

**THE CHILDREN'S BILL**  
(No. .... of 2020)

**Explanatory Memorandum**

The main object of this Bill is to repeal the Child Protection Act and replace it with a more comprehensive and modern legislative framework with a view to addressing the shortcomings of the Child Protection Act and giving 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;
- (b) for the respect and promotion of the rights of children and for the protection of the 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 the setting up of a Child Services Coordinating Panel which shall be responsible for the coordination of all activities relating to the implementation of the present legislation, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;
- (e) to prohibit marriage of children under the age of 18;
- (f) for a child under the age of 14 not to be held criminally responsible for any act or omission; and
- (g) 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 a solemn affirmation,

and to provide for matters related thereto.

**K. D. KOONJOO-SHAH**  
*Minister of Gender Equality and  
Family Welfare*

09 November 2020

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**ARRANGEMENT OF CLAUSES**

*Clause*

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## A BILL

**To make better provisions for the care, protection and assistance to children, 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 2020.

## 2. Interpretation

In this Act –

“African Charter on the Rights and Welfare of the Child” means the regional human rights treaty adopted in 1990;

“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 38;

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

“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;

“Code of Ethics for Child Mentors” means such Code as may be prescribed;

“Criminal Division of the Children’s Court” means the Criminal Division of the Children’s Court set up under the Children’s Court Act 2020;

“diversion programme” means a programme referred to in section 56;

“emergency protection order” means an order made under section 36;

“exploitation” includes –

- (a) all forms of slavery or practices similar to slavery;
- (b) sexual exploitation;
- (c) forced labour;
- (d) child labour, in respect of a child under the age of 16; or
- (e) the illegal removal of body organs;

“Family Division of the Supreme Court” means the Family Division of the Supreme Court referred to in section 41C of the Courts Act;

“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;

“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 14 or above but below the age of 18;

“mentoring order” means an order made under section 46;

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

“Ministry” means the Ministry responsible for the subject of 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 8;

“parent”, in relation to a child –

- (a) means the child’s father, mother or legal guardian;
- (b) means the child’s 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 or family welfare guidance and other assistance to a parent;

“place of safety” –

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

“placement order” means an order made under section 37;

“probation officer” has the same meaning as in the Probation of Offenders Act;

“Protection Division of the Children’s Court” means the Protection Division of the Children’s Court set up under the Children’s Court Act 2020;

“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, which provide care;

“shelter” means a temporary shelter for children whereby children under a Court Order reside and their needs are catered for;

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

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

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

(1) This Act shall bind the State.

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

(a) from articles 371 to 387 of the Code Civil Mauricien; and

(b) in so far as they relate to a child, from 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.

(3) Part V of the Act shall be in addition to, and in derogation from, the powers conferred on the Director of Public Prosecutions under section 72 of the Constitution.

(4) The Data Protection Act 2017 shall not apply to this Act.

## **PART II – IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD AND THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

### **Sub-Part A – Best Interests of Children and Parental Responsibilities**

#### **4. 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 and give the child an opportunity to be heard;
- (d) protect the child from discrimination;
- (e) bear in mind the needs of the child for its development, including any special needs which may be due to a disability;
- (f) give, where appropriate, the child and the child's family member an opportunity to express their views;
- (g) take the views of the child into account;
- (h) act, as far as possible, promptly;
- (i) have regard to the desirability of –
  - (i) placing the child with a family member;
  - (ii) placing siblings together,

where the child has to be removed from the custody of the child's parents;
- (j) adopt an approach which is conducive to conciliation;
- (k) inform the child, having regard to the age, maturity and stage of development of the child, of the outcome of any proceedings, act or decision relating to the child;
- (l) inform any person having parental responsibilities and rights in respect of the child of the outcome of any proceedings, act or decision relating to the child; and
- (m) have, where appropriate, regard to the capacity of the parents or any other person to provide for the financial, emotional or other needs of the child.

## **5. Child participation**

Every child who is of such age, maturity and stage of development as to be able to participate in any matter concerning the child shall, so far as is

practicable, have the right to participate in the matter and any views expressed by the child shall be given due consideration.

## **6. Children's duties and responsibilities**

In the application of this Act and in any proceedings, action or decision concerning a child, there shall be due regard to the duties and responsibilities of the child, in line with its evolving capacities and maturity, in order to –

- (a) work for the cohesion of the child's family and respect the rights of the child's family members;
- (b) serve the child's community, respect the rights of all members of the child's community and preserve and strengthen the cultural values of the child's community in the spirit of tolerance, dialogue and consultation;
- (c) serve the child's nation, respect the rights of every person and preserve and strengthen national solidarity; and
- (d) contribute to the general moral well-being of the society.

## **7. Parental responsibilities and rights**

(1) More than one person may hold parental responsibilities and rights in respect of a child.

(2) The parental responsibilities and rights which a person may have in respect of a child shall include the responsibility and right to –

- (a) have custody of the child, provide for the child's basic needs, including the responsibility to take decisions relating to the child's day-to-day upbringing;
- (b) maintain contact with the child;
- (c) act as guardian of the child; and
- (d) contribute to the maintenance of the child as co-holders of parental responsibilities and rights.

(3) Co-holders of parental responsibilities and rights in respect of a child may, subject to this Act, enter into a parenting plan.

## **Sub-Part B – Child Services Coordinating Panel**

### **8. Panel**

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

(2) The Panel shall have such functions as are necessary to further its object most effectively and, in particular –

- (a) shall coordinate children-related public services at inter-ministerial level;
- (b) shall monitor, at national level, any administrative arrangement to support coordination of Government's activities in relation to children;
- (c) shall collaborate with relevant stakeholders with a view to giving better protection to children;
- (d) shall consider cases referred to it by the Ministry;
- (e) shall make recommendations to any Ministry or other child-related organisation;
- (f) may set up such committees as may be necessary to assist it in the discharge of its functions;
- (g) shall advise the Minister on any matter governed by this Act or any matter connected with, or incidental to, it; and
- (h) shall discharge such other functions as may be prescribed.

