

**ACT NO. 6 OF 2011**

**I ASSENT**

**{DR. ALI MOHAMED SHEIN }  
PRESIDENT OF ZANZIBAR  
AND  
CHAIRMAN OF THE REVOLUTIONARY COUNCIL**

**6<sup>th</sup> July, 2011**

**AN ACT TO PROVIDE FOR THE RIGHTS AND BEST INTERESTS OF CHILD; TO PROVIDE FOR THE ESTABLISHMENT OF CHILDREN'S COURTS; TO CONSOLIDATE AND EXPAND ON PROVISIONS RELATING TO THE CARE AND PROTECTION OF VULNERABLE CHILDREN AND CHILDREN IN CONFLICT WITH THE LAW; TO PROVIDE FOR PARENTAGE, CUSTODY, GUARDIANSHIP, ACCESS TO, MAINTENANCE, FOSTER CARE AND ADOPTION OF CHILDREN; TO PROVIDE FOR SPECIAL PROTECTION MEASURES IN RESPECT OF CHILDREN; TO PROVIDE FOR CONSENT TO MEDICAL INTERVENTION IN RESPECT OF CHILDREN; TO PROVIDE FOR APPROVED SCHOOLS, RESIDENTIAL ESTABLISHMENTS AND DAY CARE CENTRES; AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO**

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**ENACTED** by the House of Representatives of Zanzibar.

**PART 1  
PRELIMINARY PROVISIONS**

Short title  
and  
Commencement.

**1.** This Act may be cited as the Children's Act, 2011, and shall come into force on such date as the Minister may, by notice in the Gazette, designate and different dates may be designated for different Parts.

Interpretation.

2. In this Act, unless the context otherwise requires:

“Adoption” means the legal act of permanently placing a child with parents other than such child’s biological parents by court order;

“Approved School” means a school established under section 115 of this Act;

“Care-giver” means any person other than a parent or guardian, who takes primary responsibility for the day-to-day care of a child;

“Child” means a person below the age of 18 years;

“Child abuse” means contravention of the rights of the child which causes physical, moral or emotional harm or suffering, or other cruel or degrading punishment, insults, discrimination, deliberate neglect, sexual abuse, exploitative labour or any traditional practice prejudicial to health;

“Child development” means the evolving process of change experienced by a child between birth and maturity, when the child’s physical, intellectual, spiritual, moral and social abilities have reached their full potential;

“Child-headed household” means the one where there are no adult carers available and children live on their own, and where an older child cares for his siblings;

“Child labour” means labour which is exploitative, hazardous to a child or forced upon a child as contemplated in sections 99, 100 and 102, of this Act, and which:

- (a) by its nature or circumstances is likely to harm the health, safety or morals of a child;
- (b) is inappropriate for that child’s age; or
- (c) places the child’s well-being, education, physical or mental health, or spiritual, moral or social development at risk;

but excludes duties performed by a child, in accordance with the evolving maturity of the child and in the child’s best interests and subject to the child’s human rights, to contribute to the well-being of his family and community;

“Child with disabilities” means a child who suffers from permanent, temporary, impairment or ill-health, whether such impairment or ill-health is physical, sensory, cognitive, psychological, neurological, medical or intellectual or a combination of these, which hinders the child’s full and effective participation on an equal basis with others;

“Child pornography” means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes;

“Court” means a Children’s Court established under section 18 of this Act;

“Custody” means the right of a parent to provide the child with his main residence and to make day-to-day decisions about his care and upbringing;

“Day care centre” means a centre established under Part XII of this Act where a child is placed under supervision of other persons while the parents or guardians are at work or engage with other duties;

“Director” means the Director of Social Welfare or Director of Women and Children as outlined in the relevant sections;

“Director of Public Prosecution” means the Director of Public Prosecution of Zanzibar appointed in accordance with the Constitution of Zanzibar;

“Diversion” means diversion of a criminal matter involving a child accused away from formal court procedures to the informal procedures established under Part V of this Act;

“Family” in relation to a child, includes any of the following persons:

- (a) a parent of the child;
- (b) any other person who has parental responsibilities and rights in respect of the child;
- (c) a grandparent, brother, sister, uncle, aunt or cousin of the child; or

- (d) any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship;

“Fit and proper person” means a person who is 21 years of age or older and who is:

- (a) of high moral character, integrity and sound mind who has experience and knowledge of the rights and welfare of children;
- (b) who is not a relative of the child or children concerned; and
- (c) has been approved by a welfare officer as being able to assist children on a voluntary basis, including:
  - (i) supervising a child under a supervision order, with a view to promoting his best interests;
  - (ii) providing a caring home for a child who has been refused bail after allegedly committing an offence;
  - (iii) becoming an independent member of the Board of Inspectors of an Approved School as contemplated in section 115(2); or
  - (iv) joining the management committee of an approved residential establishment;

“Foster care” means the temporary or long-term provision of a caring home by an approved person to a child who, for whatever reason, cannot be looked after by his parents or family;

“Government” means the Revolutionary Government of Zanzibar;

“Guardian” means a parent or other person who has guardianship of a child;

“Home” means the principle residence of the parent, guardian or relative who has custody of the child;

“Kafalah” means the commitment to voluntarily take care of the maintenance, protection and education of the child in the same way as the biological parents of the child would do;

“Minister” means the Minister responsible for children affairs;

“Orphan” means a child who has lost one or both parents through death in accordance with child’s faith;

“Parent in relation to a child” means a woman or a man in respect of whom parentage has been acknowledged or otherwise established in terms of Part VI and includes the prospective adoptive parent of a child, but excludes:

- (a) the biological father of a child conceived through the rape of or incest with the child’s mother;
- (b) any person who is biologically related to a child by reason only of being a sperm donor for purposes of artificial fertilisation; or
- (c) a parent whose parental responsibilities and rights in respect of a child have been ceased in accordance with the provisions of this Act;

“Parentage” means extraction from parents;

“Parental responsibilities and rights” means the responsibility and right to:

- (a) have custody of the child, including responsibility for making decisions relating to the child’s upbringing;
- (b) maintain relation with the child;
- (c) act as a guardian of the child; and
- (d) contribute to the maintenance of the child;

“Place of safety” means any institution, hospital or other suitable place, the occupier of which is willing to accept the temporary care of a child;

“Police officer in charge” means an officer commanding of the police station;

“Discipline a Child” means a disciplinary action against a child aiming at rehabilitating such child as a result of his ill manner which does not endanger child’s physical or mental health.

“Prescribed” means prescribed by law or regulations;

“Probation officer” means any person appointed as such under the provisions of the Probation of Offenders Decree;

“Pre-adoption placement” means the placement of a child in the care of prospective adoptive parents prior to consideration of an adoption order;

“Regulations” means regulations made under this Act;

“Relative” means a member of a child’s family;

“Residential establishment” means an establishment contemplated in section 123(1) of this Act;

“Welfare Officer” means a person appointed to render social welfare services including social welfare officers and women and children officers;

“Trafficking” in relation to a child means the recruitment, transportation, transfer, harbouring, adoption or receipt of a child for the purpose of exploitation within or across the borders of Zanzibar, and “exploitation” includes, but is not limited to:

- (a) prostitution or any form of sexual exploitation;
- (b) forced labour or services, prohibited child labour or other economic exploitation;
- (c) slavery or practices similar to slavery, debt bondage or forced marriage;

- (d) servitude; or
- (e) the removal of any part of the body.

**PART II**  
**BEST INTERESTS AND RIGHTS OF A CHILD**

Best interests of the child .

**3.** This Act shall be interpreted and applied so that in all matters concerning the care, protection and well being of the child, the best interests of the child concerned shall be the paramount consideration.

Determination of best interests of the child.

**4.** In determining the best interests of a child, the following factors shall be taken into consideration:-

- (a) the nature of the personal relationship between:
  - (i) the child and the parents, or any specific parent; and
  - (ii) the child and any other care-giver or person relevant in those circumstances;
- (b) the attitude of the parents, or any specific parent, towards:
  - (i) the child; and
  - (ii) the exercise of parental responsibilities and rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
- (d) the likely effect on the child of any changes in the child's circumstances, including the likely effect on the child as a result of any separation from:
  - (i) both or either of the parents; or
  - (ii) any relative, or any other child or any other care-giver or person, with whom the child has been living;

- (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- (f) the need for the child:-
  - (i) to remain in the care of his parent, family and extended family;
  - (ii) to maintain a connection with his family, extended family, culture and tradition;
  - (iii) not to be removed from his place of residence;
- (g) the child's age, maturity and stage of development, sex, background and any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his intellectual, emotional, social and cultural development;
- (i) any disability that a child may have;
- (j) any chronic illness from which a child may suffer;
- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by:
  - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviours;
  - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards any other person; or

(iii) any family violence involving the child or a family member of the child;

(m) the appropriate action or decisions which would avoid or minimise further legal or administrative proceedings in relation to the child; and

(n) any other relevant factor.

Child participation and views expressed .

**5.** Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning him, will have the right to participate in an appropriate way and views expressed by the child will be given due consideration.

Non-discrimination.

**6.(1)** A child shall have a right to live free from any discrimination.

(2) No person, authority, institution or other body shall discriminate against a child on the grounds of such child's or of his parent's or legal guardian's gender, race, colour, language, political or other opinion, age, religion, marital status, disability, health status, including HIV-status, custom, ethnic origin, rural or urban background, birth, socio-economic status, being a refugee or on the grounds of any other status.

Right to name and nationality.

**7.(1)** A child shall, from birth, have a right to a name, and to be granted a nationality of his parents in accordance with applicable laws.

(2) A person shall not unlawfully deprive a child of the right to a name and nationality.

Right to Registration of Birth.

**8.(1)** Subject to the provisions of the Birth and Death Registration Act, No. 10 of 2006 every child shall be registered upon birth.

(2) The health authorities and any other relevant person or agency shall co-operate with the Registrar of birth in measures to secure the registration of all births.

Right to live with parents.

**9.(1)** A child shall be entitled to live with his parents, guardians or family and to grow up in a caring and peaceful environment.

(2) No child shall be deprived of the right to live with his parents, guardians or family unless it is decided otherwise by a Children's Court.

(3) Subject to the provisions of subsections (1) and (2) of this section, where a Children's Court determines that it is in the best interests of a child to separate him from his parents, the best substitute care available shall be provided for the child.

(4) A child who is separated from his parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis, except when this is not in the best interests of the child.

Right to be provided with certain conditions of living.

**10.**(1) A child shall have the right to good conditions of living necessary for his development, including:-

- (a) nutritious food;
- (b) shelter;
- (c) appropriate clothing;
- (d) appropriate care and protection, which involves adequate medical care and immunization;
- (e) education, including religious education; and
- (f) sport.

(2) A child's parents, guardian or any other person having custody of a child have a duty to secure, within their abilities and financial capacities, the conditions of living set out in subsection (1) of this section.

(3) The Government may, in accordance with its national conditions, within its means or in partnership with private institutions, assist parents, children and other persons having responsibilities of a child in case of need by providing material assistance and support programmes particularly with regard to nutrition, clothing, housing, protection and special care.

(4) A child of 16 years may have the right to relevant information regarding health care and healthy development, including appropriate information relating to HIV.

(5) A person shall not deny a child necessary medical care by reason of religion or other beliefs.

(6) A child in respect of whom an offence of a sexual abuse has allegedly been committed shall have a right to be medically examined immediately after reporting the alleged commission of such an offence to the police.

(7) The parent, guardian or care-giver of a child and any other authority or institution which has a duty or duties towards a child in particular or children in general shall take all appropriate measures within their means to support the child's right to participate in play, sports, cultural and artistic activities and other constructive leisure activities which are relevant to his age.

Children with disabilities.

**11.(1)** No person, authority, institution or other body shall treat a child with disabilities in a degrading manner.

(2) A child with disabilities shall be entitled to special care and protection and shall have effective access to and receive inclusive and non-discriminatory education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration and individual development, ensuring his dignity and promoting his self-reliance and active participation in the community.

Parental duty and responsibilities.

**12.(1)** Parents and any other person legally responsible for a child shall have the duty to secure the child's right to life, dignity, respect, leisure, liberty, health, education, protection, shelter and anything else necessary for the child's physical, mental, spiritual, moral and social development.

(2) Every parent or person legally responsible for a child shall have the duty to:

- (a) ensure that the best interests of the child are his basic concern at all times;

- (b) guide and direct the child in the exercise of all of his rights under this Act or any other statute or treaty, in a manner consistent with the child's evolving capacities;
- (c) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression; and
- (d) ensure that in the temporary absence of a parent, the child shall be cared for by a competent person,

except where the parent has surrendered his rights and responsibilities in accordance with a written law or any acceptable tradition or custom.

(3) Where the biological parents of a child have died, parental responsibility may be passed on to a relative of either parent or a custodian by way of court order unless a custodian is provided for in a testamentary disposition or in accordance with any tradition or custom.

Right to parental property.

**13.** Subject to section 18(2) of this Act upon a death of a child's parent, a child shall not be deprived from the inheritance of his deceased parent.

Protection from torture and degrading treatment.

**14.(1)** No child shall be subjected to violence, torture, or other cruel, inhuman or degrading punishment or treatment or any cultural or traditional practice which dehumanizes or is injurious to his physical and mental well-being.

(2) Without prejudice to the provisions of subsection (1), parents may discipline their children in such a manner which shall not amount to injury to the child's physical and mental well-being.

Abuse of children.

**15.** Any person who:

- (a) having the custody, charge or care of a child ill treats, neglects or abandons that child or circumcise female child or allows the child to be assaulted, ill treated, neglected or abandoned in a manner likely to cause him suffering or injury to physical or mental health, commits the offence of abuse of children and

shall on conviction be liable to imprisonment for a term of not less than five years and not exceeding ten years;

- (b) sexually abuse the child, cause injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement, commits the offence of abuse of children and shall on conviction be liable to imprisonment for a term of not less than fifteen years.

Penalty for contravention.

**16.** Any person who contravenes any provisions of sections 6, 11, 13, 14(1) of this Part, commits an offence and shall on conviction be liable to a fine not less than one million shillings and not more than five million shillings or to imprisonment for a term not less than twelve months and not exceeding three years or to both such fine and imprisonment.

General duties of child.

**17.** Subject to the provision of this Act, a child shall have the responsibilities to:

- (a) work for the cohesion of the family, to respect the rights of his family members and to assist his family members in times of need;
- (b) serve his community, to respect the rights of all members of the community and to preserve and strengthen the positive cultural values of his community in the spirit of tolerance, dialogue and consultation;
- (c) serve his nation, to respect the rights of all other persons and to preserve and strengthen national solidarity; and
- (d) contribute to the general moral well-being of society;
- (e) respect and abide to all laws of the land.

