

TITLE IX

CHILDREN

	<i>Chapter</i>	<i>Page</i>
Children Act	62	1805

CHAPTER 62**THE CHILDREN ACT****Arrangement of Sections****Section****PART I—INTERPRETATION**

1. Interpretation

PART II—RIGHTS OF CHILD

2. Definition of child
3. Welfare and guiding principles
4. Rights of child
5. Duty to maintain child
6. Parental responsibility
7. Harmful customary or cultural practices
8. Harmful employment
9. Prohibition of sexual exploitation
10. Children with disabilities and children with special needs

PART III—NATIONAL CHILDREN AUTHORITY

11. Establishment of National Children Authority
12. Functions of Authority
13. Board of Directors and its functions
14. Qualifications for appointment
15. Tenure of office
16. Minister's power to suspend or terminate appointment
17. Resignation of members
18. Common seal of Authority
19. Remuneration or allowances of members
20. Specialised committees
21. Functions of specialised committees

Management and staff of Authority

22. Secretariat
23. Functions of secretariat
24. Executive Director
25. Functions of Executive Director
26. Deputy Executive Director
27. Other employees
28. Experts and consultants

Financial and Other Matters

29. Funds
30. Borrowing powers
31. Estimates of income and expenditure
32. Financial year
33. Accounts
34. Audit
35. Investment of surplus funds

PART IV—SUPPORT FOR CHILDREN BY LOCAL AUTHORITIES

36. Local councils to safeguard children and promote reconciliation between parents and children
37. Duty to report infringement of rights of children
38. Appeals

PART V—FAMILY AND CHILDREN COURT

39. Establishment of family and children court
40. Jurisdiction of family and children court
41. Venue of family and children court
42. Procedure in family and children court
43. Care or supervision order to be of benefit to child

44. Rules of court

PART VI—CARE AND PROTECTION OF CHILDREN

45. Supervision orders and care orders
46. Welfare reports

47. Grounds for making supervision or care order

Supervision order

48. Application for supervision order
49. Duties of supervisor while supervision order is in force
50. Duration of supervision order
51. Probation and social welfare officer to enforce orders
52. Requirements as to change of address and visits

Care order

53. Care order
54. Purpose of care order
55. Duration of care order
56. Duty to enforce care order
57. Parental responsibility of warden or foster parent
58. Special duties of probation and social welfare officer in relation to care order
59. Interim supervision order and interim care order
60. Exclusion order
61. Enforcement of exclusion order
62. Search and production order
63. Removal of child under emergency protection
64. Offence to remove child from place of safety without authority
65. Persons to apply for discharge or variation of supervision or care order
66. Duty of probation and social welfare officer to investigate
67. Requirement to disclose information
68. Medical examination of child
69. Protection of children from all forms of violence
70. Prevention and intervention programmes
71. Rights to protective services

PART VII FOSTER CARE PLACEMENTS

72. Conditions for foster care placements

PART VIII—GUARDIANSHIP

- 73. Legal guardianship
- 74. Application for legal guardianship
- 75. Customary guardianship
- 76. Appointment of guardian by agreement
- 77. Joint guardianship
- 78. Conditions for guardianship
- 79. Guardianship order
- 80. Effect and duration of guardianship order
- 81. Registration of guardianship order
- 82. Child placement organisation
- 83. Revocation of guardianship order
- 84. Appeals
- 85. Offences by administrator of estate of child

PART IX—ADOPTION

- 86. Jurisdiction

Prerequisites for adoption

- 87. Restrictions and conditions
- 88. Inter-country adoption
- 89. Rescission of adoption order
- 90. Consent
- 91. Consideration of court
- 92. Rules as to procedure for adoption
- 93. Appeals
- 94. Effect of adoption order
- 95. Devolution of property
- 96. Wills
- 97. Adopted children register
- 98. Disclosure of adoption

PART X—APPROVED HOMES

- 99. Approval of homes
- 100. Admission of children to home
- 101. Purpose of approved home

102. Parental responsibility of warden and staff of approved homes
103. Contact with parents and relatives
104. Removal of child from approved home
105. Recovery order
106. Application for recovery order
107. Escape from approved home or foster parent
108. Power of court to order parent or guardian to contribute
109. Rules for approved homes

PART XI—PARENTAGE OF CHILDREN

110. Declaration of parentage
111. Application for declaration
112. Proceedings on application for declaration of parentage
113. Proof of parentage
114. *Prima facie* and conclusive evidence of parentage
115. Effect of declaration of parentage
116. Custody of children
117. Interim custody order
118. Custody by agreement
119. Appeals
120. Revocation of declaration of parentage

Maintenance orders

121. Application for child maintenance order
 122. Warrant to attach earnings or levy distress for recovery of maintenance money
 123. Variation of maintenance orders
 124. Money to be paid to applicant or custodian
 125. Appointment of custodian
 126. Misapplying maintenance money
 127. Cessation of order
-
128. Rules in respect of fees and costs

Maintenance during divorce, separation or nullity

129. Maintenance during divorce, separation or nullity
130. Variation of custody
131. Upbringing of child

132. Unfit parents

PART XII—CHILDREN CHARGED WITH OFFENCES

133. Age of criminal responsibility

134. Arrest and charge of children

Detention pending trial

135. Bail

136. Remand

Role of local council courts

137. Role of local council courts

Family and children court

138. Criminal jurisdiction of family and children court

139. Orders of family and children court

140. Probation and social welfare officer's report

141. Appointment and supervision of probation and social welfare officers

142. National Rehabilitation Centre for Children and other centres

143. Committee of visitors; rules governing centre; assisting escape or preventing return to centre

144. Aftercare

145. Duration of cases

146. Remission of cases

147. Restriction on use of certain words

148. Protection of privacy and restriction on publication

149. Children in magistrate's court

150. Children before High Court

151. Death sentence for person below eighteen years 15

2. Appeals

PART XIII—MISCELLANEOUS

153. Sections of Penal Code Act not to apply to children

154. Corporal punishment in schools prohibited

155. Inquiry by court as to age of person appearing to be below eighteen years of age
156. Presumption by court of age to be conclusive evidence of person's age
157. General penal provision for offences under Act
158. Regulations
159. Enforcement of judgments, decisions and orders of family and children court
160. Power to amend Schedules

SCHEDULES

Schedule 1 Currency Point

Schedule 2 Meetings of Board

Schedule 3 Foster Care Placement

Schedule 4 Rules Petition for

Guardianship

CHAPTER 62**THE CHILDREN ACT**

Commencement: 1 August, 1997

An Act to provide for the care, protection and maintenance of children; to provide for the National Children Authority; to establish a family and children court to make provision for children charged with offences and for related matters.

PART I—INTERPRETATION**1. Interpretation**

In this Act, unless the context otherwise requires—

- “alternative care” means formal care options availed to a child without parental care;
- “approved home” means a Government or non-governmental home approved by the Minister to provide substitute family care for a child and includes a babies’ home and children’s home which provide care and accommodation for children aged below six years and aged between three to under eighteen years
- “authorised person” means an official or other person authorised expressly or impliedly to perform the act in question;
- “Authority” means the National Children Authority established under section 11;
- “Board” means the Board of Directors established under section 13;
- “care order” means a care order made under Part VI of this Act and includes an interim care order;
- “Chairperson” means a Chairperson of the Board of Directors;
- “chief magistrate’s court” means a magistrate’s court presided over by a chief magistrate;
- “child exploitation” means the employment of a child in activities from which other people derive a benefit, whether financial, sexual or political and includes activities such as child trafficking, child prostitution, child pornography and involvement of children in armed conflict;

- “child labour” means work that is mentally, physically, socially or morally dangerous and harmful to a child, and the circumstances under which it is performed jeopardises the health, safety, morals and education of a child;
- “child marriage” means any union whether formal or informal involving any person below the age of eighteen years for the purpose of living as husband and wife;
- “child neglect” means the failure to provide for the basic physical, emotional and developmental needs of a child, in areas such as health, education, emotional development, nutrition, shelter and safe living conditions, which cause or have a high probability of causing impairment to a child’s health or physical, mental, spiritual, moral or social development;
- “child pornography” means any representation through publication, exhibition, cinematography, indecent show, through information technology or by whatever means, of a child engaged in real or simulated explicit sexual activity, or any representation of sexual parts of a child for primarily sexual purposes;
- “child trafficking” means recruitment, transportation, transfer, harbouring or receipt of a child by means of threat or use of force or other forms of coercion, abduction or fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation;
- “children with special needs” means children who have long-term physical, mental, intellectual or sensory impairments which may hinder their full and effective participation in society on an equal basis with others;
- “competent authority” means an official or body or other person authorised expressly or impliedly by any enactment or otherwise to perform the act in question;
- “corporal punishment” means any punishment in which physical force is intentionally used to cause pain or injury to a child, and includes punishment which is intended to belittle, humiliate or ridicule a child;
- “currency point” has the value assigned to it in Schedule 1 to this Act;
- “custodian” means a person in whose care a child is physically placed;
- “detention centre” means a detention centre within the meaning of section 142;
- “exclusion order” means an exclusion order made under section 60;

- “foster care placement” means the placement of a child with a person who is not his or her parent or relative and who is willing to undertake the care and maintenance of the child;
- “foster parent” means a person not being the biological mother, father or relative of the child who assumes parental responsibility of the child by way of a care order;
- “guardian” means a person having parental responsibility for a child;
- “joint custody” means an order granting custody of a child to two or more persons;
- “joint guardianship” means two or more persons having parental responsibility of a child;
- “local authority” means a local government council;
- “member” means a member of the Board of Directors;
- “Minister” means the Minister responsible for children’s welfare;
- “parent” means the biological mother or father or adoptive mother or father of a child;
- “parental responsibility” means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child;
- “person in a position of authority” has the meaning assigned to it by section 114;
- “place of safety” means a place where food, protection and accommodation are provided by a fit person to a child to whom section 63 applies;
- “relative” means a person connected with another or others by blood or marriage;
- “remand home” means a place declared by the Minister to be a remand home under section 136 or any other place declared to be a remand home under any other enactment;
- “Rules Committee” means the Rules Committee provided for by section 44 of the Judicature Act;
- “significant harm” means significant harm within the meaning of section 47;
- “supervision order” means a supervision order made under Part VI of this Act and includes an interim supervision order;
- “supervisor” means the person under whose supervision a child has been placed under a supervision order or an interim supervision order;
- “violence” means any form of physical, emotional or mental injury or abuse, neglect, maltreatment and exploitation, including sexual abuse, intentional use of physical force or power, threatened or

actual, against an individual which may result in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation;

“welfare report” means a welfare report within the meaning of section 46.

PART II—RIGHTS OF CHILD

2. Definition of child

A child is a person below the age of eighteen years.

3. Welfare and guiding principles

(1) The welfare of the child shall be of paramount consideration whenever the State, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of property of a child, or the application of any income arising from that administration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the general principle that any delay in determining the matter is likely to be prejudicial to the welfare of the child.

(3) In determining any question under subsection (1), court or any other person shall have regard to—

- (a) the ascertainable wishes and feelings of the child concerned, with due regard to his or her age and understanding;
- (b) the physical, emotional and educational needs of the child;
- (c) the likely effects of any change in the circumstances of the child;
- (d) the child’s sex, age, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at the risk of suffering; and
- (f) where relevant, the capacity of the parents of the child, guardian or any other person involved in the care of the child, and in meeting the needs of the child.

4. Rights of child

- (1) Every child shall have the right to—
 - (a) live with his or her parent or guardian;
 - (b) where capable, express his or her view, belief or opinion on any matter that affects his or her well-being;
 - (c) access any information to which a parent, guardian or other person in authority deems critical to the well-being of the child;
 - (d) be registered after birth;
 - (e) a name and nationality;
 - (f) inherit property where applicable;
 - (g) safety, privacy, information and access to basic social services;
 - (h) leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;
 - (i) use any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;
 - (j) be treated without discrimination of any kind, irrespective of his or her race, colour, religion, belief, age, family status, culture, language, ethnicity, nationality, social origin, citizenship, gender, disability if any, political or social opinion, property or any other condition;
 - (k) effective legal aid including representation in all civil, criminal and administrative proceedings; and
 - (l) exercise, in addition to all the rights stated in this Act, the rights set out in the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, with appropriate modifications to suit circumstances in Uganda, that are not specifically mentioned in this Act.
- (2) Subject to subsection (1)(a), where a competent authority determines in accordance with the laws and procedure applicable that it is in the best interest of the child to separate the child from his or her parent, the best substitute care available shall be provided for the child.
- (3) Any person who contravenes the provision of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred twenty currency points or to imprisonment for a term not exceeding five years, or both.

(4) Subject to subsection (1)(e), where a child is deprived of his or her identity, the Government shall provide appropriate assistance and protection, with a view to establishing his or her identity.

(5) A person who witnesses an abuse against the rights of a child shall, as soon as possible, report the matter to the police or any authority responsible for child welfare.

(6) Any person who fails to comply with subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding twenty currency points or to imprisonment for a term not exceeding one year, or both.

5. Duty to maintain child

(1) It shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular, that duty gives a child the right to—

- (a) education and guidance;
- (b) immunisation;
- (c) adequate diet;
- (d) clothing;
- (e) shelter; and
- (f) medical attention.

(2) Any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.

6. Parental responsibility

(1) Every parent or guardian shall have parental responsibility for his or her child.

(2) Where the natural parents of a child are deceased, parental responsibility may be passed on to relatives of either parent, or by way of a care order, to the warden of an approved home, or to a foster parent.

