

**CONSOLIDATED TO 11 JULY 2016**

**LAWS OF SEYCHELLES**

**CHAPTER 28**

**CHILDREN ACT**

*[15th July, 1982]*

Act 16 of 1982  
Act 8 of 1991  
Act 4 of 1998  
Act 9 of 1999\*  
Act 7 of 2005  
Act 14 of 2016

[\*Note: Act 9 of 1999 has never been brought into force.]

[Note: The terms “Board” and “Children’s Board” were substituted throughout the Act with the term “Tribunal” by s 2(a) of Act 4 of 1998 w.e.f. 22 June 1998.]

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**PART I - PRELIMINARY**

**Short title**

1. (1) This Act may be cited as the Children Act.  
(2) [Repealed]

## **Interpretation**

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

“affiliation order” means an order under section 12;

“adoption order” except in sections 65 to 69, means an order in terms of section 33;

“adult” means a person of 18 years of age or older;

“attachment of earnings order” means an order for the attachment of earnings made under the Maintenance Orders (Attachment of Earnings) Act;

“care” includes protection, control, guidance and treatment;

“Chairman” means a chairman of a Tribunal in terms of section 78(2);

“child”, except where used to express a relationship and except in sections 9 to 14, means a person under 18 years of age and includes a young person;

“compulsory measures of care” has the meaning given in section 79(1);

“custodian” means any person, other than a parent or the reputed father, who-

(a) has the actual custody of a child; or

(b) is guardian of a child;

“Directors” means the persons for the time being acting in the capacity or performing the functions of head of the Division or Section responsible for children affairs in the Ministry or department responsible for children affairs.

“establishment” includes premises used in connection with the establishment;

“foster child” has the meaning given in section 28(2) and (3);

“foster parent” has the meaning given in section 28 (2);

“guardian” means a person appointed-

(a) as guardian of a child by a parent under Article 397 of the Civil Code; or

(b) as guardian of a child by the Court under Article 402 of the Civil Code; or

(c) as sub-guardian of a child by the Court under Article 420 or 422 of the Civil Code,

and includes-

(i) any person to whose care a child is committed under or by virtue of a court order; and

(ii) except in relation to Part IV (Foster Care), any person who, in the opinion of a court or Hearing concerned with a child, for the time being has the charge of or control over a child;

“Juvenile Centre” means an establishment in terms of section 100(1)(e);

“Juvenile Court” means a court sitting under the conditions specified in section 93(1);

“maintenance” has the meaning given in section 6;

“maintenance order” means an order under section 8(1);

“parent” –

(a) does include a foster parent; but

(b) in relation to a child who is illegitimate, includes the father of the child where he has recognised the child under Article 334 of the Civil Code or where paternal descent has been proved under Article 340 of the Civil Code;

“parental rights” and “parental rights and duties” include the rights, functions and duties of a parent as guardian of a child;

“place of safety” has the meaning given in section 80(2);

“protected child” has the meaning given in section 54;

“provisional adoption order” means an order in terms of section 44;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half-blood or by affinity) and includes a parent and, where the child is illegitimate, any person who would be a relative if the child were the legitimate child of his mother and father;

“reputed father” has the meaning given in section 12(2);

“school” has the meaning given in section 3(1) of the Education Act;

“single woman” includes a widow or married woman who is living apart from her husband;

“supervision requirement” means a requirement made by a Children’s Hearing under section 88(1)(b);

“take-home earnings” means gross earnings less tax on income or profits and contributions under the Social Security Act;



“Tribunal” means the Family Tribunal established under section 77;

Definition of “tribunal” ins by s 2(b)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

“young person” means a person of 14 years of age or older but under 18 years age.

[Note: The defined terms “Board” or “Children’s Board”, “Hearing” or “Children’s hearing” and “President’s child” were repealed by s 2(b) of Act 4 of 1998.]

### **Courts, tribunals to be guided by certain principles**

2A. (1) Whenever a court or tribunal determines any question with respect to the upbringing of a child, the child’s wellbeing shall be its primary consideration.

(2) A court or tribunal which determines such a question shall have regard to-

- (a) the general principle that a delay in determining the question is likely to prejudice the wellbeing of the child;
- (b) such wishes and feelings of the child as may be ascertained considering the child’s age and understanding;
- (c) the likely effect on the child of any change in the child’s circumstances;
- (d) the child’s age, gender, background and any characteristic of the child which the court or tribunal considers relevant;
- (e) any harm which the child has suffered or is at risk of suffering;
- (f) the capacity of each of the child’s parents, and any other person in relation to whom the court or tribunal considers the question to be relevant, of meeting the child’s needs;
- (g) the range of powers available to the court or tribunal in the proceedings in question.

Section 2A ins by s 2(a) of Act 7 of 2005 w.e.f. 1 August 2005

### **Duty to promote welfare of child and delegation of powers of the Director**

3. (1) In reaching any decision relating to a child, the Director shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood, and shall so far as practicable find out the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

S 3(1) am by s 2(c) of Act 4 of 1998 w.e.f. 22 June 1998; s 2(b)(i) of Act 7 of 2005 w.e.f. 1 August 2005

(2) If it appears to the Director that it is necessary, for the purpose of protecting members of the public, to exercise his powers in relation to a particular child in his care in a manner which may not be consistent with his duty under subsection (1), the Director may notwithstanding that duty, act in that

manner.

(2A) It shall be the duty of the Director to keep and maintain in the prescribed form a register, to be known as the Child Protection Register, of particulars of cases of offences committed against children that would be necessary to ensure the protection of such children.

S 3(2A) ins by s 2(b)(ii) of Act 7 of 2005 w.e.f. 1 August 2005

(3) The Director may delegate any of his powers under this Act, other than the power to delegate under this section to any public officer.

### **National Commission for Child Protection**

3A. (1) There shall be established a National Commission for Child Protection consisting of such number of members as may be appointed by the Minister from among persons who have distinguished themselves in social work relating to children.

(2) The functions of the National Commission for Child Protection shall be-

- (a) to advise the Minister on matters of policy relating to child protection;
- (b) to recommend policies and procedures for the review and coordination of activities of various bodies concerned with child protection;
- (c) to inquire into and report or advise on matters referred to it by the Minister.

(3) The Minister may prescribe the powers and duties of the Commission.

S 3A ins by s 2(c) of Act 7 of 2005 w.e.f. 1 August 2005

## **PART II. – MAINTENANCE ETC.**

### **Duty of Maintenance**

#### **Obligation to maintain**

4. A person under an obligation, by virtue of the Civil Code or otherwise, to maintain a child must ensure that the child is-

- (a) given adequate nutritious food;
- (b) adequately clothed;
- (c) provided with housing which protects him against bad weather and includes adequate sleeping facilities;
- (d) protected to the best of that person's ability against illness;
- (e) not neglected or exposed to danger, in the home or elsewhere, in a manner likely to

cause the child unnecessary suffering or injury to health; and

(f) if he is under 12 years of age, not regularly or for excessively long periods left in the charge of another child under 12 years of age.

### **Assistance by Director**

5. (1) Without prejudice to section 70 (Cruelty to children), if a person under an obligation, by virtue of the Civil Code or otherwise, to maintain a child is unable (through no fault of his own) to comply with section 4 but there are no grounds for care by the Director under section 25 or for compulsory care of the child in terms of section 79, the Director may provide assistance in cash or in kind to enable or assist in enabling that person to comply with section 4.

(2) The cost of assistance provided under subsection (1) shall be paid out of the Social Security Fund.

### **Enforcement of maintenance**

6. (1) The father and the mother of a child must each maintain the child in terms of section 4, regardless of -

(a) whether he or she has custody of the child; and

(b) whether he or she is resident in or outside Seychelles.

(2) If a parent -

(a) does not have custody of the child; or

(b) is not living with the family,

he must pay as maintenance for each child whom he is liable to maintain such sum as may be prescribed by the Minister.

(3) Without prejudice to section 70 (Cruelty to children), a parent -

(a) who fails to maintain his child in terms of section 4; or

(b) to whom subsection (2) applies and who fails to pay the prescribed maintenance; or

(c) who fails to comply with a maintenance order or an affiliation order,

is guilty of an offence and is liable to imprisonment for on conviction before the court, to imprisonment for two years and to a fine of R10,000;

S 6(3) am by s 2(d)(i) of Act 4 of 1998 w.e.f. 22 June 1998

Provided that if imprisonment of the parent would be against the best interest of the child, the court shall only impose a sentence of imprisonment if in the opinion of the court a fine alone would be

inadequate or inappropriate.

(4) Where a parent is imprisoned under subsection (3) all his earnings in prison, however small, shall be paid to the person who has care of the child whom he is liable to maintain.

(5) Without prejudice to the power conferred on the Attorney General by the Constitution in respect of the prosecution for criminal offences, the Director may conduct the prosecution for an offence under subsection (3).

S 6(5) ins by s 2(d)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Misuse of maintenance**

7. (1) A person who receives any money for the maintenance of a child under -

- (a) section 6(2);
- (b) a maintenance order;
- (c) an affiliation order; or
- (d) an attachment of earnings order,

must spend that money on the maintenance of the child and not otherwise.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for two years and to a fine of R.10,000.

S 7(2) am by s 2(e) of Act 4 of 1998 w.e.f. 22 June 1998

### **Maintenance orders**

#### **Maintenance orders**

8. (1) Notwithstanding any proceedings in respect of an offence under section 6(3), where a parent -

- (a) fails to maintain his child in terms of section 4; or
- (b) fails to pay maintenance in terms of section 6(2),

then -

- (i) the other parent of the child; or
- (ii) a custodian of the child; or
- (iii) the Director on behalf of a person described in paragraph (i) or (ii),

may apply to the Tribunal for an order for the payment by that defaulting parent of maintenance, including any arrears thereof, for the child.

S 8(1) am by s 2(f)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(2) ...

S 8(2) rep by s 2(f)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(3) An order under subsection (1) may provide for payment of the maintenance to –

- (a) the parent or custodian of the child;
- (b) the Director;
- (c) an officer of the court; or
- (d) any other person considered by the court to be suitable to receive and pay out that monthly sum,

and in the case of paragraphs (c) and (d) may provide for the maintenance then to be paid to the mother or custodian for the maintenance of the child in such manner and subject to such conditions as the court may direct.

S 8(3) am by s 2(f)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(3A) If on an application under subsection (1) it appears to the Tribunal that the child is or will be engaged in a course of education or training after becoming 18 years of age and that payments of maintenance should continue, then the Tribunal may vary the order by requiring the defaulting parent to continue to make payments for a specified period not extending beyond the 21st birthday of the child.

S 8(3A) ins by s 2(d) of Act 7 of 2005 w.e.f. 1 August 2005

(4) An order of the Tribunal for maintenance shall be deemed to be an order made by a court in terms of section 2 of the Maintenance Orders (Reciprocal Enforcement) Act.

S 8(4) ins by s 2(f)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

### **Affiliation orders**

#### **Meaning of “child”**

9. In this division (sections 9 to 14), “child” means an illegitimate child under 18 years of age.

#### **Application**

10. (1) A single woman who is pregnant, or who has given birth to an illegitimate child, may-

- (a) before the birth of the child; or

(b) at any time within five years after the birth of the child; or

(c) at any other time on proof that the man alleged to be the father of the child has within five years after the birth of the child paid money for the child's maintenance or otherwise supported the child; or

(d) at any time within five years after the return to Seychelles of the man alleged to be father of the child on proof that he ceased to reside in Seychelles within five years after the birth of the child,

subject to section 11, apply to the Supreme Court for a summons to be served on the man alleged by her to be the father of the child.

S 10(1) am by s 2(g) of Act 4 of 1998 w.e.f. 22 June 1998

(2) An application under this section may be made by a woman who was a single woman at the date of the birth of the child, even if she is no longer a single woman at the time of the application.

(3) An application under this section may also be made by-

(a) a custodian of the child; or

(b) the Director on behalf of a single woman referred to in subsection (1) or of a custodian of the child.

(4) The application shall be supported by an affidavit of the applicant.

### **Leave of Registrar**

11. (1) The leave of the Registrar of the Supreme Court must be obtained for an application under section 10(1), (2) or (3)(a).

(2) The Registrar may refuse leave under subsection (1) if he is not satisfied-

(a) that there is reasonable cause to believe that the man alleged to be the father of the child is the father of the child; and

(b) that the application is made in good faith and not to annoy, intimidate or exact money from that man.

(3) An appeal from a refusal of leave by the Registrar made to a Judge in chambers.

(4) A decision of a Judge under subsection (3) shall not be subject to appeal to the Court of Appeal.

S 11(4) ins by s 2(h) of Act 4 of 1998 w.e.f. 22 June 1998

## Affiliation orders

12. (1) All relevant evidence whether oral or documentary is admissible on the hearing of an application and Articles 334 to 340 and any other provision of the Civil Code setting out the manner in which natural filiation may be established or limiting the right of action in cases in which proof of paternal descent is allowed, do not apply with respect to proceedings under or governed by this division.

(2) If -

(a) the defendant admits the allegation that he is the father of the child; or

(b) the evidence of the mother is corroborated in some material particular by other evidence to the satisfaction of the court,

the court may make an affiliation order naming the defendant as the reputed father of the child and, where it makes an order, remit the case to the Tribunal for the purpose of making a determination with regard to the maintenance of the child.

S 12(2) am by s 2(i)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(3) In an affiliation order the court may also order the reputed father to pay any or all of-

(a) ...

S 12(3)(a) rep by s 2(i)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(b) the expenses incidental to the birth of the child;

(c) the funeral expenses of the child if the child has died before the making of the order;

(c) the costs of the application.

(4) ...

S 12(4) rep by s 2(i)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(5) ...

S 12(5) rep by s 2(i)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(6) If the application under section 10 is made before, or within two months after the birth of the child, maintenance determined by the Tribunal pursuant to subsection (2) may be made payable from the date of the birth.

S 12(6) am by s 2(i)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

(7) The Tribunal may, in place of maintenance order that a lump sum be paid into court to be spent on the maintenance of the child in such manner as the Tribunal may order.

S 12(7) rep and subs by s 2(i)(v) of Act 4 of 1998 w.e.f. 22 June 1998

(7) The Tribunal may direct that a lump sum paid under subsection (7) shall be invested or placed on deposit by the Director.

S 12(8) am by s 2(i)(vi) of Act 4 of 1998 w.e.f. 22 June 1998

(8) The court may, if the application is dismissed, order that the applicant pay to the person alleged to be the father the reasonable costs incurred by him in defending the proceedings.

### **Duration of order**

13. (1) Subject to this section, an affiliation order continues in force until the child -

(a) becomes 18 years of age; or

(b) dies,

whichever is the earlier, and then stops.

(2) If, on the application of the child's mother or custodian, it appears to the Tribunal that the child is or will be engaged in a course of education or training after becoming 18 years of age, and that payments under the order should continue, then the Tribunal may vary the order for maintenance of the child to order the reputed father to continue to make payments for a specified period, not extending beyond the 21st birthday of the child.

S 13(2) am by s 2(j) of Act 4 of 1998 w.e.f. 22 June 1998

(3) If a reputed father dies while an affiliation order is in force -

(a) the affiliation order is payable from and is a prior charge on his estate; and

(b) Article 205(3) of the Civil Code applies to the affiliation order as it applies to maintenance of a surviving spouse.

(4) Notwithstanding subsection (1), (2) or (3), money previously due under an affiliation order may be recovered after the order has stopped.

### **Saving**

14. Nothing in sections 9 to 13 amends or alters the law relating to the establishment of natural filiation as regards the father and an order of a court naming a defendant as the reputed father of a child does not establish the paternal descent of that child.

### **Enforcement of maintenance orders**

#### **Variation of order**

15. On the application of -

(a) either parent of the child; or



(b) any custodian of the child or other person entitled to payments under a maintenance order; or

(c) the Director; or

(d) the reputed father,

or of its own motion, the Tribunal may, after inquiring into the circumstances, vary a maintenance order.

