

Tsunami (Special Provisions)

AN ACT TO ENABLE SPECIAL LEGAL PROVISIONS TO BE MADE IN RESPECT OF PERSONS AND PROPERTY AFFECTED BY THE TSUNAMI THAT OCCURRED ON DECEMBER 26, 2004, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL, THERETO

Preamble. WHEREAS it is the National Policy of the State to ensure Preamble, and grant adequate protection to those adversely affected as a result of the Tsunami that took place on December 26, 2004, which resulted in great loss to life and property of a large number of persons in Sri Lanka :

AND WHEREAS those persons affected by the Tsunami are unable to exercise certain rights and enjoy certain benefits afforded under existing laws, and are also subjected to certain impediments and disadvantages as a result of their inability to comply with certain existing legal requirements :

AND WHEREAS there are many children and young persons who have been left without adequate parental care due to the Tsunami and it is necessary to ensure that they receive alternate care and protection :

AND WHEREAS there now exists an immediate need to make special legal provisions to enable those persons affected by the Tsunami to overcome prevailing legal obstacles and existing legal barriers and to ensure the protection and safeguarding of their rights and privileges :

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows : -

[13th June , 2005]

Short title. **1.**This Act may be cited as the Tsunami (Special Provisions) Act, No. 16 of 2005.

PART I

ISSUE OF DEATH CERTIFICATES

Where persons resident in certain area as at December 26, 2004, are **2.** Notwithstanding the provisions of section 108 of the Evidence Ordinance, where any person, who had been resident in an area referred to in the First Schedule to this Act as at December 26, 2004 or was known to have been in or travelling through such area on that date, cannot be found and has not been heard of for six months since that date by those who would normally have heard of such person has such person been alive, and the disappearance is attributable to the

found missing.

Procedure for obtaining a certificate of death in respect of a person referred to in section 2.

Tsunami that occurred on that date, the burden of proving that such person is alive is on the person who affirms it.

(1) The next of kin of any person referred to in section 2, or where there is no next of kin living, any other person having knowledge of such person, may apply in the manner hereinafter provided, to have a certificate of death issued in respect of such person.

(2) An application referred to in subsection (1) may at any time after expiry of six months from December 26, 2004, be made in the Form set out in the Second Schedule to this Act and shall be submitted along with an affidavit to the Grama Niladhari of the area within which such missing person was resident. The Grama Niladhari shall, immediately upon the receipt of such application, display a notice in his office calling for objections, if any, to the issue of a death certificate as applied for, within two weeks of the date of such notice. The Grama Niladhari shall, upon the expiry of the period for filing of objections, and after such inquiry as he deems fit and having obtained a report from the Officer in Charge of the Police Station of the area, authenticate the same and forward it along with his report as to the accuracy of the facts stated therein, to the Divisional Secretary of the division within which his area is situated. The Divisional Secretary shall endorse every such application and forward the same to the Registrar-General.

(3) Upon receipt of an application, duly authenticated and endorsed in terms of subsection (2), the Registrar-General shall, upon being satisfied on the documents presented, make order directing the appropriate Registrar to register in the Register of Deaths maintained by such Registrar under the Births and Deaths Registration Act (Chapter 110). the particulars specified in such application and issue in respect of such person a certificate of death, and such appropriate Registrar shall forthwith enter such particulars in such register and sign the register in the appropriate place.

(4) There shall be attached to the duplicate of the relevant registration entry, the order of the Registrar-General made under subsection (3), and such duplicate and order shall be sent together by the Registrar to the appropriate District Registrar for transmission to the Registrar-General for custody in his office.

Where

4.

information is received of a person being alive in respect of whom a certificate of death was issued under section 3.

(1) Where any death has been registered pursuant to an application made under section 3 of this Act, and where any person at any time thereafter becomes aware that the person whose death has been so registered is alive, such person shall forthwith furnish such information to the Registrar-General.

(2) The Registrar-General shall on receipt of such information convey the information to the Officer-in-Charge of the relevant police station, who shall investigate the truth of such information and make a report to the Registrar-General, within four weeks of the date on which such information is conveyed to such officer.

(3) Upon receipt of a report under subsection (2) and after such inquiry as he may deem necessary the Registrar-General, if satisfied that the person whose death has been registered is alive, shall take such action, or make such order or give such direction under section 52 of the Births and Deaths Registration Act (Chapter 110), as is appropriate in the circumstances of the case, to rectify the records.

(4) Any inquiry held by the Registrar-General under subsection (3) shall be concluded within one month of its commencement and the Registrar-General may, for the purposes of such inquiry, exercise all the powers exercisable by him under the Births and Deaths Registration Act (Chapter 110), in relation to an inquiry held by him under that Act.

