# THE LAW OF THE CHILD ACT, 2009

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SCHEDULES

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THE UNITED REPUBLIC OF TANZANIA

NO. 21 OF 2009

I ASSENT,

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*President*

20th November, 2009

**An Act to provide for reform and consolidation of laws relating to children, to stipulate rights of the child and to promote, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of the child; to provide for affiliation, foster care, adoption and custody of the child; to further regulate employment and apprenticeship; to make provisions with respect to a child in conflict with law and to provide for related matters.**

ENACTED by Parliament of the United Republic of Tanzania.

## PART I
### PRELIMINARY POVISIORNS

Short title and commencement

**1.**-(1) This Act may be cited as the Law of the Child Act, 2009.

(2) This Act shall come into operation on such date as the Minister may, by notice published in the *Gazette,* appoint.

Application

**2.** This Act shall apply to Mainland Tanzania in relation to the promotion, protection and maintenance of the welfare and rights of the child.

Interpretation

**3.** In this Act, unless the context otherwise requires -

"approved residential home" means a licensed home whereby a child is given a substitute temporary family care;

"approved school" means a school established under this Act and includes any place or institution declared as such under the provisions of this Act;

"basic education" means formal education provided to a child to the level that may be prescribed from time to time;

"child abuse" means contravention of the rights of the child which causes physical, moral or emotional harm including beatings, insults, discrimination, neglect, sexual abuse and exploitative labour;

"child development" in relation to the welfare of the child, means the process of change during which a child is able to reach his physical, mental, emotional and social potentials the development of each of such dimensions is simultaneously through continued life time interaction with the enviroment;

"child with disabilities" means a child who has long term or permanent physical, mental, intellectual or sensory impairment which hinders his full and effective participation on equal basis with others;

"Commissioner" means the Commissioner for Social Welfare;

"court" means -

(a) a primary court, the District Court, the Resident Magistrates Court or the High Court;

(b) for purposes of adoption, the High Court; and

(c) for purposes of parentage, a Juvenile court;

"craftsman" means a person who trains and instructs an apprentice in a trade;

"crèche" means an early childhood development establishment registered for purposes of receiving and looking after children below the age of five years of a number that does not exceed ten during the day or substantial part of the day with or without a fee;

"day-care centre" means any early childhood development establishment registered for purposes of receiving and looking after children below the age of five years for the day or a substantial part of the day with or without a fee and includes a creche;

Cap. 389

"destitute" shall have a meaning ascribed to it under the Destitute Persons Act;

Cap.287
Cap 288

"district" shall have the meaning ascribed to it under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act;

"family" means parental father, mother and children, adopted or blood related and other close relatives including grandfather , grandmother, , uncles, aunties, cousins nephews, and nieces who live in a household;

"fit person" means a person of full age who is of high moral character and integrity and of sound mind who is not a relative of the child and capable of looking after a child, and has been approved by a social welfare officer as being able to provide a caring home for a child;

"foster care or fosterage" means a temporary measure provided on voluntary basis by the family and individual who is not related to a child to discharge care and protection to the child;

"guardian" means a person who has a charge or control over a child or a person appointed by deed, will or order of the court vested with the duty of taking care and managing the property and rights of the child;

"hazardous work" means any work which places a child at risk to suffer physical or mental injury.

"home" means, in respect of the child, place where in the opinion of the court having cognizance of any case relating to the child or in which the child is concerned, the child's parent or guardian who has a permanent known residence, where there is no parent or guardian living, child's parent or guardian last permanent residence, except that:

(a) in the case of a parent or guardian with more than one permanent place of residence, such parent or guardian shall be presumed to be or to have been permanently resident at the place of his principal permanent residence;

(b) where the court is unable to determine the home of any such person, he shall be deemed for the purposes of this Act to have his home in the area of jurisdiction of the local authority in whose area the child is found;

"institution" means an approved residential home, retention home, approved schools or institution for socially deprived children and street children and includes a person or institution that has care and control of children;

"Juvenile Court" means a court established under section 97;

"Minister" means the Minister responsible for children affairs;

"next friend" means a person who intervenes to assist a child to bring a legal action and includes a guardian *adem litem*;

Cap.56 "Non-Governmental Organisation" shall have a meaning ascribed to it under the Non-Governmental Organizations Act;

"orphan" means a child who has lost both parents or a parent through death;

"parent" means a biological father or mother, the adoptive father or mother and any other person under whose care a child has been committed;

Cap. 108 "Registrar-General" means the Registrar-General of Births and Deaths appointed in accordance with the provisions of the Births and Deaths Registration Act;

"retention home" means a place where a child is safely accommodated while his case is being considered;

"relative" means a grandparent, grandmother, brother, sister, cousin, uncle, auntie or any other member of the extended family;

"social welfare officer" means a social welfare officer in the service of the Government;

"sectoral minimum wage" means a minimum wage determined by a sectoral wage board to specific sector in accordance with section 39 of the Labour Institution Act.

Cap.300

## PART II
## RIGHTS AND WELFARE OF A CHILD

### *(a) Right of a child*

Construction of "the child"

**4.**-(1) A person below the age of eighteen years shall be known as a child.

(2) The best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, courts or administrative bodies.

Non-discrimination

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

(2) A person shall not discriminate against a child on the grounds of gender, race, age, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urban background, birth, socio-economic status, being a refugee or of other status.

Right to name and nationality

**6.**-(1) A child shall have a right to a name, nationality and to know his biological parents and extended family.

(2) A person shall not deprive a child of the right to a name, nationality and to know his biological parents and members of extended family subject to the provisions of any other written laws.

(3) Each parent or guardian shall be responsible for the registration of the birth of his child to the Registrar-General.

Right to grow up with parents

**7.**-(1) A child shall be entitled to live with his parents or guardians.

(2) A person shall not deny a child the right to live with his parents, guardian or family and to grow up in a caring and peaceful environment unless it is decided by the court that living with his parents or family shall -

(a) lead a significant harm to the child;
(b) subject the child to serious abuse; or
(c) not be in the best interest of the child.

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

Duty to maintain a child

**8.**-(1)It shall be the duty of a parent, guardian or any other person having custody of a child to maintain that child in particular that duty gives the child the right to -

(a) food;
(b) shelter;
(c) clothing;
(d) medical care including immunization;
(e) education and guidance;
(f) liberty; and
(g) right to play and leisure.

(2) A person shall not deprive a child access to education, immunisation, food, clothing, shelter, health and medical care or any other thing required for his development.

(3) A person shall not deny a child medical care by reason of religious or other beliefs.

(4) A person shall not deprive a child the right to participate in sports, or in positive cultural and artistic activities or other leisure activities unless in the opinion of the parent, guardian or relative such participation or activity is not in the best interest of the child.

(5) A person shall not treat a child with disabilities in an undignified manner.

(6) A child with disabilities shall be entitled to special care, treatment, affordable facilities for his rehabilitation and equal opportunities to education and training wherever possible to develop his maximum potential and be self-reliance.

Parental duty and responsibility

**9.**-(1) A child shall have the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents.

(2) The right to leasure and liberty by the child shall be subject to guidance and ability of a parent, guardian or relative.

(3) Every parent shall have duties and responsibilities whether imposed by law or otherwise towards his child which include the duty to -

(a) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression;

(b) provide guidance, care, assistance and maintenance for the child and assurance of the child's survival and development;

(c) ensure that in the temporary absence of a parent, the child shall be cared for by a competent person,

except where the parent has surrendered his rights and responsibilities in accordance with a written law or any traditional or customary arrangement.

(4) Where biological parents of a child are deceased, parental responsibility may be passed on to a relative of either parent or a custodian by way of court order or any traditional arrangement.

Right to parental property

**10.** A person shall not deprive a child of reasonable enjoyment out of the estate of a parent.

Right of opinion

**11.** A child shall have a right of opinion and no person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being.

Harmful employment

**12.** A person shall not employ or engage a child in any activity that may be harmful to his health, education, mental, physical or moral development.

Protection from torture and degrading treatment

**13.**-(1) A person shall not subject a child to torture, or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well-being of a child.

(2) No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child is by reason of tender age or otherwise incapable of understanding the purpose of the correction.

(3) The term "degrading treatment" as used in this section means an act done to a child with the intention of humiliating or lowering his dignity.

Penalty for contravention

**14.** A person who contravenes any provision of this Part, commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding six months or to both.

### *(b) General Duty of a Child*

Duty and responsibility of a child

**15.** Notwithstanding any provisions of this Act, a child shall have a duty and responsibility to -

(a) work for the cohesion of the family;

(b) respect his parents, guardians, superiors and elders at all times and assist them in case of need;

(c) serve his community and nation by placing his physical and intellectual abilities at its service in accordance with his age and ability;

(d) preserve and strengthen social and national cohesion; and

(e) preserve and strengthen the positive cultural values of his community and the nation in general in relation to other members of the community or the nation.

## PART III
### CARE AND PROTECTION OF A CHILD

Meaning of child care and protection and grounds for care orders

**16.** For the purposes of this Act, a child is in need of care and protection if that child –

(a) is an orphan or is abandoned by his relatives;

(b) has been neglected or ill-treated by the person who has the care and custody of the child or by his guardian or parents;

(c) has a parent or guardian who does not exercise proper guardianship;

(d) is a destitute;

(e) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child;

(f) is wandering and has no home or settled place of abode;

(g) is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises or place for the purpose of begging or receiving alms;

(h) accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise;

(i) is under a care of a destitute parent;

(j) frequents the company of any reputed criminal or prostitute;

(k) is residing in a house or the part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of, or affect the morality of the child;

Cap 432

(l) is a person in relation to whom an offence has been committed or attempted under the Anti Trafficking of Persons Act;

(m) is found acting in a manner from which it is reasonable to suspect that he is, or has been, soliciting or importuning for immoral purposes;
(n) is below the age of criminal responsibility and is involved in an offence other than a minor criminal matter;
(o) is otherwise exposed to moral or physical danger;
(p) is under a care of a person with disability and such disability hinders such person from exercising proper care or guardianship; or
(q) in any other environment as the Commissioner may determine.

Child protection

**17.**-(1) A person, being an owner or occupier who runs or is in-charge of a discotheque, bar or night club, shall not allow a child to enter into the premises.

(2) A person shall not sell cigarettes, alcohol, any spirit, drugs or any intoxicating substance to a child.

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

Care order of court to be of benefit to a child

**18.**-(1) A court may issue a care order or an interim care order on an application by a social welfare officer for the benefit of a child.

(2) The care order or an interim care order shall remove the child from any situation where he is suffering or likely to suffer significant harm and transfer the parental rights to the social welfare officer.