S 15 am by s 2(k) of Act 4 of 1998 w.e.f. 22 June 1998

### **Appeal from Tribunal**

16. An appeal to the Supreme Court against a maintenance order by the Tribunal may be made by-

(a) either parent of the child; or

(b) any custodian of the child or other person entitled to payments under the order; or

(c) the Director; or

(d) the reputed father,

and the Tribunal shall inform every person referred to in paragraphs (a), (b), (c) and (d) who is before the Tribunal when the order is made of this right of appeal.

S 16 am by s 2(l) of Act 4 of 1998 w.e.f. 22 June 1998

### **Deduction of payments from salaries etc.**

17. (1) In a maintenance order the Tribunal may order any person who is liable to pay any money to or holds any money for a parent or reputed father who is liable under the maintenance order, to deduct the amount of maintenance or other money due under the order from money liable to be paid or held and to pay the amount or other money to the person specified in the order.

S 17(1) rep and subs by s (2(m)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(2) A person receiving an order in terms of subsection (1) is bound-

(a) to acknowledge receipt to the Director of that order;

(b) to make the deductions in accordance with that order out of any sums due by him to the parent giving the authority; and

(c) immediately to pay those sums to the person entitled in terms of the order in accordance with that order:

Provided that if that person is at any time unable to comply with paragraph (b) or (c) he must

inform the Director in writing, stating his reasons.

S 17(2) am by s 2(m)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Attachment of earnings orders**

18. A person entitled to receive payments under a maintenance order may apply for an attachment of earnings order under the Maintenance Orders (Attachment of Earnings) Act.

S 18 am by s 2(n) of Act 4 of 1998 w.e.f. 22 June 1998

### **Enforcement of order**

19. (1) Subject to this Part, where money due under a maintenance order is not paid, the Tribunal may, on an application by the person entitled to receive payment of maintenance-

(a) order the parent or reputed father against whom the order is made to work on project approved by the Tribunal and that any payment in respect of the work be made directly to the Director or such other person as the Tribunal may direct;

S 19(1)(a) rep and subs by s 2(o)(i)(C) of Act 4 of 1998 w.e.f. 22 June 1998

(b) order execution of the order.

S 19(1) am by s 2(o)(i)(A) and (B) of Act 4 of 1998 w.e.f. 22 June 1998

(2) The Tribunal shall not make an order on a person under subsection (1)(a) unless a summons to appear and be examined on oath has been served on that person.

S 19(2) am by s 2(o)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(3) Where an application is made under subsection (1) and it appears to the Tribunal at the time that an amount equal to not less than two of the payments of maintenance required by the order was due and unpaid and it is appropriate to do so, the Tribunal may instead of making an order under subsection (1), order that the amount due and owing at the time and any other amount due under the maintenance order be deducted by the employer, bank or other person from the salary, wages or other moneys due to the person in respect of whom the application is made and be paid to the person entitled in terms of the order.

S 19(3) rep and subs by s 2(o)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(4) Where an attachment of earnings order is made under subsection (2) or under section 3(1) of the Maintenance Orders (Attachment of Earnings) Act, no order under subsection (1)(a) shall be issued in consequence of any proceedings for the enforcement of the related maintenance order which were begun before the making of the attachment of earnings order.

S 19(4) am by s 2(o)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

(5) Notwithstanding any law to the contrary, no order committing a person to civil imprisonment shall be made in respect of money not paid under a maintenance order or an affiliation

order.

(6) Unless the Tribunal otherwise orders, all costs incurred in attempting to enforce a maintenance order are deemed to be due under the order.

S 19(6) am by s 2(o)(v) of Act 4 of 1998 w.e.f. 22 June 1998

(7) Section 17(2) shall apply to an employer, bank or other person who receives an order under subsection (3).

S 19(7) ins by s 2(o)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

### **Notice of change of address**

20. (1) A person against or in respect of whom a maintenance order has been made shall inform the person entitled to receive moneys under the order of a change of address of the first-mentioned person and, in the case of an order under section 17(1) or section 19(3) of any other change which would adversely affect the giving of effect of the order, as soon as practicable after the change.

S 20(1) rep and subs by s 2(p)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(2) A person who without reasonable excuse fails to give notice under subsection (1) is guilty of an offence and is liable to a fine of R.5000.

S 20(2) am by s 2(p)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

### **General**

#### **Judicial appointment of guardian or sub-guardian**

21. All applications for the judicial appointment of-

(a) a guardian under Article 402 of the Civil Code; or

(b) a sub-guardian under Article 420 or 422 of the Civil Code,

shall be notified to the Director by the Registrar of the Supreme Court.

#### **No publication of proceedings**

22. (1) No person shall publish a report of proceedings-

(a) for or in respect of an affiliation order; or

(b) under Article 340 (Proof of paternal descent) or Article 341 (Proof of maternal descent) of the Civil Code.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to a fine of R.5,000.

(3) A court may order that proceedings to which this section applies shall be heard in private.

**Applications in bad faith etc.**

23. A person who seeks leave to apply or applies to a court under section 10 or under Article 340 (Proof of paternal descent) or Article 341 (Proof of maternal descent) of the Civil Code-

(a) vexatiously; or

(b) in bad faith; or

(c) to annoy, intimidate or extort money from the man alleged to be the father of the child,

is guilty of an offence and is liable to imprisonment for two years and to a fine of R.5000.

**President guardian of abandoned child**

23A. (1) Subject to section 30, where a child-

(a) is orphaned and has no guardian; or

(b) has been and remains abandoned by the child's parents, the Tribunal may, on the application of the Director, make an order appointing the President, on behalf of the Republic, to be the guardian of the child.

(2) For the purposes of this section, a child is orphaned if both of the child's parents are deceased or in the case of an illegitimate child whose paternal descent has not been proved, if the child's mother is deceased.

(3) The Director when making an application under subsection (1) shall submit a report to the Tribunal on the social background of the child.

(4) Where the Tribunal has made an order under subsection (1), it may, in addition, make an order for the payment of maintenance for the child by the parents of the child to the person specified in the order and for the payment to be deducted as provided in section 17(1).

S 23A ins by s 2(q) of Act 4 of 1998 w.e.f. 22 June 1998

**PART III. – VOLUNTARY CARE AND ASSUMPTION OF PARENTAL RIGHTS**

**Voluntary supervision**

24. (1) Where a parent having custody of, or a custodian of, a child is-

(a) unable to provide proper care for the child; or

(b) the child is beyond his control and he so requests,

the Director may exercise supervision over the child while the child resides in his home.

(2) A child shall comply with directions of the Director in the course of supervision under this section.

**Care by Director necessary**

25. (1) Where it appears to the Director with respect to a child -

(a) that he has neither parent nor guardian;

(b) that he has been and remains abandoned by his parents or guardian;

(c) that he is lost;

(d) that his parents or guardian are, for the time being or permanently, prevented by reason of mental or bodily disease or infirmity or other incapacity or any other circumstances from providing for his proper care, accommodation, maintenance, welfare and upbringing;

S 25(1)(d) am by s 2(r)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(e) if he is a foster child, in terms of section 29(5) or 30(2), the Director is not satisfied with his care and maintenance;

(f) if he has been placed for adoption by the Director, that section 53 applies; or

(g) if he is a protected child in terms of Part V, that the Supreme Court has made an order under section 46,

S 25(1)(g) am by s 2(r)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

and that (except where paragraph (g) applies) the intervention of the Director under this section is necessary in the interests of the welfare of the child, the Director shall take that child into its care.

(2) Where the Director has taken a child into its care under this section -

(a) notwithstanding Article 450(1) of the Civil Code, the Director has the care of the person of the child: but the Director does not represent him in legal acts or administer his property; and

(b) it is the duty of the Director to keep the child in his care so long as required for the welfare of the child.

(3) If, at the time when a child is taken into care by the Director under this section, the whereabouts of any parent or guardian of his is unknown, the Director shall take all reasonable steps to discover it.

(4) Nothing in this section authorises the Director where it is not against the welfare of the child

to keep a child in his care under this section if any parent or guardian wishes to take over the care of the child, and the Director shall, in all cases where it appears to him consistent with the welfare of the child, endeavour to secure that the care of the child is taken over either-

(a) by a parent or guardian of his; or

(b) by a relative or friend of his.

S 25(4) am by s 2(r)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Assumption of parental rights by the Director**

26. (1) Subject to this Act, if it appears to the Director in relation to a child who is in his care under section 25 that -

(a) his parents are dead and he has no guardian; or

(b) a parent or guardian of his -

(i) has abandoned him; or

(ii) suffers from some permanent disability rendering the parent or guardian incapable of caring for the child; or

(iii) while not coming within subparagraph (ii), suffers from a mental disorder which renders the parent or guardian unfit to have the care of the child; or

(iv) is of such habits or mode of life as to be unfit to have the care of the child; or

(iv) has so consistently failed without reasonable cause to discharge the obligations of a parent or guardian, as the case may be, as to be unfit to have the care of the child; or

(c) a decision under this section on the ground of paragraph (b) is in force in relation to one parent or guardian of the child who is, or is likely to become, a member of the household comprising the child and his other parent or guardian; or

(d) throughout the three years preceding the decision under this section the child has been in the care of the care of the Director under section 25;

and if no other person is willing to become guardian of that child, the Director may decide to assume the parental rights and duties with respect to the child.

(2) Where the Director has made a decision in terms of subsection (1), he shall serve notice in writing of the decision on the person on whose account the decision was made unless-

(a) that person has consented in writing to the decision; or

(b) that person's whereabouts are unknown to the Director.

(3) The person on whose account a parental rights decision in terms of subsection (1) was made may, within one month of the decision, appeal against it to the Tribunal.

S 26(3) am by s 2(s) of Act 4 of 1998 w.e.f. 22 June 1998

### **Protection of children going aboard**

27. (1) Where the Director has reasonable ground for believing that a child who is a citizen of Seychelles is being or about to be taken out of Seychelles for an immoral purpose or for any other purpose which the Director believes to be against the best interest of the child, the Director may apply to the Supreme Court for an order preventing the child from being taken out of Seychelles.

(2) Subject to subsection (3), a person shall not take a child out of and a child shall not leave Seychelles in contravention of an order made by the Supreme Court under subsection (1).

(3) The prohibition contained in subsection (2) shall not apply where the Supreme Court has made a provisional adoption order under section 44 or an order of authority under section 60.

(4) A person or child who contravenes subsection (2) is guilty of an offence and liable-

(a) in the case of the person taking the child out of Seychelles, to a fine of R50,000 and to imprisonment for five years,

(b) in the case of a child who is leaving Seychelles, to a fine of R10,000 and to imprisonment for two years.

(5) An order under subsection (1) shall be sufficient authority for the Director General of Immigration or any other Immigration Officer, Police officer, the Captain or officer in charge of any vessel or aircraft or the person for the time being in charge of the airport or port to prevent the child named in the order from being taken out of or leaving Seychelles and the Director General of Immigration, Immigration Officer, police officer, Captain or officer in charge of a vessel or aircraft or person for the time being in charge of the port or airport shall not be liable to any suit or for any damage or claim for acting in good faith in pursuance of the order.

(6) For the purpose of subsection (1), "immoral purpose" includes for the purpose of an act which if done or omitted to be done in Seychelles would constitute an offence under Chapter XV of the Penal Code.

(7) Where in pursuance of an international scheme or agreement to which Seychelles is a party the Supreme Court makes an order in terms of subsection (1) in respect of a child who is not a citizen of Seychelles, this section shall apply to the child as it applies to a child who is a citizen of Seychelles.

S 27 rep and subs by s 2(t) of Act 4 of 1998 w.e.f. 22 June 1998

## **PART IV – FOSTER CARE**

### **Register of foster parents**

28. (1) The Director shall keep a Register of Foster Parents, including-

(a) foster parents of children in the care of the Director by virtue of an arrangement under section 30(1);

(b) subject to subsection (6), foster parents by virtue of a private arrangement; and

S 28(1)(b) am by s 2(u)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(c) persons who wish to become foster parents and in the opinion of the Director are suitable to care for and maintain a foster child.

(2) Subject to subsection (3) and (5), a foster parent is a person who, under an arrangement under section 30(1) or a private arrangement or agreement, undertakes the care and maintenance of a child of whom the person is not a parent for a continuous period of more than one month.

S 28(2) rep and subs by s 2(u)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(3) A child is not a foster child while he is in the care of any person -

(a) in an establishment provided under this Act; or

(b) in any other establishment used for the care of children; or

(c) in a school in which he is receiving full-time education; or

(d) in the National Youth Service; or

(e) in a hospital.

(4) No person shall be registered under subsection (1) unless -

(a) he has been interviewed; and

(b) the foster home has been inspected,

by or on behalf of the Director in accordance with regulations under section 107(f).

(5) A person who is a relative or guardian of a child shall not be treated as a foster parent of the child under subsection (2) unless -

(a) at the time when the arrangement or agreement for undertaking the care and maintenance of the child was made it was the intention of both the person who undertook the care and maintenance of the child and the person who gave the child to the first-mentioned person that the first-mentioned person would be the foster parent of



the child; or

(b) where there was no intention as provided under paragraph (a), the child has remained in the care and maintenance of the first-mentioned person for a continuous period of more than one year and during that period the first-mentioned person has acted as a foster parent of the child.

S 28(5) ins by s 2(u)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(6) A foster parent who is a relative or the guardian of a child shall not be required but is deemed to be registered with the Director under this section.

S 28(6) ins by s 2(u)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(7) Notwithstanding subsection (6), a foster parent who is a relative or the guardian of a child may be registered as a foster parent under subsection (1).

S 28(7) ins by s 2(u)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Care of foster children**

29. (1) The Director shall satisfy itself of the well-being of foster children whose care and maintenance is undertaken by foster parents actually registered under section 28(1).

(2) For the purpose of subsection (1) the Director shall-

(a) give to these foster parents such advice as may be needed on the care and maintenance of their foster children; and

(b) in accordance with regulations under section 107(g), supervise those foster parents and their foster children.

(3) The Director may in accordance with regulations under section 107(h) provide assistance in cash or in kind to a foster parent for the care and maintenance of a foster child.

(4) The cost of assistance provided under subsection (3) shall be paid out of the Social Security Fund.

(5) Where the Director is not satisfied with the care and maintenance of a foster child the Director may –

S 29(5) am by s 2(v)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(a) suspend or cancel the registration of the foster parents registered under section 28(1);

S 29(5)(a) am by s 2(v)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(b) (i) take the child into his care under section 25(1);

(ii) take the child to a place of safety under section 80(1).

### **Fostering of children in care**

30. (1) The Director shall wherever possible arrange foster homes for children in his care.

(2) The Director may stop an arrangement under subsection (1) and remove the foster child where it is not satisfied with the care and maintenance of the child, and shall then-

(a) take the child into his care under section 25(1); or

(b) take the child to a place of safety under section 80(1).

### **Prohibition on unregistered fostering**

31. (1) No person shall act as a foster parent unless he is-

(a) registered as a foster parent under section 28(1)(a) or (b); or

(b) deemed under section 28(6) or under subsection (2) to be so registered.

S 31(1)(b) rep and subs by s 2(w) of Act 4 of 1998 w.e.f. 22 June 1998

(2) For the purposes of this section, a person who at the commencement of this Act is a foster parent and has undertaken the care and maintenance of the foster child continuously from 1st January, 1981 or earlier is deemed to be registered as a foster parent under section 28(1):

Provided that that person may if he wishes actually register under section 28(1).

(3) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for six months and to a fine of R.500.

