

# CHILDREN'S ACT, 2005

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PASSED in the National Assembly this Twenty-Third day of June  
in the year of Our Lord Two Thousand and Five

D. C. M. Kebbel

*Acting Clerk of the National Assembly.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill  
which has passed in the National Assembly, and found by me to be a true and correct  
copy of the said Bill.

D. C. M. Kebbel

*Acting Clerk of the National Assembly.*

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Matrimonial Causes Act (Cap. 43)

Section 18 is amended by deleting subsection (3).

Section 31 is deleted

Prisons Act (Cap. 20:01)

(a) Section 2 is amended by deleting the definition of "juvenile";

(b) Section 31(1) is amended by deleting the proviso;

(c) Section 36 is amended by deleting paragraphs (b) and (c);

(d) Section 65 is amended by deleting subsection (2); and

(e) Section 70 is deleted.

Prisons Rules (Cap. 20:01)

Rules 48, 49, 50, 51, 52, 53 and 87 are deleted.

The Gambia Armed Forces Act (Cap. 19)

Section 23 is amended by deleting subsection (3).

Wills Act, 1992 (1992 No. 16)

(a) Section 3 is amended by substituting for the full stop at the end of the section, a colon, and inserting thereafter, the following proviso-

"provided that reasonable provision shall be in the will for the education and maintenance of a child of the testator."; and

(b) Section 4 is deleted.

- (k) Section 159 is amended by substituting for the word "fourteen", the word "eighteen";
- (l) Section 232 is amended by substituting for the words "minor under fourteen years of age if a male, or under sixteen years of age if a female", the words "person under the age of eighteen years", and

(m) Section 239 is amended by substituting for the word "fourteen" the word "eighteen".

(a) The Code is amended by substituting for the words "young person" wherever they occur, the word "child";

(b) Section 2 is amended -

- (i) by deleting the definition of "young person", and
- (ii) inserting in the proper alphabetical sequence, the following new definition-
- "child means a person under the age of eighteen years."

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(d) Section 126(2) is amended by substituting for the word "sixteen" wherever it occurs, the word "eighteen";

(e) Section 127(1) and (2) is amended by substituting for the word "sixteen" wherever it occurs, the word "eighteen";

(f) Section 131 is amended by substituting for the words "thirteen" and "sixteen" wherever they occur, the word "eighteen, respectively";

(g) Section 132 is amended -

(i) by substituting for the words "above the age of thirteen years and under the age of sixteen years", the words "under the age of eighteen years",

(ii) in the proviso, by substituting for the word "sixteen", the word "eighteen";

(h) Section 146 is amended by substituting for the word "fourteen" the word "eighteen";

(i) Section 149 is amended by substituting for the word "sixteen", the word "eighteen";

(j) Section 156 is amended by substituting for the word "fourteen" the word "eighteen";

**SCHEDULE** (section 241)**REPEALS AND AMENDMENTS**

FIRST COLUMN	SECOND COLUMN	HOW AFFECTED
1. Adoption Act, 1992 (1992 No. 15)	Whole Act is repealed	
2. Children and Young Persons Act (Cap. 45)	Whole Act is repealed	
3. Maintenance of Children Act (Cap. 44:03)	Whole Act is repealed	
4. Criminal Code (Cap. 10)	(a) Section 19 is amended by substituting for the word "fourteen", the word "eighteen"; (b) Section 30 is amended - (i) by deleting subsection (3), (ii) in subsection (7), by substituting for the word "sixteen", the word "eighteen"; (c) Section 125 is amended by substituting for the word "sixteen", the word "eighteen";	

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Supersession  
and  
inconsistency

239. (1) Notwithstanding the provisions of sections 238 and 241, the provisions of this Act supersede the provisions of all other laws, other than the Constitution, on any matter pertaining to children for which provision has been made under this Act.

(2) Accordingly, where a provision of this Act is inconsistent with the provision of any other law, the provision of this Act shall prevail, and that other provision shall, to the extent of the inconsistency, be void.

Regulations

240. (1) The Secretary of State may make regulations for giving proper effect and for the better carrying out of the provisions and purposes of this Act, including regulations for the establishment of a probation service.

(2) Subject to the provisions of this Act, the Chief Justice may make rules to provide for the charging of fees for the doing of anything under this Act.

Repeals and  
amendments  
Schedule

241. The enactments specified in the First Column of the Schedule to this Act are repealed or amended, as the case may be, in the manner specified in the Second Column of the Schedule.

Transitional  
provisions  
regarding  
children in  
detention

242. Where immediately before the commencement of this Act there are any children in any institution under an enactment repealed or amended under section 241, the Secretary of State, in consultation with the Secretary of State responsible for internal affairs, shall make such arrangements as may be necessary for the winding up of the institution and otherwise for the welfare of the children, taking into account the provisions of this Act and in particular, taking into account the principle that in all matters concerning the child, the best interest of the child shall be the paramount consideration.



(2) A certificate signed by a Government medical or dental practitioner as to the age of a person under eighteen years of age shall be evidence of that age.

#### **PART XVIII - MISCELLANEOUS**

General  
penal  
provision for  
offences under  
this Act

235. A person who contravenes any of the provisions of this Act commits an offence and is liable, except otherwise provided in this Act, to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

Offences by  
bodies  
corporate

236. Where a body corporate is guilty of an offence under this Act or any regulations made under it, every director, the secretary or any similar officer of the body corporate shall, unless he or she proves that the offence was committed without his or her knowledge or consent, also be liable to be prosecuted, tried, convicted and punished for that offence.

Enforcement  
of judgments,  
decisions and  
orders of the  
Children's Court

237. Subject to this Act, any enactment applicable to the enforcement of judgments, decisions and orders of a Magistrates' Court shall, subject to such modifications as may be necessary having regard to the provisions this Act, apply to judgments, decisions and orders of a Children's Court.

Modification  
of existing  
enactments

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- 241. Repeals and amendments
- 242. Transitional provisions regarding children in detention

(2) In any proceedings before the Magistrates Court or High Court in which a child is involved, the Magistrates Court or High Court shall have due regard to the child's age and to the provisions of this Act and any other law relating to the procedure of trials involving children.

232. An appeal shall lie, in a case involving the trial of a child, from -

- (a) the Children's Court to the High Court
- (b) the High Court to the Court of Appeal; and
- (c) the Court of Appeal to the Supreme Court.

Inquiry as to age of person appearing to the court to be below eighteen years of age

233. (1) Where a person, whether charged with an offence or not, is brought before any court and it appears to the court that he or she is under eighteen years of age, the court shall make an inquiry as to the age of that person.

Presumption of age by court conclusive evidence of that person's age

(2) In making the inquiry, the court shall take any evidence, including medical evidence which it may require.

234. (1) An order or judgment of the court shall not be invalidated by any subsequent proof that the age of the person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of that person shall be deemed to be his or her true age for the purpose of the proceedings.

**SCHEDULE: REPEALS AND AMENDMENTS**

*Supplement "C" to The Gambia Gazette No. 13 of 2nd August, 2005*

Children's Act, 2005



THE GAMBIA

NO. 5 OF 2005.

Assented to by The President,

this Twenty-First day of July, 2005

YAHYA A. J. J. JAMMEH  
*President*

Restriction on use of certain words

(4) A certificate stating the nature of the offence, the stage at which the case is and that the case has been remitted to the Children's Court shall be forwarded to the Children's Court.

228. A court shall not use the words "conviction" and "sentence" in reference to a child appearing before it, but shall instead substitute the words "proof of an offence against the child" for "conviction" and "order" for "sentence" respectively.

Children in Magistrates Court

229. Subject to sections 227 and 230, a child jointly charged with an adult may be tried in a Magistrate's Court.

Children in the High Court

230. A child shall be tried in the High Court for an offence with which he or she is jointly charged with an adult and for which only the High Court has jurisdiction.

Remission of case to Children's Court for appropriate order

231. (1) Where a child is tried jointly with an adult in the Magistrates Court or High Court, the child shall be remitted to the Children's Court for an appropriate order to be made if the offence is proved against the child, or if the child admits the charge.

Short title and commencement

1. (1) This Act may be cited as the Children's Act, 2005.

#### PART I – PRELIMINARY

ENACTED by the President and the National Assembly.

[ See section 1 (2) ]

**AN ACT** to set out the rights and responsibilities of children, to consolidate the laws relating to children, to provide for the care, protection and maintenance of children, to establish a Children's Court, to provide for a criminal justice system for children and for other connected purposes.

(2) This Act shall come into force on a date appointed by the Secretary of State by an Order published in the Gazette.

## Interpretation

2. (1) In this Act, unless the context otherwise requires-

"authorised person" means an official or other person authorised expressly or impliedly to perform the act in question;

"care order" means a care order made under Part VII and includes an interim care order;

"child" means a person under the age of eighteen years;

"child abuse" means contravention of the rights of the child which causes physical or mental harm to the child;

"child with disability" means a child who suffers from abnormalities or loss of physiological functions, anatomic structure or psychological state and has lost in part or wholly the ability to engage in activities in a normal way and is as a result hampered in his or her normal functions in certain areas of social life;

"children in need of special protection measures" includes children with disabilities, and street children;

"competent authority" means an official or body or other person authorised expressly or impliedly by an enactment or otherwise to perform the act in question;

"Court" means a Children's Court;

"custodian" means a person in whose care a child is physically placed;

(3) The Secretary of State shall make rules to govern the management of the detention centre.

(4) A person who knowingly assists or induces a child to escape or knowingly harbours or conceals a child who has escaped or, prevents him or her from returning to the detention centre commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

224. The Secretary of State shall appoint fit and proper persons known as Committee of Visitors to periodically visit the detained children and inspect the detention centre.

Committee of  
Visitors

225. Before a child is released from detention, the Social Welfare Officer or the Probation Officer and the authorities in the detention centre shall discuss the period of after-care with the child

After-care

226. (1) Every case shall be handled expeditiously and without unnecessary delay.

Duration of  
cases

(2) Where the case of a child appearing before a Children's Court is not completed within twelve months or such other period as the Court may determine in exceptional case, after the child's plea has been taken, the case may be struck out.

(3) Where a case is heard by a court other than the Children's Court, the maximum period of remand for a child shall be six months, after which the child shall be released on bail.

227. (1) Where it appears to a court, other than a Children's Court, that a person charged before it with an offence is a child, the court shall remit the case to a Children's Court.

Remission of  
cases to Child-  
ren's Court

(5) A sum imposed and ordered to be paid by a parent or guardian under this section, or, any forfeiture of any security under this section, may be recovered from the parent or guardian by distress in like manner as if the order had been made on the conviction of the parent or guardian for the offence with which the child was charged.

Social enquiry  
report

222. (1) If the court, after a charge has been admitted or proved, is considering making a detention or probation order, a written social background report shall be prepared by a Social Welfare Officer or a Probation Officer and shall be taken into account by the Court before making the order.

(2) The report shall include, among other things, the social and family background, the circumstances in which the child is living and the conditions under which the offence was committed.

(3) The Court shall ensure that the contents of the report are made known to the child and that a copy of the report is provided for the child or his or her legal representative.

(4) The Court may in any case request an oral report, in addition to any written report.

National  
Rehabilitation  
Centre

223. (1) The Secretary of State, in consultation with the Secretary of State responsible for internal affairs, shall establish a National Rehabilitation Centre for Children and such other centres as he or she may deem necessary which shall each be a place for the detention, rehabilitation and re-training of children committed there.

(2) The detention centre shall have a separate wing for female children.

"Department" means the Department for Social Welfare or such other Department as the Government may designate under section 66;

"detention centre" means the National Rehabilitation Centre and such other centre as may be established under section 223 for the detention, rehabilitation and re-training of children;

"exclusion order" means an order made under section 93, prohibiting a named person from having contact with a child, or with a child and persons looking after the child;

"fit person" means a person of full age who is of high moral character and integrity and of sound mind, capable of looking after a child and has been registered by the Department as being able to provide a caring home for a child;

"foster-care placement" means the placement of a child with a person who is not his or her parent or relative and who is willing to undertake the care and maintenance of the child;

"guardian" has the meaning given to it under section 179;

"harmful publication" means any book, magazine, film, picture, video or audio tape or print or other medium which is of a kind targeted at or is likely to fall into the hands of children and which consists wholly or mainly of stories told in pictures, with or without the addition of written matter or video films, and cassette tapes, which contains pictures or stories which portray harmful information, such as -

- (a) the commission of crimes;
- (b) acts of violence or cruelty;
- (c) incidents of a repulsive or horrible nature;
- (d) acts or words of an immoral character; or
- (e) obscene and indecent representation,

in such a way that the work as a whole would tend to corrupt or deprave a child into whose hands it may fall;

"industrial undertaking" has the meaning given to it under section 45;

"informal sector" means the area of the economy which is not an industrial undertaking;

"Local Government authority" has the meaning given to it in the Local Government Act, 2002.

"next friend" means a person who intervenes to assist a child to bring a legal action;

"parent" means the biological mother or father or adoptive mother or father of a child;

"parental responsibility" means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child;

"place of safety" means a place where food, protection and accommodation is provided by a fit person to a child to whom the provisions of section 159 apply;

Power of Court to order parent or guardian to pay fine

221. (1) Where a child is brought before the Court charged with an offence and the Court decides that the case would be best disposed of by imposition of a fine, damages, compensation or cost, whether with or without any other measure, the Court shall order that the fine, damages, compensation or costs awarded be paid by the parent or guardian of the child instead of the child unless the Court is satisfied that -

- (a) the parent or guardian of the child cannot be found; or
- (b) the parent or guardian has not contributed to the commission of the offence by neglecting to exercise due care, guidance of and control over the child;

(2) Where a child is brought for an offence, the Court may order his or her parent or guardian to give security for his or her good behaviour.

(3) Where the Court thinks that a charge against the child is proved, the Court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him or her to give security for good behaviour, without proceeding to find that the child is guilty.

(4) An order under this section may be made by the Court against a parent or guardian who, having been required to attend the court failed to do so, but no order shall be made without the Court giving the parent or guardian an opportunity of being heard.

- (3) Where a child has been remanded in custody prior to an order of detention being made in respect of him or her, the period spent on remand shall be taken into consideration when making the order.
- (4) Detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order.
- (5) Before making a detention order, the Court shall be satisfied that a suitable place is readily available.
- (6) A child shall not be detained in an adult prison.
- (7) The order under which a child is committed to a detention centre shall be delivered with the child to the person in charge of the detention centre and shall be sufficient authority for the child's detention in accordance with the terms of the order.
- (8) A child in respect of whom a detention order is made shall, while detained under the order and while being conveyed to and from the detention centre, be deemed to be in legal custody.
- (9) A Court shall not make an order subjecting a child to corporal punishment.