(3) The social welfare officer shall take custody of the child and determine the most suitable place for the child which may be -

(a) an approved residential home;
(b) a fit person;
(c) an approved foster parent in accordance with the foster – care placements Rules made under this Act; or
(d) at the home of a parent, guardian or relative.

(4) The maximum duration of a care order shall be three years or until such time when the child attains the age of eighteen, whichever period is earlier.

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

(6) A court shall not designate a manager or patron of an institution or an approved residential home, as an approved fit person to whom the care of a child can be entrusted, unless the institution or approved residential home is the one which the Commissioner has, by notice published in the *Gazette*, approved.

(7) An interim care order may not be made unless a child is suffering or is likely to suffer significant harm as provided for under section 16 of this Act.

Supervision order of court

**19.**-(1) A court may, on application by a social welfare officer, issue a supervision or interim supervision order.

(2) The supervision or interim supervision order shall be aimed at placing or preventing any significant harm being caused to a child whilst he remains at his family home in the custody of his parent, guardian or relative.

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

(4) The maximum duration for a supervision order shall be one year or until the child attains the age of eighteen or, upon approval by the social welfare officer where there is application by the social welfare officer to that effect.

(5) An extension of a supervision order shall require a written report by the social welfare officer.

(6) A supervision order shall require the person with whom the child lives to -

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

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

(7) An application for the order for reception of a child in approved residential home or institution, shall contain the information relating to -

(a) the name, age and address of the child;
(b) gender of the child;
(c) names of the parent, if known;
(d) nationality;
(e) education of a child;
(f) a medical report relating to the health of a child;
(g) location and place of birth, if known;
(h) tribe; and
(i) birth religion.

(8) An application made under this section shall consider -
(a) best interest of the child;
(b) social welfare investigative report; and
(c) alternative family.

Duties of Social welfare officer

**20.** The duties of a social welfare officer with respect to a care or supervision order are to -
(a) advise and counsel the child and his family;
(b) hold regular reviews to plan for the future of the child in consultation with the child and his parents or guardian;
(c) apply to the court to discharge or vary the order if necessary; and
(d) take necessary steps to ensure that the child is not subjected to harm.

Home visits

**21.** A social welfare officer shall be permitted by a parent, guardian or relative of the child to visit the child at his family home or, at an approved residential home or institution, as the case may be.

General provisions on orders

**22.**-(1) A child who infringes an order of the court and runs away may be apprehended without warrant by a police officer, village executive officer, ward executive officer or social welfare officer and returned to the place of the care.

(2) Where the child has run away and a fit person is not willing to take care of the child, the court may make another order placing that child in an approved school.

Discharge of orders

**23.** A care or supervision order may be discharged in the best interest of the child by the court on the application of -

(a) the child, through a next friend;
(b) a social welfare officer;
(c) a police officer;
(d) a parent, guardian or relative of the child; or
(e) any person with parental responsibility.

Care order and adoption

**24**.-(1) A child under a care order or supervision order whose parent, guardian or relative does not show an interest in the welfare of the child within a period stipulated by the court, may be put up for adoption, with foster parents or place the child in a care of the patron of an approved residential home.

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

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

Objective of a care order

**25**.-(1) The purpose of a care order or supervision order is to -

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

(2) A care order or supervision order shall, by an application of the social welfare officer, be reviewed at least once in each year.

Child rights where parents separate Cap 29

**26**.-(1). Subject to the provisions of the Law of Marriage Act, where parents of a child are separated or divorced, a child shall have a right to-

(a) maintenance and education of the quality he enjoyed immediately before his parents were separated or divorced;

(b) live with a parent who, in the opinion of the court, is capable of raising and maintaining the child in the best interest of the child; and

(c) visit and stay with the other parent whenever he desires, unless such arrangement interferes with his school or training programme.

(2) There shall be a rebuttable presumption that it is in the best interst of a child below the age of seven years to be with his mother but in deciding whether that presumption applies to the facts of any particular case, the court shall have regard to the undesirability of disturbing the life of the child by changes of custody.

## PART IV
## FOSTER CARE PLACEMENT

Parental responsibility of patron , manager or foster parent

**27.**-(1) The patron of the approved residential home or manager of an institution or the foster parents with whom the child is placed shall have parental responsibility for the child while the child is with him or with the institution.

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

(3) The patron or manager of the approved residential home or institution or the foster parents with whom the child is placed, shall ensure that the child's development while in the approved residential home or institution or with a foster family particularly his health and education is attended to.

(4) The patron or manager of the approved residential home or institution shall have the responsibility of communicating with the parents or guardians of the child to inform them about the child's progress and to arrange, through the social welfare officer, for a trial return home by the child as soon as it is appropriate.

(5) The social welfare officer shall be required to visit the child during the trial period at home and make plans for the future of the child in consultation with the manager, patron or the foster parents.

Exclusion order

**28.**-(1) Juvenile Court may, or in proceedings for a supervision order, care order, interim supervision order or interim care order, make an exclusion order prohibiting a named person from having contact with the child and persons looking after the child.

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

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

Enforcement of exclusion order

**29.**-(1) A Juvenile Court may vary or discharge an exclusion order on the application of the person named in the order or of the child concerned.

(2) A court may, in proceedings for an application for a care order or supervision order, make a search and production order authorizing the social welfare officer, with or without a police officer, to enter any premises specified in the order to search for and remove to a place of safety, any child whom the social welfare officer believes or suspects is suffering or is likely to suffer significant harm.

(3) A child removed on a search and production order shall be produced in court within seven days after his removal.

(4) As soon as possible and in any case within the period referred to in subsection (3), the social welfare officer shall take the child to the court and shall make a report, taking into account the wishes of the child.

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

(6) Any person who contravenes an exclusion order commits an offence and upon conviction shall be liable to a fine not less than five hundred thousand shillings or for a term of three months or to both.

Offence to remove a child without authority

**30.**-(1) Any person who, without reasonable cause removes a child placed under protection from a place of safety without the authority or permission of the person under whose custody the child is placed, commits an offence and upon conviction shall be liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

(2) The Social Welfare Officer shall, after making investigation as to the need of returning the child to the place of safety, return the child to such place of safety.

Social investigation report

**31 .**-(1) The court shall require a written social investigation report in respect of a child before making a care order or supervision order.

(2) A social welfare officer shall have the duty to prepare a social investigation report, and to comply with an order of the court whenever required to provide such a report.

(3) The social welfare officer shall make home visit and interview the parents, guardians or relatives of the child concerned before preparing a social investigation report.

(4) Where the child in respect of whom the social investigation report is made is of sufficient age and understanding that child shall be interviewed by the social welfare officer.

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

(6) The court shall take into account the information contained in the social investigation report if it is relevant to the order being made.

(7) Where an order of the court is not produced within fourteen days, the child may be admitted in the approved residential home or institution pending a court order which shall in any case, be procured within thirty days.

(8) Where the court is not satisfied with any recommendation made by the social welfare officer in the report it shall record the reasons for not complying with the recommendation.

Conditions for foster care

**32.**-(1) Where a child has been committed to an approved residential home or institution under a care order or supervision order, the social welfare officer, in conjunction with the patron or

manager of the approved residential home or institution may make recommendation to the Commissioner to place the child with a person who is willing to be a foster parent.

(2) A person who intends to foster the child shall make an application to the Commissioner for Social Welfare.

(3) The Commissioner shall, upon receipt of the application consider the application in the light with the recommendations made by the social welfare, officer, patron or manager.

(4) Where the Commissioner is satisfied that an applicant for foster parent is a person who can take care and maintain the child and is otherwise satisfied that the best interest of the child will be taken care, the Commissioner shall grant the permission for the child to be in the foster care of the applicant.

(5) A foster parent under whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the child's maintenance as if he were the parent of the child.

(6) The Minister shall, in consultation with the Minister responsible for social welfare, make rules regarding the foster care placements of the child.

No publication of information or photograph of a child

**33.**-(1) A person shall not publish any information or a photograph that may lead to the identification of a child in any matter before the court except with the permission of the court.

(2) Any person who publishes any information or photograph contrary to this section commits an offence and upon conviction shall be liable to a fine of not less than two million shillings and not more than fifteen million shillings or to imprisonment for a term not exceeding three years or to both.

## PART V

## PARENTAGE, CUSTODY, ACCESS AND MAINTENANCE

Application for parentage

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

(a) the child;
(b) the parent of a child;
(c) the guardian of a child;
(d) a social welfare officer; or

(e) with a special leave of the court, any other interested person.

(2) The application to the court may be made -
(a) before the child is born;
(b) after the death of the father or mother of a child;
(c) before a child is eighteen years of age or with special leave of the court, after the child has attained eighteen years.

Evidence of parentage

**35.** The following shall be considered by a court as evidence of parentage -
(a) any marriage performed in accordance with the Law of Marriage Act;
Cap.29
(b) the name of the parent entered in the Register of Births kept by the Registrar-General;
Cap.108
(c) performance of customary ceremony by the father of the child;
(d) public acknowledgment of parentage; or
(e) DNA results.

Medical test

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

(2) Without prejudice to subsections (1), where the evidence of a mother or independent evidence cannot be corroborated by other evidence available to the satisfaction of the court, the court may, upon request or *suo moto*, order DNA test to be conducted for the purpose of proving the biological father of the child.

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

(4) Where the court has made an order on a biological father, such biological father shall assume the responsibility to the child in the same manner as may be in respect of a child born in wedlock and the child shall, subject to religious belief of the biological father, have such other rights devolving from the parent including a right to be an heir.

(5) Any person who refuses to comply with the court order issued under this section commits an offence and shall on conviction be liable to a fine of not less than five hundred thousand shillings or to imprisonment for a term of three months or to both.

Custody

**37.**-(1) A parent, guardian or a relative who is caring for a child may apply to a court for custody of the child.

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

(3) The court may, at any time, revoke the grant of custody to one person and grant the custody to another, approved residential home or an institution, as it may deem necessary.

(4) In reaching its decision under subsection (2) or (3), the court shall primarily consider the best interest of the child.

Access

**38 .** A parent, guardian or a relative who has been caring for a child prior to the court order placing the custody of that child to another person may apply to a court for periodic access to the child.

Considerations for custody or access

**39.**-(1) The court shall consider the best interest of the child and the importance of a child being with his mother when making an order for custody or access.

(2) Subject to subsection (1), the court shall also consider -

(a) the rights of the child under section 26;

(b) the age and sex of the child;

(c) that it is preferable for a child to be with his parents except if his right are persistently being abused by his parents;

(d) the views of the child, if the views have been independently given;

(e) that it is desirable to keep siblings together;

(f) the need for continuity in the care and control of the child; and

(g) any other matter that the court may consider relevant.

