

DMI-ST.EUGENE UNIVERSITY (DMISEU)

Institute for Virtual & Distance Learning (IVDL)



Curriculum & Syllabus For Bachelor of Arts in Social Work & Counselling

MODULE CODE : 253 SW 52

MODULE NAME : SOCIAL LEGISLATION & POLICIES

**PROGRAMME : BACHELOR OF ARTS
SOCIAL WORK &
COUNSELLING**

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UNIT 1: CONCEPT OF LEGISLATION

Concept of Legislation

Legislation is the embodiment of rules and regulations enacted by the representatives of state for controlling social problems and protecting the people. Legislation is made to control the behaviour of the people and to maintain peace and order in society. They are framed for the welfare of the people. Violation of laws will be punished by the court. There are laws concerning social security, social welfare and social justice. It is an important tool for practising scientific social work. It is used to change social norms. These norms are directed towards fulfilment of social goals.

Social Legislation

The rules and regulations framed by the government in order to control social problems is called social legislation. Legislation for eradicating social evils like slavery, infanticide, sati, sacrifices, child marriage etc.

Definition of Social Legislation

Laws that seek to promote the common good, generally by protecting and assisting the weaker members of society, are considered to be social legislation. Such legislation includes laws assisting the unemployed, the infirm, the disabled, and the elderly.

Need of Social Legislation

- To ensure social justice
- To bring about social reform
- To promote social welfare
- To bring the much desired social change
- To protect and promote rights of social economically disadvantaged groups of society

Importance of Social legislation

- Removal of discrimination
- Promotion of equality
- Safeguard the rights of the weaker sections
- Eradication of harmful traditional practices

- Social legislation is important to protect the human rights of a society
- Promotes social security
- Helps to achieve a just world
- Laws determine what you are allowed to do in life
- Protects the weaker members of the society
- Reduces poverty.

Process of Legislation

- A particular social problem is identified by social workers
- Opinion is created against the problem
- Preparation of bill
- Preparation of draft bill with the help of constitutional expert
- Finding a sponsor of the bill in legislature
- Support different political parties in the legislature
- Passing the bill with the consent of the head of the state
- Implementation of the act
- Review of the act
- Creating awareness on people regarding legislation

Social Welfare

Social Welfare can be defined as the group of assistance programs designed to ensure the well-being of a nation's citizens. In other words, it is a system that aims to provide quality care to society participants. The full range of organised activities of public and voluntary agencies that seeks to prevent alleviate or contribute to the solution of a selected set of social problem.

Social Change

Social change is a term used to describe variations in or modification of any aspect of social process, social patterns, social interaction or social organization.

Characteristics of Social change

- Social change is universal or it is an essential law.
- Change with diff. in speed & form simple society ... change was slower.

- Change is unpredictable in general Revol is a process of social change. What speed & in what form the change takes place is not easily predictable.
- Social change is change in community

Social Laws as an Instrument of Social Change

- To combat social evils and vices through which the bad elements are regulated, punished and eliminated from the main stream of the society and
- To protect the weaker sections of the society against social injustice through laws like.....
 - The Marriage Act
 - The Deceased Brother's Widow's Marriage Act
 - The Adoption Act
 - The Inheritance and Intestate Succession Act
 - The Persons with Disabilities Act
 - The Mental Disorders Act
 - The Termination of Pregnancy Act
 - The Anti-trafficking in Human Act
 - The Juveniles Act
 - The Affiliation and Maintenance of Children Act
 - The National Youth Service Act
 - The National Youth Development Act
 - The Human Rights Commission Act
 - The Anti-Corruption Act
 - The Theatres and Cinematograph Exhibition Act
 - The Dangerous Drugs Act
 - The Education Act
 - The Employment Act
 - The Employment of Young Persons Act
 - The Narcotic Drugs and Psychotic Substances Act
 - The Pension Scheme Regulation Act
 - The Prisons Act
 - The Probation of Offenders Act
 - The Refugees Control Act

- The Standardization of Soap Act
- The Suicide Act
- The Witchcraft Act
- The Chiefs Act
- The Workers' Compensation Act
- The Weights and Measurements Act
- The Local Court Act

Direct Principles of State Policy

These are guidelines for framing laws and the governance of any country and the state apply these principles in making laws to have a just society.

Direct principles of state policy in Zambia constitution

- The Directive Principles of State Policy set out in this part shall guide the Executive, the Legislature and the Judiciary, case maybe, in the -
 - (a) development of national policies;
 - (b) implementation of national policies;
 - (c) making and enactment of laws; and
 - (d) application of the Constitution and any other law
- The application of the Directive Principles of State Policy - may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

The Directive Principles of State Policy set out in the Constitution shall not be justifiable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

The following Directives shall be the Principles of State Policy:

- the State shall be based on democratic principles;
- the State shall endeavour to create an economic environment which shall encourage individual initiative and self-reliance among the people and promote private investment;

- the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
- the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
- the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
- The State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;
- the State shall strive to provide a clean and healthy environment for all;
- the State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

It shall be the duty of every citizen to....

- be patriotic and loyal to Zambia and to promote its well being
- contribute to the well-being of the community where that citizen lives, including the observance of health controls;
- foster national unity and live in harmony with others;
- promote democracy and the rule of law;
- vote in national and local Government elections;
- provide defense and military service when called upon;
- carry out with discipline and honesty legal public functions;
- pay all taxes and duties legally due and owing to the State and assist in the enforcement of the law at all times.

The Constitution and the Zambian Judiciary

- Judicial power exclusively confers in the judiciary in terms of Article 91(2) of the Constitution.

- Article 91 (3) of the Constitution further provides that justice shall be administered in accordance with the provisions of an Act of Parliament which shall be independent and subject on.
- Article 91(1) provides that the judiciary shall consist of the Supreme Court of Judicature comprising:
 - (a) The Supreme Court and
 - (b) The High Court
 - (c) Such other courts as may be prescribed by an Act of Parliament.

Chapter Outline of the Zambian Constitution

- The Constitution of Zambia is the supreme law and if any other law inconsistent with the constitution that other law shall, to the extent of its inconsistency, be void (article1(3)). Therefore Zambia has a constitutional supremacy.
- The constitution was adopted in 1991 after consultations with the citizens of Zambia. It was amended in 1996. It repealed the constitution of Zambia Act, 1973. It purports to be a referendum document. The constitution sets out clearly the state structure, bill of rights, the separate arms of government as well as other administrative organs such as the public service commission.

Constitutional Clauses Analysis

Fundamental rights and freedoms	Article11
Protection of right to life	Article 11(a), Article 12
Protection of right to personal liberty	Article13
Protection from slavery	Article 14
Protection from inhuman or degrading treatment	Article 15
Protection from deprivation of property	Article16
Right to a fair hearing	Article 18(1)
Protection against arbitrary search or entry	Article 17(1)
Protection of freedom of conscience and religion	Article 19
Protection of freedom of expression	Article 20
Protection of freedom of assembly and association	Article 21
Rights of child	Article 24
Enforcement of protective provisions	Article 28

Other Features of the Zambian Constitution

National Sovereignty and the state:

Zambia is defined as a unitary sovereign, multiparty and democratic state. (This part sets out that all power resides in the people who shall exercise their sovereignty through the democratic institutions of the state). This part also establishes the Public Seal. The supremacy of the constitution is set out in this part. The constitution also sets out the anthem and the National Emblem.

Zambian Citizenship:

- Citizenship is the state of belonging.
- Citizenship guarantees rights of nationality and all other rights from being a national of a particular country.
- Amongst other inherent rights is the ability to pass on to natural and adopted children since they cannot obtain their independent citizens at that stage.
- This part talks about acquisition and loss of acquisition. Citizenship in Zambia can be by way of descent, operation of the law or birth, marriage or by registration.
- Most notable is the fact that either the mother or the father or both can confer citizenship on children (Article 5).
- Article 9 provides for the establishment of the Citizenship Board, which deals with any matters pertaining registration as citizens and powers of parliament in making provisions for acquisition of citizenship of Zambia by persons who are not eligible to become citizens of Zambia and the administration of the Registration Act.

Protection of Rights

Protection of Fundamental Rights and Freedom of the Individual:

Part three is concerned with the promotion and protection of fundamental human rights and freedom of the individual.

Protection of the right to life:

Zambia still retains the death penalty, whilst Article 12(1) states that no person shall be deprived of life, it permits the use of death penalty in the

execution of the sentence of a court in respect of criminal offence which that person has been convicted.

Protection of the right to personal liberty:

The protection of the right to personal liberty includes exceptions allowing for orders requiring a person to remain within a specific area or prohibiting that person from being within such an area as envisaged by article 16(1)(i).

Protection of Women's Rights:

- Article 11 includes a blanket non-discrimination clause that guarantees everyone the enjoyment of fundamental rights and freedoms regardless of “race, place of origin, political opinions, colour, creed, sex or marital status”.
- Article 23 of the Constitution further guarantees that, except for certain limitations, “A law shall not make any provision that is discriminatory either of itself or in its effect.”
- Article 23(4) of the Zambian Constitution allows discrimination in the area of customary Law, family law and other areas such as adoption, marriage, divorce and inheritance.
- Article 11(1) recognizes and declares every person in Zambia to be entitled to the fundamental rights and freedoms of the individual, whatever “his sex”.
- However, the same article states that the entitlement of these rights and freedoms are subject to limitations contained in this related to Fundamental Rights and Freedoms.
- Linked to Article 23(4), this means that discrimination against women in areas related to property and inheritance rights is allowed.
- Article 16 provides for protection against deprivation of property.

The right of Persons of With Disabilities:

- Though there is no specific provision in the Zambian constitution that stipulates the rights of persons with disabilities. Article 23 prescribes discrimination in any form against any person and could be used to govern the rights of the disabled. Persons with disabilities should have their rights protected and guaranteed.

- However, Zambia has a specific legislation on the rights of disabled persons. It is contained in the Handicapped Persons Act of 1968 as amended.
- The Zambian statute establishes a Council of the disabled, which provides for voluntary registration of disabled persons and of associations that maintain their welfare. A commissioner of the disabled is responsible for their protection of rights and execution of the law.

UNIT II: LEGISLATION IN MARRIAGE

The Laws Governing to Marriage:

Laws relating to Marriages:

Statutory marriage is any Marriage contracted under the Marriage Act Cap.50 of the Laws of Zambia. Marriages may be solemnized in any licensed place of worship by any licensed minister of the church, denomination or body to which such place of worship belongs and according to the rites and usages of marriage observed in such church, denomination or body, or with the consent of a recognized minister of the church, denomination or body to which such place of worship belongs by any licensed minister of any other church, denomination or body according to the rites and usages of marriage observed in any church, denomination or body

Divorce:

The process of severing / ending a marriage. Below are reasons that can justify the irretrievable breakdown of marriage under statutory law marriages

- Commission of adultery
- Unreasonable behaviour
- Desertion for a continuous period of at least two years
- Living apart for a continuous period of at least two years
- the respondent consents to the Decree of divorce being granted
- Living apart for a continuous period of at least five years

Common property in relation to a polygamous marriage, means all personal chattels of the deceased which were used in common by him, his wives and children of every household to which the deceased was connected by his marriage, not being household property

Dependent in relation to a deceased person means a person who was maintained by that deceased person immediately prior to his death and who was

- (a) a person living with that deceased person; or
- (b) a minor whose education was being provided for by that deceased person; and who is incapable, either wholly or in part of maintaining himself.

Adoption:

A court process where an individual gets custody of a child thereby making that child their own. An adoption order shall not be made in respect of an infant unless the applicant or one of the applicants –

- Has attained the age of twenty-five years and is at least twenty-one years older than the infant; or
- Has attained the age of twenty-one years and is a relative of the infant; or
- Is the mother or father of the infant.
- Adoption order shall not be made in favour of a female infant, where the applicant is a sole male.
- It shall not be made even in case if one of a body of guardians do not agree for such adoption or one of the spouse does not agree.
- An adoption order shall not be made in respect of any infant unless
- The applicant and the infant reside in Zambia; and
- The infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order.

The Marriage Act in Zambia**PART I - Definitions:**

- "district" means a marriage district constituted under section *three*;
- "licensed minister" means any minister appointed under subsection (2) of section *five* to solemnise marriages in Zambia;
- "Registrar" means a Registrar of Marriages appointed under section *four* and any person lawfully acting as such;
- "Registrar-General" includes the Registrar-General of Marriages, the Deputy Registrar-General of Marriages and any person lawfully acting as the Registrar-General of Marriages or the Deputy Registrar-General of Marriages;
- "special licence" means a special licence granted under section *twelve*.

Marriage districts: the Minister of Zambia has divided it into districts for the purposes of this Act and he may, from time to time alter such districts,

either by change of boundaries or by union or subdivision of districts or by the formation of new districts.

Appointment of Registrar-General and Registrars: The Minister may from time to time appoint a Registrar-General of Marriages for Zambia and Registrars of Marriages for any marriage district

Licensing of places of public worship: The Minister may, by *Gazette* notice, license any place of public worship to be a place for the solemnisation of marriages and may at any time, by like notice, cancel such licence and the Minister may, by *Gazette* notice, appoint any minister of any church or religious body to solemnise marriages in Zambia and may at any time, by like notice, cancel such appointment.

PART II - Preliminaries to Marriage

Notice of intended marriage: No marriage shall be solemnised unless notice of the intended marriage shall have been given in the prescribed form by one of the parties thereto to the Registrar of the district in which the marriage is intended to take place not less than twenty-one days before the date of solemnisation.

Signature of notice: If the person giving such notice is unable to write, it shall be sufficient if he place his mark or cross thereto in the presence of some literate person who shall attest the same, which attestation shall be in the prescribed form.

Forms of notice to be supplied: Every Registrar shall supply forms of notice gratuitously to any persons applying for the same.

Entry in Notice Book and publication of notice: Upon receipt of such notice the Registrar shall cause the same to be entered in a book to be called the "Marriage Notice Book" which may be inspected during office hours without fee. He shall also publish such notice by causing a copy of the same to be affixed on the outer door of the office and to be kept exposed there until he grant his certificate as hereinafter mentioned or until three months shall have elapsed.

Issue of certificate: The Registrar, at any time after the expiration of twenty-one days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall issue his certificate in the prescribed form

Marriage to take place within three months of date of notice: If the marriage shall not take place within three months after the date of the notice, the notice and all proceedings consequent thereupon shall be void: and further notice must be given in accordance with section *six* before the parties can lawfully marry. Marriage should take place within three months of date of notice.

Issue of special licence: The Minister or an authorised officer, upon proof being made to him by affidavit that there is no lawful impediment to a proposed marriage and that any necessary consent to such marriage has been obtained, may, if he shall think fit, dispense with the giving of notice and with the issue of the certificate of the Registrar and may, upon payment of the prescribed fee, grant a special licence

Entry of caveat: Any person whose consent to a marriage is hereby required, or who may know of any just cause why the marriage should not take place, may enter a caveat against the issue of the Registrar's certificate by Entry of caveat writing at any time before the issue thereof the word "forbidden" opposite to the entry of the notice in the Marriage Notice Book

Procedure on entry of caveat: Whenever a caveat is entered against the issue of a certificate, the Registrar shall refer the matter to the High Court, and that Court shall thereupon summon the parties to the intended marriage.

Cancellation (or otherwise) of caveat: If the High Court decides that the certificate ought to be issued, the Judge shall remove the caveat by cancelling the word "forbidden" in the Marriage Notice Book in ink and writing in such Marriage Notice Book immediately below such entry and cancellation the words "cancelled by order of the High Court" and signing his name thereto.

Costs of proceedings: The High Court may, in its discretion if it shall consider that a caveat has been entered in any case without reasonable or probable cause, order the person entering the caveat to pay any reasonable costs incurred by either of the parties to the intended marriage by reason of the proceedings consequent on such caveat being entered.

PART III - Consent to Marriage in Certain Cases Necessary

When consent to marriage is necessary: If either party to an intended marriage, not being a widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Zambia, of the mother, or if both be dead or of unsound mind or absent from Zambia, of When consent to marriage is necessary the guardian of such party shall be produced

Signature to consent and attestation: If the person required to sign such consent is unable to write, he shall sign such consent by placing his cross or mark thereto in the presence of one of the following persons: any Judge, District Secretary, Registrar of the High Court, Registrar of Deeds, Government Medical Officer, or minister of religion and it shall be attested by the person authorised in the Form (3) prescribed under the Act.

Consent in case of refusal or absence of parent or guardian: If any parent or guardian, whose consent to a marriage is required, refuses his consent, a Judge of the High Court may, on application being made, consent to the marriage, and the consent of the Judge so given shall have the same effect as if it had been given by the person whose consent is refused.

PART IV - Solemnisation of Marriage

Solemnisation of marriage by ministers: Marriages may be solemnised in any licensed place of worship by any licensed minister of the church, denomination or body to which such place of worship belongs and according to the rites and usages of marriage observed in such church, denomination or body, or with the consent of a recognised minister of the church, denomination or body to which such place of worship belongs by any

licensed minister of any other church, denomination or body according to the rites and usages of marriage observed in any church, denomination or body.

Registrar's certificate or special licence to be provided to minister: A minister shall not solemnise any marriage if he knows of any just impediment to such marriage nor until the parties deliver to him the Registrar's certificate or the special licence, as the case may be.

Marriage in licensed building: A minister shall not solemnise any marriage except in a building which has been duly licensed by the Minister or in such place as the special licence may direct.

Marriage books: The Minister shall cause to be printed and delivered to the several Registrars and to the licensed ministers of licensed places of worship books of marriage certificates in duplicate in the prescribed form with counterfoils.

Completion of marriage certificate: Immediately after the solemnisation of any marriage by a minister, Completion of the officiating minister shall fill up in duplicate a marriage certificate with the particulars required by the said prescribed form and enter in the counterfoil the prescribed particulars.

Attestation of marriage certificate: The certificate shall then be signed in duplicate by the officiating minister, by the parties and by two or more witnesses to the marriage. The minister having also signed his name to the counterfoil shall sever the duplicate certificate therefrom and shall deliver one certificate to the parties and shall, within seven days thereafter, transmit the other to the Registrar for the district in which the marriage takes place who shall transmit the same to the Registrar-General within seven days of the receipt thereof.

Marriage before Registrar: After the issue of a certificate under section *ten* or *fifteen*, or of a special licence, the parties may, if they think fit, contract a marriage before a Registrar in the presence of two witnesses, in his office with open doors, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, in accordance with the prescribed procedure.

Issue of marriage certificate by Registrar: The Registrar shall then fill up and he and the parties and witnesses shall sign the certificate of the marriage in duplicate and the Registrar shall then fill up and sign the counterfoil as hereinbefore provided in the case of a marriage by a minister and shall deliver one certificate to the parties and shall, within seven days, transmit the other to the Minister.

Marriage in building other than licensed building or Registrar's office: Whenever a special licence authorises the solemnisation of a marriage at a place other than a licensed place of worship or the office of a Registrar, the minister or Registrar solemnising such marriage shall observe strictly all the formalities hereinbefore provided as to marriage in a licensed place of worship or Registrar's office, as the case may be.

PART V - Registry and Evidence of Marriages

Registration of marriages by Registrar-General:

(1) The Registrar-General shall file in his office all certificates of marriage which shall be transmitted to him, and shall forthwith register in a book to be kept in his office for such purpose and to be called the "Marriage Register Book" in the prescribed form particulars of every certificate of marriage which shall be filed in his office, and every entry so made shall be dated on the day on which it is so entered and shall be signed by the Registrar-General, and such book shall be kept in such manner as is best suited for easy reference thereto.

(2) Upon payment of the prescribed fees, the Registrar-General shall at all reasonable times allow searches to be made in the Marriage Register Book and shall give certified copies therefrom.

(3) Every Registrar and the licensed minister for the time being of every licensed place of worship shall, at all reasonable times upon payment of the prescribed fee, allow searches to be made in the counterfoils of his marriage certificate books.

Correction in Register of clerical errors: The Registrar-General may correct any clerical error in any certificate of marriage filed in his office and in the Marriage Register Book upon production to him of the certificate delivered to the parties, and shall authenticate every such correction by his signature and the date of such correction.

Certificate of marriage to be evidence: Every certificate of marriage which shall have been filed in the office of the Registrar-General, or a copy thereof purporting to be signed and certified as a true copy by the Registrar-General for the time being, and every entry in a Marriage Register Book or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates in any court of justice or before any person now or hereafter having by law or consent of parties authority to hear, receive and examine evidence.

Invalid marriages:

(1) No marriage in Zambia shall be valid- Invalid marriages

(a) which if solemnised in England would, under the law relating to prohibited degrees of marriage for the time being in force in England, be null and void on the ground of kindred or affinity;

(b) where either of the parties thereto at the time of the celebration of such marriage is married by African customary law to any person other than the person with whom such marriage is had.

(2) A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its solemnisation-

- a) in any place other than the office of a Registrar or a licensed place of worship or a place authorised by the special licence; or
- b) under a false name or names; or
- c) without the Registrar's certificate of notice or special licence having been duly issued;
- d) *d)* by a person not being a licensed minister of some religious denomination or body or a Registrar.

Void marriages: A marriage between persons either of whom is under the age of sixteen years shall be void: Provided that this section shall not apply

when a Judge of the High Court has, on application being made, and on being satisfied that in the particular circumstances of the case it is not contrary to the public interest, given his consent to the marriage.

Marriage under African customary law: Any person who is married under this Act or whose marriage is declared by this Act to be valid, shall be incapable during the continuance of such marriage of contracting a valid marriage under any African customary law, but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any African customary law, or in any manner apply to marriages so contracted.

PART VI - Validation of Marriage Already Solemnised

Marriages already solemnised in Zambia: Every marriage solemnised in the portion of Zambia formerly known as North-Eastern Rhodesia before the 1st February, 1903, and every marriage solemnised in the portion of Zambia formerly known as Barotseland-North-Western Rhodesia before the 16th July, 1906, by any minister of any religious denomination or body, according to the rites in use by such religious denomination or body, shall be and shall be deemed to have been from the time of the solemnisation thereof, a legal and valid marriage.

Records and evidence of such marriages: Every minister of religion or other person in Zambia who has in his custody or control any register, record or paper purporting to be such of marriage solemnised before the 1st February, 1903, in the portion of Zambia formerly known as North-Eastern Rhodesia, and before the 16th July, 1906, in the portion of Zambia formerly known as Barotseland' North-Western Rhodesia, shall forthwith deliver or transmit to the Registrar-General the said register or official record or a copy thereof, unless a copy has already been transmitted pursuant to the provisions of the North-Eastern Rhodesia Marriage Regulations.

Costs of transmission of records, etc.: The Minister may defray out of the general revenues of the Republic all proper expenses connected with the transmission or delivery of the said registers or which may otherwise become necessary to be incurred in carrying out the provisions of this Act.

PART VII - Offences and Penalties

Contracting marriage under this Act when married in African customary law or contracting marriage in African customary law when married under this Act: Any person who-

- a) contracts a marriage under this Act, being at the time married in accordance with African customary law to any person other than the person with whom such marriage is contracted;
- b) having contracted a marriage under this Act, during the continuance of such marriage contracts a marriage in accordance with African customary law; shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years:

Accomplices: Whoever being unmarried goes through the ceremony of marriage with a person whom he or she knows to be married to another person shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years.

False declarations, etc.: Whoever in any affidavit, declaration, licence, document or statement by law, to be made or issued for the purposes of a marriage, swears, declares, enters, certifies or states any material matter which is false shall, if he does so without having taken reasonable means to ascertain the truth or falsity of such matter, be liable on conviction to imprisonment with or without hard labour for one year or shall, if he does so knowing that such matter is false, be liable on conviction to imprisonment with or without hard labour for a period not exceeding

False pretences in connection with consent to marriage: Whoever endeavours to prevent a marriage by falsely pretending that his consent thereto is required by law, or that any person whose consent is so required does not consent, or that there is any legal impediment to the performing of such marriage, shall, if he does so knowing that such pretence is false or without having reason to believe that it is true, be liable on conviction to imprisonment with or without hard labour for a period not exceeding two years.

Illegal performance of ceremony: Whoever performs the ceremony of marriage knowing that he is not duly qualified so to do, or that any of the matters required by law for the validity of such marriage has not happened or been performed, so that the marriage is void or unlawful on any ground, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years.

Failure to fill up and transmit certificates: Whoever, being under a duty to fill up the certificate of a marriage celebrated by him or the counterfoil thereof or to transmit the same to the Registrar, wilfully fails to perform such duty shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or, alternatively or in default of payment of such fine or in addition thereto, to imprisonment with or without hard labour for a period not exceeding two years.

Personation: Whoever personates any other person in marriage, or marries under a false name or description with intent to deceive the other party to the marriage, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years.

False representation: Whoever goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground and that the other person believes it to be valid, shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years.

Minority and Guardianship Act

Definitions:

- A minor is a person under the age of 18
- A guardian is the caretaker of a minor, his or her property, or both. Categories of guardians include: a natural guardian; a guardian chosen by the mother or father; a guardian appointed by the court; and a person who qualifies as a guardian according to the Court of Wards.

Overriding quality:

Any former law that is inconsistent with this law is declared legally void. This law supersedes all other relevant laws.

Natural Guardians:

The father is the primary guardian for a legitimate boy and unmarried girl and their property, while the mother is the secondary guardian. However, the mother is the primary guardian for all children under the age of five. For illegitimate children, the mother is the primary guardian, while the father is the secondary guardian. A married minor girl's husband becomes her guardian. For an adoptive son, the adoptive father is the primary guardian, then the adoptive mother.

Each of these, if they chose, may appoint guardians of their child's person or property. Should a parent cease being a Hindu or become a renouncer, hermit, or ascetic, that parent will lose his or her guardian rights.

Abilities of natural guardians:

Natural guardians can take actions that will benefit and protect the minor and his or her property. However, the guardian cannot sign a personal covenant for the minor. The guardian cannot sell, mortgage or give away any part of the minor's immovable property, lease this property for more than five years, or lease the property for more than one year after the child becomes eighteen.

Minors and property:

A child cannot act as a guardian of property of minors.

For a minor who possesses an undivided interest in joint family property that is already controlled by an adult in that family, a guardian shall not be appointed to manage that undivided interest.

Welfare of minor

The welfare of the minor will be the primary consideration in the appointment of a guardian.

The Maintenance Act

To provide for court orders as to paternity; to consolidate the law relating to the maintenance of children; to bring the law of Zambia into conformity with the United Nations Convention on the Rights of the Child dated 20th November, 1989, to which Zambia is a State Party; to abrogate the application of so much of the Maintenance Orders Act, and of the laws of the United Kingdom, as provides for the maintenance of children; and to provide for matters connected with or incidental to the foregoing.

PART I - Definitions:

"affiliation order" means an order declaring a man to be the father of a child identified in the order;

"attachment of earnings order" means an order under section *twenty-five*;

"child" means a person below the age of eighteen years, whether a marital or non-marital child;

"court" means a subordinate court or the High Court;

"custodian" means a person appointed under this Act or any other law to be the guardian of a child;

"defendant", in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under that order;

"earnings" in relation to a dependant means any sums (other than expected sums) payable to the dependant-

- (a) by way of wages or salary, including a fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or
- (b) by way of pension;

"employer" means a person by whom, as a principal and not as a servant or agent, any earnings are to be paid;

"maintenance order" means an order made under Part III;

"marital child" includes-

- (a) a legitimated person within the meaning of the Legitimacy Act;
- (b) an adopted child within the meaning of the Adoption Act; and
- (c) a child of either party to a marriage who has been accepted by the other party as a child of the family;

"non-marital child" means a child who is not a marital child;

"periodic payments order" means a maintenance order made in accordance with paragraph (a) of subsection (1) of section *ten*;

"proper officer of the court" means-

(a) in the case of the High Court, such officer as the Registrar may designate for the purposes of the provision in which the expression occurs; and

(b) in the case of a subordinate court, the clerk of that court;

"putative father" means the man alleged to be the father of a non-marital child;

"registered" relation to a maintenance order means registered under Part-V;

"secured periodic payments order" means a maintenance order made in accordance with paragraph (b) of subsection (1) of section *ten*;

"single woman" includes a widow, a married woman who is divorced and a woman living apart from her husband.

PART II - AFFILIATION ORDERS

3. The court may make an affiliation order on the application of a single woman-

(a) at any time within twelve months after giving birth to a non-marital child;

(b) at any time, upon proof that the putative father of the non-marital child has within the period of twelve months next after the birth of the non-marital child paid money for its maintenance; or

(c) at any time within the period of twelve months next after the return to Zambia of the putative father of the non-marital child, upon proof that he ceased to reside in Zambia within the period of twelve months after the birth of the non-marital child.

4. The court may, on the application of a single woman who has been delivered of a marital child, make an affiliation order upon proof that before the birth she was a party to a marriage which would have been valid but for the fact that she or the other party were under the age at which either might have legally contracted a marriage.

5. The court may, on the application of a non-marital child made through the child's next friend, make an affiliation order, subject to the limitations contained in section *three*.

6. (1) On the hearing of an application for an affiliation order, the court shall hear-

- (a) the evidence of the mother;
- (b) such other evidence as she may produce; and
- (c) any evidence tendered by or on behalf of the putative father.

(2) The court shall not make an affiliation order unless the evidence of the mother is corroborated in some material particular by other evidence.

PART III - MAINTENANCE ORDERS

7. The court may, either at the time of making an affiliation order or upon subsequent application for a maintenance order, make a maintenance order in respect of the child concerned.

8. (1) The court may on the application of either party to a marriage make a maintenance order on the ground that the other party to the marriage has failed to provide, or to make a proper contribution towards, reasonable maintenance for a marital child.

(3) In deciding what constitutes reasonable maintenance for the purposes of this section, the court shall have regard to the matters mentioned in section *eleven*.

9. (1) The court may make a maintenance order in respect of a marital child on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter.

(2) In the case of a decree of divorce or of nullity of marriage, the order may be made whether or not the decree has been made absolute.

10. (1) A maintenance order may take any of the following forms, that is to say:

- (a) an order that the defendant shall, for the benefit of a specified child, pay to a specified person or to the child itself, specified periodic payments for a specified term;
- (b) an order that the defendant shall, for the benefit of a specified child, secure to the satisfaction of the court the making, to a specified person or to the child itself, of specified periodic payments for a specified term.

(2) In addition, a maintenance order may specify that the defendant shall, for the benefit of a specified child, pay to a specified person or to the child itself, a specified lump sum.

(3) Where the court-

(a) makes an order under this section for the payment of a lump sum; and

(b) directs that-

(i) payment of that sum or any part of it shall be deferred; or

(ii) that sum or any part of it shall be paid by instalments;

the court may order that the amount deferred, or the instalments, shall carry interest at a rate specified by the order, from a specified date (not being a date earlier than the date of the order) until the date when payment thereof is effected.

11. (1) It shall be the duty of the court before making any maintenance order to have regard to all the circumstances of the child concerned.

(2) Without limiting the generality of subsection (1), the court shall have regard to the following matters:

(a) the welfare of the child while an infant, including any preliminary expenses;

(b) the income, earning capacity, property and other financial resources which each interested person has, or is likely to have, in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a person to take steps to acquire;

(c) the financial needs, obligations and responsibilities which each interested person has or is likely to have in the foreseeable future;

(d) the standard of living enjoyed by the family before the breakdown of the marriage, in the case of persons who are divorcing;

(e) the age of the child and of each interested person;

(f) any physical or mental disability of the child;

(g) the contributions which each person has made, or is likely in the foreseeable future to make, to the welfare of the child, including any contribution made or to be made by looking after the home or caring for the child;

(h) the financial needs of the child;

- (i) the income, earning capacity, property and other financial resources, if any, of the child; and
- (j) the manner in which the child was being, and in which its parents expected it to be, educated or trained.

12. (1) A maintenance order shall not be made in favour of a child who has attained the age of eighteen years.

(2) The term to be specified in a periodic payments or secured periodic payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date of the child's eighteenth birthday.

(3) Subsections (1) and (2) shall not apply if it appears to the court that-

(a) the child is or will be receiving instructions in some profession or vocation (or would be, if an order were made without complying with either or both of those subsections), whether or not he is or will be in gainful employment as well; or

(b) there are special circumstances which justify the making of an order notwithstanding either or both of those provisions.