7. Harmful customary or cultural practices

(1) A person shall not expose a child to any customary or cultural practice that is harmful to his or her health, well-being, education or social-economic development.

(2) For purposes of this section, “harmful customary or cultural practice” means any activity that is mentally, physically, socially or morally harmful to a child and includes an activity that interferes with the education and social development of a child.

(3) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred sixty-eight currency points or to imprisonment for a term not exceeding seven years, or both.

8. Harmful employment

(1) A person shall not employ or engage a child in any activity that may be harmful or hazardous to his or her health, or his or her physical, mental, spiritual, moral or social development.

(2) Subject to subsection (1), the minimum age of employment of a child shall be sixteen years.

(3) For the purpose of this section, “harmful or hazardous employment” includes work which exposes a child to physical or psychological torture, sexual abuse, work underground, work at dangerous heights or in confined spaces, work with dangerous machinery, equipment and tools, or manual handling or transportation of heavy loads, work with chemicals and dangerous substances, work under extreme temperatures, high levels of noise, or working for longer hours; or any other form of child labour which includes slavery, trafficking in persons, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and illicit activities.

9. Prohibition of sexual exploitation

(1) A person shall not engage a child in any work or trade that exposes the child to activities of a sexual nature whether paid for or not.

- (2) For avoidance of doubt, it shall be unlawful for any person to use—
- (a) inducement or coercion in the encouragement of a child to engage in any sexual activity;
 - (b) children in prostitution or other unlawful sexual practices; and
 - (c) children in pornographic performances or materials.
- (3) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or to imprisonment for a term not exceeding five years.

10. Children with disabilities and children with special needs

- (1) The parents of children with disabilities and children with special needs and the State shall take appropriate steps to see that those children are—
- (a) assessed as early as possible as to the extent and nature of their disabilities and special needs;
 - (b) offered appropriate treatment; and
 - (c) afforded facilities for their rehabilitation and equal opportunities to education.
- (2) A parent or guardian shall in liaison with a qualified medical practitioner be responsible for the identification of a child with disabilities or a child with special needs.
- (3) In the event that a child is identified with any disability or special needs, such a child shall be afforded such facilities as are necessary to address his or her needs by the Government.
- (4) A child with disabilities or a child with special needs shall have access to such education suitable to address their disabilities or special needs.
- (5) A child shall not be discriminated against on account of their disability or special needs.
- (6) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred fifty currency points or to imprisonment for a term of five years, or both.

PART III—NATIONAL CHILDREN AUTHORITY**11. Establishment of National Children Authority**

(1) There is established an authority to be known as the National Children Authority.

(2) The Authority shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its own name.

(3) The Authority may, for and in connection with its functions under this Act, purchase, hold, manage and dispose of any property, whether movable or immovable, and enter into any contract and other transactions as may be expedient and may do and suffer any other act or thing as in law may be done or suffered by a body corporate.

12. Functions of Authority

The functions of the Authority are to—

- (a) advise the Government on the formulation of a national child protection policy and child rights programmes;
- (b) create awareness, on the right of a child to be protected from abuse and develop methods of preventing child abuse;
- (c) consult the relevant ministries, local authorities, districts and divisional, public and private sector organisations and recommend all such measures as are necessary, for the purpose of preventing child abuse and for protecting and safeguarding the interests of the victims of such abuse;
- (d) recommend legal, administrative or other reforms required for the effective implementation of the national policy for the prevention of child abuse;
- (e) monitor the implementation of laws relating to all forms of child abuse;
- (f) monitor the progress of all investigations and criminal proceedings relating to child abuse;
- (g) recommend measures to address the humanitarian concerns relating to children affected by armed conflict and the protection of such children, including measures for their mental and physical well-being and their re-integration into society;

- (h) take appropriate steps where necessary for securing the safety and protection of children involved in criminal investigations and criminal proceedings;
- (i) receive complaints from the public relating to child abuse and where necessary, to refer such complaints to the appropriate authorities;
- (j) advise, coordinate and assist the Government and local authorities, and non-governmental organisations in campaigns against child abuse;
- (k) prepare and maintain a national data base on children;
- (l) in consultation with the relevant ministries and other authorities, supervise and monitor all religious and charitable institutions which provide child care services to children;
- (m) conduct, promote and coordinate research in relation to child abuse and child protection;
- (n) provide information and education to the public regarding the safety of children and the protection of the interests of the child;
- (o) engage in dialogue with all sections connected with tourism with a view to minimising the opportunities for child abuse;
- (p) organise and facilitate workshops, seminars and discussions, relating to child abuse;
- (q) liaise and exchange information with foreign Governments and international organisations, with respect to detection and prevention of all forms of child abuse.

13. Board of Directors and its functions

- (1) There is established a Board of Directors as the governing body of the Authority, which shall consist of the following
 - (a) a chairperson, who shall be appointed by the Minister;
 - (b) one representative of the Ministry responsible for social development;
 - (c) one representative of the Ministry responsible for education;
 - (d) one representative of the Ministry responsible for internal affairs;
 - (e) the Executive Director of the Authority who shall be the secretary to the Board and shall be an *ex officio* member of the Board.
- (2) The Minister may appoint two other persons who are not public officers as additional members of the Board on the basis of their special knowledge and experience in children affairs, provided that the persons being

appointed have no part-time or full time activity or interest which conflicts with, or impairs fulfilment of their duties as Board members.

(3) The Board shall be responsible for monitoring and protection of the best interests of the child and shall determine policies relating to staffing and procurement of the Authority.

(4) The Board shall, in utilising the funds of the Authority, give priority to the funding and implementation of programmes for children with special needs and shall not divert the funds for such programmes.

(5) The Minister may give directions to the Board regarding the performance of its functions, and the Board shall comply with such directions.

(6) The provisions of Schedule 2 to this Act shall apply to the meetings of the Board and other matters provided for in that Schedule.

14. Qualifications for appointment

The members of the Board, other than the *ex officio* members, shall be appointed from among persons who qualify for appointment by virtue of their professional knowledge and experience in children affairs or in such other matters of children as the Minister may determine.

15. Tenure of office

A member of the Board other than an *ex officio* member shall hold office—

- (a) on such terms and conditions as are specified in the instrument of appointment;
- (b) in the first instance, for a period not exceeding three years and shall be eligible for re-appointment only for a subsequent period not exceeding three years.

16. Minister's power to suspend or terminate appointment

The Minister may terminate or suspend the appointment of a member

- (a) for the member's inability to perform the functions of his or her office;
- (b) for misbehaviour;
- (c) if the member is declared or becomes bankrupt or insolvent;

- (d) if the member is convicted of a criminal offence in respect of which a penalty not exceeding six months imprisonment may be imposed;
- (e) if the member, without prior permission of the Chairperson or without reasonable cause to the satisfaction of the Minister, is absent from six meetings of the Board in any financial year; or
- (f) for any other sufficient cause.

17. Resignation of members

(1) A member of the Board may resign his or her office by letter addressed to the Minister and the resignation shall be effective from the date on which it is received by the Minister.

(2) Where a member of the Board dies, resigns or is removed from office, the Minister shall appoint another member in his or her place.

18. Common seal of Authority

(1) The common seal of the Authority shall be in such form as the Board may determine.

(2) The application of the common seal on any document shall be authenticated by the signature of the Chairperson and one other member of the Board; and in the absence of the Chairperson, any two members of the Board authorised by the Board shall authenticate the application of the seal on behalf of the Chairperson.

(3) The signature of the Chairperson and the other members of the Board shall be independent of the signing by any other person who may sign any such document as a witness.

(4) A document purporting to be an instrument issued by the Board and to be sealed by the common seal of the Board authenticated in the manner prescribed by subsection (2) shall be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown.

19. Remuneration or allowances of members

The members of the Board shall be paid such remuneration or allowances out of the funds of the Authority at such rates as may be determined by the Minister.

20. Specialised committees

(1) The Board shall establish the following specialised committees for the efficient performance of its functions under this Act—

- (a) a specialised committee on capacity building;
- (b) a specialised committee on policy, research, planning and data management;
- (c) a specialised committee on child development and participation; and
- (d) a specialised committee on child survival.

(2) The Board may also set up such other specialised committees as it may consider necessary for the efficient performance of its functions under this Act.

(3) Every specialised committee set up under this section shall consist of three members of the Board including a Chairperson.

(4) The Board may prescribe the procedure of a specialised committee.

21. Functions of specialised committees

(1) The functions of each specialised committee are to recommend and report to and advise the Board on all policy matters relating to the committee's specific sector of child survival, development and protection.

(2) The Board may also delegate any of its functions to a specialised committee, subject to any limitations imposed by the Authority.

*Management and staff of Authority***22. Secretariat**

The Authority shall have a secretariat to assist it in carrying out its functions under this Act.

23. Functions of secretariat

- (1) The functions of the secretariat shall be—
 - (a) to review and advise on policies and strategies regarding children;
 - (b) to establish and advise on development priorities and targets and the selection of projects in the social service sector and other areas concerning children;
 - (c) to review and prepare annual plans of action and budgets for the implementation of the programme of action and other child-based programmes;
 - (d) to undertake analytical social and economic studies relating to the needs and problems of children;
 - (e) to liaise with Ministries, institutions, non-governmental organisations and donor agencies concerned with children with a view to coordinating their activities and providing them with technical guidance and direction;
 - (f) to carry out such other functions within the objects and functions of the Authority as may be necessary or expedient for the proper implementation of the provisions of this Act as the Authority may direct.
- (2) The carrying out of the functions of the secretariat shall be subject to the directions of the Board on matters of policy and shall be deemed to be done on behalf of the Authority.

24. Executive Director

- (1) The Authority shall have an officer to be designated the Executive Director.
- (2) The Executive Director shall be appointed by the Minister in consultation with the Board and shall hold office upon such terms and conditions as may be specified in the instrument of appointment.

(3) The Executive Director shall be a person who has substantial experience in, and knowledge of, children affairs.

(4) The Minister, in consultation with the Board, may remove the Executive Director from office for—

- (a) inability to perform the functions of his or her office by reason of infirmity of body or mind;
- (b) misbehaviour; or
- (c) any other sufficient cause.

(5) Where the Executive Director is temporarily incapacitated by illness or other cause from the performance of his or her functions or where the office of the Executive Director is vacant; the Deputy Executive Director shall act as Executive Director, for the duration of the incapacity or until the vacancy is filled.

(6) Where it is not possible for the Deputy Executive Director to act as Executive Director, the Minister may, on the recommendation of the Board, appoint an officer of the Authority qualified in terms of subsection (3) to perform the functions of the Executive Director for the duration of the Executive Director's incapacity or until the vacancy in the office of the Executive Director is filled.

25. Functions of Executive Director

(1) The Executive Director shall be the head of the Authority and head of the secretariat.

(2) The Executive Director shall act as the Secretary to the Board.

(3) The Executive Director shall, subject to the control of the Board, be responsible for—

- (a) the day-to-day administration of the affairs of the Authority, and of the secretariat;
- (b) the funds and properties of the Authority;
- (c) the organisation, discipline and control of the employees of the Authority and of persons engaged by the Authority.

(4) The Executive Director shall, unless the Board in any particular case otherwise directs on grounds stated by it in writing, be entitled to attend

all meetings of the Board but shall not have the right to vote on any matter to be decided by the Board at any meeting.

26. Deputy Executive Director

(1) The Authority shall have an officer to be designated the Deputy Executive Director.

(2) The Deputy Executive Director shall be appointed by the Minister in consultation with the Board and shall hold office upon such terms and conditions as may be specified in the instrument of appointment.

(3) The Deputy Executive Director shall be a person who has substantial experience in and knowledge of, matters relating to children.

(4) The Minister, in consultation with the Authority, may remove the Deputy Executive Director from office for—

- (a) inability to perform the functions of his or her office by reason of infirmity of body or mind or for any other sufficient cause; or
- (b) misbehaviour.

(5) The Deputy Executive Director shall assist the Executive Director in carrying out his or her functions under this Act and shall carry out such specific functions as the Executive Director or the Board may direct.

27. Other employees

(1) The Board may, on the advice of the Executive Director, appoint such other employees as may be necessary for the proper and efficient discharge of the functions of the Authority under this Act.

(2) The employees of the Authority appointed under this section shall hold office upon such terms and conditions as the Board may determine.

(3) Without prejudice to the general effect of subsection (2), the Board may provide for the payment to its employees of salaries, allowances, pension or other terminal benefits and may require them to make contribution to any pension, provident fund or superannuation scheme.

(4) The Board may, subject to conditions and restrictions imposed by it, delegate to the Chairperson or the Executive Director any of its powers to appoint or remove any employee under this section.

(5) Public officers may be seconded to the service of the Authority on such terms and conditions as may be agreed between the Authority and the employers of those public officers.

28. Experts and consultants

(1) The Board may, acting on the advice of the Executive Director, engage the services of experts and consultants in respect of any of the functions of the Authority.

(2) Experts and consultants engaged under this section may be paid such fees and allowances and may be afforded such facilities as the Authority may determine.

Financial and Other Matters

29. Funds

- (1) The funds of the Authority shall consist
- (a) money appropriated by Parliament;
 - (b) grants from the Government;
 - (c) loans from the Government or from any person or organisation within or outside Uganda;
 - (d) grants, gifts and donations that may be received by the Authority from any source within or outside Uganda; and
 - (e) any sums that may become payable to the Authority in the discharge of its functions under this Act.

- (2) All income and money of the Authority shall be deposited to the credit of the Authority in a bank approved by the Accountant General and shall not be withdrawn except with the approval of, and in the manner determined by, the Board.

