

CHAPTER 28

CHILDREN ACT

[15th July, 1982]

Act 16 of 1982

Act 8 of 1991

Act 4 of 1998

Act 9 of 1999

ARRANGEMENT OF SECTIONS

Section

PART I. - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Duty to promote welfare of child and delegation of powers of the Director

PART II. - MAINTENANCE ETC.

Duty of Maintenance

4. Obligation to maintain
5. Assistance by Council
6. Enforcement of maintenance
7. Misuse of maintenance
- 7A. Maintenance of parents

Maintenance orders

8. Maintenance orders

Affiliation orders

9. Meaning of "child"
10. Application
11. Leave of Registrar
12. Affiliation orders
13. Duration of order
14. Saving

Enforcement of maintenance orders and affiliation orders

15. Variation of order
16. Appeal from Magistrates' Court
17. Deduction of payments and salaries etc.
18. Attachment of earnings orders
19. Enforcement of order

20. Notice of change of address

General

21. Judicial appointment of guardian or sub-guardian
22. No publication of proceedings
23. Applications in bad faith etc
- 23A. President guardian of abandoned child

PART II - VOLUNTARY CARE AND ASSUMPTION OF PARENTAL RIGHTS

24. Voluntary supervision
25. Care by Council necessary
26. Assumption of parental rights

PART III - FOSTER CARE

27. Protection of children going abroad
28. Register of foster parents
29. Care of foster children
30. Fostering of children in care
31. Prohibition on unregistered fostering
32. Restrictions on removal of foster child

PART V - ADOPTION

Adoption orders

33. Adoption orders
34. Making of adoption orders
35. Name of child
36. Child to live previously with adopters
37. Adoption by married couple
38. Adoption by one person
39. Repealed
40. Parental agreement
41. Evidence of parental agreement
42. Notification to and report by Council
43. Restrictions on making orders
44. Provisional orders for adoption abroad
45. Interim orders
46. Care etc. of child on refusal of order
47. Privacy
48. Appeals
49. Guardians and litem and reporting officers

Restrictions on removal of children

50. Restrictions on removal where adoption agreed

51. Restrictions on removal where applicant has provided home for 5 years
52. Return of child taken away
53. Return of child placed by Council

Protected children

54. Meaning of protected child
55. Council to ensure well-being of protection children
56. Removal of protected child to place of safety
57. Information to be given to Council
58. Offences
59. Refusal of visit etc. to protected child

General

60. Restriction on removal of children for adoption outside Seychelles
61. Ban on certain payments
62. Ban on advertisements
63. Revocation of adoptions on legitimation

Registration of adoption orders

64. Adopted Children Register

Status of adopted children

65. Meaning of adoption order

- 66. Status conferred by adoption
- 67. Citizenship
- 68. Exceptions in status
- 69. Effect on maintenance etc. orders

PART VI - OFFENCES AGAINST CHILDREN

- 70. Cruelty to children
- 70A. Medical examination
- 71. Children not to be used for begging
- 72. Children not to be given liquor
- 73. Children not to be given drugs
- 73A. Children not to be given tobacco
- 74. Children not to be used for witchcraft
- 75. Children not to be used for offences
- 76. Warrant to search for or remove child

PART VII - COMPULSORY CARE

- 77. Children's Board
- 78. Jurisdiction of the Family Tribunal
- 78A. Proceedings of the Tribunal
- 78B. Appeal from Tribunal

- 79. Children needing compulsory measures of care
- 80. Removal to place of safety
- 81. Initial investigation by Council
- 82. Report by Council to Hearing
- 83. Procedure
- 84. Repealed
 - 1. Repealed
- 86. Repealed
- 87. Further background investigations
- 88. Powers of Hearing
- 89. Review of supervision requirement
- 90. Cessation on becoming 18
- 91. Repealed

PART VIII - JUVENILE COURTS

- 92. Restriction on prosecution of children
- 93. Juvenile Courts
- 94. Restrictions on imprisonment etc.
- 95. Methods of dealing with children charged with offences
- 96. Power to order parent to pay fine etc.
- 97. Repealed
- 98. Committal to Juvenile Centre

PART IX - ESTABLISHMENTS

- 99. Provisions by Government
- 100. Types of establishment
- 101. Keeping family links
- 102. Person asked to leave establishment
- 103. Supervision of establishments
- 104. Admission of children
- 105. Discharge of children
- 106. False information

PART X - MISCELLANEOUS

- 107. Regulations
- 108. Rules of court
- 109. Indemnity

SCHEDULES

- 1. Form of agreement of parent or guardian to adoption
- 2. Specified offences against children

PART I.- PRELIMINARY

Short title 1.(1) This Act may be cited as the Children Act^[i] and shall come
and into operation on such date as the Minister may, by notice in the
commencement *Gazette*, appoint and different dates may be appointed for, or for different
purposes of, different provisions of this Act.