Provided that due regard shall be given to the age, maturity, stage of development and ability of a child and to such limitations as are contained in this Act.

### **PART III CHILDREN'S COURT**

Establish-  
ment,  
jurisdiction  
and  
powers of  
Children's  
Court and  
appeal.

**18.**(1) There is hereby established a Court to be known as the Children's Court, in every Region, for purposes of :

- (a) making an order or orders relating to children in need of care and protection, maintenance of children, custody of and access to children, guardianship and parentage of children and exercising any other jurisdiction conferred by this Act or any other law; and
  - (b) hearing and determining criminal charges against a child for an offence alleged to have been committed before the child reaches the age of 18 years, other than a charge of murder, manslaughter, treason or rape.
- (2) The provisions of subsection (1) (a) shall not:
- (a) affect the jurisdiction of a Kadhi's Court as set out in section 6 of the Kadhi's Courts Act, No.3 of 1985 to determine questions of Muslim law relating to:
    - (i) personal status;
    - (ii) marriage;
    - (iii) divorce and maintenance; or
    - (iv) inheritance proceedings, involving children of parents subscribing to the Islamic religion.
  - (b) subject to paragraph (a) and further to the provisions of subsection (4) of this section, if proceedings contemplated in subsection (1) (a) of this section involve parents of a child subscribing to the Islamic religion, a suitably qualified person of such faith appointed by the Chief Justice may assist the Children's Court as a member to ensure that the orders of such court are consistent with religious considerations.

- (c) parents of a child who subscribe to the Islamic religion shall institute proceedings for Orders under subsection 2(a) of this section in one court of competent jurisdiction only.

(3) The Chief Justice may, by notice in the Gazette:

- (a) designate any premises used by a Primary court to be a Children's Court; and
- (b) Notwithstanding the provisions of subsection (4) of this section, appoint District Magistrate to entertain cases involving children in any District with Court premises if it deems necessary
- (c) give directions relating to the informality of proceedings in a Children's Court, including the setting and lay-out of the court, the attire of court officials or any other measure designed to contribute to the informality of proceedings in such court with the aim of putting children appearing in such court at ease.

(4) Every Children's Court shall be presided over by a Regional Magistrate, as chairperson, who shall sit with at least two other persons, appointed by the Chief Justice as members, who have special knowledge or training in child welfare or child psychology or have been actively involved in health, education or welfare activities pertaining to children.

(5) The Regional Magistrate referred to in subsection (4) of this section may sit alone when hearing and determining criminal charges against a child in the case of offences listed in Schedule I.

(6) In proceedings referred to in subsections (2) (b) and (4) of this section where the chairperson sits with other members, the judgment or sentence of the court shall be determined in accordance with the following provisions:

- (a) if the court is unanimous, the judgment or sentence shall follow the finding of the panel;
- (b) if the court is not unanimous, the judgment or sentence shall follow the finding of the majority of the court, if any; or

- (c) if the court is equally divided, the judgment or sentence shall follow the finding of the chairperson.

(7) In all proceedings, the Children's Court shall have regard to the best interests of the child concerned.

- (8) The proceedings of a Children's Court shall only be attended by:
  - (a) the child involved in the matter before the court, his parents or guardian and any other party in the matter;
  - (b) the legal representative of a party to the proceedings, including the legal representative of the child involved in the proceedings;
  - (c) a person who obtained permission to be present from the magistrate presiding at the proceedings;
  - (d) a person performing official duties in connection with the work of the court or whose presence is necessary for the proceedings; and
  - (e) a probation officer or a welfare officer.

(9) A Children's Court may, in addition to the orders it is empowered to make in terms of this Act:

- (a) grant interdicts and auxiliary relief in respect of any matter it may adjudicate upon in terms of this Act;
- (b) extend, withdraw, suspend, vary or monitor any of its orders;
- (c) impose or vary time deadlines with respect to any of its orders;
- (d) make appropriate orders as to costs or compensation in matters before the court;
- (e) order the removal of a person from the court after noting the reason for the removal on the court record;

- (f) order a welfare officer or any other person to carry out a further investigation into the circumstances of a child, and compile a written report addressing such matters as the court may require;
- (g) order a medical practitioner, psychologist, developmental or educational practitioner, to assess a child who is the subject of the proceedings and compile a written report addressing such matters as the court may require; and
- (h) in accordance with the provisions of the Birth and Death Registration Act order the Registrar responsible for birth to issue a birth certificate in respect of a particular child.

(10) Any party involved in a matter before a Children’s Court may appeal against any order made or any refusal to make an order, or against the variation, suspension or rescission of such order of the court to the High Court.

(11) Every appeal against a conviction, order or sentence made or passed by a Children’s Court under the provisions of this Act shall be made within 30 days from the date the conviction, order or sentence was made or passed.

(12) The High Court may on application admit or refuse an appeal out of time.

**PART IV  
CARE AND PROTECTION OF A CHILD**

Meaning of child care and protection and grounds for care orders.

**19.(1)** For the purposes of this Act, a child is vulnerable and in need of care and protection if that child:

- (a) is abandoned or orphaned and has insufficient care or support;
- (b) is engaged in behaviour that is, or is likely to be, harmful to him or any other person, the parent or guardian or the person in whose care the child is, is unable or unwilling to control that behaviour;
- (c) lives or works on the streets or begs for a living;

- (d) lives in or is exposed to circumstances which may seriously harm the physical, mental, emotional or social welfare of the child;
- (e) is in a state of physical or mental neglect;
- (f) is addicted to alcohol or other dependence producing drug and is without any support to obtain treatment for such dependency;
- (g) is below the age of 14 years and is involved in an offence other than a minor criminal matter;
- (h) is an unaccompanied migrant or refugee;
- (i) is chronically or terminally ill, including a child affected by or infected with HIV, and lacks a suitable care-giver;
- (j) is being kept in premises which according to the opinion of the Medical Practitioner are over-crowded, highly unsanitary or dangerous; or
- (k) is being, or is likely to be, neglected, maltreated or abused.

(2) A child in the following circumstances may be a child in need of care and protection and must be referred for an assessment by welfare officer:

- (a) a child who is a victim of child labour;
- (b) a child in a child headed household, including the head of such household;
- (c) a child who is a victim of child-trafficking;
- (d) a child whose parent has been imprisoned and who lacks a suitable care-giver;
- (e) a child who has been the victim of a serious crime against himself the child's person, which includes rape, sexual assault, assault with the intent to cause serious bodily harm, kidnapping, abduction or attempted murder;

- (f) a child who is engaged in commercial sex work or has been subjected to any form of sexual exploitation;
- (g) a child who may be at risk if allowed to remain in the custody of the parent, guardian or the person in whose care the child is, as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social welfare of the child;
- (h) a child living in a violent family environment, including a child named in a protection order issued by a court;
- (i) a child whose parent, guardian or care-giver unreasonably withholds consent to necessary medical or therapeutic intervention;
- (j) a child with multiple or repeated sexually transmitted infections; and
- (k) any child reasonably suspected of falling under subsection (1) of this section.

Duty to report infringement of child's rights.

**20.(1)** Any person who performs professional or official duties with respect to children, including, but not limited to, a school or madrasa teacher, doctor or medical officer, pharmacist, school counsellor, nurse, physiotherapist, occupational therapist, traditional health practitioner, legal practitioner, any officer in the Government responsible for women and children's affairs, military or security officer, religious leader and a member of staff at a pre-school facility, place of safety, place of care or children's home, who has a reasonable belief that a child's rights are being significantly infringed, including abuse of the child or because the child's parent or custodian is able to, but refuses or neglects to, provide the child with the conditions of living set out in section 10 of this Act, has the duty to report the matter to the following:

- (a) Director of Social Welfare;
- (b) Welfare Officer;

- (c) Police station; or
- (d) Sheha.

(2) If a report under subsection (1) of this section has been made to a police station or a Sheha, such police station or Sheha shall forthwith notify the relevant welfare officer of such report in the prescribed form within 24 hours of receipt of the report.

(3) Any person, other than a person referred to in subsection (1) of this section, including another child, who reasonably believes that a child is or may be in need of care or protection, may report that belief to any person mentioned in subsection (1) of this section.

(4) A person who makes a report under subsection (1) or (3) of this section shall be entitled to have his identity kept confidential if the report is made in good faith, unless the interests of justice require otherwise, and is not subject to civil liability for producing or making any report required or permitted in terms of this section, except if the person produces or makes the report or provides information knowing it to be false or misleading.

(5) Any person who fails to comply with subsection (1) of this section shall be subject to the disciplinary measures in accordance with their professional codes of conduct.

Actions  
to be  
taken by  
welfare  
officer.

**21.(1)** The welfare officer shall, within 14 days upon receiving a report made under section 20 of this Act, conduct or cause risk assessment to be conducted or the child who is the subject of the report, in the prescribed manner, and may summon the person against whom the report was made to discuss the matter and require the person to take, or not take, specified actions in order to secure the best interest of the child.

(2) If after an assessment in terms of subsection (1) of this section:-

- (a) the welfare officer has reason to believe that the child concerned is in need of immediate protective services or protection which will not be secured otherwise than by intervention of the court; or

- (b) if the person against whom the report was made fails or refuses to comply with any requirements as may be set by the welfare officer within the time period stipulated by such officer,

shall, without delay and after requesting the Registrar of the Children's Court to notify, in the prescribed manner, the child's parent, parents, legal guardian or any other person identified by such officer as someone with an interest in the matter, refer the matter to the Children's Court for an inquiry into the matter and such court may in respect of such proceedings:

- (i) give any relief or order contemplated in this Act, whether based upon a recommendation of the district social worker or not; and
- (ii) in the case of a parent, in addition to the relief orders given, order the parent to exercise proper care and guardianship by signing an undertaking in the prescribed form to provide the child with such requirements as may be determined by the court.

(3) A welfare officer may upon the consent of a parent or legal guardian, provide a child considered to be in need of care and protection or cause such child to be provided with anything necessary to safeguard the child's best interests, including:

- (a) advice and counselling;
- (b) accommodation in a foster home or institution, with the consent of the child's parent or guardian;
- (c) medical care, which may involve mental health care;
- (d) disability aids; and
- (e) education or training.

(4) A welfare officer shall, if he or she has reason to believe, after an assessment of the risk to a child alleged to be in need of care and protection, that an offence in relation to the abuse, maltreatment or neglect of such child has been committed, forthwith report such alleged offence to an officer in charge of a police station for investigation.

(5) In the event that a matter involving a child in need of care and protection is referred to the Children's Court, the welfare officer shall compile a social investigation report contemplated in section 27 of this Act, which report may be dispensed with in the case of a recommendation for an emergency protection order contemplated in section 22 of this Act.

Emergency protection order.

**22.**(1) The Children's Court may, on application of a welfare officer, make an emergency protection order authorizing such officer, with or without the presence of a member of the police, to enter into any premises specified in the order to search for a child whom the welfare officer believes is in need of immediate emergency protection or is exposed to a substantial risk of imminent harm.

(2) The application in subsection (1) of this section may also be made out of court hours, if the welfare officer has a reasonable belief that:

- (a) the child is in need of immediate emergency protection or is exposed to a substantial risk of imminent harm; and
- (b) the child's parent or guardian has refused or is likely to refuse to allow the welfare officer access to the child or to remove the child if necessary to protect the child from harm.

(3) A child removed on an emergency protection order shall appear in court within 7 days after his removal.

(4) The welfare officer shall, as soon as possible and in any case within the period referred to in subsection (3) of this section, take the child to the court and shall furnish the court with a social investigation report contemplated in section 27 of this Act, containing recommendations relating to the care and protection of the child, taking into account the views of the child.

(5) Where a child is placed under protection, his parents, guardian or the persons with whom the child is living shall be informed as soon as is practicable and shall be allowed to have contact with the child unless such contact is not in the best interests of the child.

(6) An emergency care order may be renewed by the court for a period of seven days, but may not be extended beyond a total period of 30 days.

(7) The child's parents, guardian or person responsible for his care shall be entitled to be heard in any application for renewal of the order under subsection (6) of this section.

(8) Any person who, without reasonable cause, removes a child who is the subject of an emergency protection order without the authority or permission of the person under whose custody the child is placed, commits an offence and upon conviction shall be liable to a fine not less than one million shillings and not exceeding three million shillings or to imprisonment for a term not less than six months and not exceeding three years or to both such fine and imprisonment.

Supervi-  
sion order.

**23.**(1) The Children's Court may, on the recommendation of a welfare officer, issue a supervision order in respect of a child in need of care and protection.

(2) A supervision order shall not remove the legal rights of the child's parents or legal guardian.

(3) The aim of a supervision order shall be:

- (a) to prevent any harm to the child; and
- (b) to take reasonable steps to promote the best interests of the child and in particular to enable the child to remain in his family home and community.

(4) A supervision order may only be made if the court is satisfied, after an inquiry into the circumstances of the child and consideration of the social investigation report contemplated in section 27 of this Act that:-

- (a) the child is suffering or is at risk of harm; and
- (b) such an order is necessary in order to prevent such harm.

(5) The supervision order shall place a child under the supervision of the welfare officer or any fit and proper person in the local community while the child remains in the custody of his parent, guardian or relative.

(6) Where the child has been placed under the supervision of a fit and proper person, the responsible welfare officer shall:

- (a) satisfy himself on a regular basis that the fit and proper person's supervision is in the best interests of the child; and
- (b) take responsibility for all formal reports, applications and reviews required by this Act.

(7) The maximum duration for a supervision order shall be one year or until the child attains the age of 18 years, whichever period is earlier, unless the court has made an order under subsection (8) of this section.

(8) The court may extend the order for a period of up to one year at a time if satisfied on the basis of a written report by the women and children officer that the child:

- (a) continues to be at risk of harm; and
- (b) an extension of the order is in the child's best interests.

(9) A supervision order shall require the person or persons with parental rights over the child to:

- (a) inform the supervisor of any change in the child's address; and
- (b) allow the supervisor to visit the child at the child's home.

Care  
order.

**24.(1)** The Children's Court may issue a care order on the recommendation of a women and children officer in respect of a child in need of care and protection in circumstances where a supervision order contemplated in section 23 of this Act will not be sufficient to secure the care and protection of that child.

(2) The care order shall remove the child from any situation where he or she is suffering or likely to suffer harm and transfer the parental rights in respect of such child to the women and children officer or such other person as may be determined by the court.