- "publish" includes broadcast;
- "residence order" means an order setting out the person with whom a child is to live;
- "residential care home" means a Government or non-governmental home approved by the Department of State to provide substitute family care for a child and includes -
- (a) a babies' home which provides care and accommodation for children aged under three years; and
- (b) a children's home, which provides care and accommodation for children aged three and above;
- "Secretary of State" means the Secretary of State responsible for children;
- "secure home" means a place declared by the Secretary of State to be a secure home under section 212 or any other place declared to be a secure home under any other enactment;
- "significant harm" means significant harm within the meaning of section 80;
- "supervision order" means a supervision order made under Part VII and includes an interim supervision order;
- "supervisor" means the person under whose supervision a child has been placed under a supervision order or an interim supervision order;
- "trafficking" includes all acts and attempted acts involved in the recruitment and transportation, within or across the borders of The Gambia, purchase, sale, transfer, receipt, dealing in,

trading in and harbouring of a child, which involves the use of deception, force, coercion or debt bondage, for the purpose of placing or holding the child, whether for pay or not, in domestic, sexual or reproductive servitude, exploitation or abuse or in exploitative labour or in slave-like conditions;

"welfare report" means a welfare report within the meaning of section 79.

(2) Where a Social Welfare Officer is required under this Act to write a report, that report may be written by such other person as the Department considers appropriate.

Welfare  
principle

3. (1) The best interest of the child shall be the paramount consideration by any court, institution, person or other body in determining any question concerning a child

(2) A court, institution, person or any other body shall, in determining what is the best interest of a child, have regard, in particular to -

- (a) any harm that the child has suffered or is at the risk of suffering;
- (b) the ascertainable wishes and feelings of the child concerned, considered in the light of his or her age and understanding;
- (c) the child's physical, emotional and educational needs;
- (d) the likely effect of any changes in the child's circumstances.
- (e) the child's age, sex, background and any other circumstances relevant in the matter; and

(iii) undertake community service under supervision;

(e) ordering the parent or guardian of the child offender to -

- (i) pay a fine, damages, compensation or cost;
- (ii) give security for his or her good behaviour; or
- (iii) enter into a recognisance to take proper care of him or her and exercise proper control over him or her;
- (f) committing the child offender to custody in a place of detention provided under this Act;
- (g) making a hospital order or an order prescribing some other form of intermediate treatment; or
- (h) making an order concerning foster care, guardianship, living in communities or other educational settings; or
- (i) dealing with the case in any other manner in which it may be legally dealt with under this Act.

(2) For the purposes of paragraph (f) of subsection (1), detention means placement in a centre designated for that purpose by the Secretary of State in such circumstances and with such conditions as may be recommended to the Court by the Social Welfare Officer or Probation Officer.



Orders of the Children's Court

220. (1) Where a child charged with an offence is tried by a Children's Court and the Court is satisfied that the child actually committed the offence, the Court shall take into consideration the manner in which, under the provisions of this Act, the case should be dealt with, namely, whether by-

- (a) dismissing the charge;
- (b) discharging the child offender on his or her entering into a recognisance;
- (c) placing the child under care, guidance, or supervision, including -
  - (i) discharging the child offender and placing him or her under the supervision of a supervision officer or Probation Officer,
  - (ii) committing the child offender by means of a corrective order to the care of a guardian and a supervision officer or of a relative or any other fit person, or
  - (iii) sending the child offender by means of a corrective order to a residential care home or an approved institution;
- (d) ordering the child offender to -
  - (i) participate in group counselling and similar activities;
  - (ii) pay a fine, damages, compensation or cost,

Child to be given protection and care necessary for his or her well-being etc.

Application of the Constitution

Right to survival and development

Right to name

(f) where relevant, the capacity of the child's parents or guardian or any other person involved in the care of the child in meeting the child's needs.

4. (1) A child shall be given such protection and care as is necessary for his or her well-being, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions, services, agencies, organisations or bodies legally responsible for the child.

(2) Every person, institution, service, agency organisation and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, in the number and suitability of their staff and competent supervision.

**PART II - RIGHTS OF THE CHILD**

5. In addition to the rights guaranteed under Chapter IV of the Constitution of the Republic of The Gambia, every child has the rights set out in this Part.

6. Every child has the right to survival and development.

7. (1) Every child has the right to a name and accordingly, shall be given a name on his or her birth or on such other date as is dictated by the culture of his or her parents or guardians.

(2) The birth of every child shall be registered in accordance with the provisions of the relevant law

- Right to nationality
8. Every child has a right to acquire a nationality.
- Right to health and health services, etc
9. (1) Every child has the right to enjoy the best attainable state of physical and mental health.
- (2) Every Government, parent, guardian, institution, service, agency, organisation or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health.
- Right to privacy
10. (1) Subject to subsection (3), no child shall be subject to arbitrary or unlawful interference with his or her privacy, family life, home, correspondence, or to attacks on his or her honour or reputation.
- (2) Nothing in the provisions of subsection (1) affects the rights of parents and, where applicable, legal guardians, to exercise reasonable supervision and control over the conduct of their children and wards.
- (3) Every child has the right to the protection of the law against an interference or attack under subsection (1).
- Right to parental care, protection and maintenance
11. (1) Every child has a right to enjoy parental care and protection and shall, whenever possible, have the right to reside with his or her parents.
- (2) No child shall be separated from his or her parents against the will of the child except when a judicial authority determines in accordance with the provisions of this Act or other law, that the separation is in the best interest of the child.
- (4) No mother and child shall be held or detained at an appropriate centre in pursuance to subsection (3) for a period longer than the time the child would have attained the age of six years.
- (5) Where a mother who has completed her nursing period is further given a sentence of imprisonment, the child shall be treated as a child in need of care and protection and may be committed to the care of the person who will ordinarily have custody, or by a committal order to -
- (a) his or her father; or
- (b) a fit and proper person.
- (6) In this section, a "fit and proper person" includes an appropriate authority.
- Detention in the case of commission of offences
219. (1) Notwithstanding anything in this Act to the contrary, where a child is found to have committed or attempted to commit murder, treason, robbery or manslaughter, or wounded another person with intent to do grievous harm, the court trying the case may order the child to be detained for such period as may be specified in the order.
- (2) Where an order is made under subsection (1), the child shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the court may direct and the child whilst so detained shall be deemed to be in legal custody.

(8) If the child admits the offence or the Court is satisfied that it is proved, and the Court decides that a remand is necessary for purposes of inquiry or observation, the Court may cause an entry to be made in the Court records that the charge is proved and that the child has been remanded for enquiry or observation.

(9) The Court shall not remand a child under subsection (8) for a period of more than six weeks.

(10) The Court before which a child who has been remanded is brought may, without further proof of the commission of the offence, make any order in respect of the child which could have been made by the Court which remanded the child.

Restrictions on punishment

218. (1) A child shall not be -

- (a) ordered to be imprisoned; or
- (b) subjected to the death penalty or have the death penalty recorded against him or her.

(2) A court shall, on sentencing an expectant or a nursing mother, consider the imposition of a non-institutional sentence as an alternative measure to imprisonment.

(3) Where institutional sentence is mandatory or desirable, an expectant or a nursing mother shall be committed to and be held or detained at an appropriate centre or place designated by the Secretary of State for that purpose.

(3) Every child who is separated from one or both parents has the right to maintain personal relations and direct contact with both parents on a regular basis.

(4) Every child has the right to maintenance by his or her parents or guardians in accordance with the extent of their means.

Right of a child in need of special protection measures

12. (1) Every child who is in need of special protection measures, has the right to any such measure that is appropriate to his or her physical, social, economic, emotional and mental needs and under conditions which ensure his or her dignity, promote his or her self-reliance and active participation in the affairs of the community.

(2) Every person, authority, body or institution having the care or responsibility for ensuring the care of a child in need of special protection measures shall endeavour, within the available resources, to provide the child with such assistance and facilities which are necessary for his or her education, training, preparation for employment, rehabilitation, and recreational opportunities in a manner conducive to his or her achieving the fullest possible social integration, individual development and his or her cultural and moral development.

Right of the unborn child to protection against harm etc.

13. (1) A child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of that child.

(2) Subject to the provisions of any applicable personal law, if the father of an unborn child dies intestate, the unborn child is entitled to be considered in the distribution of the estate of the deceased father if the child was conceived during the lifetime of the father.

(3) If the mother of an unborn child dies intestate before the child is delivered, the unborn child is entitled to be considered in the distribution of the estate of the deceased mother.

14. (1) Except as provided in this section, no child is capable of entering into any contract.

Contractual  
rights of  
child

(2) All contracts, except contracts for necessities, entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be voidable.

(3) No action shall be brought against a child by a person after that child has attained the age of majority -

- (a) to pay a debt contracted before majority or ratified on majority; or
- (b) for any promise of contract made before majority,

whether or not there was new consideration for the promise or ratification after the child attained majority.

(4) If a child, having contracted a loan which is void, agrees after majority to pay the loan, the agreement, in whatever form it may be, is void so far as it relates to money which is payable in respect of the loan.

(4) If the child, instead of asking questions, wishes to make a statement, he or she shall be allowed to do so and it is the duty of the Court to put to the witnesses such of the questions as appear to be necessary and the Court may put to the child such questions as may be necessary to explain anything in the statement of the child.

(5) If it appears to the Court that a *prima facie* case is made out against the child, the evidence of the witnesses for the defence shall be heard, and the child shall be allowed to give evidence or to make any statement.

(6) If a child admits the offence or the Court is satisfied that it is proved, the Court shall then ask the child if he or she desires to say anything in explanation of reason or reasons for his or her conduct, and, before deciding on how to deal with him or her, the Court -

- (a) shall obtain information as to his or her general conduct, home surroundings, school record, including the social inquiry reports referred to in section 222 and medical history, as may enable it deal with the case in the best interest of the child; and
- (b) may put to him or her any question arising out of the information;

(7) For the purposes of obtaining any information under subsection (6) or for special medical examination or observation, the Court may, from time to time, release the child on bail or remand him or her to a place of detention.

Parents or guardians to attend court

216. (1) The parents or guardian of a child offender who is charged before the Court for an act which constitutes a criminal offence, may attend all stages of the proceedings and may be entitled to participate in the proceedings.

(2) The Court may, where necessary, make an order to enforce the attendance of a parent or guardian before it.

(3) Notwithstanding subsection (1), where in the opinion of the Court, it is not in the interest of a child that his or her parent or guardian should attend, the Court shall, by order, exclude the parent or guardian from so attending.

Child justice procedure in the Court

217. (1) Where a child is brought before the Court, the Court shall, as soon as possible, explain to the child and his or her parents or guardian in the language the child and his or her parent or guardian understand, the substance of the alleged offence.

(2) Where a child is brought before the Court for an offence, the case shall be finally disposed of in the Court, and it shall not be necessary to ask the parent or guardian of the child whether he or she consents that the child be dealt with in the Court.

(3) If the child does not admit the facts, the Court shall proceed to hear the evidence of the witnesses in support of the facts and at the close of the evidence of each witness, the Court shall ask the child or his or her counsel or if the Court sees fit, the parent or guardian of the child, whether he or she wishes to put any questions to the witness.

Right to parental property

15. Subject to the provisions of any applicable personal law, no person shall deprive a child of reasonable provision out of the estate of a parent.

Right to social activities

16. A child has the right to participate in sports, cultural and artistic activities or other leisure activities.

Right of opinion

17. A child capable of forming views has the right to express an opinion to be listened to and to participate in decisions which affect his or her well-being, the opinion of the child being given due weight in accordance with the age and maturity of the child.

Right to education

18. (1) Every child has a right to free and compulsory basic education and it shall be the duty of Government to provide the education.

(2) Every parent or guardian shall ensure that his or her child or ward attend and complete basic education.

Harmful social and customary practices

19. No child shall be subjected to any social and cultural practices that affect the welfare, dignity, normal growth and development of the child and in particular, those customs and practices that are--

- (a) prejudicial to the health and life of the child; and
- (b) discriminatory to the child on the ground of sex or other status.

Child's right to stay with parents

20. (1) A child is entitled to live with his or her parents or guardians.

(2) Subject to subsection (1), where a competent authority determines in accordance with the laws and procedures applicable, that it is in the best interests of the child to separate him or her from his or her parent or parents, the best substitute care available shall be provided for the child.

Right of the child to be maintained

21. (1) It is the duty of a parent, guardian or any other person having custody of a child to maintain that child and, in particular that duty gives a child the right to -

- (a) education and guidance;
- (b) immunization;
- (c) adequate diet according to the means of the parent, guardian or other person;
- (d) clothing;
- (e) shelter; and
- (f) medical attention.

(2) It shall be the duty of any person having custody of a child to protect the child from discrimination, violence, abuse and neglect.

### **PART III - RESPONSIBILITIES OF PARENTS AND OF THE CHILD**

Parental responsibility

22. (1) Parents have the primary responsibility for the upbringing and development of their child and have the duty to—

(b) the reaction taken is always in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the child and the society;

(c) the personal liberty of the child is restricted only after careful consideration of the case, including the use of alternative methods of dealing with the child, and the restriction is limited to the possible minimum;

(d) the child is not deprived of his or her personal liberty unless he or she -

- (i) committed murder or a serious offence involving violence against another person, or
- (ii) has persistently committed other serious offences,

and there is no other appropriate response that will protect the public safety; and

(e) the well-being of the child is the guiding factor in the consideration of his or her case.

(2) The Court shall have the power to discontinue any proceeding at any time if circumstances arise which make discontinuation of the proceeding the best way to dispose of the case.

(3) The Court shall handle each case brought before it expeditiously and without unnecessary delay.

Criminal jurisdiction of Children's Court

213. A Children's Court shall have jurisdiction to hear and determine all criminal charges against a child except -

- (a) treason; and
- (b) an offence for which a child is jointly charged with an adult.

Right to fair hearing and compliance with due process

214. (1) In the trial of a child under this Act, the observance of his or her rights to fair hearing, and compliance with due process shall be observed.

(2) The procedures established by the child justice system under this Act shall, in relation to the trial of the child offender, as during the initial contact with the child -

- (a) respect the legal status of the child;
- (b) promote the best interest and well-being of the child; and
- (c) avoid harm to the child,

having due regard to the situation of the child and the circumstances of the case.

Guiding principles in adjudication

215. (1) Where a child offender is brought before the Court, the Court shall ensure that -

- (a) the proceeding is conducive to the best interest of the child and is conducted in an atmosphere of understanding which allows the child to participate and express himself or herself freely;

(a) ensure that the best interest of the child are their basic concerns at all times;

(b) secure, within their abilities and financial capabilities, conditions of living necessary to the child's development; and

(c) ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

(2) Where the biological parents of a child are deceased, parental responsibility may pass on to guardians or relatives of either parent or, by way of a care order, to the manager of a residential care home, or to a foster parent or a significant other.

(3) In this section, "significant other" means a person who has a close relationship with the child or with either of his or her parents.