30. Borrowing powers

(1) The Authority may, with the prior approval of the Minister responsible for finance, borrow sums of money as may be required by it for meeting any of its obligations or discharging any of its functions under this Act.

(2) A loan or credit facility obtained by the Authority under this section shall be approved by Parliament, and when so approved, the principal sum and interest of that loan shall be a charge on the Consolidated Fund.

31. Estimates of income and expenditure

(1) The Executive Director shall, not later than three months before the end of each financial year, cause to be prepared and submitted to the Board for its approval, estimates of the income and expenditure of the Authority for the next following financial year.

(2) No expenditure shall be made out of the funds of the Authority unless the expenditure is part of the budget approved by the Board under the estimates for the financial year in which the expenditure is to be incurred.

32. Financial year

The financial year of the Authority shall be the period of twelve months commencing on the 1st day of July and ending on the 30th day of June of the following year.

33. Accounts

(1) The Authority shall keep proper books of accounts of all its income and expenditure and proper records in relation to them.

(2) Subject to any directions given by the Minister, the Authority shall cause to be prepared in respect of each financial year, and not later than three months after the close of the financial year, a statement which shall include a report on the performance of the Authority during that financial year, and the statement shall comprise—

(a) a balance sheet and a statement of income and expenditure of the Authority in respect of that financial year; and

- (b) any other information in respect of the financial affairs of the Authority as the Minister may, in writing, require.

34. Audit

(1) The accounts of the Authority shall, in respect of each financial year, be audited by the Auditor General or by an auditor appointed by the Auditor General.

(2) The Authority shall ensure that within four months after the close of each financial year the statement of account described in section 33 is submitted for auditing.

(3) The Auditor General or any auditor appointed by the Auditor General shall have access to all books of accounts, vouchers and other financial records of the Authority and be entitled to have any information and explanation required by him or her in relation to them as he or she may deem fit.

(4) The auditor shall, within two months after receipt of the statement of account under subsection (2), audit the accounts and deliver to the Authority a copy of the audited accounts together with his or her report on them stating any matter which in the opinion of the auditor should be brought to the attention of the Minister.

(5) The auditor shall deliver to the Minister a copy of the audited accounts together with his or her report on them.

35. Investment of surplus funds

Any funds of the Authority not immediately required for any purpose under this Act shall be invested in such manner as the Board may, with the approval of the Accountant General, determine.

PART IV—SUPPORT FOR CHILDREN BY LOCAL AUTHORITIES

36. Local councils to safeguard children and promote reconciliation between parents and children

(1) It is the general duty of every local government council from the village to the district level—

- (a) to safeguard and promote the welfare of children within its area; and
- (b) to designate one of its members to be the person responsible for the welfare of children; and this person shall be referred to as the secretary for children's affairs.

(2) The secretary for children's affairs shall, in the exercise of his or her functions in relation to the welfare of children, be assisted by such officers of the local government council as the local government council may determine.

(3) In particular, every local government council shall mediate in any situation where the rights of a child are infringed and especially with regard to the protection of a child, the child's right to succeed to the property of his or her parents and all the rights accorded to a child in section 4.

(4) The power given to the local government council to protect the property of a child shall not include any powers of distribution of the property by the local government council.

(5) A local government council shall keep a register of disabled children within its area of jurisdiction and give assistance to them whenever possible in order to enable those children to grow up with dignity among other children and to develop their potential and self-reliance.

(6) Each local government council shall provide assistance and accommodation for any child in need within its area of jurisdiction who appears to the committee to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge.

(7) Each local government council shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where he or she

ordinarily resides; and where the committee does not succeed, it shall refer the matter to a probation and social welfare officer or to the police.

37. Duty to report infringement of rights of children

(1) Any member of the community who has evidence that the rights of a child are being infringed or that a parent, a guardian or any person having custody of a child is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education shall report the matter to the local government council of the area.

(2) The secretary for children's affairs may, upon receiving the report, summon the person against whom the report was made under subsection (1) to discuss the matter; and a decision shall be made by the secretary for children's affairs in the best interests of the child.

(3) Where the person against whom the report is made refuses to comply with the decision made under subsection (2), the secretary for children's affairs shall refer the matter to the local council court which shall adjudicate the matter and may—

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

38. Appeals

Subject to this Act, the local council court at village level shall be the court of first instance in matters under this Part and appeals from that court shall follow the order of appeals as set out in section 152.

PART V—FAMILY AND CHILDREN COURT

39. Establishment of family and children court

(1) There shall be a court to be known as the family and children court in every district, and any other lower government unit designated by the Chief Justice by notice in the *Gazette*.

(2) A magistrate not below the grade of magistrate grade II shall be assigned to preside over the family and children court.

40. Jurisdiction of family and children court

(1) A family and children court shall have power to hear and determine—

- (a) criminal charges against a child, subject to sections 138 and 139; and
- (b) applications relating to child care and protection.

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

41. Venue of family and children court

A family and children court shall, whenever possible, sit in a different building from the one normally used by other courts.

42. Procedure in family and children court

(1) The procedure of the family and children court in all matters shall be in accordance with rules of court made by the Rules Committee for the purpose, but subject to the following—

- (a) the court shall sit as often as necessary;
- (b) proceedings shall be held in camera;
- (c) proceedings shall be as informal as possible and by inquiry rather than by exposing the child to adversarial procedures;
- (d) parents or guardians of the child shall be present whenever possible;
- (e) the child shall have a right to legal representation; and
- (f) the right to appeal shall be explained to the child.

(2) Apart from members and officers of the court, only the following persons may at the discretion of the court attend any sitting of a family and children court—

- (a) parties to the case before the court, their advocates, witnesses and other persons directly concerned in the case;
- (b) parents or guardians of the child before the court;
- (c) a probation and social welfare officer; and

- (d) any other person whom the court authorises to be present.

43. Care or supervision order to be of benefit to child

A family and children court shall not make a supervision order or a care order unless it considers that doing so would be beneficial to the child.

44. Rules of court

The Rules Committee may make rules prescribing—

- (a) the procedure to be followed in a family and children court and, in particular, as to the recording of evidence and the manner of arriving at and recording of findings and orders; and
- (b) the manner in which a family and children court shall be constituted.

PART VI—CARE AND PROTECTION OF CHILDREN

45. Supervision orders and care orders

On the application of a probation and social welfare officer or an authorised person, a family and children court may make—

- (a) a supervision or interim supervision order placing a child under the supervision of a probation and social welfare officer while leaving the child in the custody of his or her parents or relatives; or
- (b) a care order or interim care order, placing a child in the care of the warden of an approved home or with an approved foster parent in accordance with the Foster Care Placement Rules in Schedule 3 to this Act.

46. Welfare reports

(1) The family and children court shall require a written welfare report in respect of a child before making a supervision order or a care order.

(2) It shall be the duty of the probation and social welfare officer to prepare a welfare report, and he or she shall comply with the request of a family and children court whenever required to produce a welfare report.

(3) The probation and social welfare officer shall make a home visit and interview the parents of the child concerned before making a welfare report.

(4) Where the child in respect of whom the welfare report is made is of sufficient age and understanding, he or she shall be interviewed by the probation and social welfare officer.

(5) A welfare report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the family and children court.

(6) The family and children court shall take the information contained in the welfare report into account in as far as it is relevant to the order being made.

(7) If the family and children court is not satisfied with any recommendation made by the probation and social welfare officer in the welfare report, it shall state and record its reasons for not complying with the recommendation.

47. Grounds for making supervision or care order

A family and children court may only make an order under this Part, if it is satisfied that

- (a) the child concerned is suffering or is likely to suffer significant harm; and
- (b) that the harm, or probability of harm, is attributable to—
 - (i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give to a child; or
 - (ii) the child's being beyond parental control.

Supervision order

48. Application for supervision order

Before making an application for a supervision order, the probation and social welfare officer or an authorised person shall be satisfied that—

- (a) the local government councils from village to subcounty level where the child resides have dealt with the matter without success; and
- (b) there is need for continuous supervision enforced by a court order.

49. Duties of supervisor while supervision order is in force

The duties of a supervisor while a supervision order is in force are—

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

50. Duration of supervision order

(1) A supervision order shall be made for one year but may be extended for one further year on the application of the probation and social welfare officer.

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

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

51. Probation and social welfare officer to enforce orders

The duty to enforce a supervision order shall be vested in the probation and social welfare officer who applies for the order.

52. Requirements as to change of address and visits

A supervision order shall require the person with whom the child lives—

- (a) to inform the supervisor of any change of his or her address; and
- (b) to allow the supervisor to visit the child at his or her home.

*Care order***53. Care order**

(1) A family and children court may, on the application of a probation and social welfare officer or an authorised person, make a care order or an interim care order placing a child in the care of the warden of an approved home or with foster parents.

- (2) An application for a care order may only be made—
- (a) after all possible alternative methods of assisting the child have been tried without success and the significant harm from which the child is suffering or is likely to suffer requires his or her removal from where he or she is living; or
 - (b) where the danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

54. Purpose of care order

The object of a care order is—

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

55. Duration of care order

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

(2) A care order shall be reviewed at least once in each year by the probation and social welfare officer who may make recommendations as to steps to be taken having regard to the outcome of the review.

56. Duty to enforce care order

The duty to enforce the care order shall be vested in the probation and social welfare officer who applies for the order.

57. Parental responsibility of warden or foster parent

(1) The warden of the approved home or the foster parent with whom the child is placed has parental responsibility for the child while the child is with him or her.

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

(3) The warden of the approved home or the foster parent with whom the child is placed shall ensure that the development of the child while in the approved home or with a foster family, particularly his or her health and education, is attended to.

(4) It is the responsibility of the warden of the approved home to communicate with the parents or guardians of the child, to inform them of the progress of the child and to arrange through the probation and social welfare officer for a trial return home by the child as soon as it is appropriate.

58. Special duties of probation and social welfare officer in relation to care order

(1) The probation and social welfare officer shall, before and after the termination of the care order, work with the parents, guardians or relatives, to whom the child is expected to return after the termination of the care order.

(2) The duties of the probation and social welfare officer under this section include child and family counselling, before, during and after the return of the child and gaining the assistance of those in the community who can help in the process of resolving the problems which caused the care order to be made.

(3) In carrying out his or her duties under this section, the probation and social welfare officer shall bear in mind the wishes of the child.

(4) When a child is placed with a foster family, it shall be the responsibility of the probation and social welfare officer to communicate with the guardians or parents of the child, to inform them of the progress of the child and to arrange a trial period for the child to be at home as soon as it is appropriate.

(5) The probation and social welfare officer shall visit the child during the trial period at home and make plans for the future of the child in consultation with the foster parents.

59. Interim supervision order and interim care order

(1) A family and children court may, on hearing information on oath by a probation and social welfare officer, or an authorised person, that a child is suffering or is likely to suffer significant harm, make an interim supervision order or an interim care order in respect of the child.

(2) An interim order may not be made unless a child is suffering or is likely to suffer significant harm as described in section 47.

(3) The maximum period for an interim order is three months, but the court may prescribe a lesser period.

(4) If the probation and social welfare officer wishes to recommend a full care or supervision order, he or she shall present a report to the court during the period of the interim order.

60. Exclusion order

(1) The family and children court may, in addition to, or in proceedings for a supervision order, care order, interim supervision or interim care order, make an exclusion order prohibiting a named person from having contact with the child or with the child and persons looking after the child.

(2) Before making an exclusion order, the family and children court shall be satisfied that it is necessary for the protection of the child and to safeguard the welfare of the child.

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

61. Enforcement of exclusion order

(1) A person who breaches an exclusion order commits an offence and shall be dealt with in accordance with this Act, except that the probation and social welfare officer may proceed on behalf of the State against the offender.

(2) A family and children court may vary or discharge an exclusion order on the application of the person named in the order or of the child concerned.

62. Search and production order

(1) A family and children court may, in proceedings for an application for a care order, on hearing information on oath, make a search and production order authorising the probation and social welfare officer, with or without a police officer, to enter any premises specified in the order to search for and remove to a place of safety, any child whom the probation and social welfare officer believes or suspects is suffering or is likely to suffer significant harm.

(2) Before searching the specified premises, the probation and social welfare officer holding the order shall inform the secretary for children's affairs of the local government council of the area.

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

63. Removal of child under emergency protection

(1) A probation and social welfare officer, any member of the police force or an authorised person who has reasonable grounds for believing that a child in his or her area is suffering or is likely to suffer significant harm, after notifying the secretary for children's affairs of the local government council in writing, may take the child and place him or her under emergency protection in a place of safety for a maximum period of forty-eight hours.

(2) The probation and social welfare officer or the authorised person may be assisted by a police officer in removing and taking the child to a place of safety.

(3) As soon as possible, and in any case within the period of forty-eight hours referred to in subsection (1), the probation and social welfare officer, police officer or authorised person shall take the child to the secretary for children's affairs of the local government council of the area or before a family and children court and shall make a report, taking into account the wishes of the child.

(4) A person who places a child under emergency protection may, if he or she deems it necessary, ensure the provision of medical attention or treatment, including medical examination of the child.

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

64. Offence to remove child from place of safety without authority

A person who without reasonable cause removes a child placed under emergency protection from a place of safety without the authority of the person in whose custody the child is, commits an offence and shall be dealt with in accordance with this Act.

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

Any of the following persons may apply for a supervision or care order to be discharged or varied

- (a) the child concerned;
- (b) the child's parent or guardian;
- (c) a person who has parental responsibility;
- (d) a person with whom the child was living before the order was made; and
- (e) the probation and social welfare officer.