(3) The aim of a care order shall be:

- (a) to prevent any harm to the child, and
- (b) to determine the most suitable placement for the child, which may be:
  - (i) at the home of another parent, a guardian or relative;
  - (ii) an approved foster parent;
  - (iii) a prospective adoptive parent;
  - (iv) a fit and proper person; or
  - (v) an approved residential establishment.

(4) A care order may only be made if the court is satisfied, after an inquiry into the circumstances of the child and consideration of the social investigation report contemplated in section 27 of this Act that, in addition to subsection (1) of this section:

- (a) the child is suffering from or is likely to suffer harm;
- (b) all possible and practicable alternative methods of protecting the child have been tried without success, and
- (c) transferring parental rights is necessary to protect the child.

(5) When determining the most suitable place, due regard shall be paid to:

- (a) child's ascertained views, having regard to his age and maturity;
- (b) the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background, and
- (c) the desirability of placing siblings together.

(6) A care order may be imposed for a limited period or until the child attains the age of 18 years, whichever period is shorter, but may not exceed a period of three years in order to allow for the possible reunification of the child with his family.

(7) At the expiry of the period of the order the court may extend the order for periods of up to one year if satisfied on the basis of a written report by the welfare officer that the child will be at risk of harm if parental rights are restored to the parents.

(8) The court may make a further order that the parent, guardian or other person responsible for the child shall pay for the cost of maintaining the child.

(9) The court may, on application by a person with an interest in the well-being of a child, make an order limiting the access of a parent or legal guardian to the child who is placed under a care order, if satisfied that such an order is necessary in order to protect the child from harm.

(10) The court may vary or discharge an order under this section on the application of the welfare officer, the child, or his parent or legal guardian.

(11) A care order shall, on application by the welfare officer, be reviewed by the court at least once in each year with a view to satisfying the court that the child's best interests are being met by the order.

Prohibi-  
tion order.

**25.**(1) The Children's Court may, on application by a person referred to in subsection (4) of this section or in existing proceedings for a supervision order or care order, make an exclusion order prohibiting a named person, including a care-giver, from having contact with a child.

(2) Before making an exclusion order, the court shall be satisfied that the order is necessary for the protection of the child and to safeguard the child's best interests.

(3) The court shall specify the duration of the exclusion order.

(4) An application for an exclusion order may be made by:

- (a) the child or the child's family;
- (b) one or both of the child's parents;
- (c) a guardian or care-giver;
- (d) the welfare officer.

(5) A court may vary or discharge an exclusion order on the application of the person named in the order, the child concerned or a care-giver of the child.

(6) A person who contravenes an exclusion order commits an offence and upon conviction shall be liable to a fine not exceeding one million shillings or imprisonment for a term of six months or to both such a fine and imprisonment.

Additional orders.

**26.** Notwithstanding the provisions relating to various orders that may be made by a Children's Court as set out in this Act, such court may, taking into account that the removal of a child in need of care and protection from his family should be a measure of last resort, make any of the following orders, whether in combination with any other order or on its own, in order to safeguard the best interests of such child:-

- (a) instructing a parent or guardian of a child to undergo professional counselling, or to participate in mediation or other appropriate problem-solving forum;
- (b) instructing a child or other person involved in the matter to participate in a professional assessment;
- (c) instructing a hospital to retain a child who on reasonable grounds is suspected of having been subjected to abuse or neglect, pending further inquiry;
- (d) instructing a person to undergo a specified skills development, education, training, treatment or health rehabilitation programmes;

- (e) instructing a person who has failed to fulfil a statutory duty towards a child to appear before the court and to give reasons for the failure;
- (f) instructing an organ of State to assist a child in obtaining access to a public service to which the child is entitled, failing which, to appear through its representative before the court and to give reasons for the failure; and
- (g) directing that the child receive appropriate treatment, if needs be at state expense, if the court finds that the child is in need of medical, psychological or other treatment.

Social  
investi-  
gation  
report.

**27.(1)** The Children’s Court shall require a written social investigation report in respect of a child before making a care order, supervision order or exclusion order.

(2) A welfare officer shall have the duty to:-

- (a) prepare a social investigation report, in the prescribed manner, certified by such officer that the report is a true and balanced reflection of the facts contained therein; and
- (b) comply with an order of the court whenever required to provide such a report.

(3) The welfare officer shall make home visits and interview the parents, guardians or relatives of the child concerned and any other person who may have information pertaining to the circumstances of the child before preparing a social investigation report.

(4) The welfare officer shall ascertain the views of any child capable of forming a view and shall include these views in the report, whether or not such officer agrees with such views.

(5) Where necessary the welfare officer shall consult the child privately.

(6) A social investigation report shall contain matters relating to the best interests of the child and recommendations as to any action to be taken by the court.

(7) The court shall take into account the information contained in the social investigation report in so far as it is relevant to the order being made.

(8) Where the court is not satisfied with any recommendation made by the Welfare Officer, it shall record the reasons for not following such recommendation.

(9) Any person who hinders, obstructs or prevents a Welfare Officer from executing his duty under this Act or who fails to comply with any request by such officer, commits an offence and upon conviction shall be liable to a fine not less than two hundred thousands shillings and not exceeding five hundred thousand shillings or to imprisonment for a term not less than three months and not exceeding six months or to both such fine and imprisonment.

Duties of  
Welfare  
Officer.

**28.(1)** The duties of a welfare officer with respect to a care or supervision order are to secure the aims of care or supervision orders as provided for in this Act, by:

- (a) advising and assisting the child concerned;
- (b) advising and assisting the child's parents and family with a view to promoting the child's best interests;
- (c) holding regular reviews to:
  - (i) monitor the child's progress;
  - (ii) examine the circumstances that led to the making of the order so as to identify measures to solve or ameliorate any problems; and
  - (iii) plan for the child's future;
- (d) applying to the court to discharge or vary the order if necessary; and
- (e) taking any other necessary and reasonable step to ensure that the child is not subjected to harm and to promote the child's best interests.

(2) Reviews by a court of a care or supervision order shall:

- (a) wherever possible directly involve the child; and
- (b) where consistent with the child's best interests, directly involve a care-giver of the child, the child's parents and other members of the child's family,

be held within six months of the relevant order and at least once every year thereafter.

Home visit

**29.**(1) A welfare officer shall be permitted by a parent, guardian, relative or care-giver of the child to visit the child at his family home, alternative informal placement, approved foster home or institution, as the case may be.

(2) The welfare officer shall, where reasonable and practicable and for an appropriate period of time, consult the child separately from the persons providing his care.

Discharge of orders.

**30.** An order made in terms of this Part may be discharged in the best interest of the child by the court on good cause shown and on application by:

- (a) the child's family;
- (b) a welfare officer;
- (c) a parent, guardian, relative or care-giver of the child; or
- (d) any person with parental responsibility in respect of the child.

Power of the court to order contribution.

**31.**(1) The Court may order that the parent, guardian, relative or care-giver of a child placed in a residential establishment, foster care or other form of alternative care contribute towards the maintenance of the child.

(2) Any amount to be contributed shall be reasonable and may be varied by the court if there is a change in circumstances of the contributor.

Parental responsibility of officer responsible of residential establishment or foster parent.

**32.**(1) The officer responsible of an approved residential establishment or the foster parents with whom a child is placed under a care order shall have parental responsibility for the child while the child is placed with such establishment or foster parents.

(2) Parental responsibility as referred to in subsection (1) of this section does not mean that parental rights have been transferred.

(3) The responsibilities under subsection (1) of this section shall include:

- (a) promoting the child's well-being, happiness and full development, particularly as regards education and health;
- (b) encouraging the child to have contact with parents, relatives and friends;
- (c) informing the child's parents of his progress;
- (d) where consistent with the child's best interests, planning with the child's welfare officer for a trial return home; and
- (e) where a child is unable to return to his parents, encouraging and assisting the child to become independent and self-reliant.

(4) A child under a care order shall not be required to leave a residential institution or foster home if he or she is under the age of 18 years.

(5) Where consistent with the child's best interests, a welfare officer may arrange for the child to return to his home for a trial period.

(6) Trial placements at home under subsection (5) of this section shall be planned in collaboration with:-

- (a) the child;
- (b) the child's parents or guardian; and
- (c) the child's foster parents or the officer responsible of the institution where the child has been placed.

(7) The welfare officer shall visit the child at regular intervals during a trial home placement but at least once a month.

(8) The parents, guardian or relatives of a child placed in any residential establishment or foster home shall supplement the efforts of the staff of such establishment or foster parent to safeguard and promote the welfare of the child by visiting the child and otherwise protecting his best interests.

(9) Any person who, without reasonable cause, removes a child placed under protection from the location where such child had been placed without the authority or permission of the person under whose custody the child is placed, commits an offence and upon conviction shall be liable to a fine of not less than three thousand shillings and not exceeding one million shillings or to imprisonment for a term not less than six months and not exceeding two years or to both such fine and imprisonment.

No publication of information or photograph of a child.

**33.(1)** No person shall publish any information or a photograph that may lead to the identification of an abused child except with the permission of the court.

(2) Any person who publishes information or a photograph contrary to this section commits an offence and upon conviction shall be liable to a fine not less than five hundred thousand shillings and not exceeding three million shillings or to imprisonment for a term not less six months and not exceeding two years or to both such fine and imprisonment.

Regulations for care and protection of children.

**34.** The Minister may make regulations prescribing any ancillary or incidental administrative or procedural matter that may be necessary to prescribe in order to facilitate the implementation or administration of this Part.

## **PART V CHILDREN IN CONFLICT WITH THE LAW**

Age of criminal responsibility.

**35.(1)** A child under the age of 12 years is not criminally responsible for any act or omission.

(2) A child of 12 years of age or older but under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he or she had capacity to know that he or she ought not do the act or make the omission.

(3) The Children's Court may, on its own accord, or upon the request of the Director of Public Prosecutions or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (2) of this section by a suitably qualified person, which shall include an assessment of the cognitive, emotional, psychological and social development of the child.

Determi-  
nation of  
age.

**36.**(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due inquiry as to the age of that person.

(2) The court shall have regard to such evidence at the hearing of the case, which may include medical evidence as is necessary to provide proof of birth, whether it is of a documentary nature or otherwise, as it appears to the court to be worthy of belief.

(3) The court may at any time order that a medical examination be performed on a child appearing before such court, whether for purposes of providing proof of the age of that child or for any other purpose.

(4) A certificate signed by a medical practitioner registered or licensed under the provisions of the Medical Practitioner and Dentists Act No. 12 of 1999 as to the age of a child shall be sufficient evidence and shall be receivable by a court without proof of signature unless the court orders otherwise.

(5) An order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court and the age found by the court to be the age of the person so brought before it shall, for the purposes of this section, be deemed to be the true age of that person.

(6) Any medical examination, for which appropriate consent has been received, and collection of any other medical evidence, shall be conducted in the presence of a welfare officer.

Arrest.

**37.**(1) A child shall not be arrested for an offence contemplated in the first Schedule unless:

- (a) there are compelling reasons justifying such an arrest; or
- (b) the offence is in the process of being committed.

(2) A child shall not be arrested by using handcuffs unless there are compelling reasons justifying the use of such handcuffs.

(3) The police official effecting the arrest of a child in terms of subsection (1) (a) or (b) or for an offence contemplated in the second Schedule of this Act shall, in the prescribed manner:

- (a) inform the child of the nature of the allegation against him;
- (b) inform the child of his rights, including the right to obtain legal assistance or, if unable to do so, to be provided by Government with assistance in the preparation of his defence;
- (c) explain to the child the immediate procedures to be followed in terms of this Act;
- (d) inform the child that he has a right to be accompanied by a person during the making of any statement or during any interview or examination; and
- (e) where circumstances permit, notify the child's parent or an appropriate adult of the arrest.

(4) Any child who has been arrested and who remains in police custody shall be taken by a police official to appear at the Children's Court within 24 hours after arrest, if the court is in session, or if the court is not in session, on the first court day following arrest of the child.

Informing persons of arrest of child.

**38.** Where a child is arrested, the police officer in charge shall as soon as may be practicable after the arrest, but not later than 24 hours of such arrest, inform:

- (a) the parent or guardian of the child, if he or she can be located, of the arrest and direct the parent or guardian to be present at the court before which the child will appear; and
- (b) the probation officer or women and children officer of the arrest in order to conduct an assessment of the child, in the prescribed manner, in compliance with the provisions of section 41 of this Act.

Diversion by police cautioning and bail of children apprehended by the police.

**39.(1)** Where a child is apprehended with or without a warrant for committing an offence listed in First Schedule, the police officer in charge may, when such child has offended for the first time, instead of initiating a prosecution against the child, record the particulars of the offence and of such child and caution him not to reoffend and further advising the child that

should he or she reoffend, records of the first incidence shall be used as evidence against him for purposes of trial and sentencing.

(2) Where any child is apprehended with or without warrant and cannot be brought forthwith before a court, the police officer in charge shall inquire into the case, and:

- (a) unless the charge is an offence listed in the Second Schedule;
- (b) unless it is believed that releasing the child would constitute a threat to public safety or would defeat the ends of justice; or
- (c) unless it is necessary in the interest of that child to remove him from association with any undesirable person,

shall release such child into the care of his parent, guardian or family, with or without sureties, for such amount as may be prescribed.

Custody of children not discharged on bail after apprehension.

**40.(1)** Where any child having been apprehended is not released as contemplated in section 39 of this Act, the police officer in charge shall not detain him in the police station, but shall cause him to be detained in a children's remand home or place of safety until he is brought before a court unless the police officer certifies:

- (a) that it is impracticable to do so;
- (b) that there is a risk of the child endangering himself or any other person if he or she is to be detained in such home or place of safety; or
- (c) that by reason of his state of health or of his mental or physical condition it is inadvisable so to detain him,

and the certificate shall be produced to the court before which the child is brought.

(2) A child who remains in detention in police custody notwithstanding the provisions of subsection (1) of this section prior to his appearance in the Children's Court shall be detained separately from adults and shall have access to adequate food, water, bedding and, medical care.

Assessment  
of child  
offenders.

**41.** Any child who has been arrested for the alleged commission of an offence shall be assessed by a probation officer or a welfare officer, if practicable before he is brought before the Children's Court, in order to:

- (a) obtain information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the court;
- (b) establish whether the child may be in need of care and protection for purposes of dealing with the child in terms of Part IV of this Act;
- (c) assist with the estimation of the age of the child if the age is uncertain;
- (d) gather information relating to a previous conviction, any previous diversion or any pending charge in respect of the child;
- (e) formulate recommendations regarding the release or detention and placement of the child;
- (f) express a view on the factors that may affect the criminal capacity of the child; or
- (g) provide any other relevant information regarding the child which the probation officer or welfare officer may regard in the best interests of the child or which may further any objective of this Act.