Unlawful child removal

**40.** Any person who unlawfully removes a child from the lawful custody of another person, an approved residential home or institution, commits an offence.

Duty to maintain a child

**41**. A parent in respect of whom an order of parentage has been made, shall have a duty to contribute towards the welfare and maintenance of the child to supply the necessities for survival and development of the child.

Application for maintenance order

**42.**-(1) The following persons may apply to the court for a maintenance order for the child -

(a) a parent of the child;
(b) the guardian of the child;
(c) the child, by his next friend;
(d) a social welfare officer; or
(e) a relative of the child.

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

Maintenance order against alleged biological father

**43**.-(1) An application for maintenance order may be made against the alleged biological father to the court in respect of the child-

(a) by the expectant mother, at any time before the birth of the child;
(b) at any time within twenty four months from the birth of the child;
(c) at any time after the birth of the child upon proof that the man alleged to be the biological father of the child has within twenty four months after the birth of the child paid money for its maintenance;
(d) at any time within the twenty four months after the return to Mainland Tanzania of the man alleged to be a biological father of the child, upon proof that he ceased to reside in Tanzania before or after the birth of the child; or
(e) by the person against whom the order of parentage has been issued by the court in accordance with the provisions of Section 34 of this Act.

(2) The court shall refuse to grant a maintenance order under subsection (1) unless it is satisfied that -

(a) there is a reasonable cause to believe that the man alleged to be the father of the child is in truth the father and in fact the father of that child and that the application for a maintenance order is made in good faith and not for any purpose of intimidation and extortion; and

(b) the man alleged to be the father of the child has been requested by or on behalf of the applicant, to make provisions for maintenance of the child and has refused or neglected to provide maintenance, or has made inadequate provisions; and

Considerations for maintenance orders

**44.** The court shall consider the following matters when making a maintenance order-

(a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;

(b) any impairment of the earning capacity of the person with a duty to maintain the child;

(c) the financial responsibility of the person with respect to the maintenance of other children;

(d) the cost of living in the area where the child is resident; and

(e) the rights of the child under this Act.

Request for social enquiry report

**45.**-(1) The court may order a social welfare officer to prepare a social enquiry report before consideration of an application to make an order for maintenance, custody or access.

(2) The court shall, in making such order, consider the social enquiry report prepared by the social welfare officer.

Persons entitled to administer maintenance order

**46.**-(1) Any person who has custody of a child who is the subject of maintenance order is entitled to receive and administer the maintenance order of the court.

(2) Where the parent, guardian or any other person with custody of the child ceases to be a fit person, the court of the area where the child is resident may appoint another person to have custody of the child and administer the maintenance order and that person shall act as if he was originally appointed by the court.

Duration of maintenance order

**47.** A maintenance order issued by the court shall expire when the child attains the age of eighteen, is gainfully employed or dies before attaining the age of eighteen.

Continuation of maintenance orders in certain cases

**48.**-(1) Notwithstanding the provisions of section 47, the court may continue to enforce a maintenance order after a child has attained eighteen years if the child is engaged in a course of continuing education or training.

(2) An application under this section may be brought by a parent of the child, any person who has the custody of the child or the child himself.

(3) Notwithstanding the provisions of subsection (2), an action may be brought to the court by any person to enforce a maintenance order within forty five days after the order is made or is due.

Court may vary or discharge orders

**49.**The court may, if satisfied, vary or discharge a maintenance order on application by a parent, a person who has custody of the child or any other person legally liable and appointed to maintain the child.

Non-custodial parent to have access to a child

**50.** A parent who has no custody of a child and against whom an application is made to a court for an order of parentage, custody, access or maintenance shall have access to the child who is the subject of the order.

Offences under this Part

**51.** Any person who –

(a) unlawfully removes a child from another person who has lawful custody of the child contrary to section 37; or

(b) fails to supply the necessities for survival and development for a child when legally liable to do so under sections 41 and 46;

commits an offence and is liable on conviction to a fine of not less than five hundred thousand and not more than five million shillings or to imprisonment for a term of not less than six months and not more than three years or to both.

## PART VI
### FOSTERAGE AND ADOPTION

Person who can foster

**52.**-(1) Any person above the age of twenty-one of high moral character and proved integrity may be a foster-parent to a child.

(2) "A foster-parent" as used in this Part, means a person who is not the parent of a child but is willing and capable to undertake the care, welfare and maintenance of the child.

Conditions for foster-care placement

**53.**-(1) Where –

(a) a child has been committed to an approved residential home or an institution under a supervision order;

(b) a recommendation has been made by a social welfare officer that an approved residential home or an institution is the most suitable place for child; or

(c) a child has been placed in an approved residential home or an institution by any person,

the Commissioner may place that child with a foster parent.

(2) An application to foster a child shall otherwise be made to the Commissioner shall be forwarded to a social welfare officer, patron or to the person in charge of the approved residential home.

(3) Any foster-parent in whose care a child is placed or committed, shall have the same responsibilities in respect of the child's maintenance as the parent of the child.

(4) A child under foster care shall have a right to worship in accordance with his birth religion.

(5) Any foster-parent who contravenes the provisions of this Part is guilty of an offence under this Act.

(6) The Minister responsible for social welfare, upon consultation with the Minister responsible for children affairs may, make regulations on fosterage or foster-care placement.

(7) Notwithstanding any provisions of this section, the Commmissioner may, by deed, place any child under foster care for temporary custody.

Powers to make adoption order

**54.**-(1) Subject to the provisions of this Act-

(a) an application for an adoption order shall be made to the High Court; and

(b) an application for "open adoption" shall be made to the Resident Magistrate Court or the District Court.

(2) Upon receipt of the application, the court may grant an application for adoption or open adoption in accordance with this Act.

(3) The term "open adoption" as used in this Act, means adoption of the child by a relative.

Application for adoption

**55.**-(1) An application for an adoption order may be made jointly by -

(a) a husband and his wife; or
(b) mother or father of the child alone or jointly with his spouse.

(2) In the case of an open adoption, an application for adoption order may be made by a relative.

Restrictions on making adoption orders

**56.**-(1) An adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants -

(a) is of or above twenty-five years of age and at least twenty-one years older than the child;
(b) is a relative of the child and is above the age of twenty-five;
(c) in case of an application by one of the spouses, the other party has consented to the adoption; or
(d) a single woman where the applicant is a citizen of Tanzania,

and with due regard to the best interest of the child.

(2) A male applicant shall be granted an adoption order if the application is made in respect of his son or the court is satisfied that special circumstances warrant the order.

(3) An adoption order shall not be made for a child unless -

(a) the applicant and the child reside in Tanzania but this shall not apply if the applicant is a citizen of Tanzania resident abroad;
(b) the child has been continuously in the care of the applicant for at least six consecutive months immediately preceding the date of the submission of application; and

(c) the applicant has notified the Commissioner for Social Welfare of his intention to apply for an adoption order for the child at least three months before the date of the order.

(4) Unless the applicants are husband and wife or father and mother, as the case may be, an adoption order shall not be made to authorize more than one person to adopt a child.

Consent of parents and guardians

**57.**-(1) An adoption order shall only be made with the consent of the parents or guardian of the child.

(2) Nothwithstanding the provisions of subsection (1), the court may dispense with consent of any parent, guardian or relative of the child, if it is satisfied that -

(a) the parent, guardian or relative has neglected or persistently ill treated the child; or

(b) the person cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.

(3) Any parent, guardian or relative of a child who is the subject of an application for adoption or has given consent for the adoption order shall not be entitled to remove the child from the care and possession of the applicant except with the permission of the court and in the best interest of the child.

Other consent

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

(2) Subject to sub-section (2) of section 56, where a married person is the sole applicant, the court shall require the consent of the spouse of that person before the adoption order is made.

(3) Notwithstanding any provision of this section, no adoption order shall be made in favour of a person referred to under section 55 if such person practices or is of the civil relationship or marriage, as the case may be.

Conditions for adoption order

**59.**-(1) The court shall make an adoption order if it is satisfied that-

(a) the consent required for the adoption order has been obtained and that the parent or guardian of the child understands that the effect of the adoption order shall mean permanent deprivation of parental rights;

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

(2) Notwithstanding subsection (1), the court shall not make an adoption order unless there is a social investigation report prepared by the social welfare officer supporting the application for adoption and the court may, require some other persons or a local government authority to make a report in respect of the application.

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

(4) The adoption order shall include the following particulars the -

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

(5) An adoption order shall not be made in respect of any child unless the child has been continously in the care and custody of the applicant for at least three continuous months immediately preceding the date of the order.

Interim order

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

(2) When making an interim order the court shall impose conditions that the child shall-

(a) be under the supervision of a social welfare officer; and

(b) not be taken out of Tanzania without the permission of the court.

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

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

Knowledge of adoption by child

**61.**-(1) An adoptive parent shall inform the adopted child of the fact that the child is adopted and his parentage, but, this disclosure shall be made if -

(a) it is in the best interest of the child; and

(b) the child is at least fourteen years of age.

(2) No person other than the adoptive parent shall disclose adoption to the adopted child.

(3) Any person who contravenes this provision commits an offence and upon conviction shall be liable to a fine of not less than one hundred thousand shillings but not more than two million shillings or to imprisonment for a term not exceeding twelve months or to both.

Application by non-resident

**62.**-(1) In an application for adoption by an applicant who is a citizen of Tanzania but does not reside within the United Republic or where there is a joint application and one applicant is not a resident of Tanzania, the court shall satisfy itself that there is enough information warranting determination of application and thereafter make an interim order.

(2) The court shall, before granting an interim or adoption order, satisfy itself that there is enough information warranting the determination of the application from a recognised authority where the applicants presently reside and his country of origin.

Children previously adopted

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

Effect of adoption on parental rights

**64.**-(1) When an adoption order is made–

(a) the rights, duties, obligations and liabilities including those under customary law of the parents of the child or of any other person connected with the child of any nature whatsoever shall cease; and

(b) the adoptive parent of the child shall assume the parental rights, duties, obligations and liabilities of the child with respect of custody, maintenance and education as if the child was born to the adoptive parent in a lawful wedlock and was not the child of any other person.

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

Devolution of property on intestacy

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

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

Testamentary disposition

**66.**-(1) In a testamentary disposition of real or personal property, whether or not in writing made after the date of an adoption order -

(a) any reference whether express or implied to the child of the adoptive parent shall, unless the contrary intention appears, be construed as, or including, a reference to the adopted child;

(b) where a disposition made by the adoptive parent prior to the adoption order made no provision for the adopted child, the adopted child may apply to the court to vary the disposition to provide for the adopted child from the estate of the adoptive parent;

(c) any reference to a child of the adopted child's biological parents in a will shall not be construed as including a reference to the adopted child unless the contrary intention appears; and

(d) any reference to a person related to the adoptive parent shall, unless the contrary intention appears, be construed as a reference to the person as if he were the relative of the child who is adopted.