(3) Every Ministry or child-related organisation to which a recommendation is made pursuant to subsection (2)(e) shall, within such period as the Panel may determine, report to the Panel on –

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

### **9. Composition of Panel**

(1) The Panel shall consist of –

- (a) the supervising officer, as Chairperson;

- (b) a representative of the Ministry;
- (c) a representative of the Ministry responsible for the subject of education;
- (d) a representative of the Ministry responsible for the subject of finance;
- (e) a representative of the Ministry responsible for the subject of health;
- (f) a representative of the Ministry responsible for the subject of reform institutions;
- (g) a representative of the Ministry responsible for the subject of social security;
- (h) a representative of the Ministry responsible for the subject of youth;
- (i) a representative of the Commissioner of Police, not below the rank of Superintendent of Police; and
- (j) 2 other members, to be appointed by the Minister.

(2) (a) Every person referred to in subsection (1)(b) to (g) shall be from the technical cadre of their respective Ministries and shall be designated by their respective supervising officers for a period of 3 years.

(b) The person referred to in subsection (1)(h) shall be designated by the Commissioner of Police for a period of 3 years.

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

(4) The members of the Panel and any co-opted person shall be paid such fees as the Minister may determine.

## **10. Meetings of Panel**

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

(2) At any meeting of the Panel, 7 members shall constitute a quorum.

(3) (a) There shall be a Secretary to the Panel, to be designated by the supervising officer.

- (b) The Secretary shall –
- (i) give notice of every meeting of the Panel to the members;
  - (ii) prepare and attend every meeting of the Panel;
  - (iii) keep minutes of proceedings of any meeting of the Panel;
  - (iv) perform such other duties as may be conferred upon him by the Panel.

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

### **PART III – OFFENCES AGAINST CHILDREN**

#### **Sub-Part A – Offences**

#### **11. Discrimination against child**

(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 200,000 rupees and to imprisonment for a term not exceeding 5 years.

#### **12. Forcing or causing child to be married**

(1) No person shall force or cause a child to marry 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 one million rupees and to imprisonment for a term not exceeding 10 years.

#### **13. Ill-treatment of child**

(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 contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

#### **14. Corporal or humiliating punishment on child**

(1) No person shall inflict corporal or humiliating punishment on a 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 200,000 rupees and to imprisonment for a term not exceeding 5 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.

#### **15. Abandonment of child**

(1) (a) No person shall, for pecuniary gain or other gain, or by gifts, promises, threats or abuse of authority, incite a parent to abandon his child or to abandon his child to be born.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years.

(2) (a) No person shall, for pecuniary or other gain, act as an intermediary between a parent willing to abandon his child or willing to abandon his child to be born and another person wishing to adopt that child.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(3) (a) No person shall abandon, or by threat or abuse of authority incite another person to abandon, a child in a secluded place.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years.

(4) (a) No person shall expose or abandon a child in a spot which is not secluded.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

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

(1) No parent of a child or person with whom a child is to be domiciled pursuant to an order of the Court shall, without the written consent of the other parent of the child –

- (a) take away or remove the child from Mauritius;
- (b) decoy or entice the child to leave Mauritius;
- (c) cause the child to be taken away or removed from Mauritius; or
- (d) retain the child in Mauritius.

(2) No person shall fail to deliver or present a child in breach of an order of a Court.

(3) Any person who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

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

(1) No person shall, by force, fraud or without the written consent of the parent of a child –

- (a) take away the child or causes the child to be taken away; or
- (b) decoy, entice or cause the child to be decoyed or enticed out of the keeping of its parent or from any place where the child is or has been placed.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 20 years.

(3) Where a person abducts a child in the manner specified in subsection (1) without force or fraud, but without the written consent of the parent of the child, that person shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years.

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

(1) Where a child is in a place of safety, no person shall, without lawful authority or reasonable excuse –

- (a) take the child, or keep the child away, from that place of safety; or
- (b) do any act for the purpose of enabling the child to stay, or run, away from that place of safety.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

### **19. Causing, inciting or allowing child to be sexually abused**

(1) Subject to subsection (3), no person shall cause, incite or allow a child to be –

- (a) sexually abused by him; or
- (b) sexually abused by another person.

(2) For the purpose of subsection (1) –

- (a) a child under the age of 16 shall be deemed to be sexually abused where the child has taken part as a willing or an unwilling participant or observer in any act which is sexual in nature; or
- (b) a child aged 16 or above but under the age of 18 shall be deemed to be sexually abused where the child has taken part as an unwilling participant or observer in any act which is sexual in nature.

(3) The following shall not constitute an offence under subsection (1)(a) –

- (a) an offence under section 249 of the Criminal Code;
- (b) an indecent act (*attentat à la pudeur*) upon a child aged 12 or above but under the age of 18, where the child has consented thereto;
- (c) sexual intercourse with a child aged 16 or above but under the age of 18, where the child has consented thereto;
- (d) an offence of sodomy under section 250 of the Criminal Code.

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

- (a) where the child 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 one million rupees and to penal servitude for a term not exceeding 20 years.

(5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

## **20. 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 subsection (1) or (2) shall, on conviction, be liable –

- (a) where the child is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years; or
- (b) in any other case, to penal servitude for a term not exceeding 10 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 this section.

(5) In this section –

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

## **21. 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 and any other pornographic material; or
- (d) coerce, force or otherwise induce a child to view a pornographic performance or pornographic material, or to witness a sexual act.

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

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

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

(4) In this section –

“child pornography” includes any representation by whatever means –

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

## **22. Child grooming**

(1) Any person who –

- (a) having met or communicated with a child 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 an 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 subsection (1) shall, on conviction, be liable –

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

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

(4) It shall not be a defence to any prosecution under subsection (1) that the person charged had reasonable grounds to believe that the child was above 16.

### **23. Sale of alcohol to child**

(1) No person shall –

- (a) sell alcohol or any other compounded spirit to a child; or
- (b) cause or allow a child to consume alcohol or any other compounded spirit.

(2) Any person who commits an offence under subsection (1) shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) It shall be not a defence to any prosecution under subsection (1) that the offence was committed without the knowledge or consent of the person charged and that the person took all necessary steps to prevent the commission of the offence.

### **24. Allowing child to have access to gaming house**

(1) No person shall cause or allow a child to have access to a gaming house.

(2) Any person who commits an offence under subsection (1) shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) It shall be not a defence to any prosecution under subsection (1) that the offence was committed without the knowledge or consent of the person charged and that the person took all necessary steps to prevent the commission of the offence.

(4) In this section –

“gaming house” has the same meaning as in the Gambling Regulatory Authority Act.

## **25. 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 200,000 rupees and to imprisonment for a term not exceeding 5 years.

## **26. Bullying**

(1) No person shall bully a child.