(2) The assessment referred to in subsection (1) of this section shall be in writing and shall be submitted to the Children's Court within 7 days.

(3) An assessment in terms of this section may be dispensed with by the Director of Public Prosecutions or a court upon good cause shown.

Diversion of matters involving less serious offences.

**42.**(1) A matter in respect of which if a child is accused of committing an offence listed in the first Schedule and where such child has acknowledged responsibility for that offence, may, after assessment of the child and before he or she appears in the Children's Court, be diverted by the Director of Public Prosecutions provided that the child and, if available, his parent or guardian, have consented in writing to the diversion option to be imposed.

(2) For purposes of subsection (1) of this section diversion options include any one or more of the following:

- (a) an oral or written apology to a specified person or persons or institution;
- (b) a formal caution with or without conditions;
- (c) referral of the child to counselling or therapy;
- (d) restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored;
- (e) provision of some limited service or benefit, as may be prescribed, by the child to a specified victim or victims;
- (f) payment of compensation, not exceeding five hundred thousand shillings, to a specified person, persons, group or institution where the child or his family is able to afford this;
- (g) where there is no identifiable person or persons to whom restitution or compensation can be made, provision of some limited service or benefit, as may be prescribed, or payment of compensation, not exceeding twenty thousand shillings, to a community organisation, charity or welfare organisation;
- (h) referral of the child to family group conference or victim offender mediation, conducted by a welfare officer, to be attended by the child, his family, the victim of the offence and any other person with an interest in the matter, in order to resolve the harm caused by the offence.

(3) If a matter is diverted in terms of subsection (1) of this section, the child in question and, where possible, his parent or a fit and proper person shall appear before a magistrate in chambers, for purposes of having the diversion option that has been selected by the Director of Public Prosecution made an order of court.

(4) The provisions of section 50 of this Act apply to a child who fails to comply with an order referred to in subsection (3) of this section.

(5) The effect of a diversion in terms of this section is that the child shall not be subject to any further criminal prosecution for the offence in respect of which the diversion order had been made.

**43.(1)** The procedure for conducting proceedings by the Children's Court in all criminal matters involving children shall be in accordance with rules made by the Chief Justice for that purpose, but shall, in any case be subject to the following conditions:-

- (a) the Children's Court shall sit as often as necessary and in a different building or room, or at different times, from those in which sittings of courts other than Children's Courts are held;
- (b) proceedings shall be held in camera;
- (c) proceedings shall be as informal and as friendly to the child as possible, and made by enquiry without exposing the child to adversarial procedures, in so far as this is compatible with the child and other participants having their rights to justice fully safeguarded;
- (d) in addition to the child's right to a legal representative in the preparation and presentation of his case and throughout the hearing, the child's parent, guardian or family may support the child and take part in the representation of the child, unless the court determines that this is not in the best interests of the child;
- (e) the court shall explain to the child, in language that the child can understand:

- (i) that he has the right to appeal against a judgment or sentence of the court or to have the judgment or sentence reviewed by a higher court;
- (ii) the charge against him;
- (iii) that he has the right to obtain legal assistance or, if unable to do so, to be provided by Government with assistance in the preparation of his defence;
- (iv) that he has the right to the assistance of an interpreter if the child cannot understand or speak the language used;
- (v) that he has the right to be heard, either directly or if he wishes, through a representative;
- (vi) that he has the right not to be compelled to give evidence or confess guilt; and
- (vii) that he or she has the right to examine or have examined witnesses for the prosecution and to obtain the participation of witnesses on his own behalf under conditions of equality.

(2) The provisions of section 18(8) of this Act relating to the attendance of persons in proceedings of the Children's Court, shall apply to criminal proceedings involving a child in any court, whether such child is the accused or a witness in such proceedings.

(3) The court may exclude any person from being present in court if it determines that the presence of such person is not in the best interests of the child.

(4) The court shall have regard to the assessment of the child by a probation officer or a welfare officer contemplated in section 41 of this Act if such assessment has already been conducted at the first appearance of the child before such court, or if it has not been done, shall direct a probation officer or a welfare officer to conduct such an assessment within the period determined by the court.

(5) If it appears to the presiding magistrate during the course of criminal proceedings in a Children's Court that:

- (a) the child charged with an offence is a child in need of care and protection as referred to in section 19 of this Act and it is desirable to deal with the child in terms of Part 4 of this Act; or
- (b) the child does not live at his family home or in appropriate substitute care.

The presiding magistrate may order, at a date and time decided by, and upon such conditions as set by the presiding officer, that the child be referred to a welfare officer for an assessment under Part IV and that the child be dealt with under the provisions of that Part.

Separation or joinder of proceedings and transfer of children to Children's Court.

**44.(1)** Where a child is charged jointly with any other person not being a child, the child shall be tried separately in the Children's Court unless the court determines that this is not in the best interests of the child or in the interests of justice, in which circumstances the case must be transferred to an appropriate court for hearing, but the child, if convicted of an offence, shall be returned, save for an offence contemplated in section 18(1)(b) of this Act, to the Children's Court for disposition.

(2) Where in the course of any proceedings in a Children's Court it appears that the person charged or to whom the proceedings relate is an adult, or was an adult at the time when the alleged offence was committed, the court shall proceed with the hearing and determination of the case according to the provisions of Magistrates Courts Act No. 6 of 1985 or Criminal Procedure Act No. 7 of 2004 as the case may be.

(3) Where in the course of any proceedings in a court it appears to the court that the person charged or to whom the proceedings relate is a child or was a child when the alleged offence was committed, the court shall stay the proceedings and commit the child to the Children's Court.

Bail of children by the court.

**45.(1)** Where any child appears or is brought before the court for the purpose of hearing any charges against him, the court shall release such child into the care of his parent, guardian or other responsible person, with or

without sureties, for such amount as will, in the opinion of the court, secure the attendance of such child upon the hearing of the charge unless it appears to the court that there are reasonable grounds not to do so.

(2) The court may, instead of committing a child who is not released in terms of subsection (1) to an Offenders' Education Centre, make an order sending such child to a children's remand home or a place of safety named in the order, to remain there in custody for the period for which he or she is remanded or until finalization of the proceedings before the court.

(3) The court may commit such child to custody in an Offenders' Education Centre if it is satisfied that the child is at least 16 years of age and poses a threat to the safety of any person.

(4) Such child shall be confined in a separate building or in a separate part of the same building in such manner as to prevent him from associating with or having any communication with adult remandees or trainees.

(5) A commitment under this section or in the case of a child who poses a threat to the safety of any person, may be varied or revoked by any court acting in the place in which the court which made the order acted, and if it is revoked, the child may be committed to an Offenders' Education Centre.

(6) Such child shall be confined in a separate building or in a separate part of the same building in such manner as to prevent him from associating with or having any communication with adult remandees or trainees.

Accused to be asked to show cause.

**46.(1)** After the particulars of the alleged offence have been explained to the child, the Children's Court shall invite the child to state whether he or she admits or denies the offence, ensuring his understanding, and explain to the child that he or she may remain silent.

(2) If the child admits the offence and the court is satisfied that he or she understands the charge and that other information presented sufficiently corroborates the child's admission of guilt, the court may, after giving the child the opportunity to make a statement or to give evidence, deal with the child in terms of section 47 of this Act, subject to subsection (3) of this section.

(3) Before dealing with the child in terms of section 47 of this Act, the court shall obtain such information as to the child's general conduct, home surroundings, school record and medical history as may enable it to deal with the case in the best interests of the child and may put to him any question arising out of such information.

(4) For the purpose of obtaining information contemplated in subsection (3) of this section or for the purpose of medical examination or observation the court may from time to time release the child on such conditions which the court deems fit, including bail, or commit the child to a children's remand home or place of safety.

(5) When a Children's Court has recorded a finding that a child is guilty of an offence and has postponed sentence in order that information may be obtained in respect of the child, any other court which is empowered to act within the limits of the jurisdiction of the Children's Court which has recorded such finding:

- (a) may, in the absence of such child, extend the period for which the case has been adjourned; Provided that the child appears before that court at least once in every twenty-one days; and
- (b) when the required information has been obtained, may deal with the child finally,

and it shall not be necessary for any court which subsequently deals with the child under this subsection to hear evidence as to the commission of the offence except in so far as it may consider that such evidence will assist the court in determining the manner in which the child is to be dealt with.

(6) Where the child exercises his right to remain silent or does not admit the offence with which he is charged, or where the court does not accept the statement of the child as amounting to a plea of guilt to that charge, the court shall proceed to hear the evidence of the witnesses for the prosecution.

(7) At the close of the evidence of each witness, the court shall put to the witnesses such questions as appears to be necessary or desirable, either

for the purpose of establishing the truth or the facts alleged or to test the credibility of the witness, and the child or his representative shall have an opportunity to cross-examine each witness.

(8) After the prosecution witnesses have given evidence and the defence has exercised its right to cross-examination, the Children's Court shall hear the witnesses for the defence and any further statement which the child may wish to make in his defence.

Methods  
of dealing  
with  
children  
charged  
with  
offences.

**47.(1)** Where a matter involving a child has not been diverted in terms of section 42 of this Act and such child is brought before any court, the court may, taking into account the written assessment of the child referred to in section 41 of this Act, if not dispensed with in terms of section 41(3) of this Act, and if satisfied of such child's guilt, deal with the case in any one or more of the following ways:

- (a) by dismissing the charge after advice or admonition to the child and after the proper investigation made against him and counsel provided to the parent of the child;
- (b) by dismissing the charge and directing the child to participate in group counselling or similar activities;
- (c) by discharging the child and releasing him into the care of a parent, guardian, relative, other responsible person or a charitable children's institution willing to undertake care of the child;
- (d) by discharging the child and placing him under the supervision of a probation officer or a welfare officer on probation of good conduct, with or without the parent or guardian executing a bond, as the court may require, for the good behaviour and well-being of the child for any period not exceeding three years;
- (e) by employing any diversion option listed under section 42(2) of this Act;
- (f) by ordering the child to pay a fine, damages or compensation, if the child is in the position to do so;

- (g) by ordering the child to perform community service under the provisions of the Community Service Rules made under sections 8, 9 and 10 of the Criminal Procedure Act No. 7 of 2004;
- (h) by ordering the parent or guardian of the child to give an undertaking that will secure the child's good behaviour;
- (i) by ordering the child to be placed in an educational institution or on a vocational training programme;
- (j) by ordering the child to be placed in an Approved School, if such a school has been established in terms of Part XI of this Act;
- (k) by sentencing the child, if he or she has attained the age of 16 years and has committed an offence listed in second Schedule, or a repeat offence listed in first Schedule, as a last resort, to imprisonment in an Offenders Education Centre and for the shortest appropriate period in time, but not exceeding twenty five years; or
- (l) by dealing with the case in any other manner in which it may legally be dealt with.

(2) No child shall be subject to corporal punishment as a result of being found guilty of the commission of an offence, and no child shall be subject to the death penalty in respect of any offence for which such penalty may be imposed.

(3) An order contemplated in subsection (1) of this section amounts to the diversion of a child away from the criminal justice system, except for an order that involves the payment of a fine or an order contemplated in subsection (1) (g), (j) or (k) of this section, and may only be made with the consent of the Director of Public Prosecutions.

(4) When discharging a child in terms of subsection (1) (d) of this section, the court may impose a condition that the child be under the supervision of such person as may be named in the order during the period specified in the order, including conditions for securing such supervision as may be specified in the order.

(5) The person named in an order in terms of subsection (4) of this section shall be a probation officer or a welfare officer.

(6) The person named in an order in terms of subsection (4) of this section may at any time be relieved of his duties, and, in any such case or in the case of the death of the person so named, another person may be substituted by the court order for which the child is bound by himself or his recognized representative to appear for conviction or sentence.

(7) When making an order that a child convicted of an offence is sent to an Approved School, the court shall:

- (a) in case the child is above 16 years of age, commit such child to an Approved School for a period of not less than two years; or
- (b) in case of any other child, commit such child to an Approved School for such period until he or she ceases to be a child;

Provided that the court may, if satisfied that, having regard to the nature of the offence and the circumstances of the case, it is expedient to do so, for reasons to be recorded in writing, reduce the period of stay to such period as it deems fit.

(8) An order referred to under subsection (7) of this section shall not be made unless the Officer Responsible of the Approved School to which the child is to be committed has informed the Children's Court that there is a vacancy for the child.

(9) An order referred to under subsection (7) of this section shall be reviewed by the court at least annually, to determine whether the detention is necessary and in the child's best interests, on the basis of reports obtained from the Responsible Officer of the Approved School and the welfare officer.

Prohibition  
on  
publication  
of  
information.

**48.** The provisions of section 33 of this Act relating to the prohibition on the publication of information or photographs of a child, apply with such changes as may be required by the context to criminal proceedings involving a child in any court, whether such child is the accused or a witness in such proceedings.

Child witnesses.

**49.**(1) Any child may be admitted to give evidence in criminal proceedings without taking the oath or making an affirmation; provided that such child is able to understand questions put to him and to respond to such questions in a manner which is intelligible, and provided further that such child shall, in lieu of the oath or affirmation, be admonished by the presiding officer to speak the truth, the whole truth and nothing but the truth.

(2) Every child shall be presumed to be competent to testify in criminal proceedings and no such child shall be precluded from giving evidence unless he or she is found, at any stage of the proceedings, not to have the ability or the mental capacity, verbal or otherwise, to respond to questions in a way that is understandable to the court.

(3) The evidence given by a child referred to in subsection (2) of this section shall be admissible in criminal proceedings, and the court shall attach such weight to such evidence as it deems fit.

(4) Notwithstanding any rule of law or practice to the contrary, where evidence received by virtue of subsection (2) of this section is given on behalf of the prosecution and is not corroborated by any other material evidence in support of it implicating the accused, the court may, after warning itself, act on that evidence to convict the accused if it is fully satisfied that the child is telling the truth.

(5) Notwithstanding the provisions of this section, where in any criminal proceedings involving a sexual offence the only independent evidence is that of the child or victim of the sexual offence, the court shall receive the evidence and may after assessing the credibility of the child or victim of sexual offence, on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict for reasons to be recorded in the proceedings, if the court is satisfied that the child is telling nothing but the truth.

(6) For the purposes of subsection (5) of this section and any other written laws, "sexual offence" means any sexual offence as created by the Penal Act, No. 6 of 2004.

Provisions in case of a child failing to observe directions or conditions of order.