Responsibilities of the child

23. (1) Every child has responsibilities towards his or her family and society, The Gambia, and other legally recognised national and international communities,

(2) It is the duty of a child, subject to his or her age and ability and such other limitations as may be contained in this Act and any other law, to -

(a) work for the cohesion of his or her family;

(b) respect his or her parents, superiors and elders at all times and assist them, where necessary;

- (c) subject to section 59, serve The Gambia by placing his or her physical and intellectual abilities at its service;
- (d) preserve and strengthen African and, in particular, Gambian, cultural values in his or her relations with other members of the society, in the spirit of tolerance, dialogue and consultation;
- (e) contribute to the moral well-being of the society;
- (f) preserve and strengthen social and national solidarity;
- (g) preserve and strengthen the independence and integrity of The Gambia;
- (h) respect the ideals of freedom, equality, humanness and justice for all persons; and
- (i) contribute to the best of his or her abilities, at all times and at all levels, to the promotion and achievement of African unity.

#### **PART IV - PROTECTION OF THE RIGHTS OF THE CHILD**

##### **Heading A - Marriages and betrothals**

24. Subject to the provisions of any applicable personal law, no child is capable of contracting a valid marriage, and a marriage so contracted is voidable.

Prohibition  
of child  
marriage

- (5) For the purposes of this section, a place of safe custody shall be a place which the court considers fit to provide good care for the child and assures that the child shall be brought to Court when required and shall not associate with any adult detainee.
- (6) It is the duty of the Government to provide an appropriate place of custody, and before making an order remanding or committing a child in custody, a court shall ascertain that there is a place readily available.
- (7) Remand in custody shall not exceed -
- (a) six months, in the case of an offence mentioned in section 219 (1); or
- (b) three months, in the case of any other offence.
- (8) A child shall not be remanded in custody in an adult prison.
- (9) A child who escapes from a secure home or other place of safe custody in which he or she is detained may be arrested with or without warrant and returned to that place.
- (10) Pending the establishment of secure homes, the Secretary of State may declare any establishment as a secure home.
- (11) Whenever possible, the court shall consider alternatives to remand such as close supervision or placement with a fit person determined by the court on the recommendation of a Social Welfare Officer or a Probation Officer.



(b) with sureties, preferably the child's parents or guardian who shall be bound on a court bond, not cash.

(2) If bail is not granted, the court shall record the reasons for refusal and inform the applicant of his or her right to apply for bail to the High Court.

## Remand

212. (1) Where a child is not released on bail, a court may make an order remanding or committing him or her in custody in a secure home to be named in the order.

(2) Detention pending trial shall -

(a) be used only as a measure of last resort and for the shortest possible period of time; and

(b) wherever possible, be replaced by alternative measures, including close supervision, care by and placement with a member of the child's family or in an educational setting or home approved by a Social Welfare Officer or a Probation Officer.

(3) While in detention, a child shall be given care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that he or she may require having regard to his or her age, sex and personality.

(4) If there is no secure home within a reasonable distance of the court, the court shall make an order as to the detention of the child in a place of safe custody as it deems fit.

## Prohibition of child betrothal, etc.

25. (1) No parent, guardian or any other person shall -

(a) betroth a child to any person;

(b) make a child the subject of a dowry transaction; or

(c) give out a child in marriage.

(2) A betrothal or marriage in contravention of subsection (1) is voidable.

### Heading B - Exportation, Seduction, Procurement and other illegal dealing

## Exportation and importation of children

26. (1) No person shall -

(a) export from The Gambia to any place outside The Gambia any child with intent that he or she may be, or knowing that it is likely that he or she will be forced or seduced into prostitution in that place; or

(b) import into The Gambia from any place outside The Gambia, any child with intent that he or she may be, or knowing that it is likely that he or she will be forced into prostitution any where in The Gambia.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for life.

## Seduction of children

## 27. (1) No person shall -

- (a) by the use of deception, coercion, debt bondage or any means whatsoever, induce a child to go from one place to another to do any act with intent that the child may be, or knowing that it is likely that he or she will be, forced or seduced to have sexual intercourse with another person; or
- (b) in order to gratify the passions of another person, procures, entices or leads away, even with his or her consent, a child for immoral purpose.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for ten years without an option of a fine.

## Abduction

28. (1) No person shall, with intent to marry or to sexually assault a child or cause a child to be married or sexually assaulted by any other person, take the child away, or detain him or her.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for ten years without an option of a fine.

## Causing or encouraging the seduction or prostitution of a child

29. (1) No person who has the custody, charge or care of a child shall cause or encourage the seduction of, sexual assault on or prostitution of, or the commission of an indecent assault on the child.

(4) Where a child is arrested with or without a warrant and cannot be immediately taken before a Children's Court, the police officer to whom the child is brought shall inquire into the case and shall, unless the charge is a serious one, or it is necessary in the child's interest to remove him or her from association with any person, or the officer has reason to believe that the release of the child will defeat the ends of justice, release the child on bond on his or her own recognisance or on a recognisance entered into by his or her parent or other responsible person.

(5) Where release on bond is not granted, a child shall be detained in police custody for a maximum of seventy-two hours or until the child is taken before a Children's Court, whichever is sooner.

(6) No child shall be detained with an adult person.

(7) A female child shall, while in custody, be under the care of a female officer.

(8) In this section -

"harm" includes the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt.

## Bail

211. (1) Where a child appears before a court charged with an offence, the Magistrate or person presiding over the court shall inquire into the case and unless there is a serious danger to the child, release the child on bail -

- (a) on a court bond on the child's own recognisance; or

- (b) the Children's Court or police, as the case may be, shall, without delay, consider the issue of release; and
- (c) contacts between the police and the child shall be managed in such way as to-
  - (i) respect the legal status of the child;
  - (ii) promote the best interest and well-being of the child, and
  - (iii) avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.
- (2) The police shall ensure that the parent or guardian of the child is present at the time of the police interview with the child except where it is not in the best interests of the child.
- (3) Where a child's parent or guardian cannot be immediately contacted or cannot be contacted at all, a Social Welfare Officer, a Probation Officer or an authorised person shall be informed as soon as possible after the child's arrest so that he or she can attend the police interview unless it is not in the best interest of the child for him or her to do so.

Procurement of a child

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for ten years.
- (3) A person is deemed to have caused or encouraged the seduction of, sexual assault on or prostitution of, or the commission of an indecent assault on, a child if the person knowingly allows the child to consort with, or to enter or continue in the employment of, any prostitute or other person of known immoral character.
- 30. (1) No person shall procure a child to -
  - (a) have sexual intercourse with any other person or persons, either in The Gambia or any place outside The Gambia;
  - (b) become a common prostitute, either in The Gambia, or any place outside The Gambia;
  - (c) leave The Gambia with intent that he or she should become a prostitute in any place outside The Gambia; or
  - (d) leave his or her usual place or abode in The Gambia, with intent that he or she may engage in prostitution either in The Gambia or any place outside The Gambia.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for ten years.

Procurement of a child for prostitution, pornography, drug trafficking and use in armed conflict

31. (1) No person shall -

- (a) procure, use or offer a child for prostitution, or the production of pornography, or for pornographic performance;
- (b) procure, use or offer a child for the production or trafficking of drugs; or
- (c) traffick a child for the purpose of recruitment for use in armed conflict.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for fourteen years without an option of fine.

Foreign travel which promotes child prostitution

32. (1) No person shall organise, promote or encourage foreign travel which promotes child prostitution.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than two hundred thousand dalasis or imprisonment for a term not exceeding ten years, or to both the fine and imprisonment.

Unlawful detention with intent to defile

33. (1) No person shall detain a child in or on any premises in order to sexually assault him or her or to have him or her sexually assaulted by any other person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for ten years.

(c) where, in any other circumstance, the police prosecutor or other person deems it necessary or appropriate in the interest of the child and the parties involved to exercise the discretion.

(3) Police investigation and adjudication before the Court shall be used only as measures of last resort.

Respect of the legal status and rights of the child

208. The legal status and fundamental rights of the child, set out in Part II of this Act and -

- (a) the presumption of innocence;
- (b) the right to be notified of the charges;
- (c) the right to remain silent;
- (d) the right to the presence of a parent or guardian; and
- (e) the right to legal representation.

shall be respected in the administration of the child justice system set out in this Act.

Age of criminal responsibility

209. The minimum age of criminal responsibility is twelve years.

Arrest and charge of a child

210. (1) Where a child has been arrested -

- (a) the police shall, as soon as is practicable, inform the child's parents or guardian, the Department and the Child Welfare Unit of the arrest;

- (a) prevent and control child offences
  - (b) apprehend children accused of committing offences;
  - (c) investigate child offences; and
  - (d) perform such other duties as may be referred to the Unit under this Act or under regulations made under this Act or by any other enactment.
- (3) The officers of the Unit shall be specially trained and instructed regularly for the functions conferred on the Unit under subsection (2).

Disposal of cases

207. (1) A police prosecutor or any other person dealing with a case involving a child offender shall -
- (a) encourage the disposal of the case, without resorting to formal trial, by using other means of settlement; and
  - (b) encourage the parties involved in the case to settle the case, accordingly.
- (2) The police, prosecutor or other person referred to in subsection (1) may exercise the discretionary power conferred under that subsection if the offence involved is a misdemeanour and -
- (a) there is need for reconciliation;
  - (b) the family, the school or other institution involved has reacted or is likely to react in an appropriate or constructive manner; or

Procuring defilement of a child by threats, or fraud or administering drugs

34. (1) A person who by -
- (a) false pretence, threat or intimidation of any kind procures a child to have sexual intercourse with any person or an animal, or for any person to use a sex gadget or device on the child, either in The Gambia or any place outside The Gambia; or
  - (b) administers to a child or causes a child to take any drug or other thing with intent to stupefy or overpower him or her in order to enable the person or any other person to have sexual intercourse with or to use a sex device or gadget on the child,

commits an offence and is liable on conviction to a fine of five hundred thousand dalasis or imprisonment for ten year or to both the fine and imprisonment.

(2) A person shall not be convicted of an offence under subsection (1) on the uncorroborated testimony of one witness.

Kidnapping and abduction of a child

35. (1) No person shall -
- (a) convey a child beyond the limits of The Gambia without the consent of someone legally authorised to consent take or entice a child out of the keeping of his or her parent or guardian without the consent of the parent or guardian, to the removal;

- (b) unlawfully take a child out of the custody or protection of his or her parent or other person having lawful care or charge of the child, and against the will of the parent or other person, and it is immaterial that-
- (i) the accused believed the child to be of or above the age of eighteen years, or
- (ii) the child was taken with his or her own consent or at his or her own suggestion.
- (c) with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child, of the possession of the child -
- (i) forcibly or fraudulently take or entice away, or detain the child, or
- (ii) receive or harbour the child, knowing that the child has been so taken or enticed away or detained; or
- (d) knowing that a child has been kidnapped or has been abducted, wrongfully conceal or confine the child.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment not exceeding fourteen years.

(3) Records of a child offender shall -

- (a) be kept strictly confidential and closed to third parties.
- (b) be made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorised persons; and
- (c) not be used in adult proceedings in subsequent cases involving the same child offender.

(4) A person who, contrary to subsection (2), publishes -

- (a) the name or address of the child;
- (b) the name or address of any school which the child has been attending; or
- (c) any photograph or other matter likely to lead to the identification of the child;

commits an offence and is liable on conviction to a fine one hundred thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

Specialisation  
within The  
Gambia Police  
Force.

206. (1) There is hereby established, in The Gambia Police Force, a Child Welfare Unit which shall consist of police officers who are trained to perform the functions of the Unit.

(2) The functions of the Unit are to-

(b) continues to manage or operate a child-care centre or private residential care home in contravention of this Part; or

(c) obstructs or hinders any person conducting an inspection under this Part,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment, and in the case of a continuing offence to a further fine not exceeding one thousand dalasis for each day on which the offence continues.

#### PART XVII - CHILD JUSTICE ADMINISTRATION

Child to be subjected only to child justice system and processes

204. A child shall not be subjected to the criminal justice process or to criminal sanctions for adults, but a child alleged to have committed an act which would constitute a criminal offence if he or she were an adult shall be subjected only to the child justice system and processes set out in this Act.

Protection of privacy

205. (1) The right of the child to privacy specified in Part II shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labelling.

(2) A person shall not publish any information that may lead to the identification of a child offender, except with the permission of the Children's Court or any other court before which the proceedings are being heard.

(3) A person is deemed to detain a child in or on any premises when the child is in or brought to the premises with a view to -

(a) his or her being sexually assaulted; or

(b) detaining him or her in the premises with intent to compel or induce him or her to remain in or upon the premises, he or she withholds from him or her any wearing apparel, other property belonging to him or her or his or her travelling documents.

Kidnapping or abducting in order to commit culpable homicide

36. (1) A person shall not kidnap, abduct or by deceitful means lure a child away in order that the child may be killed.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for life.

Buying or selling children for immoral purpose

37. (1) A person shall not sell, hire, let or otherwise obtain possession or dispose of a child with intent that the child shall be employed or used for the immoral purposes or knowing it is likely that the child will be employed or used for that purpose.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for fourteen years.

Other offences

38. (1) A person shall not -

(a) cause or encourage the seduction or prostitution of a child;

(b) keep a brothel;

- (c) permit the defilement of a child in his or her premises;
- (d) allow a child to be in a brothel;
- (e) trade in prostitution;
- (f) procure, use or offer a child for the production of pornography or for pornographic performance; or
- (g) procure a child into prostitution.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for ten years.

(3) Subject to any law relating to the transfer of convicted offenders, a person convicted under subsection (1) shall, if he or she is not a citizen of The Gambia, be deported after serving his or her term of imprisonment.

### Heading C - Trafficking and Slave Dealing

39. (1) Notwithstanding any other provision of this Act, a person shall not engage in child trafficking; or recruit, transport, transfer, harbour or receive a child by means of threat, force, or other form of coercion, abduction, fraud, deception, abuse of power or position or otherwise, for the purpose of sexual exploitation or any other form of exploitation.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for life.

(3) It is not a defence to a charge for an offence under subsection (2) that the child consented.

#### Inspection

199. (1) The Department shall inspect the premises, books, accounts and other records of a child-care centre at least once in every six months.

(2) If the inspection reveals that the child-care centre or private residential care home is not being managed efficiently in the best interest of the children, the Department shall suspend the permit and the owner, manager or operator shall be ordered to make good any default within a stipulated time.

(3) If the owner or operator fails to make good the default within the stipulated time, the permit shall be cancelled.

#### Guidelines

200. The Department shall issue such guidelines as may be necessary for the operation of child-care centres and private residential care homes.

#### Policy directives

201. The Secretary of State and the Secretary of State responsible for education may issue such policy directives as may be necessary for the operation of child-care centres.

#### Existing operators

202. A person who owns, manages or operates a child-care centre or private residential care home before the commencement of this Act who intends to continue to operate the child-care centre or private residential care home shall apply to the Department for a permit within six months of the commencement of this Act.

#### Offences under this Part

203. A person who -

- (a) manages or operates a child-care centre or private residential care home in contravention of this Part;



Dismissal of application for wardship

196. Where the Court is of the opinion that an application for wardship is an abuse of the court process, it shall dismiss the application forthwith.