66. Duty of probation and social welfare officer to investigate

Where a probation and social welfare officer is informed or has reasonable cause to believe that a child who lives or is found in his or her district is suffering or is likely to suffer significant harm, the probation and social

welfare officer shall make inquiries to decide whether to act to safeguard or promote the welfare of that child.

67. Requirement to disclose information

When a family and children court is satisfied that information concerning a child is being withheld by any person, it may summon that person to disclose the information.

68. Medical examination of child

(1) The family and children court shall have power to order that a child be medically examined if there is any reason to believe that the child is in need of the examination, or for some reason requires a report concerning the physical or mental condition of the child.

(2) The family and children court may request in writing a medical officer to conduct the examination.

69. Protection of children from all forms of violence

(1) Every child has a right to be protected against all forms of violence including sexual abuse and exploitation, child sacrifice, child labour, child marriage, child trafficking, institutional abuse, female genital mutilation, and any other form of physical or emotional abuse.

(2) A person who on reasonable grounds believes that a child has been abused or is in imminent danger which may result in physical injury, sexual abuse, deliberate neglect, or is in need of care and protection may report to a designated child protection organisation or authority.

(3) Notwithstanding subsection (2), it shall be mandatory for the following persons to report on any matter which affects the well-being of a child under their charge—

- (a) a medical practitioner;
- (b) a social worker;
- (c) a teacher; and
- (d) local councillor at LC I level.

(4) The designated child protection organisation, probation and social welfare officer, or police officer or any other responsible person to whom a report has been made shall—

- (a) ensure the safety and well-being of the child concerned, if the safety or well-being of the child is at risk;
- (b) make an initial assessment of the report;
- (c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and
- (d) if the report is substantiated by such investigation, initiate proceedings in terms under this Act for the protection of the child.

(5) A designated child protection organisation to which a report has been made must report the matter to the probation and social welfare officer.

(6) Notwithstanding subsection (4), the probation and social welfare officer shall monitor the progress of all matters reported.

(7) The designated child protection organisation, probation and social welfare officer or a police officer who has conducted an investigation may—

- (a) take measures to assist the child, or refer the child to protective services including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, and problem solving; or
- (b) initiate action for the long-term protection of the child if it is assessed that the current environment in which the child lives poses significant threat or risk to the child.

(8) The designated child protection organisation or probation and social welfare officer who has conducted an investigation shall report the findings to the police.

(9) For the purpose of this section, the designated child protection organisation includes local council, medical practitioner, probation and social worker.

70. Prevention and intervention programmes

(1) The Minister shall, after consultation with relevant persons, develop a comprehensive national strategy aimed at securing the provision of

prevention and early intervention programmes to families, parents, caregivers and children across the country.

- (2) Prevention and early intervention programmes shall focus on
 - (a) preserving a child's family structure;
 - (b) developing appropriate parenting skills and the capacity of parents and caregivers to safeguard the well-being and best interest of the child, including the promotion of positive, non-violent forms of discipline;
 - (c) developing appropriate parenting skills and the capacity of parents and caregivers to safeguard the well-being and best interest of children with disabilities and chronic diseases;
 - (d) promoting appropriate interpersonal relationships within the family;
 - (e) providing psychosocial, rehabilitation and therapeutic programmes for children;
 - (f) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
 - (g) preventing recurrence of problems in the family environment that may harm children or adversely affect their development;
 - (h) avoiding the removal of a child from the family environment; and
 - (i) promoting the participation of families, parents, caregivers and children in identifying and seeking solutions to their problems.

71. Rights to protective services

- (1) Every child shall be entitled to access protective services.
- (2) The Ministry responsible for children affairs shall, in consultation with relevant government institutions, ensure that designated child protection services are available to, and accessible by children.
- (3) Designated child protection services include
 - (a) services aimed at supporting—
 - (i) the proceedings of children court; and
 - (ii) the implementation of court orders;
 - (b) services related to—
 - (i) prevention and early intervention child care services;

- (ii) the reunification of children in alternative care with their parents;
- (iii) the integration of children into alternative care arrangements;
- (iv) the placement of children in alternative care;
- (v) the adoption of children, including intercountry adoption;
- (vi) the carrying out of investigations and the making of assessments, in case of suspected abuse, neglect or abandonment of children;
- (vii) intervention and removal of children in appropriate cases;
- (viii) the drawing up of individual development plans or plans for children removed, or at risk of being removed, from their families;
- (ix) establishing a national child helpline facility;
- (x) any other social work services as may be prescribed by the Minister by statutory instrument; and
- (xi) protection of children at all stages of the justice process, including before, during and after trial and holding proceedings in camera during trial for child offenders and child victims and witnesses.

(4) Notwithstanding subsection (3)(b)(ix), all firms, institutions of child care, organisations and members of the public who interface with children shall report to the relevant authority any abuse of a child within their community.

(5) For the purpose of this section, “relevant authority” means a local council.

PART VII—FOSTER CARE PLACEMENTS

72. Conditions for foster care placements

(1) Where a child has been committed to an approved home under a care order, the district probation and social welfare officer, in conjunction with the warden of the approved home, may place the child with a person who is willing to undertake the care and maintenance of the child, in this Part referred to as a “foster parent”.

(2) An application to foster a child shall be made to the district probation and social welfare officer, except that a relative of a child without

a parent or guardian may foster the child without first applying to the district probation and social welfare officer, and this Part shall not apply to him or her.

(3) A foster parent in whose care a child is committed shall, while the child remains in his or her care, have the same responsibilities in respect of the maintenance of the child as if he or she were the parent of the child.

(4) Foster care placements shall be made in accordance with the Rules set out in Schedule 3 to this Act.

PART VIII—GUARDIANSHIP

73. Legal guardianship

(1) This Part applies to the guardianship of children in Uganda by citizens of Uganda.

(2) A person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship.

74. Application for legal guardianship

Application for legal guardianship of a child—

- (a) may be made by any person above the age of eighteen years;
- (b) shall be made to the High Court;
- (c) shall be by petition in Form I set out in Schedule 4 to this Act; and
- (d) shall be accompanied by a report of a probation and social welfare officer.

75. Customary guardianship

(1) Family members may appoint a guardian of a child in accordance with their customs, culture or tradition in case—

- (a) both parents of the child are deceased or cannot be found;
- (b) the surviving parent is incapacitated; or
- (c) the child has no guardian or any other person having parental responsibility for him or her.

(2) A guardian appointed under subsection (1) shall act as trustee in respect of the property of that child.

(3) Any person who misappropriates the property of a child commits an offence and is liable, on conviction, to a fine not exceeding one hundred fifty currency points or to imprisonment for a term not exceeding five years, or both.

(4) For purposes of this section, “customary guardianship” means parental responsibility of a Ugandan child by a Ugandan citizen resident in Uganda in accordance with the customs, culture or tradition of the respective people.

76. Appointment of guardian by agreement

(1) The parent of a child may, by agreement or deed, appoint any person to be a guardian.

(2) The appointment made under subsection (1) shall not have effect unless the agreement or deed is dated and signed by the parent in the presence of two witnesses, one of whom shall be a probation and social welfare officer, and the other a local councillor at village level.

77. Joint guardianship

(1) The court may appoint two or more persons to act as joint guardians of a child.

(2) Where two or more persons appointed to act as joint guardians in respect of a child are unable to agree on any matter affecting the welfare of a child, any of them may apply to the court for its direction.

78. Conditions for guardianship

- (1) The court shall before making a guardianship order satisfy itself that
- (a) there is no known relative or next of kin of the child;
 - (b) the relative and next of kin are unwilling or unable to take parental responsibility of the child;
 - (c) all alternative care options available to the child have been exhausted;
 - (d) the child is suffering or likely to suffer significant harm under present custody;

(e) consideration has been given to the wishes of the child, having regard to the age and understanding of the child, where in the view of the court, the child is able to understand the guardianship proceedings; and

(f) where the child is twelve years of age or above, his or her consent to the guardianship has been obtained, unless it is impossible for the child to express his or her consent.

(2) The court shall before making a guardianship order satisfy itself that the applicant—

- (a) has continuously lived in Uganda for at least three months;
- (b) does not have a criminal record; and
- (c) has a recommendation concerning his or her ability as a guardian from a probation and social welfare office or other competent authority in Uganda or in the applicant's country of residence.

(3) The court shall not make an order for guardianship, unless it is satisfied that the applicant has not made, given or agreed to make any payment or other reward in consideration of the guardianship.

(4) The court may dispense with any consent required under this section if satisfied that the person whose consent is to be dispensed with has abandoned, or deserted the child, cannot be found or is incapable of giving consent or being a person responsible for the support of the child, has persistently neglected or refused to contribute to the support of the child.

(5) The court may, in addition to the report of the probation and social welfare officer, require a local authority, the probation and social welfare officer in the relevant district in Uganda or any other person to make a report in respect of the guardianship application.

79. Guardianship order

(1) The court may, if satisfied that the applicant has fulfilled the conditions for guardianship under this Part, make an order for the guardianship of the child.

(2) Except where the application is made jointly by spouses, a guardianship order shall not be made to authorise more than one person as guardian of a child.

80. Effect and duration of guardianship order

(1) A guardianship order shall vest parental responsibility of the child in the guardian.

(2) A guardianship order shall remain in force until the child in relation to whom it is issued attains the age of eighteen years.

(3) A guardianship order shall cease to apply where the guardian dies or is suffering from infirmity of body or mind.

81. Registration of guardianship order

(1) Every person to whom a guardianship order is granted shall within fourteen days after the grant of the order, register the order with the National Identification and Registration Authority and the Ministry responsible for children affairs and submit a copy of the order to the Authority.

(2) The registration of a guardianship order shall be in Form 2 set out in Schedule 4 to this Act.

82. Child placement organisation

(1) Every child placement organisation outside Uganda shall—
(a) submit an annual progressive report to the probation and social welfare officer and to the Ugandan Diplomatic Mission in the country of residence detailing the welfare of the child, the adoption of the child to his or her new environment and any changes in the guardian's status of living; and
(b) submit any change of address of the child placement organisation mentioned in subsection (1)(a), where the guardian changes his or her physical address.

(2) The probation and social welfare officer shall within one month of receiving the reports mentioned in subsection (1)(a) transmit them to the court that made the guardianship order and to the Minister responsible for children affairs in Uganda.

83. Revocation of guardianship order

- (1) A probation and social welfare officer or a relative of a child under guardianship may apply to court to revoke a guardianship order.
- (2) The court may revoke a guardianship order where—
 - (a) it is satisfied that the guardianship order was obtained by fraud or misrepresentation;
 - (b) the guardian has not complied with the conditions issued by the court in respect of the child or the guardianship; or
 - (c) the guardian has neglected the parental responsibility over a child.
- (3) Where the court revokes a guardianship order, the court shall upon considering submissions by the Minister responsible for children affairs, place the child under alternative care.

84. Appeals

A person aggrieved by a decision of the High Court under this Part, may appeal to the Court of Appeal.

85. Offences by administrator of estate of child

- (1) An administrator of the estate of a child who—
 - (a) neglects, misappropriates, wastes or occasions loss or damage to any asset forming part of the estate of a child;
 - (b) fails to submit to court, or the parent or guardian of the child any account or inventory required by law; or
 - (c) produces an inventory or an account which is false in any material particular, knowing it to be so,commits an offence and is liable, on conviction, to a fine not exceeding one hundred twenty currency points or to imprisonment for a term not exceeding five years, or both.

- (2) The court may in addition to the penalty imposed under subsection (1) require the person so convicted to make good any loss or damage caused.
- (3) The court shall exercise its discretion in determining the modalities of accountability in guardianship matters.

PART IX—ADOPTION**86. Jurisdiction**

- (1) An application for an adoption order may be made—
 - (a) to a chief magistrate's court within the jurisdiction of which the applicant or the child resides where both the child and the applicant are citizens of Uganda; and
 - (b) to the High Court where the child or the applicant is not a citizen of Uganda, and the court may, subject to this Act, grant the application.
- (2) A child need not be a Ugandan to be adopted under this Act.

*Prerequisites for adoption***87. Restrictions and conditions**

- (1) An adoption order may be granted to a sole applicant or jointly to spouses where
 - (a) the applicant or at least one of the joint applicants has attained the age of twenty-five years and is at least twenty-one years older than the child; and
 - (b) in the case of an application by one of the spouses, the other has consented to the adoption.
- (2) The court may dispense with the consent required under subsection (1)(b) if the spouse whose consent is required cannot be found or is incapable of giving consent, or the spouses are separated and living apart and the separation is likely to be permanent.
- (3) An adoption order shall not be made in favour of a sole male applicant in respect of a female child, or in favour of a sole female applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order.
- (4) The application shall not be considered unless the applicant has fostered the child for a period of not less than twelve months under the supervision of a probation and social welfare officer.

(5) The probation and social welfare officer shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or the local authority to make a report in respect of the adoption application.

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

88. Inter-country adoption

(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she—

- (a) has stayed in Uganda for at least one year;
- (b) has fostered the child for at least one year under the supervision of a probation and social welfare officer;
- (c) does not have a criminal record;
- (d) has a recommendation concerning his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority; and
- (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.

(2) For the purposes of an application to which this section applies, the probation and social welfare officer referred to in subsection (1)(b) shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or authority to make a report in respect of the application.

(3) The restrictions and conditions in section 87, other than subsections (4) and (5), apply to an application to which this section relates.

(4) The court may, in exceptional circumstances, waive any of the requirements specified in subsection (1).

(5) The following persons may facilitate the courts of law with information to protect the best interest of the child—

- (a) advocates;
- (b) probation and social welfare officers; or
- (c) a guardian *ad litem* for children.

(6) Notwithstanding the provisions of this section, inter-country adoption shall be considered as the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services.