**50.**(1) Where a Children's Court is satisfied by information on oath that a child has failed to observe any of the directions or conditions of an order made by such court, it shall issue summons to the child requiring him to attend at such court and at such time as may be specified in the summons for the holding of an inquiry into such failure.

(2) If, upon the conclusion of the inquiry, it is found that the child has failed to comply with the directions or conditions contemplated in subsection (1) of this section, the Children's Court may confirm, amend or substitute the order; provided that such order shall not be more severe than the order originally imposed.

Children's Court to dispose of case without delay.

**51.** Where a child is brought before the Children's Court, the case shall be disposed of by that court without delay and, in any case, within a period not exceeding six months from the date upon which the child has first appeared in that court.

Expungement of criminal records.

**52.(1)** No child shall incur a criminal record for a diversion or a conviction and sentence imposed in terms of this Part other than a conviction and sentence imposed in respect of an offence listed in the second Schedule of this Act.

(2) The Magistrate shall, at the time of sentencing a child in respect of an offence listed in the Second Schedule and after consideration of:

- (a) the nature and circumstances of the offence; and
- (b) the child's personal circumstances or any other relevant factor,

make an order regarding the expungement of the record of the child's conviction and sentence and shall note the reasons for the decision as to whether such record may be expunged or not.

(3) Where a Magistrate decides that a record referred to in subsection (2) of this section shall not be expunged, such decision shall be subject to review or appeal upon application by or on behalf of the child.

(4) Where a Magistrate decides that a record referred to in subsection (2) of this section shall be expunged, the Magistrate shall set a date upon which the record of conviction and sentence shall be expunged, which date shall not be less than three months and shall not exceed five years from the date of the imposition of the sentence.

(5) Where a date for expungement of the record of the conviction and sentence has been set in terms of subsection (4) of this section, the Magistrate shall impose, as a condition of expungement, a requirement that the child concerned may not be convicted of a similar or more serious offence between the date of imposition of the sentence and the date of expungement.

Involving children in crime to be regarded as aggravating circumstances.

**53.** Any court convicting a person who is 18 years of age or more for inciting, conspiring with or being an accomplice of a child in the commission of an offence, shall regard the fact of the child's involvement as an aggravating factor in sentencing that person.

Regulations.

**54.** The Minister in consultation with the Minister responsible for Legal Affairs may make regulations prescribing:

- (a) the manner of arrest of a child;
- (b) the manner of police admonition in terms of this Act;
- (c) the manner of interviewing children alleged to have committed offences; and
- (d) the amounts to be set for the release of children on police bail.

## **PART VI PARENTAGE, CUSTODY, GUARDIANSHIP, ACCESS AND MAINTENANCE**

Application for parentage.

**55.**(1) The following persons may apply to a court for an order to confirm the parentage of a child:

- (a) the parent of a child;
- (b) the guardian of a child;
- (c) a welfare officer; or
- (d) any other interested person, with leave of the court.

(2) The application to the court may be made:

- (a) after the child is born;

- (b) within three years after the death of the alleged parent; or
- (c) before a child is 18 years of age.

Evidence  
of  
parentage.

**56.** With due regard to the jurisdiction of the Kadhis' Courts, established by section 3 of the Kadhis' Court Act No. 3 of 1985, to consider issues relating to personal status, the following shall be considered by a court, either individually or in combination, as evidence of parentage:

- (a) any marriage performed in accordance with laws of Zanzibar;
- (b) the name of the parent entered in the Register of Births kept by the Registrar responsible for Births registration;
- (c) public acknowledgment of parentage; or
- (d) DNA results.

Medical  
test.

**57.(1)** The court may order the alleged parent to submit to a medical test and shall, on the basis of the evidence before it, make such order as it considers appropriate.

(2) Without prejudice to subsection (1) of this section, where the evidence of a mother or independent evidence cannot be corroborated by other evidence available to the satisfaction of the court, the court may, upon request or of its own accord, order a DNA-test to be conducted for the purpose of proving the biological father of the child.

(3) The court shall determine and make an order as to the party who shall bear the costs associated with the DNA-test.

Custody.

**58.(1)** A court may, on the application of one or more persons qualified under subsection (3) of this section, make an order vesting the custody of a child in the applicant or, as the case may be, in one or more of the applicants.

(2) An order under subsection (1) of this section may be referred to as a custody order, and the person to whom custody of the child is awarded is referred to as the custodian of the child.

(3) Custody of a child may be granted to the following persons:

- (a) a parent;
- (b) a guardian;
- (c) any person who applies with the consent of a parent or guardian of a child and has had actual custody of the child for three months preceding the making of the application; or
- (d) any person who, while not falling within paragraph (a), (b) or (c), can show cause why an order should be made awarding that person custody of the child.

(4) The court may, in the same proceedings for the declaration of parentage, grant custody of the child to an applicant on such conditions as it may deem fit.

(5) The court may, at any time and upon good cause shown, revoke the grant of custody to one person and grant the custody to another person, as it may deem necessary.

Guardian-  
ship.

**59.**(1) A person with custody of a child shall also be the guardian of that child, unless a competent court, on application made to it, directs otherwise.

(2) If a parent is a child, guardianship of such parent's child, unless a competent court directs otherwise, shall be vested to the guardian of such parent.

(3) The following persons may seek a court order granting guardianship to one parent, or to some other person:

- (a) the parent;
- (b) the child;

- (c) any person who is acting as the care-giver of the child;  
or
- (d) any person who is, not falling within paragraph (a), (b) or (c), can show cause why an order should be made awarding that person custody of the child.

(4) A person who seeks a court order in terms of subsection (1) or (3) of this section shall make an application in the prescribed form and manner and the court must consider the application in the presence of the applicant or his authorised legal representative.

(5) On the death of one of two equal guardians, the surviving guardian, unless a competent court directs otherwise, acquires sole guardianship over a child.

(6) A person with sole guardianship of a child may, by testamentary disposition, appoint another person as the sole guardian of that child.

(7) Where there is no provision in a written will or other written testamentary disposition naming a guardian for a child, or where there is for any other reason no competent guardian for a child, a guardian can be registered for the child in terms of subsection (8) of this section.

(8) Any person who:

- (a) has a genuine interest in a child, whether or not related to the child, and who wants to be appointed as a guardian of the child, must in the prescribed form and manner apply for guardianship of the child to the Registrar of the Children's Court;
- (b) in the event that the Registrar of the Children's Court receives more than one application for guardianship of a particular child, such Registrar of the Children's court must cause the applications to be considered together.

Access. **60.** A parent, guardian, a relative who has been caring for a child prior to the court order of placing the custody of that child with another person, or any other person granted special leave by the court, may apply to the court for periodic access to the child.

Considerations for custody, guardianship or access.

**61.** In addition to giving paramount consideration to the best interests of a child when making an order for custody, guardianship or access, the court shall consider:

- (a) the child's rights under Part II of this Act;
- (b) the age and sex of the child;
- (c) the right of the child to have access to both parents, unless his rights are persistently abused by one or both of them;
- (d) the views of the child, ascertained independently of his parents, and given due weight according to the child's age and maturity;
- (e) the desirability of keeping siblings together;
- (f) the likely effect on the child of any change in his care; and
- (g) any other matter that the court may consider relevant.

Unlawful removal of the child

**62.** Any person who unlawfully removes a child from the lawful custody of another person commits an offence and shall be liable, upon conviction, to a fine not less than five hundred thousand and not exceeding two million shillings or imprisonment for a term not less than six months and not exceeding one year or to both such fine and imprisonment.

Duty to maintain a child.

**63.** A parent in respect of whom an order of parentage has been made shall have a duty to contribute towards the welfare and maintenance of the child.

Application for maintenance order.

**64.(1)** The following persons may apply to the court for a maintenance order in respect of a child:

- (a) a parent of the child;
- (b) the guardian of the child;
- (c) the child, through his family;
- (d) a welfare officer; or
- (e) a relative of the child.

(2) The application for maintenance may be made against any person who is eligible to maintain the child or contribute towards the welfare and maintenance of the child.

Maintenance order against alleged biological father.

**65.**(1) An application for a maintenance order may be made against the alleged biological father to the court in respect of a child under section 63 of this Act.

(2) The court shall refuse to grant a maintenance order under subsection (1) of this section unless it is satisfied that there is reasonable cause to believe that the man alleged to be the father of the child is the real father.

Consideration in maintenance orders.

**66.** The court shall consider the following matters when making a maintenance order:

- (a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;
- (b) any impairment of the earning capacity of the person with a duty to maintain the child;
- (c) the financial responsibility of the person with respect to the maintenance of other children;
- (d) the cost of living in the area where the child is resident; and
- (e) the rights of the child under this Act.

Request for social investigation report.

**67.** The court may request a welfare officer to prepare a social investigation report before considering an application to make an order for maintenance, custody or access.

Expiration of maintenance order.

**68.**(1) A maintenance order issued by the court shall expire:

- (a) when the child attains the age of 18 years;
- (b) when the child died before attaining the age of 18 years;

- (c) in case of a female child, when she gets married and her married persist until she attain the age of 18 years;
- (d) on the death of the alleged father; or
- (e) upon the child becoming self reliant before the age of 18 years.

(2) Notwithstanding the provisions of subsection (1) of this section the court may, on application by any person mentioned in section 64 of this Act, continue to enforce a maintenance order after a child has attained the age of 18 years if the child is engaged in a course of continuing education or training.

Failure to comply with maintenance order.

**69.**(1) Where the person named in the maintenance order fails to comply with the order, the court may take appropriate measures to enforce the order.

(2) Measures under subsection (1) of this section include making an order requiring the employer of the person named in the maintenance order to pay a specified part of that person's earnings directly to the child or person with custody of the child.

Child's rights where parents separate.

**70.** Where the parents of a child are separated or divorced, a child shall have a right to:

- (a) maintenance and education of the quality he or she enjoyed immediately before his parents were separated or divorced;
- (b) live with the parent who, in the opinion of the court, is most capable of securing the child's best interests; and
- (c) access to the other parent, in which case both parents have mutual responsibility to secure such access, unless the court specifies to the contrary.

Offences under section 69.

**71.** Any person who fails to comply with a maintenance order made under sections 69 of this Act commits an offence and is liable on conviction to a fine of not more than five million shillings or to imprisonment for a term of not more than three years or to both such fine and imprisonment.

**PART VII  
FOSTER PARENT CARE**

Persons  
who may  
foster.

**72.**(1) A child is in foster parent care if the child has been placed in the care of a person (“the foster parent”) who is not the parent, guardian, family member or extended family member of the child.

(2) A prospective foster parent shall be:

- (a) a fit and proper person to be entrusted with the care of the child concerned;
- (b) willing and able to undertake parental rights and responsibilities in respect of the child, and exercise and maintain those rights and responsibilities; and
- (c) properly assessed by a welfare officer for compliance with paragraphs (a) and (b).

(3) A person who has been convicted of an offence related to child abuse or other serious criminal offences shall not be a fit and proper person to be entrusted with the foster care of a child.

Consider-  
ations for  
foster  
parent.

**73.**(1) A welfare officer may place a child who is the subject of a care order, supervision order or emergency protection order with a person approved as a foster parent by the Director.

(2) A prospective foster parent or a welfare officer in support of the foster parent may make the application for approval as foster parent to the Director.

(3) Where the Director is satisfied that an applicant referred to in subsection (2) of this section is a person who can take good care of children and will promote their best interests after an assessment contemplated in section 72 (2) (c) of this Act, the Director shall approve the applicant as a foster parent.

Regulations  
on foster  
care.

**74.**(1) The Minister may, make regulations regarding the foster care of children.

(2) Regulations under subsection (1) of this section shall prescribe:

- (a) specification of the different types of foster parent care, such as emergency, temporary or permanent foster care, and of the appropriate recruitment of foster parents to fill these roles;
- (b) procedures preceding the placement of children in house of the foster parent;
- (c) the assessment and selection of prospective foster parents;
- (d) a care and upbringing plan;
- (e) the duties of the foster parents and that of the child;
- (f) monitoring the house of foster parent by welfare officer; and
- (g) duration and termination of foster parent care.

## **PART VIII KAFALAH AND ADOPTION**

Kafalah  
and  
safeguards.

**75.(1)** Subject to the provisions of this Act the application for kafalah shall be Made to the Kadhi's Court.

(2) The effect of kafalah on parental responsibilities and the rights of a child shall be as follows:

- (a) the legal bond between the child and his family of origin shall not cease to have effect for purposes of establishing the identity of the child and for purposes of inheritance from the parents or family members of origin;
- (b) the kafalah guardian or guardians shall assume those parental responsibilities and rights in respect of the child with regard to custody, maintenance, securing the day-to-day well-being of the child and providing for his education as if the child was born to the kafalah guardian or guardians;

- (c) the kafalah guardian or guardians shall for the purposes set out in paragraph (b) enjoy all legal rights necessary to fulfil the duties and functions required for the exercise of parental responsibilities and rights, including those incidental to guardianship and to the furnishing of any necessary consents and the administration of any property on behalf of the child, subject to guardianship of kafalah; and
- (d) the kafalah guardian or guardians shall assist the child to maintaining relations and contact, with his biological parent or parents, if alive.

(3) The effect of kafalah on the rights of the child shall be that guardianship under kafalah:

- (a) does not confer the surname of the kafalah guardian or guardians on the child, and the child's first right in Islam of parentage and identity shall be maintained through the retention of his birth surname, unless the child was abandoned at birth in which case his parentage cannot be determined;
- (b) may permit marital leave or relation between the child and any other member of the family which is permissible in Islam since they are not blood relatives;
- (c) does not affect any rights to property acquired by the child before the guardianship under kafalah, and in particular, does not affect the rights of the child to inherit from his biological parents on intestacy; and
- (d) does not affect the right of any parties, including the child, if of sufficient age and maturity to express an opinion, or revoke the guardianship under kafalah.

(4) The following safeguards shall apply in respect of guardianship under kafalah:

- (a) a child who is being raised under such guardianship shall have the right not to be discriminated against whilst in the family of the kafalah guardian or guardians in relation to any other children in that family;
- (b) the kafalah guardian or guardians shall safeguard any assets or property of the child, including immoveable property;
- (c) the kafalah guardian or guardians may take over and control such assets or property, subject to proper management in the best interest of the child as shall be determined by the court;
- (d) upon the attainment of the age of 18 years, such assets or property shall be handed over to the child in the presence of witnesses;
- (e) a kafalah guardian who has sufficient personal resources may not take or utilise any portion of the assets or property of a child under kafalah guardianship for the maintenance of the child or as payment for his services, but a guardian who has insufficient personal resources may take a reasonable portion of such assets or property as payment for his services or for the maintenance of the child; and
- (f) the kafalah guardian or guardians shall respect and protect the child's right to know his family or origin.