(4) Any periodic payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the child in respect of whom the order is made, except in relation to any arrears due under the order on the date of the death.

13. (1) The court shall have power to vary or discharge a maintenance order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) In exercising its power under this section, the court shall take into account the same matters as it is required to take into account when it makes a maintenance order.

14. (1) Subject to the other provisions of this Act, the person entitled to any payment to be made under a maintenance order shall be the child's mother, father or custodian.

(2) When making or varying a maintenance order, the court may order that the money shall be paid into court and then paid to the mother, father or custodian in such manner and subject to such conditions as it may direct.

(3) A custodian who is entitled to receive moneys under a maintenance order shall have the same power to recover them as the mother or father would have had.

PART IV - CUSTODY OF CHILDREN

15. (1) Where the court makes a maintenance order in respect of a child, the court shall also have power to make whatever order it thinks fit with respect to the custody of the child, and the right of access thereto of either parent, but the power conferred by this subsection and any order made in exercise of that power shall have effect only during any period while the maintenance order is in force.

(2) In making any order as to custody or access, the court shall regard the welfare of the child as the paramount consideration, and shall not take into account whether from any other point of view the claim of the father in respect of custody is superior to that of the mother, or vice versa.

(3) If the court is satisfied that-

(a) the mother or father of a child is not a fit and proper person to have custody of the child;

(b) the mother or father of a child has died or become of unsound mind or is serving a term of imprisonment of more than six months; or

(c) there are exceptional circumstances making it impracticable for the child to be entrusted to the custody of either of its parents;

the court may, at the time of making a maintenance order or at any time thereafter, appoint any other person as custodian of the child.

(4) The appointment of a custodian under this section may be made on the application of-

(a) The Minister responsible for community development and social welfare, or of any person authorised in that behalf by the Minister in writing either generally or specially; or

(b) the father or mother;

and such an appointment may be revoked and another person appointed as custodian.

16. (1) Where the court makes an affiliation order, or grants or makes absolute a decree of divorce, or grants a decree of judicial separation, it may include in the order or decree a declaration that either party to the proceedings is unfit to have the custody of a child.

(2) Where such a declaration is made, then, if the party to whom the declaration relates is a parent of any child, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(3) Where an order in respect of a marital child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(4) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

PART V - REGISTRATION OF MAINTENANCE ORDERS

17. (1) In this Part, unless the context otherwise requires-

"certified copy", in relation to an order of the court, means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof;

"court of registration", in relation to a maintenance order, means the court in which the order is, or is to be, registered;

"High Court order" means a maintenance order made by the High Court;

"original court", in relation to a maintenance order, means the court by which the order was made;

"subordinate court order" means a maintenance order made by a subordinate court;

"registered" means registered in accordance with the provisions of this Part, and "registration" shall be construed accordingly.

(2) For the purposes of this Part, an order for the payment by the defendant of any costs incurred in proceedings relating to a maintenance order, being an order for the payment of costs made while the maintenance order is not registered, shall be deemed to form a part of that maintenance order.

18. (1) A person entitled to receive payments under a High Court order may apply to the original court for the registration of the order in a subordinate court, and the court may, if it thinks fit, grant the application.

(2) Where an application for the registration of such an order is granted-

(a) no proceedings shall begin, and no writ, warrant or other process shall be issued, for the enforcement of the order before registration of the order or before the expiry of the prescribed period (in this Part referred to as the "registration period") from the grant of the application, whichever first occurs; and

(b) the original court shall, on being satisfied within the registration period by the person who made the application that no such proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the order to be sent to the clerk of a subordinate court within whose area of jurisdiction the defendant appears to be.

(3) If at the expiration of the registration period the original court has not been satisfied as referred to in paragraph (b) of subsection (1), the grant of the application shall become void.

(4) The proper officer of the court of registration shall, upon receipt of a certified copy of an order sent to him under this section, cause the order to be registered in that court.

19. (1) A person entitled to receive payments under a subordinate court order, who considers the order could be more effectively enforced if it were registered in the High Court or another subordinate court, may apply to the original court for the registration of the order, and the court shall grant the application being satisfied in the prescribed that, at the time when the application was made, the amount due under the first mentioned order was unpaid.

(2) Where an application for the registration of a subordinate court order is granted-

(a) no proceedings for the enforcement of the order shall be begun before the registration takes place and no warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the grant of the application;

(b) any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the grant of the application, unless the defendant has already been detained in pursuance of the warrant; and

(c) the original court shall, on being satisfied in the prescribed manner that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the proper officer of the court of registration.

(3) The proper officer of the court of registration shall, upon receipt of a certified copy of an order sent to him under this section, cause the order to be registered in that court.

20. (1) Where a maintenance order is registered in any court under this part-

(a) any provisions of the order by virtue of which sums payable thereunder are required to be paid through or to any officer or person on behalf of the person entitled to them shall be of no effect so long as the order is registered in that court; and

(b) the court shall, unless it is satisfied that it is undesirable to do so, order that all payments to be made under the maintenance order (including any arrears accrued before the date of the registration) shall be made through the proper officer of the court of registration.

(2) An order made under paragraph (b) of subsection (1) may be varied or revoked by a subsequent order.

(3) Where, by virtue of the provisions of this section or any order made under this section, payments under a maintenance order cease or become payable through or to any officer or person, the person liable to make the payments shall, until he is given the prescribed notice to that effect, be deemed to comply with the maintenance order if he makes payments in accordance with the maintenance order and any order under this section of which he has received such notice.

21. An order which is for the time being registered in any court shall not be registered in any other court.

22. (1) Subject to the provisions of this section, a registered order shall be enforceable in all respects as if it had been made by the court of registration

and as if that court had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.

(2) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.

23. (1) The provisions of this section shall have effect with respect to the variation of orders registered in subordinate courts, and references in this section to registered orders shall be construed accordingly.

(2) The court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order (other than jurisdiction in a case where a party to the order is not present in Zambia when the application for variation is made) as the original court.

(3) A rate of payments specified by a registered order shall not be varied except by the court of registration.

(4) A rate of payments specified by a registered order shall not be varied by virtue of subsection (2) so as to exceed the rate of payments specified by the order as made or last varied by the original court.

(5) If it appears to the court to which an application is made by virtue of subsection (2) or (3) for the variation of a rate of payments specified by a registered order that, by reason of limitations imposed on the court's jurisdiction by subsection (4) or for any other reason, it is appropriate to remit the application to the original court, the first mentioned court shall so remit the application, and the original court shall thereupon deal with the application as if the order were not registered.

(6) Nothing in this section shall affect the jurisdiction of the original court to vary a rate of payments specified by a registered order if an application for the variation of that rate is made to that court-

(a) in proceedings for a variation of provisions of the order which do not specify a rate of payments; or

(b) at a time when a party to the order is not present in Zambia.

(7) No application for any variation of a registered order shall be made to any court while proceedings for any variation of the order are pending in any other court.

(8) Where a subordinate court, in exercise of the jurisdiction conferred by this section, varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court.

24. (1) If a person entitled to receive payments under a registered order desires the registration to be cancelled, he may give notice under this section.

(2) Where the original court varies or discharges an order registered in a subordinate court, the original court may, if it thinks fit, give notice under this section.

(3) Where a subordinate court discharges an order registered in the High Court and it appears to the subordinate court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, the subordinate court shall give notice under this section.

(4) Notice under this section shall be given to the court of registration, and where such notice is given-

(a) no proceedings for the enforcement of the registered order shall be begun before the cancellation of the registration and no writ, warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the giving of the notice;

(b) Where the order is registered in a subordinate court, any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and

(c) the court of registration shall cancel the registration on being satisfied in the prescribed manner-

(i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force; and

(ii) in the case of an order registered in a subordinate court, that no proceedings for the variation of the order are pending in a subordinate court.

(5) On the cancellation of the registration of an order, any order made in relation to it under paragraph (b) of subsection (1) of section *twenty* shall cease to have effect, but until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the order if he makes

payments in accordance with any order under that paragraph which was in force immediately before the cancellation of which he has notice.

PART VI - ATTACHMENT OF EARNING ORDER

25. (1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to a court by which payment of any arrears under the order is enforceable-

(a) that, when the application was made, there were payments due under the order that were unpaid; and

(b) that the defendant is a person to whom earnings fall to be paid; then the court may, if it thinks fit, by order (to be known as an attachment of earnings order) require a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or part thereof such payments as may be specified in the order.

(2) The order shall-

(a) specify the normal deduction rate, which shall not exceed the rate appearing to the court to be necessary for the purpose of securing-

(i) payment of the sums falling due from time to time under the maintenance order; and

(ii) payment within a reasonable period of any sums already due and unpaid under the maintenance order and of any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;

(b) specify the protected earnings rate, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide;

(c) designate the proper officer to whom any payment is to be made; and

(d) contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(3) An attachment of earnings order shall not come into force until the expiration of fourteen days from the date when a copy of the order is served on the person to whom the order is directed.

(4) In this section-

"normal deduction rate" means the rate at which attached earnings should be applied from time to time in satisfying the requirements of the maintenance order;

"protected earnings rate" means the rate below which earnings should not be reduced by a payment made in pursuance of an attachment of earnings order.

26. Without prejudice to the powers to make attachment of earnings orders conferred by section *twenty-five*, where proceedings are brought in a court under section *four* of the Debtors Act (which authorises the committal to prison of persons refusing or neglecting to pay certain debts which they have had the means to pay) in respect of a default in making payments under a maintenance order, and it appears to the court that-

(a) at the date when the proceedings were begun, any payment was due under the maintenance order and unpaid; and

(b) the defendant is a person to whom earnings fall to be paid;
the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

27. Where an attachment of earnings order is made, no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order.

28. The court by which an attachment of earnings order has been made may, if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

29. (1) Where at any time it appears to the proper officer to whom payments under an attachment of earnings order made by the High Court are to be paid that-

(a) the aggregate of the payments made for the purpose of the related maintenance order by the defendant (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order;

(b) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by

those orders) exceeds the rate of payments required by the maintenance order; and

(c) no proceedings for the variation or discharge of the attachment of earnings order are pending; the officer shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant.

(2) The court which made the order shall-

(a) make the appropriate variation order; or

(b) if it thinks fit, at the request of the defendant made to the court in the prescribed manner and before the expiration of the prescribed period, make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks just.

(3) Where at any time it appears to the proper officer to whom payments under an attachment of earnings order made by a subordinate court are to be paid that the conditions specified in paragraphs (a) to (c) of subsection (1) are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court shall-

(a) grant the application; or

(b) if it thinks fit, where the defendant appears at the hearing of the application and requests the court to do so, make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks just.

(4) In this section "the appropriate variation order" means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to ensure that the rate (or, in the case mentioned in paragraph of subsection (1), the aggregate of the rates therein mentioned) is the same as the rate of payments required by the maintenance order or is such lower rate as the court thinks just, having regard to the amount of the excess mentioned in paragraph (a) of subsection (1).

30. An order varying an attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy thereof is served on the person to whom the attachment of earnings order is directed.

31. Where notice is given to a court under section *twenty-four*, the court shall discharge the attachment of earnings order to which the notice relates.

32. (1) An attachment of earnings order shall cease to have effect-

(a) upon the grant of an application for the registration of the related maintenance order;

(b) where the related maintenance order is registered, upon the giving of notice with respect to it under section *twenty-four*;

(c) upon the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the related maintenance order or upon the exercise for that purpose of any power conferred on a subordinate court to postpone the issue of such a warrant; or

(d) upon the discharge of the related maintenance order while it is not registered:

Provided that where the related maintenance order is discharged as mentioned in paragraph (d) and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may direct that this subsection shall not apply.

(2) Where an attachment of earnings order ceases to have effect as provided by subsection (1), the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed.

(3) Where notice is given to a court in pursuance of subsection (4) of section *thirty-three*, the court shall discharge the attachment of earnings order to which the notice relates.

(4) Where an attachment of earnings order ceases to have effect as provided by subsection (1), or is discharged otherwise than under subsection (3), the

person to whom the order is directed shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by subsection (2) or, as the case may be, a copy of the discharging order, is served on him.

33. (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law but subject to the other provisions of this Act, comply with the order or, if the order is subsequently varied, with the order as so varied.

(2) Where, on any occasion on which earnings fall to be paid to a defendant, there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with the order, the employer shall-

(a) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with; and

(b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under the order in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under that order shall give to the defendant a statement in writing specifying the amount of that payment.

(4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing in the prescribed form to the court which made the order.

(5) A person to whom an attachment of earnings order is directed shall, where the defendant ceases thereafter to be employed by him, within

fourteen days of such cessation give notice thereof to the court that make the order.

34. (1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing-

(a) obtain-

(i) the name and address of his employer, or of each of his employers if he has more than one;

(ii) such particulars as to the defendant's earnings as may be so specified; and

(iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by his employer; and

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within a period specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

(2) A document purporting to be a statement of the kind mentioned in subsection (1) shall, in any proceedings mentioned in that subsection, be received in evidence and be deemed to be such a statement without further proof, unless the contrary is shown.

35. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed, or of the defendant, or of the person in whose favour the order was made, determine whether payments to the defendant, or a particular class or description of such payments, specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order in relation to any payments of the class or

description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is still on foot and undetermined.

36. (1) The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum, in accordance with rules of court, to the person specified by the attachment of earnings order as being the person entitled to receive payments under the related maintenance order.

(2) Any sums received, by virtue of an attachment of earnings order, by the person entitled to them shall be deemed to be payments made by the defendant so as to discharge-

(a) first, any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date); and

(b) secondly, any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

(3) Notwithstanding anything in any other law, an employer may retain the prescribed amount for his own use out of any balance of the defendant's earnings, to defray his reasonable costs of compliance with an attachment of earnings order.

37. (1) In relation to earnings falling to be paid by the Government, this Act shall have effect subject to the following modification, that is to say:

(a) the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned; and

(b) section *thirty-eight* shall not apply except in relation to a failure by the defendant to comply with an order under section *thirty-four*.

(2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is

concerned for the purposes of this section, or as to whom for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister responsible for finance.

(3) A document purporting to set out a determination of the Minister responsible for finance under subsection (2) and to be signed by an official of the Ministry responsible for community development and social welfare shall, in any proceedings mentioned in that subsection, be admissible in evidence and shall be deemed to contain an accurate statement of such a determination unless the contrary is shown.

(4) The provisions of this Act shall extend to apply to a pension or other allowance granted under any law in Zambia.

38. (1) A person who-

(a) fails to comply with an attachment of earnings order or any order of the court given under this Part; or

(b) gives a notice or statement in pursuance of such an order, knowing the same to be false in a material particular;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding six months or to both.

(2) It shall be a defence for a person charged with an offence by virtue of paragraph (a) of subsection (1) to prove that he took all reasonable steps to comply with the order in question.

INHERITANCE AND INTESTATE SUCCESSION ACT IN ZAMBIA

An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a will; and to provide for matters connected with or incidental to the foregoing.

PART I - PRELIMINARY

1. This Act may be cited as the Intestate Succession Act. Title and commencement

2. (1) Except to the extent specifically provided in this Act, this Act shall apply to all persons who are at their death domiciled in Zambia and Application shall apply only to a member of a community to which customary law would have applied if this Act had not been passed.

(2) This Act shall not apply to-

(a) land which at the time of death of the intestate had been acquired and was held under customary law;

(b) property which immediately before the death of the intestate was institutionalised property of a chieftainship and had been acquired and was being held as part of chieftainship property;

(c) family property.

3. In this Act, unless the context otherwise requires- Interpretation "administrator" means a person to whom a grant of letters of administration has been made and includes the Administrator-General;

"Administrator-General" has the meaning assigned to it by section *six* of the Administrator-General's Act;

"brother or sister" includes a half-brother or half-sister and brother or sister by adoption;

"child" means a child born in, or out of marriage, an adopted child, a child who is conceived but not yet born;

"common property" in relation to a polygamous marriage, means all personal chattels of the deceased which were used in common by him, his wives and children of every household to which the deceased was connected by his marriage, not being household property;

"Court" means the High Court, subordinate court or a local court; "death duty" means estate duty chargeable under the Estate Duty Act and any other duty payable on death;

"dependant" in relation to a deceased person means a person who was maintained by that deceased person immediately prior to his death and who was-

(a) a person living with that deceased person; or

(b) a minor whose education was being provided for by that deceased person; and who is incapable, either wholly or in part of maintaining himself; "estate" means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death and for the purposes of administration of the estate under Part III includes personal chattels; "family property" means any property, whether movable or immovable, which belongs to the members collectively of a particular family or is held for the benefit of such members and any receipts or proceeds from such property; "homestead property" in relation to a polygamous marriage means all personal chattels of the deceased and used by him, his wife and children of a particular household to which the deceased was connected by his marriage, not being common property; "intestate" means a person who dies without having made a will and includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable property; "issue" in relation to any person means the children, grandchildren and other remoter descendants of that person; "local court" means a court recognized or established under section *four* of the Local Courts Act; "marriage" includes a polygamous marriage and "husband", "surviving spouse", "wife" or "widow" shall be construed accordingly; "minor" means a person who has not attained the age of eighteen years; "near relative" means issue, brother, sister, grandparent and other remoter descendants of the deceased; "parent" includes a guardian who has been responsible for the welfare and education of the deceased; "personal chattel" means clothing, articles of personal use or adornment, furniture and furnishing, appliances, utensils and all other articles of household use or decoration, simple agricultural equipment, hunting equipment, books, motor vehicles and consumable stores but does not include chattels used for business purposes, money or securities for money; "priority dependant" means a wife, husband, child or parent; "subordinate court" means a court constituted under section *three* of the Subordinate Courts Act;

"syndic" means a person deputed to represent and transact the affairs of a corporation.

PART II - SUCCESSION

4. (1) A person dies intestate under this Act if at the time of his death he has not made a will disposing of his estate. Intestacy and partial intestacy

(2) Any person who dies leaving a will disposing of part of his estate has died intestate under this Act in respect of that part of his estate which is not disposed of in the will.

5. (1) Subject to sections *eight, nine, ten* and *eleven* the estate of an intestate shall be distributed as follows: Distribution of estate

(a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;

(c) twenty per cent of the estate shall devolve upon the parents of the deceased;

(d) ten per cent of the estate shall devolve upon the dependants, in equal shares:

Provided that a priority dependant whose portion of the estate under this section is unreasonably small having regard to his degree of dependence on the deceased shall have the right to apply to a court for adjustment to be made to the portions inherited and in that case, Part III of the Wills and Administration of Testate Estates Act shall apply, with the necessary changes, to the application.

(2) In respect of a minor, the mother, father or guardian shall hold his share of the estate in trust until he ceases to be a minor.

6. Where an intestate leaves –

(a) no spouse, the portion of the estate which the spouse would have inherited shall be distributed to the children in such proportions as are commensurate with a child's age or educational needs or both; Distribution where intestate survived by no spouse, etc.

(b) no spouse or children; the aggregate portion of the estate which the spouse and children would have inherited shall be distributed equally to the parents of the deceased;

(c) no spouse, children or parents, the estate shall be distributed to dependents in equal shares;

(d) no spouse, children, parents, or dependents, the estate shall be distributed to near relatives in equal shares;

(e) no spouse, children, parents, dependants or near relatives, the estate shall be *bona vacantia* and shall devolve upon the State;

7. Where an intestate leaves-

(a) a spouse, children, dependants but no parents, the proportion of the estate which the parents would have inherited shall be shared equally Distribution where intestate survived by between the surviving spouse and children on the one hand and the dependants on the other; spouse, etc.

(b) a spouse, parents, dependants but no children, the portion of the estate which the children would have inherited shall be distributed to the surviving spouse, parents and dependants in proportion to their shares of the estate as specified in section *five*;

(c) a spouse, children, parents but no dependants, the portion which the dependants would have inherited shall be distributed equally to the parents;

(d) a spouse and dependants but no children or parents, the portion of the estate which the children and parents would have inherited shall be distributed to the surviving spouse and the dependants in proportion to their shares of the estate as specified in section *five*;

(e) a spouse and children but no parents or dependants, the portion of the estate which the parents and dependants would have inherited shall be shared equally among the surviving spouse on the one hand and the children on the other;

(f) a spouse but no children, parents or dependants, the portion of the estate which the children, parents and dependants would have inherited shall be distributed equally between the surviving spouse on the one hand and the near relatives on the other.

8. Notwithstanding section *five* where the intestate in the case of a monogamous marriage is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled equally and absolutely to the personal chattels of the intestate.

Devolution of personal chattels in monogamous marriages

9. (1) Notwithstanding section *five* where the estate includes a house the surviving spouse or child or both, shall be entitled to that house: Surviving spouse or child or both to be entitled to house

Provided that-

(a) where there is more than one surviving spouse or child or both they shall hold the house as tenants in common; and

(b) the surviving spouse shall have a life interest in that house which shall determine upon that spouse's remarriage.

(2) Where the estate includes more than one house the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate.

10. Notwithstanding section *five* where the intestate is survived by more than one widow or a child from any of them, then, each widow or her child or both of them shall be entitled-

(a) absolutely to the homestead property of the intestate; and

(b) in equal shares to the common property of the intestate.

Devolution of homestead and common property in polygamous marriage

11. Notwithstanding section *five*, where the total value of the estate does not exceed K30,000 the estate shall –

(a) devolve upon the surviving spouse or child of the intestate or to both; or

(b) where there is no surviving spouse or children, devolve upon the surviving parent.

Small estates

12. The Minister, may by statutory instrument, vary the maximum value of the estate prescribed under section *eleven*.

Minister to alter value of small estates

13. Notwithstanding anything in this Act, any person entitled to share in the estate may transfer his share in the estate to a priority dependant.

Transfer of share in estate to priority dependant

14. Any person who-

(a) unlawfully deprives any person of the use of-

(i) any part of the property of the deceased to which that person is entitled under this Act; or

(ii) any property shared with the deceased to which this Act applies; or

(b) otherwise unlawfully interferes with the use by any person of

Offences against an entitled person any property referred to in paragraph

(a); shall be guilty of an offence and liable on conviction to a fine not exceeding seven hundred and fifty penalty units or imprisonment not exceeding two years, or both.

PART III - ADMINISTRATION OF ESTATES

15. (1) Where the deceased has died intestate the court may, on the application of any interested person, grant letters of administration of the estate to that interested person.

Letters of administration on intestacy

(2) Subject to section *sixteen* where more than one person applies for letters of administration, the court may make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.

(3) Where no person applies for letters of administration, letters of administration may be granted to the Administrator-General or to a creditor of the deceased.

(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part of it other than the person who under subsection (1) in ordinary circumstances would be entitled to a grant of letters of administration, the court may, having regard to consanguinity, amount of interest, the security of the estate and the probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(5) Where letters of administration are granted under subsection (4) the grant may be limited or not limited as the court thinks fit.

16. (1) Letters of administration shall not be granted to more than four persons in respect of the same estate and if there is a minority or a life interest, letters of administration shall be granted to the Number of administrators Administrator-General, to a trust corporation solely or jointly with an individual or to not less than two individuals.

(2) If there is only one administrator (not being a trust corporation or the Administrator-General) then, during the minority of a beneficiary or the subsistence of a life interest, the court may appoint one or more administrators in addition to the existing administrator.

17. Where a person who is entitled to letters of administration is absent from Zambia, and there is no other person equally entitled who is willing to act as administrator, letters of administration may be granted to a lawfully constituted attorney, of the administrator ordinarily resident in Zambia, limited until that administrator obtains letters of administration himself and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of person entitled to administration

18. Pending the determination of any proceedings for obtaining or revoking any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing the estate, and an administrator so appointed shall be subject to the immediate control of the court and shall act under its direction.

Appointment of administrator pending litigation

19. (1) The duties and powers of an administrator shall be Duties and powers of administrator

(a) to pay the debts and funeral expenses of the deceased and pay estate duty if estate duty is payable;

(b) to effect distribution of the estate in accordance with the rights of the persons interested in the estate under this Act;

(c) when required to do so by the court, either on the application of an interested party or on its own motion-

(i) to produce on oath in court the full inventory of the estate of the deceased; and

(ii) to render to the court an account of the administration of the estate.

(2) Where an administrator considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.

20. Where there are several administrators, their powers may, in the absence of any direction to the contrary contained in the letters of administration, be exercised by the majority of them.

How powers of several administrators to be exercised

21. Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account and leaves no administrator or leaves one who is unable or unwilling to act as such, letters of administration, limited to that property, may be granted to the beneficiary, or to some other person on his behalf.

Trust property

22. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to that exception.

Grants with exception

23. Whenever a grant with exception of letters of administration has been made, a further grant may be made of the part of the estate so excepted.

Grants of excepted part

24. (1) Subject to any limitations and exceptions contained in a grant of letters of administration the grant entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death except that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

Effect of grant of letters of administration

(2) Subject to subsection (1), letters of administration shall have effect over the whole of the estate of the deceased throughout Zambia and shall-

- (a) be conclusive against all debtors of the deceased and all persons holding any property of the deceased;
- (b) afford full indemnity to all debtors paying their debts, and all persons delivering up that property to the administrator.

25. Where letters of administration have been granted to more than one administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the grant, accrue to the surviving administrator.

Death of one of several administrators

26. On the death of a sole or surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting the letters of administration the court shall have regard to the original grants.

Death of sole or surviving administrator

27. Where a limited grant has expired by defluxion of time, or the happening of the event or contingency on which it was limited and there is still some part of the deceased's estate unadministered, letters of administration may be granted to those persons to whom original grants might have been made.

Expiry of limited grant when estate not fully administered

28. (1) As a condition of granting letters of administration to any person, a court may, subject to this section, require one or more sureties to guarantee, within any limit imposed by the court, any loss which any person interested in the administration of an estate may incur in consequence of a breach by the administrator.

Guarantees on granting letters of administration

(2) A guarantee given under subsection (1) shall have the effect, in relation to any person interested in the administration of an estate of a deceased, of a contract by the surety or sureties with that person.

(3) No action shall be brought against a guarantor to whom this section relates without the leave of the court.

(4) This section shall not apply where administration is granted to the Administrator-General.

29. (1) Letters of administration may be revoked or annulled for any of the following reasons- Revocation of grants and removal

(a) that the proceedings to obtain them were defective in substance;

(b) that the grant was obtained fraudulently;

(c) that the grant was obtained by means of an untrue statement of a fact essential in point of law to justify the grant, though that statement was made in ignorance or inadvertently;

(d) that the grant has become of no use and inoperative;

(e) that the person to whom the grant was made has, without reasonable cause failed, to furnish an account of his administration after having been lawfully called upon to do so, or has prepared an account which is untrue in a material particular.

(2) Where the court is satisfied that proper administration of the estate and the interests of the persons beneficially entitled to them so require, it may-

(a) suspend or remove an administrator;

(b) provide for the succession of another person to the office of that administrator who shall cease to hold office; and

(c) provide for the vesting in the successor of any property belonging to the estate.

30. (1) Where letters of administration are revoked, all payments made in good faith to any administrator under the letters of administration before the revocation of those letters shall, notwithstanding the revocation, be a legal discharge to the person making the payment.

Payment of or to administrators whose grants are revoked

(2) An administrator who has acted under any revoked letters of administration may retain and reimburse himself out of the assets of the deceased in respect of any expenses incurred by him or fees paid out by him which any person to whom letters of administration are afterwards granted could have lawfully incurred or paid.

31. (1) Where letters of administration are revoked under this Act, the Court shall order the person to whom the grant was made to deliver up the letters to the court immediately.

Surrender of revoked grants

(2) A person who wilfully and without sufficient cause fails to deliver up the letters of administration, in accordance with subsection (1), shall be guilty of an offence and liable upon conviction to a fine not exceeding one hundred and twenty-five penalty units or to imprisonment not exceeding three months, or both.

PART IV - GENERAL

32. (1) A court may appoint any person to be the guardian of a minor. Guardians (2) A court may direct the transfer to, or vesting in the guardian of a minor of any property of the minor and may authorise or direct the sale of the property or any part of the property of the minor.

(3) A guardian appointed under this Act shall be entitled to represent the interests of the minor in any proceedings in court relating to the administration of the estate in which the minor has a share.

33. An administrator or guardian may incur expenditure on acts necessary for the proper care and management of any property belonging to the estate of a deceased person or to a minor.

Expenditure on care and management

34. (1) An administrator or guardian shall not derive any pecuniary benefit from his office.

Administrator or guardian not to derive benefit

(2) If an administrator or guardian purchases, either directly or indirectly, any part of the property of the deceased or of a minor for whom he is responsible, the sale may be set aside by the court on the application, made within a reasonable time, of any other person interested in the property sold or in the proceeds of sale.

35. (1) An administrator or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending to benefit the administrator or guardian or any person other than the minor shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred penalty units or to imprisonment not exceeding one year, or both.

Offences by administrators and guardians

(2) When any person is convicted of an offence under subsection (1), the court may, in addition to any penalty which may be imposed-

(a) order the restitution to the minor of the property which has passed in connection with the commission of the offence;

(b) if the property cannot be resituated or cannot be found, order the convicted person to make compensation to the minor of such sum as the court may assess as the value of the property.

(3) A court shall have jurisdiction to try an offence under this section although it has previously dealt with an application relating to the property in question.

36. Any beneficiary who intentionally causes the death of the deceased shall forfeit the right to inherit any part of the property of the deceased.

Beneficiary causing death of deceased

37. A court may appoint any person it considers fit to be a receiver of the property of an intestate pending a grant of letters of administration if it appears on the application of any person-

- (a) claiming to be interested in the property; or
- (b) having the custody or control of it at the time of the death of the deceased; that there is danger that the property may be wasted.

Receiver pending grant

38. A court may, on application by a receiver of property appointed Sale by order of under section *thirty-seven* or any person interested in the estate, order the sale of the whole or any part of the property, if it appears to the court that the sale will be beneficial to the estate.

Court

39. No suit shall be brought against a receiver appointed under section *thirty-seven* in relation to anything done or intended to be done by him in respect of the property of the deceased in the intended, purported or actual exercise of the powers vested in him; but a person aggrieved by anything so done or intended to be done may apply to the court which appointed the receiver, for directions in the matter, and the court may make such order as is just.

No suit against receiver

40. For the purpose of this Act where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for all purposes affecting rights in, to or over property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

Uncertainty regarding survivorship

41. Errors in the names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the letters of administration may be altered and amended accordingly.

Rectification of errors

42. On application in the prescribed manner, by an interested person, a court shall have jurisdiction in relation to a deceased person's estate-

- a) to decide whether or not the deceased person died intestate;

- b) to decide what is the property to which the deceased person was entitled at the date of his death;
- c) to decide how the distribution of the property forming part of a deceased person's estate should be carried out;
- d) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purpose of distribution;
- e) to appoint a guardian in place of a guardian who has acted improperly, or who has died.

Disputes

- (1) The High Court shall have jurisdiction in matters relating to succession.

Jurisdiction of courts

- (2) A local court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty thousand kwacha.
- (3) In matters relating to succession, a subordinate court of the first, second or third class shall, within the territorial limits of its jurisdiction, have jurisdiction to entertain any application if the value of the estate does not exceed one hundred thousand kwacha.

44. (1) A subordinate court or a local court to which application is made under this Act shall transfer the application to the High Court if-

Transfer of applications for orders relating to succession to High Court

- (a) the subordinate court or the local court is satisfied that an interested party has made application to the High Court for an order relating to the administration or distribution of the estate of the deceased to which the application relates; and
- (b) the subordinate court or the local court is satisfied that it is in the interests of justice to transfer the application to the High Court or that it is otherwise necessary to seek directions from the High Court as to the correctness or legality of the application or order to be made thereunder; or
- (c) the subordinate court or the local court is so ordered or directed by the High Court.

(2) Where an application is transferred to the High Court under subsection (1) the High Court shall make such order or give such directions in relation to it as it considers fit.

45. An appeal shall lie to the High Court in respect of any order or decree made by a subordinate court or a local court and the decision of the High Court on it shall be final.

