

No. 11 of 2014.

Juvenile Justice Act 2014.

Certified on : 30 MAY 2014



No. of 2014.

Juvenile Justice Act 2014.

ARRANGEMENT OF SECTIONS.

PART I. PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation -
 - “authorised facilitator”
 - “bail”
 - “bail authority”
 - “care”
 - “civil society group”
 - “community based conference”
 - “community service work”
 - “correctional institution”
 - “correctional officer”
 - “Court”
 - “custody”
 - “Director”
 - “Director of Lukautim Pikinini”
 - “diversion”
 - “diversion agreement”
 - “diversion option”
 - “institution”
 - “juvenile”
 - “Juvenile Court”
 - “Juvenile Court Magistrate”
 - “juvenile institution”
 - “juvenile justice officer”
 - “juvenile section of a correctional institution”
 - “Magistrate”
 - “medical practitioner”
 - “Minister”
 - “National Juvenile Justice Committee”
 - “parent”
 - “prescribed”
 - “pre-sentencing report”
 - “Principal Magistrate”
 - “probation officer”
 - “remand centre”

“responsible person”
“restorative justice”
“review”
“review report”
“serious indictable offence”
“Service”
“this Act”
“volunteer juvenile justice officer”.

3. Application and criminal capacity.
4. Age determination.
5. Objectives of the Act.
6. General principles.

PART II. - JUVENILE JUSTICE SYSTEM.

7. Establishment of Juvenile Justice Service.
8. Members of the Service.
9. Functions of the Director.
10. Functions of Juvenile Justice Officers.
11. Delegation of Director’s functions etc.
12. Protection of the Service.
13. Appointment of Volunteer Juvenile Justice Officers.
14. Establishment of Juvenile Courts.
15. Appointment of Juvenile Court Magistrates.
16. Appointment of Clerks of Juvenile Courts.
17. General jurisdiction of Juvenile Courts.
18. Limitation on jurisdiction of Juvenile Courts.
19. Exercise of jurisdiction by Courts of Summary Jurisdiction.
20. Exercise of jurisdiction by National Court.
21. Exercise of jurisdiction by the Village Courts.
22. Protection of Magistrates in the execution of their office.
23. Establishment of the National Juvenile Justice Committee.
24. Meetings of the National Juvenile Justice Committee.
25. Functions of the National Juvenile Justice Committee.
26. Provincial Juvenile Justice Committees.

PART III. - DIVERSION.

27. Purposes of diversion.
28. Juveniles to be considered for diversion.
29. Diversion options.
30. Minimum standards applicable to diversions.
31. Use of diversion admissions and statements.
32. Purpose of community based conferences.
33. Convening of community based conferences.
34. Participants and procedures at community based conferences.
35. Diversion agreements.
36. Compliance with diversion agreements.
37. Authorised facilitators.

PART IV. - JUVENILES AND THE POLICE.

38. Application of *Arrest Act* (Chapter 339).
39. Police and children under the age of criminal responsibility.
40. Police to consider alternatives to initiating proceedings.
41. Warning a juvenile.
42. Referral to Community Based Conference.
43. Court may dismiss charge if juvenile should have been diverted or no action taken.
44. Methods of Initiating Proceedings.
45. Summons.
46. Arrest.
47. Use of force on arrest.
48. Notification of parents and Juvenile Justice Officer.
49. Powers of a Juvenile Justice Officer upon arrest or detention of a juvenile.
50. Questioning and statements from juveniles.
51. Police conduct generally.
52. Custody of juveniles following arrest.
53. Civil remedy for wrongful detention or arrest.

PART V. - BAIL AND REMAND OF JUVENILES.

54. Application of *Bail Act* (Chapter 340).
55. Granting of bail by Juvenile Court or Court of Summary Jurisdiction.
56. General principles relating to bail.
57. Releasing juvenile on bail to parent or responsible person.
58. Juvenile not to be refused bail solely on certain grounds.
59. Juveniles on remand.

PART VI. - PROCEEDINGS IN JUVENILE COURTS.

60. Sitting of Juvenile Courts.
61. First appearance inquiry.
62. Court diversion.
63. Procedure in taking plea of juvenile.
64. Admission or denial of charge by juvenile.
65. Court powers after plea.
66. Conduct of the proceedings generally.
67. Presence of parents required.
68. Legal representation.
69. Court proceedings to be closed.
70. Presence of Juvenile Justice Officer at sittings.
71. Time limits relating to adjournments and conclusion of proceedings.
72. Bail on adjournment.
73. Contempt of Court.
74. Juveniles in custody at the Court.

PART VII. - SENTENCING JUVENILE OFFENDERS.

75. Juveniles to be sentenced in terms of this Part.
76. Purpose and principles of sentencing.
77. Factors to consider when sentencing Juveniles.
78. Referral to Community Based Conference for sentencing recommendations.

79. Pre-sentencing reports.
80. Juvenile sentences.
81. Restrictions on use of custodial sentences.
82. Limits on community service work.
83. Conditions relating to probation.
84. Failure to comply with order.
85. Prohibition of certain forms of punishment.
86. Failure to pay fines or restitution.

PART VIII. - REVIEW AND VARIATION OF ORDERS.

87. Application for review of order.
88. Review by National Court.
89. Review report.
90. Powers of Court on review.

PART IX. - APPEALS.

91. Grounds for appeal.
92. Appeals to a Principal Magistrate.
93. Appeals to the National Court.
94. Appeals to the Supreme Court.

PART X. - INSTITUTIONS.

95. Approval of institutions.
96. Juvenile section of a correctional institution.
97. Juvenile institutions.
98. Remand centres.
99. Duties of person in charge of an institution.
100. Rights of juveniles in institutions.
101. Terms and conditions for visits.
102. Discipline and use of force.
103. Discharge and return to the community.
104. Inspection of institution.
105. Visits by Magistrates and certain Judges.
106. Emergency powers.
107. Travelling while in custody.

PART XI. - RECORDS AND PRIVACY.

108. Restriction on fingerprinting and photographing.
109. Court records.
110. Transfer of Court records.
111. Records of institutions.
112. Restriction of publication of proceedings.

PART XII. - OTHER MATTERS.

113. Regulations.
114. Repeal.

115. Actions etc., not to abate.

116. Orders, appointments etc., to continue etc.

SCHEDULE.



No. of 2014.

AN ACT

entitled

Juvenile Justice Act 2014,

Being an Act, as authorised by Section 172 (*establishment of other courts*) of the ***Constitution***, to -

- (a) establish a comprehensive and separate juvenile justice system based on restorative justice, melanesian tradition and contemporary juvenile justice practices; and
- (b) to repeal the ***Juvenile Courts Act 1991*** and to amend certain other Acts, and for related purposes.

PART 1. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the ***Constitution***, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the ***Constitution***; and
- (b) the right to freedom of assembly and association conferred by Section 47 of the ***Constitution***; and
- (c) the right to privacy conferred by Section 49 of the ***Constitution***; and
- (d) the right to freedom of movement conferred by Section 52 of the ***Constitution***; and
- (e) the right of equality of citizens conferred by Section 55 of the ***Constitution***, is a law that is made for the purposes of complying with Section 38 of the ***Constitution***, taking account of the National Goals and Directive Principles and Basic Social Obligations, in particular -
 - (f) Goal Number 1 (*Integral human development*) which calls for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others; and
 - (g) Basic Social Obligation (*h*) which places an equal obligation on parents, to support, assist and educate their children without discrimination,and for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper regard for the right and dignity of mankind.

(2) For the purposes of Section 41(2) of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this law relates to a matter of national interest.

Juvenile Justice

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

- “authorised facilitator” means a person authorised as a facilitator of community based conferences under Section 37;
- “bail” in relation to a juvenile, means approval, whether or not subject to conditions, for the release of the juvenile from custody;
- “bail authority” means a person or court empowered or required under this Act, the *Bail Act* (Chapter 340) or any other law to grant bail;
- “care” includes custody and control, but not guardianship;
- “civil society group” includes a church group, a non-government organisation, a women’s group, a community-based organisation, a law and order committee, and any other similar non-State organisation or group;
- “community based conference” means a community based conference held in accordance with Part III.B, and includes a mediation;
- “community service work” means work of a value to the community performed by the juvenile without payment;
- “correctional institution” has the same meaning as in the *Correctional Services Act 1995*;
- “correctional officer” has the same meaning as in the *Correctional Services Act 1995*;
- “Court” means -
 - (a) a Juvenile Court; or
 - (b) a court of summary jurisdiction or the National Court exercising jurisdiction under this Act;
- “custody” in relation to a juvenile, means the custody of the juvenile in an institution;
- “Director” means the Director of the Juvenile Justice Service;
- “Director of Lukautim Pikinini” means the Director of Lukautim Pikinini appointed under the *Lukautim Pikinini (Child) Act 2009*;
- “diversion” in relation to a juvenile, means diverting the juvenile alleged to have committed an offence away from the formal justice system and resolving the conflict through informal measures;
- “diversion agreement” means a diversion agreement made under Section 35;
- “diversion option” means an option for the diversion of a juvenile referred to in Section 29;
- “institution” means -
 - (a) the juvenile section of a correctional institution; or
 - (b) a juvenile institution; or
 - (c) a remand centre;
- “juvenile” means a person who is, or in the absence of evidence to the contrary appears to be, ten years old or older, but less than 18 years old;
- “Juvenile Court” means a Juvenile Court established under Section 14;
- “Juvenile Court Magistrate” means a Magistrate of a Juvenile Court appointed under Section 15;
- “juvenile institution” means a juvenile institution approved under Section 95;
- “juvenile justice officer” means a juvenile justice officer appointed to the Juvenile Justice Service under Section 8, and includes a volunteer juvenile justice officer;
- “juvenile section of a correctional institution” means the juvenile section of a correctional institution approved under Section 95;
- “Magistrate” means -
 - (a) a Juvenile Court Magistrate; or

Juvenile Justice

- (b) a Magistrate of a court of summary jurisdiction exercising jurisdiction in accordance with Section 19 and includes a Principal Magistrate;
- “medical practitioner” includes a dentist, a nurse and a health extension officer;
- “Minister” means the Minister responsible for justice matters;
- “National Juvenile Justice Committee” means the National Juvenile Justice Committee established by Section 23;
- “parent” in relation to a juvenile, means a parent of the juvenile, and includes a guardian of the juvenile;
- “prescribed” means prescribed by the regulations made under this Act;
- “pre-sentencing report” means a report prepared under Section 79;
- “Principal Magistrate” means a Principal Magistrate appointed under the *District Courts Act* (Chapter 40);
- “probation officer” means a probation officer appointed under the *Probation Act* (Chapter 381), and includes a volunteer probation officer;
- “remand centre” means an institution approved as a remand centre under Section 95;
- “responsible person” in relation to a juvenile, means a person other than a parent of the juvenile, who agrees to accept care of the juvenile, and includes a civil society group providing for the care of juveniles;
- “restorative justice” in relation to a juvenile, means the promotion of reconciliation, restitution and accountability through the involvement of the juvenile, the juvenile’s parents and family members, victims and communities;
- “review” means a review of a sentence under Part VIII;
- “review report” means a report prepared under Section 89;
- “serious indictable offence” means an offence listed in the schedule;
- “Service” means the Juvenile Justice Service established by Section 7;
- “this Act” includes the regulations made under this Act;
- “volunteer juvenile justice officer” means a person appointed as a volunteer juvenile justice officer under Section 13.

3. APPLICATION AND CRIMINAL CAPACITY.

- (1) Notwithstanding any other Act or law, this Act applies to a person who -
 - (a) is charged with or alleged to have committed an offence; and
 - (b) is under the age of 18 years at the time of the alleged commission of the offence.

(2) If a child is under the age of 10 years at the time of the alleged commission of an offence, the child is not criminally responsible for any act or omission.

4. AGE DETERMINATION.

- (1) A member of the Police Force must treat a person as a juvenile if the person -
 - (a) is charged with or alleged to have committed an offence; and
 - (b) alleges or appears to be under the age of 18 years, and there is no persuasive evidence to the contrary that is available to the member of the Police Force.

(2) Without limiting the power of a Court to determine the age of a person in accordance with Section 63 of the *Evidence Act* (Chapter 48) and despite a member of the Police Force treating a person as a juvenile in accordance with Subsection (1), a Court must determine the age of the person if he or she is a defendant in any legal proceedings and there is doubt or a dispute about the person’s age.

Juvenile Justice

- (3) In making a determination of the age of a person, a Court shall have regard to any of the following information that is available, in the following order of cogency:
- (a) the person's birth certificate or baptismal certificate; and
 - (b) a previous determination of the age of the person by a Court; and
 - (c) hospital or health clinic records, church records or school records of the person; and
 - (d) an entry about the person in a clinic book, a village record book, or other documentation of a similar nature; and
 - (e) statements made by the person, a parent or any other person likely to have direct knowledge of the age of the person; and
 - (f) an estimation of the age of the person made by a medical practitioner; and
 - (g) the person's physical appearance.
- (4) A Court shall not determine the age of a person solely on the basis of the person's physical appearance.