(2) A notice under subsection (1) may make such provisions as appears to the Minister to be necessary or expedient in connection with the provisions brought into operation, including adaptations of this Act or any other written law in consequence of the partial operation of this Act.

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 attach-

Cap. 118 ment of earnings made under the Maintenance Orders (Attachment of
Earnings) Act;

"care" includes protection, control, guidance and treatment;

"Chairman" means a chairman of the 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;

"Director" 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

Cap. 33 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 recognized the child under Article 334 of the Civil Code

Cap 33 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);

Cap. 68 "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;

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

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

3.(1) In reaching any decision relating to a child, a court, the Tribunal or 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.

2/8/

(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.

(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.

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 **5.(1)** Without prejudice to section 70 (Cruelty to children), if a

by Director person under an obligation, by virtue of the Civil Code or otherwise,

3/8/1991 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 6.(1) The father and the mother of a child must each maintain the of child in terms of section 4, regardless of - maintenance

- (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 2 years and to a fine of R. 20,000.

Provided that if imprisonment of the parent would be against the best interests of the child, the Tribunal 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).

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

(a) section 6(2);

(b) a maintenance order;

(c) an affiliation order; or

(d) an attachment of earning 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 2 years and to a fine of R.10,000.

Maintenance **7A.**(1) Subject to subsection (2), where a person who is under a legal
orders. duty to maintain that person's parents and has the means to do so fails to

3/8/1991. maintain the parent who is unable to maintain himself or herself the Tribunal
may order the person to pay such sum in such manner as may be specified by the Tribunal, for
the maintenance of that parent.

(2) A person shall be deemed not to be under a legal duty to maintain a parent of that person who
had abandoned, neglected or ill-treated that person in his or her childhood, in a manner likely to
cause unnecessary suffering or moral danger to, or injury to the health of, that person.

(3) An application for an order under subsection (1) may be made to the Tribunal by -

1. the parent of the person;

1. any other person with whom the parent resides; or

1. the Director.

(4) For the purposes of this section, the word "parent" in relation to a person means the natural
father or mother, or the adoptive father or mother, of the person and does not include a step
father or stepmother of the person.

(5) Notwithstanding anything to the contrary in this Act the provisions of sections 15, 16, 17, 18, 19 and 20 shall, *mutatis mutandis* apply to and in relation to an order made under this section as if the order were a maintenance order referred to in those sections and as if -

1. paragraphs (a), (b), (c) and (d) in sections 15 and 16 were repealed and the following paragraphs substituted therefor-

1. the parent of the person; or

1. any other person with whom the parent resides; or

1. the Director; or

1. the person who was ordered to pay maintenance, and

1. in sections 17 and 19, the words “parent or reputed father” were repealed and the word “person” substituted therefor.

Maintenance orders

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

3/8/1991

Act 4/1998 (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.

(2) An order under subsection (1) may provide for payment of the maintenance -

(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 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.

(3) An order of the Tribunal for maintenance shall be deemed to be an

Cap. 119 order made by a court in terms of section 2 of the Maintenance Orders (Reciprocal Enforcement) Act.

Affiliation orders

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

Application 3/8/1991 **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 5 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 5 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 5 years after the return to Seychelles of the man alleged to be the father of the child on proof that he ceased to reside in Seychelles within 5 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.

(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 may be 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.

Affiliation 12.(1) All relevant evidence whether oral or documentary is

orders admissible on the hearing of an application and Articles 334 to 340 and

3/8/1991 any other provision of the Civil Code setting out the manner in which

Cap. 33 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 -

Act 9/1999

(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 Tribunal, the Tribunal may make an affiliation order naming the defendant as the reputed father of the child, and may make a determination with regard to the maintenance of the child,

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.