Rules for application for wardship

197. An application for wardship shall be made in compliance with the Rules made by the Chief Justice.

#### **PART XVI – OPERATION AND MANAGEMENT OF CHILD-CARE CENTRES AND PRIVATE RESIDENTIAL CARE HOMES**

Application to operate a child-care centre or private residential care home

198. (1) No person shall manage or operate a child-care centre or a private residential care home without a permit granted by the Department under this section.

(2) A person who requires a permit under this section shall submit an application to the Department.

(3) The application shall be accompanied by such fee as may be prescribed by regulations made by the Secretary of State.

(4) The Department shall inspect the proposed child-care centre or private residential care home and shall, if it meets the required standard, approve the application and grant a permit on payment of the fee prescribed for the permit.

(5) A child-care centre or private residential care home in operation without a permit granted by the Department shall be closed after the Department has given fourteen days notice to the owner, manager or operator.

Slave dealing

40. (1) A person shall not -

(a) import, export or otherwise deal or trade in, purchase, sell, transfer, take or dispose of a child as a slave;

(b) accept, receive, or detain a child as a slave;

(c) deal or trade in, purchase, sell, transfer or take a child in order or so that the child should be held or treated as a slave;

(d) place or receive a child in servitude as a pledge or security for debt whether then due and owing, or to be incurred or contingent, whether under the name of a pawn or by any other name the person may be called or known;

(e) convey or induce a child to go out of the limits of The Gambia in order or so that the child should be possessed, dealt or traded in, purchased, sold, or transferred as a slave or be placed in servitude as a pledge or security for debt;

(f) hold or possess a child as a slave; or

(g) enter into any contract or agreement with or without consideration of doing any of the acts or accomplishing any of consideration of doing any of the acts or accomplishing any of the purposes specified in this subsection.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for life.

#### Heading D - Exploitative Labour

41. (1) A person shall not engage a child in exploitative labour.

Prohibition of  
exploitative  
child labour

(2) Labour is exploitative if it deprives the child of his or her health, education or development.

42. (1) A person shall not engage a child in night work.

Prohibition of  
child labour  
at night

(2) Night work means work between the hours of eight o'clock in the evening and six o'clock in the morning.

43. (1) The minimum age for the engagement of a child in light work is sixteen years.

Minimum age  
for light work

(2) Light work means work, which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work.

44. (1) A person shall not engage a child in hazardous work.

Prohibition of  
hazardous  
employment

(2) Work is hazardous when it poses a danger to the health, safety or morals of a child.

(3) Hazardous work includes -

- (a) going to sea;
- (b) mining and quarrying;

(3) An order made under subsection (1)(a) shall not take effect, and a liability under an order made under this section shall not accrue, at a time when the parents of the ward of court or former ward of court, as the case may be, are residing together, and if they so reside for a period of three months after an order has been made, the order shall cease to have effect.

(4) The Court has power, from time to time, by an order under this section, to vary or discharge any previous order made under this section.

Committal of  
ward to care  
of appropriate  
authority, etc

194. (1) Where it appears to the Court that there are exceptional circumstances making it impracticable or undesirable for a ward of court to be, or to continue to be, under the care of either of his or her parents or any other person, the Court may, if it thinks fit, make an order committing the care of the ward to an appropriate authority.

(2) Where it appears to the Court that there are exceptional circumstances making it desirable that a ward of court, not being a ward who, pursuant to an order made under subsection (1), is in the care of an appropriate authority, should be under the supervision of an independent person, the Court may, with regard to such period as the court thinks fit, order that the ward be under the supervision of a child development officer or other appropriate authority.

(3) The Court has power, from time to time by an order under this section, to vary or discharge any previous order made under this section.

Matrimonial  
causes

195. A Children's Court hearing a matrimonial case in which a child may be involved may direct that proper proceedings be taken in the Court for making the child a ward of court.

(2) Where application is made for an order in respect of a child, the child becomes a ward of court on the making of the order or on the expiration of such period as may be prescribed unless within that period another order is made in accordance with the new application.

(3) The Court may, either on an application in that behalf or without an application, order that a child who is for the time being a ward of court shall cease to be a ward of court.

Maintenance  
of ward of  
court

193. (1) Subject to the provisions of this section, the Court may make an order –

- (a) requiring either parent of a ward of court to pay to the other parent; or
- (b) requiring either parent or both parents of a ward of court to pay to any other person having the care and control of the ward,

such weekly or other periodical sums towards the maintenance and education of the ward as the Court thinks reasonable, having regard to the means of the person or persons making the payment.

(2) An order under subsection (1) may require such sums as are mentioned in that subsection to continue to be paid in respect of any period but not beyond the date on which the ward of court attains the age of majority, and such order, if made, may provide that any sum which is payable for the benefit of that ward, having regard to the age of the child, be paid directly to the ward.

Registration of  
children  
in industrial  
undertakings

- (c) carrying of heavy loads;
- (d) work in manufacturing industries where chemical are produced or used,
- (e) work in places where machines are used; and
- (f) work in places such as bars, hotels and places of entertainment where a child may be exposed to immoral behaviour.

45. (1) Subject to section 44, an employer in an industrial undertaking shall keep a register of the children employed by him or her and of the dates of their births, if known, or of their apparent ages, if their dates of birth are not known.

(2) An industrial undertaking is an undertaking, other than one in commerce or agriculture and includes, subject to section 44, an undertaking –

- (a) 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 engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kind; and
- (b) engaged in the transport of passengers or goods by road or rail, including the handling of goods at docks, quays, wharves, ware-houses and airports.

Application

46. For the avoidance of doubt, this Heading applies to employment in both the formal and informal sectors.

Offences under  
this Heading

47. A person who contravenes the provisions of this Heading commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or to imprisonment for a term not exceeding three years or to both the fine and imprisonment.

Enforcement in  
the informal  
sector

48. (1) A labour officer shall carry out any enquiry he or she considers necessary in order to satisfy himself or herself that the provisions of this Heading, with respect to labour by children in the informal sector, are being strictly observed.

(2) A labour officer may, for the purposes of this section, interrogate any person.

(3) If a labour officer is reasonably satisfied that the provisions of this Heading are not being complied with, he or she shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender.

Enforcement  
in the formal  
sector

49. (1) The Department is responsible for the enforcement of the provisions of this Heading in the formal sector.

(2) For purpose of this section, any person may be interrogated by an officer or any other staff of the Department authorised in that behalf.

(3) If an officer of the Department is reasonably satisfied that the provisions of this Heading are not being complied with, he or she shall report the matter to the police who shall investigate the matter and take the appropriate steps to prosecute the offender.

(2) Where a guardian *ad litem* takes a copy of a record which he or she is entitled to examine under this section, that copy or any part of it shall, notwithstanding anything to the contrary in any enactment or rules, be admissible as evidence of any matter referred to in any –

(a) report which he or she makes to the Court in the proceedings in question; or

(b) evidence which he or she gives in those proceedings.

Saving of  
existing orders  
and jurisdiction  
of the Court

190. (1) Notwithstanding the provisions of this Act, an order lawfully made by any court relating to the guardianship or custody of a child before the commencement of this Act and which is in force at the time of the commencement of this Act and is not inconsistent with this Act shall continue in force until other provisions are made under or pursuant to this Act.

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(2) Nothing in this Act shall restrict or affect the jurisdiction of a court to appoint or remove guardians by virtue of the Courts Act or any other written law, until the Children's Court has been established in the relevant jurisdictions.

## PART XV - WARDSHIP

Jurisdiction  
of Children's  
Court

191. A Children's Court has jurisdiction in all matters pertaining to making a child a ward of court.

Wardship  
proceedings

192. (1) Subject to the provisions of this section, no child shall be made a ward of court except by virtue of an order, to that effect, made by the Children's Court.

(3) The Chief Justice may make rules to make provision as to –

- (a) the assistance which a guardian *ad litem* may be required by the Court to give to it;
  - (b) the consideration to be given by a guardian *ad litem*, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order; and
  - (c) the participation of guardians *ad litem* in any review, of the kind specified in the Rules, conducted by the Court.
189. (1) Where a person has been appointed as a guardian *ad litem* under this Act, he or she has the right, at all reasonable times, to examine and take a copy of –

- (a) any record held by the Government or the appropriate authority which was compiled in connection with the making, or proposed making, by any person of any application under this Act with respect to the child concerned; and
- (b) any other record held by the Government or the appropriate authority which was compiled in connection with any function which has been referred to the Department, so far as the records relate to that child.

(4) Where the alleged offender is a member of the family of the child whose rights are being infringed under this Heading, the Department shall request a Social Welfare Officer to prepare a social enquiry report on the matter.

#### Heading E - Apprenticeship

Child apprentices in the informal sector

50. This Heading applies to child apprentice in the informal sector.

Minimum age for apprentices

51 The minimum age at which a child may commence an apprenticeship with a craftsperson is twelve years or after completion of basic education.

Responsibilities of craftsperson

52. The responsibilities of a craftsperson towards an apprentice under his or her care are to –

- (a) train and instruct the apprentice in a trade to the best of the ability, skill and knowledge of the craftsperson and to the best ability of the apprentice or cause the apprentice to be trained in a trade under the supervision of the craftsperson;
- (b) be responsible for any harm caused to the apprentice in the course of his or her training;
- (c) provide food for the apprentice, unless otherwise agreed;
- (d) provide a safe and healthy environment for the apprentice;
- (e) be responsible for the moral training of the apprentice; and

(f) protect the best interest of the apprentice generally.

Apprenticeship  
agreement

53. (1) The parent, relative or guardian of an apprentice shall enter into an apprenticeship agreement with the craftsperson.

(2) The agreement shall be in accordance with the custom, which pertains to the specific trade but shall not include the performance of any induction ceremony, which may conflict with the rights of the child contained in Heading D of this Part.

(3) The agreement shall contain such matters as may be agreed between the parties and may include -

(a) provision that the parent, guardian or relative shall bear the cost of protective clothing and the basic tools for the training of the apprentice;

(b) a duty that the craftsperson is to provide shelter for the apprentice; and

(c) a provision that the craftsperson is to give the apprentice an allowance of not less than half the minimum national daily wage for his or her daily sustenance.

(4) The agreement shall be in writing and shall contain provisions in the best interest of the parties and the apprentice.

(5) The agreement shall immediately lapse if either party to the agreement contravenes its terms, unless there is a contrary intention in the agreement.

188. (1) The Secretary of State may by regulations provide for the establishment of panels of persons from which guardians *ad litem* appointed under this section shall be selected.

Establishment  
of panels of  
persons from  
which guardians  
*ad litem* may be  
appointed

(2) The regulations may, in particular, make provisions -

(a) as to the constitution, administration and procedures of the panels;

(b) requiring two or more specified Local Governments to make arrangements for the joint management of a panel;

(c) for the defrayment by the Government of expenses incurred by members of the panels;

(d) for the payment by the Government of fees and allowances to members of the panels;

(e) as to the qualifications for membership of a panel;

(f) as to the training to be given to members of the panels;

(g) as to the co-operation required of specified Local Governments in the provision of panels in specified areas; and

(h) for monitoring the work of guardians *ad litem*.

(g) on an appeal against –

Duties of apprentice

54. An apprentice shall diligently and faithfully obey and serve the craftsperson and shall –

(i) the making of, or refusal to make of a care order super-, vision order or any order under section 80;

(ii) the making of, or refusal to make a residence order with respect to a child who is the subject to a care order, or

Release of apprentice

(iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii),

55. (1) The conditions for the release of an apprentice on the completion of his or her training shall not be exploitative and shall be in accordance with the best interest of the child under this Act.

(iv) the making of or refusal to make an order under Part XII which are specified for the time being, for the purposes of this section, by Rules of Court

(2) The craftsperson shall, on completion of a period of apprenticeship, issue a certificate of release to the apprentice, which shall indicate that the apprentice has completed his or her training.

(7) Notwithstanding any enactment or rule of law to the contrary, the Court may take account of –

(a) any statement contained in a report made by a guardian *ad litem* who is appointed under this section for the purpose of the proceedings in question; and

(b) any evidence given in respect of the matters referred to in the report;

Resolution of disputes

56. A dispute related to an apprenticeship agreement shall be referred to the labour officer concerned by the parties to the apprenticeship agreement or the apprentice.

Application of this Part

in so far as the statement or evidence is, in the opinion of the Court, relevant to the question which the Court is considering.

57. The provisions of Heading D of this Part on Exploitative Labour shall apply to this Heading.

### Heading F – Other Forms of Exploitation, and Recruitment in the Armed Forces and other Security Agencies

Other forms of exploitation

58. (1) Notwithstanding the provisions of this Act, no person shall exploit a child in any other form or way that is prejudicial to the welfare of the child.

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

Prohibition of recruitment of children into the armed forces and other security agencies

59. (1) A child shall not be recruited into any of the branches of the armed forces of The Gambia or other security agencies.

(2) The Government or any other relevant agency or body shall ensure that no child is directly involved in any military operations or hostilities.

Prohibition of importation of harmful publication

### Heading G - Harmful Publication

60. (1) A person shall not import any harmful publication as defined in this Act.

(2) A person who imports any harmful publication commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis or imprisonment for a term of not less than three years or more than five years or to both the fine and imprisonment.

Penalty for publishing of harmful publication

61. (1) A person who -

- (a) prints, publishes, sells or lets on hire any harmful publication; or

(b) the child has sufficient understanding to instruct a legal practitioner and wishes to do so; and

(c) it appears to the Court that it would be in the best interest of the child for him or her to be represented by a legal practitioner.

(5) A legal practitioner appointed under or by virtue of this section shall represent the child, in accordance with the Rules of Court.

(6) In this section, "specified proceedings" means any proceedings -

- (a) on an application for a care order or supervision order;
- (b) in which the Court has given a direction under section 80 and has made, or is considering whether to make, an interim care order;
- (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- (d) in which the Court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- (e) with respect to a contact between a child who is the subject of a care order and any other person;
- (f) under Part XII;



Disputes between joint guardians

186. Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the Court for its direction, and the Court may make an order regarding the question in dispute.

Appointment of guardian *ad litem*

187. (1) The Court may, for the purpose of a specified proceeding, appoint a guardian *ad litem* for the child concerned to safeguard the interests of the child, unless it is satisfied that it is not necessary to do so.

(2) The guardian *ad litem* shall be -

- (a) appointed in accordance with the rules made by the Chief Justice; and
- (b) under a duty to safeguard the interests of the child in the manner prescribed by those rules.

(3) Where -

- (a) the child concerned is not represented by a legal practitioner; and
  - (b) any of the conditions mentioned in subsection (4) is satisfied,
- the Court may appoint a legal practitioner to represent him or her.

(4) The conditions under which an appointment may be made under subsection (3) are that -

- (a) no guardian *ad litem* has been appointed for the child;

(b) has in his or her possession for the purpose of selling or letting on hire any harmful publication,

commits an offence and is liable on conviction to a fine of fifty thousand dalasis or imprisonment for a term not exceeding three years or to both the fine and imprisonment.