(7) For the purpose of this section, “continuum of comprehensive child welfare services” means a broad range of preventive services and community-based family-centered alternative care options which may include—

- (a) family preservation;
- (b) kinship care;
- (c) foster care; and
- (d) institutionalisation.

89. Rescission of adoption order

(1) The court may, in exceptional circumstances, rescind an adoption order on application by—

- (a) the adopted child;
- (b) a parent of the adopted child or other person who was a guardian in respect of the child immediately before the adoption;
- (c) the adoptive parent of the child;
- (d) any person who consented to the adoption;
- (e) the Minister, in the case of an inter-country adoption; or
- (f) any other person with justifiable reason.

(2) An adoption order may be rescinded only if—

- (a) rescission of the order is in the best interest of the child; or
- (b) the order was obtained through fraud or misrepresentation.

(3) Where an adoption order is rescinded—

- (a) the adoption order shall cease to apply in respect of the child concerned; and
- (b) all responsibilities, rights and other matters which had been previously terminated by the adoption order in respect of the child shall be restored.

(4) When rescinding an adoption order, the court may—

- (a) make an appropriate placement order in respect of the child concerned;

- (b) order that the child be kept in temporary safe custody until an appropriate placement order can be made; or
- (c) make an ancillary order where necessary for restoration of the child.

90. Consent

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

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

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

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

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

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

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

(8) The court may also request a probation and social welfare officer to prepare a report to assist it to determine whether any person who is not a parent of the child has any rights or obligations in respect of the child and whether the consent of that person ought to be obtained before making the adoption order.

91. Consideration of court

- (1) The court shall, before making an adoption order, be satisfied that—
- (a) every person whose consent is required and is not dispensed with has consented and understands the nature and effects of the adoption, namely, that it will permanently deprive that person of parental rights over the adopted child;
 - (b) the order, if made, will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding;
 - (c) the applicant has not received or agreed to receive, and that no person has made or agreed to make to the applicant, any payment or other reward in consideration of the adoption; and
 - (d) the applicant or any person on behalf of the applicant has not paid or agreed to pay money or anything in place of money to the parent, guardian or any person in charge of the child in consideration of the adoption of the child.
- (2) The court may, in an adoption order, include such terms and conditions as it thinks fit.

92. Rules as to procedure for adoption

- (1) The Chief Justice may, by statutory instrument, make rules regarding all matters under this Part and the procedure to be followed by the court in adoption proceedings.
- (2) Without prejudice to the general effect of subsection (1), the rules may provide for—
- (a) the admission of documentary evidence of any consent to adoption;
 - (b) the admission of evidence, documentary or otherwise, to determine the age of the child;
 - (c) the preparation of a report for the court by a probation and social welfare officer, to help in the determination of whether the adoption order will be for the welfare and best interests of the child; and
 - (d) the conduct of adoption societies or similar bodies in placing children for adoption.

93. Appeals

- (1) A person aggrieved by any decision of a chief magistrate's court or the High Court under this Part—
- (a) may, in the case of a decision of a chief magistrate's court, appeal to the High Court against the decision; and
 - (b) in the case of a decision of the High Court, appeal to the Court of Appeal and thereafter the Supreme Court against the decision.
- (2) For the avoidance of doubt, a person aggrieved by a decision of the High Court on an appeal from the chief magistrate's court, may appeal against the decision to the Court of Appeal and thereafter to the Supreme Court.

94. Effect of adoption order

Upon an adoption order being made—

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

95. Devolution of property

- (1) Where an adopter dies intestate, his or her property shall devolve in all respects as if the adopted child were the natural child of the adopter.
- (2) If it appears to the High Court on a claim made, that the disposition of property devolving on an intestacy has been exercised unfairly against an adopted child, the court may order such provision as the court thinks equitable to be made for the child out of the property devolving on the intestacy in accordance with the law.

96. Wills

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

(2) Where any disposition made by the adopter prior to the adoption order makes no provision for the adopted child, the adopted child may apply to the court to vary the disposition by ordering such provision as the court thinks equitable to be made for him or her.

(3) For the avoidance of doubt, an adopted person shall not be entitled to inherit from or through his or her natural parents if they die intestate.

97. Adopted children register

The registration officer shall maintain an adopted children register in which shall be registered particulars of adoptions under this Act.

98. Disclosure of adoption

(1) Where a child has attained the age of eighteen years, or, at an earlier age, on the child's own request or at the discretion of the adopter, the child shall be informed by the adopter of the identity of his or her natural parents unless it is not in the child's best interests to do so.

(2) The adopter parent shall inform the child that he or she is adopted as soon as the child is of an age of understanding.

PART X—APPROVED HOMES**99. Approval of homes**

(1) A Government or non-governmental home set up for the purposes of caring for children shall be approved by the Minister, in consultation with the probation and social welfare officer within six months of receipt of application for approval.

(2) Any person who establishes or runs a home without the approval of the Minister under this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred twenty currency points or to imprisonment for a term not exceeding five years, or both.

(3) Where the offence under subsection (2) is committed by a body corporate and it is proved that the offence is committed with the consent or connivance of, or is attributable to the negligence on the part of a director, manager, secretary or other similar officer of that body corporate or any person who purports to act in any such capacity, he or she shall be personally liable to the penalty prescribed under subsection (2).

100. Admission of children to home

An approved home shall only receive children in the following two ways—

- (a) in an emergency situation from a police officer, a probation and social welfare officer or any other person for a maximum period of forty-eight hours pending production of the child in court; or
- (b) on an interim care order or a care order.

101. Purpose of approved home

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

(2) It shall be the responsibility of the staff of the approved home, the probation and social welfare officer and any other person to assist the child to become reunited with his or her parents or guardians.

(3) After a child has been returned home from an approved home, the probation and social welfare officer shall keep in regular contact with the child and his or her family until the completion of the order or its discharge.

(4) Where a child is unable to return to his or her parents or to go to foster parents or has no parent, nor a foster parent, the child shall be encouraged and assisted by the approved home and the probation and social welfare officer to become independent and self-reliant.

102. Parental responsibility of warden and staff of approved homes

While a child is in an approved home on a care order, the warden and staff of the home have parental responsibility for the child.

103. Contact with parents and relatives

(1) The approved home and the probation and social welfare officer shall maintain contact with the parents or relatives of a child in the home as well as maintain contact between the child and the parents or relatives of the child.

(2) A named person may be refused contact by an exclusion order made by the court during proceedings on an application for a care order, or later on the application of the child or the probation and social welfare officer to the court when such contact is not in the interest of the child.

(3) A person refused contact with the child or the child himself or herself may apply to the court to have the order varied or discharged.

104. Removal of child from approved home

A person who removes a child from an approved home without reasonable cause commits an offence and shall be dealt with in accordance with this Act.

105. Recovery order

(1) When a court has been informed on oath that a child has been removed unlawfully from an approved home, it may make a recovery order.

- (2) A recovery order may
- (a) direct any person who is in possession of the child to produce him or her on request to any authorised person;
 - (b) require removal of the child by any authorised person;
 - (c) require any person who has information leading to the child's whereabouts to disclose it;
 - (d) authorise search of any premises where the child is believed to be staying; or
 - (e) specify the name of the child in question and the person who has the current main parental responsibility.

106. Application for recovery order

Any of the following persons may apply for a recovery order—

- (a) a person with parental responsibility for the child; or
- (b) the probation and social welfare officer.

107. Escape from approved home or foster parent

(1) A child who runs away from an approved home to which he or she has been committed or from a person in whose care the child has been placed on emergency or committed by the court on a care order may, pending investigation—

- (a) be brought back to the approved home or the person from which or from whom the child ran away; or
- (b) be put in an alternative approved home or place of safety.

(2) As soon as possible, the child shall be interviewed by the probation and social welfare officer or an authorised person who shall also interview the warden of the home or the person in whose care the child had been placed.

(3) The child may then be returned to where he or she had been placed or, if that is not in the child's best interests, he or she may be moved by the probation and social welfare officer under a care order or otherwise returned to court for variation or discharge of the order.

108. Power of court to order parent or guardian to contribute

(1) Where an approved home has custody of a child who has a parent or guardian, the court may order the parent or guardian to contribute towards the maintenance of the child.

(2) The amount contributed shall be reasonable and within the means of the parent or guardian and may be varied by the court if there is a change in the circumstances of that person.

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

109. Rules for approved homes

The Minister may make rules for carrying this Part into effect and in particular for—

- (a) prescribing the form of application for an approved home;
- (b) prescribing requirements as to the accommodation and equipment to be provided in homes;
- (c) prescribing the medical arrangements to be made for protecting the health of the children in the approved homes;
- (d) regulating the management and discipline of an approved home; and
- (e) regular inspection of the home.

PART XI—PARENTAGE OF CHILDREN**110. Declaration of parentage**

A person who is—

- (a) the mother of a child;
 - (b) the father of a child;
 - (c) the guardian of a child; or
 - (d) the child himself or herself through a next of friend,
- may make an application for a declaration of parentage by complaint on oath to a family and children court having jurisdiction in the place where the applicant resides for summons to be served on
- (i) the man alleged to be the father of the child; or
 - (ii) the woman alleged to be the mother of the child.

111. Application for declaration

- (1) An application for a declaration of parentage may be made—
 - (a) during pregnancy;
 - (b) at any time before the child attains eighteen years of age; or
 - (c) within three years after the death of the alleged father or mother.
- (2) With leave of the family and children court, an application for a declaration of parentage may be made at any time after the three years specified in subsection (1)(c).

(3) In exercising its discretion under subsection (2), the court shall primarily consider

- (a) the welfare of the child;
- (b) the time of knowledge of the alleged father or mother or of the birth of the child, as the case may be, by the applicant; or
- (c) the conduct of the alleged father or mother where he or she knew of the birth of the child alleged to be his or her child, or his or her conduct towards any other person having the custody or control of the child.

(4) An application for a declaration of parentage may be made whether the child or the alleged father or mother is in or outside Uganda.

112. Proceedings on application for declaration of parentage

(1) The family and children court to which an application is made for declaration of parentage shall issue a summons to the person alleged to be the father or mother of the child to appear before the court on a day named in the summons.

(2) On the appearance of the person summoned, or on proof that the summons was duly served on him or her or left at his or her place of abode seven days or more before the hearing, the court shall hear the evidence of the applicant and shall also hear any evidence tendered by or on behalf of the alleged father or mother.

(3) If the evidence of the applicant is corroborated in some material particular by other evidence to the satisfaction of the court, the court may adjudge the person summoned to be the mother or father of the child, as the case may be.

(4) In proceedings for the declaration of parentage, the court may, on the application of any party to the proceedings or on its own motion, make an order, upon such terms as may be just, requiring any person to give any evidence which may be material to the question, including a blood sample for the purpose of blood tests.

(5) Any person sought to be tested must be made a party to the proceedings.

113. Proof of parentage

The burden to prove parentage shall lie on the person alleging it.

114. *Prima facie* and conclusive evidence of parentage

(1) Where the name of the father or the mother of a child is entered in the register of births in relation to a child, a certified copy of that entry shall be *prima facie* evidence that the person named as the father is the father of the child or that the person named as the mother is the mother of the child.

(2) An instrument signed by the mother of a child and by any person acknowledging that he is the father of the child, and an instrument signed by the father of a child and by any person acknowledging that she is the mother of the child shall—

- (a) if the instrument is executed as a deed; or
- (b) if the instrument is signed jointly or severally by each of those persons in the presence of a witness,

be *prima facie* evidence that the person named as the father is the father of the child or that the person named as the mother is the mother of the child.

(3) An order of a court for maintenance made against a person under any written law shall be *prima facie* evidence of parentage in subsequent proceedings, whether or not between the same parties.

(4) A declaration of parentage by the court under this Part shall, for all purposes, be conclusive proof of parentage.

(5) An order made by a competent court outside Uganda in any affiliation or similar proceedings declaring or having the effect of declaring a person to be the father of a child or the mother of a child shall be *prima facie* evidence that the person mentioned in that order is the father of the child or the mother of the child.

(6) A reference, express or implied in a will written or oral, of any person to a child as his or her son or daughter, as the case may be, is *prima facie* evidence that that person is the father of that child or is the mother of the child.

(7) A statement, written or oral, by a deceased person confided to a person in a position of authority indicating that the deceased is or was the father or the mother of a particular child is *prima facie* evidence that the deceased person was the father or the mother of the child.

(8) For the purposes of this section, “a person in a position of authority” means a person holding a position in society carrying responsibility in matters of succession, administration of justice or law enforcement and includes a minister of religion and any person placed in such a position of interest in the welfare of the child either because of family relationship or by appointment as a guardian or foster parent by the deceased.

115. Effect of declaration of parentage

(1) A declaration of parentage by a court shall have the effect of establishing a blood relationship of father and child or of mother and child and, accordingly, the child shall be in the same legal position towards the father or the mother as a child actually born in lawful wedlock.

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

116. Custody of children

(1) The court may, on application by a sole applicant or joint applicants, grant custody of a child on such conditions as may be determined by the court.

(2) The court may, at any time, revoke the grant of custody to one person and make the grant to another person, institution or organisation.

(3) In reaching its decision under subsection (1) or (2), the court shall primarily consider the welfare of the child.

(4) A person who unlawfully removes a child from the lawful custody of another person, institution or organisation commits an offence and shall be dealt with in accordance with this Act.

117. Interim custody order

(1) A probation and social welfare officer, mother, father or guardian of a child may apply to the family and children court for an interim custody order pending the determination of custody of the child by the court.

(2) The application for interim custody shall be supported by affidavit of the applicant.