- (3) In an affiliation order the Tribunal may also order the reputed father to pay any or all of -
- (a) the expenses incidental to the birth of the child;
 - (b) the funeral expenses of the child if the child has died before the making of the order;
 - (c) the costs of the application.

(4) If the application under section 10 is made before, or within 2 months after, the birth of the child, the monthly payments under subsection (3)(a) may be made payable from the date of the birth.

(5) 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.

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

(7) The Tribunal 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 **13.**(1) Subject to this section, an affiliation order continues in
order 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 affiliation order to order the reputed father to continue to make payments for a specified period, not extending beyond the 21st birthday of the child.

(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

Cap. 33 (b) Article 205(3) of the Civil Code applies to the order for maintenance of the child 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
and affiliation orders

Variation **15.**On the application of -

of order

3/8/1991 (a) either parent of the child; or

Act 4/1998

(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.

Appeal from **16.**An appeal to the Supreme Court against a maintenance order

Tribunal by the Tribunal may be made by -

Court

3/8/1991 (a) either parent of the child; or

Act 4/1998

(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.

Deduction of payments from salaries etc. Act 4/1998 Act 9/1999

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 person 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.

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

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

(b) to make the deductions in accordance with that authority 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 authority :

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.

Attachment of earnings

18.A person entitled to receive payments under a maintenance order may apply for an attachment of earnings order under the

orders Maintenance Orders (Attachment of Earnings) Act.

Cap. 118

Act 4/1998

Enforcement **19.**(1) Subject to this Part, where money due under a maintenance
of order order is not paid, the Tribunal may, on an application by the Tribunal may,
Act 9/1999 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 an 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;

(b) order execution of the order.

(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.

(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 money due the person in respect of whom the application is made and be paid to the person entitled in terms of the order.

(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 which were begun before the making of the attachment of earnings order.

(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.

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

Notice of **20.**(1)A person against or in respect of whom a maintenance order
change of has been made shall inform the person entitled to receive moneys under the
address order of a change of address of the first-mentioned person and, in the case
Act 4/1998 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..

(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. 5,000.

General

Judicial **21.**All applications for the judicial appointment of -
appointment
of guardian (a) a guardian under Article 402 of the Civil Code; or

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

3/8/1991

Cap. 33 shall be notified to the Director by the Registrar of the Supreme Court.

No publication **22.(1)** No person shall publish a report of proceedings -
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 **23.** A person who seeks leave to apply or applies to a court

in bad faith section 10 or under Article 340 (Proof of paternal descent) or Article

etc. 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 2 years and to a fine of R.5000.

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

guardian of

abandoned (a) is orphaned and has no guardian; or

child

1. 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 backgrounds of the child.

(4) Where the Tribunal has made an order under subsection (1), it may, in addition, make an order 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).

PART III.- VOLUNTARY CARE AND ASSUMPTION OF

PARENTAL RIGHTS

Voluntary supervision is -

3/8/1991

(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 (a) that he has neither parent nor guardian;

3/8/1991

Act 4/1998

(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;

(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,

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 -

Cap. 33 (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 authorizes 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.

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

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

2 & 3/8/1991

(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 sub-paragraph (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

(v) 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 3 years preceding the decision under this section the child has been in 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 1 month of the decision, appeal against it to the Tribunal.

Protection of **27.(1)** Where the Director has reasonable ground for believing that children a child who is a citizen of Seychelles is being or about to be taken out going abroad of Seychelles for an immoral purpose or for any other purpose which the 3/8/1991 Director believes to be against the best interest of the child, the Director Act 4/1998 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, a fine of R50,000 and to imprisonment for 5 years,

(b) in the case of the child who is leaving Seychelles, to a fine of R10,000 and to imprisonment for 2 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.

PART IV.- FOSTER CARE

Register of **28.(1)** The Director shall keep a Register of Foster Parents

foster parents subject to subsection (6), including -

Act 4/1998

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

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

(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.

(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.

(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.

(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)

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

3/8/1991

Act 4/1998 (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 -

- (a) suspend or cancel the registration of the foster parents registered under section 28(1);
- (b)
 - (i) take the child into his care under section 25(1); or
 - (ii) take the child to a place of safety under section 80(1).

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

in care

3/8/1991 (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 **31.**(1) No person shall act as a foster parent unless he is -
on unregiste-

red fostering (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.