### **Restrictions on removal of foster child**

32. (1) Without prejudice to section 165 (Child stealing) of the Penal Code, where a foster parent has looked after a foster child for a period (whether continuous or not and whether before or after the commencement of this Act) amounting to five years or more, no person shall remove the child from the foster parent's custody except-

(a) with the consent of the foster parent; or

(b) with leave of the Director; or

(c) under authority conferred by or under any written law.

(2) A foster parent aggrieved by leave given by the Director under subsection (1)(b) may appeal against it to the Tribunal.

S 32(2) am by s 2(x)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(3) The prohibition in subsection (1) includes the foster child's natural parent, regardless of whether one or both natural parents is or are paying maintenance under Part II.

(4) A foster parent to whom subsection (1) applies may, with the consent of the Director, apply to the Tribunal to be appointed guardian of his foster child under Article 402 of the Civil Code and to have vested in him the parental rights and duties with respect to that child.

S 32(4) am by s 2(x)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(5) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for two years and to a fine of R10,000.

S 32(5) am by s 2(x)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

## **PART V. – ADOPTION**

### **Adoption Orders**

#### **Adoption orders**

33. (1) An adoption order-

(a) is an order vesting the parental rights and duties relating to a child in the adopters;  
and

(b) may be made on the application of the adopters by the Supreme Court.

(2) The order does not affect the parental rights and duties in relation to any period before the making of the order.

(3) The making of an adoption order operates to extinguish-

(a) any parental right or duty relating to the child which immediately before the making of the order was vested in a person (not being one of the adopters) who was-

(i) a parent of the child; or

(ii) a guardian of the child; and

(b) any duty owed to or by the child-

(i) to pay or provide maintenance in respect of any period occurring after the making of the order;

(ii) to make any payment arising out of parental rights and duties in respect of such period.

(4) Nothing in subsection (3) extinguishes any duty arising under a document which expressly provides that the duty is not to be extinguished by the making of an adoption order.

## **Making of adoption orders**

34. (1) An adoption order shall not be made if the Director reports under section 42 that the adoption would not be suitable.

(2) An adoption order shall not be made unless the child is residing in Seychelles.

(3) An adoption order shall not be made in relation to a child who is or has been married.

(4) An adoption order shall not be made in relation to a child of 14 years of age or older unless with the consent of that child: except that where the court is satisfied that that child is incapable of giving his consent to the making of the order, it may dispense with that consent.

(5) An adoption order may be made notwithstanding that the child is already an adopted child.

S 34(5) am by s 2(z) of Act 4 of 1998 w.e.f. 22 June 1998

(6) Where the Supreme Court makes an order of adoption, the Court may -

(a) where it is of the opinion that it is in the interest of the child to do so, require the adopters to allow the natural parents of the child to have access to the child on such conditions as the Court may specify;

(b) direct that a record of the names of the natural parents of the child, if known, be kept by the Director;

(c) make the order subject to other conditions if the Court thinks it is in the interest of the child to do so.

S 34(6) rep and subs by s 2(y)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(7) An adoption order shall contain a direction to the Chief Officer of the Civil Status in terms of section 64(2) (Adopted Children Register).

(8) Where a record pursuant to subsection (6) is kept by the Director -

(a) a person who has been the subject of an adoption order,

(b) a police officer, or

(c) any person making an inquiry into an offence by or in relation to a person who has been the subject of an adoption order,

may apply to the Supreme Court for an order requiring the Director to divulge the names of the natural parents of the person who has been the subject of an adoption order and the Supreme Court may grant the order subject to such conditions as the Supreme Court thinks fit.

S 34(8) ins by s 2(y)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Name of child**

35. (1) On application of the adopter, the Court may change the first name or names of the child.

(2) If the adopter is a married woman the Court may, with the consent of the husband, on making the adoption order decree that the child shall bear the surname of the husband and shall, if the husband-

(a) is dead; or

(b) cannot be found; or

(c) is absent from Seychelles; or

(d) is incapable of giving his consent,

dispense with the required consent and may make such decree as seems fit in the best interest of the child.

### **Child to live previously with adopters**

36. (1) Where-

(a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child; or

(b) the child was placed with the applicants by the Director,

an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.

(2) Where subsection (1) does not apply, an adoption order shall not be made unless the child is at least 12 months old and at all times during the preceding 12 months had his home with the applicants or one of them.

(3) Subject to section 42(4), notwithstanding that the periods of time specified in subsection (1) or (2) are not fully complied with, an adoption order may be made if-

(a) those periods of time are substantially complied with; and

(b) in the opinion of the Supreme Court it is in the best interest of the child to do so.

### **Adoption by married couple**

37. (1) Subject to this Part, an adoption order may be made on the application of a married couple where each is 21 years of age or older but an adoption order shall not otherwise be made on the application of more than one person.

(2) Except with the consent of the President, an adoption order shall not be made on the application of a married couple unless at least one of them is residing in Seychelles.

### **Adoption by one person**

38. (1) Subject to this Part, an adoption order may be made on the application of one person who is 21 years of age or older and –

S 38(1) am by s 2(aa) of Act 4 of 1998 w.e.f. 22 June 1998

(a) is not married; or

(b) is married and the Supreme Court is satisfied that –

(i) his spouse cannot be found; or

(ii) the spouses have separated and are living apart, and the separation is likely to be permanent; or

(iii) his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.

(2) Except with the consent of the President, an adoption order shall not be made on the application of one person unless he is resident in Seychelles.

(3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that –

(a) the other natural parent is dead or cannot be found; or

(b) there is some other reason justifying the exclusion of the other natural parent,

and where such an order is made the reason justifying the exclusion of the natural parent shall be recorded by the Supreme Court.

**39. ...**

S 39 rep by s 2(ab) of Act 4 of 1998 w.e.f. 22 June 1998

### **Parental agreement**

40. (1) An adoption order shall not be made unless in the case of each parent or guardian of the child the Supreme Court is satisfied that–

(a) with full understanding of what is involved, and in particular in the case of a parent, understanding–

(i) of the nature and effect of an adoption order, and

(ii) that it will permanently deprive him of his parental rights,

and he freely agrees unconditionally to the making of an adoption order (whether or not he knows the identity of the applicants); or

(b) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).

(2) The grounds on which the agreement of a parent or guardian to an adoption order may be dispensed with are that the parent or guardian-

(a) cannot be found or is incapable of giving agreement;

(b) is withholding his agreement unreasonably;

(c) has persistently failed without reasonable cause to discharge his parental duties in relation to the child;

(d) has abandoned or neglected the child;

(e) has persistently ill-treated the child; or

(f) has seriously ill-treated the child, subject to subsection (4).

(3) Agreement is ineffective for the purposes of subsection (1)(a) if given by the mother less than six weeks after the child's birth.

(4) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

(5) Where the agreement given by a person under subsection (1) is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his agreement is deemed to be unreasonably withheld in terms of subsection (2)(b).

### **Evidence of parental agreement**

41. (1) Agreement in terms of section 40(1)(b) must either-

(a) be given in court by the parent or guardian; or

(b) be given in English, French or Creole in the form specified in Schedule 1 and attested by a person prescribed in rules of court.

(2) A document in the form of Schedule 1, whether executed in or outside Seychelles, is-

(a) sufficient evidence without further proof of the signature of the person by whom it was executed; and

(b) if purporting to be attested in terms of subsection (1)(b), deemed to be so attested, and to be executed and attested on the date specified in it, unless the contrary is proved.

### **Notification to and report by the Director**

42. (1) An adoption order shall not be made in respect of a child unless the applicant has, at least three months before the date of the order, given notice to the Director of the intention to apply for the adoption order.

(2) On receipt of a notice under subsection (1) the Director shall investigate the matter and submit to the Supreme Court a report of their investigation, the social backgrounds of the applicant and the child and the suitability of the proposed adoption.

(3) Under subsection (2), the Director shall in particular investigate, so far as is practicable, the suitability of the applicant including-

- (a) his medical and mental history;
- (b) the stability of his marriage;
- (c) how the child would fit in with any other children living in his home; and
- (d) his ability to provide a home and to care for the child.

(4) In his report under subsection (2) the Director shall certify that he has had sufficient opportunities to see the child with the applicant, or, in the case of an application by a married couple, both applicants together, in the home environment.

(5) Subject to subsection (4), the Director may waive the period of three months notice in subsection (1) if in its opinion it is in the best interests of the child to do so.

### **Restrictions on making orders**

43. (1) The Supreme Court shall not determine an application for an adoption order in relation to a child where a previous application for an adoption order made in relation to that child by the same applicant was refused by the Court unless-

- (a) in refusing the previous application the Court directed that this subsection should not apply; or
- (b) it appears to the Court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

(2) The Court shall not make an adoption order in relation to a child unless it is satisfied that section 61 (Ban on certain payments) has not been contravened.

### **Provisional orders for adoption abroad**

44. (1) Where an applicant for an adoption order is not resident in Seychelles, if-



(a) the Director reports under section 42 that the adoption would be suitable; and

(b) the Supreme Court is satisfied that he intends to adopt the child under the law of or within the country in which he is resident,

the Court may make a provisional adoption order which-

(i) vests in the applicant the parental rights and duties relating to the child; and

(ii) authorises the child to be taken out of Seychelles for the purpose of such an adoption.

(2) The provisions of this Part relating to adoption orders (that is sections 33 to 49), except sections 33(1)(definition of adoption order), 36 (Child to live previously with adopters) 37(2) and 38(2)(residence of adopters) and 45 (Interim orders) apply in relation to provisional adoption orders as they apply in relation to adoption orders.

(3) References in sections 50 to 52 (Restrictions on removal of children) and 54 (Meaning of “protected child”) to an adoption order include references to an order under this section.

### **Interim orders**

45. (1) Where on an application for an adoption order sections 40(1)(Parental agreement) and 42(1)(Notification to Director) are complied with, the Supreme Court may postpone the determination of the application and make an interim order vesting the custody of the child in the applicants for a probationary period not exceeding two years on such terms for the maintenance of the child and otherwise as the Court thinks fit.

(2) Where the probationary period specified in an interim order under subsection (1) is less than two years, the Court may by a further order extend the period to a duration not exceeding two years in all.

(3) An interim order is not an adoption order within the meanings of this Part and the child continues to be a protected child within the meaning of section 54.

(4) A person shall not by virtue of having custody of a child under this section-

(a) be deemed to be the guardian of the child;

(b) subject to section 27, be entitled to effect or arrange for his emigration from Seychelles.

### **Care etc. of child on refusal of order**

46. (1) Where, on an application for an adoption order, the Supreme Court refuses to make the adoption order and it appears to the Supreme Court that there are exceptional circumstances making it -

(a) desirable that the child should be under the supervision of an independent person; or

(b) impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual,

Court may remit the case to the Tribunal with a direction that the Tribunal makes an order committing the child to the care of the Director.

S 46(1) am by s 2(ac)(i) and (ii) of Act 4 of 1998 w.e.f. 22 June 1998

(2) Where upon the remittance of a case under subsection (1) the Tribunal makes an order committing a child to the care of the Director, the Tribunal may, in addition, make a determination with regard to the maintenance of the child.

S 46(2) rep and subs by s 2(ac)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Privacy**

47. (1) All proceedings before the Supreme Court under this Part shall be heard and determined in private unless the Court otherwise directs.

(2) The identity of an applicant for an adoption order shall be kept confidential and shall not be revealed to a natural parent of the child.

(3) For the purposes of subsection (2) the Registrar of the Supreme Court shall assign a serial number to an applicant for an adoption order.

### **Appeals**

48. (a) An applicant for an adoption order; or

(b) A parent or guardian of the child,

who is aggrieved by the refusal to make or the making of an adoption order may appeal to the Court of Appeal.

### **Guardians ad litem and reporting officers**

49. (1) For the purposes of any application for an adoption order, rules of court shall provide for the appointment of-

(a) a person to act as guardian *ad litem* of the child on the hearing of the application, with the duty of safeguarding the interests of the child as prescribed by those rules of court; and

(b) a person to act as reporting officer for the purpose of witnessing agreements to adoption in terms of Schedule 1 and performing such other duties as those rules of court may prescribe.

(2) Where a child is placed for adoption by the Director, the Director or person employed by the Director shall not be appointed to act as guardian ad litem or reporting officer for the purpose of the

application.

S 49(2) rep and subs by s 2(ad)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(3) Notwithstanding any other duties prescribed by rules of court, a guardian ad litem shall-

(a) interview the applicants, the natural parents or guardians of the child and the child himself (if over seven years of age); and

(b) submit a written report to the Supreme Court on the proposed adoption, including a record of the interviews specified in paragraph (a).

(4) Rules of court may provide for the reporting officer to be appointed before the application is made.

(5) The Supreme Court may, when considering an application for adoption, appoint the same person to act both as guardian ad litem and reporting officer.

### **Restrictions on removal of children**

#### **Restrictions on removal where adoption agreed**

50. (1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption (whether or not he knows the identity of the applicant), the parent or guardian shall not, against the will of the person with whom the child has his home, remove the child from the custody of that person except with the leave of the Supreme Court.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for one year and to a fine of R10,000.

S 50(2) am by s 2(ae) of Act 4 of 1998 w.e.f. 22 June 1998

#### **Restrictions on removal where applicant has provided home for five years**

51. (1) While an application for an adoption order by the person with whom the child concerned has had his home for the five years preceding the application is pending, no person shall, against the will of the applicant, remove the child from his custody except-

(a) with the leave of the Supreme Court; or

(b) under authority of any written law; or

(c) on the arrest of the child.

(2) Without prejudice to subsection (1), where a prospective adopter gives notice to the Director under section 42 that he intends to apply for an adoption order in respect of a child who for the preceding five years has had his home with the prospective adopter, no person shall, within three months from the receipt of the notice by the Director and against the will of the prospective adopter, remove the child from the custody of the prospective adopter except -

(a) with the leave of the Supreme Court; or

(b) under authority of any written law; or

(c) on the arrest of the child.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable to imprisonment for one year and to a fine of R10,000.

S 51(3) am by s 2(ae) of Act 4 of 1998 w.e.f. 22 June 1998

### **Return of child taken away**

52. (1) The Supreme Court may, on the application of a person from whose custody a child has been removed in breach of section 50 or 51, order the person who has so removed the child to return the child to the applicant.

(2) The Supreme Court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from his custody in breach of section 50 or 51, by order direct that other person not to remove the child in breach of section 50 or 51.

### **Return of child placed by Director**

53. (1) Where a child has been placed for adoption with a person by the Director and the Director is not satisfied -

(a) with the care and maintenance of the child; or

(b) that that adoption is likely to be satisfactory,

then subject to subsection (2), he may remove the child and take the child into his care under section 25(1)(Care by Director necessary).

(2) If an application for an adoption order in respect of a child has been made, the Director shall not remove that child except with the leave of the Supreme Court.

## **Protected children**

### **Meaning of protected child**

54. (1) Where a person gives notice to the Director under section 42 of his intention to apply for an adoption order in respect of a child, that child is for the purposes of this Part a protected child while he has his home with that person.

(2) A protected child ceases to be a protected child when-

(a) the application for an adoption order lapses or is withdrawn;

(b) the application for an adoption order is granted or otherwise determined;

(c) an order is made appointing a guardian of the child; or

(d) the child becomes 18 years of age.

### **Director to ensure well-being of protected children**

55. (1) The Director shall ensure that every protected child is visited from time to time by an officer of the Ministry or department responsible for children affairs, who shall satisfy himself as to the well-being of the child and give such advice as to his care and maintenance as may appear to be needed.

(2) An officer of the Ministry or department responsible for children affairs authorised to visit protected children may, after producing, if asked to do so, a document showing his authority, inspect any place in which a protected child is to be or is being kept.

### **Removal of protected child to place of safety**

56. (1) If a protected child is being kept or is about to be received -

(a) by a person who is unfit to have his care; or

(b) in a place or environment detrimental or likely to be detrimental to him,

the Director may -

(i) receive the child into his care under section 25(1) (Care by Director necessary); or

(ii) take the child to a place of safety under section 80(1).