(2) A disposition by will executed before the date of the adoption order shall not be treated, for the purpose of this section, as if it were made after the date on which the adoption order was made by a codicil giving retrospective effect to the will.

(3) For the purposes of this section the expression "disposition" means a disposition of any interest in property by any instrument whether *inter vivos* or by will, including codicil.

Supplementary provisions on intestacy and testamentary disposition

**67.**-(1) The administrators or executors of an estate may distribute the estate of a deceased person to persons entitled under the estate without incurring any liability.

(2) Where at the time of the distribution the administrator or executors had not received a notice of an adoption order by virtue of which the adopted child is entitled to benefit under the estate, the entitled adopted child shall have a right to trace the property except against a purchaser in good faith:

Provided that the property shall not be disposed of or transferred to any other person until the matter is resolved.

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

Adoption order and customary law

**68.**-(1) An adopted child shall be subject to customary law as if he were the natural child of the adoptive parent only if the adoptive parent is the subject of customary law.

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

Adopted Children Register

**69.**-(1) The Registrar-General shall keep and maintain at his office a Register of Adopted Children in which shall be recorded particulars of the adoption order or interim order issued by the court.

(2) Every adoption order or interim order issued by a court shall be served on the Registrar-General by the registrar of the High Court within thirty days of the making of the order.

(3) The Registrar-General shall keep other records that are related to entries in the Register of Births on adoption together with entries in the Register of Adopted Children but these records shall not be available to the public or any person except under a court order.

Registration of adoptions

**70.**-(1) An adoption order made by the court shall contain a direction to the Registrar-General to make an entry in the Adopted Child Register in the form set out in the Schedule to this Act.

(2) Subject to the provisions of subsection (3), shall specify the particulars to be entered under the headings in columns 2 to 6 of the Schedule to this Act.

(3) For the purpose of compliance with the requirements of subsection (1) where-

(a) the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order;

(b) the name or surname which the child is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original; and

(c) the country of birth of the child is not proved to the satisfaction of the court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Register of Adopted Children.

(4) Where upon any application to the court for an adoption order in respect of a child, not being a child who has previously been the subject of an adoption order made by the court under this Act, there is proved to the satisfaction of the court the identity of

the child, with a child to whom an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the words "Adopted".

(5) Where an adoption order is made by the court under this Act, the order shall contain a direction to the Registrar-General to cause the previous entry in the Register of Adopted Children to be marked with the word "Re-adopted".

(6) Where an adoption order is made by the court under this Act, the court shall cause the order to be communicated in a prescribed manner to the Registrar-General, and upon receipt of such communications the Registrar-General shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the Registers of Births with the word "Adopted" and in regard to making the appropriate entry in the Register of Adopted Children.

Amendment of orders and rectification of Registers

**71.**-(1) The court by which an adoption order has been made under this Act may, on the application of the adoptive parent or adopted child, amend the order by the correction of any error in the particulars; and where an adoption order is so amended, the Court shall cause the amendment to be communicated in the prescribed manner to the Registrar-General.

(2) The power of the Court under sub-section (1) shall include power to amend the order -

(a) by the insertion of the country of the adopted child's birth; or

(b) where it does not specify a precise date as the date of the adopted child's birth, by the insertion of the date which appears to the Court to be the date or probable date of his birth,

and the provisions of subsection (1) shall have effect accordingly.

(3) Where an appeal against an adoption order is allowed, the Court which made the order shall give directions to the Registrar-General to cancel any marking of any entry in the Register of Births and any entry in the Register of Adopted Children which was effected in pursuance of the order.

Prohibition of payment and reward on adoption

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

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

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

Notice to be given to send a child abroad

**73.**-(1) The adoptive parent shall notify in writing the Commissioner when the adopted child is sent out of the country permanently after an adoption order has been made by the court.

(2) Subject to the prevision of sub-section (1), the notice shall be communicated to the Commissioner within thirty days before the departure of the adoptive parent and adopted child from the country.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than ten million shillings and not more than fifty million shillings or to imprisonment for a term of not less than six months and not more than two years or to both.

Adoption by foreigners

**74.**-(1) A person who is not a citizen of Tanzania may adopt a Tanzanian child, if -

(a) the child may not be placed in a foster or adoptive family or be cared for in a manner suitable for the child's best interest while the child is in Tanzania;

(b) he has stayed in Tanzania for at least three consecutive years;

(c) he has fostered the child for at least three months under the supervision of a social welfare officer;

(d) he does not have any criminal record in his country of origin or any other country;

(e) he has a recommendation concerning his suitability to adopt a child from his country's social welfare officer and other competent authority of his permanent country of residence; and

(f) he has satisfied the court that his country of origin respects and recognizes the adoption order.

(2) Subject to subsection (1), the court may grant an adoption order if it is in the best interest of the child.

(3) For an application for adoption by a foreigner, the social welfare officer shall be required to undertake background investigation and submit a social investigation report to assist the court in considering the application. -

(4) The court may, in respet of the application for adoption by a foreigner, make an additional order-

(a) requiring a social welfare officer to represent the best interest of the child;

(b) requiring a social welfare officer to prepare a social investigation report to assist the court to determine whether the adoption order is in the best interest of the child or not; or

(c) any other matter as the court may determine.

Rules for adoption

**75.**-(1) The Minister for social welfare may, in consultation with the Minister responsible for childrens affairs , make rules prescribing procedures for adoption proceedings.

(2) For the purposes of subsection (1) the rules shall prescribe-

(a) the proceedings to be held in camera except under exceptional circumstances;

(b) the admission of documentary evidence relating to the consent required for the order;

(c) requirement of social welfare officer to represent the interests of the child;

(d) requirement for a social welfare officer to prepare a social investigation report to assist the court to determine whether the adoption order is in the best interest of the child or not; and

(e) any other matter as the Minister for social welfare may determine.

Restriction or publication advertisement

**76.**-(1) It shall be unlawful to publish any advertisement which contains information indicating that-

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

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section commits an offence under this Act and shall be liable upon conviction to a fine of not less than one million shillings and not more than ten million shillings or to imprisonment for a term of not less than six months and not more than two years or to both.

## PART VII
## EMPLOYMENT OF A CHILD

### *(a) Employment of the child*

Child's right to work

**77.**-(1) A child shall have a right to light work.

(2) For the purposes of subsection (1), the minimum age for employment or engagement of a child shall be fourteen years.

(3) Subject to subsection (1), "light work" shall constitute work which is not likely to be harmful to the health or development of the child and does not prevent or affect the child's attendance at school, participation in vocational orientation or training programmes or the capacity of the child to benefit from school work.

Prohibition of exploitative labour

**78.**-(1) A person shall not employ or engage a child in any kind of exploitative labour.

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

(3) Labour shall be construed as exploitative if -
(a) it deprives the child of his health or development;
(b) it exceeds six hours a day;
(c) it is inappropriate to his age; or

(d) the child receives inadequate remuneration.

(4) Any person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term of three months or to both.

Prohibition of night work

**79.**-(1) Without prejudice to the provisions of section 78, the child shall not be employed or engaged in a contract of the service performance which shall require a child to work at night.

(2) "Night work" shall be construed to constitute work performance of which requires the child to be at work between the hours of twenty hours in the evening and six o'clock in the morning.

(3) Any person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term of three months or to both.

Prohibition of forced labour

**80.**-(1) Any person who induces, procures, demands or imposes forced labour to a child, commits an offence.

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

(3) Ay person who contravenes any of the provision of this section commits an offence and shall, on conviction, be liable to a fine of not less than two hundred thousand shillings or to imprisonment for a term of six months or to both.

Right to remuneration

**81.**-(1) A child has a right to be paid remuneration equal to the value of the work done.

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(2) Notwithstanding the provisions of the Employment and Labour Relations Act, any employer who contravenes the provisions of this section commits an offence.

Hazardous employment

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

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

(3) Without prejudice to subsection (3), hazardous work shall include -

(a) going to sea;
(b) mining and quarrying;
(c) porterage of heavy loads;
(d) manufacturing industries where chemicals are produced or used;
(e) work in places where machines are used; and
(f) work in place such as bars, hotels and places of entertainment.

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

(a) on board a training ship as part of the child's training;
(b) in a factory or a mine, if that work is part of the child's training;
(b) in any other worksites on condition that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or training in the relevant work or activity.

Prohibition of sexual exploitation

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

(2) For avoidance of doubt, it shall be unlawful for any person to use -

(a) inducement or coercion in the encouragement of a child to engage in any sexual activity;
(b) children in prostitution or other unlawful sexual practices; and
(c) children in pornographic performances or materials.

(3) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine of not less than one million shillings and not more than five hundred million shilling or to imprisonment for a term of not less than one year and not more than twenty years or to both.

Application

**84.**-(1) For the avoidance of doubt, this Part shall apply to employment in the formal and informal sector.

(2) Subject to subsection (1), a labour officer shall, at any reasonable time, enter into any premises and carry out inspection which he may consider necessary in order to satisfy himself that the provisions of this Part are complied with.

(3) For purposes of this section, the term "premises" means a building, establishment, office, grounds, estate, site and shall include vessel, vehicle, and aircraft.

Registration of a child in industrial undertakings

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

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

(a) mines, quarries and other works for extraction of minerals from the earth;

(b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adopted for sale, broken up or demolished, or in which materials are transformed including undertakings engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kind; and

(c) undertakings engaged in the transport of passengers or goods by road or rail including the handling of goods at docks, quays, wharves, warehouses and airports.

Enforcement

**86.**-(1) The Labour Officer shall carry out any enquiry he considers to be necessary in order to satisfy himself that the provisions of this Part with respect to labour by children are being strictly observed.

(2) For purposes of this section the Labour Officer may interrogate any person as may be necessary.

(3) Where the Labour Officer is reasonably satisfied that the provisions of this Part are not being complied with, he shall serve a non- compliance order on the employment and report the matter

to the Social Welfare Officer and the nearest police station and they shall investigate and take any appropriate steps to protect the child.

### *(b) Apprenticeship*

Right to acquire vocational skills

**87.** A child shall have a right to acquire vocational skills and training in the form of apprenticeship.

Minimum age for apprentices

**88.** The minimum age at which a child may commence an apprenticeship with a craftsman shall be fourteen years or after completion of primary school education.