(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 6 months and to a fine of R.500.

Restrictions **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 5 years or more, no person shall remove the child from the foster parent's custody except -

3/8/1991
Cap. 158

Act 4/1998 (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.

(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

Cap. 33 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.

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

PART V.- ADOPTION

Adoption Orders

Adoption **33.**(1) An adoption order -

orders

(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.

3/8/1991 (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.

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

1. where it is of the opinion that 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;
1. direct that a record of the names of the natural parents of the child, if known be kept by the Director;
1. make the order subject to other conditions if the Court thinks it is in the interest of the child to do so.

(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 -

1. a person who has been the subject of an adoption order;
1. a police officer; or

1. 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 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.

Name of **35.(1)** On application of the adopter, the Court may change the first
child 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 **36.(1)** Where -

live previous-

ly with (a) the applicant, or one of the applicants, is a parent,

adopters step-parent or relative of the child; or

3/8/1991

(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 interests of the child to do so.

Adoption by **37.(1)** Subject to this Part, an adoption order may be made on the

married application of a married couple where each is 21 years of age or older

couple 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 **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 -

(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.

Repealed by **39.**

Act 4/1998

Parental **40.(1)** An adoption order shall not be made unless in the case of each agreement 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 sub- section (4).

(3) Agreement is ineffective for the purposes of subsection (1) (a) if given by the mother less than 6 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 **41.(1)** Agreement in terms of section 40(1) (b) must either -

parental

agreement (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 **42.(1)** An adoption order shall not be made in respect of a child

to and report unless the applicant has, at least 3 months before the date of the

by the order, given notice to the Director of the intention to apply for the

Director 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 3 months notice in subsection (1) if in its opinion it is in the (2) best interests of the child to do so.

Restrictions **43.**(1) The Supreme Court shall not determine an application for an
on making adoption order in relation to a child where a previous application for
orders 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 44.(1) Where an applicant for an adoption order is not resident in

orders for Seychelles, if -

adoption

abroad (a) the Director reports under section 42 that the

3/8/1991 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) authorizes 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 **45.(1)** Where on an application for an adoption order sections 40(1)

orders (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 2 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 2 years, the Court may by a further order extend the period to a duration not exceeding 2 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 **46.(1)** Where, on an application for an adoption order, the Supreme Court

child on refuses to make the adoption order and it appears to the Supreme Court

refusal of that there are exceptional circumstances making it -

order

3/8/1991 (a) desirable that the child should be under the supervision of an

Act 4/1998

independent person; or

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

the 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.

(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.

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

officers (a) a person to act as guardian ad litem of the child

3/8/1991 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.

(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 7 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 and litem and reporting officer.

Restrictions on removal of children

Restrictions on removal where adoption agreed Act 4/1998 **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 1 year and to a fine of R.10,000.

Restrictions on removal where applicant has provided home for 5 years 3/8/1991 **51.(1)** While an application for an adoption order by the person with whom the child concerned has had his home for the 5 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

years

(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 5 years has had his home with the prospective adopter, no person shall, within 3 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 1 year and to a fine of R.10,000.

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

3/8/1991

(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 **54.**(1) Where a person gives notice to the Director under section 42

"protected of his intention to apply for an adoption order in respect of a child,

child" that child is for the purposes of this Part a protected child while he

3/8/1991 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 **55.(1)** The Director shall ensure that every protected child is visited
ensure from time to time by an officer of the Ministry or department responsi-
well-being of ble for children affairs, who shall satisfy himself as to the well-
protected being of the child and give such advice as to his care and maintenance
children as may appear to be needed.

3/8/1991

(2) An officer of the Ministry or department responsible for children affairs authorized 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 **56.(1)** If a protected child is being kept or is about to be received-
protected

child to place (a) by a person who is unfit to have his care; or
of safety

3/8/1991 (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 79(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 **57.(1)** Where a person who has a protected child in his care and
to be given possession changes his permanent address he shall -
to Director

3/8/1991 (a) not less than 2 weeks before that change; or

Act 4/1998

(b) if the change is made in an emergency, not later than 1 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 date of the child give notice of the child's death to the Director.

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 authorized 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 R.10,000.

Refusal of visit etc to protected child
59. For the purposes of section 75 (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 authorized to do so under section 54 shall be treated as giving reasonable cause for suspicion in terms of section 75(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.