Appeals to High Court

46. The Minister may make regulations for the better carrying out of the provisions of this Act.

Regulations

47. The Chief Justice may, by statutory instrument, make rules regulating the practice and procedure of the court under this Act.

Practice and procedure

48. Except as is expressly provided, nothing in this Act shall affect-

(a) any rights, duties or obligations of an administrator under any law relating to the administration of estates existing immediately before the commencement of this Act; or

(b) the rights, duties or obligations of beneficiaries in respect of any person who died before the commencement of this Act.

THE ADOPTION (AMENDMENT) ACT

Aim of the Act:

- to provide for the making and registration of adoption orders;
- to provide for the registration and control of adoption societies;
- to regulate the making of arrangements by adoption societies and other persons in connection with the adoption of children;
- to provide for the supervision of adopted children by the Commissioner for Juvenile Welfare in certain cases;
- to restrict the making and receipt of payments in connection with the adoption of children; and
- to provide for matters incidental to or connected with the foregoing.

Interpretations

"abroad" means in any country outside Zambia;

"adoption society" means a body of persons whose functions consist of or include the making of arrangements for the adoption of children;

"body of persons" means anybody of persons, whether incorporated or unincorporated;

"Commissioner" means the Commissioner for Juvenile Welfare appointed under the Juveniles Act;

"court" means a court having jurisdiction to make adoption orders

"custodian" means the person in whose care and possession an infant is.

"father", means both in relation to the legitimate and an illegitimate infant, the natural father;

"Foreign infant" means a person who is below the age of eighteen years and is not a citizen of Zambia

"Infant" means a person who has not attained the age of twenty-one years

"Juveniles inspector" means a person appointed as such under the Juveniles Act;

"Registered adoption society" means an adoption society registered under the Act;

"Registrar-General" means the Registrar-General of Births and Deaths appointed under the Births and Deaths Registration Act

"Relative", in relation to an infant, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood.

"The repealed Act" means the Adoption of Children Act.

"Subordinate court" means a subordinate court of the first or second class as defined in the Subordinate Courts Act.

PART II - MAKING OF ADOPTION ORDERS

Power to make orders: The court may make an order authorising the applicant to adopt an infant. It may be made on the application of two spouses authorising them jointly or may be made by the mother or father of the infant, either alone or jointly with her or his spouse.

Restrictions on making adoption orders: An adoption order shall not be made in respect of an infant unless the applicant or one of the applicants –

- has attained the age of twenty-five years and is at least twenty-one years older than the infant; or
- has attained the age of twenty-one years and is a relative of the infant; or
is the mother or father of the infant.
- Adoption order shall not be made in favor of a female infant, where the applicant is a sole male.
- It shall not be made even in case if one of a body of guardians do not agree for such adoption or one of the spouse does not agree.
- An adoption order shall not be made in respect of any infant unless
 - (a) the applicant and the infant reside in Zambia; and
 - (b) the infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order.

Consent to adoption: The court may give out with any consent

- In the case of a parent or guardian of the infant has abandoned, neglected or persistently ill-treated the infant;
- In the case of a person liable to contribute to the maintenance of the infant, that he has persistently neglected or refused so to contribute;
- In any case, that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld;
- In case of either of the spouse is permanently separated so unable to obtain consent;
- In case of the infant whose adoption order is pending in any other court.

Evidence of consent of parent or guardian: Any document signifying the evidence of identity to the applicant should be in compliance with the Authentication of Documents Act and attested on the date and in the place specified therein.

Functions of court as to adoption orders: The court should satisfy that every person consented understand that they do not have any claim of rights on the adopted child after date of adoption and also it may impose such terms

and conditions pertaining to the adoption and execute them as and when necessary.

Interim orders: The court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period for the education, maintenance and other welfare of the infant.

Adoption orders in respect of children previously adopted: In case of already adopted infant, the previous adopter shall be liable play the role of a parent.

Jurisdiction and procedure: The entire jurisdiction of the case lies in the High court and subject to the option of the applicant it may lie on the subordinate court also and it shall appoint someone for hearing of the case in favour of the infant.

PART III - REGISTRATION OF ADOPTION ORDERS

- The Registrar-General shall maintain an Adopted Children Register in his office.
- A certified copy of the proof of birth date and place has to be maintained along with such entries in the Register of Births.
- Such copies shall be obtained on payment of the prescribed fees as evidences for birth from the office of the Registrar-General.
- Except the Adopted Children Register, another register or document are restricted for public inspection without the consent of the High court.

Registrations of adoptions:

- Every adoption should be applied in the prescribed form to the Registrar-General.
- The form should contain the date of birth, place of birth and new name in which the infant is going to be known after the adoption date.

- In case of already adopted infant the term “Adopted” should be specified in the application and the term “Re-adopted” in the Register.
- Once the adoption order is given a copy of it has to be sent to the Registrar-General by the Court which issues the adoption order.

Amendment of orders and rectification of Registers: the court on receipt of an application for rectification shall amend the modifications in the orders issued and duly intimate the corrections to the Registrar-General and it will be duly rectified in the Adopted Children Register also.

PART IV - EFFECT OF ADOPTION ORDERS

Rights and duties of parents and capacity to marry: all the parental rights and duties and the consent to marriage are transferred to the adopted parents with immediate effect of adoption.

Intestacies, wills and settlements: Except the properties owned / made will before the adoption date, the adopted child gets equal right on par with the natural child.

Industrial insurance, etc.: In case in insurances taken, even before the date of adoption, in the name of the adopted child is getting transferred to the adopted parent after the date of adoption.

Affiliation orders, etc.: If at all the natural parent has agreed for any payments of maintenance in the name of the adopted child will get nullified after the effect of the adoption.

PART V - ADOPTION SOCIETIES

Restriction on making arrangements for Adoption: No body of adoption shall be permitted to adopt a child, if it is not properly registered under the stipulated law.

Registration of adoption societies: On receipt of an application for registration given in the prescribed manner, the Commissioner is fully empowered to register any society for adoption under this law. He also can deny the application on the following grounds: (a) if the society has no controlling body, (b) if not fit or proper person is employed to undertake adoption proceedings, (c) if the number of fit persons are not sufficient to the said purpose and (d) if any person of the society is convicted of any offense

Procedure and right of appeal: if at all the Commissioner does not prefer to give approval for registration he has to give a 14 days' time specifying the reason to deny the same and asking for explanation for the same. Anyway the society can take the case to High Court if the Commissioners decision is not favourable for them.

Inspection of books, etc.: The Commissioner can at any time send a notice asking for the books and registers maintained pertaining to the adoptions cases. In case of denial, the one who denies shall be guilty of an offence and shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding three months or to both.

Arrangements by adoption societies for adoption: In case of pending adoption orders, the society should make arrangements for the safe custody of the infant not in the same society.

PART VI - SUPERVISION BY THE COMMISSIONER

The Commissioner is bound to supervise the placement of the infant in case before the release of adoption order in which he has to check for the custodians details.

Exemptions from Part VI institution: Part VI will not have an effect on the infant (a) who is under the custody of any person only for a temporary period; (b) been offered an adoption by a school, hospital or convalescent home; (c) been offered an adoption by a society for mental disorders; (d) reformatory schools or approved schools under the Juveniles Act.

Duration of the application of the Part VI: The Part VI will not be in effect if only an interim adoption order was given; or if the child crosses the age of 18.

Notification of taking possession of an Infant: If at all the condition warrants to keep the infant under someone's custody against the Part VI, the custodian has to give in writing that the details of the infant and self-details within 7 days of possession.

Notification of change of residence, etc.: 7 days before the change of residence the custodian has to give in writing and intimate to the Commissioner. In case of the death of the infant, it has to be intimated within 24 hours to the commissioner / coroner specifying the details of the place of death.

Removal of the infant from the custodian: the infant should be removed (a) in case the environment of the residence is not fit for moral and physical growth, (b) in case if the care taker is old, sick, insane, morally not fit, ignorant, etc.

Removal of infant in case of an offense: if at all the custodian has been convicted of some offense then the infant can be removed and entrusted with the natural guardians, or other fit person till further arrangements are made.

UNIT 3: SOCIAL LEGISLATIONS

DOWRY:

Dowry is an amount of property or money paid by the husband/ husband family to the family of the Bride for marriage

The pros and cons of dowry includes

Pros:

- Compensate and appreciate the woman's family for their daughter,
- To show gratitude for having raised the woman.
- Promotes culture and marriage bonding

Cons:

- Some societies think they have actually bought a woman and can lead to abuse and bondage for the wife
- Some families from the woman's side have made it a business and is pegged at such a high price

PROTECTION AGAINST DOMESTIC VIOLENCE ACT

An Act of Parliament to provide for the protection and relief of victims of domestic violence; to provide for the protection of a spouse and any children or other dependent persons, and to provide for matters connected therewith or incidental thereto

PART I — PRELIMINARY

1. Short title - This Act may be cited as the Protection Against Domestic Violence Act

2. Interpretation In this Act, unless the context otherwise requires—

“alternative residence” means the premises or accommodation which an applicant is or has been compelled to seek or move into because of domestic violence.

“applicant” means—

(a) a person who applies for a protection order under this Act; or

(b) a person on whose behalf an application for a protection order under this Act is made;

“applicant’s representative” means any one of the following persons who may make an application for a protection order on behalf of an applicant —

- (a) a police officer;
- (b) a social welfare officer;
- (c) an employer of the applicant;
- (d) the guardian of a child or a guardian appointed by the court;
- (e) a relative, neighbour or fellow employee of the applicant;
- (f) a medical practitioner;
- (g) a counsellor;
- (h) a probation officer; (i) a non-governmental organization concerned with the welfare of victims of domestic violence;
- (j) a religious leader;
- (k) community elders; or
- (l) any other person or class of persons as may be specified by law

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to social services;

" children's officer" has the meaning assigned to it in section 37 of the Children Act, 2001;

"co-respondent” means a person against whom a protection order made under section 17 applies;

“court" means a court having jurisdiction under section 24;

"domestic relationship" has the meaning assigned to it in section 4;

"domestic violence" has the meaning assigned to it in section 3;

“Director of Children’s Services” has the meaning assigned to in section 37 of the Children Act 2001;

“dwelling house” includes any mobile home or other means of shelter, placed or erected upon any land and intended for occupation on that land;

“economic abuse” includes—

- (a) the unreasonable deprivation of economic or financial resources to which an applicant is entitled or which the applicant requires, including household necessities, medical expenses, school fees, rent, mortgage expenses or other similar expenses; and
- (b) the denial to the applicant of the right to seek employment or engage in any income-generating activity;

"emotional, verbal or psychological abuse" means a pattern of degrading or humiliating conduct towards the applicant, including but not limited to the following—

- (a) repeated insults, ridicule or name-calling; and
- (b) repeated threats to cause emotional pain.

"enforcement officer" means a police officer or an officer designated as such by the Cabinet Secretary for the purposes of this Act;

"harassment" means engaging in a pattern of conduct that induces in an applicant the fear of imminent harm, including—

- (a) watching or loitering outside or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) repeated contact or attempts to contact the applicant by telephone, electronic means, post or otherwise, whether or not a conversation ensues; and
- (c) sending, delivering or causing the delivery of offensive or abusive documents or offensive objects to the applicant;

"interim protection order" means an order made by the court pending the full hearing of a matter and the making of a final order;

"intimidation" includes uttering or conveying a threat or causing an applicant to receive a threat which includes a fear of imminent harm to the applicant;

"medical practitioner" has the meaning assigned to it in the Medical Practitioners and Dentists Act [Cap. 253];

"parent" in relation to a child, includes a step parent, guardian of the child or a person with whom the child normally or regularly resides;

"physical abuse" includes any act or threatened act of physical violence towards the applicant;

"probation officer" has the meaning assigned to it in section 2 of the Probation of Offenders Act [Cap. 6];

"property" in relation to a family member, means—

- (a) the property of the family member;
- (b) the property of any person situated in premises in which the family member lives or works; or
- (c) the property of any person that is being used by the family member;

"protected person" in relation to a protection order, means—

- (a) the person for whose protection the order is made;
- (b) any child of that person;

(c) any person for whose benefit the order applies under section 16;
"protection order" means the final order made by the court in a matter concerning domestic violence;
"respondent" means the person against whom an application for a protection order under this Act is made and includes a person against whom an order under this Act is made;
"sexual abuse" has the meaning assigned to it in the Sexual Offences Act, 2006; "shared residence" means the premises at which the parties are, or have been, living as members of the same household;
"social welfare officer" means a person registered as a social welfare worker;
"stalking" includes pursuing or accosting a person;
"victim" means a victim of domestic violence; and
"virginity testing" is the practice and process or examination of a female's genitals for tears of the hymen.

3. Meaning of domestic violence.

In this Act, "violence" means—

(a) abuse that includes—

- (i) child marriage;
- (ii) female genital mutilation;
- (iii) forced marriage;
- (iv) forced wife inheritance;
- (v) interference from in-laws;
- (vi) sexual violence within marriage;
- (vii) virginity testing; and
- (viii) widow cleansing;

(b) damage to property;

(c) defilement;

(d) depriving the applicant of or hindering the applicant from access to or a reasonable share of the facilities associated with the applicant's place of residence; (e) economic abuse;

(f) emotional or psychological abuse;

(g) forcible entry into the applicant's residence where the parties do not share the same residence;

(h) harassment;

(i) incest;

- (j) intimidation;
- (k) physical abuse;
- (l) sexual abuse;
- (m) stalking;
- (n) verbal abuse; or
- (o) any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person.

(2) "Domestic violence", in relation to any person, means violence against that person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.

(3) Despite subsection

(1)(f), a person psychologically abuses a child if that person—

(a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or

(b) puts the child or allows the child to be put at risk of seeing or hearing the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship, but the person who suffers the abuse shall not be regarded as having caused or allowed the child to see or hear the abuse or as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse

(4) Despite subsection

(1)— (a) a single act may amount to abuse; and

(b) a number of acts that form part of a pattern of behaviour may amount to abuse, even when some or all of those acts, when considered in isolation, may appear to be minor or trivial.

(5) Behaviour may be psychological abuse for the purposes of subsection

(1) even if it does not involve actual or threatened physical or sexual abuse.

(6) Conduct constituting domestic violence does not by that reason alone cease to constitute an offence under any other law and any such conduct may, despite this Act, be dealt with in accordance with any other law.

4. Meaning of domestic relationship.

(1) For the purposes of this Act, a person shall be deemed to be in a domestic relationship with another person if the person—

- (a) is married to that other person;
- (b) has previously been married to that other person;
- (c) is living in the same household with that person;
- (d) has been in a marriage with the other person which has been dissolved or declared null;
- (e) is a family member of that other person;
- (f) is or has been engaged to get married to that person;
- (g) has a child with that other person; or
- (h) has a close personal relationship with the other person.

(2) For the purpose of subsection (1)(c), a person shall not be regarded as sharing a household with another person by reason only of the fact that—

- (a) the person has—
 - (i) a landlord-tenant relationship;
 - (ii) an employer-employee relationship; or
 - (iii) an employee-employer relationship, with that other person; and
- (b) they occupy a common dwelling house (whether or not other people also occupy that dwelling house).

(3) For the purposes of subsection (1)(h), a person shall not be regarded as having a close personal relationship with another person by reason only of the fact that the person has—

- (a) an employer-employee relationship; or
- (b) an employee-employer relationship with that other person.

(4) Without limiting the matters to which a court may have regard in determining, for the purpose of subsection (1) (h), whether a person has a close personal relationship with another person, the court shall have regard to—

- (a) the nature and intensity of the relationship (not necessarily a sexual relationship), and in particular—
 - (i) the amount of time the persons spend together;
 - (ii) the place or places where that time is ordinarily spent;
 - (iii) the manner in which that time is ordinarily spent; and
- (b) the duration of the relationship.

5. Meaning of family member.

- (1) For purposes of this Act, 'family member', means—
- (a) a spouse;
 - (b) a child including an adopted child, a step-child and a foster child;
 - (c) an adult son or daughter;
 - (d) a parent;
 - (e) a sibling; or
 - (f) any other relative of that person who, in the circumstances of the case, should be regarded as a member of the family.
- (2) For the purposes of this section, a relative means—
- (a) a father, mother, grandfather, grandmother, stepmother, stepfather, father-in-law or mother-in-law;
 - (b) an uncle, aunt, uncle-in-law or aunt-in-law of that person;
 - (c) a nephew or niece of that person; or
 - (d) cousin of that person.

PART II — PROTECTION ORDERS

6. Duties of police officers in relation to domestic violence.

- (1) A person to whom a complaint of domestic violence is made or who investigates any such complaint shall—
- (a) advise the complainant of all relief measures available to the complainant, including access to shelter, medical assistance or they shall assist the complainant in any other suitable way; and
 - (b) advise the complainant of the complainant's right to apply for relief under this Act and how the complainant may lodge a criminal complaint.
- (2) Where the complainant so desires, the person to whom the complainant makes a statement may be a person of the same sex as the complainant.
- (3) The provisions of this section shall not limit the power of a police officer to enter any premises under this Act or any other law.
- (4) The Inspector-General of Police shall ensure the development of procedures regarding matters under this Act including—
- (a) training police officers to deal with family related matters or domestic violence;
 - (b) facilitating the reporting process so that complainants may report to the police without fear or otherwise; and
 - (c) ensuring that complaints are processed expediently and efficiently.

7. Information on offences involving domestic violence

- (1) Any person who reasonably suspects that an offence of domestic violence is being or has been committed may give such information to the police officers or any other person in authority.
- (2) Any person who attacks, intimidates or harms a person who reports domestic violence commits an offence.
- (3) No action or proceeding, including disciplinary action, may be instituted or maintained against a person in respect of the disclosure of information made by the person to a person named under subsection (1).
- (4) Subsection (3) does not apply to any person who provides false information maliciously intended to injure another person.
- (5) In any proceeding under this Act, no witness shall be required to identify, or provide information that might lead to the identification of, a person who assisted or disclosed information about domestic violence.
- (6) In any proceedings under this Act, the court may order that information that identifies, or might lead to the identification of a person who assisted or disclosed the information concerning any violence is removed or concealed from any documents to be produced or inspected in connection with the proceedings.

8. Application for protection order.

- (1) A person who is in a domestic relationship with another person may apply to the Court for a protection order in respect of that other person.
- (2) Where the person who is eligible to apply for a protection order is a child, the application may be made by a representative in accordance with section 9
- (2)
- (3) Where the person who is eligible to apply for a protection order is a person to whom section 10 applies, the application may be made by an applicant's representative in accordance with that section.
- (4) An applicant's representative may, with the leave of the court, with or without the consent of the applicant, make an application for a protection order or any other order the court considers fit to award.
- (5) An applicant's representative who makes an application under subsection (4) shall seek the leave of the court together with such other orders as the court deems fit to award in the circumstances.
- (6) Where the person who is eligible to apply for a protection order is not a child but is unable, in the circumstances specified in section 10 (1) (b), to

make the application personally, an application may be made on that person's behalf by a representative appointed in accordance with section 11.

9. Application by children.

(1) Subject to subsection (2), a child may make an application for a protection order under this Act.

(2) A child may make the application for a protection order through—

(a) parent or guardian;

(b) a children officer;

(c) the Director of Children's Services;

(d) a police officer;

(e) a probation officer;

(f) a conciliator;

(g) any other person with the leave of the court;

(h) social welfare officer;

(i) a person acting on behalf of—

(i) a church or any other religious institution; or

(ii) a non-governmental organization concerned with the welfare of victims of domestic violence; or

(j) a relative or neighbour.

(3) Where an application has been made under subsection (2) by a person, other than a parent or guardian of a child, no orders shall be issued by the court unless the parent or guardian of the child has been served or the court is satisfied that reasonable efforts to serve such parent or guardian have failed.

(4) Nothing in subsection (2) prevents a child on whose behalf an application for a protection order is made by a representative from being heard in the proceedings, and where the child expresses views on the need for and outcome of the proceedings, the court shall take account of those views to the extent that it thinks fit, having regard to the age and maturity of the child.

(5) Subject to sections 10 and 11, a minor who has attained the age of eighteen years may, with the leave of the court, make the application on his her own behalf, without a next friend or guardian ad litem, and orders may be made on the application, and enforced, as if the minor were of full age.

10. Application by person lacking capacity.

(1) The provisions of this section shall apply to any other person (not being a child) who—

(a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or

(b) has the capacity to understand the nature, and foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters.

(2) Where a person to whom this section applies is eligible to apply for a protection order, an application may be made on that person's behalf by—

(a) a police officer;

(b) an applicant's representative; or

(c) any other person with the leave of the court

11. Application on behalf of certain persons.

(1) This section applies to a person entitled to a protection order who is incapable of applying for a protection order and for whom it is necessary to make a protection order.

(2) Any person may apply to the court to be appointed as a representative of the person referred to in subsection (1) for the purposes of applying for a protection order.

(3) The court may appoint a representative for the person referred to in subsection (1) if it is satisfied that—

(a) the representative has reasonably ascertained the wishes of the victim;

(b) the victim consents to being represented;

(c) the appointment of the representative is in the best interest of the victim;

(d) the representative accepts his appointment in writing; and

(e) there is no conflict of interest between the victim and the representative.

12. Application without notice for protection order.

(1) An interim protection order may be made on an application without notice and outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that delay would be caused by proceedings on notice or might entail—

(a) a risk of harm; or

(b) undue hardship to the applicant or child of the applicant's family.

(2) Without limiting the matters to which the court may have regard when determining whether to grant a protection order on an application without notice, the court shall have regard to-

(a) the perception of the applicant or a child of the applicant's family, of the nature and seriousness of the respondent's behaviour; and

(b) the effects of that behaviour on the applicant or a child of the applicant's family.

(3) An interim order may, where appropriate, contain any direction, prohibition or award which may be contained in a protection order issued under section 19.

(4) Whenever a court issues an interim protection order, the court shall issue a summons to appear in respect of the respondent which shall be attached to the order.

(5) Where an application is made under this section and the court is satisfied prima facie that the respondent has committed, is committing or threatening to commit an act of domestic violence but that the circumstances do not justify or require the issue of an interim protection order, the court may issue a notice requiring the respondent to show cause why a protection order should not be made: Provided that an interim protection order shall remain in force until it is replaced by a protection order or varied or revoked by a competent court.

(6) Section 22 applies to any person who fails to comply with the terms and condition of an interim protection order.

13. Power to make protection order.

(1) The court may make a protection order if it is satisfied that—

(a) the respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family or both; and

(b) the making of an order is necessary for the protection of the applicant or a child of the applicant's family or both.

(2) For the purpose of subsection (1)(a), a respondent who aids or abets another person to engage in behaviour that, if engaged in by the respondent, would amount to domestic violence against the applicant or a child of the applicant's family or both, shall be regarded as having engaged in that behaviour personally.

(3) Without limiting section 3(4)(b), the matters that the court may consider in determining, for the purpose of subsection (1) (b), whether the making of an order is necessary for the protection of the applicant or a child of the applicant's family, or both where some or all of the behaviour in respect of which the application is made appears to be minor or trivial when viewed in isolation, or appears unlikely to recur, are whether the behaviour forms part of pattern of behaviour in respect of which the applicant or a child of the applicant family or both need protection.

(4) For the avoidance of doubt, an order may be made under subsection (1) where the need for protection arises from risk of domestic violence of a different type from the behaviour found to have occurred for the purpose of paragraph (a) of that subsection.

(5) Without limiting the matters that the court may consider when determining whether to make a protection order, the court shall have regard to—

(a) the perception of the applicant, or a child of the applicant's family or both, of the nature and seriousness of the behaviour in respect of which the application is made; and

(b) the effect of that behaviour on the applicant, or a child of the applicant's family, or both.

14. Counselling.

(1) The Court may, taking into account the circumstances of each case, direct the parties to participate in counselling and conciliation programmes or any other programme that is acceptable to the Court.

(2) The counselling provided shall be aimed at ensuring respect for the law prohibiting domestic violence, the promotion of a protective environment for all within the family and the promotion of harmonious domestic relations between and among the parties.

15. Existence of other proceeding not to preclude granting of protection order.

(1) A court shall not decline to make a protection order merely because of the existence of other proceedings (including, but not limited to, proceedings relating to custody of, or access to, a minor) between or relating to the parties, whether or not those proceedings also relate to any other person.

(2) Despite the provisions of subsection (1), an application for a protection order shall not be a bar to criminal proceedings against a respondent.

16. Protection of dependants.

(1) Where the court makes a protection order, the order shall apply for the benefit of any child of the applicant's family.

(2) Subject to subsection (3), where the court makes a protection order, it may direct that the order also apply for the benefit of a particular person with whom the applicant has a domestic relationship.

(3) No direction may be made pursuant to subsection (2) in respect of a person unless the court is satisfied that—

(a) the respondent is engaging, or has engaged, in behaviour that, if the respondent and the person were or, as the case may be, had been in a domestic relationship, would amount to domestic violence against the person;

(b) the respondent's behaviour towards the person is due, in whole or in part, to the applicant's domestic relationship with the person;

(c) the making of a direction under this section is necessary for the protection of the person; and

(d) where practicable, the person consents to the direction being made.

(4) Section 12 (2) and (5) shall apply, with the necessary modifications, in respect of an application for a direction pursuant to subsection (2).

17. Protection from co-respondents.

(1) Subject to subsection (2), where the court makes a protection order against the respondent, the court may also direct that the order apply against a person who aids and abets the respondent.

(2) Section 12 (2) to (5) shall apply, with the necessary modification, in respect of an application for a direction pursuant to subsection (1).

18. Mutual orders.

Nothing in this Act shall be construed as preventing the court, in the course of determining an application, from granting a protection order, in favour of the respondent even though no application has been made by the respondent.

19. Contents of protection order.

(1) A protection order may direct that a respondent shall not do any one or more of the following—

- (a) physically or sexually abuse or threaten to abuse the protected person;
- (b) damage, or threaten to damage, any property of the protected person;
- (c) engage, or threaten to engage, in behaviour including intimidation or harassment, which amounts to psychological abuse of the protected person;
- (d) encourage any person to engage in behaviour against the protected person where the behaviour, if engaged in by the respondent would be prohibited by the order;
- (e) engage, or threaten to engage, in behaviour including intimidation, harassment or stalking which amounts to emotional, verbal or psychological abuse of the protected person;
- (f) engage, or threaten to engage, in economic abuse of the protected person; or
- (g) engage, or threaten to engage, in cultural or customary rites or practices that abuse the protected person.

(2) Without limiting the provisions of subsection (1) but subject to section 20, it shall be a condition of every protection order that at any time other than when the protected person and the respondent are, with the express consent of the protected person, living in the same dwelling house, the respondent shall not do any one or more of the following—

- (a) watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution, or other place that the protected person visits often;
- (b) stalk the protected person or stop or accost the protected person in any place;
- (c) without the protected person's express consent, enter or remain on any land or building occupied by the protected person;
- (d) where the protected person is present on any land or building, enter or remain on that land or building, in circumstances that constitute a trespass; or
- (e) make any other contact with the protected person (whether by telephone correspondence, or otherwise), except such contact that is
 - (i) reasonably necessary in any emergency;
 - (ii) permitted under any order or written agreement relating to custody of, or access to, any minor; or

(iii) permitted under any special condition of the protection order.

(3) Without prejudice to the provisions of this section, the court may in an order under this section—

(a) subject to subsection (6), grant to any protected person the right of exclusive occupation of the shared residence or a specified part thereof by excluding the respondent from the shared residence or the specified part thereof, regardless of whether the shared residence is solely owned or leased by the respondent or jointly owned or leased by the parties;

(b) require the respondent to permit any protected person to enter the shared residence, or to enter the residence of the respondent accompanied by any enforcement officer for the purpose of collecting the personal belongings of the protected person or persons;

(c) require the respondent to permit any protected person to have the continued use of necessities which had previously been ordinarily used by the protected person or persons; or

(d) give such other directions as may be necessary and incidental for the proper carrying into effect of any order made under paragraph (a), (b) or (c).

(4) Before making an order which restricts the respondent's access to any premises, the court shall take into account—

(a) the need to ensure that the protected person is protected from violence;

(b) the welfare of any child affected by the order; and

(c) the accommodation needs of all persons affected by the order.

(5) Without prejudice to the provisions of this section, where an exclusion order has been made under this section, the court may—

(a) direct the respondent to pay all expenses or emergency monetary relief in respect to the applicants needs and those of any child or dependant of the respondent;

(b) award temporary custody of any child or dependant of the respondent to any person or institution and regulate access by the respondent to such child or
dependant;

(c) direct the respondent to afford the applicant or dependant access to their place of residence and use of the facilities associated therewith; and

(d) direct the respondent to do or omit to do any act or thing which the court considers necessary or desirable for the well-being of the applicant or a dependant of the applicant.

(6) Except so far as the exercise by the respondent of a right to occupy the shared residence, or to enter the alternative residence, may be suspended restricted, prohibited or restrained, by virtue of an order under subsection (3) (a) or (b), a protection order shall not affect any title or interest that the respondent or any other person might have in the said premises.

(7) The court shall not make an order excluding the respondent from the whole of a shared residence that is solely or jointly owned or leased by the respondent unless it is satisfied that there is no other way to secure the personal safety of any protected person for the time being, and such order, where made, shall, in the case where the shared residence is jointly owned or leased by the parties, be—

(a) revoked if a suitable alternative residence is found for the protected person or persons; or

(b) revoked or varied upon the court being otherwise satisfied that it is no longer necessary for securing the personal safety of the protected person or persons.

(8) Where, pursuant to a direction made under section 18, a protection order applies against a co-respondent, the provisions of this section shall, with necessary modifications, apply in respect of the co-respondent.

20. Further provisions relating to prohibitions of contact.

(1) The contents of a protection order specified in section 19 (2) in this section referred to as "the non-contact condition" shall have effect except where the protected person and the respondent are with the express, voluntary consent of the protected person living in the same dwelling house, taking into account the vulnerability relating to the protected person .

(2) The non-contact condition shall automatically be suspended for any period during which the protected person and the respondent, with the express, free and voluntary consent of the protected person, live in the same dwelling house.

(3) Where the non-contact condition is suspended in accordance with subsection (2), and the protected person subsequently withdraws his or her consent to the respondent living in the same dwelling house then (unless the protection order has been sooner discharged) the non-contact conditions shall automatically revive.

(4) The non-contact condition may—

(a) become suspended in accordance with subsection (2) on one or more occasions; or

(b) revive in accordance with subsection (3) on one or more occasions.

(5) Where, pursuant to a direction made under section 17, a protection order applies against a co-respondent, the provisions of this section shall with necessary modifications, apply in respect of the co-respondent.

(6) References in this section to the consent of a protected person, or to the withdrawal of a protected person's consent, includes, as the case requires, the

(a) free and voluntary consent of a person (other than the respondent or, as the case may be, the co-respondent) who is specified, in a special condition of the protection order, on the protected person's behalf, in relation to the matter; and (b) withdrawal of consent by such a person in respect of an application for a direction pursuant to subsection (2).

(7) In this section, where the protected person is a child, the court may, if satisfied that it is in the best interests of the child so to do, declare any purported consent to be null and void.

21. Duration of protection order.

A protection order shall remain in force for such period as may be specified by the court and may be reviewed, from time to time, depending on the circumstances.

22. Breach of protection order.

A respondent who has been served with a copy of a protection order and who contravenes the order in any respect, commits an offence and is liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a period not exceeding twelve months, or to both

23. Arrest for breach of protection order.

(1) A police officer may, without warrant, if he or she believes on reasonable ground that any person has committed an offence under section 22, arrest and detain the person.

(2) Without limiting the provisions of subsection (1), in exercising the powers conferred by that subsection, a police officer shall take into account

(a) the risk to the safety of the protected person or property;

(b) the seriousness of the act that constitutes a breach; and

(c) the time that has lapsed since the alleged breach was committed.

PART III — MODE OF APPLICATION

24. Application by victims of domestic violence. (1) Jurisdiction for any proceedings under this Act shall be vested in the Resident Magistrates' Courts.