(3) The court may issue an interim custody order, where the court is satisfied that—

- (a) the child is suffering or likely to suffer harm if the order for interim custody is not issued; or
- (b) the order is in the best interests of the child.

(4) An interim custody order may, where appropriate, contain any direction, prohibition or award.

118. Custody by agreement

(1) The parents of a child may enter into a written agreement to determine which of them shall have custody of the child.

(2) The court may recognise an agreement made between the parents of a child giving the custody of the child to one of the parents, except where court finds that enforcing the agreement would not be in the best interest of the child.

(3) The court shall only recognise an agreement under subsection (1), if it is satisfied that there was no duress or fraud involved in making the agreement.

119. Appeals

A party to proceedings for a declaration of parentage may appeal to a chief magistrate's court against the finding of a family and children court; and the appellate court may confirm or revoke the declaration or make any other lawful order that it thinks fit.

120. Revocation of declaration of parentage

A declaration of parentage may be revoked for sufficient cause by the family and children court on the application of the person against whom it was made.

*Maintenance orders***121. Application for child maintenance order**

- (1) A person who has custody of a child and who is—
 - (a) the mother of the child;
 - (b) the father of the child; or
 - (c) the guardian of the child,may make an application for a maintenance order against the father or mother of the child, as the case may be.
- (2) A child in respect of whom a declaration of parentage has been made may also make an application through a next of friend for a maintenance order.
- (3) An application for a maintenance order may be made—
 - (a) during a subsisting marriage;
 - (b) during proceedings for divorce, separation or nullity of marriage;
 - (c) during separation;
 - (d) during proceedings for declaration of parentage; and
 - (e) after a declaration of parentage has been made.
- (4) The application may be made—
 - (a) at any time during pregnancy; or
 - (b) before the child attains eighteen years of age.
- (5) An application for a maintenance order shall be made by complaint on oath to a family and children court having jurisdiction in the place where the applicant resides, and the summons shall be served on—
 - (a) the father of the child; or
 - (b) the mother of the child.
- (6) The court shall issue a summons to the father or mother of the child to appear before the court on a day named in the summons.

(7) On the appearance of the person summoned or on proof that the summons was duly served on him or her, seven days or more before the hearing, the court shall hear the evidence of the applicant and shall also hear any evidence tendered by or on behalf of the father or mother; and the court may then, having regard to all the circumstances of the case, proceed to make an order against the father or mother for the payment to the applicant of—

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

(8) Maintenance shall include feeding, clothing, education and the general welfare of the child.

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

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

If at any time after the expiration of one month from the making of a maintenance order, it is made to appear to a magistrate on oath that any sum to be paid under the order has not been paid, the magistrate may, by warrant signed by him or her, cause the person against whom the order was made to be brought before him or her; and if that person neglects or refuses to pay the sum due from him or her under the order, the magistrate may, by warrant signed by him or her direct—

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

123. Variation of maintenance orders

(1) On the application at any time by the applicant for the maintenance order or by the person against whom the maintenance order is made, the court may, after inquiring into the circumstances, make an order either increasing or decreasing the amount of money previously ordered to be paid under the order.

(2) An order for maintenance against a father or mother shall cease to have effect on custody of the child being granted to that father or mother or other person in his or her place by the court.

(3) An order for maintenance may be made and enforced against the estate of a deceased person who has been declared the father or mother of the child under a declaration of parentage.

(4) Where a declaration of parentage has been made, an order for recovery of arrears of expenses incurred on the maintenance of a child may be made even after the death of the child.

124. Money to be paid to applicant or custodian

(1) All money payable under a maintenance order shall be due and payable to the applicant unless a custodian has been appointed, in which case, the money shall be due and payable to the custodian.

(2) The court may also order that the money shall be paid into court and then paid to the applicant or custodian in a manner and subject to any condition as the court may direct.

125. Appointment of custodian

(1) Whenever a maintenance order is made against the father or mother, a court may, at the time of making the order or from time to time thereafter, on being satisfied that the applicant—

(a) is not a fit and proper person to have custody of the child; or
(b) is dead, or suffers from mental illness or is in prison, appoint a person who is willing to have custody of the child to be the custodian of the child.

(2) The appointment of a custodian may be made on the application of a probation and social welfare officer or of the person having custody of the child or of the person against whom the maintenance order is made.

(3) The appointment of a custodian may be revoked and another person appointed to have custody of the child.

(4) A custodian shall have power to apply for the recovery of all payments in arrears becoming due under a maintenance order as any other applicant would have been entitled to do.

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

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

(7) A person who contravenes an order made under subsection (6) commits an offence and shall be dealt with in accordance with this Act.

126. Misapplying maintenance money

A person in whose custody a child is commits an offence if he or she misapplies any money paid for the maintenance of the child, and the grant of custody may be varied in the best interests of the child.

127. Cessation of order

A maintenance order shall cease to have any force or validity on the child attaining eighteen years.

128. Rules in respect of fees and costs

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

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

Maintenance during divorce, separation or nullity

129. Maintenance during divorce, separation or nullity

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

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

130. Variation of custody

Where the court is satisfied on information from a probation and social welfare officer or an official of a local government council that the parent who has custody of the child is wilfully neglecting or mistreating the child, custody shall be granted to the other parent.

131. Upbringing of child

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

132. Unfit parents

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

PART XII—CHILDREN CHARGED WITH OFFENCES

133. Age of criminal responsibility

(1) The age of criminal responsibility shall be twelve years.

(2) In determining criminal responsibility or an order for a child offender, the police, prosecutor or a person presiding over the matter shall consider the age of the person at the time the offence was allegedly committed.

(3) Subject to subsection (2), the court shall determine the age based on a full assessment of all available information, giving due consideration to official documentation including a birth certificate, school records, health records, statements certifying age from the parent or child, or medical evidence.

(4) Specialised protection for children under this Act shall apply to all children below the age of eighteen years.

(5) A person shall be presumed to be a child if he or she claims or appears to be younger than eighteen years old pending a conclusive determination of age by court.

134. Arrest and charge of children

(1) Where a child is arrested, the police shall under justifiable circumstances caution and release the child.

(2) The police shall be empowered to dispose of cases at their discretion without recourse to formal court hearings in accordance with criteria to be laid down by the Inspector General of Police.

(3) As soon as possible after arrest, the parent or guardian of the child and the secretary for children's affairs of the local government council for the area in which the child resides shall be informed of the arrest by the police.

(4) The police shall ensure that the parent or guardian of the child is present at the time of the police interview with the child except where it is not in the best interests of the child.

(5) Where a parent or guardian of a child cannot be immediately contacted or cannot be contacted at all, a probation and social welfare officer or an authorised person shall be informed as soon as possible after the child's arrest so that he or she can attend the police interview.

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

(7) Where release on bond is not granted, a child shall be detained in police custody for a maximum of twenty-four hours or until the child is taken before a court, whichever is sooner.

(8) A child shall not be detained with an adult person.

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

Detention pending trial

135. Bail

(1) Where a child appears before a court charged with any offence, the magistrate or person presiding over the court shall inquire into the case and unless there is a serious danger to the child, release the child on bail—(a) on court bond on the child's own recognisance; or
(b) with sureties, preferably the parent or guardian of the child who shall be bound with a non-cash court bond.

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

136. Remand

(1) Where a child is not released on bail, the court may make an order remanding or committing the child to custody in a remand home to be named in the order, situated in the same area as the court making the order.

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

(3) For the purposes of this section, a place of safe custody shall be a place which the court considers fit to provide good care for the child and assures that the child shall be brought to court when required and shall not associate with any adult detainee.

(4) The local government council shall provide an appropriate place of custody; and before making an order remanding or committing a child in custody, the court shall ascertain that there is a place readily available.

(5) Remand in custody shall not exceed—

- (a) three months in the case of an offence punishable by death; or
- (b) forty-five days in the case of any other offence.

(6) A child shall not be remanded in custody in an adult prison.

(7) A child who escapes from a remand home or other place of safe custody in which he or she is detained may be arrested with or without warrant and returned to that place.

(8) Pending the establishment of remand homes, the Minister may declare any establishment as a remand home.

(9) Whenever possible, the court shall consider alternatives to remand such as close supervision or placement with a fit person determined by the court on the recommendation of a probation and social welfare officer.

Role of local council courts

137. Role of local council courts

(1) Subject to the provisions of this Act, all causes and matters of a civil nature concerning children shall be dealt with by the village local council court where the child resides or where the cause of action arises.

(2) A village council court shall, in addition to any jurisdiction conferred on it by the Local Council Courts Act, have criminal jurisdiction to try a child for any of the following offences—

- (a) affray, under section 75 of the Penal Code Act;
- (b) idle and disorderly under section 150 of the Penal Code Act with the exception of paragraph (b);
- (c) common assault under section 218 of the Penal Code Act;
- (d) assault occasioning actual bodily harm, under section 219 of the Penal Code Act;
- (e) theft, under section 237 of the Penal Code Act;
- (f) criminal trespass, under section 282 of the Penal Code Act; and
- (g) malicious damage to property, under section 312 of the Penal Code Act.

(3) The village local council court shall be the court of first instance in respect to the criminal offences specified in subsection (2) involving children.

(4) A village local council court may, notwithstanding any penalty prescribed by the Penal Code Act in respect of the offences stated in subsection (2), make an order of any of the following reliefs in respect of a child against whom the offence is proved

- (a) reconciliation;
- (b) compensation;
- (c) restitution;
- (d) community service;
- (e) apology; or
- (f) caution.

(5) In addition to the reliefs under subsection (4), the court may make a guidance order under which the child shall be required to submit himself or herself to the guidance, supervision, advice and assistance of a person designated by the court.

(6) A guidance order shall be for a maximum period of six months.

(7) A local council court shall not make an order remanding a child in custody in respect of any child appearing before the court.

(8) Proceedings in respect of a child appearing before a local council court shall be in accordance with the procedure laid down by the Local Council

Courts Act, except that the court shall have due regard to the provisions set out in section 42(1)(b), (c), (d) and (f) of this Act.

*Family and children court***138. Criminal jurisdiction of family and children court**

A family and children court shall have jurisdiction to hear and determine all criminal charges against a child except—

- (a) any offence punishable by death; and
- (b) any offence for which a child is jointly charged with a person over eighteen years of age.

139. Orders of family and children court

(1) A family and children court shall have the power to make any of the following orders where the charges have been admitted or proved against a child—

- (a) absolute discharge;
- (b) caution;
- (c) conditional discharge for not more than twelve months;
- (d) binding the child over to be of good behaviour for a maximum of twelve months;
- (e) compensation, restitution or fine, taking into consideration the means of the child so far as they are known to the court; but an order of detention shall not be made in default of payment of a fine;
- (f) a probation order in accordance with the Probation Act for not more than twelve months, with such conditions as may be included as recommended by the probation and social welfare officer; but a probation order shall not require a child to reside in a remand home; or
- (g) detention for a maximum of three months for a child under sixteen years of age and a maximum of twelve months for a child above sixteen years of age and in the case of an offence punishable by death, three years in respect of any child.

(2) For the purposes of subsection (1)(g), detention means placement in a centre designated for that purpose by the Minister in such circumstances

and with such conditions as may be recommended to the court by the probation and social welfare officer.

(3) Where a child has been remanded in custody prior to an order of detention being made in respect of the child, the period spent on remand shall be taken into consideration when making the order.

(4) Detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order.

(5) Before making a detention order, the court shall be satisfied that a suitable place is readily available.

(6) A child shall not be detained in an adult prison.

(7) For avoidance of doubt, a person who has attained the age of eighteen at the time of sentencing shall serve the sentence in an adult prison.

(8) The order under which a child is committed to a detention centre shall be delivered with the child to the person in charge of the detention centre and shall be sufficient authority for the child's detention in accordance with the terms of the order.

(9) A child in respect of whom a detention order is made shall, while detained under the order and while being conveyed to and from the adult prison, be deemed to be in legal custody.

(10) A child shall not be subject to corporal punishment.

140. Probation and social welfare officer's report

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

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

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

(4) In all other cases, the court may request an oral report.

141. Appointment and supervision of probation and social welfare officers

The Minister responsible for gender, labour and social development in consultation with the district service commission, shall be responsible for the appointment and supervision of probation and social welfare officers.

142. National Rehabilitation Centre for Children and other centres

(1) The Minister shall establish a National Rehabilitation Centre for Children and such other centres as he or she may deem necessary which shall each be a place for the detention, rehabilitation and retraining of children committed there.

(2) Pending the establishment of the National Rehabilitation Centre for Children, the school known as Kampiringisa Boys' Approved School shall be used as the detention centre.

(3) The detention centre shall have a separate wing for girls.

143. Committee of visitors; rules governing centre; assisting escape or preventing return to centre

(1) The Minister shall appoint fit and proper persons to periodically visit the detained children and inspect the detention centre, and those persons shall be referred to as the "committee of visitors" under this Act.

(2) The Minister, by statutory instrument, shall make rules to govern the management of the detention centre.

(3) A person who knowingly assists or induces a child to escape or knowingly harbours or conceals a child who has escaped or prevents the child from returning to the detention centre commits an offence and shall be dealt with in accordance with this Act.

144. Aftercare

Before a child is released from detention, the probation and social welfare office and the authorities in the detention centre shall discuss the period of aftercare with the child, but in all circumstances it shall not exceed twelve months after the child's release from detention.