5. OBJECTIVES OF THE ACT.

The objectives of this Act are -

- (a) to establish the basis for the administration of a comprehensive and separate juvenile justice system based on the principles of restorative justice, melanesian tradition and contemporary juvenile justice practices; and
- (b) to establish a code for dealing with juveniles charged with or alleged to have committed an offence; and
- (c) to ensure that the rights of juveniles charged with or alleged to have committed an offence are fully respected and protected; and
- (d) to provide for the jurisdiction and proceedings of courts dealing with juveniles; and
- (e) to recognise and reinforce, in accordance with the *Constitution*, the role of the family unit as the fundamental basis of society, and in particular the importance of involving parents, families, victims and communities in juvenile justice processes in order to encourage -
 - (i) the rehabilitation of juveniles who commit offences; and
 - (ii) the reintegration of juveniles who commit offences into the community; and
- (f) to promote co-operation between all government departments and agencies, and other organisations, agencies and civil society groups involved in implementing an effective juvenile justice system.

6. GENERAL PRINCIPLES.

A Court or person exercising a power or performing a function in accordance with this Act is to be guided by the following principles:

- (a) because of their youth and vulnerability, special considerations apply in respect to proceedings against juveniles, and -
 - (i) at all stages, the criminal justice system for juveniles must be separate from that of adults; and
 - (ii) juveniles are entitled to enhanced protections to ensure that they are treated fairly and that their rights are respected; and
- (b) in all actions concerning a juvenile, the best interests of the juvenile are the primary consideration; and
- (c) a juvenile must, as far as possible, be given an opportunity to express his or her views before any decision affecting the juvenile is taken; and

Juvenile Justice

- (d) a juvenile is to be addressed in a manner appropriate to his or her age and intellectual development and is to be spoken to in his or her language of choice, through an interpreter if necessary; and
- (e) a juvenile is to be treated in a manner which takes into account his or her cultural values and beliefs; and
- (f) all procedures under this Act or any other law in respect of a juvenile are to be conducted and completed speedily; and
- (g) a juvenile being dealt with under this Act or any other law is to have access to legal and other support services; and
- (h) parents of a juvenile have the right to assist him or her in proceedings under this Act or any other law, and, if possible, to participate in decisions affecting the juvenile; and
- (i) unless the interests of justice require otherwise, criminal proceedings are not to be instituted against a juvenile if there is an alternative means of dealing with the matter; and
- (j) while juveniles must be held accountable for their actions, this should be done in a manner that -
 - (i) emphasises rehabilitation and reintegration; and
 - (ii) recognises their lack of maturity and limited capacity to understand the consequences of their actions; and
 - (iii) deals with each juvenile in an individualised way; and
- (k) all consequences arising from the commission of an offence must be proportionate to the circumstances of the juvenile, the nature of the offence, and the interests of society; and
- (l) within the limits of fair and proportional accountability, measures taken against a juvenile are to -
 - (i) reinforce respect for societal values; and
 - (ii) encourage repair of harm done to victims and the community; and
 - (iii) if appropriate, involve parents, family, the community and other agencies in the juvenile's rehabilitation and reintegration; and
- (m) parents, family members and other role models are to be encouraged to support juveniles in taking responsibility for their actions and to promote responsible behaviour in the future; and
- (n) a juvenile is to be detained in custody for an offence (whether on arrest, in remand or under sentence) as a measure of last resort, and for the shortest period of time necessary; and
- (o) in order to avoid labeling and stigma, the dignity and privacy of juveniles shall be respected at all times; and
- (p) female juveniles who are in conflict with the law are particularly vulnerable and require special protections, and special attention is to be paid to their particular needs and problems at all stages of the juvenile justice system.

PART II. - JUVENILE JUSTICE SYSTEM.

7. ESTABLISHMENT OF JUVENILE JUSTICE SERVICE.

The Juvenile Justice Service is established.

Juvenile Justice

8. MEMBERS OF THE SERVICE.

- (1) The Service consists of -
 - (a) the Director; and
 - (b) such juvenile justice officers, volunteer juvenile officers or such other officers as may be required.

(2) The persons referred to in Subsection (1)(b) are to be officers or employees of the Public Service and officers of the Court.

9. FUNCTIONS OF THE DIRECTOR.

- (1) The Director -
 - (a) is responsible for the operation of the Service; and
 - (b) shall direct and supervise the work of juvenile justice officers and other officers of the Service; and
 - (c) shall assign juvenile justice officers and other officers of the Service to serve in such areas and for such cases as the Director determines; and
 - (d) shall develop policies and procedures for the work of juvenile justice officers and other officers of the Service; and
 - (e) may issue guidelines relating to the minimum standards for juvenile institutions and juveniles in detention; and
 - (f) may accredit non-residential programs operated by individuals or civil society groups for the education, rehabilitation and vocational training of juveniles in the community; and
 - (g) has and may exercise any powers, or perform any duties or functions, of a juvenile justice officer; and
 - (h) has such other functions, powers, duties and responsibilities as are prescribed by or under this Act or any other law.

(2) The Director shall, as soon as practicable after 31 March in each year, submit to the Minister a report on -

- (a) the operation of the Service during the year ending on the preceding 31 December; and
- (b) any other matter connected with the Service as the Director thinks fit or as required by the Minister.

10. FUNCTIONS OF JUVENILE JUSTICE OFFICERS.

- (1) A juvenile justice officer shall -
 - (a) provide juveniles with support, counseling and basic information about their rights at all stages of the juvenile justice system; and
 - (b) conduct timely assessments of a juvenile's background and circumstances, and provide advice and recommendations to the police and courts with respect to any decision made regarding diversion, bail, and sentencing of a juvenile; and
 - (c) promote the development of diversion and community-based sentencing options for juveniles by enlisting support from provincial governments and local-level governments, civil society groups, churches and members of the community; and
 - (d) maintain lists of authorised facilitators, and of civil society groups or individuals providing programs, supervision and mentoring for diversion and community based sentencing options; and

Juvenile Justice

- (e) prepare and submit such reports and records as a Court or the Director requires; and
- (f) establish and maintain an adequate system of confidential records; and
- (g) perform such other functions, duties or responsibilities as the Director may require or as are prescribed by or under this Act or any other law.

(2) A person who hinders or obstructs a juvenile justice officer in the exercise of his or her powers or functions under this Act is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding 12 months, or both.

11. DELEGATION OF DIRECTOR'S FUNCTIONS ETC.

The Director may, by instrument, delegate to a juvenile justice officer all or any of his or her powers, functions, duties or responsibilities under this Act, except this power of delegation.

12. PROTECTION OF THE SERVICE.

The Director, a juvenile justice officer and any other officer referred to in Section 8(1) shall not be liable to any action, claim or proceedings for any act done, or omission made, by him or her in good faith in the exercise of powers, or the performance of functions, duties or responsibilities under this Act or any other law.

13. APPOINTMENT OF VOLUNTEER JUVENILE JUSTICE OFFICERS.

(1) The Director may, in writing, appoint persons to be volunteer juvenile justice officers to carry out all or any of the functions, duties or responsibilities of a juvenile justice officer.

(2) The Director -

- (a) shall develop criteria for the selection, training, and good conduct of volunteer juvenile justice officers; and
- (b) shall issue a volunteer juvenile justice officer an identity card indicating the nature of his or her appointment; and
- (c) may revoke the appointment of a volunteer juvenile justice officer at any time.

(3) A volunteer juvenile justice officer is deemed to be a worker employed by the State for the purposes of the *Workers Compensation Act* (Chapter 179).

14. ESTABLISHMENT OF JUVENILE COURTS.

The Minister may, by notice in the National Gazette, establish a Juvenile Court in and for an area specified in the notice.

15. APPOINTMENT OF JUVENILE COURT MAGISTRATES.

The Chief Magistrate may appoint as Juvenile Court Magistrates, such Magistrates as in his or her opinion have the necessary qualifications, training and experience to be Juvenile Court Magistrates.

16. APPOINTMENT OF CLERKS OF JUVENILE COURTS.

(1) The Chief Magistrate shall appoint, as clerks of Juvenile Courts, such persons as in his or her opinion have the necessary qualifications, training and experience to be clerks.

Juvenile Justice

(2) The appointment shall be made in accordance with the *Public Services (Management) Act 2014*.

(3) If -

(a) a clerk is not appointed to a particular Juvenile Court; or

(b) a clerk of a Juvenile Court is appointed, but is not available,

a Juvenile Court Magistrate, or such other persons as the Chief Magistrate may determine, shall perform the duties of a clerk.

17. GENERAL JURISDICTION OF JUVENILE COURTS.

(1) A Juvenile Court has exclusive jurisdiction in the area for which it is established in respect of a juvenile -

(a) to hear and determine summarily an offence punishable on summary conviction and otherwise triable in a District Court; and

(b) subject to Subsections (2) and (3), if the juvenile is charged with an indictable offence, to hear and determine the charge summarily in accordance with the provisions of this Act.

(2) Subsection (1)(b) does not apply to homicide, rape or any other offence punishable by death or imprisonment for life.

(3) Proceedings for an offence under Section (1)(b) must be heard and determined by a Juvenile Court constituted by a Juvenile Court Magistrate.

(4) To avoid any doubt, and despite any other Act or law, a Juvenile Court has exclusive jurisdiction to hear and determine summarily, proceedings for an offence under Subsection (1)(b) by way of information, without the need for election by the prosecuting authority.

18. LIMITATION ON JURISDICTION OF JUVENILE COURTS.

(1) A Juvenile Court has no jurisdiction in respect of proceedings against a person for an offence if the person was 18 years of age or older at the time the person allegedly committed the offence.

(2) If a Juvenile Court in any proceedings against a person for an offence determines that, at the time the person allegedly committed the offence, the person -

(a) was 18 years of age or older, the Juvenile Court shall transfer the proceedings to a District Court or the National Court, as the case requires; or

(b) was under the age of 10 years, the Juvenile Court shall discharge the person.

19. EXERCISE OF JURISDICTION BY COURTS OF SUMMARY JURISDICTION.

(1) If -

(a) a Juvenile Court has not been established in an area; or

(b) a Juvenile Court has been established in that area, but a Juvenile Court Magistrate has not been appointed or is absent from duty; or

(c) it is impracticable for a juvenile to be brought before a Juvenile Court in that area,

a court of summary jurisdiction may, subject to Subsection (2), exercise in and for that area the jurisdiction conferred by this Act on a Juvenile Court.

Juvenile Justice

- (2) A court of summary jurisdiction -
 - (a) shall, so far as is practicable, sit and conduct proceedings in accordance with this Act; and
 - (b) may hear and determine summarily an offence punishable on summary conviction and otherwise triable in a District Court; and
 - (c) may impose any order under Section 80, other than an order for custody or imprisonment; and
 - (d) if the court considers that the nature or circumstances of the offence are of sufficient gravity, may order that the case be heard by a properly constituted Juvenile Court.

20. EXERCISE OF JURISDICTION BY NATIONAL COURT.

(1) If a juvenile is charged with homicide, rape or other offence punishable by death or imprisonment for life -

- (a) the Juvenile Court shall deal with the committal proceedings; and
- (b) the National Court shall hear and determine the trial.

(2) If proceedings are brought in respect of two indictable offences of which -

(a) one offence is an indictable offence to which Subsection (1) applies; and

(b) the other offence is an indictable offence to which Subsection (1) does not apply,

both offences shall proceed on indictment, and the National Court shall hear and determine both offences together.

(3) When exercising jurisdiction under this section, the National Court shall, so far as is practicable, sit and conduct proceedings in accordance with this Act.

21. EXERCISE OF JURISDICTION BY THE VILLAGE COURTS.

(1) If a Village Court or village court official exercises jurisdiction under the *Village Courts Act 1989* with respect to a juvenile, the Court or the official shall, as far as is practicable, apply the principles of this Act under Sections 6 and 76.

(2) In this section, "village court official" has the same meaning as in the *Village Courts Act 1989*.

22. PROTECTION OF MAGISTRATES IN THE EXECUTION OF THEIR OFFICE.

Part XII of the *District Court Act* (Chapter 40) applies to a Magistrate in the execution of his or her duties under this Act.

23. ESTABLISHMENT OF THE NATIONAL JUVENILE JUSTICE COMMITTEE.

(1) The National Juvenile Justice Committee is established.

(2) The members of the National Juvenile Justice Committee are -

(a) the Chief Justice; and

(b) the Chief Magistrate; and

(c) the heads of the following departments -

(i) the department responsible for national justice administration; and

(ii) the department responsible for community development; and

(iii) the department responsible for health; and

(iv) the department responsible for education; and

(d) the Director; and

Juvenile Justice

- (e) the Commissioner of Police; and
- (f) the Commissioner of the Correctional Services; and
- (g) the Public Solicitor; and
- (h) a representative nominated by the National Youth Commission; and
- (i) a representative nominated by the churches; and
- (j) a representative nominated by women's groups; and
- (k) a representative nominated by civil society groups involved in providing services to juveniles; and
- (l) a representative nominated by any other organisation or group approved by the Minister; and
- (m) any individual appointed by the Minister.

(3) A member of the National Juvenile Justice Committee referred to in Subsection (2)(a),(b),(d),(e),(f) or (g), or Subsection (2)(c)(i),(ii),(iii) or (iv), may nominate another suitably qualified person as an alternate member of the Committee.