(2) It is a defence for a person charged with an offence under this section to prove that he or she had not examined the contents of the publication and had no reasonable cause to suspect that the book or magazine was one to which this Act applies.

(3) A prosecution for an offence under this section shall not be instituted except by or with the consent of the Attorney General.

62. (1) If an information is brought before a Magistrate that a person has committed or is suspected of committing an offence under section 60 or 61 of this Act with respect to any harmful publication, the Magistrate may issue a warrant for the arrest of that person.

(2) A Magistrate, if satisfied by the information, substantiated on oath, that there is reasonable ground for suspecting that a person charged with or suspected of committing an offence has in his or her possession or under his or her control -

- (a) copies of harmful publication; or
- (b) any plate prepared for the purpose of printing copies of any harmful publication or any photographic film prepared for that purpose,

Power to issue warrant of arrest, summons, search, for harmful publication

may grant a search warrant authorising a police officer named in the warrant to enter (if necessary by force) any premises specified in the warrant and any vehicle, or shop or stall used by the person for the purpose of any trade or business, and to search the premises, vehicle, shop or stall.

(3) The police officer may on searching the premises, seize any of the following items -

- (a) any copy of the harmful publication and any other copies which the police has reasonable cause to believe to be a harmful publication; and
- (b) any plate or photographic film which the police officer has reasonable cause to believe to have been prepared for the purpose of printing copies of any harmful publication.

Power of court to order forfeiture

63. (1) The court by or before which a person is convicted of an offence under section 60 or 61 may make an order for the forfeiture of any copy of the harmful publication and any plate or photographic film prepared for the purpose of printing copies of the harmful publication which has been found in his or her possession or under his or her control.

(2) The power to order forfeiture under subsection (1) shall not extend to a case where the accused person has successfully raised a defence against the charge.

(3) No order made under subsection (1) by a Magistrates Court, or a High Court, in case of an appeal from a Magistrates Court, shall take effect-

(3) A guardian of a child may, by deed, appoint another person to be the guardian of the child in the event of his death.

(4) An appointment made by a will which is not signed by the testator, shall have effect only if it is signed at the direction of the testator.

183. The consent of a person appointed as a guardian is necessary for the appointment to have effect.

Requirement of consent

184. The appointment of a guardian under sections 182 and 187 may be brought to an end at any time by an order of the Court -

Revocation of guardianship

(a) on the application of a natural parent or any person who has parental responsibility for the child;

(b) on the application of the child concerned, with leave of the Court;

(c) in any family proceedings, if the Court considers that it should be brought to an end notwithstanding that no application has been made; or

(d) on the application of an appropriate authority.

185. A guardian under this Act shall have all such powers over the estate, as the case may be, of a child as a guardian appointed by will or otherwise by virtue of the rules of common law, equity, or applicable personal law.

Power of guardians over estate of child.

(5) Where a guardian is appointed to act jointly with a parent or parents of a child under subsection (2) and the guardian so appointed considers the parents unfit to have the custody of the child, the guardian may apply to the Court, and the Court may make —

- (a) an order that the guardian be the sole guardian of the child; and
- (b) such order regarding the custody and right of access of the parents to the child as the Court may think fit, having regard to the welfare of the child.

(6) The Court may under subsection (2) order that a parent or parents of a child make a payment to a joint guardian towards the maintenance of the child.

182. (1) Where an application for the guardianship of a child is made to the Court by a person, the Court may, by order, appoint that person to be the guardian of the child if —

- (a) the child has no parent with parental responsibility for him or her; or
- (b) a residence order has been made in respect to the child in favour of a parent or guardian who had died while the order was in force.

(2) The power conferred in subsection (1) may also be exercised in any family proceedings if the Court considers that the order should be made notwithstanding that no application was made for it.

Appointment of guardian

(a) until the expiration of the ordinary time within which an appeal may be lodged, whether by giving notice of appeal or applying for a case to be stated for the opinion of the High Court; or

(b) where an appeal is duly lodged, until the appeal is finally decided or abandoned.

(4) Before a forfeiture order is made under this section, the court shall hear the authors, copyright owner or main publisher of the harmful publication if he or she so wishes.

**Heading H - Miscellaneous**

Attempts

64. (1) Where a person is charged with any of the offences under this Act and the evidence establishes an attempt to commit that offence, he or she may be convicted of having attempted to commit that offence although the attempt is not separately charged and the person shall be punished as prescribed for the offence under this Act.

(2) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence and punished as provided under this Act.

65. Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he or she, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

"guardian" means a person who is the guardian of a child by virtue of the provisions of this Act or a person lawfully appointed to be guardian of the child by deed or will or by an order of a court of competent jurisdiction or by operation of law.

Effect of  
guardianship

180. (1) A person appointed as a guardian under this Part shall have parental responsibility for the child.

(2) A person appointed as a guardian *ad litem* under section 187 shall be a guardian only for the purposes of representing the child and his or her interest in certain proceedings, but shall otherwise have no parental responsibility for the child.

Government  
to safe-guard  
children and  
promote  
reconciliation  
between parents  
and children

66. (1) It is the duty of the Government to-

- (a) safeguard, protect and promote the welfare of children; and
- (b) ensure that Local Government authorities and other Government agencies liaise with one another in matters concerning children.

(2) The Department of Social Welfare or such other Department, as the Government may designate, is responsible for the welfare of children.

(3) The Department shall, in the exercise of its functions under this Act, be assisted by such officers of the Government, including Probation Officers and Local Government authorities, as the Department may determine.

Guardianship  
of child

181. (1) The parents of a child shall have guardianship of the child and, in the event of the death of a parent, the surviving parent shall be the guardian of the child.

(2) Where the parents of a child are not fit to be guardians of the child jointly or severally, the Children's Court shall, on application of a member of the family or an appropriate authority, appoint a person to be a joint guardian with the parent or parents of the child.

(3) A surviving parent who has guardianship of a child may, by deed, appoint a guardian for the child in the event of the death of that parent.

(4) A single parent may, by deed, appoint a person to be the guardian of the child upon the death of that single parent.

Non-custody parent to have access to child

175. A non-custody parent in respect of whom an application is made to a Children's Court for an order of parentage, custody, access or maintenance under this Act shall have access to the child who is the subject of the order unless the Court otherwise decides.

Duplicity of maintenance applications Cap. 43

176. The provisions of this Act are subject to the Matrimonial Causes Act and no action may be brought for a maintenance order if an application for maintenance is pending in matrimonial proceedings.

Offences under this Part

177. A person who –

(a) fails to supply the necessities of health, life, education and reasonable shelter for a child when legally required to do so contrary to section 160; or

(b) brings an action for a maintenance under this Part while an application for maintenance is pending in matrimonial proceedings,

commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

Forms and procedure

178. The forms to be used and the procedure for applications under this Part shall be provided for by regulations made by the Secretary of State.

#### **PART XIV – GUARDIANSHIP**

Interpretation of this Part

179. In this Part, unless the context otherwise requires –

(4) In particular, it is the duty of the Department to mediate in any situation where the rights of a child are infringed and especially with regard to the protection of a child, the child's right to succeed to the property of his or her parents and all the rights accorded to a child in Part II of this Act.

(5) The Department shall keep a register of children in need of special protection measures within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance.

(6) The Department shall provide assistance and accommodation for any child in need who appears to it to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge.

(7) The Department and the Police shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where he or she ordinarily resides.

Duty to report infringement of child's rights

67. (1) It is the duty of any member of the public who has evidence that a child's right is being infringed or that a parent, guardian or any person having custody of a child who is able to, but refuses or neglects to provide the child with adequate diet, shelter, clothing, medical care or education, to report the matter to the nearest office of the Department.

(2) The Department may, on receiving the report, summon the person against whom the report was made under subsection (1) to discuss the matter, and shall make a decision in the best interest of the child.

(3) The Department shall treat a report received under this section as confidential.

(4) Where the person against whom the report was made refuses to comply with the decision made under subsection (2), the Department shall refer the matter to the Children's Court.

(5) The Children's Court shall adjudicate the matter and may -

- (a) give any relief or order allowed by the law; and
- (b) in the case of a parent, in addition to any relief or order given under paragraph (a), order the parent to execute a bond to exercise proper care and guardianship by signing an undertaking to provide the child with any or all of the requirements of the child.

#### **PART VI - CHILDREN'S COURT**

68. There shall be a court to be known as the Children's Court in every Division, and any other Local Government administrative unit designated by the Chief Justice by notice in the Gazette.

Persons entitled to maintenance order

170. (1) A person who has custody of a child who is the subject of a maintenance order is entitled to receive and administer the maintenance order of the Children's Court.

(2) If the parent, guardian or whoever has custody of the child ceases to be a fit person, the Children's Court of the area where the child is resident may appoint another person to have custody of the child and administer the maintenance order and that person shall act as if originally appointed by the Children's Court.

Duration of order

171. (1) A maintenance order issued by a Children's Court shall expire when the child attains the age of eighteen years or dies before that age.

(2) A maintenance order shall lapse before the child attains the age of eighteen years if before that age the child is gainfully employed.

Continuation of maintenance order in certain cases

172. Notwithstanding section 171, a Children's Court may continue a maintenance order after a child has attained the age of eighteen years if the child is engaged in a course of continuing education or training after that age.

Variation or discharge orders

173. A Children's Court may, if satisfied, vary or discharge a maintenance order on the application of a parent, the person who has the custody of the child or any other person legally liable to maintain the child.

Enforcement of order

174. An action may be brought by any person to enforce a maintenance order thirty days after the order is made or due.

Establishment of the Children's Court

(5) Where an order of appointment or of revocation of custodian is made, the Court may also order the child to be delivered to the person appointed to have custody of the child.

(6) If a child in respect of whom a maintenance order subsists is wrongfully removed from the person in whose custody he or she is, the Court may, on the application of the custodian, make an order that the custody of the child be returned to the applicant.

(7) A person who contravenes an order made under subsection (6) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year or to both the fine and imprisonment

168. A person in whose custody a child is, commits an offence if he or she misapplies any money paid for the maintenance of the child, and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

169. (1) The Chief Justice may make rules prescribing the fees and costs payable in any proceedings for application for an order under this Part.

(2) The rules made under subsection (1) shall include provision for the remission of the fees and costs when the person liable to pay them does not have the means to do so.

Composition of the Children's Court

69. A Children's Court shall consist of -

(a) a Chairperson who shall be a Magistrate, not below the grade of a Magistrate of the First Class, to be designated by the Chief Justice; and

(b) two other persons of proven integrity from the community, one of who shall be a woman to be appointed by the Chief Justice, on the recommendation of the Judicial Service Commission.

Jurisdiction of the Children's Court

70. (1) Subject to this Act, a Children's Court shall have power to hear and determine -

(a) subject to section 213, criminal charges against a child;

(b) all civil matters concerning a child, including adoption; and

(c) applications relating to child care and protection.

(2) The Court shall also exercise any other jurisdiction conferred on it by this Act or any other written law.

Venue of the Children's Court

71. A Children's Court shall, wherever possible, sit in a different building from the one normally used by other courts.

Procedure in Children's Court

72. (1) The procedure of the Children's Court in all matters shall be in accordance with Rules of Court made by the Chief Justice for that purpose but subject to the following -

(a) the Court shall sit as often as necessary;

Misapplying maintenance money

Rules in respect of fees and costs

- (b) the child's right to privacy shall be respected throughout the proceedings, and accordingly, proceedings shall be held in camera or where necessary by video links;
- (c) proceedings shall be as informal as possible, and by enquiry rather than by exposing the child to adversarial procedures;
- (d) parents or guardians of the child shall be present whenever possible;
- (e) the child shall have a right to give an account and express an opinion;
- (f) the child shall have a right to legal representation and legal aid provided by Government; and
- (g) the right to appeal shall be explained to the child and his or her parents or guardian.
- (2) Apart from members and officers of the Court and subject to subsection (1)(f), only the following persons may, at the discretion of the Court, attend a sitting of a Children's Court -
- the parties to the case before the Court, witnesses and other persons directly concerned in the case;
  - the parent or guardian of the child before the Court;
  - a Social Welfare Officer;
  - a Probation Officer; and

(b) that the sum due, together with any costs incurred, be recovered by distress and sale or redistribution of the property of the father or mother unless he or she gives sufficient security by way of recognisance or otherwise to the satisfaction of the Court for his or her appearance before the Court on a day appointed for the return of the warrant of distress, but not more than seven days from the taking of the security.

Appointment  
of custodian

167. (1) Whenever a maintenance order is made against the father or mother of a child, a Children's Court may, at the time of making the order or from time to time thereafter, on being satisfied that the applicant -
- is not a fit and proper person to have custody of the child; or
  - is dead, or has become of unsound mind, or is in prison;
- appoint a person who is willing to have custody of the child to be the custodian of the child.
- The appointment of a custodian may be made on the application of a Social Welfare Officer, the person having custody of the child or the person against whom the maintenance order is made.
  - The appointment of a custodian may be revoked and another person appointed to have custody of the child.
  - A custodian shall have power to apply for the recovery of all payments in arrears becoming due under a maintenance order as any other applicant would have been entitled to do.



(2) A Children's Court may order a periodic payment or lump sum payment for the maintenance of a child and the earning or property of the person liable may be attached.

(3) The attachment order shall be applicable in all cases of failure to pay maintenance.

(4) When considering an application for maintenance, a Children's Court may make a maintenance order, which it considers reasonable for any child in the household.

(5) A Children's Court may make an order for arrears of maintenance against any person liable to pay the maintenance.

Warrant to attach earnings or levy the distress for the recovery of maintenance money

166. If at any time, after the expiration of one month from the making of a maintenance order, information is given to a Children's Court on oath, that any sum to be paid under the order has not been paid, the Children's Court may, by warrant, cause the person against whom the order was made to be brought before the Court, and if he or she neglects or refuses to pay the sum due from him or her under the order, the Court may, by warrant, direct -

(a) that an attachment of earnings be made; or

Publication of information on child

73. (1) A person shall not publish information that may lead to the identification of a child in any matter before the Court, except by permission of the Court.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine of five hundred thousand dalasis or imprisonment for a term not exceeding three years or to both the fine and imprisonment.

Rules of Court

74. The Chief Justice may make rules prescribing the procedure to be followed in a Children's Court and in particular as to the recording of evidence, the manner of arriving at and recording of findings, and others matters.

**PART VII - CARE AND PROTECTION OF CHILDREN**

Persons to report child abuse and protection cases

75. (1) A person with information on -

- (a) child abuse; or
- (b) a child in need of care and protection,

shall report the matter to the Department or the nearest Police Station.

(2) The Department and the Police shall not divulge the identity of a person who makes a report to them under subsection (1).