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

(3) In this section –

“bully” means any behaviour which –

(a) is repetitive, persistent and intentionally harmful; or

(b) involves an imbalance of power between the victimiser and the child and causes feelings of distress, fear, loneliness or lack of confidence in the child,

and which results in serious physical or psychological harm to the child, disability of the child or death of the child.

## **27. 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 or broadcast in the media any information in any form, including a photograph, a

picture, a video recording or an audio recording, which identifies or tends 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 or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies, or tends to identify, 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.

## **28. 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 B – Aggravating Circumstances**

## **29. Aggravating circumstances**

(1) For the purpose of sentencing under this Act, the Court shall have regard to the existence of aggravating circumstances surrounding the commission of the offence and such surrounding circumstances shall be deemed to exist where –

- (a) the child has, as a consequence of an offence, become miltulated or lame;
- (b) the child is physically or mentally handicapped;
- (c) the offender has abused his position of responsibility, trust or authority towards the child;
- (d) the child has been adopted for the purpose of trafficking;
- (e) the offender has previously been 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 offence.

(2) Any person who is convicted of an offence under Sub-part A shall, where an aggravating circumstance exists, be liable to penal servitude for a term not exceeding 30 years.

(3) 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 C – Interdiction from Guardianship**

#### **30. 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, notwithstanding any other enactment, be interdicted from any guardianship –

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

(2) Where an offence has been committed by the father or mother of the child under this Part or under section 249 or 250 of the Criminal code, the offender shall, in addition, be deprived of the rights and advantages which are granted to him or her, upon the person and property of the child, in accordance with articles 371 to 387 of the Code Civil Mauricien.

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

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

#### **31. 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;
- (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.

#### **32. Reporting procedure in case of child in need of care and protection**

(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 for immediate support and assistance to the child in distress.

(2) Where the Police has reasonable grounds to suspect that an offence has been, or is being, committed, it shall conduct a criminal investigation in the matter.

(3) Where a matter is reported to the Police under subsection (1), the matter shall, as soon as possible, be notified to the authorised officer for assessment of the child's need of care and protection.

- (4) Notwithstanding the fact that –
  - (a) the Police refers the matter to the authorised officer under subsection (3);
  - (b) the child is not willing to make a disclosure or to give a statement to the Police; or

(c) 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.

(5) The Police shall immediately inform the Ministry and submit a report of its criminal investigation and assessment to the authorised officer after the matter is referred to it.

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

(7) On receipt of a report from an authorised officer, the authorised 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, as he considers necessary.

(8) The authorised officer may refer the matter to the Police where he has reasonable grounds to suspect that an offence may have been committed.

(9) (a) For the purpose of this section, the Police or an authorised officer shall interview a child in the presence, and with the consent, of its parent.

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

(c) An interview may take place at an educational institution, a hospital, a police station such other place as may be, in the circumstances, suitable for the child.

(d) 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 the Police or the authorised officer, as the case may be, to meet with, and interview, the child.

### **33. Investigation and assessment of child in need of care and protection**

(1) Where a matter concerning a child in need of care and protection is reported to the authorised officer, he shall, as soon as possible, refer the matter for assessment of the child's need of care and protection.

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

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

(3) On receipt of a report from an authorised officer, the authorised officer shall consider the report and shall –

(a) 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) refer the matter to the Police where he has reasonable grounds to believe that an offence has been, or is being, committed.

(4) Where a matter is referred to the Police under subsection (3)(b), a criminal investigation shall be conducted in the matter.

(5) (a) For the purpose of this section, the Police shall interview a child in the presence, and with the consent, of any of its parent or, in the absence of its parent, any other person having parental authority over the child.

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

(c) An interview may take place at an educational institution, a hospital, a police station or such other place as may be, in the circumstances, suitable for the child.

(d) 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 the Police or the authorised officer, as the case may be, to meet with, and interview, the child.

#### **34. Disclosure of reporter's identity**

(1) (a) Where a matter is reported to the authorised officer, the confidentiality of the report shall be maintained.

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

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

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

- (a) a Court determines 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 or criminal 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.

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

### **Section A – Assessment Order**

#### **35. Assessment order**

(1) The authorised 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 an assessment of a child’s health or development, or of 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.

(2) Where the Magistrate is satisfied, pursuant to subsection (1), that it is in the best interests of the child to do so, 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 time, any premises where the child is or was living, or such other place which the child usually visits;
  - (ii) interview the child without the consent of, or in the absence of, his parent;
  - (iii) direct 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) direct the parent of the child to undergo an examination of his physical, mental or emotional condition or any other assessment related to 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) direct 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;
  - (ix) remove the child to a place of safety if the authorised officer considers that it is urgent and in the best interests of the child to do so; and
- (b) 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 an assessment order, the authorised officer shall 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 authorised officer, be renewed for a further period of 14 days where the Magistrate considers that it is in the best interests of the child to do so.

(6) Notwithstanding this section, where, on an application made for an assessment order, the Magistrate is satisfied, pursuant to section 36, that it is in the best interests of the child to do so, he shall make an emergency protection order in lieu of an assessment order.

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

## Section B – Emergency Protection Order

### 36. Emergency protection order

(1) The Police or an authorised 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 suspect or believe that –

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

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

(3) An emergency protection order may provide for –

- (a) the Police or 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) enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof is, on request, produced to the owner, occupier or person in charge of the premises;
  - (iii) remove the child from any place where the child is suffering or is likely to suffer harm;
  - (iv) remove the child from, or return the child to, or prevent the child’s removal from, a place of safety;
  - (v) cause, where necessary for the welfare of the child, the child to be submitted to medical examination or urgent treatment;
  - (vi) direct for adequate Police or medical assistance to be provided for the exercise of any power under the order; and
  - (vii) take such other appropriate action as the Police or authorised officer considers to be in the best interests of the child;

- (b) the authorised 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) An emergency protection order shall confer on the Police or an authorised officer all the powers conferred under an assessment order.

(5) 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 shall refer the matter to the Police for assistance in order to compel the parent to comply with the request made under the emergency protection order.

(6) Where an authorised officer enters any premises pursuant to an emergency protection order, the owner, occupier or person in charge of the premises shall provide all reasonable facilities and assistance to the authorised officer for the discharge of his functions and exercise of his powers under the emergency protection order.

(7) An emergency protection order shall be valid for a period of 21 days but may, on an application made by the Police or an authorised officer, be renewed for a further period of 14 days where the Magistrate considers that it is in the best interests of the child to do so.