145. Duration of cases

- (1) Every case shall be handled expeditiously and without unnecessary delay.
- (2) Where the case of a child appearing before a family and children court is not completed within three months after the child's plea has been taken, the case shall be dismissed, and the child shall not be liable to any further proceedings for the same offence.
- (3) Where, owing to its seriousness, a case is heard by a court superior to the family and children court, the maximum period of remand for a child shall be three months, after which the child shall be released on bail.
- (4) Where a case to which subsection (3) applies is not completed within twelve months after the plea has been taken, the case shall be dismissed and the child shall be discharged and shall not be liable to any further proceedings for the same offence.

146. Remission of cases

- (1) Where it appears to a court other than a family and children court, that a person charged before it with an offence is a child, the court shall remit the case to a family and children court.
- (2) Subsection (1) does not apply where a child is charged with an offence punishable by death or the child is jointly charged with an adult.
- (3) Where a child is tried alone or jointly with an adult in a court superior to a family and children court, the child shall be remitted to a family and children court for an appropriate order to be made if the offence is proved against him or her.

(4) A court making an order remitting a case to a family and children court may give directions with respect to the custody or release of the child on bond or bail until the child can be brought before the family and children court.

(5) A certificate stating the nature of the offence, the stage at which the case is and that the case has been remitted to the family and children court shall be forwarded to the family and children court.

147. Restriction on use of certain words

The words “conviction” and “sentence” shall not be used in reference to a child appearing before a family and children court; and instead, the words “proof of an offence against a child” and “order” shall be substituted for “conviction” and “sentence”, respectively.

148. Protection of privacy and restriction on publication

(1) The child’s right to privacy shall be respected throughout the court proceedings in order to avoid harm being caused to him or her by undue publicity; and no person shall, in respect of a child charged before a family and children court, publish any information that may lead to the identification of the child except with the permission of court.

- (2) Any person who contrary to subsection (1) publishes—
(a) the name or address of the child;
(b) the name or address of any school which the child has been attending; or
(c) any photograph or other matter likely to lead to the identification of the child,

commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding six months, or both.

149. Children in magistrate’s court

A child jointly charged with a person over eighteen years of age may be tried in a magistrate’s court.

150. Children before High Court

(1) A child shall be tried before the High Court for an offence with which the child is jointly charged with a person over eighteen years of age and for which only the High Court has jurisdiction.

(2) Where a child is tried jointly with an adult before the High Court, the High Court shall make an appropriate order, in accordance with this Act.

(3) In any proceedings before the High Court in which a child is involved, the High Court shall have due regard to the age of the child and to the provisions of the law relating to the procedure of trials involving children.

(4) A child shall not be sentenced to death.

151. Death sentence for person below eighteen years

(1) A death sentence shall not be pronounced on or recorded against a person convicted of an offence punishable by death, if it appears to the court that at the time when the offence was committed the convicted person was below the age of eighteen years.

(2) The court shall, *in lieu* of the death sentence, order the person to be detained in safe custody, pending an order made by the Minister under subsection (4).

(3) The court shall submit to the Minister a record of the proceedings or a certified copy of the record of proceedings and a report signed by the presiding judge containing any recommendation or observations made by the presiding judge.

(4) Upon consideration of the record of proceedings and the report submitted under subsection (3), the Minister responsible for justice may order or direct that the person convicted shall be detained in a prison or any other place of custody.

(5) An order made under subsection (4) may be varied or discharged by the Minister responsible for justice and it shall be sufficient authority for the detention of the person to a place specified in the order.

(6) A person removed or detained in accordance with an order made under subsection (4) shall be deemed to be in lawful custody.

(7) The Minister shall within thirty days of receipt of the certified record as provided for in subsection (3) remit the record to court for a sentence.

(8) The court shall move the Minister responsible for justice to show cause why the juvenile should not be released if the Minister contravenes subsections (4) and (7).

152. Appeals

An appeal shall lie in a case involving the trial of a child from

- (a) a village local council court to a parish and subcounty local council court;
- (b) a subcounty local council court to a family and children court;
- (c) a family and children court to a chief magistrate's court;
- (d) a chief magistrate's court to the High Court;
- (e) the High Court to the Court of Appeal; and
- (f) the Court of Appeal to the Supreme Court.

PART XIII—MISCELLANEOUS

153. Sections of Penal Code Act not to apply to children

Sections 150(b) and 151 of the Penal Code Act shall not apply to children.

154. Corporal punishment in schools prohibited

(1) A person of authority in any institution of learning shall not subject a child to any form of corporal punishment.

(2) Any person who subjects a child to corporal punishment commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or to imprisonment for a term not exceeding three years, or both.

155. Inquiry by court as to age of person appearing to be below eighteen years of age

(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 or she is under eighteen years of age, the court shall make an inquiry as to the age of that person.

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

156. Presumption by court of age to be conclusive evidence of person's age

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

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

157. General penal provision for offences under Act

Any person who contravenes any of the provisions of this Act commits an offence and, with the exception of a person convicted under section 144, is liable, on conviction, to a fine not exceeding five currency points or to imprisonment for a term not exceeding six months, or both.

158. Regulations

(1) The Minister may make regulations generally for better carrying out the provisions and purposes of this Act.

(2) Regulations made under subsection (1) may prescribe in relation to any contravention of the regulations any penalty not exceeding a fine of twenty-five currency points or imprisonment for a term of two years, or both and may provide an additional penalty for continuing or repeated contraventions.

(3) The regulations may also, subject to this Act, provide for the charging of fees for the doing of anything under this Act.

159. Enforcement of judgments, decisions and orders of family and children court

Subject to this Act, any enactment applicable to the enforcement of the judgments, decisions and orders of a magistrate's court shall, subject to such modifications as may be necessary having regard to this Act, apply to judgments, decisions and orders of a family and children court.

160. Power to amend Schedules

(1) The Minister responsible for finance may, by statutory instrument, with the approval of Cabinet, amend Schedule 1 to this Act.

(2) The Minister may, by statutory instrument, amend Schedules 2 and 3 to this Act.

SCHEDULES*Schedule 1***Currency Point**

Sections 1, 160(1)

A currency point is equivalent to twenty thousand shillings.

Schedule 2

Sections 13(6), 160(2)

Meetings of Board**1. Meetings of Board**

(1) The Board shall meet at least once every month at such place and such time as may be determined by the Board.

(2) The Chairperson shall preside at every meeting of the Board and in his or her absence the members present may appoint a member from among themselves to preside at the meeting.

(3) The Chairperson or, in his or her absence, a member appointed by the Board to act in the place of the Chairperson may at any time call a special meeting, upon a written request by a majority of the members.

(4) Notice of a meeting of the Board shall be given in writing to each member at least five days before the day of the meeting, but an urgent meeting may be convened in less than five days' notice, at the request of two or more members.

2. Quorum

The quorum at a meeting of the Board is four members.

3. Decisions of Board

(1) All questions proposed at a meeting of the Board shall be decided by a simple majority of the votes of the members present and voting; and in case of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberate vote.

(2) A decision may be made by the Board without any meeting but by circulation of the relevant papers among the members and by the expression of the views of the majority of the members in writing; however, any member shall be entitled to require that the decision be deferred and the matter on which a decision is sought be considered at a meeting of the Board.

4. Board may co-opt members

The Board may invite any person to attend any of its meetings as a consultant and may co-opt any person to the Board but that person shall not vote on any matter before the Board.

5. Declaration of interest

(1) Any member of the Board having pecuniary or other interest, directly or indirectly in any matter before the Board shall, at that meeting, declare the nature of such interest and shall not take part in any discussion or vote on that matter, and if the Chairperson directs, the person shall withdraw from that meeting.

(2) The failure of any member of the Board to disclose an interest in any matter before the Board will cause the decision of the Board to be voidable at the instance of the other members of the Board, and that member shall be liable to be relieved of his or her duties.

(3) For purposes of determining whether there is quorum, a member withdrawing from a meeting or who is not taking part under subparagraph (1) shall be treated as being present.

6. Minutes of proceedings

(1) The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting and signed by the Chairperson of the meeting.

(2) The Chairperson of the Board shall submit to the Minister a copy of the minutes of each meeting of the Board as soon as the minutes have been confirmed.

7. Board may regulate its procedure

Subject to this Act, the Board may regulate its own procedure and may make rules regarding the holding of meetings, notice to be given, the keeping of minutes or any other matter relating to its meetings.

Schedule 3

Sections 45, 72(4), 160(2)

Foster Care Placement Rules**Arrangement of Rules****Rule**

1. Title
2. Interpretation
3. Application of Rules
4. Application to foster child
5. Persons qualified to foster children
6. Procedure before placement
7. Religion
8. Cultural background
9. Undertaking by foster parents
10. Medical arrangements
11. Supervising officer
12. Visits during placement
13. Termination of placement
14. Illness
15. Death
16. Records

SCHEDULE TO THE RULES*Schedule*

Forms

Foster Care Placement Rules

1. Title

These Rules may be cited as the Foster Care Placement Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“approved home” means a home approved by the Minister;
“child” means a person below the age of eighteen years;
“Commissioner” means the Commissioner for Social Welfare;
“foster child” means a child placed with a foster parent or foster family;
“foster family” means a family in which a child is placed;
“foster parent” means a person with whom a child is placed under these
Rules;
“supervising officer” means the district probation and social welfare
officer or a responsible person delegated by the district probation
and social welfare officer to act on his or her behalf.

3. Application of Rules

These Rules apply to the placement of a child with foster parents by a probation and social welfare officer.

4. Application to foster child

A person interested in fostering a child shall complete the application form specified in Form 1 of the Schedule to these Rules and submit it to the district probation and social welfare officer or to the warden of an approved home.

5. Persons qualified to foster children

- (1) The following persons may apply to be foster parents—
 - (a) a husband and wife, but if a man has more than one wife, the name of the wife who is to be the foster mother shall be clearly stated;
 - (b) a single woman not below the age of twenty-one years; or
 - (c) a single man not below the age of twenty-one years.

(2) A single man may not foster a female child under the Children Act.

(3) A non-Ugandan citizen residing in Uganda is qualified to apply to be a foster parent subject to subrule (1).

6. Procedure before placement

(1) A child shall not be placed with a foster parent who is not a relative of the child unless—

- (a) a probation and social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;
- (b) a probation and social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;
- (c) two persons who know the prospective foster parent well have vouched for his or her good character and suitability to care for the child, and one of the two persons shall be the secretary for children's affairs of the village local council or the village chief;
- (d) it has been established from the secretary for children's affairs of the council or the person in charge of any government medical unit in the area that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;
- (e) it has been established from the secretary for children's affairs or from the officer in charge of the police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and
- (f) the wishes of the child, insofar as can be ascertained, concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.

(2) The probation and social welfare officer concerned with the fostering shall make a written report which shall contain the following—

- (a) the information required in subrule (1);
- (b) details of the name, approximate age, religion and employment of the prospective foster parents; and

(c)the number and approximate ages of other persons living in the household of the prospective foster parent.

(3)The report shall be in Form 2 as specified in the Schedule to these Rules and shall be filed in the district probation and social welfare office.

7. Religion

(1) Where the religion of a child is known, the child shall be placed with a foster parent who is of the same religion as the foster child; but where that is not possible, the foster parent shall undertake to bring up the child in accordance with the religious denomination of the child.

(2)Where the religion of a child is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with the religious denomination of the foster parent.

8.Cultural background

Where possible, a child shall be placed with a foster parent who has the same cultural background as the parents of the child and who originates from the same area in Uganda as the parents of the child.

9. Undertaking by foster parents

(1) Each foster parent shall, on the day on which the child is placed with him or her, sign the undertaking specified in Form 3 in the Schedule to these Rules in the presence of a witness.

(2)Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the supervising officer or the authorised officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he or she understands and shall certify to that effect as prescribed in Form 3 of the Schedule to these Rules .

(3)Each foster parent shall be given a copy of the undertaking signed by him or her.

(4) A copy of the undertaking shall also be sent to the district probation and social welfare office and to the Commissioner.

10. Medical arrangements

(1) Except in the case of an emergency, a child shall not be placed with a foster parent unless he or she has been examined by a qualified medical practitioner or such other medical personnel not below a rank approved by the director of medical services, and the person examining the child has reported, in writing, on the physical and mental condition of the child.

(2) In the case of an emergency, the examination report required under subrule (1) shall be made within four weeks after the placement.

(3) When a foster placement begins, the person placing the child with the foster parent shall submit to the foster parent a list of immunisations carried out in respect of the child and indicate to the foster parent the list of other immunisations required to be effected in respect of the child in accordance with the Ministry of Health's schedule of immunisations, and the foster parent shall ensure that those immunisations are carried out.

(4) The foster parent and the district probation and social welfare office shall at all times keep a record of the immunisations in respect of the child.

(5) Where the child placed with a foster parent is under five years of age, the child shall be medically examined by a medical personnel referred to in subrule (1)—

- (a) within one month after the date of placement; and
- (b) thereafter once every six months,

and the probation and social welfare officer concerned with the placement of the child shall, so far as possible, assist the foster parent in ensuring the carrying out of the requirements of this subrule.

(6) Where the child placed with the foster parent is above the age of five years, the child shall be medically examined by the medical personnel referred to in subrule (1) once in every year.

(7) The medical personnel who examines a child under subrule (5) or (6) shall report in writing to the probation and social welfare officer by whom

the child was placed, or to the person in charge of the district probation and social welfare office, on the physical, mental and emotional condition of the child as found by him or her.

11. Supervising officer

A district probation and social welfare officer shall, subject to these Rules, be responsible for overseeing all aspects of the fostering and for ensuring that the provisions of these Rules are complied with.