(5) Nothing contained in this Part shall be construed as prohibiting a kafalah guardian from providing for the well-being of the child under kafalah, including by means of a bequest made during the life time of the kafalah guardian, by means of a portion allocated in a will, or by means of a donation, in accordance with the precepts of Islam.

Powers to make adoption orders.

**76.(1)** The provisions of this part shall not apply to persons subscribing to Islamic faith.

(2) Subject to the provisions of this Act, an application for an adoption order shall be made to the High Court and heard by such court.

(3) Upon receipt of an application for the adoption of a child, the High Court may grant an adoption order in accordance with this Act.

Application  
for adop-  
tion.

**77.**(1) An application for an adoption order may be made by:

- (a) a husband and wife;
- (b) a person married to the parent of the child; or
- (c) any other person, being a citizen of the United Republic of Tanzania, to whom the High Court grants special leave, having regard to the best interests of the child concerned.

(2) All applicants for adoption must be above 25 years of age and, unless a relative of the child, at least above 21 years.

(3) In the case of an application under subsection (1) (b) of this section, the child's parent must consent to the adoption.

(4) An adoption order shall not be made unless:

- (a) both the applicant and the child reside in Zanzibar, unless the applicant is a resident of Zanzibar residing abroad or the conditions under section 80 of this Act are met;
- (b) the child has been continuously in the care of the applicant for at least six consecutive months immediately preceding the date of the order;
- (c) the applicant has notified the Director of Social Welfare his intention to apply for an adoption order for the child at least three months before the date of the order;
- (d) there is a social investigation report in support of the application by a welfare officer; and
- (e) the court is satisfied that:
  - (i) consent required under sections 78 and 79 of this Act have been obtained, or dispensed with, as the case may be, and that the parent or guardian of the child understands that the effect of the adoption order shall mean permanent deprivation of parental rights;

- (ii) the wishes of the child have been considered if the child is capable of forming an opinion;
- (iii) if the child is at least 14 years of age, his consent to the adoption has been obtained, unless it is impossible for the child to express an opinion;
- (iv) the applicant has not received or agreed to receive any payment and that no person has made or agreed to make any payment or given or agreed to give any reward to the applicant for the adoption except as the court may order; and
- (v) the adoption order is in the best interest of the child.

(5) The Director shall approve any placement under subsection (4) (b) of this section, which shall be known as a “pre-adoptive placement”.

Consent of  
parents and  
guardians.

**78.**(1) An adoption order shall only be made with the consent of the parents or guardian of the child who is to be adopted.

(2) Notwithstanding the provisions of subsection (1) of this section, the court may dispense with consent of any parent or guardian if it is satisfied that:

- (a) the parent, guardian or relative has neglected or persistently ill treated the child; or
- (b) the person whose consent is required cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.

(3) A child who is the subject of an application for adoption may not be removed from the care and custody of the applicant by any person except with the permission of the court and in the best interest of the child.

Other  
consent.

**79.**The court may require the consent of any person for an adoption order if it considers that such person has any rights or obligations in respect of the child under an agreement or court order.

Conditions  
for adoption  
order.

**80.**(1) When considering an adoption application, the court may require any person known to the applicant or welfare officer to produce a report which shall give detailed personal information of the applicant in respect of the application.

(2) When granting an adoption order, the court may impose conditions and may require the applicant to enter a bond to make such provision in respect of the child as the court considers necessary.

(3) The adoption order shall include the following particulars:

- (a) the name, surname and gender of the child before and after adoption;
- (b) the date and place of birth of the child;
- (c) the name, surname, address, place of birth, original residence, citizenship and occupation of the adoptive parent; and
- (d) the date of the adoption order.

Adoption  
placement  
order.

**81.**(1) Subject to the provisions of this section, the court may postpone the determination of an application for the adoption of a child and make an adoption placement order giving the custody of the child to the applicant for a period not exceeding two years by way of probation and may attach such terms including provision for the maintenance, education and supervision of the child as it thinks fit.

(2) When making an adoption placement order under this section the court shall impose conditions to the effect that the child shall:

- (a) be under the supervision of a welfare officer; and
- (b) not be taken out of Zanzibar without the permission of the court.

(3) The consent and the powers to dispense with consent shall be the same for an adoption placement order as for an adoption order.

(4) An adoption placement order shall not be considered to be an adoption order under this Part.

Knowledge of adoption by child.

**82.**(1) An adoptive parent shall inform an adopted child of the fact that he is adopted.

(2) The child shall have a right to information about his biological parents unless this is contrary to his best interests, as determined by such child's adoptive parents.

Application by non-resident of Zanzibar.

**83.** In an application for adoption of a child by an applicant who is a citizen of the United Republic of Tanzania but does not reside within Zanzibar or where there is a joint application and one applicant is not a resident of Zanzibar, the court shall satisfy itself that there is sufficient information from a recognised authority where the applicant resides and from the authorities in Zanzibar regarding the best interests of the child concerned warranting determination of the application and thereafter make an adoption order, or if the court considers it to be appropriate, an adoption placement order.

Children previously adopted.

**84.** An adoption order or an adoption placement order may be made for a child who has already been adopted and the adoptive parent named under the first adoption shall, if alive, be considered as the parent or guardian of the child for the purpose of the subsequent adoption.

Effect of adoption on parental rights.

**85.**(1) When an adoption order is made:

- (a) the rights, duties, obligations and liabilities including those under customary tradition of the parents of the child or of any other person connected with the child shall cease; and
- (b) the adoptive parent of the child shall assume the parental rights, duties, obligations and liabilities in respect of the child with regard to custody, maintenance and education as if the child was born to the adoptive parent in a lawful wedlock and had not been the child of any other person.

(2) Where an adoption order is made jointly to a husband and wife, they shall assume the parental responsibilities jointly and the child shall relate to them as parents, as if born naturally by them as husband and wife.

(3) An adoption order:

- (a) confers the surname of the adoptive parent, or such other surname as may be decided upon by the adoptive parent, on the adopted child, except when otherwise provided in the order;
- (b) shall not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted; and
- (c) does not affect any rights to property acquired by the child before the adoption.

Develuation  
of property  
on  
intestacy.

**86.(1)** Where an adoptive parent dies intestate, his property shall devolve in all respects as if the adopted child is the natural child of the adoptive parent.

(2) For avoidance of doubt, an adopted child shall be not entitled to inherit from his biological parents on intestacy.

Testamentary  
disposition.

**87.** In a testamentary disposition of real or personal property, whether or not in writing, made after the date of an adoption order:

- (a) any reference whether express or implied to the child of the adoptive parent shall, unless the contrary intention appears, be construed as, or including, a reference to the adopted child;
- (b) where a testament made by the adoptive parent prior to the adoption order no provision for the adopted child, the adopted child may apply to the court to vary the testament to provide for him from the estate of the adoptive parent;
- (c) any reference to a child of the adopted child's biological parents in a will shall not be construed as including a reference to the adopted child unless the contrary intention appears; and
- (d) any reference to a person related to the adoptive parent shall, unless the contrary intention appears, be construed as a reference to the person as if he was the relative of the child who is adopted.

Supplementary provisions on intestacy and testamentary disposition.

**88.**(1) Where at the time of the distribution of an estate the distributor or administrator had not received a notice of an adoption order by virtue of which the child mentioned in that order is entitled to benefit under the estate, the entitled adopted child shall have a right to trace the property except against a purchaser in good faith provided that the property shall not be disposed of or transferred to any other person until the matter is resolved.

(2) The previous adoption order of a child that has been adopted for a second time shall be disregarded for the purpose of devolution of property on the death of the previous adoptive parent.

Adoption order and customary tradition.

**89.**(1) An adopted child shall be subject to customary tradition as if he was the natural child of the adoptive parent only if:

(a) the adoptive parent; and

(b) the child's parent or guardian,

are subject to customary tradition.

(2) Where there is a joint adoption by husband and wife, references to the adoptive parent in this section shall be taken as a reference to the husband and wife.

Register of Adopted Children.

**90.**(1) The Registrar responsible for registration of documents in the office of the Registrar-General shall keep and maintain at his office a Register of Adopted Children, in the prescribed manner, in which shall be recorded particulars of adoption orders or adoption placement orders issued by the court.

(2) Every adoption order or adoption placement order issued by a court shall be served to the Registrar responsible for registration of documents by the Registrar of the High Court within thirty days of the making of the order.

(3) The Registrar responsible for registration of documents shall keep other records that are related to entries in the Register of Births on adoption together with entries in the Register of Adopted Children.

(4) These records shall not be available to any person except:

- (a) under a court order; or
- (b) to the adopted child, with the written permission of such child's adoptive parents.

Amendment of orders and cancellation in registers.

**91.**(1) The court which made an adoption order under this Act may, on the application of the adoptive parent or adopted child, amend the order by the correction of any error in the particulars, and where an adoption order is so amended, the court shall direct the amendment to be communicated in the prescribed manner to the Registrar responsible for registration of documents.

(2) The power of the court under subsection (1) of this section shall include the power to amend the order:

- (a) by the insertion of the country of the adopted child's birth; or
- (b) where it does not specify a precise date as the date of the adopted child's birth, by the insertion of the date which appears to the court to be the date or probable date of his birth and the provisions of subsection (1) of this section shall have effect accordingly.

(3) Where an appeal against an adoption order is allowed, the court which made the order shall give directions to the Registrar responsible for registration of documents to cancel any marking of any entry in the Register of Birth and Register of Adopted Children which was made in pursuance of that order.

Prohibition of payment and reward for adoption.

**92.**(1) A person shall not give any payment or reward in respect of an adoption order except with the approval of the court.

(2) A person shall not receive any payment or reward in respect of any arrangement that may or may not lead to an adoption order, except under the Court order.

(3) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years or to both.

(4) This section does not apply to:

(a) compensation for:-

- (i) reasonable medical expenses incurred in connection with pregnancy, birth of the child and follow-up treatment;
- (ii) medical attention required by the child to be adopted prior to the conclusion of the adoption;
- (iii) reasonable expenses incurred for counselling; or
- (iv) any other prescribed expenses;

(b) a legal representative, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;

(c) an organ of the State; or

(d) any other prescribed persons.

Notice to be given to send a child abroad.

**93.(1)** An adoptive parent shall notify the Director of Social Welfare in writing when a child adopted by him is to be taken out of Zanzibar permanently after an adoption order has been made by the court.

(2) The notice referred to in subsection (1) of this section shall be communicated to the Director within thirty days before the departure of the adoptive parent and adopted child from Zanzibar.

(3) Any person who contravenes the provisions of subsection(1) of this section commits an offence and shall be liable on conviction to a fine of not less than two million shillings and not exceeding five million shillings or to imprisonment for a term of not less than two years and not exceeding five years or to both such a fine and imprisonment.

Prohibition of Adoption by foreigners.

**94.** Not foreigner shall adopt a child in Zanzibar.

Regulations for adoption.

**95.**(1) The Minister shall make regulations prescribing procedures for adoption proceedings.

(2) For the purpose of subsection (1) of this section the regulations shall prescribe:

- (a) the admission of documentary evidence relating to the consent required for the order;
- (b) the requirements which have to be complied with by a welfare officer in representing the interests of the child.
- (c) the requirements which have to be complied with by a welfare officer in preparing a social investigation report to assist the court to determine whether the adoption order is in the best interest of the child or not; and
- (d) any other matter as the Minister may determine.

Advertisements prohibited.

**96.** Any person who publishes, in any manner any advertisement which contains information indicating that:

- (a) the parent or guardian of a child desires to cause the child to be adopted;
- (b) a person desires to adopt a child; or
- (c) a person who is willing to make arrangements for the adoption of a child,

commits an offence and shall be liable on conviction to a fine not less than one million shillings and not exceeding three million shillings or imprisonment for a term not less than six months and not exceeding five years or to both such a fine and imprisonment.

**PART IX  
SPECIAL PROTECTION MEASURES  
IN RESPECT OF CHILDREN**

Child employment.           **97.** For the avoidance of doubt, no person or corporate body shall employ or engage a child in any activity that may be harmful to such child's health, education, mental, physical or moral development.

Child's right to work.           **98.**(1) A child shall have the right to work, subject to the need to promote and safeguard his best interests.

(2) For the purposes of subsection (1) of this section, the minimum age for employment or engagement in work of a child shall be 15 years and above.

(3) A child of 15 years of age and above may only do light work.

(4) For the purposes of subsection (3) of this section, "light work" is work which is not likely to be harmful to the health or development of the child and does not prevent or affect the child's attendance at school, participation in vocational orientation or training programmes or the capacity of the child to benefit from school work.

Prohibition of exploitative labour.           **99.**(1) No person shall employ or engage a child in any kind of exploitative labour.

(2) Without prejudice to the provisions of this section, every employer shall ensure that every child lawfully employed is protected against any discrimination or acts which may have a negative effect on him taking into consideration his age and evolving capacities.

(3) A person shall not employ a child in the employment:

(a) that is inappropriate for a child of that age;

(b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

(4) Labour is exploitative if:

- (a) it deprives the child of his health or development;
- (b) it exceeds six hours a day;
- (c) it is inappropriate to the child's age or stage of development;  
or
- (d) it requires a child to work after eight o' clock at night and before six o' clock in the morning.

Prohibition  
of  
hazardous  
work.

**100.**(1) It shall be unlawful to employ or engage a child in any hazardous work.

(2) Work shall be construed as or considered to be hazardous if it poses a danger to the health, safety or morals of a person.

(3) Notwithstanding to subsection (2) of this section, hazardous work shall include:

- (a) mining and quarrying;
- (b) portorage of heavy loads;
- (c) work in manufacturing industries where chemicals are produced or used;
- (d) work in places where machines are used; and
- (e) any other hazardous work as shall be declared by the Minister.

(4) Notwithstanding the provisions of subsection (3) of this section, any written law regulating the provisions of training may permit a child:

- (a) on board a training ship as part of the child's training;
- (b) in a factory or a mine if that work is part of the child's training; or

- (c) in any other worksites on conditions that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or training in the relevant work or activity.

(5) The Minister shall make regulations:

- (a) to prohibit or place conditions on the employment and training of children;
- (b) to determine the forms of work referred to in subsection (2) of this section and to make provision for the regular revision and updating of the list of hazardous forms of work.

Right to remuneration.

**101.** A child who is permitted to do work under this Part, has the right to be paid remuneration equal to the value of the work done.

Prohibition of forced labour.