(8) 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 37.

(9) Notwithstanding any other enactment, no appeal shall lie against the issue of an emergency protection order.

(10) (a) The parent of a child may, not earlier than 72 hours after the issue of an emergency protection order under this section, apply for the discharge of the order.

(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.

## Section C – Placement Order

### 37. Placement order

(1) The authorised 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 for a social enquiry report by a probation officer regarding the child’s family background, general conduct and home surroundings, to enable him to determine the application in the best interests of the child; and
- (c) may order the child to be medically examined.

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

- (a) consider the social enquiry report;
- (b) consider any arrangement which the authorised officer has made, or proposes to make, for allowing any person to have contact with the child; and
- (c) invite any party to the proceedings to comment on those arrangements.

(4) Where, after hearing evidence, the Magistrate is satisfied that it is in the best interests of the child to do so, 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 Police, the authorised officer, the child concerned or the parent of the child, as the case may be, vary or discharge an emergency protection 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 39, 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.

### **Section D – Ancillary Orders**

#### **38. 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 parenting aide order, providing such parenting aide as the authorised officer may determine;
- (b) 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;
- (c) an order –
  - (i) for the child to be medically examined and be provided such treatment as is deemed necessary and urgent by the examining doctor;
  - (ii) instructing the child or the parent of the child 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 the parent of the child, or any other person involved in the matter concerning the child, to undergo a professional assessment;
  - (iv) limiting access of a person to the child or prohibiting a person from contacting the child;
  - (v) allowing a person to contact the child subject to such conditions as may be specified in the order.

## **Section E – Long-term Care Order**

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

(1) Where the authorised 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 authorised 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 for a social enquiry report by a probation officer regarding the child’s family background, general conduct and home surroundings, to enable him to determine the application in the best interests of the child;

(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 social enquiry report;

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

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

(4) Where, after hearing evidence, the Magistrate is satisfied that it is in the best interests of the child to do so, 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 exceeding 3 years.

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

## **Section F – Contact Order**

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

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

(3) On an application under this section, a Magistrate may, where he is satisfied that it is in the best interests of the child to do so, 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 an authorised officer to refuse to allow contact between the child and any person referred to in subsection (1).

(4) A determination to allow contact under this section shall not be made against the will of the child depending on the age, maturity and 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 is made by the Magistrate and at the time of executing the order, such an order is no longer considered to be in the best interests of the child, the authorised officer may refuse to allow contact with the child and seek a variation or discharge of the order.

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

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

(8) A Magistrate making a contact order under this section may impose such conditions as he may determine.

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

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

(1) Where –

- (a) a child exhibits a pattern of serious hostile, aggressive or disruptive behaviour to such an extent that the behaviour seriously interferes with the care and development of the child; and
- (b)
  - (i) the child exhibits anti-social behaviour;
  - (ii) the child absents himself regularly from his residence without the permission of the child's parent; or
  - (iii) the child exhibits 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 there exists serious behavioural concerns 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 probation officer, an application for parenting support intervention so as to assist the parent in performing his parental duties with respect to the management of the child's behaviour.

(b) On receipt of an application under paragraph (a), the Probation and After Care Services shall –

- (i) conduct an initial psycho-social assessment of the child and that of his parents;
- (ii) draw up a parenting support intervention plan which shall include at least 2 home visits by a parenting aide; and

- (iii) conduct a follow-up assessment not later than 21 days after the application for parenting support intervention.

(c) The probation officer shall, not later than 21 days after the application for parenting support intervention, 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 of the Protection Division of the Children's Court shall hear the parties concerned and determine whether there are serious behavioural concerns which need to be addressed.

(2) Where the Magistrate determines that a child has serious behavioural concerns, he may issue a preventive intervention order requiring the child –

- (a) to be placed, in accordance with the Probation of Offenders Act, in an institution;
- (b) to attend school or a specified place on specified days;
- (c) not to leave the place where he has to reside outside permitted hours and without the permission of his parent or the person in charge of that place, as the case may be;
- (d) to follow, where applicable, such drug or alcohol treatment or mental health counselling plan as may be specified;
- (e) to refrain from associating with such persons as may be specified;
- (f) to refrain from engaging in such behaviour as may be specified;
- (g) to participate in such group activities, including counselling, as may be specified;
- (h) to be allowed to have contact with its parent; and
- (i) to comply with such other order as the Magistrate may determine.

(3) (a) In determining the requirements of a preventive intervention order, the Magistrate shall give priority consideration not to remove the child from the child's usual household where he considers this to be in the best interests of the child.

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

- (a) 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.

(4) Where the Magistrate considers that it is not in the best interests of the child to continue to reside at its usual household, he may direct that the child be placed, in accordance with the Probation of Offenders Act, in an institution.

(5) In this section –

“institution” has the same meaning as in the Probation of Offenders Act.

#### **Sub-Part IV – Child Mentoring Scheme**

#### **43. Child Mentoring Scheme**

(1) There shall be, for the purposes of this Act, a Child Mentoring Scheme.

(2) The object of the Child Mentoring Scheme shall be to assist children between the ages of 8 to 16 who –

- (a) are victims of neglect;
- (b) suffer from behavioural problems;
- (c) are in distress; or
- (d) have problems of social adaptation.

(3) (a) The Child Mentoring Scheme shall, with the assistance of the Child Mentoring Committee, be administered by the authorised officer.

(b) The authorised officer shall, under the Child Mentoring Scheme –

- (i) receive and consider applications from volunteers for registration as child mentor;
- (ii) register, in consultation with the Child Mentoring Committee, child mentors;
- (iii) provide child mentors with such guidance and

assistance as may be necessary for them to effectively perform their duties under a mentoring order;

- (iv) identify children who may need assistance and protection and apply to the Protection Division of the Children's Court for a mentoring order where he considers necessary;
- (v) supervise all placements of children and activities of child mentors under the Child Mentoring Scheme;
- (vi) forward, in respect of a child who is subject to a mentoring order, to the Protection Division of the Children's Court a quarterly progress report, or any other report at such interval as the Court may determine;
- (vii) discharge such other functions as may be necessary for the effective implementation of the Child Mentoring Scheme.

(4) (a) No child shall be placed under the Child Mentoring Scheme unless there is a mentoring order.

(b) (i) Where a child is placed under the Child Mentoring Scheme, he shall be assigned a child mentor who shall provide him with such guidance, advice and sense of stability as the child may require.