Responsibilities of craftsman

**89.** The obligations of a craftsman towards an apprentice under his care shall be to -

(a) train and instruct the apprentice in a trade to the best of his ability, skill and knowledge and to the best ability of the apprentice or cause the apprentice to be trained in a trade under his supervision;
(b) be responsible for any harm caused to the apprentice in the course of his training;
(c) provide a safe and healthy environment for the apprentice;
(d) prepare morally an apprentice to lead his independent life; and
(e) protect the best interest of the apprentice, generally.

Apprenticeship agreement

**90.**-(1) The parent, guardian or relative of an apprentice shall enter into an apprenticeship agreement with the craftsman.

(2) The agreement shall be in accordance with the custom which pertains to the specific trade but shall not include the performance of any induction ceremony which may conflict with the rights of the child provided under this Act.

(3) The agreement shall contain matters agreed upon by the parties, and may include -

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

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

(c) a provision that the craftsman is to give the apprentice an allowance of not less than half the sectoral minimum daily wage for his daily sustenance, if the apprentice generates income.

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

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

Duties of apprentice

**91.** An apprentice shall diligently and faithfully obey and serve the craftsman and shall agree -

(a) to regularly attend the apprenticeship;

(b) to prevent any deliberate damage to the property of the craftsman; and

(c) not to conceal any damage to the property of the craftsman.

Release of apprentice

**92.**-(1) The conditions of the release of an apprentice shall, upon the completion of his training, not be exploitative and shall be in accordance with the best interest of the child.

(2) The craftsman shall, on completion of a period of apprenticeship, issue proof of release from the apprenticeship.

Disputes resolution

**93.** Any disputes arising out of the apprenticeship agreement shall be referred to the Labour Officer of the district concerned by the parties to the apprenticeship agreement.

## PART VIII
## SUPPORT SERVICES FOR A CHILD BY LOCAL GOVERNMENT AUTHORITIES

Duty of Local Government Authorities to safe-guard children and promote reconciliation between parents and a child

**94.**-(1) A local government authority shall have a duty to safeguard and promote the welfare of the child within its area of jurisdiction.

(2) The social welfare officer in the local government authority shall exercise his functions in relation to the welfare of children, and may be assisted by such officers of the local government authority as the authority may determine.

(3) A local government authority through a social welfare officer shall provide parental counseling to both parents, guardians, relatives and children for the purpose of promoting reconciliation between them.

(4) The local government authority shall have the duty to keep a register of most vulnerable children within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self reliance.

(5) Each local government authority shall, within its area of jurisdiction, be required to provide assistance and accommodation for any child who appears to the authority to require such assistance as a result of having been lost or abandoned or is seeking refuge.

(6) Each local government authority shall, in collaboration with the police force, make every effort to trace the parents, guardians or relatives of any lost or abandoned child and, to return the child to the place where he ordinarily resides and, where the authority does not succeed, it shall refer the matter to the social welfare officer.

(7) The social welfare officer and the police officer shall, within the area of a local government authority, investigate all cases of breach or violation of the rights of the child.

Duty to report infringement of child's rights

**95.**-(1) It shall be the duty of any member of the community who has evidence or information that a child's rights are being infringed or that a parent, a guardian or relative having custody of a child who is able to, but refuses or neglects to provide the child with food, shelter, right to play or leisure, clothing, medical care and education, to report the matter to the local government authority of the area.

(2) The social welfare officer may, upon receiving the report, summon the person against whom the report was made to discuss the matter; and the decision shall be made by that officer in the best interest of the child.

(3) Where the person against whom the report was made refuses to comply with the decision made under subsection (2), the social welfare officer shall refer the matter to the court which shall hear and adjudicate the matter, and may in respect of such proceedings –

(a) give any relief or order prayed for as circumstances may require; and

(b) in the case of a parent, in addition to the relief or orders given, order the parent to execute a bond to exercise proper care and guardianship by signing and undertaking to provide the child with any or all of the requirements.

(4) Subject to the provisions of this Act, the primary court may be the court of first instance in matters under this Part and appeals from that court shall follow the normal procedures of appeals.

(5) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of three months or to both.

Investigation by Department

**96.**-(1) Where the social welfare officer has reasonable grounds to suspect a child abuse or a need for care and protection of a child, he shall in the company of a police officer and may enter and search the premises where the child is kept in order to investigate.

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

(3) Where a child has been displaced or removed in accordance with subsection (2), the social welfare officer shall bring the child before the court within a fourteen days period for an order to be made.

(4) Until the court determines the matter, it may commit the child to an approved residential home or to the care of a social welfare officer or any fit person.

## PART IX
## A CHILD IN CONFLICT WITH LAW

### *(a) Juvenile Court*

Establishment of Juvenile Court

**97.**-(1) There shall be established a court to be known as the Juvenile Court , for purposes of hearing and determining child matters relating to children.

(2) The Chief Justice may, by notice in the *Gazette*, designate any premises used by a primary court to be a Juvenile Court.

(3) A Resident Magistrate shall be assigned to preside over the Juvenile Court.

Jurisdiction of Juvenile Court

**98.**-(1) The Juvenile Court shall have power to hear and determine-

(a) criminal charges against a child; and

(b) applications relating to child care, maintenance and protection.

(2) The Juvenile Court shall also have jurisdiction and exercise powers conferred upon it by any other written law.

(3) The Juvenile Court shall, wherever possible, sit in a different building from the building ordinarily used for hearing cases by or against adults.

Procedure in Juvenile Court

**99.**-(1) The procedure for conducting proceedings by the Juvenile Court in all matters shall be in accordance with rules made by the Chief Justice for that purpose, but shall, in any case, be subject to the following conditions -

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

(b) proceedings shall be held in camera;

(c) proceedings shall be informal as possible, and made by enquiry without exposing the child to adversarial procedures;

(d) a social welfare officer shall be present;

(e) a right of a parent, guardians or a next of kin to be present;

(f) the child shall have a right to next of kin and representation by an advocate;

(g) the right to appeal shall be explained to the child; and

(h) the child shall have a right to give an account and express an opinion.

(2) Apart from members and officers of the Juvenile Court, only the following persons may, at the discretion of the Court, attend any sitting of Juvenile Court -

(a) parties to the case before court, their advocates, witnesses and other persons directly concerned or involved in the case; and

(b) any other person whom the court may authorize to be present.

Proceedings in Juvenile Courts

**100.**-(1) The Juvenile Court when hearing a charge against a child shall, if practicable, unless the child is charged jointly with any other person not being a child, sit in a different building or room from that which the ordinary proceedings of the court are held.

(2) Where in the course of any proceedings in a court it appears to the court that the person charged or to whom the proceedings relate is a child, the court shall stay the proceedings and commit the child to the Juvenile Court.

(3) Where in the course of any proceedings in a Juvenile Court it appears that the person charged or to whom the proceedings relate is an adult, the court shall proceed with the hearing and determination of the case according to the provisions of Magistrates Court Act or Criminal Procedure Act, as the case may be.

Cap.11 and 20

Bail for a child

**101.** Where a child is apprehended with or without a warrant and cannot be brought immediately before a Juvenile Court, the officer in charge of the police station to which he is brought shall -

(a) unless the charge is one of homicide or any offence punishable with imprisonment for a term exceeding seven years;

(b) unless it is necessary in the interest of that child remove him from association with any undesirable person; or

(c) unless the officer has reason to believe that the release of that child would defeat the ends of justice,

release such child on a recognisance being entered into by himself or by his parent, guardian, relative or without sureties.

Association with adults whilst in custody

**102.** The police officer shall make arrangements for preventing, so far as practicable, a child while in custody, from associating with an adult charged with an offence unless he is a relative.

Juvenile court may dispose of all cases other than homicide

**103.**-(1) The police officer shall not bring a child to the court unless investigation has been completed or the offence requires committal proceedings.

(2) Where a child is brought before the Juvenile Court for any offence other than homicide, the case shall be disposed by that court on that day.

Children may be remanded to the care of a fit person or institution

**104.**-(1) Where a Juvenile Court remands a child or commits a child for trial before the High Court and the child is not released on bail or is not permitted to go at large, the Juvenile Court may, instead of committing the child to prison, order him to be handed over to the care of the Commissioner, fit person or institution named in the order.

(2) The child shall remain in the custody of that person or institution during the period mentioned in the order or until he is further dealt with according to law and shall be deemed to be in legal custody during that period.

Court's duty to explain charge

**105.** A Juvenile Court shall on hearing a charge against a child explain to him in simple language the particulars of the alleged offence.

Accused to be asked to show cause

**106.** After explaining the particulars of the alleged offence the Juvenile Court shall ask the child to make a statement on whether he has a cause to show why he should not be convicted.

Accused may be convicted on plea of guilty

**107.** Where the statement made by the child amounts to a plea of guilty the court may convict him.

Attendance, appearance and hearing in juvenile court

**108.**-(1) Where the child does not admit the offence with which he is charged, or where the court does not accept the statement of the child as amounting to a plea of guilt to that charge, the court shall proceed to hear the evidence of the witnesses for the prosecution.

(2) In all proceedings against a child, where the parents, guardian, relatives or social welfare officer attend, any one of them may, with the prior consent of the court, assist the accused

child in the conduct of his case and, in particular, in the examination and cross-examination of witnesses.

Cross-examination of witness

**109.** At the close of the evidence of each witness the Juvenile Court shall put to the witnesses such questions as appears to be necessary or desirable, either for the purpose of establishing the truth or the facts alleged or to test the credibility of the witness.

Defence

**110.** Where after the prosecution witnesses have given evidence and the Juvenile Court is satisfied that the evidence before it established a prima facie case against the child the Juvenile Court shall hear the witnesses for the defence and any further statement which the child may wish to make in his defence.

Procedure upon conviction

**111.**-(1) Where the child admits the offence and the Juvenile Court accepts its plea or after hearing the witnesses the Juvenile Court is satisfied that the offence is proved, the Juvenile Court shall convict the child and then, except in cases where the circumstances are so trivial as not to justify such a procedure, obtain such information as to his character, antecedents, home life, occupation and health as may enable it to deal with the case in the best interests of the child, and may put to him any question arising out of that information.

(2) For the purpose of obtaining information or for special medical examination or observation, the Juvenile Court may remand the child or may release him on bail.

Attendance at court of parent of child charged with an offence

**112.** Where a child is charged with any offence, the Juvenile Court may in its discretion require the attendance of his parent, guardian, relative or a social welfare officer and may make such orders as are necessary for procuring the attendance.

Determination of age

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

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

(3) A certificate purporting to be signed by a medical practitioner registered or licensed under the provisions of the law governing medical practice in Tanzania as to the age of a child shall be sufficient evidence and shall be receivable by a court without proof of signature unless the court orders otherwise.