Seychelles

3/8/1991 (1A) A person who applies to the Supreme Court for an order, other than an

Act 4/1998 order under section 43 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.

(2) A person who -

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

(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 3 years and to a fine of R.30,000.

(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 part 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.

Tribunal's **60A.**(1) Subject to subsection (2), where it appears to the Tribunal, upon powers over the hearing of an application made by a parent or guardian of a child or

removal of a the Director, that it is in the best interest of the child so to do, it may make
child out of an order directing a person not to take or send the child out of Seychelles
Seychelles without the leave of the Tribunal.

Act 9/1999

(2) Section (1) shall not apply to and in respect of a child in respect of whom an application
made under subsection 50, 52 or 60 is pending before the Supreme Court.

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

3/8/1991 (a) the adoption by that other person of a child;

Act 4/1998

(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 sub- section (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 3 years and to a fine of R.30,000.

(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 authorized 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 **62.**(1) No person shall publish an advertisement indicating -
advertise-
ments

3/8/1991 (a) that the parent or guardian of a child wishes to cause the child to be adopted;

Act 4/1998

(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 R. 10,000.

Revocation of **63.** Where the natural parents of an illegitimate child, one of

adoptions on 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

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 Officer, 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;

Cap. 87

(1971 Edition) (b) an adoption order under the Adoption Act repealed by this Act; or

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

and cognate expressions are construed accordingly.

(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

Cap. 34

Status Act; and

(B) the crime of incest under section 155 or

Cap. 158

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

Act 4/1998 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.

(2) Without prejudice to subsection (1), section 66 (Status conferred by adoption) does not affect the operation of -

Cap. 42 (a) Chapter II of the Constitution of the Republic of Seychelles ;

Cap. 30 (b) the Citizenship of Seychelles Act;

Cap. 93 (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 **68.**Section 66 (Status conferred by adoption) does not affect -

in status

(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-

3/8/1991
Cap. 158

- (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 and 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 3 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 5 years and to a fine of R. 50,000.

(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 **70A.**(1) Where the Director has reasonable ground for believing that a
examination child has been assaulted or ill-treated under section 70 or the Penal Code

Act 4/1998 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 2 years and a fine of R10,000.

Children **71.**(1) No person shall -

not to be

used for (a) cause or procure a child; or

begging

Act 4/1998 (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 singing, 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 sub-section (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 hire out to him, that child is for the purpose of this section deemed to be in that street or place for the purpose of sub-section (1) (iii).

(4) A person who contravenes sub-section (1) is guilty of an offence and is liable to imprisonment for 2 years and to a fine of R.2000.

Children **72.(1)** No person shall -

not to be

given liquor (a) give to a child; or

2/8/1991

(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 sub-section (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.

Cap. 113 (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 a fine of R.20,000.

Children **73.**(1) No person shall -

not to be

given drugs (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 sub-section (1) if the controlling 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
Cap. 133 section 2 of the Misuse of Drugs Act.

(4) A person who contravenes sub-section (1) is guilty of an offence and is liable to imprisonment for 15 years and to a fine of R.200,000.

Children **73A.**(1) A person shall not -

not to be

given

tobacco (a) give to a child;

(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 2 years and to a fine of R20,000.

Children **74.**(1) No person shall -

not to be

used for (a) use a child; or

witchcraft

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

Cap. 158 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 sub-section (1) is guilty of an offence and is liable to imprisonment for 10 years and to a fine of R.100,000.

Children **75.**(1) No person shall -

not to be

used for (a) cause or procure a child; or

offences

(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

Cap. 158 given in section 5 of the Penal Code.

(3) A person who contravenes sub-section (1) is guilty of an offence and is liable to imprisonment for 5 years and to a fine of R.50,000.

Warrant to **76.**(1) If, on an application to a judicial officer by any person who,

search for in the opinion of the judicial officer, is acting in the interests of

or remove a child, it appears to the judicial officer on information on oath that

child there is reasonable cause to suspect that the child appears to need

Act 4/1998 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 address 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.

PART VII. - COMPULSORY CARE

Children's **77.**(1) There shall be a Family Tribunal which shall consist of a Chairman, Board 2 Vice- Chairmen, and such other members, being not less than 5 and not more than 15, as the Minister may appoint and the Minister shall publish the names of the persons appointed as members of the Tribunal in the Gazette.