12. Visits during placement

(1) A probation and social welfare officer shall visit the foster family and see the child—

- (a) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;
- (b) within one month after the date of placement of the child with the foster family where the child is above two years of age, and thereafter once every three months;
- (c) within one month after receiving notification from a foster parent that he or she has changed his or her residence; and
- (d) immediately and in any case not later than one week after receipt of any information from the child, a foster parent or any other person, which indicates the need for him or her to visit the child.

(2) The probation and social welfare officer who carries out a visit under subrule (1) shall make a written report to be placed in the case record of the child stating in detail his or her observations as to the welfare of the child, progress and conduct and any changes which have occurred in the circumstances of the foster family.

(3) The report made under subrule (2) shall also include the views and feelings of the child concerning placement; and where there are any problems, they shall be discussed and resolved openly within the foster family.

13. Termination of placement

(1) A child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child except that—

- (a) the foster parent may appeal to the Commissioner if the supervising officer seeks to remove a child who has been in the care of the foster parent for more than twelve months; and
- (b) the Commissioner on any such appeal may prohibit the removal or authorise it subject to such conditions as he or she thinks fit.

(2) A child shall not be required to remain in the care of a foster parent after he or she has attained the age of eighteen years.

14. Illness

If a foster child is seriously ill, the foster parent shall as soon as possible give notice to the supervising officer, who shall in turn notify the parents or guardians of the illness.

15. Death

(1) If the foster child dies, the foster parent shall make every effort to obtain a medical certificate of death and a post-mortem report and shall, within forty-eight hours after the death, notify the supervising officer responsible for that child, who shall in turn notify the Commissioner of the death.

(2) Where the parents or guardians of the child are known, the Commissioner shall inform them of the death of the child.

(3) If the foster parent dies, in the case where a child is placed with a single foster parent, the child shall be returned to the supervising officer or to the warden of the approved home from which he or she was received.

16. Records

(1) Every district probation and social welfare office shall maintain a register of foster parents, in which shall be stated in respect of each foster parent, a record set out in Form 2 specified in the Schedule to these Rules.

- (2) The register referred to in subrule (1) shall, in addition, contain—
(a) a statement of the name, sex, age, religion and address of each parent of the foster child, if known; and
(b) the date of placement, the date of termination and the reason for termination.
- (3) The district probation and social welfare office shall also, in respect of each child placed by it in a foster home, maintain a foster child case record in the form set out in Form 4 in the Schedule to these Rules.
- (4) The district probation and social welfare office shall also keep with the foster child case record the following—
(a) a copy of the application form completed by the foster parent and a copy of the undertaking required by rule 9; and
(b) reports made under rule 12.
- (5) A register prescribed by subrule (1) and a foster child case record made under subrule (3) may be inspected at any reasonable time by the Commissioner or by any public officer authorised by him or her.
- (6) Every foster child case record made under this rule shall be preserved for at least five years after the child to whom it relates has attained the age of eighteen years or has died, or has returned to the care of his or her parents.
- (7) Every district probation and social welfare office shall report to the Commissioner within one month after each fostering effected by it, the fact of the fostering and stating the information in Form 2 specified in the Schedule to these Rules.
- (8) A district probation and social welfare office shall also notify the Commissioner within twenty-one days after its occurrence, of any change in the information referred to in subrule (7).

Schedule to the Rules

Rule 4

Forms

Republic of Uganda

Form 1

Application to Foster a Child
 Foster Care Placements
(The Children Act, Cap. 62)

Name of applicant _____

Married/single _____ Age _____

Address _____

Tel. No. _____

Number of children _____ Age(s) _____

Employment of applicant _____

Employment _____ of _____ husband

Employment of wife

Have you ever fostered a child/children before? (If so, give particulars) _____

Other sources of income (e.g. farm) _____

Reasons to foster _____

Are you willing to undertake short term fostering? _____

Names of two referees and their addresses (one shall be your LC I chairperson)

1. _____

2. _____

Age range _____ Sex of child you wish to foster _____

Applicant's signature _____

Republic of Uganda

Form 2
 Prospective Foster Parent Record
 Foster Care Placements
(The Children Act, Cap. 62)

Name of prospective foster parent(s) _____

Date of birth _____ Age _____
 District of origin _____ Religion _____
 Occupation _____ Marital status
 of prospective foster parent(s) _____ Date of marriage

Is the relationship monogamous or polygamous? _____
 Home address:

LC I _____
 Village _____
 Parish _____
 Subcounty _____
 County _____

Details of other people living in the home:

Name	Relationship to prospective foster parent	Age	School/class/occupation

Is there or has there been any serious illness/infection in the family? (*If
any, give details*)

State the income and wealth of the prospective foster parents

Give details of businesses and land owned by the family/person

Description of the home

Number of rooms _____ Type of toilet _____
 Type of water supply _____

Will the family/person need material support in order to start fostering? _____
(If the answer is "yes", state what will be needed.)

Why does this family/person wish to foster children? _____

Do they understand the temporary nature of fostering? _____

Has the person/any member of the family had a serious conviction?
(If yes, give details and dates and state whether in your opinion it is of such seriousness as to prevent the family/person from taking on a foster placement.)

Assessment of the suitability of that family/person to foster children _____

Recommendation

What type of foster child would best benefit from this family/person? (baby, child, male, female, etc.)

Details of foster child(ren) already placed with foster parents

Name	Sex	Date of placement	Age at date of placement	Date of termination	Why terminated

Details of parents and siblings of foster children (if known)

Name of foster child	Names of parents	Names of brothers/sisters of foster child	Sex	Age	Religion	Address

Name of supervising officer _____

Signature _____

Address _____

Date _____

Republic of Uganda

Form 3
Form of Undertaking
Foster Care Placements
(*The Children Act, Cap. 62*)

I/We (*names of foster parents*) _____

Who received (*name of child*) _____
into my/our home on (*date*) _____
from (*name of district probation and social welfare office*) _____

undertake that—

1. I/We will care for (*name of child*) _____ as though he/she were my/our own child.
2. I/We will bring him/her up in accordance with the _____ religion.
3. I/We will look after his/her health and allow him/her to be medically examined as required by the district probation and social welfare office.
4. I/We will allow an officer of the district probation and social welfare office or representative of the Ministry to visit my/our home and to see the child at any time.
5. I/We will inform the district probation and social welfare office immediately if the child is seriously ill, or is missing, or is involved in an accident, or is in any kind of trouble.
6. I/We will inform the district probation and social welfare office immediately if I/we plan to change residence and address.
7. I/We understand that an officer of the district probation and social welfare office has the right to remove the child from my/our home in certain circumstances.

Signed, foster father

Signed, foster mother

Address of foster parent

Certificate

I, _____, (*title*)
certify that I have explained the foregoing undertaking in the _____
language to
_____ and _____
foster parent(s).

District Probation and Social
Welfare Officer

Witness

Address of District Probation
and Social Welfare Office

Address of witness

Date

Rule 16

Republic of Uganda

Form 4
Foster Child Record
(The Children Act, Cap. 62)

Name of child (*surname first*) _____

Date of birth _____ Age _____
 — District of origin _____
 — Sex _____ Religion _____
 _____ Name of foster parent(s) _____

	Foster parent's home address	Change of address
LC I		
Village		
Parish		
Subcounty		
County		

Natural father's name _____ alive/dead/unknown
 Natural mother's name _____ alive/dead/unknown

	Natural father or guardian's address	Natural mother or guardian's address
LC I		
Village		
Parish		
Subcounty		
County		

Details of foster child's brothers, sisters and relatives

Name	Addresses	Alive/dead

Where was the child living immediately prior to this foster placement? (*Please give names and addresses of carers or institution*).

Case history of the child and his/her family

State what efforts have been made to trace the parents or relatives and to return the child to his/her family.

Details of medical history, including immunisation

Details of
education—School _____ Class _____
Name of supervising officer _____
____ Address _____

Supervisor's signature

Date

Schedule 4

Section 74

The Republic of Uganda

Form 1

Petition for Guardianship
 In The High Court of Uganda
(The Children Act, Cap. 62)

In the matter of the Children Act and in the matter of
 (name of child) of _____ village of
 _____ subcounty.

The petition of _____ (petitioner) of
 (address in Uganda and address in foreign country), (and of the same
 address) states as follows—

The petitioner(s) is (are) desirous of obtaining legal guardianship of the
 child _____ under the provisions of the Children Act.

The petitioner _____ of _____ (L.C.I)
 zone) (town) _____ is
 citizen of _____ a and stays in Uganda at the
 address(es) following
 Address L.C.I

The co-petitioner _____ of _____
 and has address

The petitioner _____ is unmarried (was married) to the
 co-petitioner _____, at _____ on
 the _____ (day) (month) (year) (which
 marriage is supported by evidence annexed).

The petitioner _____ is by occupation _____ and the co-petitioner
is by occupation a _____

The petitioner _____ is _____ years of age
(date of birth _____ (day) _____ (month) _____ (year), these
dates supported by evidence of birth annexed).

The petitioner _____ is related to the child
as follows

and the co-petitioner _____ is related to the child
_____ (as follows) or, the petitioner (s) _____ and
_____ is not (are not, nor is either of them) related to the child.

The petitioner _____ annexes
a certificate marked _____ that he/she does not have a
criminal record and affirms that he/she does not have a criminal record in
Uganda or any other country.

The co-petitioner _____ annexes a certificate marked
_____ that he/she does not have a criminal
record in Uganda or any other country.

The petitioner _____ attaches a recommendation concerning
his/her suitability to adopt a child from _____
(recommendor) of _____ the probation and social
welfare office/other authority (specify) in _____ (country of origin
of the petitioner).

The co-petitioner _____ attaches a
recommendation concerning his/her suitability to adopt a child from _____
(recommendor) of _____ the probation and social welfare office/other authority
(specify) in _____ (country of origin of co-petitioner).

The petitioner(s) has (have) resident with him/her (them) the following
children, namely, _____ (son), aged _____ years,
_____ (daughter), aged _____ years, and
_____ (others)

- The child ————— is—
 (a) of the sex;
 (b) unmarried;
 (c) a child of _____ (father) of _____
 village subcounty _____
 District and of _____ (mother)
 of village subcounty
 District;
 (d) a citizen of _____
 (e) _____ years of age, having been born at _____ the
 _____ (day) _____ (month) _____ (year);
 (f) resident at _____ village subcounty
 _____ District;
 (g) now in the actual custody of _____ of
 village or (LC V) _____ subcounty town or
 District;
 (h) under the guardianship of _____ of _____
 village or (LC V) subcounty or town
 District;
 (i) entitled to the following property—

 (j) the following persons are liable to contribute to the support of the
 child—
 (a) _____ of _____ village _____
 subcounty _____ District;
 (b) _____ of _____ village _____
 subcounty _____ District;
 (c) other _____

The petitioner(s) _____ and
 _____ annexes (annex) the following consent(s)
 marked No. _____ required under the Children Act.

Name of person _____
 Relationship with consenting child _____
 Date of consent _____

The child has not been the subject of a guardianship order or of an application or petition for a guardianship order (except that) (state order and application or petition, if any).

The petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the petitioner(s) (or either of them) any payment or reward in consideration of the guardianship of the child.

The petitioner(s) undertake(s) that—

- (a) He/she/they shall care for (*name of child*)
as though he/she/they were my/our own child.
- (b) He/she/they shall bring him/her up in accordance with the _____ religion.
- (c) He/she/they shall look after his/her health and allow him/her to be medically examined as required by the district probation and social welfare office.
- (d) He/she/they shall allow an officer of the district probation and social welfare office or representative of the ministry to visit my/our home and to see the child at any time.
- (e) He/she/they shall inform the district probation and social welfare office immediately if the child is ill, or is missing, or is involved in an accident, or is in any kind of trouble.
- (f) He/she/they shall inform the district and social welfare office immediately if he/she plans to change residence and address.
- (g) He/she/they understand(s) that an officer of the district probation and social welfare office has the right to remove the child from my/our home in certain circumstances.

The petitioner(s) affirm(s) that a guardianship order made by this honourable court will be respected and recognised by _____
(*the country*)

of origin of petitioner(s)), and produce(s) a sworn affidavit to that effect, annexed and marked _____

It is proposed that the costs of the petition shall be paid by the petitioner(s) and

The petitioner(s) pray(s)—

- (a) That an order for guardianship of the child _____, by the petitioner(s) be made under the Children Act with all necessary directions;
 - (b) That the cost of this petition be provided for as above mentioned or otherwise as the court may direct; and
 - (c) That such further or other order be made as the nature of the case may require.

Signed _____

, Petitioner

Witnessed

(name)

Signed _____, Co-petitioner _____ Witnessed _____
(name) _____ (occupation), of _____ (address)

Form 2

Section 81(2)

The Republic of Uganda
Registration of Guardianship Order
(*The Children Act, Cap. 62*)

Name of child (*surname first*) _____
Date of birth _____ Age _____ Sex _____

Religion _____
District of origin _____

Names of guardians _____

Name of biological father _____ alive/dead/unknown _____

Name of biological mother _____ alive/dead/unknown _____

Details of medical history, including immunisation.
(Attach a copy of the child's immunisation card)

Details of education

School (current) _____ class _____

Address _____ Name of district probation and social welfare

District Probation and Social Welfare Officer

Guardian

Date

History: Statute 6/1996; S.I. 51/1997; Cap. 59 (Revised Edition, 2000);
Act 13/2006; Act 9/2016; S.I. 33/2016; Act 17/2023

Cross References

African Charter on the Rights and Welfare of the African Child, 1990

Judicature Act, Cap. 16

Local Council Courts Act, Cap. 18

Penal Code Act, Cap. 128

Probation Act, Cap. 132

United Nations Convention on the Rights of the Child, 1989