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

(5) Medical evidence and or collection of blood for the purpose of DNA from the child shall be conducted in the presence of a social welfare officer.

Persons appearing to be of the age of eighteen years or more

**114.**-(1) Where it appears to the court that any person brought before it is of the age of beyond eighteen years, that person shall, for the purposes of this section, be deemed not to be a child.

(2) Without prejudice to the preceding provisions of this section, where the court has failed to establish the correct age of the person brought before it, then the age stated by that person, parent, guardian, relative or social welfare officer shall be deemed to be the correct age of that person.

### *(b) A child as a witness*

Child witness

**115.**-(1) Where in any cause or matter a child called as a witness does not, in the opinion of court, understand the nature of an oath, the evidence may be received if in the opinion of the court, which opinion shall be recorded in the proceedings, the child is possessed of sufficient intelligence to justify the reception of the laws of evidence and understands the duty of speaking the truth.

(2) Notwithstanding any rule of law or practice to the contrary, where evidence received by virtue of subsection (1) is given on behalf of the prosecution is not corroborated by any other material evidence in support of it implicating the accused the court may after warning itself, act on that evidence to convict the accused if it is fully, satisfied that the child is telling the truth.

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

Cap.16

(4) For the purposes of this section and any other written laws, "sexual offence" means any sexual offence as created by the Penal Code.

### *(c) Custodial Sentence*

Probation orders

**116.**-(1) Where a child is convicted of an offence other than homicide, the Juvenile Court may make an order discharging the offender conditionally on his entering into recognisance, with or without sureties, to be of good behaviour during such period not exceeding three years, as specified in the order but if a child has demonstrated good behaviour then that child shall be presumed to have served the sentence.

(2) A recognisance entered into under this section shall, if the court so orders, contain a condition that the child be under the supervision of parent, guardian, relative or social welfare as may be named in the order during the period specified in the order, if that person is willing to undertake the supervision, and such other conditions for securing the supervision as may be specified in the order.

(3) The person named in the order may at any time be relieved of his duties and, in that case or in the case of the death of a person so named, another person may be substituted by the Juvenile Court before which the child is bound by his recognisance to appear for conviction or sentence.

Provision in case of a child failing to observe conditions of release

**117.**-(1) Where a Juvenile Court, is satisfied by information on oath that the child has failed to observe any of the conditions of his recognisance, it shall issue summons to the child or young person and his sureties, if any, requiring him or them to attend at such court and at such time as may be specified in the summons.

(2) A Juvenile Court, before which a child is bound by his recognisance to appear for sentence, on being satisfied that he has failed to observe any condition of his recognisance, may forthwith deal with child as for the original offence.

Power to order parent to pay fine instead of child

**118.**-(1) Where a child is convicted of any offence for the commission of which a fine, compensation or costs may be imposed, and the court is of opinion that the case would be best disposed of in the interest of, the child by the imposition of a fine, compensation or costs, whether with or without any other punishment, the court may in any case, order that the fine, compensation or costs awarded be paid by the parent, guardian or relative of the child instead of by the child, unless the court is satisfied that the parent, guardian, or relative of child cannot be found or that he has not contributed the commission of the offence by neglecting to exercise due care of the child.

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

(3) Any sum imposed or ordered to be paid by a parent, guardian, or relative may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent, guardian or relative of the child with was charged.

(4) A parent or guardian may appeal against an order issued under this section.

### *(d) Alternative Sentences*

Prohibition of custodial sentence and alternative punishments

**119.**-(1) A child shall not be sentenced to imprisonment.

(2) Where a child is convicted of any offence punishable with imprisonment, the court may, in

addition or alternative to any other order which may be made under this Act–

(a) discharge the child without making any order;

(b) order the child to be repatriated at the expense of Government to his home or district of origin if it is within Tanzania; or

(c) order the child to be handed over to the care of a fit person or institution named in the order, if the person or institution is willing to undertake such care.

When approved school order may be made

**120.**-(1) Where a child is convicted of an offence which if committed by an adult would have been punishable by a custodial sentence, the court order that child be committed to custody at an approved school.

(2) An order referred to under section (1), shall not be made unless the patron of the approved school to which the child is to be committed has informed the Juvenile Court that he has a vacancy which may be filled by the person in respect of whom it is proposed to make the order.

(3) An order made under this section shall be referred to as an approved school order.

## PART X
### APPROVED SCHOOLS

Approved schools

**121.**-(1) Minister responsible for social welfare may by order, establish a school or declare any school or institution to be an approved school for the purposes of this Act.

(2) The Minister responsible for social welfare may, by notice in the *Gazatte*, appoint a person or a body of persons to be a patron or a manager of an approved school.

Appointment of Board of Visitors

**122.**-(1) The Minister responsible for social welfare shall, by order, establish a Board of Visitors in respect of any approved school which Board shall consist of -

(a) a Member of Parliament of that area where the approved school is located;

(b) the patron or matron ;

(c) the Social Welfare Officer;
(d) the District Education Officer;
(e) the District Executive Director of local government authority where the approved school is located;
(f) the District Community Development Officer; and
(g) the Regional Prisons Officer.

(2) The members of the Board shall hold office by virtue of their offices.

Power of Board

**123.**-(1) The Board or any member of the Board with the permission of the Chairman may -

(a) visit the school from time to time;
(b) call for all books, papers and records relating to the management and discipline of the school;
(c) interview members of the staff and pupils whether resident or on licence;
(d) inspect and test the quality and quantity of the pupils' food;
(e) inquire into the maintenance of discipline;
(f) ascertain whether reasonable facilities are provided for the education, training, welfare and recreation of the pupils;
(g) investigate any complaint made by any pupil or member of the staff; or
(h) exercise such other powers as may be prescribed.

(2) A Board may, where it considers it necessary or desirable, make any recommendation in relation to the management of the approved school to the Minister responsible for social welfare.

Approved school orders

**124.**-(1) An approved school order shall specify -

(a) the school to which the child or young person is to be sent; and
(b) the person who is to be responsible for conveying him to the school.

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

(3) A certified copy of every order shall be delivered to the person responsible for conveying the child to the school and he shall deliver the same to the manager.

(4) An order shall be sufficient authority for the admission of the child in the school for a period not exceeding three years or until he attains the age of eighteen, whichever is earlier.

Suspension of approved school orders

**125.** The operation of an approved school order may be suspended pending completion of arrangements for the reception of the child into an approved school, or on account of his ill-health or for other good and sufficient reason and in that case the court may commit the child to a retention home or may order a child to be committed to the care of a fit person willing to undertake the custody, or may release him on bail.

Authority for detention

**126.** A child while admitted in an approved school in accordance with the provisions of this Act and while being conveyed to or from such school shall be deemed to be in legal custody and if he escapes may be apprehended without warrant and brought back to the school.

Extension of period of detention

**127.** Where the manager or patron or matron of an approved school is satisfied that a child whose period of detention is about to expire needs further care or training he may, apply to the court for an order to admit that child for a further period not exceeding one year but, that child shall not be detained beyond the date upon which he attains the age of eighteen years.

Power of manager to bring persons detained before a court

**128.** Where the manager or patron or matron of an approved school is satisfied that the child committed to the school is of such an unruly or depraved a character that it is undesirable that he should remain at the school or to be incorrigible or to be exercising bad influence on the inmates of the school, the manager or patron or matron may, with the approval of the Board, cause that person to be brought before a court having jurisdiction in the place where the approved school is situated or before the court which made the approved school order and a court may make any order which could have been legally made by the committing court under the provisions of this Act and may commute the whole or part of the unexpired term of the period of detention.

Discharge and transfer from approved school

**129.** The manager or patron or matron of an approved school with the approval of the Board may-

(a) order any child whose period of detention has exceeded six months but has not exceeded twelve months to be discharged;
(b) order any child whose period of detention has exceeded twelve months to be discharged;
(c) order any child to be transfered from one approved school to another.

Time for appeal

**130.**-(1) Every appeal against an order or sentence made or passed by a Juvenile Court under the provisions of this Act shall be entered within fourteen days from the date of the order or sentence appealed against.

(2) The High Court may for good cause admit an appeal out of time.

(3) Where no appeal is entered against an approved school order made by a district court under the provisions of this Act within the prescribed time a copy of the order together with the proceedings shall be sent forthwith to the High Court and the High Court may, in the exercise of its revisional jurisdiction, make such order as it may deem proper.

Approved school order to take effect pending considera-tion by High Court

**131.** Notwithstanding anything contained in this Part, an approved school order shall not be suspended for the reason only that no order by the High Court in the exercise of it's appellate or revisional jurisdiction has been received unless the child concerned is committed to the care of a fit person or released on bail.

Power to make rules

**132.**-(1) The Minister responsible for social welfare may make rules for the better carrying out of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, for providing for the following purposes -

(a) management, control, discipline and interior economy of approved schools and retention homes;
(b) registration of children committed to approved schools;
(c) visits of parents, guardian or relative of the child;
(d) education, training and rehabilitation of children.

(2) Rules made under this section may apply to all approved schools and retention homes or to any particular approved school and retention home.

## PART XI
## INSTITUTIONALISED CARE

### (a) *Approved residential home or Institution*

Approval of residential homes

**133.**-(1) The Government may establish an approved residential home or institution for the care of children in such areas as the Commissioner may determine.

(2) Any person may establish and operate an approved residential home or institution for the care of children subject to the approval of the Commissioner.

(3) An application for the approval of an approved residential home or institution shall be made in a prescribed manner and submitted to the Commissioner.

(4) The Commissioner shall cause the approved residential or institution home to be inspected by the social welfare officer and if the home meets the required standard it shall, by notice published in the *Gazette*, be approved.

(5) Upon approval by the Commissioner, the approved residential home or institution shall obtain a licence to operate which licence shall be issued by the Commissioner.

(6) The provisions of subsection (3) shall not apply to a government approved residential home or institution.

(7) A privately owned approved residential home or institution in existence at the commencement of this Act, shall apply to the Commissioner for approval and be issued a licence within a period of six months from the commencement of this Act.

(8) For the purposes of this Sub Part the "approved residential homes" and "institution" shall include-

(a) a children's home;
(b) a retention home;
(c) an approved school;
(d) a crisis centre; and
(e) any other establishment designated as such by the Commissioner.

(9) The approved residential homes and institutions reffered to under subsection (8) shall, by notice, be published in the Gazette.

Monitoring of homes and institutions

**134.**-(1) It shall be the duty of the Commissioner to monitor and supervise approved residential homes or institutions.

(2) For the purpose of promoting the welfare of children, every approved residential home and institution shall establish a committee of not less than four fit persons for overseeing the running and general administration of the children's welfare and development.