(2) An application for a protection order shall be lodged with the court and, where directed by the court shall—

(a) be supported by the affidavit of any person who can depone to matters which are relevant to the application; and

(b) require the police, a social worker, probation officer, medical practitioner, children officer or other appropriate person or authority to investigate the acts or omissions of the domestic violence and forward findings directly to court as may be directed by the Court.

(3) If the applicant is not represented by an advocate, the court shall inform the applicant of the—

(a) reliefs available under this Act;

(b) effect of any order which may be granted and the means provided by the law for its enforcement under this Act;

(c) right to lodge a criminal complaint against the respondent if a criminal offence has been committed by the respondent; and

(d) right to claim compensation for any loss suffered or injury caused by any act of domestic violence.

25. Applications by other parties.

Where the application for a protection order is made by a person other than the actual victim of domestic violence, the person making the application shall, as soon as reasonably practicable after the making of the application, cause a copy thereof to be served on the victim personally or, where the victim is a child or physically, mentally, intellectually or sensory challenged person, on the parent or guardian of the child or such challenged person.

26. Procedure in third party applications.

In any case where an application for a protection order is made by a person, other than the actual victim of domestic violence, the court shall not commence or continue the hearing of the application if the victim, or if the

victim is a child or a physically, mentally, intellectually or sensory challenged person, the person referred to under section 10 (2), objects to the application being heard and determined.

27. Explanation of order.

(1) Where the court proposes to make a protection order and the respondent is before the court, the court shall, before making the order, explain to the respondent —

- (a) the purpose, term and effect of the proposed order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

(2) No order under subsection (1) shall be invalid for the reason only that the court did not explain any particular matter contained in the order to the respondent.

28. Persons who may be present during proceedings.

(1) No person shall be present during the hearing of any proceeding under this Act except—

- (a) an officer of the court;
- (b) parties to the proceedings and their advocates, if any;
- (c) a representative, if any;
- (d) witnesses; and
- (e) any other person whom the court permits to be present.

(2) A witness shall leave the courtroom if so directed by the court.

(3) Nothing in this section shall limit any other power of the court to hear proceedings in private or to exclude any person from the court.

29. Evidence.

In any proceedings under this Act, and during hearing in the first instance or during hearing of an appeal, or otherwise, the court may receive any evidence it thinks fit, for the fair determination of the case.

30. Appeal by respondent.

(1) The respondent may appeal to the High Court against the making of a protection order or any term thereof within thirty days of the date of the order.

(2) An appeal under subsection (1) shall not stay the operation of the order unless the respondent moves the court for an order of stay.

(3) The court which made the order may, on the application of the respondent and taking into account the circumstances of the case, stay the operation of the order or any term thereof pending the decision of the appeal.

31. Restriction on reports of proceedings.

(1) In proceeding under this Act, no person shall publish or cause to be published—

(a) in any newspaper or broadcast proceedings containing the locality or any particulars calculated to lead to identification of the particular venue of the court or the name, address or any particulars calculated to lead to the identification on the victim or any other person in the proceedings either as a party to the proceedings or as a witness in the proceedings; or

(b) in a newspaper or by television or by any other means, any picture of the victim or other person concerned in the proceedings.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is on conviction liable —

(a) in any newspaper or broadcast proceedings containing the locality or any particulars calculated to lead to identification of the particular venue of the court or the name , address or any particulars calculated to lead to the identification on the victim or any other person in the proceedings either as a party to the proceedings or as a witness in the proceedings; or

(b) in a newspaper or by television or by any other means, any picture of the victim or other person concerned in the proceedings.

(3) The provisions of this section shall not apply to the publication of any report in any publication that—

(a) is of a bonafide professional or technical nature; and

(b) is intended for the circulation among members of the legal or medical professions.

(4) A publication under this section shall be made thirty days after the final determination of proceedings

IMMORTAL TRAFFIC ACT

Short title, extent and commencement –

This Act may be called [the Immoral Traffic (Prevention)] Act

This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date⁴ as the Central Government may, by notification in the Official Gazette, appoint.

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

"brothel" includes any house room, [conveyance] or place or any portion of any house, room, [conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes;

"child" means a person who has not completed the age of sixteen years;

"corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which [persons], who are in need of correction, may be detained under this Act, and includes a shelter where [undertrials] may be kept in pursuance of this Act;

"magistrate" means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule;

"major" means a person who has completed the age of eighteen years;

"minor" means a person who has completed the age of sixteen years but has not completed the age of eighteen years; (d) "prescribed" means prescribed by rules made under this Act;

"prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression

"prostitute" shall be construed accordingly;

"protective home" means an institution by whatever name called (being an institution established or licensed as such under Section 21), in which [persons], who are in need of care and protection, may be kept under this Act [and where appropriate technically qualified persons, equipment and other facilities have been provided], but does not include

a shelter where i. [undertrials] may be kept in pursuance of this Act, or
a corrective institution;]

3. Punishment for keeping a brothel or allowing premises to be used as a brothel.

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who

a. being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

b. being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2A) For the purposes of sub-section (2) it shall be presumed until the contrary is proved, that any person referred to in clause(a) or clause(b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case maybe, has knowledge that the premises or any part thereof are being used as a brothel, if, -

a. report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

b. a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of

sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

Any person who-

- i. keeps, or
- ii. manages,
- iii. or acts or assists in the keeping or management of, a brothel, shall be liable to be punished with.

a. rigorous imprisonment for not less than 1 year but upto 3 years and also fine upto Rs.2,000/-, on first conviction; and

b. rigorous imprisonment for not less than 2 years but upto 5 years and also fine upto Rs. 2000/-.

4. Punishment for living on the earnings of prostitution. – (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of 1 [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both 2 [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].

Where any person over the age of eighteen years is proved –

- a. to be living with, or to be habitually in the company of, a prostitute;
- b. or to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or
- c. to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meanings of Sub-section (1).

Any person over the age of 18 years who knowingly lives on the earnings of the prostitution of any other person, shall be liable to be punished with –

- i. imprisonment upto 2 years, or
- ii. fine upto Rs. 1,000/-, or 4

MEDICAL TERMINATION OF PREGNANCY ACT

To amend and clarify the law relating to termination of pregnancy by registered medical practitioners; and to provide for matters incidental thereto and connected therewith.

1. Short title - This Act may be cited as the Termination of Pregnancy Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"hospital" means any institution run as such by the Government or any other institution approved in writing for the purposes of this Act by the Permanent Secretary, Ministry of Health;

"registered medical practitioner" means a medical practitioner registered as such under the provisions of the Medical and Allied Professions Act.

"the law relating to abortion" means sections 151, 152 and 153 of the Penal Code, and includes any written law or rule of law relating to the procurement of abortion;

3. Medical termination of pregnancy

(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if he and two other registered medical practitioners, one of whom has specialised in the branch of medicine in which the patient is specifically required to be examined before a conclusion could be reached that the abortion should be recommended, are of the opinion, formed in good faith—

(a) that the continuance of the pregnancy would involve—

(i) risk to the life of the pregnant woman; or

(ii) risk of injury to the physical or mental health of the pregnant woman; or

(iii) risk of injury to the physical or mental health of any existing children of the pregnant woman;

greater than if the pregnancy were terminated; or

(b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk as is mentioned in paragraph (a) of sub-section (1), account may be taken of the pregnant woman's actual or reasonably foreseeable environment or of her age.

(3) Except as provided by sub-section (4), any treatment for the termination of pregnancy must be carried out in a hospital.

(4) Sub-section (3) and so much of sub-section (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination of pregnancy is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

4. Conscientious objection to participation in treatment

(1) Subject to sub-section (2), no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection:

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in sub-section (1) shall affect any duty to participate in any treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

(3) In any proceedings before a court, a statement on oath by any person to the effect that he has a conscientious objection to participating in any treatment authorised by this Act shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon him by sub-section (1).

5. Regulations

(1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

(a) anything which is to be or which may be prescribed under this Act;

(b) requiring any such opinion as is referred to in section 3 to be certified by the registered medical practitioner concerned in such form and at such time as may be prescribed by the regulations;

(c) the preservation and disposal of certificates made pursuant to the regulations;

(d) requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination of pregnancy and such other information relating to the termination of pregnancy as may be prescribed;

(e) prohibiting the disclosure, except to such persons or for such purposes as may be prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations made by virtue of paragraph (d) of sub-section (1) shall be notified solely to the Permanent Secretary, Ministry of Health.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations made under sub-section (1) shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two thousand penalty units.

6. Supplementary provisions

For the purpose of law relating to abortion, anything done with intent to procure the miscarriage of a woman is unlawfully done unless it is done in accordance with the provisions of this Act.

Termination of pregnancy under the Termination of pregnancy Act.

1. The law outlines the following conditions for the medical termination of pregnancy that the continuance of the pregnancy would involve:
2. Risk to the life of the pregnant woman
3. Risk of injury to the physical or mental health of the pregnant woman
4. Risk of injury to the physical or mental health of any existing children of the pregnant woman or
5. That there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped

UNIT 4: CHILDREN AND SOCIAL LEGISLATIONS

JUVENILE JUSTICE ACT

PART I - PRELIMINARY

1. Short title and Application:

(1) This Act may be cited as the Juveniles Act, and shall apply to such areas and to such extent as the Minister may, by statutory order, declare.

(2) In the application of this Act to juveniles, the provisions of African customary law shall be observed unless the observance of such customary law would not be in the interests of such juveniles.

2. Interpretation:

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

"approved school" means a school approved by the Minister under subsection (1) or deemed to be an approved school under subsection (2) of section *seventy-five*;

"approved school order" means an order made by a court requiring a juvenile to be sent to an approved school;

"child" means a person who has not attained the age of sixteen years;

"contribution order" has the meaning assigned to it by section *one hundred and ten*;

"foster child" has the meaning assigned to it by subsection (4) of section *thirty-two*;

"guardian", in relation to a juvenile includes any person who, in the opinion of any court having cognizance of a case in relation to the juvenile or in which he is concerned, has for the time being the charge of or control over such juvenile;

"in need of care" has the meaning assigned to it by section *nine*;

"intoxicating liquor" has the meaning assigned to it by section *two* of the Liquor Licensing Act;

"juvenile" means a person who has not attained the age of nineteen years; and includes a child and a young person;

"juvenile adult" means - (a) a person who has attained the age of nineteen years but has not attained the age of twenty-one years; and (b) a person who has attained the age of twenty-one years but has not attained the age of

twenty-five years and whose classification as a juvenile adult has been expressly sanctioned by the Minister;

"juvenile adult reformatory" includes any division of a prison or juvenile reformatory established as a reformatory for juvenile adults;

"juvenile court" has the meaning assigned to it by section *sixty-three*;

"legal guardian", in relation to a juvenile, means a person appointed according to law to be his guardian by deed, will or order of a court;

"managers", in relation to an approved school or other institution, means the persons for the time being having the management or control thereof;

"place of safety" includes any institution, police station, or any hospital or surgery, or any other suitable place the occupier of which is willing temporarily to receive a juvenile, but does not include any remand prison, prison or detention camp;

"probation officer" means any person appointed under the Probation of Offenders Act;

"probation order" has the meaning assigned to it by section *three* of the Probation of Offenders Act;

"public place" includes any street and any building, place or conveyance to which for the time being the public are entitled or permitted to have access either with or without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meeting or assembly or as an open court;

"receiving centre" means any reformatory or part thereof declared to be a receiving centre under section *ninety-one*;

"reformatory" means a reformatory established by the Minister under section *ninety-one*;

"reformatory order" means any order ordering a person to be detained in a juvenile reformatory or a juvenile adult reformatory; "remand prison" means a place established as a remand prison under section *three* of the Prisons Act;

"scheduled offence" means any of the offences mentioned in the First Schedule;

"scheduled territory" means any country mentioned in the Second Schedule;

"street" includes any highway, market place, square, bridge, road, footway, alley, or passage, whether a thoroughfare or not, lawfully used by the public;

"voluntary home" means any home or other institution for the boarding, care and maintenance of juveniles, being a home or other institution supported wholly or partly by voluntary contributions;

"young person" means a person who has attained the age of sixteen years, but has not attained the age of nineteen years.

(2) Reference in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

PART II - PROTECTION OF JUVENILES

3. Approval of societies:

(1) The managing committee or governing body of any association of persons working for the care, protection or control of juveniles may apply to the Minister for the society to be approved by him for that purpose, and the Minister may, after making such inquiries as he may think fit, approve the society for that purpose and may issue a certificate of approval accordingly.

(2) If the Minister considers that the continuance of such approval is unnecessary or undesirable, he may, by notice served on the managing committee or governing body of the society, withdraw the certificate of approval of the society as from a date to be specified in the notice, not being less than three months after the date of the notice, and upon the date so specified, unless the notice is previously withdrawn, the society shall cease to be an approved society.

(3) The managing committee or governing body of any approved society may, on giving not less than three months' notice to the Minister in that behalf, surrender the certificate of approval of the society, and at the expiration of the said notice, unless previously withdrawn, the society shall cease to be an approved society.

(4) No juvenile shall be committed or received into the care of an approved society under the provisions of this Act after the date of the receipt of any notice given under subsections (5) The Minister shall, within one month of the date thereof, cause any grant of a certificate of approval or any notice of withdrawal or intention to surrender given in respect of any such certificate to be published in the *Gazette*.

4. Fit person: For the purposes of the provisions of this Act relating to the making of orders committing juveniles to the care of fit persons - (a) the Commissioner for Juvenile Welfare; or (b) an approved society; or (c) a person appointed for this purpose by the court; shall be deemed to be a fit person and accordingly orders may be made committing juveniles to the care of the said Commissioner, or to the care of any such society or person willing to undertake the care of such juveniles.

5. Appointment of Commissioner for Juvenile Welfare: The President may, by *Gazette* notice, appoint a Commissioner for Juvenile Welfare.

6. Appointment of juvenile's inspectors:

(1) The President may, by *Gazette* notice, appoint as juveniles inspectors such persons as he may think fit.

(2) In any District in which no juveniles inspector appointed under the provisions of subsection (1) is stationed, the District Secretary of the District shall, for the time being, be a juveniles inspector.

7. Duties of Commissioner for Juvenile Welfare and juveniles inspectors

(1) The Commissioner for Juvenile Welfare and a juveniles inspector shall perform such duties as may be entrusted to them by this or any other Act.

(2) The Commissioner for Juvenile Welfare may authorise a juveniles inspector to exercise or perform all or any of the powers and duties which are entrusted to the said Commissioner under the provisions of this or any other Act.

8. Juveniles in Need of Care: Powers of Commissioner for Juvenile Welfare and juveniles inspectors:

(1) The Commissioner for Juvenile Welfare and a juveniles inspector may, at any reasonable time and for the proper performance of their duties, enter -

(a) any institution or dwelling of any person, society or body in whose custody a juvenile has been placed under this Act; or

(b) any dwelling in which a foster child is kept; or (c) any voluntary home; and make such examination into the state and management thereof as he thinks requisite.

(2) Any person who obstructs the Commissioner for Juvenile Welfare or a juveniles inspector in the execution of his duties shall be liable to a fine not exceeding seven hundred and fifty penalty units.

(3) Any refusal to allow the Commissioner for Juvenile Welfare or a juveniles inspector to enter any such institution, dwelling or voluntary home in the execution of his duties shall, for the purposes of section *sixteen* (which relates to search warrants), be deemed to be a reasonable cause to suspect that a juvenile therein is in need of care.

9. (1) For the purposes of this Act, a juvenile in need of care means a person who - Definition of "in need of care"

(a) is a juvenile who, having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations or is exposed to moral or physical danger or beyond control; or

(b) is a juvenile who - (i) being a person in respect of whom any scheduled offence has been committed; or (ii) being a member of the same household as a juvenile in respect of whom such an offence has been committed; or (iii) being a member of the same household as a person who has been convicted of such an offence against a juvenile; or (iv) being a female member of a household whereof a member has committed an offence under section *one hundred and fifty-nine* of the Penal Code in respect of another female member of that household; or (v) frequenting the company of any reputed thief or prostitute; or (vi) lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction of the juvenile; requires care, control or protection.

(2) For the purposes of this section, the fact that a juvenile –

(a) is found destitute; or

(b) is found wandering without any settled place of abode and without visible means of subsistence; or

(c) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing or offering anything for sale); or

(d) is found loitering for the purpose of so begging or receiving alms; shall, without prejudice to the generality of the provisions of paragraph (a) of subsection (1), be evidence that he is exposed to moral danger.

10. Powers of juvenile courts in respect of juveniles in need of care:

(1) Any police officer or juveniles inspector having reasonable grounds for believing that a juvenile is in need of care may bring him before a juvenile court, and it shall be the duty of a juveniles inspector to bring before a juvenile court any juvenile who appears to be in need of care unless he is satisfied that the taking of proceedings is undesirable in the interests of such juvenile, or that proceedings are about to be taken by some other person.

(2) If a juvenile court is satisfied that any person brought before the court under this section is a juvenile in need of care, the court may-

(a) order his parents or guardian to enter into recognizances to exercise proper care and guardianship; or

(b) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or

(c) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer or some other person appointed for the purpose by the court; or

(d) order him to be sent to an approved school.

(3) The provisions of section *one hundred and thirty-one* of the Criminal Procedure Code shall apply in relation to recognizances under paragraph (a) of subsection (2) as they apply in relation to recognizances to be of good behaviour: Provided that where a recognizance under the said paragraph is adjudged to be forfeited, the court, if it thinks fit, instead of adjudging the person bound thereby to pay the sum for which he is bound, may adjudge him to pay part only of the said sum or may remit payment of the whole thereof.

11. Power of juvenile court to vary or revoke order: Any order made by a juvenile court may be varied or revoked at any time by the court making the order or by any other juvenile court acting for the same District.

12. Power to transfer case from one juvenile court to another: Where a juvenile court finds a juvenile to be in need of care within the meaning of section *nine*, and the juvenile has his home or usually resides in an area

within the jurisdiction of another juvenile court, the court may transfer the case to that other court to be dealt with.

13. (1) Any court by which a person has been- Disposal of juveniles in respect of whom a scheduled offence has been committed

(a) convicted of committing a scheduled offence against a juvenile;

or

(b) committed for trial for any such offence; or

(c) bound over to keep the peace towards a juvenile; may direct that the juvenile be brought before a juvenile court with a view to that court making such order under section *ten* as may be proper: Provided that, if the juvenile has a parent or legal guardian, no order shall be made under this section unless the parent or guardian has been convicted of or committed for trial for the offence, or is under committal for having been, or has been proved to the satisfaction of the court to have been, party or privy to the offence, or has been bound over to keep the peace towards the juvenile, or cannot be found.

(2) Where any court has, under this section, directed that a juvenile be brought before a juvenile court, it shall notify forthwith a juveniles inspector of that area of such direction and the juveniles inspector shall take all steps necessary to bring the juvenile before a juvenile court.

(3) Where a direction is made under this section and any order is subsequently made under section *ten* in respect of a person who has been committed for trial, then, if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the direction and order shall forthwith be void, except with regard to anything that may have lawfully been done under it.

14. Refractory juveniles: Where the parent or guardian of a juvenile proves to a juvenile court that he is unable to control the juvenile, the court, if satisfied –

(a) that it is expedient so to deal with the juvenile; and

(b) that the parent or guardian understands the results which will follow from and consents to the making of the order; may order that the juvenile be sent to an approved school or may place him under the supervision of a probation officer, for a period not exceeding three years, or may commit him to the

care of a fit person, whether a relative or not, who is willing to undertake the care of him.

15. Proceedings in respect of juveniles in need of care:

(1) Any juveniles inspector or police officer having obtained an order from a magistrate may take to a place of safety any juvenile who is about to be brought before a juvenile court as being in need of care.

(2) No juvenile may be kept in a place of safety for longer than fourteen days without a renewal of the order.

(3) Where an application is to be made to a juvenile court for an order under section *ten* and the juvenile in respect of whom the application is to be made has not been removed to a place of safety, a summons may be issued requiring him to attend before the court.

(4) Where under the provisions of this section a juvenile is taken to a place of safety, the person who so takes him shall forthwith send a notice to the juvenile court specifying the grounds upon which the juvenile is to be brought before the court, and shall also send the particulars to the parent or guardian of the juvenile warning him to attend at the court on the date and at the time of the hearing.

(5) Where an application is to be made to a juvenile court under section *ten*, the person intending to make the application shall forthwith notify a juveniles inspector for that area of the name and address of the juvenile, the day and the hour when and the nature of the grounds on which he is to be brought before the court.

(6) A juveniles inspector having received a notice under subsection

16. Warrant to search for and remove juvenile:

(1) If it appears to a magistrate on information on oath laid by any person who, in the opinion of the magistrate, is acting in the interests of a juvenile, that there is reasonable cause to suspect -

(a) that the juvenile has been or is being assaulted, illtreated, or neglected in any place within the jurisdiction of the magistrate in a manner likely to cause him unnecessary suffering or injury to health; or

(b) that any scheduled offence has been or is being committed in respect of the juvenile; or

(c) that the juvenile is otherwise in need of care; the magistrate may issue a warrant authorising any police officer named therein to search for the juvenile, and, if it is found that he has been or is being assaulted, ill-treated or neglected in manner aforesaid, or that any scheduled offence has been or is being committed in respect of him, or that he is in need of care, to take him and detain him in a place of safety, until he can be brought before a juvenile court, or authorising any police officer to remove him with or without search to a place of safety and detain him there until he can be brought before a juvenile court.

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

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

(4) Every warrant issued under this section shall be addressed to and executed by a police officer, who shall be accompanied by the person laying the information, if that person so desires, unless the magistrate by whom the warrant is issued otherwise directs, and may also, if the said magistrate so directs, be accompanied by a duly qualified medical practitioner.

(5) It shall not be necessary in any information or warrant under this section to name the juvenile.

17. Power of parent to oppose application:

(1) Where a juvenile is brought before a juvenile court on an application for an order on the grounds that he is in need of care, the court shall allow his parent or guardian to be heard, if they so wish, in opposition to the application for an order, either personally or by a barrister or solicitor.

(2) Where the parent or guardian cannot be found or cannot, in the opinion of the court, be reasonably required to attend, the court may allow any relative or other responsible person to take the place of the parent or guardian for the purpose of this section.

18. Fit Persons: Interim orders to place of safety: If a juvenile court is not in a position to decide what order, or whether any order, ought to be made in respect of a juvenile, the court may make such interim order as it thinks fit for the detention or continued detention of the juvenile in a place of safety: Provided that any interim order made under this section shall not remain in force for more than fourteen days, but if, at the expiration of that period, the court deems it expedient so to do, it may make a further interim order.

19. Provisions as to orders of committal to fit persons:

(1) Before making an order under this Act committing a juvenile to the care of a fit person, the court shall endeavour to ascertain the religious persuasion of the juvenile, and in selecting the person to whose care the juvenile is to be committed the court shall, if possible, select a person who is of the same religious persuasion as the juvenile or who gives an undertaking that he will be brought up in accordance with that religious persuasion.

(2) The provisions of subsection (1) relating to the selection of a fit person shall not apply where the court orders committal to the Commissioner for Juvenile Welfare, but the said Commissioner shall take all reasonable steps to ensure that the juvenile is brought up in accordance with his religious persuasion.

20. Contents of order of committal to care of fit person:

(1) Every order committing a juvenile to the care of a fit person shall contain a declaration

(a) as to the age or apparent age; and

(b) as to the religious persuasion; of the juvenile with respect to whom it is made.

(2) The court which makes an order committing a juvenile to the care of a fit person shall cause a record in the prescribed form, embodying all such information in the possession of the court as is, in the opinion of the court, material to be known by such fit person, to be prepared and transmitted to the fit person.

21. Duration of order: Every order made committing a juvenile to the care of a fit person shall, subject to the provisions of this Act, remain in force until the juvenile attains the age of nineteen years.

22. Power of fit person over juvenile committed to his care:

(1) The person to whose care a juvenile is committed by any such order as aforesaid shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of his maintenance as if he were the parent of the juvenile, and the juvenile so committed shall continue in his care notwithstanding any claim by a parent or any other person: Provided that the authority and control shall not include power to give consent to the marriage of the juvenile or to deal with the property of the juvenile.

(2) The Commissioner for Juvenile Welfare may, when he is satisfied that it is in the interest of the juvenile and on such conditions as he may deem fit, authorise the temporary absence from Zambia of any juvenile committed to his care or to the care of any other fit person.

(3) Nothing in subsection (1) shall be deemed to make the Commissioner for Juvenile Welfare personally liable for the maintenance of a juvenile committed to his care.

23. Powers of Commissioner for Juvenile Welfare to board out juveniles: Where a juvenile is committed to the care of the Commissioner for Juvenile Welfare as a fit person, he may-

(a) board out the juvenile with persons whom he considers suitable to undertake the care of the juvenile and who are willing to do so;

(b) place the juvenile in any home or institution within Zambia which he considers suitable for the juvenile and the managers of which are willing to undertake the care of such juvenile;

(c) place the juvenile in a home or institution in Southern Rhodesia or the Republic of South Africa which he considers suitable for the juvenile and the managers of which are willing to undertake the care of such juvenile: Provided that no juvenile shall be placed in a home or institution outside Zambia without the written authority of the court which made the order committing the juvenile to the care of the Commissioner for Juvenile Welfare as a fit person.

24. A fit person, other than the Commissioner for Juvenile Welfare, may board out juveniles committed to his care for such periods and on such terms as to payment and otherwise as the Commissioner for Juvenile Welfare may

approve: Juveniles may be boarded out by fit persons. Provided that, in selecting the person or institute with whom any juvenile is to be boarded out, care shall be taken to select, if possible, a person or institute of the same religious persuasion as the juvenile, or a person or institute which will give an undertaking that he will be brought up in accordance with that religious persuasion.

25. The Minister, in any case where it appears to him to be for the benefit of a juvenile, may empower the person to whose care the juvenile has been committed to arrange for his emigration, but except with the authority of the Minister no person to whose care a juvenile has been committed shall arrange for his emigration: Power to arrange emigration Provided that the Minister shall not empower such a person to arrange for the emigration of a juvenile unless he is satisfied that the juvenile consents or, being too young to form or express a proper opinion on the matter, is to emigrate in company with a parent, guardian, relative or friend, and also that his parents have been consulted or that it is not practicable to consult them.

26. Application for order of committal to be varied or revoked:

(1) An order committing a juvenile to the care of a fit person may, on the application of any person, be varied or revoked by a juvenile court acting for the District or place within which the juvenile is residing, and the court by which any such order is revoked may, upon the application of any person, substitute for that order an order placing the juvenile for a specified period not exceeding three years under the supervision of a probation officer or of some other person appointed by the court for that purpose: Provided that an order under this subsection placing a juvenile under supervision as aforesaid shall be of no effect after the time at which the juvenile attains the age of nineteen years.

(2) If on the application of the parent or guardian or any near relative of a juvenile committed by any such order as aforesaid, any court having power to vary or revoke the order is satisfied that he is not being brought up in accordance with his religious persuasion, the court shall, unless a satisfactory undertaking is offered by the person to whose care the child has been committed, either revoke the order or vary it in such manner as the court

thinks best calculated to secure that he is henceforth brought up in accordance with that persuasion.

27. Application by fit person for transfer of juvenile to approved school: Where a fit person is of opinion that any juvenile who has been committed to his care and who is under nineteen years of age should be sent to an approved school, he may apply to a juvenile court, and that court may, if it thinks that it is in his interests so to do, order him to be sent to such a school.

28. Escapes from care of fit person:

(1) Any juvenile who runs away from a person to whose care he has been committed under this Act may be apprehended without a warrant and brought back to that person, if he is willing to receive him, and if he is not willing to receive him, he may be brought before a juvenile court having jurisdiction in the place where he was residing immediately before he ran away, and that court may make any order in respect to him which the court might have made if he had been brought before it as being a juvenile who, having no parent or guardian, was beyond control.

(2) A juvenile who runs away from a person or institution with whom he has been boarded out under section *twenty-four* may be apprehended without a warrant and brought back to that person or institution, or to such other person or institution as the Commissioner for Juvenile Welfare may direct.

(3) Any person who knowingly –

(a) assists, or persistently attempts to induce, or induces a juvenile to run away from a person or institution to whose care he has been committed or with whom he has been boarded out under this Act; or

(b) harbours or conceals a juvenile who has so run away, or prevents him from returning; shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for any term not exceeding six months, or to both.

29. Power to discharge: The Minister may, at any time in his discretion, discharge a juvenile from the care of the person to whose care he has been committed or from an approved school and any such discharge may be granted either absolutely or subject to conditions.

30. Rules Custody of Juveniles: The Minister may, by statutory instrument, if he thinks fit, make rules as to the manner in which juveniles committed to the care of fit persons are to be dealt with and as to the duties of the persons to whose care they are committed, and may cause any juvenile committed to the care of a fit person to be visited from time to time.

31. Application for custody of juvenile:

(1) Where the parent of a juvenile applies to any court for the custody of the juvenile and the court is of the opinion that the parent has abandoned or deserted the juvenile, or that he has so conducted himself that the court should refuse to enforce his right to the custody of the juvenile, the court may in its discretion refuse to award the custody of the juvenile to the parent.

(2) Where the parent of a juvenile has allowed him to be brought up by another person at that person's expense for such length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties, the court shall not make an order for the delivery of the juvenile to the parent unless the parent has satisfied the court that, having regard to all the circumstances, it is more advantageous to the juvenile to make the order.

(3) If at the time of an application by a parent for an order for the custody of a juvenile, the juvenile is being brought up by a person other than the parent, the court may in its discretion, if it orders the juvenile to be given up to the parent, further order that the parent shall pay to such other person the whole of the cost properly incurred by such person in bringing up the juvenile, or such proportion thereof as shall seem to the court to be just and reasonable having regard to all the circumstances of the case.

32. Receiving Children for Reward:

(1) A person who undertakes for reward the care and maintenance of a child apart from his parents, or having no parents, for a longer period than thirty days shall give notice thereof to the juveniles inspector of the area within which the child is to be maintained - Notices to be given by persons receiving children for reward

(a) in the case of a child not already in his care, being the first child proposed to be received by him for reward in the premises occupied, or

proposed to be occupied, for the purpose, not less than seven days before he receives the child;

(b) in the case of any other child not already in his care, not less than forty-eight hours before he receives the child;

(c) in the case of a child already in his care without reward, within forty-eight hours after entering into the undertaking; and

(d) in the case of a child who is being cared for and maintained for reward at the commencement of this Act, and in respect of whom no notice has been given to the juveniles inspector, within one month of the commencement of this Act: Provided that, in proceedings in respect of failure to give any such notice as aforesaid, it shall be a defence for the defendant to prove that he received the child upon an emergency and gave notice within forty-eight hours thereafter.

(2) For the purposes of this section, an undertaking shall be deemed to be an undertaking for reward if there is any payment or gift of money or money's worth, or any promise to pay or give money or money's worth irrespective of whether there is any intention of making profit.

(3) The notice required by this section shall contain such particulars as may be prescribed.

(4) A child in respect of whom a notice has been or ought to have been given under this section and who is still living apart from his parents, if any, with the person by whom the notice was, or ought to have been given, is hereinafter referred to as a "foster child".

(5) If a person who is maintaining a foster child changes his residence, he shall, at least seven days before so doing, give to the juveniles inspector notice of the change, and, where the residence to which he removes is situate within the area of another juveniles inspector, he shall at least seven days before so moving give to that juveniles inspector the like notice as respects each foster child in his care as he is required to give on the first reception of a foster child: Provided that, where an immediate change of residence is necessitated by any emergency, a notice under this subsection may be given at any time within forty-eight hours after the change of residence.

(6) If a foster child dies, or is removed or removes himself from the care of the person who has undertaken his care and maintenance, that person shall, within forty-eight hours thereof, give to the juveniles inspector and to the person from whom the child was received if his whereabouts are known

notice in writing of the death or removal and, in the case of removal, the notice shall also state the name and address of the person, if any, to whose care the child has been transferred.