Meaning of care and protection

76. (1) For purposes of this Act, a child is in need of care and protection if the child -

- (a) is an orphan and is deserted by his or her relatives;
- (b) has been neglected or ill-treated by the person who has the care and custody of the child;
- (c) has a parent or guardian who does not exercise proper guidance and control over the child;
- (d) is destitute;
- (e) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child;
- (f) is wandering and has no home or settled place of abode or visible means of subsistence;
- (g) is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises or place for the purpose of begging, or receiving;
- (h) accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise;
- (i) frequents the company of any reputed thief or reputed prostitute;

- (d) the cost of living in the area where the child is resident;
- (e) the rights of the child under this Act; and
- (f) any other matter which the Children's Court considers relevant.

Request for social enquiry report

164. (1) A Children's Court may direct a Social Welfare Officer to prepare a social enquiry report on the issue of maintenance before it for consideration.

(2) The Children's Court shall, in making any order, consider the social enquiry report prepared by the Social Welfare Officer.

Form of maintenance order

165. (1) A Children's Court may award maintenance to the mother of a child whether married to the father or not, where the father has been identified, and the maintenance shall include the following -

- (a) medical expenses for the duration of her pregnancy, delivery or death of the child;
- (b) a periodic allowance for the maintenance of the mother during her period of pregnancy and for a further period of nine months after the delivery of the child; and
- (c) the payment of a reasonable sum to be determined by the Children's Court for the continued education of the mother if she is a child herself.

- (a) a monthly sum of money as may be determined by the Court, having regard to the circumstances of the case and to the financial means of the father or mother, for the maintenance of the child;
- (b) the funeral expenses of the child if the child has died before the making of the order; and
- (c) the costs incurred in obtaining the order.

(10) Maintenance includes provision for feeding, clothing, education, medical and the general welfare of the child.

(11) If the Court thinks fit, it may, in place of a monthly payment, order that a lump sum determined by the Court be paid into Court and that the sum shall be expended on the maintenance of the child.

Consideration  
for main-  
tenance orders

163. A Children's Court shall consider the following 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 duty to maintain the child;
- (c) the financial responsibility of the person with respect to the maintenance of other children;

- (j) is residing in a house or part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of or affect the morality of the child;
- (k) is a child in relation to whom an offence against morality has been committed or attempted or is otherwise exposed to moral or physical danger or slave dealing;
- (l) is found acting in a manner from which it is reasonable to suspect that he or she is, or has been, soliciting for immoral purposes;
- (m) is below the age of criminal responsibility and is involved in an offence, other than a minor criminal matter;
- (n) is the child of a parent who has been previously convicted of the offence of defilement or indecent treatment of any of his or her children; or
- (o) is beyond the control of his or her parents or guardian.

(2) A child shall not be considered to come within the scope of paragraph (i) or (j) of subsection (1) if the only reputed prostitute that the child associates with is his or her mother and if it is proved that she exercises proper guardianship and care to protect the child from corrupt influences.

## Investigation

77. (1) If the Department has reasonable grounds to suspect child abuse or a need for care and protection, it shall direct a Social Welfare Officer accompanied by the police to enter and search the premises where the child is kept to investigate the case.

(2) If after investigation it is determined that the child has been abused or is in need of immediate care and protection, the Department shall direct a Social Welfare Officer accompanied by the police to remove the child to a place of safety for a period of not more than seven days.

(3) The child shall be brought before a Children's Court by the Social Welfare Officer before the expiry of the seven-day period for an order to be made.

(4) The Children's Court may, until it determines the order, commit the child to a residential care home or to the care of the Department or other suitable person.

## Supervision orders and care orders

78. On the application of a Social Welfare Officer or an authorised person, a Children's Court may make -

(a) a supervision or interim supervision order placing a child under the supervision of a Social Welfare Officer or a Probation Officer while leaving the child in the custody of his or her parents, guardian or relative; or

(b) a care order or interim care order, placing a child in the care of the manager of a residential care home or with an approved foster parent in accordance with this Act.

(e) after a declaration of parentage has been made.

(5) The application may be made -

(a) at any time during pregnancy; and  
 (b) before the child attains the age of eighteen years.

(6) An application for a maintenance order shall be made by complaint on oath to a Children's Court having jurisdiction in the place where the applicant resides and the summons shall be served on -

(a) the father of the child;  
 (b) the mother of the child; or  
 (c) any other person legally liable to maintain the child.

(7) The Children's Court shall issue a summons to the father or mother of the child to appear before the Court on a day named in the summons.

(8) On the appearance of the person summoned or on proof that the summons was duly served on him or her, seven days or more before the hearing, the Court shall hear the evidence of the applicant and shall also hear any evidence tendered by or on behalf of the father or mother.

(9) After hearing evidence under subsection (8), the court may then, having regard to all the circumstances of the case, proceed to make an order against the father or mother for the payment to the applicant of -

Application for child maintenance order

162. (1) A person who has custody of a child and who is -

- (a) the mother of the child;
  - (b) the father of the child;
  - (c) the guardian of the child; or
  - (d) a person authorised by law,
- may apply to the Children's Court for a maintenance order in respect of the child.

(2) The following persons may also apply to Children's Court for a maintenance order -

- (a) a child, by his or her next friend; or
- (b) a Social Welfare Officer.

(3) The application for maintenance may be made against any person who is liable to maintain the child or contribute towards the maintenance of the child.

(4) Application for a maintenance order may be made -

- (a) during a subsisting marriage;
- (b) during proceedings for divorce, separation or nullity of marriage;
- (c) during separation;
- (d) during proceedings for declaration of parentage; or

Welfare reports

79. (1) The Children's Court shall require a written welfare report in respect of a child before making a supervision order or a care order.

(2) The Social Welfare Officer shall prepare a welfare report and comply with the request of a Children's Court whenever required to produce the welfare report.

(3) The Social Welfare Officer shall make a home visit and interview the parents or guardian of the child concerned before making a welfare report.

(4) Where the child in respect of whom the welfare report is made is of sufficient age and understanding, the Social Welfare Officer shall interview the child.

(5) A welfare report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the Children's Court.

(6) The Children's Court shall take the information contained in the welfare report into account in so far as it is relevant to the order being made.

Ground for making a supervision or care order

80. A Children's Court may only make an order under this Part, if it is satisfied that -

- (a) the child concerned is suffering or is likely to suffer significant harm; and
- (b) that the harm, or probability of harm, is attributable to -

- (i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give to a child, or
- (ii) the child being beyond parental control.

Application for a supervision order

81. Before making an application for a supervision order, the Social Welfare Officer or an authorised person must be satisfied that -

- (a) the Department has dealt with the matter without success; and
- (b) there is need for continuous supervision enforced by a court order.

Duties of a supervisor while a supervision order is in force

82. The duties of a supervisor while a supervision order is in force are to -
- (a) be friendly to, advise, and assist the supervised child;
- (b) advise the child's parents or guardian;
- (c) make plans for the child's future in consultation with the child and his or her parents or guardian;
- (d) apply to the Court to discharge or vary the order if necessary; and
- (e) take such other reasonable steps as may be necessary to reduce the harm to the child.

Up bringing of child

158. In separation, divorce and nullity cases, there shall be joint consultation between the parents in bringing up the child where the circumstances permit and wherever possible.

Unfit parents

159. Where a court, during divorce, separation or nullity proceedings, finds that the child is suffering or is likely to suffer significant harm as a result of both parents being unfit to have custody of the child, the court shall place the child in the custody of a fit person, but the parents shall be allowed to have reasonable access to their child unless it is not in the best interests of the child for them to do so.

### PART XIII - MAINTENANCE

Duty to maintain a child

160. (1) A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities for health, life, education and reasonable shelter for the child.

(2) For the purpose of this section, "education" means basic education.

Maintenance during divorce, separation or nullification of marriage

161. (1) In all cases of divorce, separation or nullification of marriage, both parents shall continue to maintain and educate their child.

(2) Where the child is in the custody of one parent, the other parent shall have reasonable access to the child unless the court otherwise decides.

(2) In any prosecution for the contravention of subsection (1), where it is proved that the custody, possession, control or guardianship of a child has been given to or acquired by a person, other than a person who is member of the family of the child, it shall be presumed by the Children's Court that the child has been given or acquired in contravention of the provisions of subsection (1).

(3) It shall be a defence to this section to prove that the child concerned was given or acquired in accordance with customary law, provided that the customary law is not repugnant to natural justice, morality or humanity or inconsistent with any written law.

(4) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term of one year or to both the fine and imprisonment.

Unlawful child removal  
156. (1) No person shall unlawfully remove a child from another person who has the lawful custody of the child.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term of not exceeding one year or to both the fine and imprisonment.

Variation of custody  
157. Where the Court is satisfied on information from a Social Welfare Officer or other official of the Department that the parent who has custody of the child is wilfully neglecting or mistreating the child, custody shall be granted to the other parent.

Duration of supervision order

83. (1) A supervision order shall be made for a period of not more than one year at a time but may be extended for a further period of not more than six months or such other period as may be prescribed on the application of the Social Welfare Officer.

(2) An extension of a supervision order shall require a written report by the Social Welfare Officer.

(3) A supervision order shall terminate when the child to whom it relates attains eighteen years of age.

Social Welfare Officer to enforce orders

84. The duty to enforce a supervision order shall be vested in the Social Welfare Officer or such other officer, as the Department considers appropriate.

Requirements as to change of address and visits

85. A supervision order shall require the person with whom the child lives to -

(a) inform the supervisor of any change of his or her address;

(b) allow the supervisor to visit the child at his or her home.

Care order

86. (1) A Children's Court may, on the application of a Social Welfare Officer or an authorised person, make a care order or an interim care order placing a child in the care of the manager of a residential care home or with foster parents.

(2) An application for a care order may only be made -

- (a) after all possible alternative methods of assisting the child have been tried without success, and the significant harm from which the child is suffering or is likely to suffer requires his or her removal from where he or she is living; or
- (b) the danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

Purpose of  
a care order

87. The object of a care order is to -

- (a) remove a child from a situation where he or she is suffering or likely to suffer significant harm; and
- (b) assist the child and those with whom he or she was living or wishes to live to examine the circumstances that have led to the making of the order and to take steps to resolve or ameliorate the problem so as to ensure the child's return to the community.

Duration of  
a care order

88. (1) A care order shall be for a maximum period of three years or until the child reaches the age of eighteen years, whichever is shorter.

(2) A care order shall be reviewed every six months by the Social Welfare Officer and the parents of the child concerned, and the Social Welfare Officer may, thereafter, make recommendations as to steps to be taken, having regard to the outcome of the review.

153. A person who for the time being is under an obligation to make payment in pursuance of an order for the payment of money under this Act shall give notice of any change in his or her address to such person, if any, as may be specified in the order.

Notice of  
change of  
address by  
person  
ordered to  
pay money

154. (1) The Secretary of State may, by order published in the Gazette, prohibit -

Power of  
Secretary  
of State  
to make  
order

- (a) the giving or acquiring of the custody, possession, control or guardianship of a child; or
- (b) the removal of a child from any part of The Gambia.

(2) Where the Secretary of State has made an order under subsection (1), no person shall give or acquire the custody, possession or control of or remove a child from any part of The Gambia specified in the order, except in accordance with rules made by the Secretary of State

Prohibition  
against  
acquiring  
custody,  
of child for the  
purpose of  
dealing in him or  
her

155. No person shall hire, give or acquire the custody, possession, control or guardianship of a child whether or not for pecuniary or other benefit in circumstances that it may reasonably be inferred that the child has been hired, sold or bartered, or that by reason of the hiring, giving or acquiring, the child may reasonably be inferred to be placed in any danger, whatsoever.



Power of Court to consult child's wishes

150. Nothing contained in sections 147, 148 and 149 shall interfere with or affect the power of the Children's Court to consult the wishes of the child in considering what order ought to be made under section 149 or diminish the right which any child has to exercise his or her own free choice.

Power of Court as to child's religious education

151. The Children's Court may, on an application by a parent for the production or custody of a child, if it is of the opinion

- (a) that the parent ought not to have the custody of the child; and
- (b) that the child is being brought up in a different religion, other than that in which the parent has brought the child up,

make such order as it may deem fit to ensure that the child is brought up in the religion in which the parent requires the child to be brought up.

Enforcement of order for payment of money by attachment of income

152. Where the Court makes an order for the payment of money in pursuance of this Act, the Court shall, in addition to any other powers for enforcing compliance with the order, have power, in any case where pension or income, which is capable of being attached, is payable to the person against whom the order is made, after giving the person to whom the pension or income is payable an opportunity of being heard, order that such part of the pension or income as the Court may deem fit be attached for the payment of any money under this Act.

Duty to enforce a care order

89. The duty to enforce a care order is vested in the Social Welfare Officer or such other person as the Department considers appropriate.

Parental responsibility for a child in a residential care home or foster home

90. (1) The Department and the parents of a child shall have parental responsibility for the child while the child is in a residential care home or with a foster parent.

(2) The child's contact with his or her parents, guardian, relatives and friends while he or she is in the residential care home or with a foster parent shall be encouraged unless it is not in the best interests of the child.

(3) The Department and the parents of a child shall ensure that the child's development while in a residential care home or with a foster parent, particularly his or her health and education, is attended to.

(4) The Department shall -

- (a) communicate with the parents or guardian of a child in a residential care home;
- (b) inform the parents or guardian of the child's progress; and
- (c) arrange, through the Social Welfare Officer, a trial period for the child to be at home with his or her parents or guardian, as soon as it is appropriate.

(5) The Department, the parents of a child and the manager of the residential care home shall hold review sessions at least once every six months, and may, thereafter, make recommendations as to steps to be taken having regard to the outcome of the review.

Special duties  
of the  
Social Welfare  
Officer in  
relation to  
care order

91. (1) It is the duty of the Social Welfare Officer or such other authorised person as the Department considers appropriate, before and after the termination of the care order, to work in partnership with the parents, guardians or relatives, to whom the child is expected to return after the termination of the care order.

(2) The duties of the Social Welfare Officer or authorised person under this section include child and family therapy, and through counselling and service before, during and after the child's return and gaining the assistance of those in the community who can help in the process of resolving the problems which caused the care order to be made.

(3) In carrying out his or her duties under this section, the Social Welfare Officer or authorised person shall take into account the wishes of the child.

(4) Where a child is placed with a foster parent, it is the responsibility of the Social Welfare Officer or authorised person to -

- (a) communicate with the parents or guardian of the child;
- (b) inform them of the progress of the child; and

for such a length of time and under such circumstances as to satisfy the Children's Court that the parent was not mindful of his or her parental responsibilities, the Children's Court shall not make an order for the child to be delivered to the parent, unless the parent satisfies the Court that, having regard to the welfare of the child, the parent is a fit person to have the custody of the child.

Power of  
Children's  
Court as to  
production  
of child

148. Where the parent of a child applies to the Children's Court for a writ or an order for the production of a child, and the Court is of the opinion that the parent -

- (a) has abandoned or deserted the child; or
- (b) had otherwise so conducted himself or herself that the Court should refuse to enforce his or her right to the custody of the child,

the Court may, in its discretion, decline to issue the writ or make the order.