**102.**(1) Any person who procures, demands or imposes forced labour in relation to a child commits an offence.

(2) For the purposes of this section, “forced labour” includes bonded labour or any other work exacted from a person under the threat of a penalty but shall not include work that forms part of national civic obligations or minor communal services performed by the members of a community in the direct interest of that community.

(3) Any person who contravenes the provisions of subsection (1) of this section, commits an offence and shall be liable on conviction to a fine of not exceeding ten million shillings or to imprisonment for a term not exceeding three years or to both such a fine and imprisonment.

Application.

**103.**(1) For the avoidance of doubt, this Part shall apply to employment in the formal and informal sector and shall be read in conjunction with sections 6, 7 and 8 of the Employment Act, No. 11 of 2005.

(2) Subject to subsection (1) of this section, a labour officer may, at any reasonable time, enter into any premises and carry out such inspection which he or she may consider necessary in order to satisfy himself self that the provisions of this Part and sections 6, 7 and 8 of the Employment Act, No. 11 of 2005, are complied with.

(3) For purposes of this section, the term “premises” includes a building, establishment, office, grounds, estate, site, vessel, vehicle, and aircraft.

Registration  
of child in  
industrial  
undertakings.

**104.**(1) An employer in any industrial undertaking shall keep a register of children employed or engaged by him and the dates of their births, if known, or probable dates of birth if the date of birth are not known.

(2) An industrial undertaking is an undertaking other than one in commerce or agriculture and includes:

- (a) mines, quarries and other works for extracting minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adopted for sale, broken up or demolished, or in which materials are transformed, including undertakings the manufacturing of ship or in the generation, transformation or transmission of electricity or motive power of any kind; and
- (c) undertakings engaged in the transport of passengers and goods by road or rail including the handling of goods at docks, quays, wharves, warehouses and airports.

Enforcement

**105.**(1) A labour officer may carry out any inquiry he considers to be necessary in order to satisfy himself self that the provisions of this Part and sections 6, 7 and 8 of the Employment Act, No. 11 of 2005, with respect to labour by children are being strictly observed.

(2) For purposes of this section a labour officer may interrogate any person as may be necessary.

(3) Where a labour officer is reasonably satisfied that the provisions of this Part or sections 6, 7 and 8 of the Employment Act, No. 11 of 2005 are not being complied with, he shall serve a non-compliance order to the management of the place where a child is employed and report the matter to a welfare officer and to an officer in charge of a police station who shall investigate and take any appropriate steps to protect the child concerned.

Penalty for  
contraven-  
tion.

**106.**(1) It shall be an offence for any person:

- (a) to employ or engage a child contrary to the provisions of this Part or sections 6, 7 and 8 of the Employment Act; No. 11 of 2005 or
- (b) to procure a child for employment or work contrary to provisions of this Part or sections 6, 7 and 8 of the Employment Act, No. 11 of 2005.

(2) In any proceedings under this section, if the age of the child is in issue, the burden of proving that it was reasonable to believe, after investigation, that the child was not under age for the purposes of this section, shall lie to the person employing or procuring the child for employment or work.

(3) Any person who contravenes the provisions of subsection (1) of this section commits an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings and not exceeding two million shillings or to imprisonment for a term not less than twelve months and not exceeding two years or to both such a fine and imprisonment.

Vocational  
training.

**107.** Where in the best interest of the child, a child of 16 years may be a trainee for the vocational training in accordance with provisions of the Vocational Training Act, No. 8 of 2006.

Offences  
relating to  
licensed  
premises and  
the sale of  
harmful  
substances  
to children.

**108.**(1) No person who is the owner or occupier or who runs or is in charge of a discotheque, bar or night club, shall allow a child to enter into such discotheque, bar or night club.

(2) No person shall sell cigarettes, alcohol, any spirit, prohibited drugs or any intoxicating substance to a child.

(3) A person who contravenes the provisions of this Section commits an offence and shall on conviction be liable to a fine not less than five hundred thousand and not exceeding two million shillings or to imprisonment for a term not exceeding twelve months or to both such a fine and imprisonment.

Child safety  
at  
Recreation  
centres.

**109.**(1) A person providing recreation centres to children on any premises or in any enclosure, or hosting any performance or event, shall comply with subsection (3) of this section if:

- (a) the majority of the people attending the recreation centres, performance or event are children; and
- (b) the number of people, including children, who attend the recreation centres, performance or event is expected to exceed 50.

(2) The Minister may designate facilities providing for recreation centres to children to comply with subsection (1) of this section, notwithstanding the provisions of paragraph (b) of that subsection.

(3) A person providing recreation centres to children or hosting a performance or event in the circumstances specified in subsection (1) of this section or the person responsible for premise mentioned in subsection (2) of this section shall:

- (a) determine the number of people, including children, who can safely be accommodated on the premises or in the enclosure and each part of the premises or enclosure;
- (b) station a sufficient number of adult attendants to prevent more people, including children, being admitted to the premises or enclosure, or any part of the premises or enclosure, than the number of people determined in terms of paragraph (a);

- (c) control the movement of people admitted to the premises or enclosure, or any part of the premises or enclosure, while entering or leaving the premises or enclosure or that part of the premises or enclosure; and
- (d) take all reasonable precautions for the safety of the children and other people attending the recreation centres.

(4) No alcohol or tobacco products shall be sold, served or made available to children under 18 years at recreation centers and places of entertainment.

(5) A person authorised by a local government authority in whose the premises or enclosure is situated where entertainment or recreation described in subsection (1) or (2) is or is to be provided, or on reasonable suspicion that such recreation centres is or is to be provided, may enter such premises or enclosure in order to inspect whether subsections (3) and (4) of this section are complied with.

(6) A person who contravene subsections (3) or (4) of this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both such a fine and imprisonment.

Prohibition  
of sexual  
exploitation.

**110.**(1) A child shall not be engaged in any work or trade that exposes the child to activities of a sexual nature, whether for remuneration or not.

(2) For avoidance of doubt, it shall be an offence for any person to:

- (a) engage, influence, encourage child to join in sexual activities with any person;
- (b) use or engage in sexual practices or any other sexual business; or
- (c) use children in pornographic performances or for purposes of creating pornographic material of any nature.

(3) For the avoidance of doubt, it shall be an offence:-

- (a) to possess, for any purpose, to access through the internet or any other communications technology, child pornography; or
- (b) to produce, distribute, disseminate, including through the internet, import, export, advertise or sell child pornography.

(4) It shall be an offence to attempt, be complicit in or participate in any of the offences in subsections (2) and (3) of this section.

(5) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not less than five million and not exceeding fifteen million shillings or to imprisonment for a term not less than five years and not exceeding ten years or to both such a fine and imprisonment.

**PART X  
CONSENT TO MEDICAL INTERVENTION  
AND HIV-TESTING**

Consent of medical intervention and surgical operation.

**111.(1)** Despite any law to the contrary:

- (a) a child may consent to medical intervention in respect of himself if:
  - (i) the child is 16 years of age or more; and
  - (ii) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks and effects of the treatment, as determined by a medical practitioner;
- (b) a child may consent to the performance of a surgical operation on him if:
  - (i) the child is 16 years of age or more;

(ii) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks and effects of the surgical operation, as determined by a medical practitioner; and

(iii) the child is duly assisted by his parent or guardian.

(2) A child who is competent to consent to medical intervention in respect of himself self in terms of subsection (1) of this section is also competent to consent to medical intervention in respect of his child, and a child who is competent to consent to a surgical operation on himself self with the assistance of a parent or guardian in terms of subsection (1) of this section is also competent to consent with such assistance to a surgical operation on his child.

(3) The parent or guardian of a child may consent to the medical intervention and surgical operation in respect of the child if such child:

(a) has not attained the age of 16 years; or

(b) is older than the age referred to in paragraph (a) but is of insufficient maturity and is unable to understand the benefits, risks and effects of the treatment.

(4) The medical superintendent of a hospital or the person in charge of the hospital in the absence of the medical superintendent may consent to a medical intervention or a surgical operation in respect of the child if:

(a) the intervention or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical harm or disability; and

(b) the need for the intervention or operation is so urgent that it should not be deferred for the purpose of obtaining consent that would otherwise have been required.

(5) The Minister may, upon the request of any interested person to the welfare of a child, consent to the medical intervention or surgical operation in respect of the child if the parent or guardian of the child:

- (a) unreasonably refuses to give consent or to assist the child in giving consent;
- (b) is incapable of giving consent or of assisting the child in giving consent;
- (c) can not be found; or
- (d) is deceased.

(6) The Minister may, upon the request of any interested person to the welfare of a child, consent to the medical intervention or surgical operation in respect of the child if such child unreasonably refuses to give consent.

(7) A Children's Court may, following failure to obtain consent as contemplated in this section and upon the request of any person with an interest in the welfare of a child, consent to the medical intervention in respect of or a surgical operation on the child in all instances where a person who may give consent in terms of this section refuses or is unable to give such consent.

(8) A parent or guardian of a child may not refuse to assist the child in terms of subsection (1) (b) (iii) of this section or withhold consent in terms of subsection (3) of this section by reason only of religious or other beliefs, unless that parent or guardian may show that there is an alternative medically accepted in respect of the medical intervention or surgical operation concerned.

HIV testing.

**112.(1)** A child may not be tested for HIV except when:

- (a) it is in the best interests of the child and consent has been given in terms of subsection (2) of this section;
- (b) the test is necessary in order to establish whether:
  - (i) a health worker may have contracted or been exposed to HIV due to contact in the course of a medical procedure with any substance from the child's body that may transmit HIV; or

- (ii) any other person may have contracted or been exposed to HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a Court; or
  - (iii) a child or any person mentioned under paragraphs (i) and (ii) of subsection (1)(b) of this section may have virus of HIV due to contact with any substance from the child's body that may transmit HIV.
- (c) the child is pregnant.
- (2) Consent for a HIV-test on a child may be given by:
- (a) the child, if the child is:
    - (i) 16 years of age or more; or
    - (ii) under the age of 16 years but have sufficient maturity and mental capacity to understand the benefits, risks and social effects of such a test;
  - (b) the parent or guardian, if the child is under the age of 16 years and is not of sufficient maturity to understand the benefits, risks and effects of such a test;
  - (c) the Minister responsible for children, if the child is under the age of 16 years and is not of sufficient maturity to understand the benefits, risks and effects of such a test;
  - (d) the superintendent or person in charge of a hospital or the Regional Director of a Clinic, if:
    - (i) the child is under the age of 16 years and is not of sufficient maturity to understand the benefits, risks and implications of such a test;
    - (ii) the child does not have a parent, guardian or care-giver; or

- (e) a Children's Court, if:
  - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or
  - (ii) the child or the parent, guardian or care-giver of the child is incapable of giving consent.

Counselling before and after HIV-testing.

**113.**(1) A child may be tested for HIV only after proper counselling is provided by an appropriate trained person to:

- (a) the child, unless the person doing the counselling is satisfied that the child's age and maturity will preclude the child from deriving any benefit from such counselling; and
- (b) the child's parent or guardian, if the parent or guardian has knowledge of the test.

(2) Post-test counselling must be provided by an appropriate trained person to:

- (a) the child, if the child is of sufficient maturity to understand the implications of the result; and
- (b) the child's parent or guardian, if the parent or guardian has knowledge of the test.

Information relating to HIV/IDS of the child to be confidential.

**114.**(1) No person shall disclose the fact that a child is HIV-positive without consent given in terms of subsection (2) of this section, except:

- (a) within the scope of that person's powers and duties in terms of this Act or any other law;
- (b) when necessary for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings; or

(d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by:

(a) the child concerned, if the child is:

(i) 16 years of age or more; or

(ii) under the age of 16 years and is of sufficient maturity to understand the benefits, risks and social effects of such disclosure;

(b) the parent or guardian, if the child is under the age of 16 years and is not of sufficient maturity to understand the benefits, risks and social effects of such a disclosure;

(c) the medical superintendent or person in charge of a hospital, if:

(i) the child is under the age of 16 years and is not of sufficient maturity to understand the benefits, risks and social effects of such a disclosure; and

(ii) the child does not have a parent or guardian; or

(d) a Children's Court, if:

(i) consent in terms of paragraph (a), (b), or (c) is unreasonably withheld and disclosure is in the best interests of the child; or

(ii) the child or the parent or guardian of the child is incapable of giving consent.

(3) A person who contravene the provisions of subsection (1) of this section commits an offence and shall be liable on conviction to a fine not less than five hundred thousand shillings and not more than two million shillings or to imprisonment for a period not less than six months and not exceeding two years or to both such fine and imprisonment.

**PART XI**  
**APPROVED SCHOOLS**

Approved  
Schools.

**115.**(1) The Minister may establish a school to be an Approved School for the purposes of this Act which may be used to accommodate children with behavioural problems.

(2) The Minister may by notice in the Gazette appoint a person or persons to be the Officer Responsible of an Approved School.

(3) An Approved School or part of an Approved School may be specifically approved for the purpose of restricting the liberty of children under an order of the court and in accordance with the provisions of Part 5 of this Act, in which case such children shall be kept separate from children contemplated in subsection (1) of this section.

Establishment  
of the Board  
of Visitors.

**116.**(1) There is hereby established a Board to be known as Board of Visitors which shall be composed of the following members appointed by the Minister:

- (a) Chairman;
- (b) Member of the House of Representatives in the respective area in consultation with the Speaker of the House of Representatives;
- (c) Welfare Officer;
- (d) District Education Officer;
- (e) Ward Councillor where the Approved School is located;
- (f) Officer from health sector; and
- (g) three other members who have experience in the implementation of the Laws of the children.

(2) The members of the Board shall hold office for the period of three years and may be re appointed for another term of three years only.

(3) The Board in consultation with the Minister shall appoint a Secretary to the Board.

Functions  
of the  
Board.

**117.(1)** The Board shall have the following functions:

- (a) visit an Approved School from time to time, whether announced or unannounced;
- (b) call for all books, papers and records relating to the management and discipline of the school;
- (c) interview members of the staff and pupils whether resident or on licence, including offering them an interview in private;
- (d) inspect the pupils' accommodation, living and sanitary arrangements, and arrangements to respect the pupils' privacy and inspect and test the quality and quantity of the pupils' food;
- (e) inquire into the behaviour management of pupils and any sanctions applied;
- (f) ascertain sufficient facilities are provided for health care, education, training, welfare and recreation of the pupils;
- (g) investigate any complaint made by any pupil or member of the staff;
- (h) ensure that the Rules applying to an Approved School are appropriately complied with; and
- (i) exercise such other powers as may be prescribed by the Law.

(2) The Board may, where it considers it necessary or desirable, to make any recommendation in relation to the management of an Approved School to the Minister.