(3) The Commissioner may delegate to any person within the public service, powers to discharge the duty referred to under subsection (1).

(4) The Minister responsible for social welfare may make regulations prescribing the composition, qualification and any other matters relating to the committee established under subsection (2).

Power of Commissioner to give directives to homes

**135.** The Commissioner may give such orders and directions to an approved residential home or institution as may be necessary for promotion of the development of a child.

Inspection of homes

**136.** The Commissioner may direct inspection of an approved residential home or institution to be carried out by the social welfare officer at any time to ensure that the approved residential home or institution is being maintained at the required standards.

Admission of children to approved residential homes

**137.**-(1) A child may be admitted to an approved residential home or institution –

(a) pending the determination by a court for care and protection.

(b) on the recommendation of a social welfare officer who has determined that the approved residential home or institution is the most suitable place for the child; or

(c) with the approval of a social welfare officer, if the child is an orphan and family care and fosterage are not available.

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

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

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

(5) Where a child is unable to return to his parents or to go to his foster-parents the child shall be encouraged and assisted by the patron, manager and social welfare officer to become independent and self-reliant.

(6) Subject to the provisions of subsection (5), a child shall not be required to leave an approved residential home or institution if he is under the age of eighteen.

Parental responsibility of staff of approved residential homes

**138.**-(1) While a child is in an approved residential home or institution the staff of the home or institution shall assume parental responsibilities for the child and ensure that the rights of the child under this Act are protected.

(2) Notwithstanding subsection (1), parents, guardian or relatives of a child placed under any approved residential home or institution shall supplement the effects of the approved residential home or institution to safeguard and promote the welfare of the child by visiting the child and otherwise protecting his best interests.

(3) Parental responsibility of a child in the approved residential home or institution shall include an application to a court to protect the best interest of the child where it becomes necessary.

Power of court to order contribution

**139.**-(1) The court may order that the parent, guardian or relative of a child in an approved residential home or institution to contribute towards the maintenance of the child in the approved residential home or institution.

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

Cancellation of the licence for approved homes

**140.**-(1) Where the Commissioner has reasonable grounds for believing that –

(a) the premises of the children's home are no longer fit to be used as a children's home;

(b) a children's home is being kept in an unclean or in an unsanitary condition;

(c) the provisions made for the health or welfare of children who have been received into the children's home are inadequate; or

(d) the licensee has failed to comply with any regulations governing the establishment and management of the approved residential home,

he shall cancel the licence.

(2) The Commissioner shall, upon cancellation of licence under subsection (1), make alternative arrangement for the children living in the home.

Right to be heard

**141.**-(1) The Commissioner may, after giving the licensee the opportunity of being heard or making representations, by notice in writing require him before the date specified in the notice to remedy, to the satisfaction of the Commissioner, the defects specified in the notice.

(2) Where the licensee fails to comply with the requirements of a notice under subsection (1), the Commissioner, after calling upon the licensee to show cause why his licence should not be cancelled, may cancel the said licence.

Reasons for decision to be given

**142.** The Commissioner, on the application of a person whose application for the issuance or renewal of a licence has been refused or a person whose licence has been cancelled, shall inform that person in writing without delay of the reasons for his decision.

Approved residential homes and adoption

**143.** -(1) Subject to the provisions of this Act, a child in an approved residential home or institution shall be put up for adoption if it is in his best interest.

(2) The decision for the adoption of a child in an approved residential home or institution shall be taken by the Commissioner in consultation with the management of the home.

(3) The adoption under subsection (2), shall follow the procedure for adoption provided for in this Act.

A mother in prison with a child

**144.**-(1) Where a mother is in prison with her child under any circumstances, all measures shall be taken by the prison authorities to ensure that the child receives the required child care in the form of adequate diet, nutrition and child health care including immunization.

(2) The prison authorities shall inform the District Social Welfare Officer about the child who is in prison with his mother and who is no longer breastfeeding.

(3) Where the social welfare officer has received information from the prisons authority, he shall determine the most suitable place for the child, which may be -

(a) the parent who is not in prison;
(b) a relative;
(c) a guardian; or
(d) a fit person;

(4) In the absence of persons referred to under subsection (3), the Social Welfare Officer shall cause the child to be admitted in an approved residential home until such times when the mother is discharged from prison.

Minister to make regulations for homes

**145.** The Minister responsible for social welfare may, in consultation with the Minister responsible for children affairs, make regulations for better carrying and maintaining the standards of approved residential homes or institutions, day-care centres and creches.

Offences and Penalties

**146.**-(1) The penalty for contravening ,in respect of the rights of the child and parental duty provided for under this Act, shall apply to the manager, patron a holder of a licence and any person in an approved residential home or institution who fails to uphold the rights of the child.

(2) Any person who -

(a) operates an approved residential home or institution without a licence issued by the Commissioner;

(b) continues to operate an approved residential home or institution in contravention of this Part; or

(c) obstructs or hinders a social welfare officer conducting an inspection under this Part,

commits an offence and shall be liable on conviction to a fine of not less than two million shillings and not more than ten million shillings or to a term of imprisonment for a term of not exceeding one year or to both; and in the case of a continuing offence to a further fine of not less than one hundred thousand shillings for each day on which the offence continues.

### *(b) Day-care centres and creches*

Application to operate day-care centre and creche

**147.**-(1) An application for a permit to operate a day-care centre or a creche shall be submitted by the applicant to the Commissioner.

(2) The application shall be made in a prescribed manner and shall be accompanied by such fee as may be prescribed.

(3) Upon receipt of an application for registration of a day care center or crèche the Commissioner shall cause an inspection of the premises to be made, and may register it as a day care centre or a creche if he is satisfied that :-

(a) the premises are suitable for carrying on a day care centre or a crèche with a specified number of children;

(b) the applicant has sufficient financial and human resources to maintain the premises in accordance with the requirements of a day care centre and a crèche as may be prescribed in regulations;

(c) the applicant has or is able to provide on the premises all facilities necessary for the management of a day care centre and a creche;

(d) the ownership of the premises is not subject of any proceedings before any court or any other authority.

(4) In deciding whether or not the premises are suitable for registration, the Commissioner shall take into account the proposed programmes for maintenance and care of the children and in particular -

(a) whether the programmes if carried out in those premises would, promote the development of children attending at the centre or creche into cultured and good mannered persons;

(b) the programmes of the day care centre or creche would provide a sound foundation for enabling the children to grow up into healthy and responsible citizens; and

(c) the facilities of the proposed day care centre or creche shall be suitable for preparation of children for pre-primary education.

(5) The social welfare officer shall inspect the proposed day-care centre or crèche and after satisfaction that the requirements of this Act have been complied with, shall approve the application.

(6) Where the Commissioner grants an application under this section, he shall issue to the applicant a registration certificate in relation to premises registered which shall contain a clear description of the premises and such other particulars as prescribed.

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

(9) Before the closure under subsection (8), the Commissioner shall issue a fourteen days notice.

Prohibition of certain persons to operate day care centers

**148.**-(1) A person who has been convicted of an offence against children or any sexual offence shall not be employed in a day care center or a creche.

(2) For the purposes of subsection (1), the Commissioner shall ensure that the manager, patron or matron or any other person operating or working in a daycare centre or crèche is vetted by the office of the commissioner.

Registration of owners of centers

**149.** –(1) A child kept in a day care centre or crèche shall be below the age of five years.

(2) Subject to subsection (3), an application for registration as an owner or manager of a day care cantre or crèche shall be made to the Commissioner in the prescribed manner and shall be accompanied by the prescribed fees.

(3) The Commissioner may grant an application for registration under this section only if he is satisfied that -

(a) the premises in which the applicant proposes to establish a daycare center or a crèche been inspected and registered;

(b) the applicant has sufficient financial resources such as would enable him to secure appropriate staff and to provide and care for the children, in accordance with the standards required of a day care center or creche;

(c) the applicant is not disqualified in any other way from being registered, or a person whose registration has previously been cancelled; and

(d) the applicant meets in all respects such other requirements which may be prescribed in respect to owners or managers of day care centers or creche.

(4) The Commissioner shall issue an appropriate certificate to the person registered, containing such particulars as the Minister responsible for social welfare may prescribe.

Register of the day care centers and creches

**150.**-(1) The District Social Welfare Officer shall cause to be kept and maintained separate registers in the prescribed form in respect of registered day care centres and crèche and registered owners or managers of day care centres.

(2) Each register shall contain the name of every day care centre or crèche and every owner or manager of a day care centre and crèche, registered under this Act together with such other particulars in the day care centre and the owner or manager and the registrar may delete or amend any of those particulars as circumstances may require.

(3) At least once each year, the registrar shall cause to be published in the Gazette or in any newspaper published and circulated throughout the United Republic, a list of all day care centres and creche whose registration has been cancelled and those which have been newly registered.

Department to inspect

**151.**-(1) The Commissioner shall inspect the premises, books, accounts and other records of the day-care centre or a creche, an approved residential home or institution at least once in every six months and shall submit a report of the inspection to the Minister responsible for social welfare and a copy to the Minster responsible for children affairs.

(2) Where the inspection reveals that the day-care centre or a creche is not being managed efficiently in the best interest of the children, the Commissioner shall suspend the permit and the owner or operator shall be ordered to make good any default within a stipulated time.

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

(4) Subject to subsection (2), where the Commissioner has cancelled a licence, he shall, immediately make or cause to be made applications for an order of the court for re-allocation of children and their relevant documents to another day-care centre, creche or approved residential home or institution.

(5) The Commissioner shall, after inspection reveals that the day care center, crèche or approved residential home whose licence was cancelled, has made good the default, renew the registration; provided that the renewal shall be done two years after the cancellation.

## PART XII
## MISCELLAENOUS PROVISIONS

By-laws and guidelines

**152.** A local government authority may, in consultation with the Minister responsible for social welfare, shall issue by-laws and guidelines as it may determine for the operation approved residential homes, institutions, day-care centres and creches within its district.

Directives

**153.**-(1) The Minister responsible for social welfare shall establish training centres for child care workers intending to work in approved residential homes, institutions and day care centres.

(2) The Minister may, in consultation with the Minister responsible for Social Welfare and the Minister responsible for education issue such policy directives as may be necessary for the operation of approved residential homes, institutions and day-care centres and creches.

Existing operators

**154.** Any person who owns or operates a residential home, institution, day-care centre or a creche before the commencement of this Act, and intends to continue to operate such approved residential homes, institutions, day-care centres or creche shall apply to the Commissioner for a permit within six months from the commencement of this Act.