Power of  
Court  
to order  
repayment  
of cost of  
bringing  
up child

149. If at the time of the application for a writ or an order for the production of a child, the child is being brought up by another person, the Children's Court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent pays to that other person -

- (a) the whole of the costs properly incurred in bringing up the child; or
- (b) such portion of the costs as seems to the Court to be just and reasonable,

having regard to the circumstances of the case.

(3) Where the Children's Court makes an order under subsection (1), giving the custody of the child to the mother, the Children's Court may further order that the father shall pay to the mother, towards the maintenance of the child, such weekly or other periodical sum as the Children's Court may, having regard to the means of the father, think reasonable.

(4) Where the Children's Court makes an order under subsection (1) giving custody of the child to the father, the Children's Court may further order that the mother shall pay to the father, towards the maintenance of the child, such weekly or other periodical sum as the Court may, having regard to the means of the mother, think reasonable.

(5) Subject to this section, no order whether for custody or maintenance shall be enforceable, and no liability shall accrue under the order while the mother of the child resides with the father, and any such order shall cease to have effect if, for a period of three months after it is made, the mother of the child continues to reside with the father.

147. Where the parent of a child has -

- (a) abandoned or deserted the child; or
- (b) allowed the child to be brought up by another person at the expense of that other person.

Court to have regard to conduct of parent

(c) arrange a trial period for the child to be at home as soon as it is appropriate.

(5) The Social Welfare Officer or authorised person shall visit the child during the trial period at home and make plans for the future of the child in consultation with the foster parents.

Interim supervision order and interim care order

92. (1) A Children's Court may, on hearing information on oath by a Social Welfare Officer or an authorised person, that a child is suffering or likely to suffer significant harm, make an interim supervision order or an interim care order in respect of the child.

(2) An interim order shall not be made unless a child is suffering or is likely to suffer significant harm as described in section 80.

(3) The maximum period for an interim order is three months but the Court may prescribe a lesser period, which shall not be less than eight weeks.

(4) If the Social Welfare Officer wishes to recommend a full care or supervision order, he or she shall present a report to the Court during the period of the interim order.

Exclusion order

93. (1) A Children's Court may, in addition to, or in proceedings for a supervision order, care order, interim supervision or interim care order, make an exclusion order, prohibiting a named person from having contact with the child, or with the child and persons looking after the child.

(2) A Children's Court shall, before making an exclusion order, be satisfied that it is in the best interest of the child.

(3) The Children's Court may specify the duration of the exclusion order.

Enforcement  
of exclusion  
order

94. A person who breaches an exclusion order commits an offence and shall be dealt with in accordance with the provisions of this Act except that the Social Welfare Officer may proceed on behalf of the State against the offender.

Search and  
production  
order

95. (1) A Children's Court may, in proceedings for an application for a care order, on hearing information on oath, make a search and production order authorising the Social Welfare Officer, with a police officer, to enter any premises specified in the order to search for and remove to a place of safety, a child whom the Social Welfare Officer believes or suspects is suffering or is likely to suffer significant harm.

(2) Before searching the specified premises, the Social Welfare Officer holding the order, shall inform the Department.

(3) A child removed on a search and production order shall be produced in the Children's Court within forty-eight hours after his or her removal.

Removal of a  
child under  
emergency  
protection

96. (1) A Social Welfare Officer, any member of the police force or an authorised person who has reasonable grounds for believing that a child is suffering or is likely to suffer significant harm shall immediately notify the Department by any possible means, and thereafter in writing, of the case.

(2) The Department shall, pursuant to a notification under subsection (1), take the child and place him or her under emergency protection in an approved place of safety for a maximum period of forty-eight hours.

Order as to  
custody and  
access

146. (1) The Children's Court may, on application of the father or mother of a child -

(a) make such order as it may deem fit with respect to the custody of the child and the right of access to the child of either parent, having regard to -

(i) the welfare of the child and the conduct of the parents, and

(ii) the wishes of the mother and father of the child;

(b) alter, vary or discharge the order, on the application of -

(i) the father or mother of the child, or

(ii) the guardian of the child, after the death of the father or mother of the child; and

(c) in every case, make such order with respect to costs, as it may think just.

(2) The power of the Children's Court under subsection (1) to make an order as to the custody of a child and the right of access to the child may be exercised, notwithstanding that the mother of the child is at the time not residing with the father of the child.

(7) Where a person has parental responsibility for a child as a result of subsection (5), he or she shall not have the right to -

- (a) consent or refuse to consent, to the making of an application or order or any other order relating to adoption in respect of the child; or
- (b) appoint a guardian for the child.

(8) Where subsection (5) requires the Children's Court to make an order under subsection (1) in respect of the father of a child, the Court shall not bring that order to an end at anytime while the residence order concerned remains in force.

(9) The fact that a person has, or does not have, parental responsibility for a child shall not affect -

- (a) any obligation which he or she may have in relation to the child, such as, a statutory duty to maintain the child; or
- (b) any right which, on the death of the child, he or she or any other person may have in relation to the property of the child.

(10) A person who does not have parental responsibility for a particular child but has care of the child may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the welfare of the child.

(3) The Department may be assisted by a police officer in removing and taking the child to a place of safety.

(4) As soon as possible and in any case within the period of forty-eight hours referred to in subsection (1), the Department shall take the child before a Children's Court and shall make a report, taking into account the wishes of the child.

(5) The Children's Court before which a child is brought may make an emergency protection order in respect of the child and give such directions as it considers appropriate in the circumstances.

(6) Where the Department places a child under emergency protection it may, if it deems it necessary, ensure the provision of medical attention or treatment, including medical examination of the child.

(7) Whenever a child is placed under emergency protection, his or her parents or the person with whom the child was living shall be informed as soon as practicable and shall be allowed to have contact with the child unless it is not in the best interest of the child to do so.

97. A person who, without reasonable cause, removes a child placed under emergency protection from a place of safety, without the authority of the person in whose custody the child is, commits an offence, and is liable on conviction to a fine of fifty thousand dalasis or imprisonment for a term not exceeding three years or to both the fine and imprisonment.

Offence to  
remove without  
authority a child  
from a place of  
safety

Persons to apply for discharge or variation of supervision or care order

98. A Children's Court may discharge a supervision or care order in the best interest of the child on the application of -

- (a) the child concerned;
- (b) the parent, guardian or relative of the child;
- (c) a person who has parental responsibility for the child;
- (d) a person with whom the child was living before the order was made; or
- (e) the Social Welfare Officer.

Duty of Department to investigate

99. Where the Department is informed or has reasonable cause to believe that a child is suffering or is likely to suffer significant harm, it shall make enquiries to decide whether to act to safeguard or promote the welfare of the child.

Requirement to disclose information

100. A Children's Court may summon a person to disclose an information concerning a child if it is satisfied that the information is being withheld by the person.

Medical examination of child

101. (1) The Children's Court has power to order that a child be medically examined if there is any reason to believe that the child is in need of the examination, or for some reason requires a report concerning the child's physical or mental condition.

(2) The Children's Court may request in writing a medical officer to conduct the examination.

(b) the father and mother may by agreement have joint parental responsibility for the child.

(2) No parental responsibility agreement shall have effect for the purpose of this Act, unless it is made in the form and manner prescribed by regulations made by the Chief Justice under this section.

(3) Subject to subsection (4), an order under subsection (1)(a), or a parental responsibility agreement, may only be brought to an end by an order of the Children's Court made on the application -

- (a) of any person who has parental responsibility for the child; or
- (b) of the child himself or herself, with leave of the Court.

(4) The Children's Court may only grant leave under subsection (3) (b) if it is satisfied that the child has sufficient understanding to make the proposed application.

(5) Where the Children's Court makes a residence order in favour of the father or the mother of a child it shall, if the father or mother would not otherwise have parental responsibility for the child, also make an order under subsection (1) giving him or her that responsibility.

(6) Where the Children's Court makes a residence order in favour of a person who is not the parent or guardian of the child concerned, that person shall have parental responsibility for the child while the residence order remains in force.

(e) provide that scientific tests shall not be carried out except by such persons, and at such places, as may be appointed by the Secretary of State;

(f) prescribe the blood or other tests to be carried out and the manner in which they are to be carried out;

(g) regulate the charges that may be made for the taking and testing of scientific samples and for the making of a report to a Court under section 138;

(h) make provision for securing that, so far as practicable, the samples to be tested for the purpose of giving effect to a direction under section 138 are tested by the same person; and

(i) prescribe the form of the report to be made to a Children's Court under section 138.

**PART XII - POSSESSION AND CUSTODY OF CHILDREN**

Acquisition of parental responsibility  
145. (1) Where the father and mother of a child were not married to each other at the time of his or her birth -

(a) the Children's Court may -

(i) on the application of the father, order that he shall have parental responsibility for the child; or

(ii) on the application of the mother, order that she shall have parental responsibility for the child; or

Contravention of order by a child

102. (1) A child who contravenes an order from the Children's Court and runs away may be apprehended without warrant by the police and returned to the place specified in the care or supervision order.

(2) The Children's Court may make another order where the child has run away in order to place the child elsewhere if the approved fit person is not willing to take the child.

Lack of interest in welfare of child under care order

103. A child under a care order whose parent, guardian or relative does not show an interest in the welfare of the child within a period stipulated by a Children's Court may be placed with a foster parent.

**PART VIII - FOSTERING**

Definition of foster parent

104. A foster parent is a person who is not the parent of a child but is willing to undertake the care and maintenance of the child.

Person who can foster

105. (1) A person above the age of twenty-one years who is of high moral character and proven integrity may be a foster parent to a child.

(2) A foster parent must be at least fifteen years older than the child to be fostered.

Foster care placement

106. (1) Where -

(a) a child has been committed to a residential care home under a care order,

(b) a recommendation has been made by a Social Welfare Officer that a residential care home is the most suitable place for a child; or

(c) a child has been placed in a residential care home by any person,

a committee comprising a Social Welfare Officer, a person in charge of the residential care home and two other persons from the community, with interest in the welfare of children, selected by the Department may recommend to the Department that the child be placed with a foster parent.

(2) Subject to subsection (1), a person who wishes to foster a child shall apply to a Social Welfare Officer or to the manager of the residential care home who shall forward the application to the Department for consideration.

(3) The Department shall not place a child with a foster parent under this section unless it has applied to the Children's Court for an order, which the Court may make if it is satisfied that it is in the best interest of the child to do so.

(4) A foster parent in whose care a child is placed or committed shall have the same responsibilities in respect of the child's maintenance as the parent of the child while the child remains in his or her care.

(5) A foster parent is liable for contravention of any of the provisions of Parts II and III.

(6) The Department, the parents and the foster parent of a child shall hold review sessions at least once every six months and thereafter may make recommendations as to steps to be taken having regard to the outcome of the review.

143. A party to proceedings for a declaration of parentage may appeal to High Court against the finding of a Children's Court and the appellate court may confirm or revoke the declaration or make any other lawful order that it thinks fit.

Appeals

144. The Secretary of State may make regulations for the purposes of this Part and in particular, the regulations may -

Power of Secretary of State to make regulations under this Part

(a) provide that blood or other samples shall not be taken except by such medical practitioners as may be appointed by the Secretary of State;

(b) regulate the taking, identification and transporting of the blood or other samples;

(c) require the production, at the time when a scientific sample is to be taken, of such evidence as to the identity of the person from whom it is to be taken as may be prescribed by the regulations;

(d) require the person from whom a scientific sample is to be taken, or, in such cases as may be prescribed by the regulations, such other person as may be so prescribed, to state in writing whether he, she or the person from whom the scientific sample is to be taken, as the case may be, has during such period as may be specified in the regulations, suffered from any such illness as may be so specified or received a transfusion of blood;



(3) If at the end of the period referred to in subsection (2), the person has failed without reasonable cause to take the step required, the Children's Court may, without prejudice to subsection (1), dismiss his or her claim for relief notwithstanding the absence of evidence to rebut the presumption.

(4) Where a person, named in a direction under section 138, fails to consent to the taking of a scientific sample from himself or herself or from any person named in the direction of whom he or she has the care and control, he or she shall be deemed for the purposes of this section to have failed to take a step required of him or her for the purpose of giving effect to the direction.

141. If, for the purpose of providing a blood or other sample for a test required to give effect to a direction under section 138, a person personates another, or proffers a child knowing that it is not the child named in the direction, he or she commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

142. (1) A declaration of parentage by a court shall have the effect of establishing a blood relationship of father and child or of mother and child and, subject to the provisions of any applicable personal law, the child shall be in the same legal position as a child actually born in lawful wedlock towards the father or the mother.

(2) A declaration of parentage shall not, by itself, confer rights of custody of the child upon the declared father or mother.

Penalty for personating another, etc for purpose of providing scientific sample.

Effect of declaration of parentage

Regulations under this Part

107. (1) The Secretary of State may by regulations or rules provide for the procedure for the registration of foster parents, making fostering orders and other matters relating to fostering of children under this Act.

(2) The Chief Justice may make rules to provide for the practice and procedure of the Children's Court in proceedings relating to fostering.

**PART IX - ADOPTION**

Interpretation

108. In this Part, unless the context otherwise requires -

"inter-country adoption" means the adoption of a Gambian child by a person who is not a citizen of The Gambia and whose ordinary place of residence is outside The Gambia.

Jurisdiction

109. (1) An application for an adoption order shall be made to a Children's Court, which may, subject to the provisions of this Act, grant the application.

(2) A child need not be a citizen of The Gambia to be adopted.

Restrictions and conditions

110. (1) An adoption order may be granted to a sole applicant or jointly to spouses where -

- (a) the applicant or at least one of the joint applicants has attained the age of twenty-one years and is at least fifteen years older than the child, and is not more than sixty years old; and

- (b) in the case of an application by one of the spouses, the other has consented to the adoption.

(2) The Court may dispense with the consent required under paragraph (b) of subsection (1), if the spouse whose consent is required cannot be found or is incapable of giving consent, or the spouses are separated and living apart and the separation is likely to be permanent.

(3) An adoption order shall not be made in favour of a sole male applicant in respect of a female child, or in favour of a sole female applicant in respect of a male child, unless the Court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order.

(4) The application shall not be considered unless the applicant has fostered the child for a period of not less than thirty-six months under the supervision of a Social Welfare Officer.

(5) The Social Welfare Officer is required to submit a report to assist the Court in considering the application and the Court may, in addition, require some other person or the local authority to make a report in respect of the adoption application.

(6) Except where the application is by spouses jointly, an adoption order shall not be made authorising more than one person to adopt a child at the same time.

Inter-country  
adoption

111. (1) A person who is not a citizen of The Gambia may in exceptional circumstances adopt a Gambian child, if he or she -

- (a) has been ordinarily resident in The Gambia for at least six months; or

(b) is incapable of understanding the nature and purpose of scientific tests,

if the person who has the care and control of him or her consents and the medical practitioner in whose care he or she has certified that the taking of the blood or other sample from him or her will not be prejudicial to his or her proper care and treatment.

(6) The provisions of this section are without prejudice to the provisions of section 138.