Offences. Any person who -

(a) knowingly makes a false statement in an application made by him under section 3, or furnishes false information ;

(b) being aware that a person whose death has been registered in pursuance of an application made under section 3. is alive, fails to furnish such information to the Registrar-General ; or

(c) dishonestly or fraudulently uses a certificate of death issued under the Births and Deaths Registration Act knowing, or having reason to believe that the person referred to in such certificate is alive,

shall be guilty of an offence under this Act, and shall upon conviction after trial by the High Court be sentenced to a term of imprisonment of not less than three years and not exceeding five years.

Interpretation. 6. In this Part of this Act, unless the context otherwise requires- "appropriate District Registrar", "appropriate registrar" and "district" shall have the respective meanings assigned to them by the Births

and Deaths Registration Act (Chapter 110) ;
"District Registrar" means a District Registrar of Births and Deaths appointed under section 4 of the Births and Deaths Registration Act (Chapter 110) and
"Registrar-General" means the Registrar-General of Births and Deaths appointed under section 2 of the Births and Deaths Registration Act (Chapter 110) and includes a Deputy Registrar-General.

PART II

CUSTODY OF CHILDREN AND YOUNG PERSONS

Application of **7.** The provisions of this Part of this Act shall apply in respect of -
the

Provisions
the Act.

- (a) every child and young person who is left an orphan ;
- (b) every child left with a single parent who is unable to take care of such child ; and
- (c) every young person left with a single parent who is in need of care and protection, which such parent is unable to provide,

as a result of she Tsunami which occurred on December 26, 2004.

Authority to
maintain a
register.

8.

(1) The National Child Protection Authority established by the National Child Protection Authority Act, No. 50 of 1998 (hereinafter referred to as "the Authority") shall maintain a Register containing all available information relating to every child who is left -an orphan and of every child and young person in respect of whom foster care is desired for under section 11 of this Act.

(2) The Authority shall be required for the purpose of ensuring that the register maintained under subsection (1) contains accurate information, to make any inquiry as it may consider necessary about the children and young persons whose information is recorded in such register.

Registration
as current
custodian.

9.

(1) Every person, who on the date of the coming into operation of this Part of this Act has the custody of a child as is referred to in paragraphs (a) or (b) of section 7 of this Act, shall, unless such person-

- (a) is the parent of the child ; or
- (b) has been granted custody of the child or has been committed with the care of the child under any law, after December 26,2004,

forthwith and in any event not later than one month of the date of the coming into operation of this Part of this Act, make an application in the form specified in the Third Schedule So this Act to the Commissioner of Probation and Child Care Services (hereinafter referred to as the "Commissioner") for the purpose of being registered as the current custodian of such child. The Commissioner may where necessary, delegate to the Divisional Secretary of the area where such child is presently resident, the power to accept an application and forward the same to the Commissioner.

(2) Every person having custody of a child referred to in subsection (1) and who fails without just cause to register within the period specified in that subsection, shall be guilty of an offence and shall upon conviction be liable to a term of imprisonment of either description not exceeding two years.

(3) A child found in the custody of a person who fails to register as required under subsection (1), shall immediately be removed by the Commissioner from the custody of such person, upon an order of a Magistrate, issued in the best interest of the child.

(4) The Commissioner shall maintain a register containing all available information relating to every current custodian registered under this section and forward a copy of the information to the Authority.

(5) The provisions of this section shall apply also in respect of every institution or organization where any children affected by the Tsunami are being taken care of.

Duty of a
current
custodian, **10.**

(1) It shall be the duty of every current custodian to provide all such care and protection, including adequate education, to the child under his or her care, so long as he or she remains the current custodian of such child.

(2) Where a current custodian who is an individual wishes to be the foster parent to the child under his or her care, an application for the same is required to be made under section 13 of this Act within one month of such person being registered as the current custodian of such child.

Informing
Authority of
desire for
foster care. **11.**

(1) It shall be the duty of the parent of a child referred to in paragraph (b) of section 7 who desires to place such child under foster care, to inform the Authority of that fact foster within six months of the coming into operation of this Act.

(2) A young person who is referred to in paragraph (a) or (c) of section 7 may, if he or she is desirous of being placed under foster care, inform the Authority of that fact within six months of the coming into operation of this Act.

Authority to **12.**
be the
Guardian.

(1) Subject to the upper guardianship of Court, the Authority shall be the Guardian of every child placed under foster care by a parent and of every child who is left an orphan, whether or not such child is in the custody of any person, on the date of the coming into operation of this Act.
(2.) It shall be the duty of the Authority to ensure that every child who is not under foster care or who has ceased to be in foster care for any reason whatsoever, is provided with adequate care, custody and protection including education and any special care that may be needed in view of the emotional trauma suffered by such child, and the Authority shall make every endeavour to find a suitable foster parent for such child.