Offences and penalties

**155.** Any person who -

(a) operates day care centre without a licence or permit issued by the Commissioner;
(b) continues to operate an approved residential home in contravention of this Act; or
(c) obstructs or hinders a social welfare officer conducting an inspection under this Act,

commits an offence and shall on conviction be liable to a fine of not less than two million shillings but not more than five million shillings or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one hundred thousand shillings for each day on which the offence continues.

Appeals

**156.** Unless otherwise provided for in other laws, any person aggrieved by the decision of the Commissioner for -

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

may within thirty days after receiving a notice of the decision from the Commissioner, appeal to the Minister for social welfare against such decision.

Regulations

**157.** The Minister responsible for social welfare shall, after consultation with the Minister responsible for children affairs, make regulations prescribing for-

(a) care and protection of children; procedure for admission and removal of children, from approval residential homes or institutions;
(b) foster care placement;
(c) adoption;
(d) child labour;

(e) apprenticeship;
(f) children accompanying a parent, guardian or a relative admitted in hospital for more than six months;
(g) open adoption;
(h) matters provided for under section 6, 7 and 8;
(i) approved residential homes and institution; and
(j) generally for the promotion and furtherance of the objects of this Act.

General prohibition

**158.**-(1) No person shall:

(a) perform or cause to be performed female genital mutilation to a child;
(b) publish, produce, show or cause to be published, produced or showed a photograph or a picture of a child or a dead child containing brutal violence or in a pornographic posture;
(c) use a child in a wedding show, fashion show or any other similar shows performed during the night;
(d) publish or cause to be published any information which is prejudicial to the best interest of a child;
(e) force an adopted child or a child under foster care to change his birth religion; or
(f) use, or cause to be used or engaged a child who is in an approved residential home or institution for begging or any other personal gains; or
(g) misuse aid or other kind of assistance meant for purposes of providing assistance to support or care to children in an institution.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine of not less than five hundred thousand shillings or to imprisonment for a term of six months or to both.

General penalty

**159.** Any person who contravenes any of the provisions of this Act where no specific penalty has been provided commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term of not more than three months or to both.

Repeals and savings Cap. Nos, 13, 61, 180, 278 and 335

**160.**-(1) The following laws are hereby repealed –

(a) the Affiliation Act;

(b) the Adoption Act;

(c) the Day Care Centres Act;

(d) the Children and Young Persons Act; and

(e) the Children Home (Regulation) Act.

(2) Notwithstanding the repeal of the laws set out in subsection (1)-

(a) all persons empowered under the repealed laws to exercise control over any matter stipulated in this Act shall be deemed to have been empowered to exercise corresponding powers conferred and performance of similar functions as stipulated under this Act;

(b) all licences and permits granted under the provisions of the repealed laws shall be deemed to have been made, granted, or issued under and subject to the provisions of this Act;

(c) all rules made under the provisions of the repealed laws shall be deemed to have been made under this Act and shall remain in force and have effect until replaced in accordance with the provisions of this Act; and

(d) all orders, notices, by- laws, directives given or anything given or made by a person authorized as such by an officer so authorized to give or make orders, notices, by-laws, directives given under the repealed Acts shall be deemed to have been made under this Act and shall remain in force and have effect until amended or withdrawn under this Act.

(3) Any fees imposed and certificates issued under the provisions of the repealed laws shall, notwithstanding the repeal of the aforementioned laws remain in force as if such fees had been imposed or certificate issued under this Act until the same are revoked or replaced in accordance with the provisions of this Act.

## PART XIII
### CONSEQUENTIAL AMENDMENTS

### *(a) Sub Part I*

Construction Cap. 29

**161.** This Sub Part shall be read as one with the Law of Marriage Act, hereinafter referred to as the "principal Act".

Amendment of Section 2

**162.** The principal Act is amended in section 2 by-

(a) deleting the definitions of the term "child" and substituting for it the following term:
'"child" means a person under the age of eighteen;'

(b) deleting:
(i) all references relating to the definition of the terms "infant" and "infant child";
(ii) the words "infant children" and "infant" wherever they appear in the Act and substituting for them the words "children" and "child", as the case may be.

Amendment of Section 17

**163.** The principal Act is amended in section 17 by-

(a) inserting a full-stop in place of a comma that appears after the word "guardian"; and
(b) deleting the phrase "but in any other case, or if those persons are dead, shall not require consent."

Amendment of Section 39

**164** The principal Act is amended in section 39(c), by deleting the words "wife had" and substituting for them the words "the person had".

Amendment of Section 64

**165.** The principal Act is amended in section 64(1) by deleting the word "infant" appearing between the words "the" and "children".

Amendment of Section 67

**166.** The principal Act is amended in section 67, by deleting the word "infant".

### *(b) Sub Part II*

Construction Cap. 353

**167.** This Sub Part shall be read as one with the Education Act, hereinafter referred to as the "principal Act".

Amendment of Section 35

**168.** The principal Act is amended in section 35 by inserting immediately after subsection (1), the following provision:

"**1A.** Without prejudice to subsection (1), no child of the age of seven or above shall be refused enrollment in a school."

Amendment of Section 59

**169.** The principal Act is amended in section 59 by adding a new section 59A as follows:

"Obligation to report

**59A.**-(1) Every teacher, a craftsman and a trainer shall be under the general obligation to report evidence or concerns of abuse perpetrated on the child by any person to the appropriate social welfare officer.

(2) Every teacher, a craftsman and a trainer shall have a duty to ensure that best interest of a pupil is of a paramount consideration."

Amendment of Section 60

**170.** The principal Act is amended in section 60 by-

(a) adding a new paragraph (k) as follows:

"(k) impregnates a pupil of primary or secondary school.";

(b) substituting for the words "ten thousand shillings" and the words "six months" with the words "five hundred thousand shillings" and "three years" respectively.

### *(c) Sub Part III*

Construction Cap. 366

**171.** This Sub Part shall be read as one with the Employment and Labour Relations Act, hereinafter referred to as the "principal Act.

Amendment of Section 5

**172.** The principal Act is amended in section 5 by-

(a) in subsection 6(a) inserting the words "and training" between the words "employment" and "of".

(b) adding the follows paragraph:

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

*(d)* ***Sub Part IV***

Construction Cap. 16

**173.** This Sub Part shall be read as one with the Penal Code, hereinafter referred to as the "principal Act".

Amendment of Section 15

**174.** The principal Act is amended in section 15 by adding a following new subsection (4) as follows-

"(4) Any person under the age of twelve years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act, 2009."

Amendment of Section 17

**175.** The principal Act is amended in section 17 by adding the following phrase immediately after the word "offence" appearing at the end of the section as follows "unless the offender is a child".

Amendment of Section 130

**176.** The principal Act is amended in section 130(3)(c) by inserting the following words "schools, day care centre, children's home or any other institution, organization or agency where there is a duty of care" between the words "hospital," and "takes".

Amendment of Section 131

**177.** The principal Act is amended in section 131 by-

(a) in subsection (2)(c), deleting the phrase "life imprisonment pursuant to subsection (1)" and substituting for it the phrase "five years with corporal punishment".

(b) in subsection (3), deleting the word "whoever" and substituting for it the following "a person other than a person referred to under subsection (2)."

Amendment of Section 138

**178.** The principal Act is amended in section 138 by-

(a) deleting the word "fifteen" and substituting for it the word "eighteen", wherever it appears in that section;

(b) repealing subsection (6).

Amendment of Section 138B

**179.** The principal Act is amended in section 138B by-

(a) designating section "138B" as 138B(1);

(b) deleting the words "five" and "twenty years" and substituting for them the words "fifteen" and "thirty years without option of fine";

(c) adding a new subsection (2) as follows:

"(2) The court may, in addition, order for compensation of such amount of money to be paid to the victim."

Amendment of Section 138C

**180.** The principal Act is amended in section 138C (2)(b) by deleting the word "fifteen" and substituting for it the word "eighteen".

Amendment of Section 141

**181.** The principal Act is amended in section 141 by-

(a) deleting the words "under the age of fifteen years"; and

(b) deleting the proviso.

Amendment of Section 142

**182.** The principal Act is amended in section 142 by deleting the word "sixteen" wherever it appears in that section and substituting for it the word "eighteen".

Amendment of Section 144

**183.** The principal Act is amended in section 144(3)(a)and (b) by deleting the word "sixteen" and substituting for it the word "eighteen".

Amendment of Section 147

**184.** The principal Act is amended in section 147 by deleting the word "female".

Amendment of Section 154

**185.** The principal Act is amended in section 154 by deleting the word "ten" and substituting for it the word "eighteen".

Amendment of Section 156

**186.** The principal Act is amended in section 156(1) by deleting the word "fourteen" and substituting for it the word "eighteen".

Amendment of Section 160

**187.** The principal Act is amended in section 160 by deleting the word "ten" and substituting for it the word "eighteen".

Amendment of Section 166

**188.** The principal Act is amended in section 166 by deleting the word "fourteen" and substituting for it the word "eighteen".

Amendment of Section 167

**189.** The principal Act is amended in section 167 by deleting the word "fourteen" and substituting for it the word "eighteen".

Amendment of Section 169

**190.** The principal Act is amended in section 169 by deleting the word "fourteen" and substituting for it the word "eighteen".

Amendment of Section 245

**191.** The principal Act is amended in section 245 by deleting the phrase "fourteen years of age if a male, or under sixteen years of age if a female" and substituting for it the word "eighteen years of age".

Amendment of Section 252

**192.** The principal Act is amended in section 252 by deleting the word "fourteen" and substituting for it the word "eighteen".

### *(e) Sub Part V*

Construction Cap. 20

**193.** This Sub Part shall be read as one with the Criminal Procedure Act, hereinafter referred to as the "principal Act".

Amendment of Section 188

**194.** The principal Act is amended in section 188 by-

(a) designating it as subsection (1);

(b) adding new subsection (2) as follows:

"(2) Notwithstanding subsection (1), children under the age of eighteen shall have their names and identities protected."

## SCHEDULE

*(Made under section 70)*

### FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| No. of entry | Date and Country of birth of Child | Name and surname of Child | Sex of Child | Name and surname, address and occupation of adoptive parent or parents | Date of adoption order and description of court by which the order was made | Date of entry | Signature of officer deputed by registrar-General to attest the entry |
| | | | | | | | |
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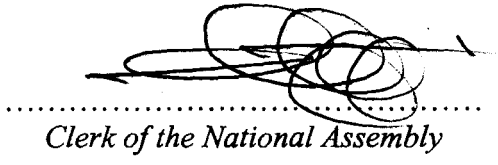
| | | | | | | | |

Passed in the National Assembly on the 4th November, 2009.



*Clerk of the National Assembly*