(ii) A child mentor shall not be assigned more than 3 children under the Child Mentoring Scheme.

(c) A child placed under the Child Mentoring Scheme shall remain in the custody of its parent.

#### **44. Child Mentoring Committee**

(1) There shall be a Child Mentoring Committee which shall consist of –

- (a) a chairperson, to be appointed by the Minister;
- (b) a representative of the Ministry;
- (c) a representative of the Attorney-General's Office;
- (d) a representative of the Commissioner of Police;
- (e) a representative of the Ministry responsible for the subject of education;

- (f) a psychologist, to be appointed by the authorised officer; and
- (g) 3 representatives of non-Governmental organisations working on sexual and reproductive health and substance abuse and having wide experience in issues relating to children, to be appointed by the Minister.

(2) The Committee shall –

- (a) assist the authorised officer in administering and implementing the Child Mentoring Scheme;
- (b) review, at regular intervals, the criteria for the recruitment of volunteers as child mentors;
- (c) conduct interviews for the recruitment of child mentors and make recommendations to the authorised officer;
- (d) consider the suitability of a child mentor in relation to a child for the purpose of a mentoring order;
- (e) periodically assess and evaluate the progress of children placed under the Child Mentoring Scheme and submit progress reports to the authorised officer;
- (f) review, at regular intervals, such Code of Ethics for Child Mentors; and
- (g) discharge such other functions as the authorised officer may delegate to it for the proper administration and effective implementation of the Child Mentoring Scheme.

(3) The Committee may co-opt such other persons with relevant expertise not already available to the Committee, and set up such subcommittees as it considers necessary to assist it in the discharge of its functions under this Act.

(4) (a) There shall be a secretary to the Committee who shall be a public officer, to be designated by the authorised officer.

(b) The secretary to the Committee shall –

- (i) ensure the smooth coordination of the activities of the Committee;
- (ii) record all deliberations of the Committee;

- (iii) assist the authorised officer in keeping a register of child mentors, including a list of child mentors whose registration have been cancelled; and
- (iv) perform such other duties as may be conferred upon him by the Committee.

(5) The Committee shall meet at such place and time as the chairperson may determine.

(6) At any meeting of the Committee, 5 members of the Committee shall constitute a quorum.

(7) The members of the Committee and any co-opted person shall be paid such fees as may the Minister may determine.

(8) Subject to this section, the Committee shall regulate its proceedings in such manner as it may determine.

#### **45. Child mentor**

(1) No person shall be registered or act as a child mentor unless –

- (a) he has attained the age of 30;
- (b) he is a person of good character and reputation;
- (c) has relevant qualifications or proven experience in matters of child rights, child development or child psychology;
- (d) he has demonstrated ability to work in a team;
- (e) he has good communication and listening skills;
- (f) he is in good physical and mental health;
- (g) he enjoys a stable family life; and
- (h) he is willing to work flexible hours.

(2) A child mentor who has been assigned a child pursuant to a mentoring order shall –

- (a) enter into contact with the child only in accordance with the mentoring order;
- (b) comply with any order made by the Court under the mentoring order;

- (c) by the end of each month, submit to the authorised officer a report on the programme of work undertaken with the child;
- (d) submit quarterly progress reports to the authorised officer on the situation and evolution of the child;
- (e) where he reasonably believes that the child is suffering or is likely to suffer harm, immediately report the matter to the authorised officer;
- (f) notify, at least 5 days in advance, the authorised officer of weekly activities he intends to undertake for the purpose of mentoring; and
- (g) abide by all requirements which may be prescribed for the effective implementation of the Child Mentoring Scheme.

(3) Notwithstanding any other enactment, a child mentor shall not be considered as a public officer, nor an employee or agent of the State.

#### **46. Mentoring order**

(1) Where, in relation to a child, the authorised officer reasonably believes that –

- (a) the child may require assistance under the Child Mentoring Scheme;
- (b) the parents of the child are refusing to take or cannot take any measure to provide the child with the assistance and support that it needs;
- (c) it is in the best interests of the child to be placed under the Child Mentoring Scheme; and
- (d) there is no alternative means of providing assistance and support to the child,

he may, with or without the consent of the parents, apply to the Protection Division of the Children’s Court, in such form as may be prescribed, for a mentoring order in order to have the child placed under the Child Mentoring Scheme.

(2) Subsection (1) shall be without prejudice to the powers of the authorised officer under section 36.

(3) The application for a mentoring order shall, as far as possible, be accompanied by –

- (a) a report from the authorised officer specifying the reasons why the child should be placed under the Child Mentoring Scheme, including the name of the child mentor who shall assist the child and the reasons why the child mentor has been chosen;
- (b) a psychological report; and
- (c) such other information or document which may be relevant for the purpose of determining the application.

(4) On receipt of an application for a mentoring order, the Magistrate shall cause a notice of the application to be served on the parents of the child, requiring them to appear before him on such day and time as may be specified in the notice, and in any case not later than 14 days of the date of the application, to show cause why the order applied for should not be made.

(5) (a) The Magistrate may, for the purpose of determining an application for a mentoring order, summon and –

- (i) examine any parent of the child;
- (ii) examine the child mentor identified in order to ascertain his suitability as a child mentor in the particular case;
- (iii) examine such other person as he may consider appropriate and request such other information or report as he considers necessary;
- (iv) request such other information or report as he may consider appropriate.

(b) Any person who, in connection with any examination or request under paragraph (a) –

- (i) refuses to furnish any information or document to the Magistrate;
- (ii) refuses to answer to the best of his knowledge any question put to him by the Magistrate; or
- (iii) knowingly gives to the Magistrate, false or misleading information or evidence,

shall commit an offence.

(6) (a) In determining an application for a mentoring order, the Magistrate shall have regard to the following –

- (i) whether it is imperative that the child should be placed under the Child Mentoring Scheme;
- (ii) whether there is any alternative means of providing assistance and support to the child;
- (iii) any undertaking given and measures taken by the parents to provide the child with the required assistance and support without having to place the child under the Child Mentoring Scheme, including the financial means of the parents to provide the child with assistance and support with the help of professionals;
- (iv) any hardship which may be caused to the parents of the child as a result of the mentoring order; and
- (v) any other matter which the Court may consider relevant.

(b) The Magistrate shall, before issuing a mentoring order, consult the child.

(7) (a) Where the Magistrate is satisfied that it is in the best interests of a child to do so, he shall issue a mentoring order which shall be in such form as may be prescribed.