(4) The Minister shall appoint members of the National Juvenile Justice Committee referred to in Subsection (2)(h),(i),(j),(k) and (l) on such terms and conditions as are prescribed.

24. MEETINGS OF THE NATIONAL JUVENILE JUSTICE COMMITTEE.

(1) The National Juvenile Justice Committee shall, at its first meeting and any subsequent meetings, as the need arises, elect one of its members to be the Chairperson of the Committee, and another member to be the Deputy Chairperson of the Committee.

(2) The National Juvenile Justice Committee shall meet -

- (a) at such times and places as the Chairperson determines; and
- (b) at least once in every three months.

(3) The National Juvenile Justice Committee is to determine its own procedures.

(4) The Director is to provide secretariat services for the National Juvenile Justice Committee.

25. FUNCTIONS OF THE NATIONAL JUVENILE JUSTICE COMMITTEE.

The functions of the National Juvenile Justice Committee are -

- (a) to oversee and monitor the implementation of this Act; and
- (b) to promote co-operation between all government departments and agencies and other organisations, agencies and civil society groups involved in implementing the juvenile justice system; and
- (c) to periodically develop national plans for the implementation of juvenile justice initiatives and for juvenile crime prevention; and
- (d) to share information, review progress and coordinate implementation of juvenile justice initiatives; and
- (e) to promote training and specialisation for the personnel of agencies and organisations involved in the administration of the juvenile justice system; and
- (f) such other functions as are prescribed.

Juvenile Justice

26. PROVINCIAL JUVENILE JUSTICE COMMITTEES.

- (1) The Director may, after consultation with the Provincial Administrator of a Province -
 - (a) establish a Provincial Juvenile Justice Committee in the Province; and
 - (b) appoint the members of the Committee; and
 - (c) determine the Committee's functions.
- (2) A Provincial Juvenile Justice Committee is to determine its own procedures.

PART III. - DIVERSION.

27. PURPOSES OF DIVERSION.

The purposes of diversion of a juvenile are to -

- (a) provide an effective and timely response to the offending behaviour of the juvenile; and
- (b) hold the juvenile accountable for his or her actions; and
- (c) encourage the juvenile to acknowledge and repair the harm caused to the victim and the community; and
- (d) promote reconciliation between the juvenile and the person or community affected by the juvenile's offending behaviour; and
- (e) allow victims to participate in decision-making; and
- (f) encourage the juvenile's parents and other family members, and community members, to be directly involved in holding the juvenile accountable, supporting the victim, and providing opportunities for the juvenile to correct his or her offending behaviour; and
- (g) prevent stigmatising the juvenile and prevent adverse consequences flowing from the juvenile being subject to the criminal justice system; and
- (h) prevent the juvenile from having a criminal record.

28. JUVENILES TO BE CONSIDERED FOR DIVERSION.

- (1) A juvenile may be considered for diversion if -
 - (a) the juvenile voluntarily acknowledges responsibility for the offence; and
 - (b) consent to diversion and the diversion option is given by -
 - (i) the juvenile; and
 - (ii) if the juvenile has one or both parents, one of his or her parents (whether or not the juvenile has both parents); and
 - (c) there is sufficient evidence to proceed with the case and the prosecution is not barred at law; and
 - (d) it is in the interests of justice that the matter be resolved informally.
- (2) In determining whether diversion is in the interests of justice, regard shall be had to -
 - (a) the nature and seriousness of the offence; and
 - (b) the background and circumstances of the juvenile, including the juvenile's criminal history and whether the offence is a repeat offence; and
 - (c) the views of the victim, although such views are not binding; and
 - (d) the need to ensure public safety; and
 - (e) the general principles set out in Section 6.

Juvenile Justice

29. DIVERSION OPTIONS.

- (1) A diversion option in relation to a juvenile may include all or any of the following:
 - (a) a warning to, or caution of, the juvenile; and
 - (b) an oral or written apology by the juvenile to a specified person; and
 - (c) the compulsory school attendance by the juvenile for a specified period of time; and
 - (d) a requirement that the juvenile comply with certain standards of behaviour and spend a specified number of hours with his or her family; and
 - (e) a requirement that the juvenile report to a specified person or organisation at specified times to supervise, monitor and guide the juvenile's behaviour; and
 - (f) the counseling of the juvenile by a specified person or organisation; and
 - (g) a referral of the juvenile to a non-residential vocational training or rehabilitation program approved by the Director; and
 - (h) restitution, including the return of any item taken, or the repair of any damage done, by the juvenile; and
 - (i) with the consent of the victim, the provision of a specified service by the juvenile to the victim; and
 - (j) the payment of compensation of not more than K5,000.00; and
 - (k) the performance by the juvenile of community service work in accordance with Section 82; and
 - (l) a community based conference; and
 - (m) any other measure appropriate to the juvenile and the local circumstances, which is consistent with the principles contained in this Act.

- (2) A member of the Police Force under Section 40(2) or a Court under Section 62 may divert a juvenile.

30. MINIMUM STANDARDS APPLICABLE TO DIVERSIONS.

- (1) The diversion of a juvenile shall be -
 - (a) appropriate to the age and maturity of the juvenile; and
 - (b) proportionate to the offence allegedly committed by the juvenile.

- (2) The diversion of a juvenile shall not -
 - (a) be exploitive, harmful or hazardous to the juvenile's physical or mental health; and
 - (b) involve punishment that is more onerous than the juvenile would have received through the formal legal system; and
 - (c) involve corporal punishment, public humiliation, or anything that would degrade or stigmatise the juvenile; and
 - (d) involve any form of deprivation of the juvenile's liberty; and
 - (e) interfere with the juvenile's schooling.

- (3) To the extent possible, the diversion of a juvenile must -
 - (a) impart useful skills to the juvenile; and
 - (b) address the underlying problems that contributed to the juvenile's offending behaviour; and
 - (c) include a restorative justice element aimed at restoring the relationship between the juvenile, the victim and the community; and
 - (d) involve the juvenile's parents, family, and community members in holding the juvenile accountable and addressing the juvenile's offending behaviour.

Juvenile Justice

31. USE OF DIVERSION ADMISSIONS AND STATEMENTS.

(1) If, through the course of a diversion, including a community based conference, a juvenile makes an admission or statement in relation to the offence the juvenile allegedly committed, the admission or statement cannot be used against the juvenile in any current or subsequent legal proceedings.

(2) Subsection (1) applies to a juvenile even if the juvenile fails to satisfactorily comply with any diversion option or a diversion agreement.

32. PURPOSE OF COMMUNITY BASED CONFERENCES.

(1) The purpose of a community based conference for a juvenile is to develop a diversion agreement about what should be done in response to the juvenile's offending behaviour.

(2) A member of the Police Force under Section 40(2)(b) or a Court under Section 62 may refer a juvenile to a community based conference.

33. CONVENING OF COMMUNITY BASED CONFERENCES.

(1) An authorised facilitator shall, before convening a community based conference for a juvenile, make all reasonable efforts to consult with the juvenile, the juvenile's parents and, if applicable, the victim in relation to -

- (a) the date, time and location at which the community based conference is proposed to be held; and
- (b) the persons who should attend the conference; and
- (c) the procedures to be adopted at the conference.

(2) The community based conference shall be held not later than 14 days after an authorised facilitator has received a referral for the conference from a member of the Police Force or a Court.

(3) The community based conference may be held at any location agreed to by the participants and the authorised facilitator, but must not be held at a police station or in a courtroom, unless there are no other more suitable facilities available.

(4) The authorised facilitator shall take all reasonable steps to ensure that every person who may attend the community based conference receives timely notice of the date, time and place of the conference.

34. PARTICIPANTS AND PROCEDURES AT COMMUNITY BASED CONFERENCES.

(1) The following persons may attend a community based conference -

- (a) the authorised facilitator; and
- (b) the juvenile; and
- (c) the juvenile's parents or other responsible person; and
- (d) any victim of the alleged offence; and
- (e) a support person or persons for the victim; and
- (f) a member of the Police Force; and
- (g) a juvenile justice officer.

Juvenile Justice

- (2) If the authorised facilitator is of the opinion that it is appropriate, he or she may invite all or any of the following persons to attend the community based conference:
- (a) a respected member of the community where the juvenile lives; and
 - (b) a representative from a civil society group providing supervision and support services to juveniles in the community; and
 - (c) if the juvenile attends school, a representative of the school; and
 - (d) if the juvenile attends church, a representative of the church; and
 - (e) any other person requested by the juvenile.
- (3) The following procedures must be followed at a community based conference:
- (a) the juvenile has the right to participate personally in the discussion and in any decision made; and
 - (b) the victim has the right to participate personally in the discussion and in any decision made, unless he or she elects not to participate; and
 - (c) the proceedings must be conducted in a way that best assists the reaching of an agreement that meets the objectives of -
 - (i) encouraging the juvenile to accept responsibility for his or her behaviour; and
 - (ii) determining what support is necessary and available from the juvenile's family and community to enable the juvenile to overcome the offending behaviour and to promote responsible behaviour from the juvenile in the future; and
 - (iii) identifying the means by which the juvenile can repair the harm caused to the victim and the community.
- (4) The participants in a community based conference may follow such other procedures as are agreed by them.

35. DIVERSION AGREEMENTS.

- (1) The participants at a community based conference may develop a diversion agreement for the juvenile.
- (2) A diversion agreement must -
- (a) be agreed to and signed by the juvenile; and
 - (b) specify what the juvenile must do to overcome his or her offending behaviour and make amends for the harm caused; and
 - (c) contain details of the services and assistance, if any, to be provided to the juvenile; and
 - (d) specify the persons or civil society groups to provide supervision or other services to the juvenile; and
 - (e) comply with the minimum standards for diversion options set out in Section 30; and
 - (f) set out times, not exceeding any limits imposed by this Act, for the implementation of the agreement; and
 - (g) identify a suitable person to monitor the juvenile's compliance with the agreement; and
 - (h) specify the other conditions to which the diversion agreement is subject.
- (3) A diversion agreement may include -
- (a) any diversion option contained in Section 29; and

Juvenile Justice

- (b) any other measure consistent with this Act and appropriate to the juvenile and the local circumstances.
- (4) The authorised facilitator of a community based conference must provide a copy of any diversion agreement developed at the conference to the referring member of the Police Force or the Court within seven days after the conference ends.
- (5) The Court may confirm, vary or reject the diversion agreement in accordance with Section 62(3).
- (6) The referring member of the Police Force may approve, vary or reject the diversion agreement in accordance with Section 42(3).
- (7) If the participants in a community based conference cannot agree on a diversion agreement, the authorised facilitator shall refer the matter back to the referring member of the Police Force or the Court for -
 - (a) consideration of another diversion option; or
 - (b) the initiation or continuation of criminal proceedings in accordance with this Act.

36. COMPLIANCE WITH DIVERSION AGREEMENTS.

- (1) The person identified in a diversion agreement as being responsible for monitoring the juvenile's compliance with the agreement shall report to the referring member of the Police Force or the Court on the juvenile's compliance with the diversion agreement not later than two weeks after the date set for completion of the agreement.
- (2) If a juvenile satisfactorily complies with a diversion agreement in relation to an alleged offence, no further criminal proceedings may be taken against the juvenile for that offence.
- (3) If a juvenile fails to satisfactorily comply with a diversion agreement, the authorised facilitator shall give written notice of the failure to the referring member of the Police Force or the Court.
- (4) The Court shall decide in accordance with Section 62(7) what to do about the juvenile's failure to comply.
- (5) The referring member of the Police Force may, upon being notified of such failure, initiate criminal proceedings against the juvenile in accordance with Section 44.

37. AUTHORISED FACILITATORS.

- (1) The Director may in writing authorise persons to facilitate community based conferences.
- (2) An authorised facilitator is not liable to any action, claim or proceedings for any act done, or omission made, in good faith by the facilitator in the exercise of powers, or the performance of functions, duties or responsibilities, under this Act.

Juvenile Justice

PART IV. - JUVENILES AND THE POLICE.

38. APPLICATION OF *ARREST ACT* (CHAPTER 339).

The *Arrest Act* (Chapter 339), unless otherwise indicated and to the extent that it is not inconsistent with this Act, applies to the arrest of a juvenile.

39. POLICE AND CHILDREN UNDER THE AGE OF CRIMINAL RESPONSIBILITY.

(1) A member of the Police Force shall arrest, detain or charge a child if the child is under the age of 10 years and is alleged to have committed an offence.

(2) Notwithstanding Subsection (1), the member of the Police Force -

(a) shall take all reasonable steps -

(i) to notify the child's parents or a responsible person of the alleged offence; and

(ii) to deliver the child to a parent or the responsible person; and

(b) if the child cannot be delivered to a parent or a responsible person, must report the child's circumstances to the Director or a juvenile justice officer; and

(c) if the member has reason to believe that the child is a child in need of protection within the meaning of the *Lukautim Pikinini (Child) Act 2009*, must report the child's circumstances to the Director of Lukautim Pikinini in accordance with Section 45 of that Act.

40. POLICE TO CONSIDER ALTERNATIVES TO INITIATING PROCEEDINGS.

(1) Before initiating criminal proceedings against a juvenile for an alleged offence, a member of the Police Force must consider whether to take no further action or to divert the juvenile.