(2) Where a child is removed under this section, the Director shall, if practicable, inform a parent or guardian of the child, or any person who act as his guardian.

### **Information to be given to Director**

57. (1) Where a person who has a protected child in his care and possession changes his permanent address he shall -

(a) not less than two weeks before that change; or

(b) if the change is made in an emergency, not later than one week after the change,

give notice to the Director specifying the new address.

(2) If a protected child dies, the person in whose care and possession the child was at his death shall within 48 hours after the death of the child give notice of the child's death to the Director.

S 57(2) am by s 2(af) of Act 4 of 1998 w.e.f. 22 June 1998

## **Offences**

58. A person is guilty of an offence if-

(a) being required under section 57 to give any notice or information he -

(i) fails to give the notice within the specified time; or

(ii) fails to give the information within a reasonable time; or

(iii) knowingly makes or causes or procures another person to make any false or misleading statement in the notice or information;

(b) he refuses to allow the visiting of a protected child by a duly authorised officer of the Ministry or department responsible for children affairs or the inspection of any place under section 55(2); or

(c) he refuses to comply with an order under section 56 for the removal of any child or obstructs any person in the execution of such an order,

and is liable to imprisonment for one year and to a fine of R10,000.

S 58 am by s 2(ag) of Act 4 of 1998 w.e.f. 22 June 1998

## **Refusal of visit etc. to protected child**

59. For the purposes of section 76 (Warrant to search for or remove a child), any refusal to allow the visiting of a protected child or the inspection of any place by a person authorised to do so under section 55 shall be treated as giving reasonable cause for suspicion in terms of section 76(1)(a) or (b).

## **General**

### **Restriction on removal of children for adoption outside Seychelles**

60. (1) A person shall not take or send a child who is a citizen of Seychelles out of Seychelles with a view to the adoption of the child by a person who is not a parent, guardian or relative of the child except under the authority of the provisional adoption order or other order of the Supreme Court.

S 60(1) rep and subs by s 2(ah)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(1A) A person who applies to the Supreme Court for an order, other than an order under section 44 for a provisional adoption order for authority to take a child who is a citizen of Seychelles out of Seychelles for the purposes of subsection (1), shall at the time of making the application serve a copy of the application on the Director and the Supreme Court shall give the Director an opportunity to be heard before making its determination on the application.

S 60(1A) ins by s 2(ah)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(2) A person who -

(a) contravenes subsection (1) or subsection (1A) with regard to the service of the application on the Director;

S 60(2)(a) am by s 2(ah)(iii)(A) of Act 4 of 1998 w.e.f. 22 June 1998

(b) makes or takes part in any arrangements for transferring the care and possession of a child to a person with a view to subsection (1) being contravened,

is guilty of an offence and is liable to imprisonment for three years and to a fine of R30,000.

S 60(2)(b) am by s 2(ah)(iii)(B) of Act 4 of 1998 w.e.f. 22 June 1998

(3) A person is deemed to take part in arrangements referred to in subsection (2)(b) if -

(a) he assists the placing of the child in the care and possession of the person; or

(b) he initiates or takes in any negotiations of which the purpose or effect is the conclusion of any agreement for such arrangements, or if he causes another person to do so.

### **Ban on certain payments**

61. (1) Subject to this section, no person shall make or give to any other person a payment or reward for or in consideration of -

(a) the adoption by that other person of a child;

(b) the grant by that other person of any agreement required in connection with the adoption of a child;

(c) the transfer by that other person of the care and possession of a child with a view to the adoption of the child; or

(d) the making by that other person of any arrangements for the adoption of the child.

(2) A person who -

(a) contravenes or agrees or offers to contravene subsection (1); or

(b) receives, or agrees to receive, or attempts to obtain, a payment or reward which is or would be made in contravention of subsection (1),

is guilty of an offence and is liable to imprisonment for three years and to a fine of R30,000.

S 61(2) am by s 2(ai) of Act 4 of 1998 w.e.f. 22 June 1998

(3) The court may order any child in respect of whom an offence is committed under this section to be removed to a place of safety under section 80 until -

(a) he can be restored to his parents or guardian; or

(b) other arrangements can be made for him.

(4) This section does not apply to-

(a) a payment made to the Director by-

(i) a parent or guardian of a child; or

(ii) a person who adopts or proposes to adopt a child,

being a payment in respect of expenses reasonably incurred by the Director in connection with the adoption of the child;

(b) a payment or reward authorised by the Supreme Court;

(c) a payment made by the Director to a person who has applied or proposes to apply to the Supreme Court for an adoption order, being a payment of or towards legal or medical expenses incurred or to be incurred by that person in connection with the application; or

(d) a payment made to a legal practitioner for or in connection with an adoption order.

### **Ban on advertisements**

62. (1) No person shall publish an advertisement indicating -

(a) that the parent or guardian of a child wishes to cause the child to be adopted;

(b) that a person wishes to adopt a child; or

(c) that a person other than the Director is willing to make arrangements for the adoption of a child.

(2) A person who -

(a) causes to be published; or

(b) knowingly publishes,

an advertisement in contravention of subsection (1) is guilty of an offence and liable to a fine of R10,000.

S 62(2) am by s 2(aj) of Act 4 of 1998 w.e.f. 22 June 1998



## **Revocation of adoptions on legitimation**

63. Where the natural parents of an illegitimate child, one of whom has adopted him in Seychelles, have subsequently married each other, the Supreme Court may, on the application of any of the parties concerned, revoke the adoption order.

## **Registration of Adoption Orders**

### **Adopted Children Register**

64. (1) The Chief Officer of the Civil Status shall continue to maintain a register, called the Adopted Children Register, in which shall be made entries directed to be made under section 34(7) or by or under this section, but no other entries.

(2) Every adoption order made by the Supreme Court shall contain a direction to the Chief Officer of the Civil Status to make the prescribed entry in the Adopted Children Register.

(3) A certified copy of the Adopted Children Register, if purporting to be sealed or stamped with the seal of the Central Civil Status Office, is, without any further or other proof of the entry,

(a) evidence of the adoption to which it relates, and

(b) where the entry contains a record of the date or country of birth of the adopted person, evidence of that date or country,

in all respects as if the copy was a certified copy of an entry in the Register of Births.

(4) The Supreme Court may on the application of the adopter or of the adopted person, amend an adoption order by the correction of any errors in its particulars.

## **Status of Adopted Children**

### **Meaning of adoption order**

65. (1) In sections 65 to 69, “adoption order” means -

(a) an adoption order within the meaning of section 33;

(b) an adoption order under the Adoption Act repealed by this Act; or

(c) any other adoption recognised by the law of Seychelles,

and cognate expressions are construed accordingly.

S 65(1) am by s 2(ak) of Act 4 of 1998 w.e.f. 22 June 1998

(2) The definition of adoption order includes, where the context admits, an adoption order which took effect before the commencement of this Act.

## **Status conferred by adoption**

66. (1) A child who is the subject of an adoption order is treated in law -

(a) where the adopters are a married couple, as if he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted); or

(b) in any other case, as if he had been born as a legitimate child of the adopter (but not as a child of any actual marriage of the adopter);

and in every case as if he were not the child of any person other than the adopters or adopter.

(2) Without prejudice to the generality of subsection (1), an adoption order has the following particular effects -

(a) in relation to the child who is subject to it -

(i) he ceases to belong to his natural family except as regards -

(a) the prohibitions to marriage in sections 43 (between relatives in direct line), 44 (collateral line) and 45 (uncle and niece etc.) of the Civil Status Act; and

(b) the crime of incest under section 155 or 156 of the Penal Code;

(ii) he stands in all respects to the adopter exclusively in the position of a child born to the adopter in lawful wedlock;

(iii) where the adopters are a married couple, he stands to them respectively in the same relation as to a lawful father and mother respectively;

(iv) he is deemed to be related to any other person being the child or adopted child of the adopter or, where the adopters are a married couple, of either of them -

(a) where he or she was adopted by a married couple and that other person is the child or adopted child of both of them, as brother or sister of the whole blood; or

(b) in any other case, as brother or sister of the half blood; and

(v) subject to section 35 (Name of child), he acquires the surname of the adopter; and

(b) in relation to the adopters -

(i) where two spouses are the adopters, they stand in all respects to each other and to the child in the same relation as they would stand if they were the

lawful father and mother of the adopted person;

(ii) Where -

(a) there is only one adopter; or

(b) two spouses are the adopters and one dies,

the adopter or the surviving adopter, as the case may be, becomes guardian of the child to exercise guardianship on the same conditions as for the surviving father or mother of a legitimate child; and

(iii) where two spouses are the adopters and they become divorced or judicially separated, the court decreeing the divorce or separation has the same jurisdiction to make orders for the custody and maintenance of, and the right of access to, the child as it has to make those orders with regard to children of the marriage.

(3) Where an illegitimate child has been adopted by one of his natural parents as sole adoptive parent and the adopter thereafter marries the other natural parent, subsection (1) does not affect any Act, statutory instrument or rule of law whereby, by virtue of the marriage, the child is rendered the legitimate child of both natural parents.

(4) This section has effect -

(a) in the case of an adoption before date of commencement of Act, from that date; and

(b) in the case of any other adoption, from the date of the adoption.

(5) Subject to section 65 and sections 67 to 69, this section -

(a) applies for the construction of Acts, statutory instruments or documents passed or made before or after the commencement of this Act, so far as the context admits;

(b) does not affect things done or events occurring before the adoption or, where the adoption took place before date of commencement of Act, before that date.

(6) This section has effect subject to sections 68 (Exceptions in status) and 69 (Effect on maintenance etc. orders).

## **Citizenship**

67. (1) Where an adoption order is made in relation to a child who is not a citizen of Seychelles but the adopter or, in the case of a joint adoption one of the adopters, is a citizen of Seychelles, the child is a citizen of Seychelles as from the date of the adoption.

S 67(1) am by s 2(al)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(2) Without prejudice to subsection (1), section 66 (Status conferred by adoption) does not

affect the operation of –

S 67(2) am by s 2(al)(ii)(A) of Act 4 of 1998 w.e.f. 22 June 1998

(a) Chapter II of the Constitution of the Republic of Seychelles;

S 67(2)(a) am by s 2(al)(ii)(B) of Act 4 of 1998 w.e.f. 22 June 1998

(b) the Citizenship of Seychelles Act;

(c) the Immigration Decree;

(d) any statutory instrument having effect under a law specified in paragraph (a), (b) and (c);

(e) any other law for the time being in force which determines citizenship of Seychelles.

### **Exceptions in status**

68. Section 66 (Status conferred by adoption) does not affect -

(a) entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of the adoption;

(b) the existing law relating to adopted persons in respect of -

(i) the succession to a deceased person (whether testate or intestate); and

(ii) the disposal of property by virtue of any inter vivos deed.

### **Effect on maintenance etc. orders**

69. Where an adoption order is made in respect of a child who is illegitimate, -

(a) any maintenance order, affiliation order or attachment of earnings order in force with respect to the child; and

(b) any agreement by which the father has undertaken to make payments specifically for the benefit of the child,

Either -

(i) ceases to have effect, but without prejudice to the recovery by the natural mother of the arrears under the order or agreement due at the date of the adoption order; or

(ii) if the child is adopted by his mother who is a single woman, continues in force and does not cease to have effect unless the mother subsequently

marries.

## **PART VI – OFFENCES AGAINST CHILDREN**

### **Cruelty to children**

70. (1) Without prejudice to sections 162 (Desertion of children) or 163 (Neglecting to provide food etc. for children) of the Penal Code, a person who has the custody, charge or care of a child and who wilfully -

(a) assaults or ill-treats that child; or

(b) neglects, abandons or exposes that child,

in a manner likely to cause him unnecessary suffering, moral danger or injury to health (including injury to or loss of sight, hearing, limb or organ of the body an any mental derangement) is guilty of an offence.

(2) For the purposes of this section, a person to whom section 4 (Obligation to maintain) applies and who has the custody, charge or care of a child is deemed to have wilfully neglected or exposed him in a manner likely to cause him unnecessary suffering, moral danger or injury to his health if-

(a) he has failed to maintain that child in accordance with section 4; or

(b) being unable so to maintain that child, he has failed to notify the Director of that inability.

(3) For the purposes of this section, -

(a) where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of a foreign body in the throat or air passages of the child) while the child was in bed with another person of 16 years of age or older; and

(b) if that other person was under the influence of drink when he went to bed,

that other person is deemed to have wilfully neglected that child in a manner likely to cause injury to his health.

(4) A person may be convicted of an offence under this section notwithstanding -

(a) that actual suffering, moral danger or injury to health was prevented by the action of another person;

(b) the death of the child.

(5) Where a person is charged with the manslaughter of a child of whom he had the custody, charge or care and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under this section, he may be convicted of an offence under this section although he was not

charged with it.

(6) A person guilty of an offence under this section is liable to imprisonment for five years and to a fine of R50,000.

S 70(6) am by s 2(am) of Act 4 of 1998 w.e.f. 22 June 1998

(7) Nothing in this section affects the right of a parent, guardian, teacher or other person having the lawful control or charge of a child to administer proper punishment to him if that punishment does not contravene subsection (1).

### **Medical examination**

70A. (1) Where the Director has reasonable ground for believing that a child has been assaulted or ill-treated under section 70 or the Penal Code and a parent or the guardian of the child refuses to have the child examined medically in connection with the assault or ill-treatment, the Director may apply to the Supreme Court for an order authorising -

- (a) the Director to take the child to be medically examined, and
- (b) the medical examination.

(2) Where a child has been medically examined in connection with an assault or ill-treatment and it is necessary for the Director to obtain a medical report with regard to the assault or ill-treatment for the purpose of investigating any matter with regard to the welfare of the child, the Director may apply to the Supreme Court for an order requiring the medical practitioner who examined the child or medical authority which has the custody of the medical record of the examination of the child to make a medical report to the Director.

(3) Where the Supreme Court has made an order under this section a person who -

- (a) in the case of an order under subsection (1), prevents the Director from taking the child to be medically examined or in any way hinders the Director from giving effect to the order;
- (b) in the case of an order under subsection (2), fails or refuses to make a medical report to the Director,

is guilty of an offence and liable on conviction to imprisonment for two years and a fine of R10,000.

S 70A ins by s 2(an) of Act 4 of 1998 w.e.f. 22 June 1998

### **Children not to be used for begging**

71. (1) No person shall -

- (a) cause or procure a child; or

(b) if he has the custody, charge or care of a child, allow him,  
to be in any place for the purpose of -

- (i) begging; or
- (ii) winning sympathy for a person who is begging; or
- (iii) inducing gifts of money or other things,

even if there is a pretence of signing, playing, performing or offering anything for sale.

(2) Where a person is charged with contravening subsection (1)(b) and it is proved that the child was in a place for a purpose specified in subsection (1), and that the person allowed the child to be in that place, he is presumed to have allowed him to be in that place for that purpose unless the contrary is proved.

(3) If a person singing, playing, performing or offering anything for sale in a street or public place has with him a child who has been lent or hired out to him, that child is for the purpose of this section deemed to be in that street or place for the purpose of subsection (1)(iii).

(4) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for two years and to a fine of R2000.

S 71(4) am by s 2(ao) of Act 4 of 1998 w.e.f. 22 June 19

### **Children not to be given liquor**

72. (1) No person shall -

- (a) give to a child; or
- (b) allow a child in his custody, care or charge to drink,

any liquor in a quantity which might be detrimental to the child's health.

(2) A person does not contravene subsection (1) if the liquor is given to or drunk by the child-

- (a) on the direction of a medical practitioner; or
- (b) in case of illness, suspected illness or other urgent cause.

(3) In this section, "liquor" has the meaning given to it in regulation 2 of the Licences (Liquor) Regulations.

(4) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment of two years and to a fine of R20,000.