Order  
accepted by  
the school.

**118.(1)** An order in terms of this Act to the effect that a child be accommodated in an Approved School shall specify:

- (a) the school that the child is to be sent to; and

(b) the person who is to be responsible for conveying such child to the school.

(2) Every order shall contain such information as is, in the opinion of the court, material to be known by the Officer Responsible of the school.

(3) A certified copy of every order shall be delivered to the person responsible for conveying the child to the school who shall deliver the same to the Officer Responsible.

(4) An Approved School order shall be sufficient authority for the admission of the child for a period not exceeding three years or until the age of 18, whichever is earlier.

(5) Upon application by the child, the Officer Responsible of an Approved School or the responsible welfare officer, the court may discharge the order if it is satisfied that such a discharge is in the interests of the child and the community.

Suspension of Approved school orders.

**119.** The implementation of an Approved School order may be suspended until completion of arrangements for the reception of the child into an Approved School or on account of his ill-health or for other sufficient reason, and in that case the Court may commit the child to another place or may order the child to be committed to the care of a competent and proper person who is willing to undertake custody of the child, or may release the child on bail.

Power of Officer Responsible to bring child before a court.

**120.**(1) If a child committed to an Approved School is of such unruly or incorrigible nature and the Officer Responsible believes that it is undesirable for that child to remain at the school, the Officer Responsible may, with the approval of the Board, bring the child before the Children's Court.

(2) Where a child is brought before the court under subsection (1) of this section, the Court may make any other order under this Act it considers necessary in the best interests of the child.

Discharge and transfer from Approved School.

**121.** The Officer Responsible of an Approved School may, with the approval of the Board:

- (a) to apply to the court for an order of discharge of any child whose detention has exceeded six months;
- (b) to arrange for that child to be transferred from one recognised Approved School to another, provided that the approval of the Officer Responsible of such other school has been obtained.

Power to  
make rules.

**122.**(1) The Minister may make rules for the proper implementation of the purposes and provisions of this Part without prejudice to the generality of the foregoing, for providing for the following purposes:-

- (a) the management, control, discipline and interior economy of Approved Schools and remand homes;
- (b) the registration of children committed to Approved Schools;
- (c) visits of parents, guardians or relatives of children in Approved Schools;
- (d) the prohibition of all forms of corporal punishment and other cruel or degrading punishments;
- (e) procedures for the lodging of complaints by children in an Approved School; and
- (f) the education, training and rehabilitation of children.

(2) Rules made under this section may apply to all Approved Schools and remand homes or to any particular Approved School and remand home.

(3) Rules made under this section shall make special provision in relation to the restriction of liberty of a child in an Approved School to ensure that he is treated with humanity and respect for his inherent dignity.

**PART XII**  
**RESIDENTIAL ESTABLISHMENTS AND**  
**DAY CARE CENTRES**

Approval  
of  
residential  
establishments.

**123.**(1) For the purposes of this section, a residential establishment for children includes:-

- (a) a children's home;
- (b) an Approved School;
- (c) any other establishment designated as such by the Minister.

(2) The Government may establish a residential establishment for children in such areas as the Minister may determine.

(3) Any person, whether for business or otherwise, may establish and operate a residential establishment for children subject to the approval of the Minister.

(4) The Minister shall approve an application of establishment under subsection (3) of this section:-

- (a) prescribe the form and procedures relating to approval of an establishment; and
- (b) cause the establishment to be inspected by a Welfare officer.

(5) Where the Minister is satisfied that the establishment will be appropriately managed and there is sufficient staff in order to promote children's well-being, happiness and full development particularly as regards their education and health, the Minister shall furnish the establishment with a license to operate and publish a notice of its approval in the Gazette.

(6) Any residential establishment for children which is:

- (a) not run by the Government; and
- (b) in existence before the commencement of this Act,

shall apply to the Minister for approval under subsection (3) of this section within a period of six months from the commencement of this Act.

Monitoring  
of  
residential  
establishments.

**124.**(1) The Minister shall:

- (a) secure the effective administration of any residential establishment for children that has been established by the Government under section 123(2) of this Act, and
- (b) monitor the administration of any residential establishment approved under section 123(3) of this Act,

with due regard to the duty of such establishments to promote the children's well-being, integration with their peers and the community and their full development, particularly as regards their education and health.

(2) The Minister may delegate to any person within the public service, powers to discharge the duty referred to under subsection (1) of this section.

Establishment  
of committees.

**125.**(1) For the purpose of promoting the well-being and development of children in residential establishments, particularly as regards their education and health, every residential establishment approved under section 123(3) of this Act shall establish a committee of not less than four reasonable persons to oversee the management of the establishment.

(2) The committee shall:

- (a) visit the establishment from time to time, including unannounced;
- (b) examine books, papers and all records relating to management and discipline of the establishment;
- (c) conduct interview to the staff and children, including private interview;
- (d) inspect and test:

- (i) the quality and quantity of the food;
- (ii) the children's living conditions; and
- (iii) arrangements to respect the children's privacy;
- (e) inquire into the maintenance of discipline and behaviour-management, having regard to the prohibition on corporal punishment and other humiliating forms of punishment;
- (f) ascertain provision for the education, training, welfare, recreation and health of the children;
- (g) investigate any complaint made by any child or staff; and
- (h) exercise such other powers as may be prescribed.

(3) Where a member of the Committee has any concern about the running of the establishment, he shall:-

- (a) where reasonable, first inform the Officer Responsible or appropriate staff of this concern, and
- (b) if this does not resolve the matter, inform the Minister.

Inspection of residential establishments.

**126.** The Minister shall direct inspection of an approved residential establishment to be carried out by a welfare officer at any time to ensure that such establishment is being maintained at the required standards.

Admission of children to residential establishments.

**127.(1)** A child may be admitted to an approved residential establishment:

- (a) pending the determination by a court of such child's care and protection;
- (b) on the recommendation of a welfare officer who has determined that the approved residential establishment is the most suitable place for the child; or
- (c) with the approval of a welfare officer, if the child is an orphan and family or foster care is not available.

(2) Where an approved residential establishment fails to maintain the required standards, its licence to operate may be cancelled or suspended by the Minister and alternative arrangements shall be made for the children in the approved residential establishment.

(3) It shall be the responsibility of the staff of an approved residential establishment, the welfare officer and any other person responsible for maintenance of a child, to assist such child to become reunited with his parents, guardians or relatives.

(4) After a child has been returned to his family home, the Officer Responsible of the residential establishment and the welfare officer shall keep in regular contact with the child and his family to ensure that the best interest of the child is maintained.

(5) Where a child is unable to return to his parents or foster parents, the child shall be encouraged and assisted by the Officer Responsible of the residential establishment and the welfare officer to become independent and self-reliant.

Cancellation  
of the licence  
for approved  
residential  
establishments.

**128.**(1) Where the Minister has reasonable grounds for believing that the licensee of an approved residential establishment for children has:

- (a) failed to comply with any regulations, rules or directives governing the establishment or any requirements for its approval, and
- (b) such failure has adversely affected, or risks adversely affecting, the welfare of any child in the establishment,

he shall cancel or suspend the licence.

(2) Where a licence to operate established has been cancelled or suspended by the Minister, alternative arrangements shall be made for the children in the establishment.

(3) Before cancelling a license, the Minister shall:

- (a) inform the licensee in writing of the reasons for cancelling or suspending the license, and
- (b) give the licensee the opportunity to be heard or to make representations.

(4) The Minister may, by notice in writing, require the licensee to remedy defects in the running of the establishment.

(5) If the licensee fails to comply with the requirements of a notice under subsection (4) of this section, the Minister may cancel the said licence.

Application  
to operate  
day care  
centre.

**129.**(1) No day care centre may operate without a permit from the Minister.

(2) An application for a permit under subsection (1) of this section shall be submitted to the Minister in the prescribed manner and shall be accompanied by such fee as may be prescribed.

(3) Upon receipt of an application the Minister shall cause an inspection of the premises to be made by a welfare officer, and may grant the permit if satisfied that:

- (a) the premises are suitable for the specified number of children;
- (b) the applicant has sufficient resources to maintain the premises and provide such facilities as are required under the regulations;
- (c) the owner and Officer Responsible of the premises are not the subject of any proceedings before any court or any other authority;
- (d) the programmes provided in the day care centre provide a proper foundation for:

- (i) enabling the children to grow up into healthy, cultured, well-mannered and responsible citizens, and
- (ii) preparing the children for basic education.

(4) Where the Minister grants a permission under this section, he shall issue to the applicant a certificate which shall contain a clear description of the premises and such other particulars as may be prescribed.

(5) Any day-care centre which operates without a registration under this section shall be closed.

(6) Before closure under subsection (5) of this section the Minister shall issue a fourteen days notice to the management of the day care centre.

Register of  
day care  
centres.

**130.**(1) The Director of Social Welfare shall kept and supervise specific registers in the prescribed form in respect of registered day care centres and registered owners or Officer Responsible of that centres.

(2) Each register shall contain the name of every day care centre and every owner or Officer Responsible of a day care centre registered under this Act, together with such other particulars as may be prescribed.

(3) The Director shall, at least once every year, cause to be published in the Gazette or in any newspaper published and circulated throughout Zanzibar, a list of all day care centres whose registration has been cancelled and those which have been newly registered.

Inspection of  
day care  
centres.

**131.**(1) The welfare officer shall inspect the premises, books, accounts and other records of a day care centre at least once in every six months and shall submit a report of the inspection to the Minister.

(2) Where the inspection reveals that the day care centre is not being managed efficiently in the best interests of the children, the welfare officer may order the owner or operator to make good any default within a stipulated time, and may suspend or cancel the permit.

(3) Where the owner or operator fails to resolve the default within the stipulated time, the permit shall be cancelled.

(4) Subject to subsection (2) of this section, where a permit has been cancelled, the welfare officer shall immediately send the children and their relevant documents to another day care centre.

Prohibition of certain person to operate establishments.

**132.** A person who has been convicted of an offence against children or any sexual offence shall not be employed in, or be the Officer Responsible, owner or staff of any residential establishment, day care centre registered or approved by the Minister under this Act or be approved as a foster parent.

Offences and Penalties.

**133.** Any person who:

- (a) operates a residential establishment for children, day care centre without a licence or permit issued by the Minister;
- (b) continues to operate an approved residential establishment, day care centre in contravention of this Part;
- (c) obstructs or hinders a welfare officer or any other authorised person conducting an inspection under this Part; or
- (d) acts in contravention of any of the provisions of this Part,

commits an offence and shall be liable on conviction to a fine of not less than two million shillings but no more than ten million shillings or to a term of imprisonment for a term of not exceeding one year or to both; and in the case of a continuing offence to a further fine of not less than one hundred thousand shillings for each day on which the offence continues.

### **PART XIII MISCELLANEOUS PROVISIONS**

Powers of the Minister to make Regulations and by-laws.

**134.** The Minister may, make regulations prescribing the standard of care in all residential establishments for children, day care centres.

Training centres and directives.

**135.**(1) The Minister shall establish training centres for child care workers intending to work in approved residential establishments or, day care centres.

(2) The Minister may, issue such policy directives as may be necessary for the operation of approved residential homes, institutions and day-care centres.

Existing operators.

**136.** Any person who owns or operates a residential establishment or day-care centre before the commencement of this Act, and intends to continue to operate such residential establishment, day-care centre shall apply to the Minister for a permit within six months from the commencement of this Act.

Appeals.

**137.** Any person aggrieved by the decision of the Minister for:

- (a) refusal to grant or renew a licence or a permit;
- (b) the cancellation of a licence or a permit;
- (c) refusal to register a day care centre; or
- (d) cancellation of a registration,

may within 30 days after receiving a notice of the decision from the Minister, appeal to the Court which have power against such decision.

Regulations.

**138.**(1) The Minister, may make regulations prescribing procedures, requirements and forms relating to:

- (a) the care and protection of children as contemplated in this Act;
- (b) the admission, removal and transfer of children from approved residential establishments;
- (c) placement of children in foster care;
- (d) adoption;
- (e) child labour;
- (f) approved residential establishments; and

- (g) generally for the promotion and furtherance of the objects of this Act.

(2) In addition to the powers granted to the Minister in subsection (1) of this section as well as elsewhere in this Act, the Minister may, in consultation with any other relevant Minister, make regulations regarding any other ancillary or incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation or administration of this Act.

Repeals  
and  
savings.

**139.**(1) The Adoptions Decree, Cap. 55, the Children and Young Persons Decree, Cap. 58 and the Approved Schools Decree, Cap. 59 are hereby repealed.

(2) Without prejudice to the provisions of subsection (1) of this section:

- (a) anything done or measure taken under the repealed laws shall be deemed to have done under the provisions of this Act;
- (b) any regulations, procedures or orders made under the repealed laws which are still in force during the coming into force of this Act shall remain to be in force until repealed or amended by other regulations, procedures or orders made under this Act;
- (c) any Court proceedings instituted under the repealed laws and which are not disposed off, shall proceed under such repealed laws; and
- (d) any licence, permit and certificates issued under the provisions of the repealed laws shall remain to be in force until revoked or replaced in accordance with the provisions of this Act.

## **FIRST SCHEDULE**

**(Made under sections 18(5), 37(1), 39(1), 42(1) and 47(1) (l))**

1. Theft
2. Fraud, extortion, forgery and uttering
3. Robbery, in the absence of aggravating circumstances or the use of a firearm
4. Malicious injury to property
5. Common assault where grievous bodily harm has not been inflicted
6. Perjury
7. Contempt of court
8. Blasphemy
9. Crimen injuria
10. Defamation
11. Trespass
12. Public Indecency
13. Bestiality
14. Any offence under any law relating to the illicit possession of dependence producing drugs.
15. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period not exceeding one year.
16. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

## **SECOND SCHEDULE**

**(Made under sections 37(3), 39(2) (a), 47(1) (l) and 52)**

1. Treason
2. Sedition
3. Murder
4. Manslaughter
5. Abduction
6. Kidnapping
7. Robbery, in the presence of aggravating circumstances or the use of a firearm
8. Rape or any offence involving the commission of an unlawful sexual act against any person
9. Any offence under any law relating to:
  - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;
  - (b) the possession of firearms, explosives or armament
10. Any offence relating to the trafficking of any person
11. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding one year.
12. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

**PASSED** in the House of Representatives of Zanzibar on 28<sup>th</sup> day of March, 2011.

**{IBRAHIM MZEE IBRAHIM}  
CLERK OF THE HOUSE OF REPRESENTATIVES  
ZANZIBAR.**

# **THE CHILDREN'S ACT**

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