(2) The Chairman of the Tribunal and at least one of the Vice-Chairmen shall be legal practitioners of at least 3 years standing.

(3) The Board shall appoint a Secretary to the Board who, in addition to any other duties conferred on him shall be responsible for convening all sittings of members of the Board in terms of section 78(1).

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

Tribunal generality of the foregoing the Tribunal shall -

(a) hear and determine matters, relating to the care, custody 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 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 3 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.

(6) The Minister shall appoint a Secretary to the Tribunal who shall be responsible -

- (a) after consultation with the members of the Tribunal, for convening sittings of the Tribunal;
- (b) for implementing the decisions of the Tribunal and issuing summonses and other notices on behalf of the Tribunal; and
- (c) for keeping the records of the Tribunal.

(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 Minister shall provide the Tribunal with suitable accommodation and facilities dissociated with the courts and police station for the purpose of performing its functions.

Proceedings **78A(1)** Subject to subsection (3), the Tribunal may -
of the Tribunal

Act 4/1998 (a) summon any person to appear before it;

Act 9/1999

- (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) Except as otherwise provided under this Act, the Tribunal shall establish its own procedure for the hearing or determination of any matter falling under its jurisdiction.

(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 on any premises or part of any premises in the interest of a child, or directing a person not to take or send a child out of Seychelles,

1. fails to comply with any order of the Tribunal other than an order referred to in section 6.

is guilty of an offence and liable on conviction to imprisonment for 3 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 (7), 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.

Appeal **78B**(1) Except as otherwise provided in this Act, a person aggrieved
from by a decision of the Tribunal may appeal to the Supreme Court

Tribunal against the decision.

(2) The Supreme Court may, on an appeal, make such order as the Supreme Court thinks fit and the order shall not be subject to appeal to the Court of Appeal.

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

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

compulsory

measures (a) without prejudice to Articles 375 and 376 of the Civil

of care Code, he is beyond the control of his parent or guar-

3/8/1991 dian ; 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;

(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 **80.**(1)Where a child appears to need compulsory measures of care in

place of terms of section 79(1), -

safety

2 & 3/8/1991 (a) a police officer; or

Act 4/1998

(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);

(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.

(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 7 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 7 days, where the hearing of the issue of compulsory measure of care has started,

whichever is the shorter.

(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.

(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.

(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 R.10,000.

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.

3/8/1991

Act 4/1998 (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 his notice,

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

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

- (a) refer the case for the consideration and determination of a Tribunal under sections 86 and 88; and
- (b) submit to the Tribunal a report on the child and his social background.

Report by Director to Tribunal **82.** Where the case of a child is referred to a Tribunal under

section 80(3) or section 95 -

Tribunal

3/8/1991 (a) the Secretary of the Board shall inform the Director; and

Act 4/1998

(b) the Director shall submit to the Tribunal within 7 days of being informed under paragraph (a), a report on the child and his social background.

Procedure **83.**(1) A Tribunal shall be conducted in private.

(2) Subject to regulations under section 107(k), no person shall be present at a Tribunal other than -

(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 Tribunal at any one time is kept to a minimum.

Attendance **84.** Repealed

of child

by Act 4/1998

Attendance **85.** Repealed

of parent

by Act 4/1998

Criteria for **86.** Repealed

decisions

by Act 4/1998

Further **87.**(1) Where a Tribunal consider that further investigation in relation

background to a child or his social background is necessary to complete its con-

investiga- sideration of his case it may -

tions

Act 4/1998 (a) continue the case to a subsequent sitting; and

(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 83(7) 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).

Powers of **88.**(1) The Tribunal may -

Tribunal

3/8/1991 (a) where it decide that no further action is required, discharge a referral; or

(b) where they decide 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 they may impose; or

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

(c) where they consider that an application to have a child received into a mental hospital under the Mental Treatment Act should

Cap. 127 be made, make a report to that effect to a Commissioner of Lunacy under that Act;

(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 sub- section (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

(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.

(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.

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.

3/8/1991 (2) A supervision requirement shall be reviewed by a Tribunal -
Act 4/1998

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

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

(c) after it has been in effect for 6 months, on the application of a child or his parents or guardian;

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

(3) On a review of a supervision requirement, a Hearing 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

(c) end that requirement.