33. Penalties for failure to give notices:

(1) If any person required to give any notice under either subsection (5) or (6) of section *thirty-two* fails to give notice before the latest time specified for giving the notice, he shall be guilty of an offence and, if the consideration for the care and maintenance of the child in respect of whom the notice ought to have been given consisted in whole or in part of a lump sum, the person failing to give the notice shall, in addition to any other penalty under this Part, be liable to forfeit that sum, or such less sum as the court having cognizance of the case may deem just, and the sum forfeited shall be applied for the benefit of the child in such manner as the court may direct. (2) Where under this section any such sum as aforesaid is ordered to be forfeited, the order may be enforced as if it were an order for the payment of a civil debt.

(3) For the purpose of any enactment by which the time for taking proceedings is limited, an offence under this section shall be deemed to continue so long as the child in respect of whom a notice ought to have been given remains in the care of the offender without any notice having been given.

34. A foster child shall not, without the consent of the juveniles inspector and the approval of the Commissioner for Juvenile Welfare, be kept-

(a) by any person from whose care any child has been removed under this Part; or

(b) in any premises from which any child has been removed under this Part by reason of the premises being dangerous or insanitary or so unfit as to endanger the health of a child; or

(c) by any person who has been convicted of an offence under sections *forty-six* to *fifty-three*; or

(d) by any person excluded from taking care of a child under the provisions of section *thirty-six*; and any person keeping a foster child contrary to this section or causing a foster child to be so kept shall be guilty of an offence. Persons prohibited from receiving foster children

35. Power to prevent over-crowding of foster children:

(1) The Minister may fix the maximum number of persons under the age of nineteen years who may be kept in any premises in which a foster child is kept, and may also impose conditions to be complied with so long as the number of children kept in the premises exceeds a specified number.

(2) If the maximum number fixed under this section is exceeded, or if any condition imposed is not complied with, a person who keeps a foster child in those premises shall be guilty of an offence.

36. (1) If a foster child is about to be received or is being kept- Removal of foster children from

Unsuitable premises or persons

(a) in any premises which are overcrowded, insanitary or dangerous;

or

(b) by any person who, by reason of old age, infirmity, ill health, ignorance, negligence, inebriety, immorality, or criminal conduct, or for any other reason, is unfit to have care of the child; or

(c) in any premises, or by any person, in contravention of any of the provisions of this Part; or

(d) in an environment which is detrimental to the child; a subordinate court may, on the application of a juveniles inspector, make an order for the removal of the child to a place of safety until he can be restored to his relatives, or until other arrangements can be made with respect to him; and, upon proof that there is imminent danger to the health and well-being of the child concerned, such court may make the said order *ex parte*.

(2) An order made under subsection (1) may be enforced by a police officer, or any other person authorised by the court making the order; and any person who refuses to comply with such an order upon its being produced or who obstructs any such police officer or person as aforesaid in the enforcement of the order, shall be guilty of an offence.

37. Notice to coroner:

(1) In the case of the death of a foster child, the person who had the care of the child shall, within twenty-four hours of the death, give notice in writing thereof to the coroner of the area within which the body of the child lies, and the coroner shall hold an inquest thereon, unless there is produced to him a

certificate of a registered medical practitioner certifying that a practitioner has personally attended the child during his last illness and certifying also the cause of death, and the coroner is satisfied that there is no ground for holding an inquest.

(2) If the person required to give notice under this section fails to give notice within the time specified for the purpose, he shall be guilty of an offence.

38. Avoidance of insurance on lives of foster children: A person who keeps a foster child shall be deemed to have no interest in the life of the child for the purpose of any law for the time being in force regarding life insurance, and, if any such person directly or indirectly insures or attempts to insure the life of a foster child, he shall be guilty of an offence.

39. Provisions as to Notices:

(1) If any person required to give any notice under the provisions of this Part relating to protection of juveniles knowingly makes, or causes or procures any other person to make, any false or misleading statement in any such notice, he shall be guilty of an offence.

(2) Every notice required by this Part to be given to a juvenile's inspector may be delivered to the office of the juveniles inspector or may be sent by post in a registered letter addressed to the juveniles inspector or to a person duly authorised by him to receive such notice. Every such notice required to be given to a coroner shall be delivered at his office or residence.

40. Prohibition of anonymous advertisements offering to receive foster children:

(1) No advertisement indicating that a person or society will undertake, or will arrange for, the care or maintenance of a child shall be published unless that person's name and residence, or, as the case may be, that society's name and office, are truly stated in the advertisement.

(2) Every person who knowingly publishes or causes to be published any advertisement in contravention of the provisions of this section shall be guilty of an offence.

41. Penalties: Any person guilty of an offence under the foregoing provisions of this Part relating to the protection of juveniles for which no other penalty is provided shall be liable to a fine not exceeding one thousand and five

hundred penalty units or to imprisonment for a term not exceeding six months, or to both and the court may order any child in respect of which the offence was committed to be removed to a place of safety.

42. Exemptions:

(1) The provisions of this Part relating to the reception of children for reward shall not extend to-

(a) any relative or legal guardian of a child who undertakes the care and maintenance of the child; or

(b) any hospital, convalescent home, school, or institution which is maintained by a Government department or local authority, or which is, as a whole, otherwise than under this Act, subject to inspection by, or under the authority of, a Government department; or

(c) any approved society or fit person to whose care a child has been committed under the provisions of this Act; or

(d) any person who, with the consent of the parents or guardians, has undertaken the care of a child who is attending school as a day scholar; or

(e) any person who, with the consent of the parents or guardians, undertakes for a period not exceeding six months the care and maintenance of a child during the absence on leave or holiday of such parents or guardians; or

(f) any person or body of persons exempted by order of the Minister from the provisions of this Act relating to the reception of children for reward.

(2) The Minister, having satisfied himself that any institution is being conducted in good faith for the care and protection of children, may issue to the managers of the institution a certificate exempting them from the requirements of sections *thirty-two* and *thirty-three*, and any certificate so granted may at any time be withdrawn by the Minister.

(3) For the purposes of this section, "relative" means a grandparent, brother, sister, uncle or aunt by consanguinity or affinity, or in consequence of adoption, and, in the case of an illegitimate child, a person who would be so related through the mother if the child were legitimate.

43. Voluntary Homes: (1) It shall be the duty of the person in charge of a voluntary home to give notice with respect to the establishment of the home

to the juveniles inspector of the area within which the home is situate within three months after the commencement of this Act, or, in the case of a home established after the commencement of this Act, within one month of the establishment of the home. The notice to be given under this subsection shall state- Notices and records in connection with voluntary homes

- (a) the address of the home;
- (b) the date on which it was established;
- (c) the name or names of the manager or managers of the home;
- (d) the name of the person in charge thereof;
- (e) the age group of the juveniles for which it is designed to cater;

and

- (f) the race of the juveniles for which it is designed to cater.

(2) It shall be the duty of the person in charge of a voluntary home to keep records showing the name of every juvenile admitted to the home, and his age and the dates on which he was admitted and discharged, and the name of the person, if any, to whose care he was discharged.

(3) If any person required to give a notice or keep records under this section fails to give such notice or keep such records he shall be liable to a fine not exceeding one hundred and fifty penalty units and to a further fine not exceeding thirty penalty units in respect of each day during which the default continues after conviction.

44. Restriction on managers of voluntary homes:

(1) No voluntary home shall be established or maintained under the management of-

- (a) any person from whose care a juvenile has been removed as being in need of care; or (b) any person who has been convicted of a scheduled offence in respect of a juvenile.

(2) No person shall employ in any voluntary home any of the persons mentioned in paragraphs (a) and (b) of subsection (1).

(3) Any person contravening the provisions of this section shall be liable to a fine not exceeding one thousand five hundred penalty units.

45. Inspection of voluntary homes and removal of juveniles therefrom:

(1) A juveniles inspector shall cause any voluntary home within his area to be inspected from time to time unless the home is one which is, as a whole,

otherwise than under this Act, subject to inspection by, or is under the authority of, a Government department.

(2) If a juvenile, while maintained in a voluntary home, is found to be in need of care, a juvenile court having jurisdiction in the area in which the home is situate, in addition to making an order in respect of the juvenile, may cause a summons to be served upon the person in charge of the home and upon such other person as the court may direct, and upon the hearing of the summons may - (a) order the removal of all juveniles from the home; or (b) make an order containing such general and special directions as the court thinks expedient for the welfare of the juveniles in the home: Provided that no order shall be made unless the court is satisfied that the welfare of the juveniles in the home is endangered. (3) An order for the removal of all juveniles from a voluntary home shall operate as an authority to any person named in the order and to any police officer to enter the home and to remove all juveniles therein to a place of safety; and where any juveniles are so removed, it shall be the duty of the person removing them to lodge them in a place of safety until they can be restored to their relatives, or until other arrangements have been made with respect to them. (4) Where an order has been made for the removal of all juveniles from a voluntary home, the home shall not be used for the reception of juveniles without the consent of the juveniles inspector of the area within which it is situate, and any person who knowingly permits it to be so used shall be guilty of an offence and shall be liable on conviction to a fine not exceeding seven hundred and fifty penalty units.

46. Offences against Juveniles: (1) If any person who has attained the age of sixteen years and has the custody, charge or care of any juvenile wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental suffering), that person shall be liable to a fine not exceeding six thousand penalty units or to imprisonment for a term not exceeding two years, or to both. (2) For the purposes of this section - (a) a parent or other person legally liable to maintain a juvenile shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide

adequate food, clothing, medical aid or lodging for him; (b) where it is proved that the death of a child under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the child) while the child was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was when he went to bed under the influence of drink, be deemed to have neglected the child in a manner likely to cause injury to his health. (3) A person may be convicted of an offence under this section-(a) notwithstanding that actual suffering or injury to health, or the likelihood thereof, was obviated by the act of some other person; (b) notwithstanding that actual suffering or injury or detriment to health, mind or body has not occurred; and (c) notwithstanding the death of the juvenile in question. (4) Upon the trial of any person who is charged with or indicted for infanticide or the manslaughter of a juvenile of whom he had the custody, charge or care, it shall be lawful for the court, if it is satisfied that he is guilty of an offence under this section, to find him guilty of that offence. (5) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the juvenile, and had knowledge that the sum of money was accruing or becoming payable, then the maximum amount of the fine which may be imposed under this section shall be twelve thousand penalty units and the court shall have the power, in lieu of awarding any other penalty under this section, to sentence the person convicted to imprisonment for any term not exceeding five years. (6) For the purposes of subsection (5) - (a) a person shall be deemed to be directly or indirectly interested in a sum of money if he has any share in or any benefit from the payment of that money, notwithstanding that he may not be a person to whom it is legally payable; and (b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company granting the policy, shall be evidence that the juvenile therein stated to be insured has in fact been so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable. (7) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him.

47. Prostitution of girls under sixteen: (1) If any person having the custody, charge or care of a girl under Causing or encouraging the the age of sixteen years causes or encourages the seduction, unlawful carnal knowledge, or prostitution of, or the commission of an indecent assault upon, her, he shall be liable to imprisonment for a term not exceeding two years. (2) For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction, unlawful carnal knowledge, or prostitution of, or commission of an indecent assault upon, a girl who has been seduced, unlawfully carnally known, or indecently assaulted, or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

48. Allowing persons under sixteen to be in brothels: (1) If any person having the custody, charge or care of a juvenile who has attained the age of four years and is under the age of sixteen years allows that juvenile to reside in or frequent a brothel, he shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or to both. (2) Nothing in this section shall affect the liability of a person to be charged with an offence under sections *one hundred and forty-two* and *one hundred and forty-three* of the Penal Code, but upon trial of a person under those sections, or any one of them, it shall be lawful for the court, if it is satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

49. Power to bind over persons having the custody of young girls: (1) Where it is shown to the satisfaction of the magistrate empowered to hold a subordinate court of the first or second class, on the complaint of any person, that a girl under the age of sixteen years is, with the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution or of being unlawfully carnally known, or is living a life of prostitution, the magistrate may adjudge the parent or guardian to enter into a recognizance to exercise due care and supervision in respect of the girl.

(2) The provisions of the Penal Code with respect to recognizances to be of good behaviour (including the provisions as to the enforcement thereof) shall apply to recognizances under this section.

50. Causing or allowing children to be used for begging: (1) If any person causes or procures any child or, having the custody, charge or care of such a child, allows him to be in any street, premises or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), he shall be liable to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a term not exceeding three months, or to both. (2) If a person having the custody, charge or care of a child is charged with an offence under this section and it is proved that such child was in any street, premises or place for any such purposes as aforesaid, and that the person charged allowed the child to be in the street, premises or place, he shall be presumed to have allowed him to be in the street, premises or place for that purpose unless the contrary is proved. (3) If any person while singing playing, performing or offering anything for sale in a street or public place has with him a child who has been hired out to him, the child shall, for the purposes of this section, be deemed to be in that street or public place for the purpose of inducing the giving of alms.

51. Giving intoxicating or spirituous liquor to children: If any person gives or causes to be given-(a) to any child under the age of five years any intoxicating liquor; (b) without the consent of his parent or guardian, to any child over the age of five years any intoxicating liquor; (c) to any child any spirituous liquor; except upon the order of a duly qualified medical practitioner, or in the case of sickness, apprehended sickness or and fifty penalty units.

52. Causing or allowing children to be in bars of licensed premises: (1) The holder of the licence of any licensed premises shall not allow a child, other than an infant, to be at any time in the bar of the licensed premises during the permitted hours. (2) If the holder of a licence acts in contravention of this section, or if any person causes, or procures, or attempts to cause or procure, any child, other than an infant, to go to, or to be in, the bar of any licensed premises during the permitted hours, he shall be liable to a fine not exceeding, in respect of a first offence, sixty penalty units, and in respect of any subsequent offence, one hundred and fifty penalty units.

(3) If a child, other than an infant, is found in the bar of any licensed premises during the permitted hours, the holder of the licence shall be deemed to have committed an offence under this section unless he proves that he had used due diligence to prevent such child from being admitted to the bar or that the child had apparently attained the age of sixteen years. (4) Nothing in this section shall apply to the case of any child who is in any railway restaurant car, railway or airport refreshment room or other premises constructed, fitted, and intended to be used in good faith for any purpose for which the holding of a licence is merely auxiliary. (5) In this section- "bar", in relation to any licensed premises, means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor; "the holder of the licence of any licensed premises" means- (a) the holder of a licence issued under the Liquor Licensing Act; (b) the person authorised to sell traditional beer in accordance with the provisions of the Traditional Beer Levy Act; (c) the secretary of any club registered in accordance with the provisions of the Clubs' Registration Act; "infant" means a child up to the apparent age of three years and actually carried by some other person; "licence" means a licence issued under the Liquor Licensing Act or the Clubs' Registration Act and any authority to sell traditional beer in accordance with the provisions of the Traditional Beer Levy Act; "licensed premises" means- (a) any premises in respect of which a licence to sell liquor is in force in accordance with the provisions of the Liquor Licensing Act; (b) a place where traditional beer is sold in accordance with the provisions of the Traditional Beer Levy Act; (c) a club registered in accordance with the provisions of the Clubs' Registration Act; "permitted hours" means those hours of the day during which intoxicating liquor may lawfully be supplied in licensed premises.

53. Children at Entertainments: (1) No child shall, except under licence granted by a juveniles inspector, take part whether as performer or attendant in any entertainment in connection with which any charge, whether for admission or not, is made to any of the audience with a view to profit or personal gain; and every person who causes or procures a child, or being his parent allows him, to take part in an entertainment in contravention of this section shall be liable to a fine not exceeding one thousand five hundred

penalty units. (2) The Minister may exempt any entertainment or class of entertainment from the provisions of this section.

54. License to take part in entertainment: A juveniles inspector may grant a licence for a child to take part in any specified entertainment or series of entertainments in his area: Provided that no licence shall be granted unless the juveniles inspector is satisfied that the child is fit to take part in the entertainment, and that proper provision has been made to secure his health and kind treatment, and that his performance shall in no way endanger his life or limbs.

55. Safety of children at entertainments: (1) Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, it shall be the duty of the person or persons providing the entertainment to take all reasonable steps to station and keep stationed wherever necessary a sufficient number of attendants, properly instructed as to their duties and not being less than eighteen years of age, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering or leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children and the prevention of fire. (2) Any person failing to fulfil the obligations imposed on him by this section shall be liable to a fine not exceeding one thousand five hundred penalty units. (3) Any police officer of or above the rank of Assistant Inspector who has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided in any building may enter such building with a view to ascertaining whether the provisions of subsection (1) are carried into effect.

56. Miscellaneous: For the purposes of this Part-(a) any person who is the parent or legal guardian of a juvenile or who is legally liable to maintain him shall be presumed to have the custody of him and, as between father and mother, the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with,

the mother and the juvenile; (b) any person to whose charge a juvenile is committed by a person who has the custody of him shall be presumed to have charge of the juvenile; (c) any other person having the actual possession or control of a juvenile shall be presumed to have the care of him.

57. Interpretation of Part II: (1) Where prior to the commencement of Act No. 35 of 1959 a court has committed a juvenile to the care of the Commissioner for Juvenile Welfare, such committal shall not be deemed to be or to have been invalid solely by reason of the fact that, prior to the enactment of Act No. 35 of 1959, the Commissioner for Juvenile Welfare was not a fit person under this Act. (2) The Commissioner for Juvenile Welfare shall be deemed always to have had the powers conferred upon him by this Act as amended by Act No. 35 of 1959. (3) Nothing in Act No. 35 of 1959 shall be deemed to render invalid any order validly made prior to the commencement of Act No. 35 of 1959 committing a juvenile to the care of a fit person.

PART III - JUVENILE DELINQUENTS

58. Preliminary Proceedings: It shall be the duty of the Commissioner of Police to make arrangements for preventing, as far as possible, a juvenile while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with an offence, other than an offence with which the juvenile is jointly charged, and for ensuring that a girl (being a juvenile) shall, while so detained, being conveyed, or waiting be under the care of a woman.

59. Prevention of juveniles associating with adults during detention: Where a person apparently under the age of nineteen years is apprehended, with or without a warrant, and cannot be brought forthwith before a court, the police officer in charge of the police station to which he is brought shall inquire into the case, and may in any case, and –

(a) unless the charge is one of homicide or other grave crime; or

(b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or

(c) unless the officer has reason to believe that the release of such person would defeat the ends of justice; shall, release such person on a recognizance, with or without sureties, for such amount as will, in the opinion of the officer, secure the attendance of that person upon the hearing of the charge, being entered into by him, or by his parent or guardian or other responsible person.

60. Bail of juveniles arrested: Where a person apparently under the age of nineteen years having been arrested is not released on recognizance as provided in the last preceding section, the officer in charge of the police station to which such person is brought shall cause him to be detained in a place of safety until he can be brought before a court, unless such officer certifies-

(a) that it is impracticable to do so; or

(b) that the juvenile is of so unruly or depraved a character that he cannot safely be so detained; or

(c) that by reason of the state of health or of the mental or bodily condition of the juvenile it is inadvisable so to detain him; and the certificate shall be produced to the court before which the person is brought.

61. Custody of juvenile not released on bail after arrest: (1) A court on remanding or committing for trial a juvenile who is not released on bail shall, instead of committing him to prison, commit him to custody in a remand prison or place of safety named in the commitment, to be detained there for the period for which he was remanded or until he is thence delivered in due course of law: Remand or committal to custody in a remand prison or place of safety: Provided that, in the case of a young person, it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly or depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly or depraved a character that he is not fit to be so detained, revoked by any court acting in or for the place in or for which the court which made the order acted, and, if the order is revoked, the young person may be committed to prison.

62. Custody of juveniles in remand prisons: (1) Where it is impracticable in a remand prison to separate juveniles from adults detained in custody, a superintendent of prisons may detain any juvenile awaiting trial, or placed on remand by a court, in a suitable dwelling, other than a prison or detention camp, and whilst the juvenile is so detained, he shall be deemed to be in legal custody.

(2) A juvenile whilst so detained and whilst being conveyed to and from a remand prison shall be deemed to be in legal custody, and if he escapes shall be guilty of an offence and may be apprehended without warrant and brought back to the remand prison in which he was detained.

63. Establishment and Procedure of Juvenile Courts: A subordinate court sitting for the purposes of-

(a) hearing any charge against a juvenile; or

(b) exercising any other jurisdiction conferred on juvenile courts by or under this or any other Act; is in this Act referred to as a juvenile court.

64. Establishment of juvenile courts: (1) Where a juvenile is brought before a juvenile court for any offence other than homicide or attempted murder, the case shall be finally disposed of in such court. Procedure in juvenile courts

(2) After explaining the substance of the alleged offence, the court shall ask the juvenile whether he admits the offence.

(3) Notwithstanding that the juvenile admits the offence, a juvenile court, other than a court presided over by a senior resident magistrate, resident magistrate or such other magistrate as the Chief Justice may designate for the purposes of this section, shall in any case where the juvenile is not legally represented then hear the evidence of the witnesses in support thereof.

(4) At the close of the evidence in chief of each witness, the magistrate shall, if the juvenile is not legally represented, ask the juvenile, and the juvenile's parent or guardian if present in court, whether he wishes to put any questions to the witness.

(5) If in any case where the juvenile is not legally represented, the juvenile, instead of asking questions by way of cross examination, makes assertions, the court shall then put to the witness such question as it thinks necessary on behalf of the juvenile and may for this purpose question the juvenile in order to bring out or clear up any point arising out of such assertions. Provided that

where the court puts any questions to a witness in pursuance of this subsection, the prosecution shall have the right to re-examine the witness upon the answers to such questions. (6) If it appears to the court that a *prima facie* case is made out, the evidence of any witness for the defence shall be heard and the juvenile shall be allowed to give evidence or make a statement. (7) If the court is satisfied that the offence is proved, the juvenile shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him, the court shall, if practicable, obtain such information as to his general conduct, home surroundings, school record, and medical history as may enable it to deal with the case in the best interests of the juvenile, and may put to him any question arising out of such information. For the purpose of obtaining such information or for special medical examination or observation, the court may from time to time remand the juvenile on bail or to a place of detention so, however, that he appears before a court at least once in every twenty-one days.

65. Assignment of certain matters to juvenile courts: (1) Subject as hereinafter provided, no charge against a juvenile, and no application or matter whereof the hearing is by this Act assigned to juvenile courts, shall be heard by a subordinate court which is not a juvenile court: Provided that-

(i) a charge made jointly against a juvenile and a person who has attained the age of nineteen years shall be heard by a subordinate court which is not a juvenile court; and All magistrates empowered to hold a subordinate court of the first or second class designated by G.N. No. 972 of 1967.

(ii) where a juvenile is charged with an offence, the charge may be heard by a subordinate court which is not a juvenile court if a person who has attained the age of nineteen years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence; and

(iii) where in the course of any proceedings before any subordinate court other than a juvenile court, it appears that the person to whom the proceedings relate is juvenile, nothing in this section shall be construed as preventing the court, if it thinks fit so to do, from proceeding with the hearing and determination of those proceedings.

2) No direction, whether contained in this or any other Act, that a charge shall be brought before a juvenile court shall be construed as restricting the powers of any magistrate to entertain an application for bail or for a remand, and to hear such evidence as may be required for that purpose.

66. Miscellaneous provisions as to powers of juvenile courts: (1) Juvenile courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other Act.

(2) A juvenile court sitting for the purpose of hearing a charge against, or an application relating to, a person believed to be a juvenile may, if it thinks fit to do so, proceed with the hearing and determination of the charge or application notwithstanding that it is discovered that the person in question is not a juvenile.

(3) The attainment of the age of nineteen years by a probationer or a person bound by a recognizance under the provisions of this Act or of the Probation of Offenders Act shall not deprive a juvenile court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of the recognizance or order, or of jurisdiction to vary or to discharge the recognizance or order.

(4) When a juvenile court has remanded a juvenile for information to be obtained with respect to him, any juvenile court acting for the same District or place –

(a) may in his absence extend the period for which he is remanded, so, however, that he appears before a court at least once in every twenty-one days;

(b) when the required information has been obtained, may deal with him finally; and where the court by which he was originally remanded has recorded a finding that he is guilty of an offence charged against him, it shall not be necessary for any court which subsequently deals with him under this subsection to hear evidence as to the commission of that offence, except in so far as it may consider that such evidence will assist the court in determining in which manner he should be dealt with.

67. Power of other court to transfer offenders to juvenile courts: (1) Any court by or before which a juvenile is found guilty of an offence other than homicide may, if it thinks fit, transfer the case to a juvenile court acting for

the place where the offender was committed for trial, or for the place where the offender resides; and, where any such case is so transferred, the offender shall be brought before a juvenile court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(2) No appeal shall lie against an order of transfer made under this section, but nothing in this subsection shall affect any right of appeal against the verdict or finding on which such an order is founded, and a person aggrieved by the order of the juvenile court to which the case is transferred may appeal therefrom as if the offender had been tried by, and pleaded guilty before the juvenile court.

(3) A court by which an order transferring a case to a juvenile court is made under this section may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail until he can be brought before the juvenile court, and shall cause to be transmitted to the clerk of the juvenile court a certificate setting out the nature of the offence and stating that the offender has been found guilty and that the case has been transferred for the purpose of being dealt with under this section.

68. Abolition of the use of the words "conviction" and "sentence" in respect of juveniles: The words "conviction" and "sentence" shall cease to be used in relation to juveniles dealt with by a subordinate court and any reference in any enactment, whether passed before or after the commencement of this Act, to a person convicted, a conviction, or a sentence shall in the case of a juvenile be construed as including a reference to a person found guilty of an offence, a finding of guilty, or an order made upon such a finding, as the case may be.

69. Where a juvenile is himself ordered by a juvenile court to pay costs in addition to a fine, the amount of the costs shall in no case exceed the amount of the fine.

70. Removal of disqualifications attaching to felony: No conviction or finding of guilty of a juvenile shall be regarded as a conviction of felony for the purposes of any disqualification attaching to felony.

71. Juvenile Offenders: The Chief Justice may, by statutory instrument, from time to time make rules of court for regulating the procedure and practice of juvenile courts, and such of the provisions of the Subordinate Courts Act or of any other enactment as regulate procedure in criminal cases shall have effect subject to any rules so made.

72. Restriction on punishment of juveniles: (1) No child shall be sentenced to imprisonment or to detention in a detention camp.

(2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other manner.

(3) A court shall not order a child to be sent to a reformatory unless the court is satisfied that having regard to his character and previous conduct, and to the circumstances of the offence, it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a reformatory.

73. Methods of dealing with offenders: (1) where a juvenile charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other written law, the case should be dealt with, namely:

(a) by dismissing the charge;

(b) by making a probation order in respect of the offender;

(c) by sending the offender to an approved school;

(d) by sending the offender to a reformatory;

(e) by ordering the offender to be caned;

(f) by ordering the offender to pay a fine, damages or costs;

(g) by ordering the parent or guardian of the offender to pay a fine, damages or costs;

(h) by ordering the parent or guardian of the offender to give security for the good behaviour of the offender;

(i) where the offender is a young person, by sentencing him to imprisonment;

(j) by dealing with the case in any other manner in which it may legally be dealt with.

(2) Whenever a juvenile is found guilty of an offence for which, but for the provisions of this Act, a sentence of imprisonment would have been passed,

the court by which the juvenile is found guilty may, instead of passing such sentence of imprisonment, order him to be detained in a reformatory.

(3) Nothing in this section shall be construed as in any way restricting the power of the court to pass any sentence or combination of sentences which it is empowered to pass under this or any other written law: Provided that no court shall order an offender to be caned in addition to directing that he be sent to an approved school or a reformatory.

74. Powers of court in respect of fines, etc.: (1) Where a court thinks that a charge against a juvenile is proved, the court may make an order on the parent or guardian of the juvenile under the last preceding section for the payment of a fine, damages or costs or requiring him to give security for good behaviour, with or without proceeding to the conviction of the juvenile: Provided that no such order shall be made unless the court is satisfied that the parent or guardian has conducted to the commission of the offence by neglecting to exercise due care of the juvenile.

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

(3) Any sums imposed and ordered to be paid by a parent or guardian under the last preceding section, or on forfeiture of any security as aforesaid, may be recovered from him by distress and imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the juvenile was charged.

PART IV - ADMINISTRATIVE PROVISIONS

75. Approved Schools: (1) The Minister may, by statutory notice, establish approved schools for the reception, maintenance and training of juveniles sent thereto under the provisions of this or any other Act.

(2) Establishment of approved schools: Any institution or school established in any of the scheduled territories which affords sufficient facilities for the education and training of persons who could be sent there in pursuance of the provisions of this Act relating to approved schools may be approved by the President and shall thereupon be deemed to be an approved school for the purposes of this Act.

76. Religious persuasion of person committed to approved school: Before making an order under this Act committing a juvenile to an approved school, the court shall endeavour to ascertain the religious persuasion of the juvenile, and in selecting the approved school to which the juvenile is to be committed, the court shall, if possible, select a school for persons of the same religious persuasion as the juvenile, or which gives an undertaking that he will be brought up in accordance with that religious persuasion.

77. (1) Every approved school order shall contain a declaration- Contents of approved school Order

(a) as to the age or apparent age; and

(b) as to the religious persuasion; of the juvenile with respect to whom it is made.

(2) The court which makes an approved school order shall cause a record in the prescribed form, embodying all such material in the possession of the court as is, in the opinion of the court, material to be known by the managers of the school, to be prepared and forwarded to the person in charge of the school.

78. Authority of approved school order: An approved school order shall be an authority for the detention of the person named therein in an approved school –

(a) if at the date of the order he has not attained the age of fourteen years, until the expiration of a period of three years or the expiration of four months after he attains the age of fifteen years, whichever is the later;

(b) if at the date of the order he has attained the age of fourteen years but has not attained the age of sixteen years, until the expiration of a period of three years from the date of the order; and

(c) if at the date of the order he has attained the age of sixteen years, until he attains the age of nineteen years.

79. Confirmation of approved school order by High Court: (1) No approved school order made by a juvenile court shall be carried into effect until the record of the case or a certified copy thereof has been transmitted to, and the order confirmed by, the High Court.

(2) Pending the confirmation of an approved school order by the High Court or pending arrangements for the admission of the juvenile to an approved school, the court making the order may make a temporary order committing the juvenile to the care of a fit person to whose care he might be committed under this Act, or to a place of safety, and, subject as hereinafter provided, such temporary order shall have effect until he is sent to an approved school in pursuance of the approved school order: Provided that a temporary order as aforesaid shall not remain in force for more than twenty-eight days, but if at the expiration of that period the court considers it expedient so to do, it may make a further temporary order.

(3) Any temporary order may be made under subsection (2) in the absence of the juvenile.

80. Classification of approved schools: (1) The court which makes an approved school order shall cause it to be delivered to the authority or person responsible for conveying the juvenile to his school, and the person who conveys him to his school shall deliver the order to the person in charge of the school.

(2) Where a juvenile has been ordered to be sent to an approved school, any person who harbours or conceals him after the time has come for him to go to his school shall be liable to a fine not exceeding six hundred penalty units or to imprisonment for a term not exceeding two months, or to both.

(3) Where a person authorised to take a juvenile to an approved school is, when the time has come for him to go to his school, unable to find him or unable to take possession of him, a subordinate court may, if satisfied by information on oath that same person named in the information can produce the juvenile, issue a summons requiring the person so named to attend at the court on such day as may be specified in the summons and produce the juvenile and, if he fails to do so without reasonable excuse, he shall be guilty of an offence and shall, in addition to any other liability to which he may be subject under the provisions of this Act, be liable to a fine not exceeding one hundred and fifty penalty units.

81. All approved schools established under the provisions of Supervision of subsection (1) of section *seventy-five* shall be under the supervision of the Commissioner for Juvenile Welfare. approved schools

82. Classification of approved schools: All approved schools established under the provisions of subsection (1) of section *seventy-five* shall be classified according to the discipline and training required by the juveniles detained therein.

83. Removal of juveniles from one approved school to another: The Commissioner for Juvenile Welfare may at any time direct that a juvenile be removed from one approved school within Zambia to another such approved school.

84. Commutation of committal order: The Commissioner for Juvenile Welfare may grant leave of absence to any person detained in an approved school within Zambia for such periods and on such conditions as may be prescribed and may at any time revoke such leave and direct such person to return to his school.