(b) A mentoring order shall –

- (i) specify the name of the child mentor;
- (ii) specify the time and place where the mentoring exercise shall take place; and
- (iii) where appropriate, make provisions for such other orders and give such directions as may be appropriate to the authorised officer, the child mentor and the parents of the child.

(c) The Magistrate may, for the purpose of paragraph (b)(ii), take the following factors into consideration –

- (i) the nature and gravity of the child's problem;
- (ii) the infrastructural facilities near the child's residence;
- (iii) the availability and preference of the parents; and
- (iv) such other matters as he may consider relevant.

(d) A mentoring order shall remain in force for such period, not exceeding 12 months, as the Magistrate may specify.

(e) A Magistrate may extend the mentoring order for such period of time, not exceeding 12 months, as he considers necessary.

(8) (a) The authorised officer or a parent may, at any time during which a mentoring order is in force, apply to the Magistrate for a variation or discharge of the mentoring order, including the substitution of a child mentor by another child mentor.

(b) 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.

(9) (a) Notwithstanding any other enactment, a mentoring order shall, while it is in force, confer on the authorised officer the power to –

- (i) summon any person, with or without the child, to give evidence for the purpose of verifying whether the child is suffering or likely to suffer harm;
- (ii) enter, and where necessary by force and with the assistance of the police, any premises specified in the mentoring order, and search for the child, subject to a warrant being issued by a Magistrate;
- (iii) cause the child to undergo such medical examination or treatment as may be necessary for the welfare of the child;
- (iv) request Police or medical assistance for the exercise of any power under the mentoring order;
- (v) prevent a child mentor from continuing to mentor a child where he has reason to believe that a child mentor is not performing his duties under this Act or is acting in breach of the Code of Ethics for Child Mentors; and
- (vi) carry out investigations into complaints against a child mentor or any activities of a child mentor.

(b) The Commissioner of Police shall provide such assistance as may be necessary to the authorised officer for the effective exercise of his powers under a mentoring order.

(c) Where the authorised officer or any person lawfully assisting him and enters any premises pursuant to a mentoring order, the owner, occupier or person in charge of the premises shall provide the authorised officer or the

person lawfully assisting him with all reasonable facilities and assistance for the effective exercise of his powers under the mentoring order.

(10) Any parent or person having an influence, control or authority upon a child who is subject of a mentoring order shall, where so requested, provide such assistance as is possible to the child mentor to enable him to effectively perform his duties.

#### **47. Report on compliance**

The Magistrate may, in relation to any mentoring order made by him, direct, where he deems appropriate, the authorised officer to report to him on the compliance of the said order, at such regular intervals as he may determine.

#### **48. Offence by child mentor**

(1) A child mentor who abuses his position as child mentor and commits an offence under this Act shall, on conviction, be liable to the appropriate penalty provided for in relation to that offence.

(2) It shall not be a defence in any criminal proceedings against a child mentor that he has been appointed as a child mentor under a mentoring order or registered as a child mentor by the authorised officer.

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

#### **Sub-Part I – Child Offenders**

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

#### **49. Child under 14 not criminally responsible**

No child under the age of 14 shall be prosecuted for any criminal offence.

#### **50. Procedure regarding child under 14 suspected of having committed an offence**

(1) Where a police officer has reasonable grounds to suspect that a child under the age of 14 has committed an offence, he shall, notwithstanding any other enactment, not detain the child but shall conduct an enquiry and shall immediately inform the Ministry which shall –

- (a) place the child in a place of safety under the care of the Mauritius Probation and Aftercare Service;
- (b) refer the child to a probation officer for assessment; and

- (c) refer the child to a psychologist of the Mauritius Probation and Aftercare Service 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 51(4) to establish the circumstances which led to the commission of 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 14, other than psychological services; or
- (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.

(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 to the commission of the offence;
- (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 (4)(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 this section.

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

### **51. 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, other than a child under the age of 14, has been 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 14 has been referred to a probation officer under section 50(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 Protection Division of 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 14, establish the circumstances which led to the commission of the offence so as to be able to make a decision under section 50(3);
- (f) determine whether the child has been used by an adult to commit the offence; and
- (g) 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.

(5) The probation officer shall keep a proper record of all matters relating to an assessment carried out by him under this section, including the outcome of the assessment and the decision made in accordance with section 50.

### **52. Confidentiality of information obtained during assessment**

(1) Any information obtained during an assessment shall –

- (a) remain confidential; and
- (b) not be admissible as evidence during any bail application, plea, trial or sentencing proceedings in which a child aged 14 or above 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.

(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.

### **53. Place where assessment of child 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.

### **54. 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 – Best Interests of Juvenile Not to be Prosecuted or Criminal Proceedings Against Juvenile to be Discontinued**

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

(1) Where the Director of Public Prosecutions considers that –

- (a) in lieu of prosecuting a juvenile for an offence; or
- (b) criminal proceedings instituted against a juvenile shall be discontinued,

he shall request a probation officer to assess whether it would be in the best interests of the juvenile to be enrolled in a diversion programme rather than being prosecuted or criminal proceedings being continued against him.

(2) Where, further to a request made under subsection (1), the probation officer makes an assessment to the effect that it would be in the best interests of the juvenile to be enrolled in a diversion programme rather than being prosecuted or criminal proceedings being continued against him, the Director of Public Prosecutions may offer the juvenile to enrol in such programme.

(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, where aggravating circumstances under section 41 exist; or
  - (iii) such other offence as may be prescribed by the Attorney-General; 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.

## **56. Diversion programme**

(1) A diversion programme shall be an individualised non-residential supervision and rehabilitation scheme implemented by the Ministry 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 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.

(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 shall refer the assessment or evaluation to the Director of Public Prosecutions for him to determine whether or not criminal proceedings against the juvenile ought to be initiated or reinstated, as the case may be.

(6) In this section –

“Ministry” means the Ministry responsible for the subject of probation and aftercare service.

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

### **57. Detention of juvenile offender**

(1) Subject to any other enactment, the detention of a juvenile who has been arrested upon reasonable suspicion of having committed a criminal offence shall, as far as possible, be imposed only as a measure of last resort.

(2) Where a juvenile is arrested upon reasonable suspicion of having committed a criminal offence, the enquiring officer shall immediately take all reasonable steps to inform his parent of his arrest and the place where he may be seen by the parent.

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

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

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

from associating with any adult.