(2) Subject to Subsection (3), if the member of the Police Force is of the opinion that the criteria has been met under Section 28 in relation to the juvenile, the member may divert the juvenile by -

(a) warning the juvenile; or

(b) referring the juvenile to a community based conference; or

(c) adopting another diversion option mentioned in Section 29.

(3) A juvenile who is alleged to have committed a serious indictable offence may be diverted only if the serious indictable offence is triable summarily.

41. WARNING A JUVENILE.

(1) A member of the Police Force may give a warning to a juvenile at any place, including a place where the juvenile is found, and shall -

(a) explain to the juvenile that his or her behaviour is unacceptable and the possible consequences of the offending behaviour; and

(b) warn the juvenile that if he or she persists in such behaviour, he or she may be charged the next time.

(2) The juvenile must not be taken into police custody and the warning must not involve threats or intimidation.

Juvenile Justice

- (3) The juvenile may be required to apologise to the victim if -
 - (a) the member of the Police Force considers that it is appropriate in the circumstances; and
 - (b) the victim consents to participate in the proceedings.
- (4) The member of the Police Force may make a record of the warning.

42. REFERRAL TO COMMUNITY BASED CONFERENCE.

- (1) A member of the Police Force may divert a matter by referring a juvenile to a community based conference.
- (2) An authorised facilitator shall convene and facilitate the community based conference in accordance with Part III.B.
- (3) If the community based conference develops a diversion agreement, the member may, upon receipt of a copy of the diversion agreement -
 - (a) approve the agreement; or
 - (b) with the consent of the juvenile, vary the agreement and make a revised diversion agreement; or
 - (c) reject the agreement and initiate criminal proceedings in accordance with Section 44.

43. COURT MAY DISMISS CHARGE IF JUVENILE SHOULD HAVE BEEN DIVERTED OR NO ACTION TAKEN.

- (1) If a juvenile pleads guilty before a Court to a charge, the Court may dismiss the charge instead of accepting a plea of guilty if the Court is satisfied that the juvenile should have been diverted or no action should have been taken against the juvenile.
- (2) The Court may dismiss the charge on its own motion or on an application for dismissal made by or on behalf of the juvenile.
- (3) In making its decision, the Court may have regard to -
 - (a) any other diversions administered to the juvenile for any offence; and
 - (b) whether any previous diversion agreements have been made by the juvenile; and
 - (c) if diversion agreements have previously been made, whether the juvenile has complied with the conditions of those diversion agreements.
- (4) If the Court dismisses the charge, the Court may -
 - (a) administer a caution to the juvenile; or
 - (b) direct that a caution be administered to the juvenile as directed by the Juvenile Court.
- (5) The caution is not part of the juvenile's criminal history.

44. METHODS OF INITIATING PROCEEDINGS.

- (1) Subject to Subsection (2), criminal proceedings are to be initiated against a juvenile by way of a summons.
- (2) Criminal proceedings are to be initiated against a juvenile by means of an arrest if -
 - (a) the offence for which proceedings are being initiated is an indictable offence; or

Juvenile Justice

- (b) in the opinion of the person initiating the proceedings, there are reasonable grounds to believe that the arrest is necessary -
- (i) because the juvenile is unlikely to comply with a summons; or
 - (ii) to obtain or to prevent the loss or destruction of evidence relating to the offence; or
 - (iii) because the violent behaviour of the juvenile, or violent nature of the offence indicates that the juvenile should not be allowed to remain at liberty.

(3) To avoid doubt, nothing in this section affects the operation of Section 18(1)(a)(i), (ii) and (iii) of the *Arrest Act* (Chapter 339).

45. SUMMONS.

(1) If a member of the Police Force intends to initiate proceedings against a juvenile by means of a summons, the member shall -

- (a) advise the juvenile that he or she is charged with an offence; and
- (b) explain to the juvenile the allegations against him or her; and
- (c) advise the juvenile of the date, time, and place that he or she shall appear before the Court, and the consequences for failing to do so; and
- (d) serve a copy of the summons on the juvenile.

(2) To avoid doubt, the requirements of Subsection (1) are in addition to the requirements of any other law relating to a summons.

46. ARREST.

(1) If a member of the Police Force intends to initiate proceedings against a juvenile by means of arrest, the member must immediately -

- (a) advise the juvenile that he or she is under arrest; and
- (b) explain to the juvenile the nature of the allegations made against him or her; and
- (c) explain to the juvenile his or her rights under the *Constitution* and this Act; and
- (d) answer any questions that the juvenile may have; and
- (e) request that the juvenile accompany him or her to the police station.

(2) Any information or explanation required to be given shall be given in a manner and in language that is appropriate to the age and level of understanding of the juvenile.

47. USE OF FORCE ON ARREST.

(1) In effecting an arrest, a member of the Police Force must not use physical force or a means of restraint unless -

- (a) the juvenile resists the arrest, whether by force or by refusing to move, or seeks to evade arrest, whether by running away or by other means; or
- (b) the use of force or the restraint is necessary to -
 - (i) protect the juvenile from causing harm to himself or herself; or
 - (ii) prevent the juvenile from causing harm to some other person.

(2) Any use of physical force must be reasonable, and shall be the minimum necessary in the circumstances.

Juvenile Justice

48. NOTIFICATION OF PARENTS AND JUVENILE JUSTICE OFFICER.

(1) If a juvenile is arrested by a member of the Police Force, the member or the officer in charge of the relevant police station shall -

- (a) immediately, or not more than 24 hours after the arrest, notify the following persons of the arrest, the reasons for the arrest and the place of detention:
 - (i) a parent of the juvenile or a responsible person; and
 - (ii) a juvenile justice officer; and
- (b) allow access to the juvenile by all or any of the persons mentioned in Paragraph (a)(i) or (ii).

(2) If a juvenile is arrested by a person who is not a member of the Police Force, the person shall immediately notify a member of the Police Force, and the member or the officer in charge of the police station, shall comply with Subsection (1).

(3) If the juvenile's parent or a responsible person cannot, with reasonable diligence, be found, it is sufficient to notify a juvenile justice officer.

(4) The juvenile justice officer, having been notified of the arrest of the juvenile, shall, as soon as practicable, notify a parent of the juvenile or a responsible person of the arrest, the reasons for the arrest and the place of detention if the parent or responsible person has not yet been notified.

(5) To avoid doubt, a failure by a member of the Police Force or the officer in charge of a police station to comply with Subsection (1) may constitute a disciplinary offence within the meaning of Section 20(1)(b) or (c) of the *Police Act 1998*.

(6) Nothing in this section affects the requirement for a member of the Police Force who has reason to believe that the juvenile is a child in need of protection within the meaning of the *Lukautim Pikinini (Child) Act 2009* to report the arrest of the juvenile to the Director of Lukautim Pikinini in accordance with Section 45 of that Act.

49. POWERS OF A JUVENILE JUSTICE OFFICER UPON ARREST OR DETENTION OF A JUVENILE.

A juvenile justice officer may -

- (a) enter any police station, lock-up or any other place of detention, for the purpose of interviewing a juvenile; and
- (b) be present for any police questioning or interrogation of the juvenile; and
- (c) advise the juvenile of his or her legal rights and of his or her right to refuse to answer questions; and
- (d) counsel or advise the juvenile; and
- (e) question an arresting officer in respect of a juvenile who is arrested or who is charged with, or in connection with, an offence; and
- (f) make recommendations to the arresting officer with respect to the appropriateness and availability of diversion options; and
- (g) make recommendations to the bail authority with respect to releasing the juvenile on bail.

Juvenile Justice

50. QUESTIONING AND STATEMENTS FROM JUVENILES.

(1) Prior to questioning a juvenile, a member of the Police Force shall explain to the juvenile, in a manner and in a language that is appropriate to the age and level of understanding of the juvenile that -

- (a) the juvenile is under no obligation to make or give a statement; and
- (b) if the juvenile consents to giving a statement, the juvenile may withdraw that consent at any time; and
- (c) any statement made or given by the juvenile may be used in evidence in any proceedings; and
- (d) the juvenile is entitled to consult with, and make or give any statement in the presence of a legal representative, parent or other adult support person.

(2) To the extent possible, a juvenile shall be questioned by a member of the Police Force who has received training in juvenile matters.

(3) A juvenile shall be questioned in the presence of one or more of the following persons:

- (a) a parent or responsible person; and
- (b) a juvenile justice officer; and
- (c) a legal representative of the juvenile; and
- (d) any other adult support person nominated by the juvenile.

(4) If none of the persons referred to in Subsection (3) can, with due diligence, be located to be present during the questioning of a juvenile, the officer in charge of the police station may nominate a respected member of the community, other than a member of the Police Force, to be present as a support person for the juvenile.

(5) Subject to Subsection (6), an oral or written statement made or given by the juvenile is not admissible in evidence in any proceedings against the juvenile unless the Court is satisfied that one or more persons referred to in Subsections (3) or (4) was present with the juvenile at the time the statement was made or given.

(6) A Court may admit into evidence a statement made by a juvenile in the absence of a person mentioned in Subsections (3) or (4) if the Court is satisfied that -

- (a) there was a proper and sufficient reason for the absence of those persons; and
- (b) it is in the interests of justice to do so; and
- (c) the admission of the statement would not bring into disrepute the principle that juveniles are entitled to enhanced procedural protections to ensure that they are treated fairly and their rights are protected.

51. POLICE CONDUCT GENERALLY.

(1) Any contact between a member of the Police Force and a juvenile in respect of an offence shall be managed in such a way as to -

- (a) respect the legal status of the juvenile; and
- (b) promote the well-being of the juvenile, including to obtain medical assistance for the juvenile when required; and
- (c) avoid harm to the juvenile.

(2) Without limiting Subsection (1), a member of the Police Force shall -

- (a) refrain from using vulgar or profane words; and

Juvenile Justice

- (b) not apply any physical force to a juvenile or use handcuffs or other instruments of restraint except, and to the minimum extent necessary -
 - (i) to prevent the escape of the juvenile, if there is a serious risk that the juvenile may attempt to escape; or
 - (ii) to protect the juvenile from causing harm to himself or herself; or
 - (iii) to prevent the juvenile from causing harm to some other person; and
- (c) refrain from pointing, displaying or using a firearm; and
- (d) ensure, to the extent possible, that juveniles in the custody of the police are kept separate from adults; and
- (e) take such steps as are necessary and practicable in the circumstances to protect juveniles in police custody from harm, including harm caused by other adult or juvenile detainees.

(3) Any use of force or restraint against a juvenile under this Part shall be documented by a member of the Police Force, and shall be brought to the attention of the officer in charge of the police station.

52. CUSTODY OF JUVENILES FOLLOWING ARREST.

(1) If -

- (a) a juvenile has been arrested for an offence and is held in custody at a police station or in the custody of a member of the Police Force; and
- (b) the officer-in-charge of that police station or a commissioned officer of the Police Force is of the opinion that it is not practicable to bring the juvenile before a Court within a reasonable time,

the officer shall, immediately after forming that opinion, consider and grant or refuse bail to the juvenile in accordance with Part V.

(2) To avoid doubt, Subsection (1) applies to a juvenile despite Section 5 of the *Bail Act* (Chapter 340).

(3) A juvenile who is arrested or detained at a police station or in the custody of a member of the Police Force shall -

- (a) to the extent possible, be kept separate from adult detainees; and
- (b) be detained in conditions that will reduce the risk of harm to the juvenile; and
- (c) be treated in a manner and kept in conditions which take into account his or her age; and
- (d) be permitted, without delay and in private to communicate with -
 - (i) a member of his or her family or a personal friend; and
 - (ii) a legal representative of his or her choice, including the Public Solicitor if he or she is entitled to legal aid; and
- (e) be brought before a Court without delay, and not later than 24 hours after the juvenile was arrested or detained.

53. CIVIL REMEDY FOR WRONGFUL DETENTION OR ARREST.

(1) This section applies to a person who detains a child under the age of criminal responsibility or arrests a juvenile.

(2) If a person to whom this section applies -

- (a) exercises a power conferred by this Part in breach of this Part; or

Juvenile Justice

- (b) performs a duty imposed by this Part in breach of this Part; or
- (c) fails or refuses to perform a duty imposed by this Part,

the person may be liable in damages to the child or juvenile, or his or her parents, for the breach, failure or refusal, as the case may be.

- (3) An action under Subsection (2) may be brought -
 - (a) in the National Court; or
 - (b) in a District Court, which has jurisdiction within the limits prescribed by Section 21 of the *District Courts Act* (Chapter 40).

- (4) In an action under Subsection (2), a court may award exemplary damages.

(5) The provisions of this section are in addition to and not in derogation of the provisions of the *Constitution* or any other law dealing with the enforcement of any constitutional right, power, duty, restriction or prohibition.

(6) For the purpose of any action under Subsection (2), if the detention or arrest would otherwise be within the scope of a person's employment, the mere non-compliance by an employee with a provision of this Part does not, of itself, take any act of the employee, committed during the course of the detention or arrest, outside the scope of his or her employment.

(7) A member of the Police Force against whom proceedings are brought under this section shall be indemnified in the same manner and to the same extent as a police officer is indemnified under Section 29 of the *Arrest Act* (Chapter 339), and a reference to Section 26(1) in that section must be read as if it were a reference to Section 53(2) of this Act.