S 72(4) am by s 2(ap) of Act 4 of 1998 w.e.f. 22 June 1998

### **Children not to be given drugs**

73. (1) No person shall -

- (a) give to a child;
- (b) sell to a child;
- (c) allow a child to purchase; or
- (d) allow a child in his custody, care or charge to use or take,

any controlled drug.

(2) A person does not contravene subsection (1) if the controlled drug is given or sold to or used or taken by a child on the direction of a medical practitioner.

(3) In this section “controlled drug” has the meaning given in section 2 of the Misuse of Drugs Act.

(4) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for 15 years and to a fine of R200,000.

### **Children not to be given tobacco**

73A. (1) A person shall not -

- (a) give to a child; or
- (b) sell to a child, or
- (c) allow a child in his custody, care or charge to smoke,

any tobacco or product containing tobacco.

(2) A person who contravenes subsection (1) is guilty of an offence and liable to imprisonment for two years and to a fine of R20,000.

S 73A ins by s 2(aq) of Act 4 of 1998 w.e.f. 22 June 1998

### **Children not to be used for witchcraft**

74. (1) No person shall -

- (a) use a child; or
- (b) allow a child in his custody, care or charge to be used or to take part,



for or in connection with any act which is an offence under section 303 (Pretending to deal in witchcraft and connected offences) of the Penal Code.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for 10 years and to a fine of R100,000.

S 74(2) am by s 2(ar) of Act 4 of 1998 w.e.f. 22 June 1998

### **Children not to be used for offences**

75. (1) No person shall -

(a) cause or procure a child; or

(b) if he has the custody, charge or care of a child, allow him,

to be used for or take part in or in connection with any felony, misdemeanour or any other act which is an offence under any written law.

(2) In this section “felony” and “misdemeanour” have the meanings given in section 5 of the Penal Code.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for five years and to a fine of R50,000.

S 75(3) am by s 2(as) of Act 4 of 1998 w.e.f. 22 June 1998

### **Warrant to search for or remove child**

76. (1) If, on an application to a judicial officer by any person who, in the opinion of the judicial officer, is acting in the interests of a child, it appears to the judicial officer on information on oath that there is reasonable cause to suspect that the child appears to need compulsory measures of care in terms of section 79(1), the judicial officer may issue a warrant-

(a) authorising any police officer or other person named in the warrant to search for the child and, if it is found that he appears to need compulsory measures of care, to take him to and detain him in a place of safety; or

(b) authorising any police officer to remove him with or without search to a place of safety and detain him there.

(2) A judicial officer issuing a warrant under this section may by the same warrant cause a person accused of any offence in respect of the child to be apprehended and brought before a court, and proceedings to be taken against him according to law.

(3) A police officer or other person authorised by warrant under this section to search for or, with or without search, to remove any child may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove him from there.

(4) Every warrant issued under this section shall be addressed to and executed by a police officer or another person named in it, who may be accompanied by the person making the application if that person so desires, unless the judicial officer by whom the warrant is issued otherwise directs, and may also, if the judicial officer by whom the warrant is issued so directs, be accompanied by a medical practitioner.

(5) In an application, information or warrant under this section the child need not be named.

(6) In this section, “judicial officer” means a Judge, a Senior Magistrate, a Magistrate, a Justice of the Peace, the Registrar of the Supreme Court or an Assistant Registrar of the Supreme Court.

(7) Where a police officer or other person referred to in subsection (1)(a) has, pursuant to a warrant under that subsection, taken and detained a child, the police officer or other person shall immediately thereafter inform the Director of the name of the child and the address of the place where the child is being detained.

S 76(7) ins by s 2(at) of Act 4 of 1998 w.e.f. 22 June 1998

## **PART VII. – COMPULSORY CARE**

### **Family Tribunal**

77. (1) There shall be a Family Tribunal consisting of a Chairperson, two Vice-Chairpersons and five other members, as the President may appoint.

(2) The President shall appoint the Chairperson and Vice-Chairperson and Members of the Tribunal in consultation with the Chief Justice.

(3) The Chairperson and at least one of the Vice-Chairperson shall be legal practitioners of at least 3 years standing.

(4) The President shall publish the names of persons appointed as the Chairperson, Vice-Chairperson and members of the Tribunal in the *Gazette*.

(5) The Tribunal shall be under the administrative control of the Judiciary.

(6) The Chief Justice may make rules to regulate the practice and procedure of the Tribunal.

S 77 rep and subs by s 2(a) of Act 14 of 2016 w.e.f. 11 July 2016

### **Jurisdiction of the Family Tribunal**

78. (1) The Tribunal shall have the jurisdiction and functions conferred on it by this Act or any other written law and without prejudice to the generality of the foregoing the Tribunal shall -

(a) hear and determine matters relating to the care, custody, access or maintenance of a child under this Act and a written law specified in Schedule 3;

(b) hear and determine matters relating to children who may need compulsory

measures of care under this Act;

(c) hear and determine matters regarding consent to medical, dental or surgical treatment in respect of a child.

(2) When exercising its jurisdiction and functions under this Act -

(a) the Tribunal shall have as its paramount consideration the interest of the child who is the subject of the matter before the Tribunal;

(b) the Tribunal shall, where it is able to do so, take into consideration the view of the child who will be affected by its decision;

(c) the Tribunal shall be deemed to have all the functions of the Supreme Court.

(3) For the purposes of this section -

(a) a reference to the Supreme Court or Magistrates' Court in a written law specified in Schedule 3 in connection with the care, custody or maintenance of a child shall be deemed to be a reference to the Tribunal;

(b) a reference to the Registry of the Supreme Court in connection with the filing or issuing of a document relating to a matter referred to in subsection (1)(a), (b) or (c) shall be deemed to be a reference to the Secretary of the Tribunal.

(4) The jurisdiction and functions of the Tribunal shall be exercised by not less than three members sitting together and a decision of the Tribunal shall be by majority vote.

(5) A sitting of the Tribunal shall be presided by the Chairman or the Vice-Chairman who is a legal practitioner as specified in section 77(2) and there shall at each sitting be both a man and woman member of the Tribunal.

(5A) Notwithstanding any other written law, no fee shall be payable by any of the parties to any proceedings in a Tribunal under this Act or any other written law.

S 78(5A) ins by s 2(b)(i) of Act 14 of 2016 w.e.f. 11 July 2016

(6) The Chief Justice shall appoint a Secretary to the Tribunal who shall be responsible –

S 78(6) am by s 2(b)(ii) of Act 14 of 2016 w.e.f. 11 July 2016

(a) after consultation with the members of the Tribunal, for convening sittings of the Tribunal;

(b) for facilitating the mediation of any matter in dispute in accordance with subsection (9) prior to the commencement of proceedings before the Tribunal.

S 78(6)(b) ins by s 2(e)(i) of Act 7 of 2005 w.e.f. 1 August 2005

(c) for implementing the decisions of the Tribunal and issuing summonses and other notices on behalf of the Tribunal; and

S 78(6)(b) renumbered as s 78(6)(c) by s 2(e)(ii) of Act 7 of 2005 w.e.f. 1 August 2005

(d) for keeping the records of the Tribunal.

S 78(6)(c) renumbered as 78(6)(d) by s 2(e)(ii) of Act 7 of 2005 w.e.f. 1 August 2005

(7) A member of the Tribunal and its Secretary -

(a) shall not be liable for anything done by any one of them in good faith in performance of their functions under this Act;

(b) shall be deemed to be public officers for the purposes of the Penal Code.

(8) The Chief Justice shall provide the Tribunal with suitable accommodation and facilities for the purpose of performing its functions.

S 78(8) rep and subs by s 2(b)(iii) of Act 14 of 2016 w.e.f. 11 July 2016

(8A) The Tribunal shall hold its sittings in such place and at such times as directed by the Chief Justice by notice published in the *Gazette*.

S 78(8A) ins by s 2(b)(iii) of Act 14 of 2016 w.e.f. 11 July 2016

(9) Where the matter in respect of which the jurisdiction of the Tribunal is sought to be invoked, other than an application under the Family Violence (Protection of Victims) Act, 2000, is a matter in dispute between parties, the Secretary shall in the first instance request the parties to attend before a member of the Tribunal who consents to act as a mediator and such member shall endeavour to settle the dispute by mutual agreement without any influence being exerted by any outsider, and –

S 78(9) am by s 2(b)(iv) of Act 14 of 2016 w.e.f. 11 July 2016

(a) if the parties arrive at a settlement, the terms of such settlement shall be reduced to writing and the Tribunal shall be requested to make a decision accordingly; or

(b) if the parties fail to agree on a settlement, the Secretary shall submit the matter to the Tribunal with a certificate that a settlement could not be effected by mediation.

S 78 rep and subs by s 2(aw) of Act 4 of 1998 w.e.f. 22 June 1998; s 78(9) ins by s 2(e)(iii) of Act 7 of 2005 w.e.f. 1 August 2005;  
s 78 am by s 2(b) of Act 14 of 2016 w.e.f. 11 July 2016

## **Proceedings of the Tribunal**

78A. (1) Subject to subsection (3), the Tribunal may -

(a) summon any person to appear before it;

(b) require any person to produce any document which the Tribunal considers relevant;

(c) examine a witness or person appearing before it on oath.

(2) The proceedings of the Tribunal shall be held in private where the Tribunal is of the opinion that it is necessary in the interest of a child or for the protection of the privacy of the person concerned in the proceedings and for this purpose the Tribunal may exclude any person from the proceedings, other than persons directly concerned with the proceedings, the legal representatives of the persons, the Director or the Director's representative and a representative of the National Council for Children.

(3) The laws of Seychelles relating to witnesses and evidence shall be applicable to all witnesses or persons appearing before the Tribunal.

(4) The Tribunal shall before making a decision-

(a) afford all interested parties the opportunity to be heard;

(b) generally observe the rules of natural justice;

(c) consider any report submitted by the Director in respect of a child.

(5) ...

S 78A(5) rep by s 2(c) of Act 14 of 2016 w.e.f. 11 July 2016

(6) A decision of the Tribunal is enforceable as if it were a decision of the Supreme Court.

(7) A person who -

(a) without reasonable excuse, fails to attend the Tribunal when summoned or required by the Tribunal,

(b) without reasonable excuse, fails to produce a document when required to do so by the Tribunal,

(c) disrupts or interrupts, or misbehaves in the course of, the proceedings of the Tribunal,

(d) insults or otherwise threatens a member of the Tribunal in the performance of the member's functions,

(e) fails to comply with an order of the Tribunal preventing the person from having access to a child, or restraining the person from entering or remaining in any premises or part of any premises in the interest of the child,

is guilty of an offence and liable on conviction to imprisonment for three years and to a fine of R20,000.

(8) Without prejudice to subsection (6), where proceedings have been instituted in respect of a child and the Tribunal has reason to believe that the child or any other person who has been summoned to appear before the Tribunal is unlikely to obey the summons or is avoiding service, the Tribunal may

issue a warrant for the arrest of the child or other person in terms of the Criminal Procedure Code and a warrant of arrest so issued shall be deemed to be a warrant of arrest under the Criminal Procedure Code.

(9) Where a child has been arrested under a warrant under subsection (8), the Director shall be informed of the arrest and the child shall be detained and be brought before the Tribunal as soon as practicable thereafter.

S 78A ins by s 2(aw) of Act 4 of 1998 w.e.f. 22 June 1998

### **Appeal from Tribunal**

78B. (1) Any person aggrieved by a decision of the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.

S 78B(1) rep and subs by s 2(d) of Act 14 of 2016 w.e.f. 11 July 2016

(2) There shall be appeal to the Court of Appeal against the decision of the Supreme Court on question of law and fact or of law.

S 78B(2) rep and subs by s 2(d) of Act 14 of 2016 w.e.f. 11 July 2016

(3) The Chief Justice may make rules for the purposes of an appeal under this section.

S 78B ins by s 2(aw) of Act 4 of 1998 w.e.f. 22 June 1998

### **Children needing compulsory measures of care**

79. (1) A child may need compulsory measures of care within the meaning of this Act if -

- (a) without prejudice to Articles 375 and 376 of the Civil Code, he is beyond the control of his parent or guardian; or
- (b) he has fallen or is falling into bad associations or is exposed to moral danger; or
- (c) lack of parental care has caused or is likely to cause him unnecessary suffering or seriously to impair his health or development; or
- (d) any offence specified in Schedule 2 has been committed against or in respect of him or a child who is a member of the same household; or
- (e) the child is a member of the household of a person who has been convicted of an offence of sexual interference or another offence against morality in terms of the Penal Code and the Director has reasonable ground for believing that there is a grave risk that the child may fall victim to the person;

S 79(1)(e) rep and subs by s 2(ax) of Act 4 of 1998 w.e.f. 22 June 1998

(f) he has committed an offence; or

(g) if he is a foster child and in terms of section 29(5) or 30(2) the Director is not

satisfied with his care maintenance; or

(h) if he is a protected child to whom section 56(1) applies.

(2) Where any person has reasonable cause to believe that a child may need compulsory measures of care he may give to the Director such information about the child as he may have been able to discover.

### **Removal to place of safety**

80. (1) Where a child appears to need compulsory measures of care in terms of section 79(1), -

(a) a police officer; or

(b) the Director; or

(c) a person authorised by a judge or magistrate; or

(d) a person authorised by a warrant under section 76; or

(e) a person authorised by a warrant issued on an application by a Children's Hearing under section 84(3),

may take that child to a place of safety.

(2) A place of safety is -

(a) any establishment provided under section 100(1) or specified under section 103(1);  
or

(b) a police station; or

(c) any hospital, clinic or other suitable place the occupier of which is willing temporarily to receive a child.

(3) A child who is taken to a place of safety under subsection (1) or a child who has taken refuge in a place of safety shall not be detained at the place unless -

(a) the Tribunal has, by an order, authorised the detention, and

(b) the parent or guardian of the child or the Attorney-General has consented to the detention.

S 80(3) rep and subs by s 2(ay)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(3A) The Tribunal shall not make an order of detention of a child under subsection (3) pending the hearing of the issue of compulsory measures of care of the child for a period which exceeds seven days and the child shall not continue to be detained under this subsection -

(a) after the period specified by the Tribunal; or

(b) after the period of seven days, where the hearing of the issue of compulsory measure of care has started;

whichever is the shorter.

S 80(3A) ins by s 2(ay)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(3B) The Director shall ensure that children who are detained under this section are kept separate from children who are being detained under a compulsory measure of care.

S 80(3B) ins by s 2(ay)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(4) A person (including a parent or guardian) shall not remove a child who is detained pursuant to an order under subsection (3) in contravention of subsection (3A) or in any event without first notifying the Director.

S 80(4) rep and subs by s 2(ay)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(5) A person who contravenes subsection (3) is guilty of an offence and is liable to imprisonment for one year and to a fine of R10,000.

S 80(5) am by s 2(ay)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

### **Initial investigation by Director**

81. (1) Where the Director receives information, from any source, of a child who may need compulsory measures of care he shall make such initial investigation as he may think necessary.

S 81(1) am by s 2(az)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(2) If, after making an initial investigation under subsection (1), the Director decides that no further action is required, he shall, where he considers this to be the proper course, inform -

(a) the child and his parent or guardian; and

(b) the person who brought the case to its notice,

or any of those persons; and shall not thereafter take action under subsection (3) in relation to the same facts.

S 81(2) am by s 2(az)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(3) Where it appears to the Director that the child needs compulsory measures of care, he shall -

S 81(3) am by s 2(az)(ii)(A) of Act 4 of 1998 w.e.f. 22 June 1998

(a) refer the case for the consideration and determination of the Tribunal under sections 86 and 88; and



S 81(3)(a) am by s 2(az)(ii)(B) of Act 4 of 1998 w.e.f. 22 June 1998

(b) submit to the Tribunal a report on the child and his social background.