85. Commutation of committal order: Where a person detained in an approved school within Zambia is reported to the Minister by the Commissioner for Juvenile Welfare to be-(a) exercising a bad influence on the other inmates of the school; or (b) through his own default not benefiting from the training in the school; the Minister may commute the whole or part of the unexpired portion of his committal order to a term of detention in a reformatory.

86. Extension of period of detention in approved school: If the managers of an approved school within Zambia are satisfied that a juvenile whose period of detention therein is, under the provisions of this Act, about to expire needs further care or training, they may, with the consent of the Minister, detain such person for a further period not exceeding six months: Provided that a person shall not be detained beyond the date on which he will attain the age of nineteen years.

87. At any time during the period of a person's detention in an approved school within Zambia, the Commissioner for Juvenile Welfare may, by a licence in writing, permit him to live at his home or elsewhere, and may at

any time, by order in writing, revoke such licence and require the person to whom it relates to return to the school wherein he was last detained.

88. Release on licence: Supervision and recall after expiration of order: (1) A juvenile sent to an approved school within Zambia shall, after the expiration of the period of his detention, be under the supervision of the managers of his school

(a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years;

(b) if at the expiration of that period he has attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.

(2) The Commissioner for Juvenile Welfare may, by notice in writing, recall to the school any person under the supervision of a manager who is at the date of the recall under the age of nineteen years: Provided that –

(i) a juvenile shall not be so recalled unless, in the opinion of the Commissioner for Juvenile Welfare, it is necessary in the interest of such juvenile to recall him;

(ii) a juvenile so recalled shall be released as soon as the Commissioner for Juvenile Welfare thinks that he can properly be released, and in no case shall he be detained after attaining the age of nineteen years.

89. Powers and duties of managers of an approved school towards persons on licence or under Supervision: (1) For the purposes of this Act, a juvenile who is out on licence under the provisions of section *eighty-seven*, or is under supervision under the last preceding section, shall be deemed to be under the care of the managers of the school in which he was last detained.

(2) It shall be the duty of the officer in charge of the approved school from which a person is released on licence or under whose supervision he is to cause such person to be visited, advised and befriended and to give him assistance (including, if he thinks fit, financial assistance) in maintaining himself and finding himself suitable employment, or, where practicable, to arrange for the continuance of his education.

90. The Minister may, by statutory instrument, if he thinks fit, make rules as to the management and administration of approved schools established under

the provisions of subsection (1) of section *seventy-five*, and the treatment and control of juveniles sent thereto.

91. The Minister may, by statutory notice-

- (a) establish reformatories;
- (b) declare any reformatory or any part thereof to be a receiving centre.

92. Establishment of reformatories: (1) Every reformatory order shall contain a statement as to- Contents of reformatory order

- (a) the age or apparent age; and
 - (b) the religious persuasion; of the juvenile in respect of whom it is made.
- (2) The court making a reformatory order shall cause a record in the prescribed form, embodying all the information in the possession of the court with respect to the person subject to the order as is, in the opinion of the court, material to be made known to the officer in charge of the receiving centre, to be made and transmitted to such officer.

93. Authority of reformatory order: A reformatory order shall, subject to the provisions of this Act, be authority for the detention of the person named therein for a period of four years.

94. Conveyance of juvenile to receiving centre: (1) No reformatory order made by a juvenile court shall be carried into effect, except as provided in subsection (2), until the record of the case or a certified copy thereof has been transmitted to and the order confirmed by the High Court.

2) Any juvenile with respect to whom a reformatory order has been made shall be conveyed forthwith to the receiving centre without awaiting the confirmation of the order by the High Court.

(3) The court making a reformatory order shall cause it to be delivered to the person conveying the juvenile to the receiving centre, and such person shall deliver it to the officer in charge of the centre.

95. Control and supervision of reformatories: (1) All reformatories shall be under the supervision of the Chief Inspector of Reformatories who shall be the person for the time being holding the office of Commissioner of Prisons.

(2) The Chief Inspector of Reformatories shall be assisted by boards, to be known as "Reformatory Boards", established by the Minister by Gazette notice.

(3) There shall be established a Reformatory Board for each Province in which a reformatory has been established under section *ninety-one*, and each Board shall consist of a chairman and such other members, not exceeding nine, as the Minister may appoint: Provided that every such appointment to a Board shall be for a specified period but shall be revocable at any time by the Minister at his pleasure.

96. The officers appointed to control and administer a reformatory shall be appointed under and be subject to the provisions of the Prisons Act.

97. Officers in charge of reformatories: The Chief Inspector of Reformatories shall periodically visit and inspector cause to be visited and inspected all reformatories.

98. Inspection of Reformatories: (1) Reformatories shall be classified according to the discipline and training required by the persons detained therein.

(2) It shall be the duty of the officer in charge of the receiving centre to consider all the information which may be forthcoming as to the health, character, abilities, conduct, home circumstances, and general antecedents of any juvenile with respect to whom a reformatory order has been made; and thereafter to cause the juvenile to be placed in the reformatory which, in the opinion of that officer, is best suited to the needs of the juvenile.

(3) A juvenile may be detained in the receiving centre for such period, not exceeding three months as may be necessary for the purposes of subsection (2): Provided that any such detention in the receiving centre shall not extend Classification of reformatories the total period for which he is liable to be detained in a reformatory.

99. Leave of absence: The Chief Inspector of Reformatories may grant leave of absence to any person detained in a reformatory for such periods and on such conditions as he may think fit, and may at any time revoke such leave and direct the person to whom leave was granted to return to the reformatory.

100. Removal of person from one reformatory to another: The Chief Inspector of Reformatories may at any time direct that a person be removed from one reformatory to another: Provided that the total period of detention of a person so removed shall not be increased thereby.

101. Notwithstanding any of the provisions of this Act, when a person detained in a reformatory has attained the age of fourteen years and is reported to the Minister by the Chief Inspector of Reformatories to be –

(a) exercising a bad influence on the other inmates of the reformatory; or
(b) through his own default not benefiting from the training in the reformatory; the Minister may commute the whole or part of the unexpired period of the reformatory order made in respect of such person to a term of imprisonment.

102. Commutation of reformatory order: Extension of period of detention in reformatory: If the officer in charge of a reformatory is satisfied that a person whose period of detention therein is, under the provisions of this Act, about to expire needs further care or training he may, with the consent of the Minister, detain such person for a further period, not exceeding six months: Provided that a person so detained shall not be detained beyond the date on which he will attain the age of twenty-three years.

103. Power to discharge: A person committed to a reformatory shall be detained in a reformatory for such period, not exceeding four years, as the Chief Inspector of Reformatories may determine, and shall then be released: Provided that –

(i) the Chief Inspector of Reformatories shall not release any such person from a reformatory before the expiration of nine months from the date of the reformatory order;

(ii) the Minister may at any time order that any person detained in a reformatory be discharged or may commute the reformatory order under the provisions of section *one hundred and one*.

104. Release on licence: At any time during the period of a person's detention in a reformatory the Chief Inspector of Reformatories may, by a licence in writing, permit him to live at home or elsewhere, and may at any

time, by order in writing, revoke such licence and require the person to whom it relates to return to the reformatory wherein he was last detained.

105. Supervision and recall after expiration of order: (1) A person sent to a reformatory shall, after the expiration of the period of his detention, be under the supervision of the officer in charge of the reformatory in which he was detained at the date of the expiration of the order –

(a) if at the date of his committal he had not attained the age of twelve years, for a period of three years or until he attains the age of sixteen years, whichever shall be the longer period; or

(b) if at the date of his committal he had attained the age of twelve years, for a period of three years after the expiration of his period of detention or until he attains the age of twenty-three years, whichever shall be the shorter period.

(2) The Chief Inspector of Reformatories may, by notice in writing, recall to the reformatory any person under the age of twenty-three years who is under the supervision of an officer in charge of a reformatory: Provided that –

(i) a person shall not be recalled unless, in the opinion of the Chief Inspector of Reformatories, it is necessary in the interest of such person so to recall him;

(ii) a person who has so been recalled shall be released as soon as the officer in charge of the reformatory is of opinion that he can properly be released, and in no case shall he be detained for a longer period than six months or after he has attained the age of twenty-three years.

(3) Where any person has been recalled as aforesaid, he shall, during any period for which he may be detained, be deemed to be detained under the authority of the original reformatory order made in respect of him.

106. Powers and duties of officer in charge of reformatory towards persons on licence or under supervision: (1) For the purposes of this Act, a person who is under the supervision of or out on licence from a reformatory shall be deemed to be under the care of the officer in charge of the reformatory.

(2) It shall be the duty of the officer in charge of the reformatory to cause a person who is under the supervision of or out on licence from a reformatory to be visited, advised and befriended, and to give him assistance in

maintaining himself and finding suitable employment, or, where practicable, to arrange for the continuance of his education.

107. The Minister may, by statutory instrument, if he thinks fit, make rules as to the management and administration of reformatories and the treatment and control of persons detained therein.

108. Escapes: Escapes from approved schools and reformatories: (1) Any person who has been ordered to be sent to an approved school or to a reformatory and who –

(a) escapes from the school or reformatory in which he is detained, or from any hospital, home or other place in which he is receiving medical attention; or

(b) being absent from his school or reformatory on temporary leave of absence, or on licence, runs away from the person in whose charge he is, or fails to return to the school or reformatory upon the expiration of his leave or upon the revocation of his licence; or

(c) being absent from his school or reformatory under supervision, fails to return thereto upon being recalled; may be apprehended without warrant, and may, any other enactment to the contrary notwithstanding, be brought before a court having jurisdiction where he is found or where the school or reformatory is situated; and that court may, notwithstanding any limitation contained in this Act upon the period during which he may be detained in an approved school or reformatory, order him to be taken back to his school or reformatory and to have the period of his detention therein increased by such period not exceeding six months as the court may direct. (2) Where a person is, under subsection (1), taken back to a school or reformatory, the period of his detention shall, notwithstanding any limitations contained in this Act upon the period during which he may be detained in an approved school or reformatory, be increased, over and above any increase ordered by a court, by a period equal to the period during which he was unlawfully at large.

(3) If any person knowingly –

(a) assists or persistently attempts to induce or induces a juvenile to commit any such offence as is mentioned in subsection (1); or

(b) harbours and conceals a juvenile who has committed such an offence, or prevents him from returning; he shall be liable to a fine not exceeding one thousand five hundred penalty units, or to imprisonment for any term not exceeding six months, or to both.

PART V - SUPPLEMENTAL

109. Financial Provisions: Where an order has been made by a court committing a juvenile to the care of a fit person, or sending him to an approved school, the following persons shall be liable to make contributions in respect of his maintenance, namely:

(a) the father and mother of the juvenile so long only as the juvenile has not attained the age of sixteen years; and no payment shall be required to be made by the father or mother of a juvenile under any order made under the provisions of the next following section after the juvenile has attained the age of sixteen years;

Contribution to be made by parents

(b) a juvenile who has attained the age of sixteen years and is engaged in remunerative work shall be liable to make contributions in respect of himself.

110. Contribution orders: (1) Where an order has been made by a court committing a juvenile to the care of a fit person or sending him to an approved school, the court which makes it may at the same time, and any subordinate court having jurisdiction in the place where the person to be charged is for the time being residing may subsequently at any time, make an order (hereinafter referred to as a "contribution order") on any person who is, under the last preceding section, liable to make contributions in respect of the juvenile, requiring him to contribute such sums as the court having regard to his means thinks fit, and any court as aforesaid may from time to time vary or revoke such order.

(2) A contribution order may be made on the application of the person to whose care the juvenile is committed or who is named in the approved school order, and either at the time the committal order is made or subsequently, and the sums contributed shall be paid to such person as the court may name and be applied for the maintenance of the juvenile.

(3) A contribution order shall remain in force, in the case of a juvenile committed to the care of a fit person, so long as the order for his committal is in force, and in the case of a juvenile ordered to be sent to an approved school, until he ceases to be under the care of the managers of such a school: Provided that no contribution shall be payable under a contribution order in respect of any period during which a juvenile ordered to be sent to an approved school is out on licence or under supervision from such school.

(4) A contribution order shall be enforceable as an affiliation order and any enactments relating to the enforcement of affiliation orders shall apply accordingly, subject to any necessary modifications.

(5) A person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the person who was, immediately before the change, entitled to receive the contributions, and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred and fifty penalty units.

111. Affiliation orders: (1) Where a juvenile who is ordered by a court to be committed to the care of a fit person or to be sent to an approved school is illegitimate, and an affiliation order for his maintenance is in force, that court may at the same time, and any subordinate court having jurisdiction in the place where the putative father is for the time being residing may subsequently at any time, order the payments under the affiliation order to be paid to the person who is from time to time entitled to receive payments under a contribution order in respect of the juvenile. Applications for orders under this subsection may be made by the persons by whom, and in the circumstances in which, applications for contribution orders may be made.

(2) Where an order made under this section with respect to an affiliation order is in force-

(a) any powers conferred by any enactment upon subordinate courts, relating to the enforcement of affiliation orders, shall as respects the affiliation order in question be exercisable, and exercisable only, by courts having jurisdiction in the place where the person liable is for the time being residing;

(b) any sums received under the affiliation order shall be applied in like manner as if they were contributions received under a contribution order;

(c) if the putative father changes his address, he shall forthwith give notice thereof to the person who was immediately before the change entitled to receive payments under the order and, if he fails so to do, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred and fifty penalty units.

(3) The making of an order under this section with respect to an affiliation order shall not extend the duration of that order, and that order shall not in any case remain in force (except for the recovery of arrears) –

(a) in the case of a juvenile committed to the care of a fit person, after the order for his committal has ceased to be in force;

(b) in the case of a juvenile ordered to be sent to an approved school, after he has been released from his school, either absolutely or on licence: Provided that, where an affiliation order would, but for the provisions of this subsection have continued in force, the mother, or any person entitled to make application for an affiliation order, may apply to a subordinate court having jurisdiction where she is for the time being residing, for an order that the affiliation order may be revived and that payments thereunder may until the expiration thereof be made to the applicant.

112. Variation of trusts for maintenance of juvenile: (1) Where a juvenile is by an order of any court made under this Act removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the juvenile, the court may order the whole or any part of the sum so payable under the trust to be paid to any person the court may name, to be applied for the benefit of the juvenile in such manner as, having regard to the terms of the trust, the court may decide.

(2) An appeal shall lie from an order of a subordinate court made under this section to the High Court.

113. Grants-in-aid: The maintenance of juveniles detained in places of safety or committed to the care of fit persons may, to the extent that funds from other sources are inadequate for the purpose, be defrayed out of such sums as may from time to time be appropriated for the purpose by Parliament and placed at the disposal of the Commissioner for Juvenile Welfare: Provided that such grants-in-aid shall be subject to such conditions as may be laid down by the Commissioner for Juvenile Welfare.

114. Power to enter into agreements: Removal of Persons out of Zambia: (1) It shall be lawful for the President to enter into any agreement with the Government of any scheduled territory, on such terms and conditions as he may think fit, for the reception into the scheduled territory and the detention in any reformatory, approved school or other institution therein of any person who has been ordered by a court under the provisions of this Act to be detained in a reformatory, approved school or other institution.

(2) The agreement set forth in the Third Schedule shall be deemed to have been lawfully entered into under the powers conferred by this section.

115. Removal of persons out of Zambia: (1) Any person who has been ordered under the provisions of this Act to be detained in a reformatory, approved school or other institution may, while still subject to such order, by warrant signed by the President, be removed in custody into any of the scheduled territories in order that he may be detained in any reformatory, approved school or other institution therein in accordance with the law in force in the scheduled territory authorising such detention until the expiration of the order or until he is sooner released according to law.

(2) No person shall be removed in custody in a scheduled territory under this section unless the original warrant of committal accompanies him.

(3) Any person in course of removal under a warrant signed under this section shall be deemed to be in lawful custody.

116. Detention pending Removal: Any person who has been ordered by a court under the provisions of this Act to be detained in a reformatory, approved school or other institution shall, pending his removal to any such reformatory, school or institution in a scheduled territory, be detained in such place and in the custody of such person as the Minister may direct and subject to such conditions as the Minister may prescribe.

117. Appeals after removal: Nothing contained in this Act shall prevent the finding and orders of a court in respect of any person removed hereunder into lawful custody in a scheduled territory from being questioned within Zambia in the same manner as if he had not been so removed, and the order for detention of any such person may be remitted or his discharge ordered in

the same manner and by the same authority as if he had not been so removed.
Provisions in Relation to Court Proceedings in which Juveniles are Involved

118. (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 juvenile, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order of judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to or estimated by the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person and, where it appears to the court that the person so brought before it has attained the age of nineteen years, that person shall, for the purposes of this Act, be deemed not to be a juvenile.

(2) Where, in any charge or indictment for any offence under this Act, or for any scheduled offence, it is alleged that the person by or in respect of whom the offence was committed was a juvenile or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a juvenile, or to have been under or to have attained the specified age, as the case may be, he shall, for the purposes of this Act, be presumed at that date to have been a juvenile or to have been under or to have attained the specified age, as the case may be, unless the contrary is proved.

(3) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age, it shall be a defence to prove that the person in respect of whom the offence is alleged to have been committed was actually of or over that age.

119. **Sittings of juvenile Courts:** (1) A juvenile court shall sit in a room other than that in which any courts other than juvenile courts ordinarily sit, unless no such other room is available or suitable, and if no such room is available or suitable, the juvenile court shall sit on different days or at different times from those on or at which ordinary sittings are held.

(2) No person shall be present at any sitting of a juvenile court, or at any sitting of the High Court when hearing charges against a juvenile not jointly charged with a person who is not a juvenile, except –

(a) members and officers of the court;

(b) parties to the case, their legal advisers, and witnesses and other persons directly concerned in that case;

(c) *bona fide* representatives of newspapers and news agencies;

(d) such other persons as the court may specifically authorise to be present.

120. Children not allowed in court: No child (other than an infant in arms) shall be permitted to be present in court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not permitted to be so shall be ordered to be removed.

121. Power to clear court: (1) Where, in any proceedings in relation to any offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a juvenile is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the juvenile: Provided that nothing in this section shall authorise the exclusion of *bona fide* representatives of a newspaper or news agency.

(2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings *in camera*.

122. Evidence of a child of tender years: (1) Where, in any proceedings against any person for any offence or in any civil proceedings, any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his evidence may be received though not on oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth; and his evidence though not given on oath but otherwise taken and reduced into writing so as to comply with the requirements of any law in

force for the time being, shall be deemed to be a deposition within the meaning of any law so in force: Provided that where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him.

(2) If any child whose evidence is received as aforesaid wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be liable on conviction to be dealt with as if he had been convicted of an offence punishable in the case of an adult with imprisonment.

123. Prohibition of publication of certain matters (1) In relation to any proceedings in any court-

(a) no newspaper report or wireless broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any juvenile concerned in the proceedings, either as being the person against or in respect of whom the proceedings are taken, or as being a witness therein;

(b) no picture shall be published in any manner as being or including a picture of any juvenile so concerned in the proceedings as aforesaid: Provided that the court or the Minister may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this subsection to such extent as may be specified in the order.

(2) Any person who publishes or broadcasts by wireless any matter in contravention of any such direction shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand five hundred penalty units in respect of each offence.

124. Power to proceed with case in absence of juvenile: Where, in any proceedings with relation to any scheduled offence, the court is satisfied that the attendance before the court of any juvenile in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the juvenile.

125. Extension of power to take depositions: (1) Where a magistrate is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any juvenile in respect of whom any scheduled offence is alleged to have been committed would involve serious danger to his life or health, the magistrate may take in writing the deposition of the juvenile on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking it and of the date when and the place where it was taken, and of the names of the persons (if any) present at the taking thereof.

(2) The magistrate taking any such deposition shall transmit it with his statement –

(a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and

(b) in any other case, to the clerk of the court before which proceedings are pending in respect of the offence.

126. Admission of deposition of juvenile: Where, in any proceedings in respect of any scheduled offence, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any juvenile in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, any deposition of the juvenile taken under the Criminal Procedure Code or under this Part shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the magistrate by or before whom it purports to be taken: Provided that the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been given to him or that it was taken in the presence of the accused person and that he or his advocate had opportunity of cross-examining the juvenile making the deposition.

127. Attendance in court of parent of juvenile: (1) Where a juvenile is charged with any offence, or is for any other reason brought before a court, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance, be required to attend at the court before

which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where a juvenile is arrested or taken to a place of safety, the police officer by whom he is arrested or in charge of the police station to which he is brought, or the person by whom he is taken to the place of safety, as the case may be, shall cause the parent or guardian of the juvenile, if he can be found, to be warned to attend at the court before which the juvenile will appear.

(3) If any parent or guardian who has been required to attend as aforesaid, having received reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the court, he shall be liable to a fine not exceeding three hundred penalty units.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the juvenile: Provided that if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a juvenile shall not be required under this section in any case where the juvenile was, before the institution of the proceedings, removed from the custody or charge of his parent by order of a court.

CHILD LABOUR

The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by- depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.”

- It is work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by:

- depriving them of the opportunity to attend school;
- obliging them to leave school prematurely; or
- Requiring them to attempt to combine school attendance with excessively long and heavy work.
- In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age.
- Hazardous work is any labor that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out.
- Child labour is...work by children under 18 years, which is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or social, physical, mental, spiritual or moral development.”
- Child work is differentiated from child labour, and can be defined as “Children’s participation in both economic and noneconomic activities”. This kind of work is assumed not to negatively affect the health and development of children or interfere with their education. According to the ILO Convention 138; work that does not interfere with education (light work) is permitted from the age of 12 years.

Serious Forms of Child Labour:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Causes of Child Labour:

- **Poverty:** First of all, poverty strikes a major percentage of the total population of India. Life in rural areas of villages is even more difficult. The poor economic condition and low standard of living pave the way for child labour. To compensate for the daily needs of food and survival, both boys and girls are forced to work beyond their capacities. It is fair to say that they are left with no choice.
- **Lack of Education:** Lack of education in the rural areas means parents are less educated. Consequently, they also do not value the importance of school and education in the lives of their own children. In the scarcity of contraceptive awareness, couples end up having multiple children. Arranging three meals every day becomes an impossible task and the children learn it the hard way quite soon.
- **Gender Discrimination:** Girls are often prevented from going to school at a very low age. They are made to help in the fieldwork and the house chores as well. The story is not much different for the boys too. They quit school in order to take up some labour work in factories and farms and help their father in breadwinning.
- **Cheap Labour:** In big cities and towns, these factors may be absent but that doesn't immune the urban areas from the child labour cases. Child labours are easy to afford. They can be made to do more tiring jobs at low pays. Often the owners would provide them little food and money for continuous hours of work. As these kids have no family support, they end up giving in to such exploitations.
- **Child Trafficking:** Child trafficking is also another factor that leads to child labour. Trafficked children have no home. They are sent to faraway place unknown to them. Ultimately, these little souls are pushed into extremely torturing and dangerous work conditions, such as prostitution, domestic helping, transport of drugs, etc.

Effects of Child Labour:

1. Psychological:

- The psychological development of children advances the most during their formative years. In particular, this is the time when cognitive and intellectual development is rapid, and subsequently emotional and psychological facets also have their foundations during this time. A lot of

this development can be attributed to nurturing home environments, secure attachments to supportive adults, and good educational opportunities

- Children may experience feelings of neglect, marginalization, discrimination and alienation. Additionally, child labourers are also less likely to attain the intellectual, social and psychological development expected of children of similar ages.

2. Physical:

- In addition to psychological development, the physical development of children also excels during the formative years. During this time, children engage in a variety of healthful activities, such as play, which serve to enhance their physical capabilities and facilitate the healthy development of their bodies.
- However, child labourers are often denied the opportunity for healthy physical development and functioning. Not only can the work they engage in be particularly hazardous, but they can also be subject to abuse and neglect by employers or family members, which may stunt growth and inhibit healthy functioning.
- Child labour does more than deprive children of their education and mental and physical development - their childhood is stolen.
- Immature and inexperienced child labourers may be completely unaware of the short and long term risks involved in their work.
- Working long hours, child labourers are often denied a basic school education, normal social interaction, personal development and emotional support from their family. Beside these problems, children face many physical dangers - and death - from forced labour
- Physical injuries and mutilations are caused by badly maintained machinery on farms and in factories, machete accidents in plantations, and any number of hazards encountered in industries such as mining, ceramics and fireworks manufacture
- Growth deficiency is prevalent among working children, who tend to be shorter and lighter than other children; these deficiencies also impact on their adult life
- Long-term health problems, such as respiratory disease, asbestosis and a variety of cancers, are common in countries where children are forced to work with dangerous chemicals

- HIV/AIDS and other sexually transmitted diseases are rife among the one million children forced into prostitution every year; pregnancy, drug addiction and mental illness are also common among child prostitutes
- Exhaustion and malnutrition are a result of underdeveloped children performing heavy manual labour, working long hours in unbearable conditions and not earning enough to feed themselves adequately.

Impacts of Child Labour:

- **Poor Physical and Mental Health:** Children at such a young age are gullible and vulnerable. Child labour affects their physical, mental, and emotional health in a severe way. They are deprived of their basic rights to education. Arduous physical strain and the burden of arranging their own food cause malnutrition in them.
- **Forced Maturity:** In order to survive in this world, they tend to become mature faster than they need to. Their childhood is lost and crushed with the bitter pressure of acting like an adult. The kind of affection and love needed at such a tender age is never available to them. Both parents and the owners are often highly demanding to them.
- **Physical Abuse:** Such consistent threats keep the children in a frightening state of mind all the time. There are increased chances of physical abuse. To cope up with these pressures, girls and boys fall victims to the drug abuse. Many more dangerous habits become a normal part of their lives.
- **Addiction and Sexual Abuse:** From taking drugs to selling them, alcohol addiction, sexually transmitted diseases, rape, emotional numbness, violence, are common things that surround their living conditions. Poor kids may also catch up these habits from their own parents or localities, where their parents or friends are showing these behaviours on a regular basis.
- The situation becomes worse if these kids are physically handicapped. In villages and low-income groups, the adults struggle to arrange a proper livelihood for themselves. So, they begin to see girls and handicapped children as nothing more than a baggage. As a result, girls are sold off to marry old men and the kids are left to beg on the streets.

Challenges in Controlling Child Labour:

- **Unclear Laws:** While the laws to diminish the curse of child labour have been made, they are pretty vague in nature. For instance, most of the laws are unable to dictate strict guidelines for the unorganized sectors. Immunity from the dangerous works is not sufficient. Moreover, clear points should be laid out in terms of where and for how many hours can the children work (if they really need to).
- **Lack of Rehabilitation Plans:** Another issue that the authorities face is the lack of rehabilitation facilities for the children who have been saved from the devil grips of child labour. It becomes an unanswered question as to how these children should regain control of their new lives and start afresh. Proper counselling and nutrition play an indispensable role to help them thrive.
- **Lack of Awareness:** More awareness needs to be created in rural and urban areas. Adults including the parents should be taught about the negative impacts of child labour on the minds of children. They should also be explained about the power of education and the various schemes which promises a free basic education for kids. It is even more important to emphasize how the education empowers girls and makes their lives better.

CHILD MARRIAGE

Definition:

Child Marriage is defined as a marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married. It affects both girls and boys.

Child marriage perpetuates the cycles of poverty, poor health, illiteracy, and violence that have negative **impacts** on overall development, prosperity, and stability

Causes of Child Marriage:

Child marriage has many causes: cultural, social, economic and religious. In many cases, a mixture of these causes results in the imprisonment of children in marriages without their consent.

- **Poverty:** Poor families sell their children into marriage either to settle debts or to make some money and escape the cycle of poverty. Child marriage fosters poverty, however, as it ensures that girls who marry young will not be properly educated or take part in the workforce.
- **"Protecting" the girl's sexuality:** In certain cultures, marrying a girl young presumes that the girl's sexuality, therefore the girl's family's honour, will be "protected" by ensuring that the girl marries as a virgin. The imposition of family honour on a girl's individuality, in essence, robbing the girl of her honour and dignity, undermines the credibility of family honour and instead underscores the presumed protection's actual aim: to control the girl.
- **Gender discrimination:** Child marriage is a product of cultures that devalue women and girls and discriminate against them. "The discrimination," according to a UNICEF report on "Child Marriage and the Law," "often manifests itself in the form of domestic violence, marital rape, and deprivation of food, lack of access to information, education, healthcare, and general impediments to mobility."
- **Inadequate laws:** Many countries such as Pakistan have laws against child marriage. The laws are not enforced. In Afghanistan, a new law was written into the country's code enabling Shiite, or Hazara, communities to impose their own form of family law--including permitting child marriage.
- **Trafficking:** Poor families are tempted to sell their girls not just into marriage, but into prostitution, as the transaction enables large sums of money to change hands.

Effects of Child Marriage

Perpetuates poverty: Child brides do not receive education and economic opportunities that help lift them and their families from poverty, hence child marriage perpetuates a vicious cycle of intergenerational poverty.

Deprives girls of an education: Child brides are likely to drop out of school, curtailing opportunities and realization of their full potential.

Creates health risks: Child marriage and teenage pregnancy expose girls to early childbearing and greater risks of life-long fertility with significantly higher maternal and infant morbidity and mortality. Increases girls' vulnerability: Child brides are at risk of negative sexual and reproductive health outcomes, including early pregnancy, exposure to HIV and other STIs, and increased discrimination.

Puts girls at risk of violence: Child marriage puts girls at an increased risk of sexual, physical, and emotional gender-based violence.

PROTECTION OF CHILDREN FROM SEXUAL OFFENSES ACT

Chapter I – Purposes, non-discrimination principle and definitions

Article 1 – Purposes

1 The purposes of this Convention are to:

A prevent and combat sexual exploitation and sexual abuse of children;

B protects the rights of child victims of sexual exploitation and sexual abuse;

C promote national and international co-operation against sexual exploitation and sexual abuse of children.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2 – Non-discrimination principle

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

Article 3 – Definitions

For the purposes of this Convention:

A “child” shall mean any person under the age of 18 years;

B “sexual exploitation and sexual abuse of children” shall include the behaviour as referred to in Articles 18 to 23 of this Convention;

C “victim” shall mean any child subject to sexual exploitation or sexual abuse.

Chapter II – Preventive measures

Article 4 – Principles

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

Article 5 –Recruitment, training and awareness raising of persons working in contact with children

1. Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.
2. Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.
3. Each Party shall take the necessary legislative or other measures, in conformity with its internal law, to ensure that the conditions to accede to those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children.

Article 6 – Education for children

Each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations

of risk, especially those involving the use of new information and communication technologies.

Article 7 – Preventive intervention programmes or measures

Each Party shall ensure that persons who fear that they might commit any of the offences established in accordance with this Convention may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.

Article 8 – Measures for the general public

1. Each Party shall promote or conduct awareness raising campaigns addressed to the general public providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken.
2. Each Party shall take the necessary legislative or other measures to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention.

Article 9 – Participation of children, the private sector, the media and civil society

1. Each Party shall encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or others initiatives concerning the fight against sexual exploitation and sexual abuse of children.
2. Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation.
3. Each Party shall encourage the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press.

4. Each Party shall encourage the financing, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse.

Chapter III – Specialised authorities and co-ordinating bodies

Article 10 – National measures of co-ordination and collaboration

1. Each Party shall take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities.
2. Each Party shall take the necessary legislative or other measures to set up or designate:
 - a) independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities;
 - b) mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection.
3. Each Party shall encourage co-operation between the competent state authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.

Chapter IV – Protective measures and assistance to victims

Article 11 – Principles

1. Each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care.
2. Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and

assistance measures provided for children shall be accorded to him or her pending verification of his or her age.

Article 12 – Reporting suspicion of sexual exploitation or sexual abuse

1. Each Party shall take the necessary legislative or other measures to ensure that the confidentiality rules imposed by internal law on certain professionals called upon to work in contact with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse.
2. Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

Article 13 – Helplines

Each Party shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity.

Article 14 – Assistance to victims

1. Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns.
2. Each Party shall take measures, under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
3. When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures taken in application of Article 11, paragraph 1, shall include:
 - the possibility of removing the alleged perpetrator;

- the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with the best interests of the child.
- 4. Each Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.