PART V. - BAIL AND REMAND OF JUVENILES.

54. APPLICATION OF *BAIL ACT* (CHAPTER 340).

The *Bail Act* (Chapter 340), unless otherwise indicated and to the extent that it is not inconsistent with this Act, applies to the granting of bail to a juvenile.

55. GRANTING OF BAIL BY JUVENILE COURT OR COURT OF SUMMARY JURISDICTION.

Subject to Section 4 of the *Bail Act* (Chapter 340), a Juvenile Court or a court of summary jurisdiction exercising jurisdiction under this Act may grant bail to a juvenile who is charged with an offence, other than murder, rape or any other offence punishable by death or life imprisonment.

56. GENERAL PRINCIPLES RELATING TO BAIL.

(1) A juvenile arrested or detained for an offence is entitled to bail at all times from arrest or detention to acquittal or conviction unless the interests of justice otherwise require.

(2) A bail authority, when deciding whether to grant or refuse bail to a juvenile, shall have regard to all relevant factors, including the following:

- (a) the best interests of the juvenile; and
- (b) the juvenile's character, background and criminal history; and
- (c) the availability of a parent or other responsible person to supervise the juvenile; and

Juvenile Justice

- (d) the availability of appropriate remand facilities to ensure that the juvenile is detained separately from adults, and in conditions that will reduce the risk of harm to the juvenile; and
- (e) the nature and seriousness of the offence; and
- (f) the strength of the evidence against the juvenile relating to the offence; and
- (g) the likelihood that, if the juvenile is convicted of the offence, a sentence of imprisonment will be imposed; and
- (h) the risk that the juvenile might be a danger to any other person; and
- (i) any recommendation from a juvenile justice officer; and
- (j) the principle that a juvenile shall not be detained as a substitute for appropriate child protection measures; and
- (k) the principle that a juvenile is to be detained only as a measure of last resort.

57. RELEASING JUVENILE ON BAIL TO PARENT OR RESPONSIBLE PERSON.

If a juvenile is granted bail, the bail authority, as a condition of bail -

- (a) shall place the juvenile in the care of a parent or a responsible person who has agreed to accept the juvenile and, in the opinion of the bail authority, is capable of caring for the juvenile; and
- (b) if Paragraph (a) does not apply, may place the juvenile -
 - (i) under the supervision of a juvenile justice officer; or
 - (ii) in the care of the Director of Lukautim Pikinini; and
- (c) may require the juvenile to report to the juvenile justice officer or the Director of Lukautim Pikinini at such times as the bail authority considers necessary; and
- (d) may impose such other conditions as the bail authority considers to be necessary.

58. JUVENILE NOT TO BE REFUSED BAIL SOLELY ON CERTAIN GROUNDS.

A juvenile shall not be refused bail solely on the ground that -

- (a) the juvenile does not have adequate accommodation or parental supervision; or
- (b) the juvenile or another person cannot lodge an amount of money as a condition of the bail.

59. JUVENILES ON REMAND.

(1) A juvenile who has been denied bail and remanded into custody shall be placed in a remand centre, or in such place as is approved by the Director for that purpose.

(2) If a juvenile has been remanded into custody, a Court shall take such steps as are reasonably practicable to expedite the completion of the proceedings, so as to minimise, to the extent possible, the length of time the juvenile will spend in custody.

PART VI. - PROCEEDINGS IN JUVENILE COURTS.

60. SITTING OF JUVENILE COURTS.

(1) A Juvenile Court may sit at any place in the area for which it is established and may, subject to Section 71, be adjourned from time to time and from place to place.

(2) A Juvenile Court shall, so far as practicable, sit either in a different building or room from that in which the sittings of courts other than Juvenile Courts are held, or on different days or at different times from those on which sittings of such other courts are held.

Juvenile Justice

61. FIRST APPEARANCE INQUIRY.

(1) At a juvenile's first appearance before a Court, and prior to taking a plea from the juvenile, the Court shall -

- (a) explain to the juvenile the nature of the allegations made against him or her; and
- (b) make a determination as to the juvenile's age in accordance with Section 4; and
- (c) inquire as to the treatment the juvenile has received, and whether his or her rights under the *Constitution* and this Act have been complied with; and
- (d) make a determination under Section 62 as to whether diversion is appropriate; and
- (e) inquire whether the juvenile has had contact with or received assistance from a juvenile justice officer; and
- (f) decide whether to grant bail to the juvenile in accordance with Part V.

(2) The Court may conduct an inquiry under Subsection (1)(c) informally by asking questions or eliciting information from the juvenile, the juvenile's parents, a responsible person, a juvenile justice officer and the prosecuting authority, or any other person the Court considers relevant.

(3) The Court may, prior to making any decision under Subsection (1), determine that an out-of-court planning meeting is to be convened by a juvenile justice officer to discuss and make recommendations with respect to any decision that the Court is required to make under this section.

(4) The meeting may include the juvenile, the juvenile's parents, the prosecuting authority, a member of the Police Force involved in the case, a responsible person or any organisation involved in the care of the juvenile, and any other person at the discretion of the Court.

(5) At the conclusion of the meeting, the juvenile justice officer shall report to the Court on the outcome of the meeting and the recommendations of the participants.

62. COURT DIVERSION.

(1) If, in the opinion of a Court, the criteria under Section 28 has been met for a juvenile, the Court may divert the juvenile by making an order for one or more diversion options under Section 29.

(2) If the Court makes an order to refer the juvenile to a community based conference, the Court shall refer the juvenile to an authorised facilitator to convene and facilitate the conference in accordance with Part III.B, and adjourn the proceedings for the purposes of holding the conference.

(3) If the community based conference develops a diversion agreement, the Court may, upon receipt of a copy of the diversion agreement -

- (a) confirm the agreement by making a diversion order in accordance with the agreement; or
- (b) with the consent of the juvenile, vary the agreement and make an appropriate diversion order; or
- (c) reject the agreement and refer the matter for plea and trial.

(4) If the Court makes a diversion order, the Court shall adjourn the proceedings pending the juvenile's compliance with the diversion agreement.

(5) The Court shall, upon receipt of a report that the juvenile has satisfactorily complied with the diversion agreement, discharge the juvenile on all charges in question.

Juvenile Justice

(6) The discharge may be made in the absence of the juvenile.

(7) If the juvenile fails to satisfactorily comply with the diversion agreement, the Court may, upon being notified of such failure, issue a summons to the juvenile to appear before the Court and may -

- (a) vary the diversion order or impose a different diversion option; or
- (b) set the matter down for plea and trial.

(8) The Court may divert a matter of its own motion or at the request of the prosecutor.

63. PROCEDURE IN TAKING PLEA OF JUVENILE.

(1) If a juvenile who appears before a Court charged with an offence has not been diverted under Section 62, the Court shall follow the procedure set out in this section.

(2) Following the completion by the Court of a first appearance inquiry referred to in Section 61, the Court shall, in simple language and in a manner and terms appropriate to the age and level of understanding of the juvenile -

- (a) explain to the juvenile the nature of the allegations against him or her; and
- (b) inform the juvenile of his or her rights; and
- (c) explain to the juvenile the procedures to be followed under this Act.

(3) The Court shall read and explain the particulars of the charge to the juvenile, and shall ask the juvenile whether he or she admits or denies the charge.

64. ADMISSION OR DENIAL OF CHARGE BY JUVENILE.

(1) If a juvenile admits a charge -

- (a) the prosecutor shall give a statement of the facts to the Court; and
- (b) the Court shall explain the individual allegations as questions to the juvenile; and
- (c) the juvenile shall answer whether any or all of the allegations are true or not true; and
- (d) the Court shall record the answer to each allegation put to the juvenile in accordance with Paragraph (b).

(2) The Court shall record a plea of guilty against the juvenile if -

- (a) the juvenile does not dispute any of the allegations put to him or her in accordance with Subsection (1)(b); and
- (b) an offence is disclosed.

(3) If the juvenile does not accept any one or more of the allegations, the Court shall decide whether or not the answers on the remaining undisputed facts are sufficient to establish a plea of guilty.

(4) If the Court decides that the answers on the remaining undisputed facts are sufficient to establish a plea of guilty, the Court shall ask the prosecutor whether the prosecutor -

- (a) is prepared to accept the version of facts offered by the juvenile as a plea of guilty; or
- (b) wishes to proceed to trial to prove all the particulars alleged in the statement of facts.

Juvenile Justice

(5) The Court shall record a plea of guilty against the juvenile if the prosecutor is prepared to accept the version of facts offered by the juvenile under Subsection (4)(a) and the version discloses an offence.

(6) If -

(a) the prosecutor is not prepared to accept the version of facts offered by the juvenile under Subsection (4)(a); and

(b) the Court considers that the difference in the version of the facts offered by the juvenile and the prosecutor is substantial and material to the determination of guilt or innocence or the severity of sentence,

the Court shall change the plea to not guilty and proceed to hear the charge or adjourn to a date for trial.

(7) Notwithstanding the juvenile admitting the offence, the Court may, in any case in which the juvenile is not legally represented, hear such evidence as it considers necessary in the best interest of justice and of the juvenile.

(8) If the juvenile denies the charge, the Court may proceed to hear the charge or adjourn to a date for trial.

65. COURT POWERS AFTER PLEA.

(1) If at any stage after a plea of guilty has been entered by a juvenile, and before sentence has been passed -

(a) the juvenile alleges a defence or claims he or she is not guilty; or

(b) it appears to the Court that a defence has been raised,

the Court shall change the plea to not guilty and adjourn the matter to a date for trial.

(2) If, at any stage after a plea of not guilty has been entered, but before a conviction or acquittal has been entered, it comes to the attention of the Court that the juvenile acknowledges responsibility for an alleged offence, the Court may divert the matter in accordance with Section 62.

66. CONDUCT OF THE PROCEEDINGS GENERALLY.

(1) A Court shall, with due regard to a juvenile's procedural rights, conduct proceedings in an informal manner to encourage maximum participation by the juvenile and the juvenile's parents.

(2) The Court shall take steps to ensure, as far as practicable, that the juvenile and his or her parents have a full opportunity to be heard and to participate in the proceedings.

(3) Without limiting Subsection (1), the Court shall ensure that the juvenile and his or her parents understand, as far as practicable -

(a) the nature of the alleged offence, including the matters that shall be established before the juvenile can be found guilty; and

(b) the Court's procedures; and

(c) the consequences of any order that the Court makes.

(4) At the close of the evidence in chief of each witness, the Court may, if the juvenile is not legally represented, ask the juvenile and his or her parents whether the juvenile or either of his or her parent's wishes to put any questions to the witness.

Juvenile Justice

67. PRESENCE OF PARENTS REQUIRED.

(1) If a parent does not attend proceedings held before a Court in respect to a juvenile, the Court may, if in its opinion the presence of the parent is necessary or in the best interests of the juvenile, summons the parent to attend.

(2) A parent who is summonsed to attend the Court and who fails, without reasonable excuse, the proof of which lies on the parent, to comply with the summons -

- (a) is guilty of contempt of Court; and
- (b) may be dealt with summarily by the Court; and
- (c) is liable on conviction to a fine not exceeding K500.00.

(3) If a parent who is summonsed to attend the Court does not attend when required by the summons, the Court may issue a warrant of arrest to compel the attendance of the parent.

68. LEGAL REPRESENTATION.

(1) A juvenile is entitled to have legal representation at all stages of the proceedings.

(2) A juvenile who is charged with an offence punishable by imprisonment for more than two years is entitled to legal aid, advice and assistance from the Public Solicitor or another legal representative assigned to him or her by the Public Solicitor.

(3) If a juvenile to whom Subsection (2) applies appears before a Court without legal representation, the Court shall -

- (a) advise the juvenile of his or her right to obtain legal aid, advice and assistance from the Public Solicitor; and
- (b) refer the juvenile to the Public Solicitor for appointment of counsel.

(4) If Subsection (2) does not apply, or if no counsel has been appointed by the Public Solicitor, the Court may, on the request of the juvenile, allow the juvenile to be assisted by an adult whom the Court considers to be suitable.

69. COURT PROCEEDINGS TO BE CLOSED.

(1) Subject to Subsection (2), the proceedings of a Court in respect to a juvenile are closed to all persons, and the Court shall reduce to a minimum contact between -

- (a) the juvenile and members of the public; and
- (b) the juvenile and an offender appearing before any other court.

(2) In any proceedings in respect to a juvenile before a Court, the following persons may be present -

- (a) the Director; and
- (b) juvenile justice officers; and
- (c) probation officers; and
- (d) officers or members of the Court; and
- (e) persons immediately concerned with the proceedings; and
- (f) any legal representative of any party to the proceedings; and
- (g) parents or responsible persons in relation to any party to the proceedings; and
- (h) members of the Police Force; and
- (i) any person who has supplied a pre-sentencing report in relation to a party to the proceedings; and

Juvenile Justice

- (j) witnesses; and
- (k) any other person by leave of the Court.

70. PRESENCE OF JUVENILE JUSTICE OFFICER AT SITTINGS.

A Court -

- (a) shall permit a juvenile justice officer to be present at any stage during its sitting; and
- (b) unless it is impracticable to secure the presence of a juvenile justice officer, is not to pass sentence under Section 80.