(2) Subsection (1) shall not apply to –

- (a) a police officer who is designated to escort the juvenile; or
- (b) any parent, unless the enquiring officer considers that it would not be in the best interests of the juvenile or it would compromise the police enquiry.

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

### **59. 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 the Court before which the case is to be heard during all stages of the proceedings.

(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 C – Recording of Statements from Juvenile Offenders**

#### **60. Recording of statements from juvenile offenders**

(1) Every statement recorded from a juvenile offender during a criminal investigation shall, subject to subsection (2), be recorded by the police in presence of his parent.

(2) Where the officer in charge of the police station has reasonable grounds to believe that the best interests of a juvenile offender so require, a statement may be recorded from him in the absence, or without the consent, of his parent, but in presence of a probation officer.

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

#### **61. Pre-sentence report**

(1) A Court shall, before deciding on how to deal with a juvenile who has been convicted of an offence other than a contravention, 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 character of the juvenile, including his age, behaviour, attitude, antecedents, home surroundings, school attendance and performance record, any employment history, medical history, his state of health and mental condition;
- (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 considers appropriate.

(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.

## **62. Sentencing of juvenile offenders**

(1) 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 juvenile 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.

(2) Subject to subsection (3), 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.

(3) 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.

## **63. Places of remand and of detention for juvenile offenders**

(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.

#### **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 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 3 years.

(4) 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 penal servitude for a term not exceeding 8 years.

### **Sub-Part III – Child Witness and Child Victim**

#### **65. Recording of statements from child witness or child victim**

(1) Every statement recorded from a child witness or child victim during a criminal investigation shall be recorded by the police, in presence of the parent of the child.

(2) Where the enquiring officer has reasonable grounds to believe that the best interests of a child witness or child victim so require, a statement shall, in the absence of the parent of the child, be recorded in the presence of a probation officer.

#### **66. 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 Police, a probation officer or an authorised officer may, where –

- (a) there is a conflict of interest between the child victim and the victim's parent;

- (b) there is a dispute of custody or visiting rights in relation to the child; or
- (c) where no parent is available or the parent 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 caused by the involvement in the justice process, throughout the investigation and the judicial proceedings on the child; and
- (c) make recommendations related to the child's best interests to the Director of Public Prosecutions, the Police and any other person or body in relation to any Court proceedings involving the child.

## **PART VI – MISCELLANEOUS**

### **67. Protection from liability**

(1) No liability, civil or criminal, shall be incurred by the Ministry, any officer of the Ministry or the Police in respect of any act done or omitted in good faith in the execution of its or his functions or exercise of its or his powers under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act, and for the purposes of that Act, every officer shall be deemed to be a public officer or a person lawfully engaged, authorised or employed in the performance of a public duty.

### **68. Confidentiality**

No officer of the Ministry or of any other Ministry, or member of the Panel or the Child Mentoring Committee shall disclose to any unauthorised person any matter which comes to his knowledge in the discharge of his functions.

### **69. 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 the child's birth has not been registered in accordance with the Civil Status Act.

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

## **70. Offences and jurisdiction**

(1) Any person who molests, hinders or obstructs the supervising officer, an authorised officer, a police officer, a probation officer or any person assisting him in the discharge of his functions or 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 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 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(4) The Court before which a person is convicted for 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) (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 19, 20, 21 or 22 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 19, 20, 21 or 22 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 19, 20, 21 or 22 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.

## **71. 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 facilities and services for children, including the procedure for placement in places of safety, excluding hospitals and schools;
- (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) such other matter as may be prescribed.

## **72. Repeal**

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

### 73. Consequential amendments

- (1) The Civil Status Act is amended –
- (a) in section 20(3), by deleting the words “Articles 145 to 147 or 154” and replacing them by the words “Article 154”;
  - (b) in section 33 –
    - (i) by numbering the existing provision as subsection (1);
    - (ii) by adding the following new subsection –

(2) Notwithstanding subsection (1), no religious marriage shall be celebrated unless the parties to the religious marriage are aged 18 or above.

- (2) The Code Civil Mauricien is amended –
- (a) in article 108-1, in alinéa 1, by deleting the words “non émancipé par mariage”;
  - (b) by repealing articles 145 to 148;
  - (c) by inserting, after article 149, the following new article –

**149A.** Les dispositions des articles 144, 149, 150, 151 et 152 sont d’ordre public.
  - (d) by repealing articles 182 and 183;
  - (e) in Titre Dixième –
    - (i) by deleting the heading and replacing it by the following heading –

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- (ii) in article 445, in alinéa 1, by deleting the words “ou émancipé par mariage”;
- (iii) in article 446, in alinéas 1 and 2, by deleting the words “ou émancipé par mariage”;
- (iv) in article 448, by deleting the words “, lors même qu’il y aurait eu émancipation par mariage”;
- (v) by repealing Chapitre Troisième and articles 476 to 478;

- (f) by repealing article 495;
- (g) in article 502, by deleting the words “, *de la tutelle et de l’émancipation par mariage*” and replacing them by the words “*et de la tutelle*”;
- (h) in article 776, by deleting the words “, *de la tutelle et de l’émancipation par mariage*” and replacing them by the words “*et de la tutelle*”;
- (i) in article 838, in alinéa 2, by deleting the words “des mineurs non émancipés par mariage ou”;
- (j) in article 904, by deleting the words “et non émancipé par mariage”;
- (k) in article 907, in alinéa 2, by deleting the words “ou émancipé par mariage”;
- (l) in article 935 –
  - (i) in alinéa 1 –
    - (A) by deleting the words “non émancipé par mariage”;
    - (B) by deleting the words “, *de la tutelle et de l’émancipation par mariage*” and replacing them by the words “*et de la tutelle*”;
  - (ii) in alinéa 2, by deleting the words “non émancipé par mariage”;
- (m) in article 1123, in alinéa 2, by deleting the words “non émancipés par mariage”;
- (n) in article 1304, in alinéa 3, by deleting the words “ou de l’émancipation par mariage”;
- (o) in article 1305, by deleting the words “non émancipé par mariage”;
- (p) in article 1990, by deleting the words “non émancipé”;
- (q) in article 2194, in alinéa 1, by deleting the words “ou son émancipation par mariage”;

(r) in article 2206, by deleting the words “même émancipé par mariage”.

(3) The Code de Commerce is amended, in article 4, by deleting the words “, même émancipé par le mariage,”.