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

Appeal. **91.** Repealed

by Act 4/1998

PART VIII - JUVENILE COURTS

Restriction on **92.**(1) No child shall be prosecuted for any offence except -
prosecution

of children

(a) the offence of murder or an offence for which the penalty is death; or

1. on the instructions of the Attorney-General.

Juvenile Court **93.**(1) A court when hearing charges against a child, unless the child is

Act 4/1998 charged jointly with any other person who is not a child, -

1. shall consist of a 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

1. shall sit either -

1. in chambers; or

1. on different days or at different times from those at which the ordinary sittings are held.

(1A) The President shall, for the purpose of subsection (1) (a), appoint not less than 3 and not more than 6 persons and shall publish the names of the persons appointed in the Gazette.

(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

1. 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 -

1. detained;
1. being conveyed to or from court;
1. 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.

(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.

Restrictions **94.**(1) Notwithstanding any other written law, no child under 14
on imprison- years of age shall be sentenced to imprisonment.
ment etc.

Act 4/1998 (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, and 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.

Methods of **95.**(1) Where a child charged with any offence is tried by any court,
dealing with and the court is satisfied of his guilt, the court shall consider how,
children under this or any other written law, the case should be dealt with,
charged with namely -
offences

1. by making an order for his absolute or conditional discharge;
1. by referring him to the Tribunal under Part VII;
1. by making a probation order under the Probation of Offenders Act;
1. by committing him to the care of a relative or other person;
1. subject to section 94(3), by committing him to a Juvenile Centre provided under Part IX for training for a period not exceeding 3 years;
1. by ordering him to pay a fine, damages or costs;
1. by ordering his parent or guardian to pay a fine, damages or costs in terms of section 96(1) or (4);
1. by ordering his parent or guardian to give security for his good behaviour in terms of section 96(3) or (4);
1. 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;
1. by dealing with the case in any other manner in which it may be legally dealt with:

Provided that nothing in this section authorizes 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

Power to order **96.**(1) Where -

parent to pay

fine etc. (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

1. 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 -

1. may in any case; and

1. 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 the child.

(2) No order shall be made under subsection (1), -

1. if the parent or guardian, as the case may be, cannot be found; or

1. 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 failed to do so.

(6) A sum -

1. ordered to be paid by a parent or guardian under this section; or

1. on forfeiture of security under subsection (3),

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) A parent or guardian may appeal against an order under this section to the Supreme Court, but the decision of the Supreme Court is final and there is no appeal from it to the Court of Appeal.

Repealed **97.** Repealed

by Act 4/1998

Committal to **98.**(1) The order or judgment under which a child or young person

Juvenile is committed to a Juvenile Centre shall be delivered with the

Centre 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 in 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

Provision by **99.** It is the duty of the Government -

Government

1. to provide and maintain such residential and other establishments as may be required for the purposes of this Act; or

1. to arrange for the provision of such establishments by the Director.

Types of **100.**(1) Establishments provided and maintained under this Act may

establishment include one or more of each of -

3/8/1991

1. a day nursery for the daytime care of children not exceeding 4 years of age whose mothers are employed during the day;

1. 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);

1. 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

1. a Juvenile Centre for young persons as -

1. 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

1. an attendance centre.

1. a residential re-orientation centre for young persons at risk;

1. a Youth Residential Treatment Centre;
2. a place approved by the Minister for the purpose of training or apprenticeship.

(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 -

1. regular visits to the child by the parents or guardian; and
1. 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 6 months and to a fine of R.1000.

Supervision of establishments. **103.**(1) The Director shall supervise establishment (not being schools) specified by the Minister by notice published in the Gazette as having the care of children.

2/8/1991

(2) In exercising supervision, the Director shall -

1. appoint a Supervision Committee to carry out this function; and
1. cause each establishment to be inspected at intervals not exceeding 3 months.

(3) Without prejudice to any other power or provision, in an inspection under subsection (2)(b) the Director shall ensure that -

1. the situation of the establishment is suitable for the care of children;

1. the establishment is physically and structurally sound with adequate proportion of staff trained in working with children;
1. the establishment has sufficient staff, including an adequate proportion of staff trained in working with children;
1. the children at the establishment are healthy and well fed and clothed; and
1. if there are problems or complaints, the children concerned are seen individually.

Admission of children **104.** A child shall only be admitted as a resident to an establishment specified under section 103(1) on the instructions of the Director.