S 81(3)(b) am by s 2(az)(ii)(C) of Act 4 of 1998 w.e.f. 22 June 1998

### **Report by Director to Tribunal**

Am by s 2(bb) of Act 4 of 1998 w.e.f. 22 June 1998

82. Where the case of a child is referred to the Tribunal under section 80(3) or section 95 –

S 82 am by s 2(bc)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(a) the Secretary of the Tribunal shall inform the Director; and

(b) the Director shall submit to the Tribunal within seven days of being informed under paragraph (a), a report on the child and his social background.

S 82(b) am by s 2(bc)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

### **Procedure private**

83. (1) A Children's Hearing shall be conducted in private.

(2) Subject to the rules made under section 77(6), no person shall be present at a Children's Hearing other than –

S 83(2) am by s 2(e) of Act 14 of 2016 w.e.f. 11 July 2016

(a) a person whose presence is necessary for the proper consideration of the case which is being heard; or

(b) a person whose presence is permitted by the chairman.

(3) The Chairman shall take all reasonable steps to ensure that the number of persons present at a Children's Hearing at any one time is kept to a minimum.

84. ...

S 84 rep by s 2(bd) of Act 4 of 1998 w.e.f. 22 June 1998

85. ...

S 85 rep by s 2(bd) of Act 4 of 1998 w.e.f. 22 June 1998

86. ...

S 86 rep by s 2(bd) of Act 4 of 1998 w.e.f. 22 June 1998

## **Further background investigations**

87. (1) Where the Tribunal considers that further investigation in relation to a child or his social background is necessary to complete its consideration of his case it may –

S 87(1) am by s 2(be)(i)(A), (C), and (D) of Act 4 of 1998 w.e.f. 22 June 1998

(a) continue the case to a subsequent sitting, and

S 87(1)(a) am by s 2(be)(i)(B) of Act 4 of 1998 w.e.f. 22 June 1998

(b) require a child to attend or reside at a specified place for a specified period not exceeding 30 days.

(2) Where a child fails to comply with a requirement of subsection (1)(b), the Tribunal may issue a warrant of arrest as provided in section 78A(8) and with the consent of the parent or guardian of the child or the Attorney-General, may order the detention of the child at any of the places specified in section 80(2).

S 87(2) rep and subs by s 2(be)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

## **Powers of Tribunal**

88. (1) The Tribunal may -

(a) where it decide that no further action is required, discharge a referral; or

(b) where it decides that a child needs compulsory measures of care, make a supervision requirement requiring him -

(i) to submit to supervision by any person or body as the Tribunal thinks fit in accordance with such conditions as it may impose; or

S 88(1)(b)(i) am by s 2(bf)(i) (CA) of Act 4 of 1998 w.e.f. 22 June 1998

(ii) to reside in an establishment or with the person named in the requirement and to be subject to such conditions as it may impose; or

S 88(1)(b)(ii) am by s 2(bf)(i) (CB) of Act 4 of 1998 w.e.f. 22 June 1998

(c) where it consider that an application to have a child received into a mental hospital under the Mental Treatment Act should be made, make a report to that effect to a Commissioner of Lunacy under that Act; or

S 88(1)(c) am by s 2(bf)(i) (D) of Act 4 of 1998 w.e.f. 22 June 1998

(d) where it is of the opinion that it is necessary in the interest of a child to prevent a person from having access to the child, make an order restraining the person from entering or remaining in any premises or any part of any premises.

(1A) Where -

(i) it requires a child to submit to supervision by a person or body, require the parents or guardian of the child to assist the Director in ensuring that the child complies with the conditions of supervision and to that end require further that the parents or guardian enters into a bond in a reasonable amount as security for the behaviour of the child.

(ii) it requires a child under subsection (1)(b)(ii) to reside in an establishment or with a person, other than the parents or guardian of the child, require the parent of the child to pay maintenance for the child to the establishment or person; or

S 88(1A) ins by s 2(bf)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(2) Without prejudice to section 89, the Tribunal may, where it is satisfied that such a course is proper, postpone the operation of a supervision requirement but otherwise a supervision requirement shall have effect from the date it is made.

S 88(2) am by s 2(bf)(iii) of Act 4 of 1998 w.e.f. 22 June 1998

(3) The Director shall give effect to a supervision requirement.

(4) A supervision requirement shall be in such form as may be prescribed under section 107(1).

(5) A person who appeals to the Supreme Court under section 78B against a supervision requirement shall serve a copy of the notice of appeal on the Secretary of the Tribunal and, where the person appealing is not the Director, the Director.

S 88(5) ins by s 2(bf)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

### **Review of supervision requirement**

89. (1) No child shall continue to be subject to a supervision requirement for any time longer than is necessary in his best interests.

(2) A supervision requirement shall be reviewed by the Tribunal-

(a) at any time, where the Director so recommends;

(b) at any time, in the discretion of the Tribunal on its own initiative;

(c) after it has been in effect for six months, on the application of a child or his parent or guardian;

(d) within one year of the date on which it was made.

(3) On a review of a supervision requirement, the Tribunal may-

(a) continue that requirement; or

(b) vary that requirement by making another supervision requirement under section 88(1)(b) or under section 88(1)(d); or

S 89(3)(b) am by s 2(bg)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(c) end that requirement.

S 89 am by s 2(bg)(i) of Act 4 of 1998 w.e.f. 22 June 1998

### **Cessation on becoming 18**

90. A supervision requirement ceases to have effect in respect of a child when he becomes 18 years of age.

91. ...

S 91 rep by s 2(bh) of Act 4 of 1998 w.e.f. 22 June 1998

## **PART VIII. – JUVENILE COURTS**

### **Restriction on prosecution of children**

92. (1) No child shall be prosecuted for any offence except -

(a) the offence of murder or an offence for which the penalty is death; or

(b) on the instructions of the Attorney-General.

### **Juvenile Courts**

93. (1) A court when hearing charges against a child, unless the child is charged jointly with any other person who is not a child, -

(a) shall consist of Judge or Magistrate, as the case may be, and 2 persons, one of whom shall be a man and the other a woman, appointed by the President under subsection (1A); and

S 93(1)(a) rep and subs by s 2(bi)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(b) shall sit either -

(i) in chambers; or

(ii) on different days or at different times from those at which the ordinary sittings are held.

(1A) The President shall, for the purposes of subsection (1)(a), appoint not less than three and not more than six persons and shall publish the names of the persons appointed in the Gazette.

S 93(1A) ins by s 2(bi)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(2) A court sitting under the conditions specified in subsection (1) is called a Juvenile Court.

(3) (a) Where in the course of any proceedings in a Juvenile Court it appears to the Court that the person charged or to whom the proceedings relate is of 18 years of age or older; or

(b) Where in the course of any proceedings in any court other than a Juvenile Court it appears that the person charged or to whom the proceedings relate is under 18 years of age,

nothing in this section prevents the court, if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case.

(4) The Commissioner of Police shall make arrangements for preventing persons apparently under 18 years of age while-

(a) detained;

(b) being conveyed to or from court;

(c) waiting before or after their attendance in court,

from associating with an adult (not being a relative) charged with or convicted of any offence, other than an offence with which the person apparently under 18 years of age is jointly charged or convicted.

### **Restrictions on imprisonment etc.**

94. (1) Notwithstanding any other written law, no child under 14 years of age shall be sentenced to imprisonment.

S 94(1) am by s 2(bj)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way provided for under this Act.

(3) A court shall not order a child to be committed to a Juvenile Centre unless the Court is satisfied that, having regard to his character and previous conduct, the circumstances of the offence and any other relevant factor, it is expedient for his reform and the prevention of crime that he should undergo a period of training in a Juvenile Centre.

S 94(3) am by s 2(bj)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

## **Methods of dealing with children charged with offences**

95. (1) Where a child charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall consider how, under this or any other written law, the case should be dealt with, namely -

(a) by making an order for his absolute or conditional discharge;

(b) by referring him to the Tribunal under Part VII;

S 95(1)(b) am by s 2(bk)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(c) by making a probation order under the Probation of Offenders Act;

(d) by committing him to the care of a relative or other person;

(e) subject to section 94(3), by committing him to a Juvenile Centre provided under Part IX for training for a period not exceeding three years;

(f) by ordering him to pay a fine, damages or costs;

(g) by ordering his parent or guardian to pay a fine, damages or costs in terms of section 96(1) or (4);

(h) by ordering his parent or guardian to give security for his good behaviour in terms of section 96(3) or (4);

(i) subject to section 94(2), by sentencing him to imprisonment if he is a young person convicted of an offence punishable, in the case of an adult, with imprisonment;

(j) by dealing with the case in any other manner in which it may be legally dealt with:

Provided that nothing in this section authorises the court to deal with a case in a manner in which it could not deal with the case apart from this section.

(2) Where the court commits a child to the care of a relative or other person under subsection (1)(d), the court shall remit the case to the Family Tribunal for the purpose of making a determination with regard to maintenance for the child.

S 95(2) ins by s 2(bk)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

## **Power to order parent to pay fine etc.**

96. (1) Where -

(a) a child is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed; and

(b) the court considers that the case would be best met by imposing a fine, damages or

costs, whether with or without any other punishment,

subject to subsection (2) the court -

(i) may in any case; and

(ii) shall if the offender is a child under 14 years of age,

order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child.

(2) No order shall be made under subsection (1), -

(a) if the parent or guardian, as the case may be, cannot be found; or

(b) unless the court is satisfied that the parent or guardian, as the case may be, contributed to the commission of the offence by neglecting to exercise due care of the child.

(3) Where a child is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(4) Where a court thinks that a charge against a child is proved, the court may make an order on the parent or guardian under this section without proceeding to the conviction of the child.

(5) A court shall not make an order under this section against a parent or guardian without giving him an opportunity of being heard, unless having been required to attend, he has failed to do so.

(6) A sum -

(a) ordered to be paid by a parent or guardian under this section; or

(b) on forfeiture of security under subsection (3),

S 96(6)(b) am by s 2(bl)(i) of Act 4 of 1998 w.e.f. 22 June 1998

may be recovered from him by execution or imprisonment as if the order had been made on his conviction of the offence with which the child was charged.

(7) ...

S 96(7) rep by s 2(bl)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

**97. ...**

S 9 rep by s 2(bm) of Act 4 of 1998 w.e.f. 22 June 1998

## **Committal to Juvenile Centre**

98. (1) The order or judgment under which a child or young person is committed to a Juvenile Centre shall be delivered with the child to the person in charge of the Juvenile Centre and shall be a sufficient authority for his detention in the Centre in accordance with that order or judgment.

(2) A child while so detained and while being conveyed to and from the Juvenile Centre is deemed to be legal custody; and if he escapes he may be apprehended without warrant and brought back to the Juvenile Centre in which he was detained.

## **PART IX.-ESTABLISHMENTS**

### **Provisions by Government**

99. It is the duty of the Government -

- (a) to provide and maintain such residential and other establishments as may be required for the purposes of this Act; or
- (b) to arrange for the provision of such establishments by the Director.

### **Types of establishment**

100. (1) Establishments provided and maintained under this Act may include one or more of each of -

- (a) a day nursery for the daytime care of children not exceeding 4 years of age whose mothers are employed during the day;
- (b) a short-stay children's home for the initial or temporary care of children not exceeding 16 years of age (priority being given to younger children) taken into care by the Director under Part III (Voluntary Care etc.) or Part VII (Compulsory Care) or taken to a place of safety under section 80 (Removal to place of safety);
- (c) a children's home for the long-term care of children who are orphaned or abandoned, adopted by the President under section 39 or taken into care by the Director under Part III (Voluntary Care etc.) or Part VII (Compulsory Care); or
- (d) a Juvenile Centre for young persons as -
  - (i) a residential training establishment for young persons on remand or sentenced to be committed for training under section 95 (Method of dealing with children), or otherwise; and
  - (ii) an attendance centre;

S 100(1)(d)(ii) am by s 2(bn)(i) of Act 4 of 1998 w.(e.f. 22 June 1998

- (e) a residential re-orientation centre for young persons at risk;



S 100(1)(e) ins by s 2(bn)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(f) a Youth Residential Treatment Centre;

S 100(1)(f) ins by s 2(bn)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(g) a place approved by the Minister for the purpose of training or apprenticeship.

S 100(1)(g) ins by s 2(bn)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(2) In this section, “employed” means employed to work under a contract with an employer.

### **Keeping family links**

101. The Director and the person in charge of an establishment used for the residential care of children shall encourage and make available all reasonable facilities for the parents or guardian of a child resident in the establishment to keep in close touch with the child in order to preserve family links by -

(a) regular visits to the child by the parents or guardian; and

(b) at the discretion of the Director, home visits by the child at weekends or during holidays.

### **Person asked to leave establishment**

102. (1) Subject to visits under section 101(a), no person (including a parent, guardian or other relative of a child) shall remain at an establishment (whether or not the child is residing there) after he has been asked to leave by the person in charge of the establishment.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to imprisonment for six months and to a fine of R.1000.

### **Supervision of establishments**

103. (1) The Director shall supervise establishments (not being schools) specified by the Minister by notice published in the Gazette as having the care of children.

(2) In exercising supervision the Director shall -

(a) appoint a Supervision Committee to carry out this function; and

(b) cause each establishment to be inspected at intervals not exceeding three months.

(3) Without prejudice to any other power or provision, in an inspection under subsection (2)(b) the Director shall ensure that -

(a) the situation of the establishment is suitable for the care of children;

(b) the establishment is physically and structurally sound with adequate hygiene and in

a good state of repair;

(c) the establishment has sufficient staff, including an adequate proportion of staff trained in working with children;

(d) the children at the establishment are healthy and well fed and clothed; and

(e) if there are problems or complaints, the children concerned are seen individually.

### **Admission of children**

104. (1) A child shall only be admitted as a resident to an establishment specified under section 103(1) on the instructions of the Director.

S 104 rep and subs by s 2(bo) of Act 4 of 1998 w.e.f. 22 June 1998

### **Discharge of children**

105. (1) Except as provided in subsection (2A), no child who is resident in an establishment specified under section 103(1) shall be discharged unless –

S 105(1) am by s 2(bp)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(a) the Director has been notified not less than 48 hours beforehand of the intended discharge; and

(b) the Director has notified the person in charge of the establishment that he is satisfied that adequate provisions for the future welfare of the child have been made.

(2) When the person in charge of an establishment has received notification under subsection (1)(b) he has no right to keep the child to whom it refers in the establishments.

(2A) Where the Tribunal or the Supreme Court makes an order requiring that a child who is a resident of or being held at an establishment, other than a Juvenile Centre, specified in section 103(1), be discharged, the person in charge of the establishment shall comply with the order and shall immediately notify the Director.

S 105(2A) ins by s 2(bp)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(2B) A child who is detained at a Juvenile Centre shall not be discharged unless the child has completed the sentence the child is serving or has been pardoned by the President or pursuant to an order of the Juvenile Court, Supreme Court or the Court of Appeal.

S 105(2B) ins by s 2(bp)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

(3) Subject to subsections (1), (2A) and (2B), no person (including a parent or guardian of the child) shall remove from an establishment specified under section 103(1) without the written consent of the Director.

S 105(3) am by s 2(bp)(iii) of Act (4 of 1998 w.e.f. 22 June 1998

(4) A person who contravenes subsection (3) is guilty of an offence and is liable to imprisonment for one year and to a fine of R.10,000.

S 105(4) am by s 2(bp)(iv) of Act 4 of 1998 w.e.f. 22 June 1998

### **False information**

106. A parent or guardian who -

(a) with the intention of having a child admitted to an establishment specified under section 103(1); or

(b) in respect of any other matter falling within the scope of this Part,

makes a statement -

(i) wilfully, if he knows it to be false; or

(ii) recklessly, if it is false in a material particular

is guilty of an offence and is liable to imprisonment for one year and to a fine of R.10,000.