71. TIME LIMITS RELATING TO ADJOURNMENTS AND CONCLUSION OF PROCEEDINGS.

(1) A Court shall conclude all trials of accused juveniles as speedily as possible and shall ensure that adjournments are limited in number and duration.

(2) An adjournment of proceedings is not to exceed 14 days, unless otherwise agreed between the prosecutor and the -

- (a) juvenile; or
- (b) person advising or representing the juvenile.

(3) Subsection (2) does not apply to an adjournment under Section 62.

72. BAIL ON ADJOURNMENT.

(1) If a juvenile has been remanded in custody in connection with any proceedings, including proceedings in the National Court, the Court shall, on each occasion that it adjourns the proceedings before conviction, consider and accordingly grant or refuse bail to the juvenile in accordance with Part V.

(2) In deciding whether to grant or refuse bail, the Court shall -

- (a) determine whether or not the remand remains necessary; and
- (b) consider amending conditions to any bail granted to the juvenile, including reducing or dispensing with the requirement that a guarantor lodge a sum of money as a condition of bail; and
- (c) inquire whether or not the juvenile is being properly treated and kept under suitable conditions; and
- (d) if not satisfied that the juvenile is being properly treated and kept under suitable conditions, make an appropriate remedial order.

(3) Notwithstanding any agreement under Section 71(2), if an adjournment of proceedings exceeds 60 days, a juvenile who is remanded in custody in relation to the proceedings shall appear before a Court at least every 60 days for a determination under Subsection (2).

73. CONTEMPT OF COURT.

A Juvenile Court has all the power, jurisdiction and authority with respect to contempt as provided for under the *District Courts Act* (Chapter 40).

74. JUVENILES IN CUSTODY AT THE COURT.

(1) If a juvenile is transported to or from a Court in the custody of a member of the Police Force, the juvenile shall, if reasonably possible, be transported separate from adults.

Juvenile Justice

(2) A juvenile who is in custody at a Court must, if reasonably possible, be kept in a room or cell separate from adults and be treated in a manner and kept in conditions which take into account his or her age.

PART VII. - SENTENCING JUVENILE OFFENDERS.

75. JUVENILES TO BE SENTENCED IN TERMS OF THIS PART.

(1) Notwithstanding any other Act or law, if a Court is satisfied that an offence has been proven against a juvenile, or if the juvenile pleads guilty to the offence, the Court shall impose sentence on the juvenile in accordance with this Part.

(2) A Court that sentences a juvenile for an offence shall disregard a requirement under any other Act or law that an amount of money or term of imprisonment shall be the minimum penalty for the offence.

76. PURPOSE AND PRINCIPLES OF SENTENCING.

(1) The purposes of sentencing a juvenile are to -

- (a) encourage the juvenile to understand the consequences of and be accountable for the harm caused by his or her actions; and
- (b) promote an individual response which is appropriate to the juvenile's circumstances and proportionate to the circumstances surrounding the offence; and
- (c) promote the rehabilitation and reintegration of the juvenile into the family and community; and
- (d) ensure protection of the public.

(2) A Court that imposes a sentence on a juvenile shall determine the sentence in accordance with the principles set out in Section 6 and the following principles:

- (a) the sentence shall be proportionate to the seriousness of the offence and the degree of responsibility of the juvenile for that offence; and
- (b) the sentence shall -
 - (i) be the least restrictive sentence that is capable of achieving the purposes set out in Subsection (1); and
 - (ii) be the one that is most likely to rehabilitate the juvenile and reintegrate him or her into society; and
 - (iii) promote a sense of responsibility in the juvenile, and an acknowledgement of the harm done to the victim and the community; and
- (c) the sentence shall have regard to the juvenile's age and limited capacity to appreciate the consequences of his or her actions; and
- (d) the sentence shall not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances; and
- (e) if appropriate, juveniles shall be permitted to remain in the community; and
- (f) deprivation of liberty shall be used only as a measure of last resort, for the shortest period necessary to achieve the purposes set out in Subsection (1).

77. FACTORS TO CONSIDER WHEN SENTENCING JUVENILES.

(1) In determining a sentence to be imposed on a juvenile, a Court shall take into account -

- (a) the seriousness of the offence and the circumstances in which it was committed; and

Juvenile Justice

- (b) the degree of participation of the juvenile in the commission of the offence; and
- (c) the harm done to the victim and whether it was intentional or reasonably foreseeable; and
- (d) the age, maturity, education, health, character and attitude of the juvenile; and
- (e) the juvenile's previous history in respect of offences and his or her responses to previous orders in relation to those offences; and
- (f) the community services and facilities that are available to assist the juvenile and his or her willingness to use those services or facilities; and
- (g) any proposals that the juvenile or his or her parents may put forward for the future improvement of the juvenile; and
- (h) any views of a juvenile justice officer in relation to the juvenile; and
- (i) any views of any person who is involved in the education or custody of the juvenile; and
- (j) information contained in a pre-sentencing report; and
- (k) any sentencing recommendations made by a community based conference; and
- (l) any time spent by the juvenile in custody on remand in relation to the offence; and
- (m) any other factor that the Court considers relevant.

(2) In determining a sentence to be imposed on a juvenile, a Court is not, having regard to the need for an individualised approach to juvenile sentencing, strictly bound by precedent.

78. REFERRAL TO COMMUNITY BASED CONFERENCE FOR SENTENCING RECOMMENDATIONS.

(1) If -

(a) a Court is satisfied that an offence has been proven; or

(b) the juvenile admits the facts constituting the offence,

the Court may, before imposing sentence, refer the juvenile to an authorised facilitator to convene and facilitate a community based conference for the purpose of making recommendations to the Court on an appropriate sentence.

(2) The authorised facilitator must convene and facilitate the community based conference in accordance with Part III.B.

(3) At the community based conference -

(a) the juvenile has the right to participate personally in the discussion and in any decision made; and

(b) the victim has the right to participate personally in the discussion and in any decision made, unless he or she elects not to participate.

(4) Upon receipt of the recommendations from a community based conference, the Court may -

(a) confirm the recommendations by making them an order of the Court; or

(b) substitute or amend the recommendations and make an appropriate order.

79. PRE-SENTENCING REPORTS.

(1) Subject to Subsections (6) and (7), if -

(a) a Court is satisfied that an offence has been proven; or

Juvenile Justice

(b) a juvenile admits the facts constituting the offence, the Court shall, before imposing sentencing, order a juvenile justice officer to prepare a written pre-sentence report in respect of the juvenile.

(2) The juvenile justice officer shall complete the pre-sentencing report as soon as possible, but not later than 14 days after the date the report was requested.

(3) A pre-sentencing report shall contain all information relevant to the exercise of the powers of the Court under this Part, including -

- (a) a report of any interview with the juvenile, including information with respect to the maturity, behaviour and attitude of the juvenile; and
- (b) if practicable, a report of any interview with a parent of the juvenile or a responsible person with whom the juvenile is living; and
- (c) if practicable, a report of any interview with the victim in the case; and
- (d) any social background information about the juvenile which the person making the report may consider relevant; and
- (e) any plans put forward by the juvenile or his or her parents to change the juvenile's conduct; and
- (f) the availability and appropriateness of community services for the supervision, rehabilitation and reintegration of the juvenile and the willingness of the juvenile to avail himself or herself of those services; and
- (g) a recommendation as to the most appropriate sentence to be imposed on the juvenile; and
- (h) if the recommendation under Paragraph (g) is that the juvenile be sentenced to a juvenile institution, results of the juvenile justice officer's inquiries with respect to the availability of a place for the juvenile.

(4) The Court shall make a copy of the pre-sentencing report available to the following persons:

- (a) the juvenile and his or her parents; and
- (b) the lawyers representing parties in the case; and
- (c) any other person with the consent of the Court.

(5) The juvenile justice officer shall give a copy of the pre-sentencing report to the following persons:

- (a) if the juvenile is sentenced to imprisonment in a correctional institution, the officer in charge of the correctional institution; and
- (b) if the juvenile is sentenced to custody in a juvenile institution, the superintendent of the juvenile institution; and
- (c) if the juvenile is sentenced to probation, to the probation officer; and
- (d) to the Director.

(6) If, in the opinion of the Court, the preparation of a written pre-sentencing report would cause undue delay in the conclusion of the case to the prejudice of the juvenile, the Court may permit the juvenile justice officer to submit the pre-sentencing report orally.

(7) Subject to Subsection (8), if a juvenile justice officer is not available or it would be impracticable to secure the presence of a juvenile justice officer, the Court may dispense with the requirement for a pre-sentencing report.

Juvenile Justice

(8) The Court shall not sentence a juvenile to a period of custody or imprisonment unless a pre-sentencing report has first been obtained.

80. JUVENILE SENTENCING.

(1) If a Court finds a juvenile guilty of an offence, the Court may make one or more of the following orders:

- (a) direct that the juvenile be discharged and take no further action; or
- (b) reprimand the juvenile; or
- (c) make a good behaviour order for a period of not more than 12 months, requiring the juvenile to abide by an agreement made between the juvenile and his or her parents to comply with certain standards of behaviour; or
- (d) order the juvenile to report to a specified person, agency or organisation for counselling, on such terms as the Court may decide; or
- (e) make a supervision and guidance order for a period of not more than 12 months, placing the juvenile under the supervision and guidance of a specified adult or peer mentor in order to monitor and guide the juvenile's behaviour; or
- (f) order the juvenile to attend a non-residential vocational training or rehabilitation program approved by the Director, on such terms as the Court may decide; or
- (g) order the juvenile to make restitution to any other person, including the return of any item taken or repair of any damage done; or
- (h) subject to the consent of a person, order that the juvenile compensate the person by way of personal service, at the time and on the terms that the Court may decide, for any loss, damage or injury suffered by the person as a result of the offence; or
- (i) having regard to the ability of the juvenile to pay, order the juvenile to pay restitution in kind to a person, at the time and on the terms that the Court may decide, for any loss, damage or injury suffered by the person as a result of the offence, in an amount not exceeding K5,000.00; or
- (j) subject to Section 82, order the juvenile to perform community service work under the supervision of a juvenile justice officer, or a specified person or civil society group that has agreed to supervise the juvenile, for a maximum period of up to 100 hours, and to be completed within a maximum period of six months; or
- (k) having regard to the ability of the juvenile to pay, order the juvenile to pay a fine, not exceeding K500.00, to be paid at the time and on the terms that the Court may decide; or
- (l) subject to Section 83, order that the juvenile be placed on probation in accordance with the *Probation Act* (Chapter 381) for a specified period, not exceeding three years; or
- (m) order that the juvenile be committed to the care of the Director, with a directive that the juvenile be committed to custody in a juvenile institution selected by the Director, for a period not exceeding five years; or
- (n) subject to Section 81, order that the juvenile serve a term of imprisonment in the juvenile section of a correctional institution; or
- (o) if the order is made by a Juvenile Court or a court of summary jurisdiction, for a period not exceeding six years; or
- (p) if the order is made by the National Court, for any period as is prescribed for an adult who committed the same offence in similar circumstances; or
- (q) defer passing sentence on the juvenile for a specified period and subject to such conditions as the Court orders.

Juvenile Justice

- (2) If a Court orders a term of imprisonment under this section, the Court may -
 - (a) in addition, make some other order under Subsection (1); and
 - (b) order the suspension of the term of imprisonment and place the juvenile on probation with the condition that the other order is complied with.
- (3) If the other order referred to in Subsection (2) is not carried out, the term of imprisonment originally imposed automatically takes effect.
- (4) If -
 - (a) a Court imposes a sentence of imprisonment on a juvenile; and
 - (b) in the opinion of the Court, the juvenile does not have a parent or responsible person,the Court shall advise the Director of Lukautim Pikinini of the juvenile's imprisonment.
- (5) When making an order sentencing a juvenile for an offence, a Court shall take steps to ensure that the juvenile understands -
 - (a) the purpose and effect of the order; and
 - (b) the consequences, if any, that may follow if the juvenile fails to comply with the order.

81. RESTRICTIONS ON USE OF CUSTODIAL SENTENCES.

- (1) A Court shall not impose a sentence of custody or imprisonment under Section 80(1)(*m*) or (*n*) unless the Court has considered all alternatives under this Act and has determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purposes and principles set out in this Part.
- (2) An order sentencing a juvenile to a term of imprisonment in a correctional institution under Section 80(1)(*n*) shall not be made unless -
 - (a) the juvenile -
 - (i) is 14 years of age or older; and
 - (ii) has committed a serious indictable offence; and
 - (b) the Court is satisfied that the correctional institution has the appropriate facilities for the imprisonment of the juvenile.
- (3) An order sentencing a juvenile to a term of imprisonment in a correctional institution under Section 80(1)(*n*) shall not include hard labour.
- (4) If an order of custody or imprisonment under Section 80(1) (*m*) or (*n*) exceeds a period of 12 months, the order shall be subject to a custody review at intervals not exceeding 12 months, or such lesser period as the Court orders.
- (5) If an order is made under Section 80(1)(*m*), the Court may order that the juvenile is detained in a remand centre until the Director is able to accept responsibility for the juvenile as ordered.
- (6) A Court shall not impose a sentence of custody or imprisonment as a substitute for appropriate child protection measures.