3/8/1991

Act 4/1998

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

3/8/1991 be discharge unless -

Act 4/1998

1. the Director has been notified not less than 48 hours beforehand of the intended discharge; and
1. 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 establishment.

(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.

(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.

(3) Subject to subsection (1), (2A) and (2B) no person (including a parent or guardian of the child) shall remove a child from an establishment specified under section 103(1) without the written consent of the Director.

(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.

False **106.** A parent or guardian who -
information

Act 4/1998

1. with the intention of having a child admitted to an establishment specified under section 103(1); or

1. in respect of any other matter falling within the scope of this Part,

makes a statement -

1. wilfully, if he knows it to be false; or

1. 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 R10,000.

Regulations **107.** The Minister may make regulations for the better carrying out of

Act 4/1998 the objects and purposes of this Act, including -

1. prescribing any matter which is to be or may be prescribed under this Act;

1. amending a Schedule;

1. prescribing the form or content of documents under this Act;

1. prescribing the persons to be served with, and the advertisement and publication of, documents under this Act;

1. prescribing fees or charges -

1. for applications, objections, appeals or certificates;

1. for or in connection with services given under this Act;

1. specifying the matters to be taken into account by the Director when considering the suitability of foster parents or foster homes;
1. 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;
1. prescribing the assistance which the Director may provide a foster parent under section 29(3) and any contributions to be made by foster parents for that assistance;
1. regulating the procedure of the Tribunal;
1. prescribing the form of a supervision requirement under section 88(4);
1. the classification, treatment, employment, training and control of children -
 1. sentenced to imprisonment;
 1. committed to a Juvenile Court;
1. the visiting of children in prison or Juvenile Centre by persons appointed in accordance with the regulations;
2. the conduct of residential and other establishments and for securing the welfare of persons residing or accommodated in them, including -
 1. the construction of and the accommodation provided in those establishments, and their equipment, maintenance and management;
 1. the classification, training, education and occupation of children in those establishments and the persons who may give it;
 1. specifying the occasions on which corporal punishment may be given to children in those establishments and the persons who may give it;
 1. 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 -

1. prescribing the fees and costs payable in any proceedings before, or on commitment to prison by, a court;
1. providing generally for matters of practice and procedure and incidental matters arising;

1. providing for any matter which is to be prescribed by rules of court under this Act;
1. providing for the remission of fees and costs where the person liable to pay them has no means to do so;
1. restricting the persons who may attend Juvenile Courts;
1. restricting reports of proceedings of Juvenile Courts;
1. the detention of children on remand or waiting trial;
1. requirements for the attendance of parents;
1. 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 -

2/8/1991

1. the Government;
1. the Director;
1. a member or the Secretary of the Tribunal;
1. a member of a Juvenile Court;
1. 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.

FORM OF AGREEMENT OF PARENT OR GUARDIAN TO ADOPTION

I (Name) of

..... (Address)

being the mother/father/guardian* of the child (Name)

who is (i) not less than 6 weeks old; and

(ii) the child whose birth certificate is now shown to me and attached to this Agreement

HEREBY STATE THAT

- 1. I understand that the effect of an adoption order will be to deprive me permanently of my rights as a parent/guardian* and to transfer them to the persons who adopt my child;

and particularly I understand that if an order is made I shall have no right to see or get in touch with the child or to have him or her returned to me.

- 1. I also understand that the Court cannot make an adoption order without the agreement of each parent or guardian of the child unless the Court dispenses with agreement on grounds of neglect or failure by the person concerned.

- 1. I further understand that, when the application for an adoption order is heard, this document may be used as evidence of my agreement to the making of the order unless I tell the Court I no longer agree.

AND I AGREE to the making of an adoption order.

(Signature)

This Agreement, duly completed, was signed by

..... (Name of parent or guardian)

before me (being a person prescribed by rules of court for this purpose) at
..... (place)

on (Date)

(Signature)

(Designation)

(Address)

.....

*Delete alternatives not applicable

SCHEDULE 2 Section 79 (I)(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.
 1. Any offence under Part VI (Offences against Children) of this Act.
 2. Any other offence involving bodily injury to a child.

SCHEDULE 3 Section 78

Specified written law

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.

[\[i\]](#)Part IX of the Act has not come into operation up to December 31, 1991.