S 106 am by s 2(bq) of Act 4 of 1998 w.e.f. 22 June 1998

## **PART X - MISCELLANEOUS**

### **Regulations**

107. The Minister may make regulations for the better carrying out of the objects and purposes of this Act, including -

(a) prescribing any matter which is to be or may be prescribed under this Act;

(b) amending a Schedule;

(c) prescribing the form or content of documents under this Act;

(d) prescribing the persons to be served with, and the advertisement and publication of, documents under this Act;

(e) prescribing fees or charges -

(i) for applications, objections, appeals or certificates;

(ii) for or in connection with services given under this Act;

(f) specifying the matters to be taken into account by the Director when considering the suitability of foster parents or foster homes;

(g) prescribing how the Director is to supervise foster parents and foster children, including the occasions and frequency of visits by or on behalf of the Director to the foster home;

(h) prescribing the assistance which the Director may provide to a foster parent under section 29(3) and any contributions to be made by foster parents for that assistance;

(i) ...

S 107(i) rep by s 2(br)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(j) ...

S 107(j) rep by s 2(br)(i) of Act 4 of 1998 w.e.f. 22 June 1998

(k) ...

S 107(k) am by s 2(br)(ii) of Act 4 of 1998 w.e.f. 22 June 1998; rep by s 2(f) of Act 14 of 2016; w.e.f. 11 July 2016

(l) prescribing the form of a supervision requirement under section 88(4);

(m) the classification, treatment, employment, training and control of children-

(i) sentenced to imprisonment;

(ii) committed to a Juvenile Centre;

(n) the visiting of children in prison or Juvenile Centre by persons appointed in accordance with the regulations;

(o) the conduct of residential and other establishments and for securing the welfare of persons residing or accommodated in them, including-

(i) the construction of and the accommodation provided in those establishments, and their equipment, maintenance and management;

(ii) the classification, training, education and occupation of children in those establishments and the persons who may give it;

(iii) specifying the occasions on which corporal punishment may be given to children in those establishments and the persons who may give it;

(iv) specifying other lesser punishments for, or measures which may be used to control, children in those establishments.

## **Rules of court**

108. (1) The Chief Justice may make rules of court for the better carrying out of proceedings in court under this Act including -

- (a) prescribing the fees and costs payable in any proceedings before, or on commitment to prison by, a court;
- (b) providing generally for matters of practice and procedure and incidental matters arising;
- (c) providing for any matter which is to be prescribed by rules of court under this Act;
- (d) providing for the remission of fees and costs where the person liable to pay them has no means to do so;
- (e) restricting the persons who may attend Juvenile Courts;
- (f) restricting reports of proceedings of Juvenile Courts;
- (g) the detention of children on remand or waiting trial;
- (h) requirements for the attendance of parents;
- (i) providing for a declaration to be signed by a person on appointment by a court as guardian of an illegitimate child.

(2) Subject to any rules of court made under subsection (1), the forms to be used and the practice and procedure to be followed in proceedings in court under this Act shall be as near as practicable to those in ordinary civil or criminal cases, as the case may be, before the court.

### **Indemnity**

109. No action shall lie against -

- (a) the Government;
- (b) the Director;
- (c) a member or the Secretary of the Tribunal;

S 109(c) rep and subs by s 2(bs)(i) of Act 4 of 1998 w.e.f. 22 June 1998

- (d) a member of a Juvenile Court;
- (e) any other public officer,

for or in respect of any act done or purported to be done or ordered to be done in good faith under this Act, or in the case of a person specified in paragraph (b), (c) or (d), any words spoken or written at or for the purposes of the Tribunal or a sitting of a Juvenile Court, as the case may be.

S 109 am by s 2(bs)(ii) of Act 4 of 1998 w.e.f. 22 June 1998

## **SCHEDULE 1**

### **Section 41(1)**

Form of agreement of parent or guardian to adoption (CH001.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

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## **SCHEDULE 2**

### **Section 79(1)(d)**

#### **SPECIFIED OFFENCES AGAINST CHILDREN**

**(in relation to children needing compulsory measures of care)**

1. Any offence under Chapter XV (Offences against Morality) of the Penal Code.
2. Any offence under Part VI (Offences against Children) of this Act.
3. Any other offence involving bodily injury to a child.

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## **SCHEDULE 3**

### **Section 78**

Sch 3 ins by s 2(bt) of Act 4 of 1998 w.e.f. 22 June 1998

<b>Specified written law</b>	
Matrimonial Causes Act	Cap 124
Civil Code	Cap 33
Maintenance Orders (Attachment of Earnings) Act	Cap 118
Summary Jurisdiction (Wives and Children) Act	Cap 233

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## **LAWS OF SEYCHELLES**

### **CHAPTER 28**

#### **CHILDREN ACT**

#### **SUBSIDIARY LEGISLATION: SECTION 108: CHILDREN (ADOPTION) RULES**

*[31<sup>st</sup> August 1964]*

[Note: These rules were made under the repealed Adoption Act (Cap 87) (1971 Ed.) and are continued in force by section 110(2) of the Children Act (Cap. 28). Section 110 was a savings provision which was omitted from the 1991 Ed.]

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#### Arrangement of Rules

1. Short title.
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4. Medical certificate as to applicant's health.
5. Medical report of health of child.
6. Document signifying consent in what form and how attested.
7. Court may refuse to proceed with application when previous application dismissed.
8. Appointment of guardian ad litem.
9. Duties of guardian ad litem.
10. Fixing time for hearing.
11. Notice of hearing to be served on applicant, when attendance of infant required.
12. Notice of hearing to be served on certain other persons who shall be respondents to the application.
13. Personal attendance of applicant before the court.
14. Personal attendance of infant.
15. Proceedings to be held in chambers unless court otherwise orders.
16. Consent of the President.
17. Fixing time for further hearing when interim order made.
18. Copy of adoption order to be sent to Chief Officer of the Civil Status.
19. Order as to costs.

20. Information obtained in course of proceedings to be treated as confidential.

21. Service how effected.

22. Chapter 218 to apply in certain respects.

23. Copies of notices to be served on guardian ad litem.

24. Forms of adoption and interim orders.

25. Forms in First Schedule.

26. Particulars of adoption order.

27. Directions on marking of registers.

28. Amendment, revocation etc. of adoption order.

## SCHEDULE

### SECOND SCHEDULE

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#### **Short title**

1. These rules may be cited as the Children (Adoption) Rules.

#### **Interpretation**

2. In these rules the following expressions have the meanings hereby assigned to them unless the context otherwise requires

"application" means an application for an adoption order and applicant shall be construed accordingly;

"child" means the child whom the applicant is applying to adopt;

"determination of application" includes a withdrawal of the application;

"interim order" means an order made under section 45(1) of the Children Act;

"the court" means the Supreme Court;

"Registrar" means the Registrar of the Supreme Court;

"regular armed forces of the Crown" means the Royal Navy, the regular forces as defined by



section 225 of the Army Act, 1955, the regular air force as defined by section 223 of the Air Force Act, 1955, the Women's Royal Naval Service, Queen Alexandra's Royal Naval Nursing Service and Voluntary Aid Detachments serving with the Royal Navy.

### **Commencement of proceedings**

3.(1) An application shall be in Form 1 and shall be made to the court by filing it with the Registrar together with all documents referred to in the application as attached thereto. The applicant shall supply to the Registrar a copy of his application.

(2) If any person proposing to apply to the court for an adoption order desires that his identity be kept confidential, he may, before making his application apply to the Registrar for a serial number to be assigned to him for the purposes of the proposed application and a number shall be assigned to him accordingly.

### **Medical certificate as to applicant's health**

4. Except where the applicant, or one of the applicants, is the father or mother of the child every applicant shall supply to the Registrar at the time he files his application the certificate of a registered medical practitioner as to his health. For the purposes of such certificate Form 2 may be used.

### **Medical report of health of child**

5.(1) A report on the health of the child which is to be used for the purposes of an application shall be supplied by the applicant to the Registrar at the time he files his application.

(2) The report may if the applicant so desires be in Form 3.

### **Document signifying consent in what form and how attested**

6.(1) A document signifying the consent of any person to the making of an adoption order for the purposes of section 40(1) of the Children Act shall be in the Form in Schedule 1 to that Act.

(2) If the said document is executed in Seychelles it shall be sufficiently attested for the purposes of section 41(1) of the Children Act if it is attested by any of the following persons namely, a Judge, a Magistrate, a Justice of the Peace, a Notary or the Registrar.

(3) If the said document is executed outside Seychelles it shall be sufficiently attested for the purposes of section 41(1) of the Children Act if it is attested by any of the following persons

- (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;
- (b) a British consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

(4) Subject to rule 7 the court may notwithstanding paragraphs (2) and (3)

(a) on the request of the prospective applicant or the Director, in either case before an application is made; or

(b) in any other case as soon as possible after an application is made, appoint a person to act as reporting officer in terms of section 49(1)(b) of the Children Act, for the purpose of witnessing agreements to the adoption in terms of section 41 of and Schedule 1 to that Act.

### **Court may refuse to proceed with application when previous application dismissed**

7. If it appears that the applicant has previously made an application in respect of the same child to the court, and that the court, after having heard the case dismissed the application on its merits, the court shall not proceed with the application unless it is satisfied that there has been a substantial change in the circumstances since the previous application.

### **Appointment of guardian ad litem**

8.(1) Subject to the provisions of rule 7 the court shall, as soon as practicable after an application is made, appoint a guardian ad litem to the child and shall furnish him with a copy of the application, together with the documents attached thereto or filed at the same time as the application.

(2) The person appointed guardian ad litem shall be the Attorney General, if he consents. If the Attorney General does not consent to act as guardian ad litem or if the applicant desires that some other person should be appointed to act as guardian, the applicant must ask for the appointment of a guardian ad litem in his application. The court must thereupon appoint as guardian ad litem some other person who appears to it to be suitably qualified.

Provided that no person shall be appointed guardian ad litem if he has taken part in the arrangements for the adoption of the child.

(3) Where the Attorney General is appointed guardian ad litem he may carry out his duties and appear before the court personally or by any other law officer of the Republic.

### **Duties of guardian ad litem**

9.(1) With a view to safeguarding the interests of the child before the court the guardian ad litem shall, so far as is reasonably practicable

(a) investigate all circumstances relevant to the proposed adoption, including the matters alleged in the application and those specified in the Second Schedule to these Rules; and

(b) perform such other duties as are specified in the said Schedule or as the court may direct.

(2) On completing his investigation the guardian ad litem shall make a confidential report in writing to the court.

(3) With a view to obtaining the directions of the court on any particular matter the guardian ad litem may at any time make such interim report to the court as appears to him necessary.

### **Fixing time for hearing**

10. At the time of appointing the guardian ad litem the court shall fix a time for the hearing of the application.

### **Notice of hearing to be served on applicant, when attendance of infant required**

11.(1) When the time for the hearing of the application has been fixed the Registrar shall cause a notice of the time of hearing to be served on the applicant.

(2) If the guardian ad litem reports to the court that in his opinion the child is able to understand the nature of an adoption order the Registrar shall inform the applicant that the personal attendance of the child at the hearing of the application is required.

### **Notice of hearing to be served on certain other persons who shall be respondents to the application**

12.(1) When the time for the hearing of the application has been fixed the Registrar shall cause to be served a notice of the time of hearing on the following persons

- (a) every person, not being an applicant, whose consent to the making of an adoption order is required under section 40(1) of the Children Act;
- (b) any other person not being the child who in the opinion of the court ought to be served with notice of the hearing of the application.

(2) Any person on whom a notice is required to be served under the foregoing provisions of this rule shall be a respondent to the application.

### **Personal attendance of applicant before the court**

13. The court shall not make an adoption order or an interim order except after the personal attendance before the court of the applicant.

Provided that where the application is made by two spouses jointly the court may dispense with the personal attendance of one of the applicants if the application is verified by a declaration made by that applicant and attested as set out in rule 6(2), (3) or (4).

### **Personal attendance of infant**

14. If the applicant has been informed that the personal attendance of the child at the hearing is required the court shall not make an adoption order or an interim order unless

- (a) the child has so attended or the court decides that there are special circumstances making his attendance unnecessary; and

- (b) the court is satisfied that the child has been informed of the nature of the order.

### **Proceedings to be held in chambers unless court otherwise orders**

15. Every application shall be heard and determined in chambers unless the court orders otherwise.

### **Consent of the President**

16. (1) Where an application for adoption is made by a married couple both of whom are not resident in Seychelles or by a person who is not resident in Seychelles, the Supreme Court shall, where it is satisfied that it is in the best interests of the child that the application shall be allowed, forward the application and the affidavits filed in support of such application to the President for the exercise of his powers under section 37(2) or section 38(2) of the Children Act.

(2) A document signifying the consent of the President under section 37(2) or section 38(2) of the Children Act, shall be in Form 6.

### **Fixing time for further hearing when interim order made**

17. (1) Where the determination of an application is postponed and an interim order is made, the court shall, on making the order or at any time thereafter but not less than one month before the expiration of the period during which the applicant has been in custody of the child in accordance with the interim order and whether or not the applicant makes an application for the purpose, fix a time for the further hearing of the application.

(2) On fixing a time for the further hearing of the application the court shall cause to be served on the applicant and on each respondent to the application a notice of the time of the further hearing.

### **Copy of adoption order to be sent to Chief Officer of the Civil Status**

18. Within seven days after the making of an adoption order the Registrar shall send a copy of the order to the Chief Officer of the Civil Status.

### **Order as to costs**

19. On the determination of an application or on the making of an interim order the court may make such order as to costs as it thinks just, and in particular may order the applicant to pay

- (a) out of pocket expenses incurred by the guardian ad litem; and
- (b) the expenses incurred by any respondent in attending the hearing or such part of those expenses as the court thinks proper.

### **Information obtained in course of proceedings to be treated as confidential**

20. Any information obtained by any person in the course of, or relating to, proceedings under Part V of the Children Act shall be treated as confidential and shall not be disclosed by him except so far as may be necessary for the proper execution of his duty.

### **Service how effected**

21. Unless otherwise directed, service of a document under these rules on any person may be effected by delivering it to him or by sending it by post to him at his last known or usual place of abode.

### **Chapter 218 to apply in certain respects**

22. Save in so far as special provision is made by these rules, proceedings on an application shall be regulated in the same manner as proceedings under the Seychelles Code of Civil Procedure, and accordingly for the purposes of this rule the application shall be deemed to be a plaint, the applicant to be a plaintiff, the respondents to be defendants and any notice served under the rules to be a summons.

### **Copies of notices to be served on guardian ad litem**

23. The court shall cause to be served on the guardian ad litem a copy of every notice served on an applicant or respondent.

### **Forms of adoption and interim orders**

24. When the court makes an adoption order or an interim order Form 4 and Form 5 may respectively be used with such variation as the circumstances may require.

### **Forms in First Schedule**

25. In these rules a form referred to by number means the form so numbered in the First Schedule to these rules or a form to the like effect, and any such form may be used with such variation as the circumstances may require.

### **Particulars of adoption order**

26.(1) Where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and shall specify that date in the adoption order as the date of his birth.

(2) Where the first name or names or surname which the child is to bear after the adoption differs from his original first name or names or surname, the new first name or names or surname shall be specified in the adoption order instead of the original.

(3) Where the country of birth of the child is not proved to the satisfaction to the court, the particulars of that country may be omitted from the adoption order.

### **Directions on marking of registers**

27.(1) Where on an application for an adoption order there is proved to the satisfaction of the court the identity of the child (not being a child who has previously been the subject of an adoption order made by the court under the Adoption Act or the Children Act,) with a child to whom an entry in the Register of Births relates, any adoption order made by the Court shall contain a direction to the Chief Officer of the Civil Status to cause the entry in the Register of Births to be marked with the word "Adopted".

