Aggravating circumstances**

(1) For the purpose of section 132A(a)(iii), aggravating circumstances shall exist where –

- (a) the offence involves a victim who is particularly vulnerable, including a pregnant woman or an elderly person;
- (b) the offence exposed the victim to a life-threatening illness, including HIV and AIDS;
- (c) the victim is physically or mentally handicapped;
- (d) the victim is a child;
- (e) drugs, medications or weapons were used in the commission of the offence;
- (f) the offender has been previously convicted for the same or similar offences;
- (g) the offender is the spouse or partner of the victim;
- (h) the offender is in a position of responsibility or trust in relation to the victim; or
- (i) the offender is in a position of authority concerning the victim who is a child.

(2) In this section –

“AIDS” has the same meaning as in the HIV and AIDS Act;

“HIV” has the same meaning as in the HIV and AIDS Act.

- (h) in section 135(4)(c), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2019”;
- (i) by repealing the First Schedule.

(7) The District and Intermediate Courts (Criminal Jurisdiction) Act is amended –

- (a) in section 92, by deleting the words “a Magistrate or before the Intermediate Court” and replacing them by the words “the District Court, the Intermediate Court or the Criminal Division of the Children’s Court”;
  - (b) in section 96(6)(d)(iii), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2019”.
- (8) The Legal Aid and Legal Assistance Act is amended –
- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –
 

“juvenile” means a child aged 12 or above but below the age of 18;
  - (b) in section 7A –
    - (i) in the heading, by deleting the word “minors” and replacing it by the word “juvenile”;
    - (ii) by deleting the word “minor” and replacing it by the word “juvenile”;
  - (c) by inserting, after section 7B, the following new section –

**7C. Legal assistance to juveniles**

(1) Where the detainee or accused party referred to in section 7B(2) is a juvenile, the police officer in charge of the police station shall inform the parent or legal guardian of the juvenile that an application for legal assistance during police enquiry and for bail applications, in respect of the child, may be made.

(2) The application under section 7B(3) shall be made by his parent or legal guardian or such other person having responsibility for the juvenile.

(3) Notwithstanding sections 7B(3), (4) and (5), where an application for legal assistance is made, the Magistrate shall approve the grant of legal assistance.

(4) (a) Where a juvenile wishes to obtain legal assistance and he has no parent or legal guardian, or his parent or legal guardian refuses to apply for legal assistance on his

behalf, he shall be brought before a Magistrate within 24 hours of his arrest.

(b) Where a juvenile is brought before a Magistrate pursuant to paragraph (a), the Magistrate shall grant legal assistance to the juvenile.

(9) The National Children's Council Act is amended, in section 9, by repealing paragraph (g).

(10) The Ombudsperson for Children Act is amended –

(a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“African Charter” means the African Charter on the Rights and Welfare of the Child;

(b) in section 5(c), by deleting the word “Convention” and replacing it by the words “Convention and the African Charter”;

(c) in section 9, by repealing paragraph (c).

(11) The Transfer of Prisoners Act is amended –

(a) in section 2 –

(i) in the definition of “imprisonment”, in paragraph (a), by deleting the words “section 25 of the Juvenile Offenders Act” and replacing them by the words “section 63 of the Children's Act 2019”;

(ii) by inserting, in the appropriate alphabetical order, the following new definition –

“juvenile” means a child aged 12 or above but below the age of 18;

(b) in section 8(2) –

(i) in paragraph (a), by deleting the words “by reason of his age as a young offender within the meaning of the Juvenile Offenders Act” and replacing them by the words “as a juvenile”;

- (ii) in paragraph (b)(iv), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2019”.

**89. Savings and transitional provisions**

(1) Any order made under the repealed Child Protection Act and Juvenile Offenders Act and which is still valid before the commencement of this Act shall, at the commencement of this Act, be deemed to have been made under this Act and shall be dealt with in accordance with the relevant provisions of this Act.

(2) Any application made under the repealed Child Protection Act and Juvenile Offender Act and which is still pending before the commencement of this Act shall, at the commencement of this Act, be deemed to have been made under this Act and shall be dealt with in accordance with the relevant provisions of this Act.

(3) Where this section does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

**90. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

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