Juvenile Justice

82. LIMITS ON COMMUNITY SERVICE WORK.

(1) Any community service work required to be performed by a juvenile shall be of a kind and in a manner approved by the Director.

- (2) Without limiting Subsection (1), community service work shall -
- (a) take into account the age and capacity of the juvenile; and
 - (b) not interfere with the juvenile's normal hours of employment or education; and
 - (c) not be hazardous to the juvenile's health or physical development; and
 - (d) not expose the juvenile to public ridicule or humiliation; and
 - (e) not exceed 4 hours in any one day and 5 days in any one week.

83. CONDITIONS RELATING TO PROBATION.

(1) In addition to any conditions that shall or may be imposed in a probation order under the *Probation Act* (Chapter 381), a probation order made under this Act shall -

- (a) require the juvenile to notify the probation officer of any changes in address, employment circumstances or place of education; and
- (b) direct the juvenile to remain under the care of a parent or responsible person during the period of probation; and
- (c) direct the juvenile to reside with the responsible person if -
 - (i) a responsible person volunteers to care for the juvenile; and
 - (ii) the parents or guardians agree; and
 - (iii) the Court orders it.

(2) In addition to the conditions specified in Subsection (1), a Court may impose all or any of the following conditions:

- (a) the juvenile attends a specified school or place of learning during a specified period of time; and
- (b) the juvenile takes up such employment approved by his or her probation officer as may be available to him or her for a specified period of time; and
- (c) the juvenile is restrained from being in the vicinity of certain places, or in the company of certain persons, at all or certain times, as the Court may specify; and
- (d) any order that the Court may make under Section 80(1)(c) to (j); and
- (e) if the Court finds that the offence for which the juvenile is convicted is as a result of or in relation to the use of a motor vehicle, the juvenile is prohibited from owning or using a motor vehicle for a period not exceeding 3 years; and
- (f) if the Court finds that the offence for which the juvenile is convicted is as a result of the use of alcohol or of a dangerous drug within the meaning of the *Dangerous Drugs Act* (Chapter 228), that -
 - (i) the juvenile must not use alcohol or dangerous drugs, unless legitimately prescribed by a medical practitioner, for a period not exceeding 3 years; and
 - (ii) if necessary, the juvenile shall undergo treatment for the purpose of overcoming problems associated with the use of alcohol or dangerous drugs; and
- (g) such other conditions as the Court considers necessary in the circumstances of the case for ensuring compliance by the juvenile with the conditions of the order and for his or her good conduct.

Juvenile Justice

84. FAILURE TO COMPLY WITH ORDER.

(1) A juvenile who willfully fails to comply with an order of a Court imposed on him or her under this Act is guilty of an offence.

(2) In determining a penalty for an offence under Subsection (1), a Court may make any order in accordance with Section 80.

(3) A prosecution under Subsection (1) must be brought in a Juvenile Court or a court of summary jurisdiction.

85. PROHIBITION OF CERTAIN FORMS OF PUNISHMENT.

(1) The following sentences shall not be imposed on a juvenile -

- (a) corporal punishment; or
- (b) life imprisonment; or
- (c) capital punishment.

86. FAILURE TO PAY FINES OR RESTITUTION.

(1) Notwithstanding any other law, a juvenile shall not be imprisoned for failing to comply with an order to pay a fine or restitution.

- (2) If a juvenile has not complied with the terms of a fine or restitution order, a Court may -
- (a) extend the time for paying the amount; or
 - (b) cancel the fine or restitution order and re-sentence the juvenile by making a community service or community work order against the juvenile; or
 - (c) convert a fine or restitution order to a community service or community work order to be set at the rate of K1.00 per hour up to a maximum period of 100 hours.

(3) Notwithstanding the *Village Courts Act 1989*, a juvenile shall not be imprisoned for failing to comply with an order of a Village Court.

PART VIII. - REVIEW AND VARIATION OF ORDERS.

87. APPLICATION FOR REVIEW OF ORDER.

(1) An application for review of an order made in respect of a juvenile under Section 80 may be made to a Court by -

- (a) the Director, a juvenile justice officer or a probation officer; or
- (b) the juvenile; or
- (c) a parent of the juvenile or a responsible person.

(2) The grounds of review are -

- (a) there has been a change in the circumstances of the juvenile or those in whose care and custody he or she has been placed; or
- (b) the juvenile is unable to comply with or is experiencing serious difficulty in complying with the terms of an order; or
- (c) the juvenile has made sufficient progress to justify a change in the juvenile sentence; or
- (d) it would be otherwise in the best interests of the juvenile.

Juvenile Justice

(3) An application for a review may be made in writing to the clerk of the Court by which the order was made and without regard to legal form.

- (4) Except by leave of the Court, a review shall not be made within a period of -
- (a) six months from the date of the original order; or
 - (b) if the order has been varied, six months from the date of the last variation of the order.

(5) If the order made under Section 80 is an order of custody or imprisonment for a period exceeding 12 months, the Director may apply for review of the order -

- (a) every 12 months from the date of the original order; or
- (b) if the order has been varied, 12 months from the date of the last variation of the order; or
- (c) at such lesser intervals as the Court orders at the time of making or varying the order.

(6) If -

- (a) a juvenile is in a juvenile institution by order or variation of an order of a Court; and
 - (b) in the opinion of the Director, the behaviour of the juvenile is unsatisfactory,
- the Director may, at any time, apply to the Court to vary the order of custody to one of imprisonment under Section 80(1)(n).

88. REVIEW BY NATIONAL COURT.

(1) If a review relates to a sentence imposed by the Court, the application for review shall be made to the National Court.

(2) The National Court has and may exercise all the powers of a Juvenile Court under this Part.

89. REVIEW REPORT.

(1) If an application for review has been made, a juvenile justice officer shall prepare a review report on the juvenile.

- (2) The review report shall contain -
- (a) views and comments from the juvenile and a parent of the juvenile or a responsible person; and
 - (b) views and comments of all persons who have been concerned with the custody and welfare of the juvenile since the imposition of sentence on the juvenile; and
 - (c) the recommendations of the juvenile justice officer.

(3) A Court shall not proceed to conduct a review until the review report is produced to it.

90. POWERS OF COURT ON REVIEW.

(1) On the hearing of an application under this Part, a Court, having regard to the grounds of the review, the review report and all other information before it in relation to the juvenile, may -

- (a) confirm the order; or
- (b) suspend or vary any conditions of the order; or
- (c) impose any additional conditions; or
- (d) vary an order of imprisonment to one of custody or probation; or

Juvenile Justice

- (e) vary an order of custody to one of imprisonment or probation; or
 - (f) discharge the order.
- (2) A Court shall not make an order varying an order of custody to one of imprisonment unless -
- (a) a period of imprisonment could have been imposed in the first instance under Section 80; or
 - (b) the Court is satisfied that the juvenile is a risk to other juveniles in the institution.
- (3) A juvenile shall not be transferred from a juvenile institution to a correctional services institution except by order of a Court under Section 80(1)(n).

PART IX. - APPEALS.

91. GROUNDS FOR APPEAL.

- (1) A party to proceedings in respect of a juvenile may appeal a conviction, sentence, order or adjudication of a Court on the grounds that there has been a substantial miscarriage of justice and the -
- (a) Court acted in contravention of this Act or any other law applying to it; or
 - (b) Court was not properly constituted; or
 - (c) Court exceeded its jurisdiction or its powers; or
 - (d) sentence imposed by the Court was excessive or inappropriate.

92. APPEALS TO A PRINCIPAL MAGISTRATE.

- (1) An appeal with respect to a conviction, sentence, order or adjudication of -
- (a) a Juvenile Court shall be made to a Juvenile Court constituted by a Principal Magistrate; and
 - (b) a court of summary jurisdiction exercising jurisdiction in accordance with this Act in relation to a juvenile shall be made to a court of summary jurisdiction constituted by a Principal Magistrate.
- (2) An appeal shall be instituted by lodging, within 60 days after the day when the decision is made, a notice of appeal with the clerk of the court by which the conviction, order or adjudication was made.
- (3) A notice of appeal shall be in writing and shall state the grounds of appeal.
- (4) Notice of the hearing of an appeal shall be given by the clerk of the court to the parties to the proceedings at least 7 days before the day fixed for the hearing of the appeal.
- (5) A Principal Magistrate hearing an appeal shall -
- (a) consider the records relevant to the decision of the Court; and
 - (b) receive such evidence (if any) and make such enquiries as he or she considers necessary.
- (6) A party to any proceeding appealed against may appear at the hearing of the appeal personally or by a representative.

Juvenile Justice

- (7) On the hearing of an appeal, the appeal court may -
- (a) confirm or quash the decision of the Court; or
 - (b) order that the matter be dealt with again by the Court and, if it thinks fit, include with the order a direction as to how any defect in the earlier proceedings might be overcome.
- (8) An appeal court hearing an appeal shall -
- (a) record its decision on the appeal and its reasons for that decision; and
 - (b) forward a copy to the Court against whose decision the appeal was made and the Director.

93. APPEALS TO THE NATIONAL COURT.

(1) Appeals with respect to a conviction, sentence, order or adjudication of a Juvenile Court constituted by a Principal Magistrate exercising jurisdiction in accordance with this Act shall be made to the National Court.

(2) Subject to Subsection (3), an appeal shall be instituted and conducted in accordance with Part XI of the *District Courts Act* (Chapter 40).

(3) A juvenile who has instituted an appeal is not required to enter into a recognisance on appeal under Section 222 of the *District Court Act* (Chapter 40).

94. APPEALS TO THE SUPREME COURT.

(1) Appeals with respect to a conviction, sentence, order or adjudication of the National Court exercising jurisdiction in accordance with this Act shall be made to the Supreme Court.

(2) An appeal under this section shall be instituted and conducted in accordance with such procedures as have been prescribed for appeals to the Supreme Court.

PART X. - INSTITUTIONS.

95. APPROVAL OF INSTITUTIONS.

(1) The Minister may, by notice in the National Gazette, approve any premises or a part of any premises as one of the following institutions -

- (a) a juvenile section of a correctional institution; or
- (b) a juvenile institution; or
- (c) a remand centre.

(2) The Director is responsible for the welfare of all juveniles held in custody in any institution approved under this section.

(3) A juvenile shall not be detained in any institution other than an institution approved under this section.

(4) A juvenile institution or remand centre approved under this section, and its staff, are not liable to any action, claim or proceedings for any act done, or omission made, in good faith in the exercise of their powers, functions, duties or responsibilities under this Act.

Juvenile Justice

96. JUVENILE SECTION OF A CORRECTIONAL INSTITUTION.

- (1) The juvenile section of a correctional institution shall be used for the reception and imprisonment of a juvenile sentenced to a term of imprisonment.
- (2) The juvenile section of a correctional institution shall -
 - (a) be separate and detached from all other sections within the correctional institution; and
 - (b) be used exclusively for juveniles; and
 - (c) provide proper and appropriate accommodation, supervision and suitable facilities for recreation and rehabilitation of juveniles.
- (3) A juvenile detained in the juvenile section of a correctional institution shall not be transferred to the juvenile section of another correctional institution without prior consultation with the Director.

97. JUVENILE INSTITUTIONS.

- (1) A juvenile institution shall be used for the reception and custody of a juvenile sentenced to a period of custody.
- (2) A juvenile shall not be placed in a juvenile institution until the person in charge of the institution has advised the Director that he or she is capable of accepting the juvenile.

98. REMAND CENTRES.

- (1) A remand centre shall be used for the reception and custody of a juvenile -
 - (a) in accordance with Section 59; or
 - (b) while awaiting placement in a place of imprisonment or custody; or
 - (c) when remanded in custody while awaiting appearance in a Court for any reason.

99. DUTIES OF PERSON IN CHARGE OF AN INSTITUTION.

- (1) The person in charge of an institution shall -
 - (a) ensure that a record is kept in respect of each juvenile in the institution, which shall contain such particulars as are prescribed; and
 - (b) ensure the management, security and good order of the institution; and
 - (c) ensure the safe custody and welfare of the juveniles detained in the institution; and
 - (d) ensure that a juvenile's rights under Section 100 are respected; and
 - (e) subject to the general direction of the Director, formulate rules for the good conduct and management of the institution and of juveniles placed there; and
 - (f) promote the education and rehabilitation of juveniles by enlisting members of the community, church groups and other civil society groups to regularly visit the institution and provide counselling, education, rehabilitation and mentoring services to juveniles; and
 - (g) report in writing to the Director every 6 months on the progress of each juvenile detained in the institution; and
 - (h) provide to the Director such other oral or written reports as the Director may reasonably require in relation to the institution and the juveniles detained in it; and
 - (i) ensure that, as soon as practicable after a juvenile is admitted to the institution, the following information is fully explained to the juvenile, in a manner and in a language that is appropriate to the age and level of understanding of the juvenile -
 - (i) the rules governing the institution; and

Juvenile Justice

- (ii) the juvenile's rights and responsibilities while in the institution; and
- (iii) how, and to whom, the juvenile may make a complaint; and
- (j) comply with the guidelines issued under Section 9(1)(e).