Chapter V – Intervention programmes or measures

Article 15 – General principles

1. Each Party shall ensure or promote, in accordance with its internal law, effective intervention programmes or measures for the persons referred to in Article 16, paragraphs 1 and 2, with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the proceedings, inside and outside prison, according to the conditions laid down in internal law.
2. Each Party shall ensure or promote, in accordance with its internal law, the development of partnerships or other forms of co-operation between the competent authorities, in particular health-care services and the social services, and the judicial authorities and other bodies responsible for following the persons referred to in Article 16, paragraphs 1 and 2.
3. Each Party shall provide, in accordance with its internal law, for an assessment of the dangerousness and possible risks of repetition of the offences established in accordance with this Convention, by the persons referred to in Article 16, paragraphs 1 and 2, with the aim of identifying appropriate programmes or measures.
4. Each Party shall provide, in accordance with its internal law, for an assessment of the effectiveness of the programmes and measures implemented.

Article 16 – Recipients of intervention programmes and measures

1. Each Party shall ensure, in accordance with its internal law, that persons subject to criminal proceedings for any of the offences established in accordance with this Convention may have access to

the programmes or measures mentioned in Article 15, paragraph 1, under conditions which are neither detrimental nor contrary to the rights of the defence and to the requirements of a fair and impartial trial, and particularly with due respect for the rules governing the principle of the presumption of innocence.

2. Each Party shall ensure, in accordance with its internal law, that persons convicted of any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1.
3. Each Party shall ensure, in accordance with its internal law, that intervention programmes or measures are developed or adapted to meet the developmental needs of children who sexually offend, including those who are below the age of criminal responsibility, with the aim of addressing their sexual behavioural problems.

Article 17 – Information and consent

1. Each Party shall ensure, in accordance with its internal law that the persons referred to in Article 16 to whom intervention programmes or measures have been proposed are fully informed of the reasons for the proposal and consent to the programme or measure in full knowledge of the facts.
2. Each Party shall ensure, in accordance with its internal law, that persons to whom intervention programmes or measures have been proposed may refuse them and, in the case of convicted persons, that they are made aware of the possible consequences a refusal might have.

Chapter VI – Substantive criminal law

Article 18 – Sexual abuse

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
 - b) engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or

- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
2. For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
 3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

Article 19 – Offences concerning child prostitution

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a) recruiting a child into prostitution or causing a child to participate in prostitution;
 - b) coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
 - c) having recourse to child prostitution.
2. For the purpose of the present article, the term “child prostitution” shall mean the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.

Article 20 – Offences concerning child pornography

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:
 - a) producing child pornography;
 - b) offering or making available child pornography;
 - c) distributing or transmitting child pornography;
 - d) procuring child pornography for oneself or for another person;
 - e) possessing child pornography;
 - f) knowingly obtaining access, through information and communication technologies, to child pornography.

2. For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.
3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:
 - consisting exclusively of simulated representations or realistic images of a non-existent child;
 - involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.
4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f.

Article 21 –Offences concerning the participation of a child in pornographic performances

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a) recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
 - b) coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
 - c) knowingly attending pornographic performances involving the participation of children.
2. Each Party may reserve the right to limit the application of paragraph 1.c to cases where children have been recruited or coerced in conformity with paragraph 1.a or b.

Article 22 – Corruption of children

Each Party shall take the necessary legislative or other measures to criminalise the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.

Article 23 – Solicitation of children for sexual purposes

Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

Article 24 – Aiding or abetting and attempt

1. Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with this Convention.
2. Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, attempts to commit the offences established in accordance with this Convention.
3. Each Party may reserve the right not to apply, in whole or in part, paragraph 2 to offences established in accordance with Article 20, paragraph 1.b, d, e and f, Article 21, paragraph 1.c, Article 22 and Article 23.

Article 25 – Jurisdiction

1. Each Party shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
 - a) in its territory; or
 - b) on board a ship flying the flag of that Party; or
 - c) on board an aircraft registered under the laws of that Party; or
 - d) by one of its nationals; or
 - e) by a person who has his or her habitual residence in its territory.
2. Each Party shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed

against one of its nationals or a person who has his or her habitual residence in its territory.

3. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraph 1.e of this article.
4. For the prosecution of the offences established in accordance with Articles 18, 19, 20, paragraph 1.a, and 21, paragraph 1.a and b, of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraph 1.d is not subordinated to the condition that the acts are criminalised at the place where they were performed.
5. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to limit the application of paragraph 4 of this article, with regard to offences established in accordance with Article 18, paragraph 1.b, second and third indents, to cases where its national has his or her habitual residence in its territory.
6. For the prosecution of the offences established in accordance with Articles 18, 19, 20, paragraph 1.a, and 21 of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1.d and e is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the State of the place where the offence was committed.
7. Each Party shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged offender is present on its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality.
8. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved

shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

9. Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Article 26 – Corporate liability

1. Each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable for an offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - a) power of representation of the legal person;
 - b) an authority to take decisions on behalf of the legal person;
 - c) an authority to exercise control within the legal person.
2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 27 – Sanctions and measures

1. Each Party shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include penalties involving deprivation of liberty which can give rise to extradition.

2. Each Party shall take the necessary legislative or other measures to ensure that legal persons held liable in accordance with Article 26 shall be subject to effective, proportionate and dissuasive sanctions which shall include monetary criminal or non-criminal fines and may include other measures, in particular:
 - a) exclusion from entitlement to public benefits or aid;
 - b) temporary or permanent disqualification from the practice of commercial activities;
 - c) placing under judicial supervision;
 - d) judicial winding-up order.
3. Each Party shall take the necessary legislative or other measures to:
 - a) provide for the seizure and confiscation of:
 - goods, documents and other instrumentalities used to commit the offences, established in accordance with this Convention or to facilitate their commission;
 - proceeds derived from such offences or property the value of which corresponds to such proceeds;
 - b) enable the temporary or permanent closure of any establishment used to carry out any of the offences established in accordance with this Convention, without prejudice to the rights of *bona fide* third parties, or to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed.
4. Each Party may adopt other measures in relation to perpetrators, such as withdrawal of parental rights or monitoring or supervision of convicted persons.
5. Each Party may establish that the proceeds of crime or property confiscated in accordance with this article can be allocated to a special fund in order to finance prevention and assistance programmes for victims of any of the offences established in accordance with this Convention.

Article 28 – Aggravating circumstances

Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:

- a) the offence seriously damaged the physical or mental health of the victim;
- b) the offence was preceded or accompanied by acts of torture or serious violence;
- c) the offence was committed against a particularly vulnerable victim;
- d) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;
- e) the offence was committed by several people acting together;
- f) the offence was committed within the framework of a criminal organisation;
- g) the perpetrator has previously been convicted of offences of the same nature.

Article 29 – Previous convictions

Each Party shall take the necessary legislative or other measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sanctions.

Chapter VII – Investigation, prosecution and procedural law

Article 30 – Principles

1. Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.
2. Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.

3. Each Party shall ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.
4. Each Party shall ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
5. Each Party shall take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law:
 - to ensure an effective investigation and prosecution of offences established in accordance with this Convention, allowing, where appropriate, for the possibility of covert operations;
 - to enable units or investigative services to identify the victims of the offences established in accordance with Article 20, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available through the use of information and communication technologies.

Article 31 – General measures of protection

1. Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:
 - a) informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;
 - b) ensuring, at least in cases where the victims and their families might be in danger, that they may be informed, if necessary, when the person prosecuted or convicted is released temporarily or definitively;
 - c) enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;

- d) providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
 - e) protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification;
 - f) providing for their safety, as well as that of their families and witnesses on their behalf, from intimidation, retaliation and repeat victimisation;
 - g) ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.
2. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.
3. Each Party shall ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings.
4. Each Party shall provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim.
5. Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.

6. Each Party shall ensure that the information given to victims in conformity with the provisions of this article is provided in a manner adapted to their age and maturity and in a language that they can understand.

Article 32 – Initiation of proceedings

Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.

Article 33 – Statute of limitation

Each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.

Article 34 – Investigations

1. Each Party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.
2. Each Party shall take the necessary legislative or other measures to ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.

Article 35 – Interviews with the child

1. Each Party shall take the necessary legislative or other measures to ensure that:
 - a) interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;

- b) interviews with the child take place, where necessary, in premises designed or adapted for this purpose;
 - c) interviews with the child are carried out by professionals trained for this purpose;
 - d) the same persons, if possible and where appropriate, conduct all interviews with the child;
 - e) the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;
 - f) the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.
2. Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.
 3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the measures established in paragraphs 1 and 2 shall be applied pending verification of his or her age.

Article 36 – Criminal court proceedings

1. Each Party shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.
2. Each Party shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that:
 - a) the judge may order the hearing to take place without the presence of the public;
 - b) the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Chapter VIII – Recording and storing of data

Article 37 – Recording and storing of national data on convicted sexual offenders

1. For the purposes of prevention and prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention.
2. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of a single national authority in charge for the purposes of paragraph 1.
3. Each Party shall take the necessary legislative or other measures to ensure that the information referred to in paragraph 1 can be transmitted to the competent authority of another Party, in conformity with the conditions established in its internal law and the relevant international instruments.

Chapter IX – International co-operation

Article 38 – General principles and measures for international co-operation

1. The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:
 - a) preventing and combating sexual exploitation and sexual abuse of children;
 - b) protecting and providing assistance to victims;
 - c) investigations or proceedings concerning the offences established in accordance with this Convention.

2. Each Party shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.
3. If a Party that makes mutual legal assistance in criminal matters or extradition conditional on the existence of a treaty receives a request for legal assistance or extradition from a Party with which it has not concluded such a treaty, it may consider this Convention the legal basis for mutual legal assistance in criminal matters or extradition in respect of the offences established in accordance with this Convention.
4. Each Party shall endeavour to integrate, where appropriate, prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states.

Chapter X – Monitoring mechanism

Article 39 – Committee of the Parties

1. The Committee of the Parties shall be composed of representatives of the Parties to the Convention.
2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.
3. The Committee of the Parties shall adopt its own rules of procedure.

Article 40 – Other representatives

1. The Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental committees, shall each appoint a representative to the Committee of the Parties.

2. The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting the latter.
3. Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.
4. Representatives appointed under paragraphs 1 to 3 above shall participate in meetings of the Committee of the Parties without the right to vote.

Article 41 – Functions of the Committee of the Parties

1. The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention.
2. The Committee of the Parties shall facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children.
3. The Committee of the Parties shall also, where appropriate:
 - a) facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration or reservation made under this Convention;
 - b) express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments.
4. The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions pursuant to this article.
5. The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

Chapter XI – Relationship with other international instruments

Article 42 – Relationship with the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography

This Convention shall not affect the rights and obligations arising from the provisions of the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, and is intended to enhance the protection afforded by them and develop and complement the standards contained therein.

Article 43 – Relationship with other international instruments

1. This Convention shall not affect the rights and obligations arising from the provisions of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for child victims of sexual exploitation or sexual abuse.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

Chapter XII – Amendments to the Convention

Article 44 – Amendments

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European

Community, any State invited to sign this Convention in accordance with the provisions of Article 45, paragraph 1, and any State invited to accede to this Convention in accordance with the provisions of Article 46, paragraph 1.

2. Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation with the non-member States Parties to this Convention, may adopt the amendment.
4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter XIII – Final clauses

Article 45 – Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration as well as the European Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 5 signatories, including at least 3 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
4. In respect of any State referred to in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by

it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 46 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 47 – Territorial application

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the

month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 48 – Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservations expressly established. Any reservation may be withdrawn at any time.

Article 49 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 50 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, any State invited to sign this Convention in accordance with the provisions of Article 45 and any State invited to accede to this Convention in accordance with the provisions of Article 46 of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance, approval or accession;
- c) any date of entry into force of this Convention in accordance with Articles 45 and 46;
- d) any amendment adopted in accordance with Article 44 and the date on which such an amendment enters into force;
- e) any reservation made under Article 48;
- f) any denunciation made in pursuance of the provisions of Article 49;
- g) any other act, notification or communication relating to this Convention.

UNIT: V - SOCIAL POLICIES

PROTECTION OF CIVIL RIGHTS:

An Act to prescribe punishment for the '[preaching and practice of - "Untouchability"] for the enforcement of any disability arising there from for matters connected therewith.

Untouchability:

There is no definition in constitution for untouchability

- Preventing from entering any place of public worship
- Preventing access to shop, hotel, hospital, educational institutions or any public place
- Disability with regard to practice of profession or carrying an occupation
- Refusing to sell goods or render service
- Encourage others to practice untouchability

Civil rights are rights that guarantees equal social opportunities and equal protection under the law, regardless of race, religion, or other personal characteristics

Civil and political rights are a class of rights that protect individuals' freedom from infringement by governments, social organizations, and private individuals. They ensure one's entitlement to participate in the civil and political life of the society and state without discrimination or repression.

Examples of civil rights include:

- The right to vote,
- The right to a fair trial,
- The right to government services,
- The right to a public education,
- The right to use public facilities.
- right to equality, freedom, good governance, justice, and due process of law
- Freedom of speech, press, and assembly;
- The right to vote;
- Freedom from involuntary servitude

The Zambia Human Rights Commission

The mandate of the Human Rights Commission is to promote and protect human rights for all people in Zambia. The functions of the Commission are basically investigative, educative and advisory.

The Human Rights Commission is an independent constitutional body established under Article 125 of the Constitution of Zambia. Its autonomy is guaranteed by Article 125(2) of the Constitution and Section 3 of the Human Rights Commission Act No. 39 of 1996. The Commission has a broad mandate to promote and protect human rights as outlined in its constitutive Act.

Functions:

In order to fulfil its broad mandate, the Commission is empowered by Sections 9 and 10 of the Human Rights Commission Act No. 39 of 1996 to:

- Investigate human rights violations.
- Investigate any mal administration of justice.
- Propose effective measures to prevent human rights abuses.
- Visit prisons and other places of detention and related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems.
- Establish a continuing program of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect from and protection of human rights do all such things as are incidental or conducive to the attainment of the functions of the commission.

MAINTENANCE OF PARENT AND SENIOR CITIZEN ACT

Maintenance and Welfare of Parents and Senior Citizens Act is a legislation to provide more effective provision for maintenance and welfare of parents and senior citizens. The Act make it a legal obligation for children and heirs to provide maintenance to senior citizens and parents, by monthly allowance. The Act also provides simple, speedy and inexpensive mechanism for the protection of life and property of the older persons

Objectives of the act:

This Act provides in-expensive and speedy procedure to claim monthly maintenance for parents and senior citizens. This Act casts obligations on children to maintain their parents/grandparents and also the relative of the senior citizens to maintain such senior citizens. The main attraction of this Act is there are provisions to protect the life and property of such persons. This Act also provides setting up of old age homes for providing maintenance to the indigent senior citizens and parents.

DEFINITIONS:

- Children- Include son, daughter, grandson, granddaughter but does not include a minor
- Maintenance includes provision for food, clothing, residence, medical attendance and treatment
- Parent- means father or mother whether biological, adoptive or step father or step mother, whether or not father or mother is a senior citizen
- Senior citizen- means an Indian who attained the age of 60 years or above
- Relative- means any legal heir of childless senior citizen who is not a minor and is in possession of or would inherit his\her property after his\her death
- Welfare- means provision for food, healthcare, recreation centers and other amenities necessary for senior citizens

Maintenance of parents and senior citizens:

A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, is entitled to get relief under this Act. Children / grandchildren are under obligation to maintain his or her parent father, mother or both. Likewise, relative of a senior citizen is also bound to look after the senior citizen. If such children or relative is not maintaining his parents or senior citizen respectively, then the parents/senior citizen can seek the assistance of Tribunal constituted under this Act, to enforce the remedy of maintenance. Such parents/ senior citizen can file an application before the Tribunal, claiming maintenance and other reliefs from their children/relatives as the case may be.

Such application for maintenance can be filed by the senior citizen or a parent himself, or if such person is incapable, then by any other person or any registered organisation authorised by him. The Tribunal can also *suo motu* take cognizance of the case. After receiving the application the Tribunal may issue notice to the respondent-children/relative and provide them time to furnish their reply. Such application for maintenance should be disposed of within 90 days from the date of service of notice of application to the respondent. However, the Tribunal can extend time for a maximum period of 30 days in exceptional circumstances after recording reason. The Tribunal is having power to allow interim maintenance pending disposal of the case. Even though the application can be filed against any of children/relative as the case may be, such respondent-children/relative can implead other people who are liable to pay maintenance.

If such children/relative who are directed to pay maintenance fail to comply with the order of tribunal without sufficient cause, the Tribunal may issue warrant for levying the due amount from them in the manner levying fines and can also sentence the erring respondent to imprisonment that may extend to one month or until payment made whichever is earlier. The Tribunal will not issue Warrant to execute the order of maintenance, if such petition for execution is filed after a period of 3 months from the date on which the maintenance is due. The application under this Act can be filed before the Tribunal in any district, where the applicant resides or last resided or where children or relative resides. The evidence of proceedings shall be taken in the presence of children/relative against whom relief is sought and if such respondent is willfully avoiding service of summons or neglecting to attend the Tribunal, the Tribunal may proceed and determine the case *ex parte*. If the Tribunal is satisfied that such children/relative against whom such application for maintenance is pending, neglect or refuses to maintain the parents/senior citizens as the case may be, may order such children/relative to pay monthly allowance to such applicant. The maximum amount of maintenance that can be allowed by the Tribunal is ZMK 10000 per month. The tribunal has power to alter, modify or cancel the order in appropriate circumstances. The Tribunal has also power to levy interest on the maintenance amount, which shall be not less than 5% and greater than 18%. Aggrieved by the order of Tribunal, senior citizen/parent can file appeal

before Appellate tribunal within a period of 60 days and if the Appellate tribunal is satisfied that there occurred some delay in filing appeal due to sufficient cause, the appeal can be entertained.

Protection of life and property of senior citizen:

If a senior citizen after the commencement of this Act, has transferred his property either moveable or immovable, by way of gift or otherwise, subject to the condition that the transferee shall provide him basic amenities and physical needs and thereafter such transferee reuses or fails to provide such promise, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence and the Tribunal can declare such transfer as void. Before the enactment of this law, a senior citizen's only remedy in such a case was to approach the court for maintenance from the children to whom he had given the property by way of gift or otherwise and such property would be the exclusive property of the transferee and the senior citizen had no right in such property. But after the enactment of this Act, a senior citizen can reclaim his property from the transferee. The concerned police personnel will also ensure priority in dealing with these types of cases. Representation by lawyers are prohibited under section 17 of this Act. However the Hon'ble Kerala High Court held that legal practitioners also could represent cases under this Act.

Abandoning a senior citizen in any place by a person who is having the care or protection of such senior citizen is a criminal offence and such person shall be punishable with imprisonment for a term which may extend to three months or fine which may extend to five thousand rupees or both.

This Act also provides that state governments may establish old age homes at least one in one district to accommodate indigent senior citizens. State governments may also ensure proper medical care for senior citizens.

CONSUMER PROTECTION ACT

An Act to continue the existence of the Zambia Competition Commission and re-name it as the Competition and Consumer Protection Commission; safeguard and promote competition; protect consumers against unfair trade practices; provide for the establishment of the Competition and Consumer Protection Tribunal; repeal and replace the Competition and Fair Trading

Act, 1994; and provide for matters connected with, or incidental to, the foregoing.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Competition and Consumer Protection Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint

Interpretation

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

“ acquired ” means acquired by take over, purchase of shares or assets, or any other means through which an enterprise obtains, secures or gains a legal interest in another independent enterprise;

“ agreement ” means any form of agreement, whether or not legally enforceable, between enterprises which is implemented or intended to be implemented in Zambia and includes an oral agreement or a decision by a trade association or an association of enterprises;

“ assets ” in relation to an enterprise, includes physical assets, businesses, shares and other financial securities, brands and intangible assets including goodwill, intellectual property rights and knowhow;

“ bid rigging ” means a horizontal agreement between enterprises where—

(a) one or more parties to the agreement agrees not to submit a bid in response to a call for bids; or

(b) the parties to the agreement agree upon the price, terms or conditions of a bid to be submitted in response to a call for bids;

“ Board ” means the Board of the Commission constituted under paragraph 1 of the First Schedule;

“ Chairperson ” means the person appointed as Chairperson of the Board under paragraph 1 of the First Schedule;

“ Commission ” means the Competition and Consumer Protection Commission referred to under section four;

“ company ” has the meaning assigned to it in the Companies Act;

“ concerted practice ” means a practice which involves some form of communication or coordination between competitors falling short of an

actual agreement but which replaces their independent action and restricts or lessens competition between them;

“ confidential information ” means trade, business, commercial or industrial information that belongs to an enterprise, has a particular economic value and is not generally available to, or known by, others;

“ distribution ” means any act by which goods are sold or services supplied for consideration;

“ dominant position ” means a situation where an enterprise or a group of enterprises possesses such economic strength in a market as to make it possible for it to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;

“ enterprise ” means a firm, partnership, joint- venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them;

“ essential facility ” means an infrastructure or resource that cannot reasonably be duplicated, without access to which competitors cannot reasonably provide goods or services to their customers;

“ Executive Director ” means the person appointed as Executive Director under section six;

“ former Commission ” means the Zambia Competition Commission established under the repealed Act;

“ goods or products ” includes services, buildings and other structures;

“ group ” in relation to an enterprise that is a company, means that company, any other company that is its holding company or subsidiary and any other company that is a subsidiary of the holding company or a single economic entity;

“ horizontal agreement ” means an agreement between enterprises each of which operates, for the purpose of the agreement, at the same level of the market and would normally be actual or potential competitors in that market;

“ inter connected ” in relation to bodies corporate, has the meaning assigned to it under subsection (2);

“ inspector ” means a person appointed as inspector under section seven;

“ irreparable injury ” means injury which is substantial and can never be adequately remedied or atoned for by damages;

“ market ” in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the goods or services;

“ merger ” has the meaning assigned to it in section twentyfour;

“ micro business enterprise ” has the meaning assigned to in the Zambia Development Agency Act, 2006;

“ negative clearance ” means the certification by the Commission that an otherwise anti-competitive conduct can be allowed under conditions specified by the Commission;

“ per se ” in relation to a prohibited practice, means a practice which is prohibited in all circumstances so that it is not necessary for the Commission to demonstrate that it has anticompetitive effects;

“ price ” means a charge of any description;

“ professional association ” means the controlling body established by, or registered under, any law, or recognised by the Commission as fulfilling similar functions on behalf of its members, in respect of a profession;

“ re-sale price maintenance ” means an agreement between a supplier and a dealer whose object or effect is, directly or indirectly, to fix a minimum selling price to be used by the dealer when re-selling goods to customers;

“ regulator ” means a regulatory body or agency, or a Government department that exercises functions of prudential, technical or economic regulation on the basis of statutory powers;

“ repealed Act ” means the Competition and Fair Trading Act, 1994;

“ sale ” includes an agreement to sell or offer for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

“ service ” includes the sale of goods, where the goods are sold in conjunction with the rendering of a service;

“ services ” includes the carrying out and performance on a commercial basis of any engagement, whether professional 322 No. 24 of 2010] Competition and Consumer Protection Act No. 11 of 2006 Cap. 417 or not, other than the supply of goods, but does not include the rendering of any services under a contract of employment;

“ small claims court ” has the meaning assigned to it in the Small Claims Courts Act; “ small business enterprise ” has the meaning assigned to it in the Zambia Development Agency Act, 2006;

“ statutory monopoly ” means a commercial undertaking or an activity conducted by an entity, whether or not owned wholly or partly by the State, on the basis of statutory provisions that preclude other entities from conducting the same activity;

“ turnover ” means the latest audited gross sales of an enterprise;

Application

3. (1) Except as otherwise provided for in this Act, this Act applies to all economic activity within, or having an effect within, Zambia.

(2) This Act binds the State insofar as the State or an enterprise owned, wholly or in part, by the State engages in trade or business for the production, supply, or distribution of goods or the provision of any service within a market that is open to participation by other enterprises.

(3) This Act shall not apply to—

(a) an agreement or conduct insofar as it relates to intellectual property rights including the protection, licensing or assignment of rights under, or existing by virtue of, a law relating to copyright, design rights, patents or trade marks;

(b) activities of employers or an agreement to which employers are party, insofar as it relates to the remuneration, terms or conditions of employment of the employees;

(c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;

(d) concerted conduct designed to achieve a non-commercial socio-economic objective or similar purpose; and

(e) the business of any enterprise exercising a statutory monopoly which precludes the entry of another enterprise into the relevant market in Zambia: Provided that—

(i) the enterprise does not enter into an agreement that has the purpose of restricting competition;

(ii) the conduct of the enterprise does not, in itself or in conjunction with another enterprise, amount to an abuse of a dominant position; or

(iii) the enterprise, if it wishes to enter into a merger transaction, is in compliance with the provisions of this Act relating to mergers.

PART II - THE COMPETITION AND CONSUMER PROTECTION COMMISSION

Continuation and renaming of Zambia Competition Commission

4. (1) The Zambia Competition Commission established under the repealed Act shall continue to exist as if established under this Act and is for purposes of this Act hereby re-named the Competition and Consumer Protection Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may, by law, do or perform.

(3) The provisions of the First Schedule apply to the Commission.

Functions of Commission

5. The functions of the Commission are to—

(a) review the operation of markets in Zambia and the conditions of competition in those markets;

(b) review the trading practices pursued by enterprises doing business in Zambia; (c) investigate and assess restrictive agreements, abuse of dominant positions and mergers;

(d) investigate unfair trading practices and unfair contract terms and impose such sanctions as may be necessary;

(e) undertake and publish general studies on the effectiveness of competition in individual sectors of the economy in Zambia and on matters of concern to consumers;

(f) act as a primary advocate for competition and effective consumer protection in Zambia;

(g) advise Government on laws affecting competition and consumer protection;

(h) provide information for the guidance of consumers regarding their rights under this Act;

(i) liaise and exchange information, knowledge and expertise with competition and consumer protection authorities in other countries;

(j) advise the Minister on agreements relevant to competition and consumer protection and on any other matter relating to competition and consumer protection;

- (k) co operate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act; and
- (l) do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

Executive Director and other staff

- 6. (1) The Board shall appoint an Executive Director on such terms and conditions as the Board may determine.
- (2) The Executive Director shall be the chief executive officer of the Commission and shall be responsible, under the direction of the Board, for the daytoday administration of the Commission.
- (3) The Executive Director shall be an ex-officio member of the Board.
- (4) The Board may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of the Commission's functions under this Act.

Inspectors

- 7. (1) The Board may appoint any suitable person to be an inspector for the purposes of ensuring compliance with this Act, on such terms and conditions as the Board may determine.
- (2) The Board shall provide an inspector with a certificate of appointment in the prescribed form which shall be prima facie evidence of the inspector's appointment as such.
- (3) An inspector shall, in performing any function under this Act—
 - (a) be in possession of the certificate of appointment referred to under subsection (2); and
 - (b) show the certificate of appointment to any person who requests to see it or is subject to an investigation under this Act.
- (4) An inspector may, with a warrant, at any reasonable time —
 - (a) enter and search any premises occupied by an enterprise or any other premises, including a private dwelling, where information or documents which may be relevant to an investigation may be kept;
 - (b) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any document or article

that has a bearing on the investigation: Provided that a person shall only be searched by a person of the same sex;

(c) examine any document or article found on the premises that has a bearing on the investigation;

(d) require information to be given about any document or article by —

(i) the owner of the premises;

(ii) the person in control of the premises;

(iii) any person who has control of the document or article; or

(iv) any other person who may have the information;

(e) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation;

(f) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—

(i) search any data contained in, or available to the computer system;

(ii) reproduce any record from the data; or

(iii) seize any output from the computer for examination and copying; and

(g) attach and, if necessary, remove from the premises for examination and safeguarding any document or article that appears to have a bearing on the investigation.

(5) An inspector who removes any document or article from any premises under paragraph (g) of subsection (4) shall—

(a) issue a receipt for the document or article to the owner of, or person in control of, the premises; and

(b) return the document or article as soon as practicable after achieving the purpose for which it was removed.

(6) A person who—

(a) delays or obstructs an inspector in the performance of the inspector's functions;

(b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's powers; or

(c) gives an inspector false or misleading information in answer to an inquiry made by the inspector; commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(7) An inspector shall furnish the Commission with a written report and any other information relating to an inspection, as the Commission may require.

(8) Nothing in this section requires a person to disclose or produce information or a document, if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

PART III - RESTRICTIVE BUSINESS AND ANTI-COMPETITIVE TRADE PRACTICES

Prohibition of anticompetitive practice, agreement or decision

8. Any category of agreement, decision or concerted practice which has as its object or effect, the prevention, restriction or distortion of competition to an appreciable extent in Zambia is anti-competitive and prohibited.

9. (1) A horizontal agreement between enterprises is prohibited per se, and void, if the agreement—

(a) fixes, directly or indirectly, a purchase or selling price or any other trading conditions;

(b) divides markets by allocating customers, suppliers or territories specific types of goods or services;

(c) involves bid rigging, unless the person requesting the bid is informed of the terms of the agreement prior to the making of the bid;

(d) sets production quotas; or

(e) provides for collective refusal to deal in, or supply, goods or services.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(3) An enterprise that contravenes subsection (1) is liable to pay the Commission a fine not exceeding ten percent of its annual turnover.

Vertical agreements prohibited

10. (1) A vertical agreement between enterprises is prohibited per se, and void, to the extent that it involves re-sale price maintenance.

(2) Notwithstanding subsection (1), a supplier or producer may recommend a minimum re-sale price to the re-seller of a good or a service if—

(a) the supplier or producer makes it clear to the re-seller that the recommendation is not binding; and

(b) the product has a price stated on it and the words “recommended price” appear next to the stated price.

(3) An enterprise that contravenes subsection (1) is liable to pay the Commission a fine not exceeding ten percent of its annual turnover.

Severability

11. If an agreement prohibited under section nine or ten contains any provisions that are not prohibited, the provisions shall continue to have effect to the extent that they can be effected without the prohibited provisions.

Other horizontal and vertical agreements

12. Subject to sections eight, nine and ten, an agreement between enterprises is prohibited if the Commission determines that—

- (a) the agreement has the effect of preventing, distorting or restricting competition or substantially lessening competition in a market for any goods or services in Zambia; and
- (b) the agreement is not exempted under this Part

Interconnected bodies corporate

13. Sections eight, nine, ten and twelve do not apply to an agreement to which all the parties involved are interconnected bodies corporate falling under a single economic unit.

Share of supply threshold for authorisation of restrictive agreements

14. (1) Where the parties to—

- (a) a horizontal agreement, together supply or acquire thirty percent or more of goods or services of any description in a relevant market in Zambia; or
 - (b) a vertical agreement, individually supply or acquire, at either one of the two levels of the market that are linked by the agreement, fifteen percent or more of goods or services of any description in a relevant market in Zambia; the parties shall apply to the Commission for authorisation of the agreement in the prescribed manner and form.
- (2) The Commission shall, upon receipt of an application under subsection (1), carry out an investigation to determine whether the agreement is prohibited under this Act.
- (3) The Commission may, upon the conclusion of an investigation under subsection (2), approve or reject the application.

(4) The Commission shall where it rejects an application under subsection (3), inform the applicant accordingly and give the reasons therefor.

Share of supply threshold for establishing existence of dominant position

15. A dominant position exists in relation to the supply of goods or services in Zambia, if—

- (a) thirty percent or more of those goods or services are supplied or acquired by one enterprise; or
- (b) sixty percent or more of those goods or services are supplied or acquired by not more than three enterprises.

Prohibition of abuse of dominant position

16. (1) An enterprise shall refrain from any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general.

(2) For purposes of this Part, “ abuse of a dominant position ” includes—

- (a) imposing, directly or indirectly, unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition;

Determination of relevant product market

17. The Minister may, on the advice of the Commission, prescribe the procedure for determining the relevant product market within which the share of supply or acquisition thresholds are to be met under subsection (1) of sections fourteen and fifteen.