(4) The Code de Procédure Civile is amended, in article 910 –

(a) in alinéa 1, by deleting the words “et les créanciers mineurs émancipés”;

(b) in alinéa 2, by deleting the words “non émancipés”.

(5) 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 a 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 2020”;

(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;
- (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 an aggravating circumstance specified in section 13A exists, be liable to penal servitude for a term not exceeding 20 years.

(6) 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 2020”.

(7) The Convention on the Civil Aspects of International Child Abduction Act is amended –

(a) by inserting, after section 4, the following new sections –

**4A. Request for return of child abducted from Mauritius**

(1) A person, an institution or any other body that claims to have rights of custody in relation to a child and, in breach of those rights, has been –

(a) removed from Mauritius to a Contracting State; or

(b) retained in a Contracting State,

may request the Central Authority to have the claim sent to the Central Authority in the country to which the child has been removed or in which the child is retained.

(2) A request shall be –

(a) in such form as the Minister may approve; and

(b) in accordance with the Convention.

(3) Where the Central Authority is satisfied that a request received by it complies with subsection (2), it shall, on behalf of the person, institution or other body, take any action required to be taken by a Central Authority under the Convention.

(4) The Central Authority may refuse to accept a request received by it where it is satisfied that the request is not in accordance with the Convention.

(5) Any refusal under subsection (4) shall be notified in writing and shall –

(a) be sent to the person, institution or other body that made the request; and

(b) include the reason for the refusal.

#### **4B. Request for return of child abducted to Mauritius**

(1) The Central Authority shall take action to secure the return of a child under the Convention where –

- (a) it receives a request from –
  - (i) a person, an institution or any other body that claims to have rights of custody in relation to the child and, in breach of those rights, has been removed from a Contracting State or has been retained in Mauritius; or
  - (ii) a Central Authority of a Contracting State, on behalf of a person, an institution or any other body referred to in subparagraph (i); and
- (b) it is satisfied that the request is in accordance with the Convention.

(2) The Central Authority may refuse to accept a request received by it where it is satisfied that the request is not in accordance with the Convention.

(3) Any refusal under subsection (2) shall be notified in writing and shall –

- (a) be sent to the person, institution or other body referred to in subsection (1)(a)(i) or to the Central Authority of the Contracting State referred to in subsection (1)(a)(ii); and
- (b) include the reason for the refusal.

(4) For the purpose of subsection (1), the action taken may include any of the following –

- (a) seeking an amicable resolution of the differences, in relation to the removal or retention of the child, between the person making the request for the child's return and the person opposing the child's return;
- (b) seeking the voluntary return of the child;
- (c) applying for an order under section 6.

#### **4C. Request for access to child in Contracting State**

(1) A person who claims under a law in force in Mauritius to have rights of access to a child in a Contracting State may request the Central Authority to have arrangements made for establishing, organising or securing the effective exercise of those rights in that Contracting State.

(2) A request shall be –

- (a) in such form as the Minister may approve; and
- (b) in accordance with the Convention.

(3) Where the Central Authority is satisfied that a request received by it complies with subsection (2), it shall take any action required to be taken by a Central Authority under the Convention.

(4) A Central Authority which is satisfied that a request received by it does not comply with subsection (2) may refuse to accept the request.

(5) A refusal under subsection (4) shall be in writing and –

- (a) be sent to the person who made the request; and
- (b) include the reason for the refusal.

#### **4D. Request for access to child in Mauritius**

(1) The Central Authority shall take action to establish, organise or secure the effective exercise of rights of access to a child in Mauritius where –

- (a) it receives a request from a Central Authority in a Contracting State on behalf of a person who claims –
  - (i) to have rights of access to the child under a law in force in a Contracting State; and
  - (ii) that those rights have been breached; and

(b) it is satisfied that the request is in accordance with the Convention.

(2) The Central Authority may refuse to accept a request received by it if it is satisfied that the request is not in accordance with the Convention.

(3) A refusal under subsection (2) shall be in writing and –

(a) be sent to the Central Authority of the Contracting State which sent the request; and

(b) include the reason for the refusal.

(4) For the purpose of subsection (1), the action taken may include any of the following –

(a) applying to a Court under section 6 for an order that is necessary or appropriate to establish, organise or secure the effective exercise of the rights of access to which the request relates;

(b) seeking an amicable resolution in relation to the rights of access to the child.

(b) in section 6, by adding the following new subsections –

(3) Subject to section 7, where an application is made under section 6(1), a Court shall not make an order providing for the custody of the child, until the application is determined.

(4) The Court shall, so far as practicable, give to an application such priority as will ensure that the application is dealt with as quickly as a proper consideration of each matter relating to the application allows.

(c) in section 8, by adding the following new subsection –

(4) An affidavit of a witness or a statement of a witness who resides outside Mauritius which is filed in the proceeding is admissible as evidence even where the witness does not attend the proceeding for cross-examination.

(8) 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 repealing sections 109 and 110 and replacing them by the following sections –

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

A child victim or child witness under the age of 14 –

- (a) shall not be examined on oath or solemn affirmation; and
- (b) 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.

**110. 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) 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”;
- (d) 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”;
- (e) 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 previously been 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.

(f) in section 135(4)(c), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2020”;

(g) by repealing the First Schedule.

(9) 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 14 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 may 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.

- (10) The National Children’s Council Act is amended –

- (a) in section 4 –
  - (i) by repealing paragraph (a) and replacing it by the following paragraph –
    - (a) be the implementation arm of the Ministry for all activities regarding children;

- (ii) in paragraph (b), by deleting the word “protect” and replacing it by the word “uphold”;
  - (b) in section 9, by repealing paragraphs (a), (f) and (g);
  - (c) in section 13(1)(b), by deleting the words “3 years” and replacing them by the words “2 years”.
- (11) 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”.
- (12) The Reform Institutions Act is amended by repealing section 15.
- (13) 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 2020”;
    - (ii) by inserting, in the appropriate alphabetical order, the following new definition –
 

“juvenile” means a child aged 14 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 2020”.

#### **74. 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, on 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 Offenders Act and which is still pending before the commencement of this Act shall, on 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, on the commencement of this Act, the Children's Court Act 2020 is not into operation, any reference made to the –

- (a) the Protection Division of the Children's Court shall be construed as a reference made to the appropriate District Court where the child resides; and
- (c) Criminal Division of the Children's Court shall be construed as a reference made to the Criminal Division of the Intermediate Court or a District Court, as the case may be.

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

#### **75. 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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