100. RIGHTS OF JUVENILES IN INSTITUTIONS.

- (1) A juvenile detained in an institution has the following rights:
 - (a) to be separated from adult detainees; and
 - (b) to be accommodated in facilities that meet minimum standards of health, hygiene, human dignity, and climatic conditions; and
 - (c) to food that is adequate to ensure a well-balanced diet and in sufficient quantities to maintain health and well-being; and
 - (d) to sanitary arrangements adequate to enable a juvenile to comply with the needs of nature when necessary and in a clean and decent manner; and
 - (e) to adequate bathing installations and supplies so that a juvenile may have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to the season, but at least once a week; and
 - (f) to be issued clothing suitable to the climate; and
 - (g) to daily free time for leisure activities, including daily free exercise in the open air whenever weather permits; and
 - (h) to medical treatment as required; and
 - (i) to practice his or her own religion; and
 - (j) subject to Section 101, to receive visits from family or friends at least once per week; and
 - (k) to receive telephone calls from a parent or responsible person; and
 - (l) to have unrestricted, private visits from a lawyer or other legal representative; and
 - (m) to the extent that it is reasonably practicable, to continue his or her education; and
 - (n) to the extent that it is reasonably practicable, to benefit from rehabilitation and vocational training programs; and
 - (o) subject to any reasonable conditions that may be established by the institution, to leave the institution for a specified period for all or any of the following -
 - (i) to visit his or her family; or
 - (ii) to attend any place for educational or training purposes; or
 - (iii) to participate in paid or unpaid employment; or
 - (iv) to attend a funeral; or
 - (v) to attend any place for a medical examination or treatment; or
 - (vi) to take part in sport, recreation or entertainment in the community; or
 - (vii) any other purpose that the person in charge of the institution considers will assist in the juvenile's reintegration into the community.

101. TERMS AND CONDITIONS FOR VISITS.

(1) For the purposes of the security, good order and management of an institution, the person in charge of the institution may, subject to the general direction of the Director, determine in writing the terms and conditions that apply to visits by visitors to the institution.

(2) If the person in charge of an institution believes on reasonable grounds that the security of the institution, or the safety of any person at the institution, will be or is likely to be threatened by a visitor or a group of visitors, the person in charge of the institution may in writing direct that the visitor or group shall not enter the institution or must leave the institution.

Juvenile Justice

(3) A person who fails to comply with a direction given under Subsection (2), whether as an individual or a member of a group, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

102. DISCIPLINE AND USE OF FORCE.

(1) Any discipline imposed on a juvenile in an institution shall be in accordance with the rules of that institution, and shall not include any of the following:

- (a) any cruel, inhumane or degrading treatment of the juvenile; or
- (b) corporal punishment of the juvenile; or
- (c) a restriction of medical treatment for the juvenile; or
- (d) a reduction of diet or missed meals for the juvenile; or
- (e) a restriction or suspension of family visits for the juvenile; or
- (f) solitary confinement of the juvenile.

(2) Subject to Subsection (3), no form of physical force or restraint is to be used against juveniles in institutions.

- (3) Reasonable physical force or restraints may be used against a juvenile in institutions if -
- (a) all other methods to control the juvenile have failed; and
 - (b) the use of force is necessary to prevent the juvenile from causing self-injury, injury to others, or serious destruction of property.

(4) Any use of force or restraint against a juvenile under Subsection (3) shall be brought to the attention of the person in charge of the institution who shall record in writing the details of the use of the force.

103. DISCHARGE AND RETURN TO THE COMMUNITY.

(1) Not more than 2 weeks before the discharge of a juvenile from an institution, other than a juvenile on remand, the person in charge of the institution shall notify the Director and a juvenile justice officer so that arrangements may be made for the juvenile's return and reintegration into the community.

(2) The notification shall contain a report, in accordance with the standard form provided for that purpose, containing the following information -

- (a) the juvenile's personal details, including contact information for his or her parents or a responsible person; and
- (b) the juvenile's attitude and behaviour whilst in the institution; and
- (c) details of any education or rehabilitation programs undertaken by the juvenile whilst in the institution; and
- (d) details, including certificates, of any educational programs that the juvenile participated in; and
- (e) details of any vocational skills or work experience acquired by the juvenile whilst in the institution.

Juvenile Justice

(3) To the extent possible, a juvenile justice officer, in consultation with the Director, shall ensure that a juvenile who is released from detention receives all necessary assistance to return to his or her place of residence and to reintegrate into the community, if necessary with the support of local civil society groups.

104. INSPECTION OF INSTITUTION.

(1) The Director shall monitor the operation of all institutions and inspect each institution at least once every 6 months.

(2) The Director may, without prior notice, visit any institution or police station or lock-up at any time to inspect the facilities and interview any juvenile in detention.

(3) If a person interferes with the Director in the execution of his or her duties under Subsection (1) or (2), the person is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding one year, or both.

105. VISITS BY MAGISTRATES AND CERTAIN JUDGES.

(1) A Judge of the National Court exercising jurisdiction in accordance with Section 20 or a Magistrate may -

- (a) without prior notice, visit any institution or police station or lock-up at any time to inspect the facilities and interview any juvenile in detention; and
- (b) make a report on any matter to the Director; and
- (c) if not satisfied that the juvenile is being properly treated and kept under suitable conditions, make an appropriate remedial order.

(2) The Judge or Magistrate must, subject to Subsection (3), interview a juvenile in private.

(3) If the officer in charge of a juvenile section of a correctional institution determines that it is not in the interest of security for the Judge or Magistrate to interview a juvenile in private, he or she may direct that the juvenile be interviewed out of hearing but in the sight of a correctional officer.

106. EMERGENCY POWERS.

(1) If in the opinion of the person in charge of a juvenile institution or remand centre, a situation of emergency exists or is likely to arise, the person in charge of the institution or remand centre may remove any juvenile or juveniles in the institution or remand centre to the juvenile section of a correctional institution for the duration of the emergency or until alternative arrangements can be made.

(2) Any juvenile removed to the juvenile section of a correctional institution shall be received at the correctional institution under -

- (a) the original warrant of commitment; or
- (b) the letter of authorisation,

by which the juvenile was sentenced to the institution.

(3) If a person in charge of a juvenile institution or remand centre has acted under this section, he or she shall, within 24 hours, inform the Director of his or her action.

Juvenile Justice

107. TRAVELLING WHILE IN CUSTODY.

- (1) If -
 - (a) a juvenile who is in custody is travelling or is being transferred from one place to another; and
 - (b) during the course of the travel or transfer it is necessary to break the journey, the juvenile shall, during the break in the journey, be placed in an institution, police station or lock-up, or other place of secure care.

PART XI. - RECORDS AND PRIVACY.

108. RESTRICTION ON FINGERPRINTING AND PHOTOGRAPHING.

- (1) This section applies to a juvenile if the juvenile -
 - (a) is suspected of having committed an offence; or
 - (b) is charged with, or convicted of, an offence.
- (2) If the offence -
 - (a) is an indictable offence, whether triable summarily or on indictment, the juvenile may be fingerprinted or photographed; and
 - (b) in any other case, the juvenile shall not be fingerprinted or photographed.
- (3) If a juvenile refuses to provide his or her fingerprints or refuses to cooperate to have his or her photograph taken, a member of the Police Force may use reasonable physical force to obtain the juvenile's fingerprints or to take the juvenile's photograph.
- (4) A juvenile shall be fingerprinted or photographed in the presence of a juvenile justice officer, a legal representative, a parent or responsible person.
- (5) If proceedings for an indictable offence, whether triable summarily or on indictment, against a juvenile are dismissed, any fingerprints or photographs of the juvenile taken shall be surrendered to the court and the court shall destroy them.
- (6) To avoid doubt, this section applies despite any law to the contrary relating to the identification of persons suspected, charged, or convicted of offences.

109. COURT RECORDS.

- (1) A Court shall maintain and keep separate records for each juvenile dealt with by the Court under this Act or any other law.
- (2) The records may be published, made available or disclosed for the purposes of an appeal under Part IX.
- (3) The records may be published for, made available or disclosed to -
 - (a) another court; or
 - (b) the Director; or
 - (c) a person approved by the Chief Magistrate after consultation with the Director for the purpose of research and study.
- (4) A person who contravenes Subsections (2) or (3) is guilty of an offence.

Juvenile Justice

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

110. TRANSFER OF COURT RECORDS.

A Court may transfer the records of a juvenile maintained under Section 109 to -

- (a) a court to which proceedings in relation to the juvenile have been transferred; and
- (b) the court nearest to the institution in or to which the juvenile is transferred under Section 80(1)(m) or (n) to serve his or her sentence.

111. RECORDS OF INSTITUTIONS.

(1) The records of a juvenile detained in an institution shall not be published, disclosed or made available to any person except with the written consent of the Director.

(2) A person who publishes, discloses or makes available to any person any information in contravention of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding one year, or both.

112. RESTRICTION OF PUBLICATION OF PROCEEDINGS.

(1) A person shall not publish a report of proceedings, or the result of proceedings, before a Court under this Act or any other law unless -

- (a) the Court expressly authorises the publication; or
- (b) if the publication is of a technical nature intended for circulation amongst the members of the legal, medical, teaching, psychological or social welfare professions, authorisation is given in writing by the Director.

(2) Nothing under Subsection (1) authorises the publication of -

- (a) the name of the juvenile involved in the proceedings; or
- (b) the name of the school the juvenile is attending; or
- (c) the name of an employer, village or place of residence of the juvenile; or
- (d) any other particulars which are likely to lead to the identification of the juvenile, his or her school, employer, village or place of residence.

(3) Notwithstanding Subsection (2), an officer in charge of a police station may permit any person to publish information that identifies a juvenile as having committed or allegedly committed an indictable offence, if the officer in charge is satisfied that -

- (a) there is reason to believe that the juvenile is a danger to others; and
- (b) publication of the information is necessary to assist in apprehending the juvenile.

(4) A person who publishes a report of proceedings, or the result of proceedings, before a Court under this Act or any other law, except in accordance with this section, is guilty of an offence.

Penalty: In the case of -

- (a) an individual person - a fine not exceeding K5,000.00; or
- (b) a corporation - a fine not exceeding K10,000.00.

PART XII. OTHER MATTERS.

113. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required to be prescribed or are necessary or convenient to be prescribed, including regulations prescribing penalties of fines not exceeding K2,000.00 for infringements of the regulations.

114. REPEAL.

The *Juvenile Courts Act 1991* is repealed.

115. ACTIONS ETC., NOT TO ABATE.

If, immediately before the commencement of this Act, any action or proceeding was pending or existing under the *Juvenile Courts Act 1991*, the action or proceeding does not, on the commencement of this Act, abate or discontinue but it may be prosecuted, continued or enforced under the *Juvenile Courts Act 1991* as in force immediately before its repeal, as if this Act had not come into operation.

116. ORDERS, APPOINTMENTS ETC., TO CONTINUE, ETC.

(1) Any order made under the *Juvenile Courts Act 1991* and in force immediately before the commencement of this Act continues in force after that commencement until its expiry or termination according to its terms or otherwise according to law.

(2) If, after the commencement of this Act, any variation to an order referred to in Subsection (1) is sought, the procedure relating to such variation shall be as contained in this Act with such modifications as may be necessary, as if the original order had been made under this Act.

(3) Any court established as a Juvenile Court under the *Juvenile Courts Act 1991* is deemed, on the commencement of this Act, to have been established as a Juvenile Court under this Act.

(4) Any magistrate appointed as a Juvenile Court Magistrate under the *Juvenile Courts Act 1991* is deemed, on the commencement of this Act, to have been appointed as a Juvenile Court Magistrate under this Act on the same terms and conditions of service.

(5) Any appointment of a juvenile courts officer or volunteer juvenile court officer under the *Juvenile Courts Act 1991* is deemed, on the commencement of this Act, to be an appointment as a juvenile justice officer or volunteer juvenile justice officer under this Act on the same terms and conditions of service.

Juvenile Justice

Section 2

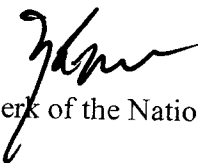
SCHEDULE.

SERIOUS INDICTABLE OFFENCES.

Item	Criminal Code Section No.	Brief description of offence.
1	210	Unnatural Offences
2	229A	Sexual Penetration of a Child
3	229B	Sexual Touching of a Child
4	229D	Persistent Sexual Abuse of a Child
5	229L	Offering or Engaging a Child for Prostitution
6	299	Wilful Murder
7	300	Murder
8	302	Manslaughter
9	304	Attempted Murder
10	305	Accessory after the fact to Murder
11	307	Conspiring to Kill
12	319	Grievous Bodily Harm
13	347	Rape
14	349	Sexual Assault
15	386	Robbery
16	387	Attempted Robbery Accompanied by Wounding
17	395	House-breaking; Burglary
18	397	Entering Dwelling-house with Intent to Commit Crime
19	398	Breaking into Buildings and Committing Crime
20	400	Breaking into Place of Worship and Committing Crime
21	436	Arson
22	437	Attempts to Commit Arson


Juvenile Justice

I hereby certify that the above is a fair print of the *Juvenile Justice Act 2014*, which has been made by the National Parliament.


Clerk of the National Parliament.

3 0 MAY 2014

I hereby certify that the *Juvenile Justice Act 2014* was made by the National Parliament on 13 February, 2014 by an absolute majority in accordance with the *Constitution*.


Speaker of the National Parliament.

3 0 MAY 2014