Application for exemption

18. (1) Subject to subsection

(2), an enterprise that wishes to be exempted from a prohibition under section twelve may apply to the Commission for exemption in the prescribed manner and form upon payment of the prescribed fee. (2) Subsection (1) does not apply to an agreement that is prohibited per se under this Act.

Determination of application for exemption

19. (1) The Commission may, after receipt of an application under section eighteen—

(a) grant the exemption; or

(b) refuse to grant the exemption.

(2) The Commission shall grant an exemption to an agreement that contributes to, or is likely to contribute to, or result in—

(a) maintaining or promoting exports from Zambia;

(b) promoting or maintaining the efficient production, distribution or provision of goods and services;

(c) promoting technical or economic progress in the production, distribution or provision of goods and services;

Amendment of exemption

20. The Commission may amend an exemption granted under section nineteen, if—

(a) some other enterprise has succeeded to the interest in the enterprise exempted, by substituting the name of the enterprise with the name of the successor;

(b) the name of the enterprise has changed, by substituting the name so changed; or (c) there has been a change in market circumstances since the exemption was granted.

Revocation of exemption

21. (1) The Commission may revoke an exemption, if—

(a) the exemption was granted on materially incorrect or misleading information; (b) there has been a material change of circumstances since the exemption was granted; or

(c) the enterprise exempted fails to comply with any condition upon which the exemption was granted.

(2) The Commission shall, where it proposes to revoke an exemption under subsection (1), give notice, in writing, of the proposed action to the enterprise to which the exemption was granted and request the enterprise to submit to the Commission, within seven days of the receipt of the notice, any representation which the enterprise may wish to make on the proposed action.

(3) Notwithstanding subsection (2), an enterprise that does not comply with a condition of an exemption is liable to pay the Commission a fine not exceeding ten percent of its annual turnover.

Exemption in respect of professional rules

22. (1) A professional association whose rules contain a restriction that has the effect of lessening competition in a market may apply to the Commission for an exemption of a prohibition under section twelve in the prescribed manner and form upon payment of the prescribed fee.

(2) Upon receipt of an application under subsection (1), the Commission shall—

(a) publish in a daily newspaper of general circulation in Zambia, a notice of the application; and

(b) give interested parties, fourteen days from the date of that notice, to make representations concerning the application. (3) After considering an application and any representations received in relation to the application, the Commission may—

(a) grant an exemption; or

(b) refuse to grant an exemption.

(4) The Commission shall publish a notice of its decision under subsection (3), in such manner and form as it considers appropriate.

(5) The Commission may exempt all, or part, of the rules of a professional association from the provisions of section twelve if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of preventing or substantially lessening competition in a market is reasonably required to maintain—

(a) professional standards; or

(b) the ordinary function of the professional association.

(6) The Commission shall, where it refuses to grant an exemption under subsection (3), inform the applicant accordingly and give the reasons therefor.

(7) The Commission may, where it considers that any rules of a professional association, either wholly or in part, should no longer be exempt under this section, revoke the exemption in respect of such rules or the relevant part of the rules, at any time after it has— (a) given the professional association notice of the proposed revocation; and

(b) given interested parties fourteen days, from the date of that notice, to make representations concerning the revocation.

Publication of grant or revocation of exemption

23. The Commission shall, as soon as is practicable, publish in a daily newspaper of general circulation in Zambia, a notice of every exemption granted, and of every exemption revoked.

PART IV - MERGERS

24. (1) For purposes of this Part, a merger occurs where an enterprise, directly or indirectly, acquires or establishes, direct or indirect, control over the whole or part of the business of another enterprise, or when two or more enterprises mutually agree to adopt arrangements for common ownership or control over the whole or part of their respective businesses.

(2) A merger contemplated in subsection (1) may be achieved in the following circumstances:

(a) where an enterprise purchases shares or leases assets in, or acquires an interest in, any shares or assets belonging to another enterprise;

(b) where an enterprise amalgamates or combines with another enterprise; or

(c) where a joint venture occurs between two or more independent enterprises. (3) For purposes of subsection (1), a person controls an enterprise if that person— (a) beneficially owns more than one half of the issued share capital of the enterprise;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of the enterprise, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that enterprise;

(c) is able to appoint or to veto the appointment of a majority of the directors of the enterprise;

(d) is a holding company and the enterprise is a subsidiary of that company;

(e) in the case of an enterprise which is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

Market assessment

25. The Commission shall, upon receipt of a proposed merger notification, carry out a market assessment of the proposed merger to determine the likely

effects of the proposed merger in the relevant market, on trade and the economy in general

PART V - SECTOR REGULATED ACTIVITIES

Application of Act to sector regulated activities

26. Subject to section three, the economic activities of an enterprise in a sector where a regulator exercises statutory powers is subject to the requirements of Part III.

Memorandum of understanding with sector regulators

27. The Commission shall, for the purpose of coordinating and harmonising matters relating to competition in other sectors of the economy, enter into a memorandum of understanding with any regulator in that sector, in the prescribed manner and form.

Market inquiry into regulated sector

28. The Commission may, where it determines that a regulated sector is unduly restrictive of competition, conduct a market inquiry into the sector

MENTAL HEALTH ACT

An Act to provide for the promotion and protection of the rights of persons with mental illness, mental disorder, mental impairment or mental disability; to establish the National Mental Health Council and provide for its functions; provide for mental health services in correctional facilities; give effect to certain provisions of the United Nations Convention on the Rights of Persons with Disabilities, Principles for the protection of persons with mental illness and the improvement of mental care General Assembly Resolution 46/119 of 17th December, 1991 and other international human rights instruments to which Zambia is a State Party; repeal the Mental Disorders Act, 1949; and provide for matters connected with, or incidental to, the foregoing.

PART I - PRELIMINARY PROVISIONS

Short Title:

1. This Act may be cited as the Mental Health Act, 2019.

Interpretation:

2. In this Act unless the context otherwise requires—

“Board” means the Board of the Council constituted under section 11;

“child” has the meaning assigned to the word in the Constitution;

“Council” means the National Mental Health Council established under section 8; “community leader” means a civil society leader, chief, headperson, minister of religion or any person of good standing in a community;

“community mental health service” means a mental health service within a community;

“correctional centre” means an institution where a mental patient who commits an offence is held in custody for treatment and rehabilitation;

“court” means a court of competent jurisdiction;

“discrimination” has the meaning assigned to the word in the Persons with Disabilities Act, 2012;

“emergency” includes a situation where there is immediate and imminent danger to the health and safety of a person or others and it is demonstrated that the time required to comply with substantive procedures would cause sufficient delay and harm to the concerned mental patient or others;

“forensic mental patient” means a person who is referred to a mental health facility by a court for assessment in order to determine whether or not that person is mentally fit to stand trial, or to be held criminally responsible for an offence; “health care provider” means a person registered and licensed under the Health Professions Council of Zambia or the General Nursing Council of Zambia or, any other health regulatory body;

“health facility” has the meaning assigned to the words in the Health Professions Act, 2009;

“health practitioner” has the meaning assigned to the words in the Health Professions Act, 2009;

“in-charge” means an officer with commensurate authority to superintend the management of a health facility;

“informed consent” means consent obtained freely, without threats or improper inducements, after appropriate disclosure to the mental patient of adequate and clear information in a form and language understood by the mental patient on— (a) the diagnostic assessment;

(b) the purpose, method, likely duration and expected benefit of the proposed treatment;

(c) alternative modes of treatment, including those less intrusive; and

(d) possible pain or discomfort, risks and side effects of the proposed treatment;

“informed decision” means a decision by a mental health services user about a diagnostic or therapeutic procedure, based on choice, which requires the decision to be voluntary and that the mental patient has the capacity for choice, which rests on the following key elements:

(a) possession of a set of values and goals for which the mental patient need to make a decision;

(b) ability to understand information and communicate decisions; and

(c) ability to reason and deliberate;

“involuntary admission” means the detention and provision of mental health services to a mental patient who—

(a) is incapable of making an informed decision due to their mental health status; or

(b) unreasonably withholds or refuses to give informed consent but requires those services for that person’s own protection or for the protection of others;

“mental capacity” means the capability to make independent informed decisions and to act on that decision and understand the consequences of the decision made and action taken;

“mental disability” means long-term psycho-social impairment which may hinder a person’s full and effective participation in society on an equal basis with others; “mental disorder” means diagnosis of a mental condition, impairment or disability in the absence of demonstrable organic etiological factor also referred to as functional neurosis or psychosis;

“mental health” means a state of well-being in which a person realises that person’s potential to cope with the normal stresses of life, can work productively and is able to make a contribution to the person’s community;

“mental health care” includes analysis and diagnosis of a person’s mental condition, and treatment, care, rehabilitation and palliation for a mental illness or suspected mental illness;

“mental health facility” means an establishment, or unit of an establishment which provides mental health care as its primary function;

“place of safety” means a designated health facility or other secure location taking into consideration the best interpretation of the will and preference of the mental patient;

“primary care giver” means a health care provider, spouse, relative, friend or community-based worker closest to the mental patient;

“primary health care” means essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals, families and communities at a cost that the community and the country can afford to maintain;

“psychiatrist” means a person registered as such under the Health Professions Act, 2009;

“public mental health facility” means a government run site, health post, clinic, hospital, fixed or mobile, providing services for the promotion, prevention, diagnosis, treatment and rehabilitation of a mental patient;

“reasonable accommodation” has the meaning assigned to the words in the Persons with Disabilities Act, 2012;

“rehabilitation” has the meaning assigned to the word in the Persons with Disabilities Act, 2012;

“supporter” means a person who represents a mental health service user or mental patient’s rights or interests;

“treatment” means an intervention given to control, cure or provide relief from symptoms of a disorder, an illness, impairment or cognitive and psycho-social disability, approved by a relevant regulatory authority; and

“voluntary admission” means the provision of mental health interventions to a person who gives informed consent to the health interventions.

General principles for determination of condition of mental patient

3. The following principles apply to the determination of a condition of a mental patient:

(a) the determination of whether a person is a mental patient shall be made in accordance with principles in this Act and the applicable diagnostic criteria and relevant professional standards;

(b) the determination of whether a person is a mental patient shall not be made on the basis of political, economic or social status or membership in a cultural, racial or religious group, or for any other reason not directly relevant to the mental health status of a person;

(c) a family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person’s

community, shall not be a determining factor in the diagnosis of mental illness; and

(d) a background of past treatment or hospitalisation of a mental patient shall not be used as a basis to justify any present or future determination of mental illness.

PART II - LEGAL CAPACITY AND RIGHTS OF MENTAL PATIENTS

4. (1) Subject to the other provisions of this Act, a mental patient shall enjoy legal capacity.

(2) Where the nature of the mental illness, mental disorder or mental disability results in the absence of mental capacity of that mental patient, the mental patient shall not enjoy legal capacity and is legally disqualified from performing a function that requires legal capacity.

(3) Where a mental patient lacks legal capacity, a court may appoint a supporter

(4) A mental patient who has legal capacity under subsection (1), may appoint a supporter through advance instructions.

(5) Where a court declares that a mental patient does not have legal capacity, that person is legally disqualified under subsection (4) and any other written law.

Duty to respect and uphold rights and dignity of mental patients

5. A person, shall respect, safeguard the dignity, and uphold the rights of a mental patient.

Prohibition of discrimination, degrading treatment and use of derogatory names

6. (1) A person shall not discriminate against a mental patient.

(2) A person shall not exploit or subject a mental patient to abusive, violent or degrading treatment including gender based aspects.

(3) A person shall not call a mental patient by a derogatory name on account of a disability of that mental patient.

Promotion of mental health and preventive programmes

7. (1) The Minister shall, in consultation with other relevant Ministries, take policy measures to promote mental health.

(2) Without prejudice to the generality of subsection (1), the Minister shall ensure that the policy measures are aimed at—

- (a) preventing or reducing the occurrence of mental illness;
- (b) enhancing awareness about mental health;
- (c) preventing or reducing stigma associated with mental illness;
- (d) training and sensitisation of law enforcement officers and adjudicators on mental health issues;
- (e) ensuring the provision of adequate mental health services by—
 - (i) training health care providers in public health facilities and correctional centres in basic and emergency mental health care and in human rights of mental patients;
 - (ii) necessary infrastructure provision and development; and
 - (iii) making available finances, medical and nonmedical supplies.

PART III - THE NATIONAL MENTAL HEALTH COUNCIL

Establishment of National Mental Health Council

8. There is established the National Mental Health Council which is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power subject to the other provisions of this Act, to do all acts and things that a body corporate may by law do or perform.

Seal of Council

9. (1) The seal of the Council shall be a device that may be determined by the Board and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Board.

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) A document purporting to be a document under seal of the Council or issued on behalf of the Council shall be received in evidence and shall be deemed to be so executed or issued, without proof, unless the contrary is proved.

Functions of Council

10. The functions of the Council are to—

- (a) promote and protect the rights of a mental patient;
- (b) facilitate the development of integrated, effective and efficient methods or systems of providing mental health services at all levels;
- (c) collaborate with local and international organisations for the promotion of mental health;
- (d) facilitate and promote communication about mental health issues, including the elimination of stigma and discrimination against a mental patient;
- (e) facilitate the mobilisation of resources for mental health services;
- (f) advise the Minister on all policy matters related to mental health;
- (g) liaise with the body responsible for the health profession on the professional conduct and inspections of mental health facilities and correctional centres in accordance with acceptable national and international standards;
- (h) liaise with Zambia Agency for Persons with Disabilities and relevant institutions on mental health related programmes;
- (i) develop guidelines for special and intrusive treatment of a mental patient;
- (j) facilitate research on any matter relevant to mental health issues;
- (k) develop systems and facilitate the monitoring and evaluation of mental health service delivery;
- (l) facilitate the development and provision of adequate and standard infrastructure for mental health services;
- (m) facilitate the development and implementation of community-based mental health services; and
- (n) promote de-institutionalisation.

Board of Council

11. (1) There is constituted a Board of the Council which consists of the following part-time members appointed by the Minister:

- (a) one representative each of the ministries responsible for—
 - (i) correctional services;
 - (ii) social welfare;
 - (iii) health;
 - (iv) finance; and
 - (v) local government;
 - (b) a representative of the Attorney-General;
 - (c) a representative of the Administrator-General and Official Receiver;
 - (d) a representative of the Human Rights Commission;
 - (e) a representative of the General Nursing Council of Zambia;
 - (f) a representative of the Health Professions Council of Zambia;
 - (g) a representative of a relevant non-governmental organisation dealing with mental health issues;
 - (h) a Psychiatrist; and
 - (i) one other person from the community with experience and knowledge in mental health issues.
- (2) The Minister shall appoint the Chairperson of the Board from among the members who are not public officers.
- (3) The Members shall elect the Vice-Chairperson of the Board from among themselves.
- (4) A person is not qualified to be appointed as a member if that person—
- (a) is not a citizen of Zambia;
 - (b) is an undischarged bankrupt;
 - (c) is legally disqualified from performing the functions of a member;
 - (d) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months without the option of a fine within a period of five years preceding the appointment;
 - (e) has been found guilty of professional misconduct; or
 - (f) is an employee of the Council.
- (5) The provisions of the Schedule apply to the Board.

Functions of Board

12. Subject to this Act, the functions of the Board are to—

- (a) review the policy and strategic plan of the Council;
- (b) oversee the implementation and successful operation of the policy and functions of the Council;

- (c) approve the annual budget and plans of the Council;
- (d) monitor and evaluate the performance of the Council against budgets and plans; and
- (e) establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of the staff of the Council.

Delegation of functions of Board

13. The Board may, subject to this Act, by direction, in writing, and subject to any terms and conditions that it considers necessary, delegate to the Executive Director any of its functions under this Act.

Executive Director and other staff

14. (1) The Board shall appoint the Executive Director who shall be the chief executive officer of the Council on the terms and conditions that the Board may determine with the approval of the Emoluments Commission.

(2) The Executive Director shall, subject to the control of the Board, be responsible for the day-to-day administration of the Council.

(3) A person shall not be appointed as the Executive Director unless that person is a psychiatrist.

(4) The Executive Director shall attend meetings of the Board and any committee of the Board, and may address that meeting, but shall not vote on any matter.

(5) The Board may, appoint, on the terms and conditions that the Board may determine with the approval of the Emoluments Commission, other staff that the Board considers necessary for the performance of the functions of the Council.

PART IV - MENTAL HEALTH SERVICES

Access to mental health services

15. (1) A mental health facility shall put in place appropriate measures to ensure (a) availability of mental health services at all levels of mental health care;

(b) adequate financial and geographical accessibility;

(c) provision of services that meet prescribed minimum standards; and

(d) access to psychiatric medication.

(2) Mental health services shall be provided on an equal basis with physical health services where possible.

(3) Mental health services shall—

- (a) be integrated within the general health services;
- (b) be provided in specialised public and private health facilities;
- (c) be provided in designated health facilities for forensic mental patients;
- (d) promote in mental patient and out mental patient services at community level;
- (e) promote the rights and interests of mental patients;
- (f) promote and improve the mental health status of the population; and
- (g) provide primary health care.

(4) A health practitioner who is not a psychiatrist shall not cause a mental patient to receive prescribed psychiatric medication for more than six months without being authorised by a psychiatrist who is designated to provide medication and review psychiatric treatment.

(5) A health practitioner shall provide mental health services in a manner that facilitates the involvement of the community, family members and support persons.

(6) A head of a mental health facility or institution or any other person delegated with the duties under this Part shall follow the prescribed exemption criteria for categories of mental patients eligible for free health services at public health facilities.

(7) In prescribing the exemption criteria referred to under subsection (6), regard shall be given to the—

- (a) range of free mental health services currently available;
- (b) categories of mental patients already receiving free mental health services;
- (c) therapeutic impact to mental patients; and
- (d) needs of groups such as women, children, elderly persons, inmates, other persons with disabilities and persons receiving compensation for compensable occupational diseases.

PART V - RIGHTS AND RESPONSIBILITIES OF MENTAL PATIENTS

Right of mental patient

16. A mental patient has the right to

- (a) effective, timely, safe, considerate and respectful care and support;
- (b) obtain from mental health practitioners appropriate, current and understandable information about diagnosis, treatment and prognosis;
- (c) discuss and request information about the specific procedures or treatments, the risks involved, the possible length of recuperation and the medically reasonable alternatives and their risks and benefits;
- (d) know the identity of the mental health practitioner involved in the care of the mental health services user;
- (e) make decisions about the plan of care before and during treatment;
- (f) refuse a recommended treatment or plan of care to the extent allowed by law and to be informed of the medical consequences of that refusal;
- (g) alternative appropriate care and services provided by the hospital or be transferred to another hospital in the case of a refusal of recommended treatment or plan of care;
- (h) be notified by the hospital of any policy that might affect choice of treatment and care within the institution;
- (i) supported decision making regarding treatment;
- (j) privacy during case discussion, consultation, examination, and treatment;
- (k) access to personal records of treatment and an explanation or interpretation of information, where necessary;
- (l) consent or decline taking part in a research study or human experimentation affecting treatment and care or requiring direct mental patient involvement, and have those studies fully explained prior to consent as provided for in the National Health Research Act, 2013;
- (m) be informed of available alternative dispute resolution mechanisms; and
- (n) be protected from forced or inadequately remunerated labour within an institution, work place and the community.

Responsibilities of mental patient

17. Subject to the other provisions of this Act, a mental patient shall—

- (a) provide information relating to mental illness including mental health interventions;
- (b) provide information relating to the next of kin where a mental patient will not be in a position to provide information;

- (c) participate effectively in decision making and request additional information or explanation about the health status or treatment when they do not fully understand information and instructions; and
- (d) provide information on mode of payment for mental health services.

Privacy, dignity and confidentiality

18. (1) A mental health facility or correctional centre shall take steps to ensure that, the mental patient—

- (a) is accorded privacy and confidentiality relating to information obtained in the therapeutic relationship, and that the information given shall only be used for the purpose of improving the mental patient's mental health;
- (b) is protected from exploitation, abuse or any cruel or degrading treatment;
- (c) is informed when personal information is passed on to a third party; and
- (d) has unrestricted access to information concerning that mental patient's mental health care, treatment, rehabilitation and palliation.

PART VI - STANDARDS OF CARE AND TREATMENT

Standards of care and treatment

19. (1) A mental patient or forensic mental patient shall receive mental health services which is appropriate for that patient's needs in accordance with relevant health service standards.

(2) A mental patient or forensic mental patient shall be protected from harm, inappropriate medication, or acts causing mental distress or physical discomfort and abuse by other mental patients, staff, family members or any other person.

(3) A mental patient or forensic mental patient shall be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the mental patient's health needs and the need to protect the physical safety of the mental patient or any other person.

(4) Despite subsection (3), a mental health facility may treat a mental patient or forensic mental patient in a more restrictive environment for a period required to give effect to the appropriate, treatment, care, support, rehabilitation and palliation.

(5) The treatment of a mental patient or forensic mental patient shall be directed towards restoring and enhancing personal autonomy.

Notice of health care standards and rights

20. (1) A health facility shall, on admission, inform a mental patient or forensic mental patient of the—

- (a) rights of that mental patient or forensic mental patient, in a form and language which a mental patient or forensic mental patient understands; and
- (b) health care standards which the mental patient or forensic mental patient is entitled to receive.

(2) Where a mental patient or forensic mental patient is unable to understand the information communicated under subsection (1), that information shall be communicated to a supporter.

Minimum standards for mental health facilities

21. A mental health facility shall meet the following minimum standards for the provision of the mental health services:

- (a) provide a qualified psychiatrist or a mental health practitioner and other appropriate professional staff;
- (b) have adequate space;
- (c) implement an appropriate and active therapy programme;
- (d) avail and maintain medical and non-medical equipment, diagnostic and therapeutic equipment, kitchen, laundry and mortuary;
- (e) provide information communication technology, security systems and equipment, and transport; and
- (f) ensure adequate and consistent medical and nonmedical supplies.

(2) A mental health facility shall be inspected as provided for under the Health Professions Act, 2009, the Nurses and Midwives Act, 1997, and the Medicines and Allied Substances Act, 2013.

PART VII - CONSENT

Consent to admission, treatment, care, rehabilitation and palliation services and admission to health facility

22. (1) A mental health facility shall only provide treatment, care, support, rehabilitation and palliation services to, or admit a mental patient where—

- (a) the mental patient or a supporter has consented to the admission, treatment, care, rehabilitation or palliation;

(b) the Board authorises the admission, treatment care, rehabilitation or palliation; (c) the admission, treatment, care, support, rehabilitation or palliation services if not done may result in—

(i) death or irreversible harm to a mental patient;

(ii) a mental patient inflicting serious harm to oneself or another person; or

(iii) a mental patient causing serious damage to, or loss of, property.

(2) A mental health facility that provides admission, treatment, care, support, rehabilitation or palliation services under subsection

(1) (c)

(a) shall render a report, in writing, to the Council in the prescribed manner; and (b) may only provide the admission, treatment, care, support, rehabilitation or palliation services for a period of seventy-two hours unless an application is made to the Board within that period for the provision of services or admission for a longer period.

(3) A mental health practitioner shall minimise admission, treatment, care, support rehabilitation or palliation services without informed consent.

(4) Where a mental patient requires special treatment which cannot be administered routinely to the mental patient even with the mental patient's consent, three medical doctors, one of whom shall be a psychiatrist shall certify that the person concerned is capable of understanding the nature, purpose and likely effects of the treatment.

Proxy consent to treatment

23. (1) Where a mental patient is unable to give consent to the treatment, the consent may be given by a supporter.

(2) Where the mental patient is below the age of eighteen years the consent may be made by the mental patient's parent or guardian.

Advance decision

24. (1) A mental patient who understands the mental patients right to decide on an option of treatment shall state in advance the mental patient's choice of treatment.

(2) An advance decision may be in writing and signed by the mental patient, a recorded oral statement or a note of a particular discussion recorded on the mental patient's file, except that where a mental patient's advance decision

relates to a refusal of life prolonging treatment, this shall be recorded in writing.

(3) An advance decision shall be either a—

(a) statement authorising or requesting specific procedures; or

(b) clear instruction refusing some or all medical procedures.

(4) An advance decision shall be legally binding where the mental patient is an adult and competent to make an informed decision.

(5) Where a mental patient subsequently grants a person a power of attorney to make a decision, an advance decision which was made by the mental patient ceases to have effect

PART VIII - ADMISSION, TREATMENT, CARE, SUPPORT, REHABILITATION OR PALLIATION

25. (1) A mental health facility shall where a person requires treatment at a mental health facility, endeavour to ensure that

(a) there is voluntary admission;

(b) the procedure for admission to a mental health facility is consistent with a hospital treating physical health; and

(c) while admission or treatment on a voluntary basis shall be the preferred practice, involuntary admission or treatment, shall be provided where they are necessary for the health and safety of the mental patient.

(2) A person on voluntary admission, treatment, care, support, rehabilitation or palliation services may leave the mental health facility at any time in accordance with the prescribed regulations.

(3) An involuntary admission shall be carried out as prescribed

Involuntary admission and treatment in emergency

26. A mental health practitioner shall conduct an involuntary admission in an emergency situation where it is not possible or reasonable to comply with a procedure for voluntary admission and treatment.

PART IX - SPECIAL TREATMENT

27. (1) A special treatment such as electro-convulsive therapy or psycho-surgery shall be

(a) provided in accordance with written instructions by a psychiatrist; and

(b) applied under the authorisation and supervision of a consultant psychiatrist.

(2) Seclusion and restraint shall

(a) be provided under an authorisation and supervision of a consultant psychiatrist;

(b) not exceed seventy-two hours unless an application is made to the Board within that period for the seclusion or restraint for a longer period; and

(c) be undertaken with intermittent reviews.

(3) A psychiatrist shall, after the period of seclusion and restraint referred to under subsection (2) (b), prepare a report to the Board on the mental health status of the mental patient and may recommend release from, or extension of, the seclusion or restraint

Clinical or experimental research and development of drugs

28. A clinical or experimental research and development of drugs to be administered as part of special treatment shall be conducted in accordance with the National Health Research Act, 2013.

PART X - CRIMINAL PROCEDURES FOR FORENSIC MENTAL PATIENTS

Designation of health facility for forensic mental patients

29. The Minister shall, in consultation with the Minister responsible for correctional services, designate a health facility which may admit, treat, care, provide a rehabilitation and palliation service to a forensic mental patient.

Admission of forensic mental patient to designated health facility

30. (1) Where a court issues an order for a forensic mental patient to be admitted for mental health services, the Registrar or the Clerk of the court shall send a copy of that order to a designated health facility.

(2) A designated health facility shall examine the forensic mental patient within fourteen days of the date of the court order

Referral of forensic mental patient between designated health facilities

31. (1) Where a mental health practitioner is of the opinion that it would be for the benefit of a forensic mental patient admitted in a designated health facility, or that it is necessary for the purpose of obtaining special treatment

for the forensic mental patient, transfer the forensic mental patient to another designated health facility after obtaining consent from the designated health facility where the forensic patient is being transferred to.

(2) In the case of a forensic patient under a correctional centre, consent shall be obtained from the Commissioner-General of Zambia Correctional Service.

Forensic mental patient who absconds

32. Where a forensic mental patient has absconded or is considered by the in-charge of a designated health facility to have absconded, the in-charge of that designated health facility shall immediately notify the police in writing

Periodic review of mental health status of forensic mental patient

33. (1) The in-charge of a designated health facility shall ensure that the forensic mental patient is reviewed every six months by a psychiatrist, and submit a report to the Minister responsible for correctional services, in the prescribed manner and form.

(2) The review under subsection (1), shall include recommendations on—

- (a) a plan for further treatment, care, support, rehabilitation or palliation service of a forensic mental patient; or
- (b) the discharge of a forensic mental patient from a designated health facility.

PART XI - MENTALLY ILL INMATES AND UNCONVICTED INMATES

Assessment of mental health status of inmate

34. (1) Where an officer-in-charge of a correctional centre observes or receives information that an inmate may be mentally ill, the officer-in charge of the correctional centre shall cause the mental health status of the inmate to be examined within forty eight hours—

- (a) by a psychiatrist; or
- (b) where a psychiatrist is not readily available, by—
 - (i) a medical practitioner; or
 - (ii) a mental health care practitioner.

(2) The person conducting the assessment under subsection (1) shall submit a written report to the officer-in-charge of the correctional centre, within fourteen days of the assessment and shall specify in the report—

(a) the mental health status of the inmate; and

(b) a plan for the treatment, care, support, rehabilitation or palliation of that inmate.

Treatment, care rehabilitation and palliation of inmates with mental illness

35. Where a mental health practitioner conducting the assessment referred to in section 34, finds that the mental illness of the inmate is of a nature that the inmate concerned may appropriately be treated, cared for rehabilitated or palliated, in the correctional centre, the officer-in-charge of a correctional centre shall take the necessary steps to ensure that the required levels of treatment, care, support, rehabilitation and palliation services are provided to that inmate.

Referral of mentally ill inmate or unconvicted inmate to designated health

Facility

36. (1) Where a mental health practitioner conducting the assessment referred to in section 34, finds that the mental illness of an inmate is of a nature that requires the inmate to be treated and cared for in a designated health facility referred to in section 22, the officer-in-charge of the correctional centre shall, within forty eight hours, cause the inmate to be transferred to a mental health facility.

(2) Despite subsection (1), where the mental health practitioner recommends that an inmate or unconvicted inmate may be treated, cared for, supported, rehabilitated or palliated at a designated health facility, the mental health practitioner shall recommend to the officer-in-charge of the correctional centre the transfer of that inmate or unconvicted inmate to the designated health facility

Review of mental health status of mentally ill inmate

37. (1) The head of a mental health facility in which a mentally ill inmate is admitted shall cause the mental health status of the mentally ill inmate to be

reviewed, and prepare and submit a report to the officer-in-charge of the relevant correctional centre.

(2) The review shall—

(a) specify the mental health status of the mentally ill inmate; and

(b) set out recommendations regarding a plan for further treatment, care and rehabilitation services for the mentally ill inmate

Discharge procedure of mentally ill inmate

38. Where the in-charge of a designated health facility has established that the mentally ill inmate has recovered from a mental illness such that the inmate no longer requires treatment, care, support, rehabilitation or palliation or that the required treatment, care, support, rehabilitation or palliation can be given in a correctional centre, the in-charge of a designated health facility shall prepare and submit a discharge report to the officer-in-charge of the correctional centre.

PART XII - GENERAL PROVISIONS

Regulations

39. (1) The Minister may, by statutory instrument in consultation with the Council, make regulations to give effect to the purposes and provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations for the

(a) forms and certificates to be used for the purposes of the Act;

(b) guidelines for the establishment, development, maintenance and management of mental health facilities;

(c) exemption criteria for categories of mental patients eligible for free health services at public facilities;

(d) procedure and form for foreign mental health service users or mental patients coming to Zambia and mental health service users seeking treatment abroad including foreigners who are either on short or long stay, the transfer of mental patients between designated health facilities;

(e) after care services, support, rehabilitation and palliation programmes for mental health service users and mental patients;

(f) establishment of transit homes and boarding home care services;

(g) de-institutionalisation of mental patients; and

(h) administration of special treatments.

General penalty

40. A person who commits an offence under this Act for which a specific penalty is not provided is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Savings and transitional provisions

41. On the commencement of this Act—

(a) an order made under the repealed Act that is still in force shall continue as if made under this Act;

(b) an estate and property of a mental patient that was being administered under the repealed Act shall continue to be administered as if the order for the administration of the estate or property was made under this Act;

(c) a mental patient under an order of detention pending removal shall be deemed to be lawfully detained under this Act;

(d) an institution established for the reception, treatment or detention of a mental patient shall continue to exist as if established under this Act;

(e) wherever in any written law a reference to a lunatic or to lunacy, to an asylum or similar terms are contained, that reference shall be read and construed as a reference to a mental patient or similar terms, within the meaning of this Act; and (f) wherever in any written law a reference to mental disability or legal disqualification, or similar terms are contained, that reference shall be read and construed as a reference to a person being legally disqualified from performing a function under that Act for the purposes section 4.

SECTION 135 OF COMPANIES ACT

CORPORATE SOCIAL RESPONSIBILITY

1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years⁷[or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years], in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount⁸[and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year].