Failure to  
comply with  
direction for  
taking of  
scientific  
samples

140. (1) Where a Children's Court gives a direction under section 138 and a person fails to take any step required of him or her for the purpose of giving effect to the direction, the Children's Court may draw such inference, if any, from that fact as appear proper in the circumstances.

(2) Where, in any proceeding in which the father or mother of a child fails to be determined by the Children's Court, there is a presumption of law that the child is legitimate, the Children's Court may adjourn the hearing for such period as it thinks fit to enable a party to take the step required to give effect to any direction given by the Court under section 138, if the party who-

(a) is claiming any relief in the proceedings; and

(b) for the purpose of obtaining that relief is entitled to rely on the presumption,

failed to take any step required of him or her for the purpose of giving effect to the direction.

- (a) in taking any step required of him or her for the purpose; and
- (b) in making a report to the Children's Court under this section,
- but the amount paid shall be treated as costs incurred by him or her in the proceedings.

Consent  
required for  
taking scientific  
samples

139. (1) Subject to the provisions of subsections (3) and (4), a scientific sample which is required to be taken from any person for the purpose of giving effect to a direction under section 138 shall not be taken from that person except with his or her consent.

(2) The consent of a child who has attained the age of sixteen years to the taking from himself or herself of a scientific sample shall be as effective as it would be if he or she had attained the age of majority.

(3) Where a child has, by virtue of subsection (2), given an effective consent to the taking of a scientific sample, it shall not be necessary to obtain any consent for it from any other person.

(4) A sample scientific may be taken from a child under the age of sixteen years, not being a person as is referred to in subsection (5), if the person who has the care and control of him or her consents.

(5) A scientific sample may be taken from a person who -

- (a) is suffering from mental disorder within the meaning of any relevant law in The Gambia; and

- (b) has fostered the child for at least thirty-six months under the supervision of a Social Welfare Officer; and
- (c) does not have a criminal record and produces a police check report;
- (d) has a home study report concerning his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority;
- (e) satisfies the Court that the child will enjoy safeguards and standards equivalent or more than those existing in The Gambia;
- (f) satisfies the Court that his or her country of origin will respect and recognise the adoption order.

(2) For the purposes of an application to which this section applies, the Social Welfare Officer referred to in paragraph (b) of subsection (1) shall be required to submit a report to assist the Court in considering the application, and the Court may, in addition, require some other person or authority to make a report in respect of the application.

(3) The restrictions and conditions in section 110, other than subsections (4) and (5) of that section, apply to an application to which this section relates.

112. (1) The consent of the parents of the child, if known, is necessary for the adoption order to be made but the consent may be revoked at any time before the pronouncement of the adoption order.

(2) The Court may dispense with the consent if the parents are incapable of giving it.

Consent

(3) While an application for an adoption order is pending in the Court, a parent who has given his or her consent to the adoption is not entitled, except with the leave of the Court, to remove the child from the care and custody of the applicant.

(4) The Court may refuse to grant leave to remove the child from the care and custody of the applicant under subsection (3) if it considers it significantly harmful to the welfare of the child.

(5) If in the view of the Court a child is able to understand the adoption proceedings, then his or her views shall be taken into consideration.

(6) If the child is at least fourteen years of age, his or her consent to the adoption must be obtained unless it is impossible for him or her to express his or her wishes.

(7) Where it appears to the Court that any person who is not the parent of the child has any rights or obligations in respect of the child under any order of the Court or agreement or under personal law or otherwise, the Court may require the consent of that person before the adoption order is made.

(8) The Court shall also request a Social Welfare Officer to prepare a report to assist it to determine whether any person who is not a parent of the child has any rights or obligations in respect of the child and whether that person's consent ought to be obtained before the making of the adoption order.

Functions of  
Court

113. (1) The Court shall, before making an adoption order, be satisfied that -

(7) Where a report has been made to the Court under subsection (5), a party to the proceedings may, with the leave of a Children's Court, or shall, if the Court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall be deemed, for the purposes of this section, to form part of the report made to the Court.

(8) Where a direction is given under this section in any proceeding, a party to the proceedings, shall not, except the Court otherwise directs, be entitled to call as a witness -

(a) the person responsible for carrying out the tests taken for the purpose of giving effect to the direction, or

(b) any person by whom any thing necessary for the purpose of enabling those tests to be carried out was done,

unless within fourteen days after receiving a copy of the report he or she serves notice on the other parties to the proceedings or on such of them as the Children's Court may direct, of his or her intention to call that person and where a person is called as a witness the party who called him or her shall be entitled to cross-examine him or her.

(9) Where a direction is given under this section, the party on whose application the direction is given shall pay the cost of taking and testing blood or other samples for the purpose of giving effect to the direction, including any expenses reasonably incurred by any person.

- (3) The Court may at any time revoke or vary a direction previously given by it under subsection (1).
- (4) Where an application is made for a direction under this section, the order shall specify who is to carry out the tests.
- (5) The person responsible for carrying out blood tests taken for the purpose of giving effect to a direction under this section shall make, to the Children's Court which gave the direction, a report in which he or she shall state -
- (a) the results of the scientific tests.
  - (b) whether the party or person to whom the report relates is or is not indicated by the results as the father or mother of the child whose parentage is to be determined; and
  - (c) if the party is so indicated, the value, if any, of the results in determining whether that party or person is actually the father or mother of the child.
- (6) The report made under subsection (5) shall be -
- (a) received by a Children's Court as evidence in the proceedings of the matters stated in it;
  - (b) in the form prescribed by regulations made under section 144.

- (a) every person whose consent is required and is not dispensed with, has consented and understands the nature and effects of the adoption, namely, that it will permanently deprive that person of parental rights over the adopted child.
  - (b) the order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding;
  - (c) the applicant has not received or agreed to receive, and that no person has made or agreed to make to the applicant, any payment or other reward in consideration of the adoption; and
  - (d) the applicant or any person on behalf of the applicant has not paid or agreed to pay money or anything in place of money to the parent, guardian or any person in charge of the child in consideration of the adoption of the child.
- (2) The Court may, in an adoption order, impose such terms and conditions as it thinks fit in the circumstances.
114. An appeal shall lie against a decision taken under this Part, from -
- (a) the Children's Court to the High Court
  - (b) the High Court to the Court of Appeal; and
  - (c) the Court of Appeal to the Supreme Court.

Appeals

## Effect of adoption

115. On an adoption order being made –

- (a) all rights, duties, obligations and liabilities of the parents and guardians in relation to the future custody, maintenance and to consent or give notice of consent to marriage are extinguished; and
- (b) there shall vest in, and be exercised by, and enforceable against the adopter all such rights, duties, obligations and liabilities in relation to the future custody, maintenance and education of the child as would vest in him or her if the child were the natural child of the adopter.

## Devolution of property

116. (1) Subject to any applicable personal law, where an adopter dies intestate, his or her property shall devolve in all respects as if the adopted child were the natural child of the adopter.

(2) If it appears to the High Court on a claim made, that the disposition of property devolving on an intestacy has been exercised unfairly against an adopted child, the Court may order such provision as the Court thinks equitable to be made for him or her out of the property devolving on the intestacy in accordance with the law.

## Wills

117. (1) In any testamentary disposition of property, whether or not in writing, made after the date of an adoption order, any reference, whether expressed or implied, to the child or children of the adopter shall, unless the contrary intention appears, be construed as including a reference to the adopted child.

(c) after the child has attained the age of eighteen years, with special leave of the Children's Court.

## Evidence of parentage

137. The following may be considered by a Children's Court as evidence of parentage –

- (a) the name of the parent entered in the register of births;
- (b) performance of customary ceremony by the father of the child;
- (c) refusal by the parent to submit to a scientific test; and
- (d) any other matter that the Children's Court may consider relevant.

## Use of scientific test to determine parentage

138. (1) A Children's Court may on its motion or on an application of any party to the proceedings, give a direction for –

- (a) the use of scientific tests, including blood tests and DNA tests, to ascertain whether a party to the proceeding is or is not the father or mother of a child; and
- (b) the taking, within a period to be specified in the direction, of blood or other samples from the child, the mother of the child and any party alleged to be the father or mother of the child or from any two of those persons.

(2) In the application of the provisions of subsection (1), religious precepts shall be taken into consideration.

- (c) regulating the management and discipline of the residential care homes; and
- (d) regular inspection of the residential care home.

**PART XI – PARENTAGE**

Interpretation of this Part -

135. In this Part -  
"scientific samples" means any blood, tissue or any other sample taken for the purpose of conducting scientific tests;

Adopted Children Register

"scientific tests" means any test carried out under this Part, and includes any test made with the object of ascertaining the inheritable characteristics of blood, tissue, or any other sample.

(2) The Adopted Children Register shall be open to inspection by interested parties but not to the public.

Application for parentage of a child

136. (1) The following persons may apply to a Children's Court for an order to confirm the parentage of a child -

Disclosure of adoption

- (a) the child;
- (b) the parent or guardian of a child;
- (c) a Social Welfare Officer; or
- (d) any other interested person.

119. (1) A child shall, before, or after attaining the age of eighteen years, on his or her request or at the discretion of the adopter, be informed by the adopter of the identity of his or her natural parents unless it is not in the child's best interest to do so.

- (a) before the child is born;
- (b) before a child is eighteen years of age; or

Effect of adoption on fit person order

(2) The application to a Children's Court may be made -

(2) It is the duty of the adopter or parent to inform the child that he or she is adopted as soon as the child is of an age of understanding.  
120. Where an adoption order is made in respect of a child under a fit person care order of a Children's Court, the fit person care order shall cease to apply.

Offences related to adoption

- (a) before the child is born;
- (b) before a child is eighteen years of age; or

121. (1) No person shall give or receive any payment or reward in respect of an adoption except with the approval of the Court.

(2) A person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dalasis or to imprisonment for a term not exceeding three years or to both the fine and imprisonment.

Notice to be given to send child abroad

122. (1) The Department shall be notified by the adopter when the adopted child is being sent out of The Gambia permanently after the adoption order has been made by the Court.

(2) The notice shall be given to the Department thirty days before the departure of the adopter and the adopted child from The Gambia.

(3) A person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dalasis or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

Rules as to procedure for adoption

123. (1) The Chief Justice may make rules for the procedure for making application for adoption and for other matters relating to adoption.

(2) The rules shall provide for –

- (a) the proceedings to be held *in camera* except under exceptional circumstances;
- (b) the admission of documentary evidence relating to the consent required for the order;

(3) The child may then be returned to where he or she had been placed or, if that is not in the best interest of the child, he or she may be moved by the Social Welfare Officer under a care order or otherwise returned to the Children's Court for variation or discharge of the order.

Court's power to order parent or guardian to contribute

133. (1) Where the Department has custody of a child who has a parent or guardian, the Children's Court may order the parent or guardian to contribute towards the child's maintenance.

(2) The amount contributed shall be a reasonable percentage of the parent's or guardian's earnings and within the means of the parent or guardian and may be varied by the Children's Court if there is a change in the parent's or guardian's circumstances.

(3) A contribution order made under this section shall remain in force as long as the child is in the residential care home, but a person contributing may, at any time, apply to the Children's Court for the order to be varied or discharged on the ground that his or her circumstances have changed since the order was made.

Rules for residential care homes

134. The Secretary of State may make rules for carrying this Part into effect and, in particular for –

- (a) prescribing requirements as to the accommodation and equipment to be provided in the residential care homes;
- (b) prescribing the medical arrangements to be made for protecting the health of the children in the residential care homes;



(c) require any person who has information leading to the whereabouts of the child to disclose it;

(d) authorise the search of any premises where the child is believed to be staying or is being held; and

(e) specify the name of the child in question and the person who has the current main parental responsibility.

Application for a recovery order

131. A person with parental responsibility for the child or the Social Welfare Officer may apply for a recovery order.

Escape from residential care home or foster parent

132. (1) A child who runs away from a residential care home to which he or she has been committed by the Court on a care order or from a person in whose care he or she has been placed in emergency situation may, pending investigation -

(a) be brought back to the residential care home from which or the person from whom he or she ran away; or

(b) be put in alternative residential care home or place of safety.

(2) A child to which subsection (1) applies shall, as soon as possible, be interviewed by the Social Welfare Officer or an authorised person who shall also interview the manager of the residential care home or the person in whose care the child had been placed.

(c) requiring a Social Welfare Officer to represent the interest of the child in proceedings relating to an adoption order or an interim order;

(d) requiring a Social Welfare Officer to prepare a social enquiry report to assist the Court to determine whether the adoption order is in the best interest of the child or not; and

(e) such other matters as the Chief Justice may determine.

(3) The rules made under this section shall be published in the Gazette.

#### PART X - RESIDENTIAL CARE HOMES

Department to approve residential care homes

124. A Government or non-governmental home set up for the purposes of caring for children shall first be approved by the Department as fit for a residential care home for children.

Admission of children to residential care home

125. A residential care home shall only receive children in the following ways -

(a) in an emergency situation, from a police officer, a Social Welfare Officer or any other authorised person, for a maximum period of forty-eight hours pending production of the child in Court; or

(b) on an interim care order or a care order.

Purpose of a residential care home

126 (1) A residential care home shall provide substitute family care for a child until such time as the parents of the child are able to provide adequate care to meet his or her basic needs, or the child completes three years in the home, or attains the age of eighteen years, whichever is earlier.

(2) It is the responsibility of the staff of the residential care home, the Social Welfare Officer and any other authorised person to assist the child to become reunited with his or her parents or guardian.

(3) After a child has been returned home from a residential care home, the Social Welfare Officer and any other authorised person shall keep in regular contact with the child and his or her family until the completion of the order or its discharge.

(4) Where a child is unable to return to his or her parents or to go to foster parents or has no parent, or a foster parent, he or she shall be encouraged and assisted by the residential care home, the Social Welfare Officer and any other authorised person to become independent and self-reliant.

Parental responsibility for children in residential care homes

127. While a child is in a residential care home on a care order, the Department and parents of the child have parental responsibility for the child.

Contact with parents and relatives

128. (1) The manager of a residential care home, the Social Welfare Officer and any other authorised person shall maintain contact with the parents or relatives of a child in the home and also maintain contact between the child and the parents or relatives of the child.

(2) A named person may be refused contact by an exclusion order made by the Children's Court during proceedings on an application for a care order, or later on the application of the child, the Social Welfare Officer or any other authorised person, to the Court when such contact is not in the best interest of the child.

(3) A person refused contact with the child or the child himself or herself may apply to the Court to have the order varied or discharged.

(4) The Court may, in varying an order under subsection (3), allow the person to have supervised contact with the child.

Removal of child from residential care home

129. A person who removes a child from a residential care home without reasonable cause commits an offence and is liable on conviction to a fine not exceeding thirty thousand dollars or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

Recovery order

130. (1) When a Children's Court has been informed on information on oath that a child has been removed unlawfully from a residential care home, it may make a recovery order.

(2) A recovery order may –

(a) direct a person who is in possession of the child to produce him or her on request to an authorised person;

(b) require removal of the child by an authorised person;