(2) Where an adoption order is made by the court in respect of a child who has previously been the subject of an adoption order under the Adoption Act or the Children Act, the order shall contain a direction to the Chief Officer of the Civil Status to cause the previous entry in the Adopted Children Register to be marked with the word "Re adopted".

#### **Amendment, revocation etc. of adoption order**

28.(1) Where the court amends an adoption order under section (4) of the Children Act, it shall cause that amendment to be communicated to the Chief Officer of the Civil Status.

(2) Where an adoption order is quashed or revoked or an appeal against an adoption order allowed, the court shall give directions to the Chief Officer of the Civil Status to cancel any marking of an entry in the Register which was made under that order.

(3) A copy or extract of an entry in the Adopted Children Register or the Register of Births marking of which is cancelled under this rule, is not deemed to be an accurate copy unless both the marking and the cancellation are omitted from it.

### **SCHEDULE**

#### **Rule 3**

Application for an adoption order (CH002.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

Medical certificate as to health of applicant (CH003.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

Medical report on health of child (CH004.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

Adoption order (The Children Act, section 33 (CH005.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

Interim order (The Children Act, section 45) (CH006.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

Consent of President to an adoption order (CH007.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

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### **SECOND SCHEDULE**

#### **Rule 9**

#### **PARTICULAR DUTIES OF THE GUARDIAN AD LITEM**

1. The guardian ad litem shall interview the applicant and shall ascertain -
  - (a) particulars of all members of the applicant's household and their relationship (if any) to the applicant;
  - (b) particulars of the accommodation in the applicant's home and the condition of the home;

- (c) the means of the applicant;
- (d) whether the applicant suffers or has suffered from any serious illness and whether there is any history of tuberculosis, epilepsy or mental illness in the applicant's family;
- (e) in the case of an application by one only of two spouses, why the other spouse does not join in the application;
- (f) whether any person specified in the application as a person to whom reference may be made is a responsible person and whether he recommends the applicant with or without reservations;
- (g) whether the applicant understands the nature of an adoption order and, in particular, that the order, if made, will render him responsible for the maintenance and upbringing of the child.

2.. The guardian ad litem shall ascertain and inform the applicant -

- (a) whether the child has been baptised and, if so, the date and place of baptism;
- (b) what treatments the child has received with a view to immunising him against disease;
- (c) whether the child has any right to, or interest in, any property.

3. The guardian ad litem shall ascertain whether the child is able to understand the nature of an adoption order and, if he is, whether he wishes to be adopted by the applicant.

4. The guardian ad litem shall interview either in person or by an agent appointed by him for the purpose every individual to whom notice is required to be given under rule 12 or who appears to the guardian ad litem to have taken part in the arrangements for the adoption of the child.

5. The guardian ad litem shall ascertain when the mother of the child ceased to have the care and possession of the child and to whom the care and possession was transferred.

6. The guardian ad litem shall ascertain that every consent to the making of an adoption order in pursuance of the application is freely given and with full understanding of the nature and effect of an adoption order.

7. Where either parent of the child is dead, the guardian ad litem shall inform the court if he learns of any relation of the deceased parent who wishes to be heard by the court on the question whether an adoption order should be made.

8. Where the child is illegitimate but no one is liable as the putative father to contribute to the maintenance of the child by virtue of any order or agreement, the guardian ad litem shall inform the court if he learns of any person, claiming to be the father, who wishes to be heard by the court on the question whether an adoption order should be made.

9. The guardian ad litem shall inform the court if he learns of any other person or body who wishes or ought in his opinion to be heard by the court on the question whether an adoption order should be made.

10. Where the applicant is not ordinarily resident in Seychelles, the guardian ad litem shall endeavour to obtain a report on the applicant's home and living conditions from a suitable agency in the country in which he is ordinarily resident.

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## **SUBSIDIARY LEGISLATION: SECTION 108: CHILDREN ACT (JUVENILE COURT) RULES**

S.I 52 of 1982  
S.I 60 of 1984

### **Citation**

1. These Rules of Court may be cited as the Children Act (Juvenile Court) Rules.

### **Attendance**

2. In a Juvenile Court no person other than

- (a) the members and officers of the court;
- (b) the parties to the case and their legal practitioners;
- (c) a parent or guardian of the child; and
- (d) other persons directly concerned in this case,

shall, except by leave of the Court, be allowed to attend.

### **Restriction on report of proceedings**

3.(1) No person shall publish the name, address, school, photographs of any particulars likely to lead to the identification of a child concerned in the proceedings before the Juvenile Court whether

- (a) as a person against or in respect of whom the proceedings are taken; or
- (b) as a witness,

except with the permission of the Court or in so far as required by the provisions of the Act or these Rules.

(2) In subrule (1) "publish" includes publication in a newspaper or sound or television broadcast.



(3) A person who contravenes subrule (1) is guilty of an offence and is liable to a fine of R. 5000.

### **Custody of children not given bail**

4.(1) Where a person apparently under 18 years of age having been apprehended is not released under section 24 of the Criminal Procedure Code, the police officer to whom that person is brought shall cause him to be detained in a Juvenile Centre or removed to a place of safety until he can be brought before a Court, unless the police officer certifies that

- (a) it is impracticable to do so; or
- (b) that person is of so unruly or depraved a character that he cannot be safely so detained; or
- (c) by reason of that person's state of health or of his mental or bodily condition it is inadvisable to so detain him.

(2) The certificate by the police officer under subrule (1) shall be produced to the court before which the person is brought.

### **Remand or committal to Juvenile Centre**

5.(1) Subject to subrule (2), a court on remanding or committing for trial a child who is not released on bail, shall, instead of committing him to prison commit him to a Juvenile Centre named in the commitment, to be there detained

- (a) for the period for which he is remanded; or
- (b) until he is thence delivered in due course of law.

(2) A court on remanding or committing for trial a young person who is not released on bail may commit him to prison or to a place of safety if

- (a) no place in a Juvenile Centre is available; or
- (b) the court certifies that the young person
  - (i) is of so unruly a character that he cannot be safely so committed; or
  - (ii) is of so depraved a character that he is not a fit person to be so detained.

(3) A committal under subrule (1) may be varied or revoked, and if it is revoked the child or young person may be committed under subrule (2).

### **Procedure in Juvenile Court**

6.(1) Where a child is brought before a Juvenile Court for any offence the Court shall as soon as

possible explain to him in simple language the substance of the alleged offence.

(2) The Court shall then ask the child whether he admits the offence.

(3) Notwithstanding that the child admits the offence, the Court shall in any case where the child is not legally represented then hear the evidence of the witnesses in support of the case.

(4) At the close of the evidence in chief of each witness, the Court shall, if the child is not legally represented, ask the child, and the child's parent or guardian if present in Court, whether he wishes to put any questions to the witness.

(5) if in any case where the child is not legally represented, the child, instead of asking questions by way of cross examination,

(a) wishes to make a statement; or

(b) makes assertion,

he shall be allowed to do so and the Court shall then put to the witness such questions as it thinks necessary on behalf of the child and may for this purpose question the child in order to bring out or clear up any point arising out of those assertions:

Provided that where the Court puts any questions to a witness under this subrule, the prosecution shall have the right to re examine the witness on the answers to those questions.

(6) If it appears to the Court that a sufficient case is made out the evidence of any witness for the defence shall be heard and the child shall be allowed to give evidence or make a statement.

(7) If the Court is satisfied that the offence is proved, the child shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise,

(8) Before deciding how to deal with the child, the Court shall obtain such information as to his

(a) general conduct;

(b) home surroundings;

(c) school record; and

(d) medical history,

as may enable it to deal with the case in the best interests of the child, and may put to him any question arising out of that information.

(9) For the purpose of obtaining information under or for special medical examination of observation, the Court may

(a) from time to time remand the child on bail or to a Juvenile Centre so, however,

that he appears before a court at least once in every 21 days; or

(b) request the Director to submit to it a report on the child and his social background.

### **Attendance of parent**

7. (1) A Juvenile Court may in its discretion require the attendance of the parent or guardian of the child.

(2) The Court may make orders necessary for the purposes of subrule(1).

(3) A person who contravenes an order under subrule (2) is guilty of an offence and is liable to a fine of R. 1000.

### **Decisions of the Juvenile Court**

8. (1) Subject to subrules (2) and (3), the opinion of the majority of the members of the Juvenile Court shall be decisive upon any question before the Court.

(2) When any charge is to be heard, the Chief Justice shall nominate a Judge or a Magistrate, as the case may be, to be a member of the Juvenile Court and such Judge or Magistrate shall determine questions of law arising before or after the commencement of the hearing.

(3) A Judge or a Magistrate nominated pursuant to subrule (2) may exercise any power vested in the Court not involving a decision as to the commission of the offence, the penalty or the method of dealing with the case.

### **Clerk to the Juvenile Court**

9. The Registrar of the Supreme Court shall be the Clerk of the Juvenile Court and he may delegate his powers to any of the staff that he deems fit.

### **Notice etc. of the Juvenile Court**

10. All notices, summonses and orders purporting to be signed by the Clerk or his delegate shall be deemed to be issued by the Juvenile Court.

### **Appeals**

11. (1) Subject to any necessary modifications, the provisions of sections 295 to 312 of the Criminal Procedure Code shall apply with respect to appeals from the Juvenile Court to the Supreme Court as they apply with respect to appeals from the Magistrates' Court to the Supreme Court.

(2) If a Judge sits as a member of a Juvenile Court an appeal to the Supreme Court shall be heard by a Bench of not less than two Judges.

## **SUBSIDIARY LEGISLATION: SECTION 107: CHILDREN (REGISTRATION OF ADOPTION ORDERS) REGULATIONS**

*[27th September 1982]*

S.I 53 of 1982

### **Citation**

1. These Regulations may be cited as the Children (Registration of Adoption Orders) Regulations.

### **Form of Register**

2. The Adopted Children Register shall be in the form set out in the schedule, and shall include the particulars under the headings in columns 2 to 6 of the Schedule.

### **Entry in Register**

3. On receipt of an adoption order from the Registrar of the Supreme Court, the Chief Officer of the Civil Status shall

(a) cause an entry to be made in the Adopted Children Register in accordance with Regulation 2; and

(b) comply with any direction in the order relating to the marking of an entry in the Register or the Register of Births.

### **Index of Register**

4. (1) The Chief Officer of the Civil Status shall cause an index of the Adopted Children Register to be made and kept in the Civil Status Office.

(2) Any person shall be entitled to search that index and to have a copy of any entry in the Adopted Children Register on payment of such fee as may be prescribed under the Act.

### **Cross-references**

5. (1) The Chief Officer of the Civil Status shall, in addition to the Adopted Children Register and its index, keep and make such entries in such other registers and books as may be necessary to record and make traceable the connection between any entry in the Register of Births which has been marked "adopted" under Regulation 3 and any corresponding entry in the Adopted Children Register.

(2) No registers and books kept under sub regulation (1) nor their indexes shall be open to public inspection or search.

(3) Except under an order of the court, the Chief Officer of the Civil Status shall not furnish any person with any information contained in, or with any copy or extract from, registers or books kept under sub regulation (1).

### **Amendment of adoption order**

6. Where an amendment by the court of an adoption order is communicated to the Chief Officer of the Civil Status, he shall amend the Adopted Children Register accordingly.

### **Revocation etc. of adoption order**

7. (1) Where an adoption order is quashed or revoked or an appeal against it allowed and the court gives a direction to the Chief Officer of the Civil Status to cancel

(a) an entry in the Adopted Children Register made under that order; or

(b) a marking of an entry in that Register or the Register of Births,

the Chief Officer of the Civil Status shall comply with that direction.

(2) A copy or extract of an entry in the Adopted Children Register or the Register of Births, marking of which is cancelled under sub regulation (1), is not deemed to be an accurate copy unless both the marking and the cancellation are omitted from it.

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## **SCHEDULE**

### **Regulation 2**

Entry in adopted children register (CH008.pdf): [www.seylli.org/greybook](http://www.seylli.org/greybook)

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## **SUBSIDIARY LEGISLATION: SECTION 107: CHILDREN ACT (FOSTER CARE) REGULATIONS**

*(24th July 1995)*

S.I 78 of 1995

### **Citation**

1. These Regulations may be cited as the Children Act (Foster Care) Regulations.

### **Application**

2. An application for registration as a foster parent shall be in Form I of the Schedule.

### **Matters to be considered before registering a foster parent**

3. For the purposes of determining whether a person applying to be registered as a foster parent is

suitable to care for and maintain a foster child and the home of the applicant is suitable for a foster home in order that the person may be registered as a foster parent, the Director shall take into consideration the following matters -

- (a) the means of livelihood of the applicant and whether the applicant will be able to adequately maintain a foster child;
- (b) the health of the applicant and that of the other members of the applicant's household and in particular whether the applicant or any member of the applicant's household has suffered or suffers for any mental illness or serious disease or other mental or physical disability;
- (c) the character and antecedents of the applicant and other members of the applicant's household and whether the applicant or any member of the applicant's household has been the subject of any complaint or investigation for child abuse;
- (d) the condition of the home and the physical environment of the home of the applicant.

#### **Register of foster parents**

4. The Register of Foster Parent shall be in Form 2 of the Schedule.

#### **Supervision of foster parent and foster children**

5. (1) Where a foster parent has undertaken the care and maintenance of a foster child, the Director -
- (a) shall cause supervisory visits to be made in respect of the foster parent and child at the foster home at least once a week during the first month of fostering and thereafter at such regular intervals as the Director may consider necessary in the circumstances; and
  - (b) may, in addition after informing the foster parent, cause the foster child to be visited at any other place frequented by the child.
- (2) The person carrying out a visit under subregulation (1) shall make out a report in respect of the visit and shall discuss the contents of the report with the foster parent.

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### **SCHEDULE**

Application for registration as foster parent (CH009.pdf): [www.seyllii.org/greybook](http://www.seyllii.org/greybook)

Register of foster parent (CH010.pdf): [www.seyllii.org/greybook](http://www.seyllii.org/greybook)

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**SUBSIDIARY LEGISLATION: SECTION 107: CHILDREN (CHILD PROTECTION REGISTER) REGULATIONS, 2007**

*(6<sup>th</sup> August 2007)*

S.I 18 of 2007  
SI. 27 of 2008

**Citation**

1. These Regulations may be cited as the Children (Child Protection Register) Regulations, 2007.

**Interpretation**

2. In these Regulations —

“Child Protection Register” means the register maintained under section 3 (2A) of the Children Act;

“offence against children” means any offence, specified in chapters xv, xvi, xix, xx, xxi, xxii, xxiii, xxiv and xxv read with sections 378 and 379 of the Penal Code committed by a person, in which a child is the victim.

**Director’s duty**

3. (1) The Director of Social Services shall ensure that the Child Protection Register—

(a) contains information that is accurate and up to date;

(b) is kept in safe custody; and

(c) is not disclosed to any unauthorised person.

- (2) The Child Protection Register shall be substantially in the form specified in the Schedule.

**4. ...**

4. Where a Court convicts, or confirms the conviction of, a person for an offence against children and an appeal is not lodged against the judgment of the Court within the time allowed by law, the Court shall cause a notice stating—

(a) the name and address of the convicted person;

(b) the name and address of the child victim;

(c) the offence;

(d) the date of conviction; and

(e) the sentence passed by Court,

to be served on the Director of Social Services for the purpose of these Regulations.

5. (1) Every person convicted of an offence against children and whose name is entered in the Child Protection Register shall notify the Director of Social Services of any change of the person's name or address within one month of the change taking effect.

(2) A person who knowingly contravenes subregulation (1) commits an offence punishable on conviction with a fine of R5000.

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## **SCHEDULE**

Sch am by reg 2(a) and (b) of SI 27 of 2008 w.e.f. 5 May 2008

Child protection register (CH011.pdf): [www.seylii.org/greybook](http://www.seylii.org/greybook)

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