Application to **13.**
be a foster
parent.

(1) Any person, including an individual who is a current custodian of a child, who desires to become a foster parent of a child or young person referred to in section 7 of this Act, shall make an application for the issue of a Foster Care Order in the Form as specified in the Fourth Schedule to this Act, to the Magistrate's Court within whose jurisdiction such person is resident. A copy of the application along with the information specified in the Fifth Schedule shall be sent to the Authority.
(2) The Magistrate's Court shall not make an order on any application received under subsection (1), until it receives the recommendation of the Panel forwarded by the Authority under section 15 of this Act.

Authority to **14.**
refer
application to
a Foster Care
Evaluation
Panel.

(1) On receipt of the copy of an application under section 13, the Chairman of the Authority shall forthwith refer the same to the Foster Care Evaluation Panel (hereinafter referred to as the "Panel") constituted for the Province within which the person who made such application for a Foster Care Order is resident, for the purpose of evaluating the suitability of the applicant to be a foster parent.
(2) The Panel referred to in subsection (1) shall consist of -

- (a) the Chairman of the Authority or his nominee ;
- (b) a nominee of the Sri Lanka College of Paediatricians ;
- (c) the Commissioner of Probation and Child Care Services, of the relevant Province or his nominee ;
- (d) a Psychologist nominated by the Authority ;
- (e) a Psychiatrist nominated by the Authority ;
- (f) the Provincial Director of Education of the relevant province or his nominee ; and
- (g) the Provincial Director of Health Services, of the relevant Province or his nominee.

(3) The Panel shall function for so long as it may be necessary for the purpose of discharging the functions entrusted to it under this Part of this Act.

(4) The members of the Panel shall elect from among themselves one of the members to be its Chairman and also determine the procedure to be followed in conducting its meetings. The quorum for a meeting of the Panel shall be three members.

(5) In evaluating the suitability of an applicant to be a foster parent, the paramount consideration shall be the best interest of the child and for that purpose the Panel shall be guided by the criteria specified in the Sixth Schedule to this Act. The Panel shall also obtain a home study report from a person holding a designation specified in the Seventh Schedule to this Act.

For the purpose of this subsection, a "home study report" means a report on the mental health of the applicants on their social, religious and financial background and on their suitability to be a foster parent.

Panel to forward **15.**
its
recommendations.

(1) The Panel shall consequent to its evaluation of an application, forward its recommendation on the same so the Chairman of the Authority within two weeks of receiving the application from the Authority, and the Chairman of the Authority shall forthwith forward the same to the Magistrate's Court to which the application pertaining to the child or young person, as the case may be, was made under section 13 of this Act.

(2) The Authority shall when forwarding the recommendations under subsection (1), also identify by designation and name the person who shall be required to perform the functions specified in section 18 of this Act; as the Monitoring Officer, in the event a

Foster Care Order is made in favour of the applicant. A person to be identified as the Monitoring Officer by the Authority, shall be selected from among persons holding such designations as specified in the Seventh Schedule to this Act.

Foster Care. **16.**

(1) On receipt of the recommendations of the Panel forwarded by the Chairman of the Authority, and where the Order. Panel recommends the suitability of the applicant to be a foster parent, the Magistrate's Court may, with the consent of the child where such child is over ten years of age or the young person, as the case may be, issue a Foster Care Order appointing the person or persons named in the application as the Foster Parent or Foster Parents (hereinafter referred to as "Foster Parent") as the case may be, of the child or young person concerned. The Foster Care Order issued shall be in such Form and be subject to such conditions as specified in the Eighth Schedule to this Act.

(2) When issuing the Foster Care Order, the Court shall also appoint as the Monitoring Officer the person identified by the Authority under subsection (2) of section 15, and such Officer shall be required to perform the functions referred to in section 18 of this Act in respect of the child or young person regarding whom the Foster Care Order is being made.

(3) A Foster Care Order issued under subsection (1) shall -

(a) in the case of a child, be valid for a period of one year from the date of its issue, even if the child reaches the age of eighteen years prior to the expiration of that, period ; or

(b) in the case of a young person, be valid until such young person reaches the age of twenty-one years or such other age as may be specified in the Foster Care Order.

(4) A Foster Care Order issued in respect of a child may, upon application made in that behalf before the expiration of the period of one year to the Magistrate's Court which made such Order, be renewed for a further periods of one year at a time until the child reaches the age of twenty-one years, subject to the provisions of section 20.

(5) Notwithstanding the issue of a Foster Care Order under subsection (1), the Authority shall at all times continue to remain as the Guardian of a foster child, until such child

reaches the age of eighteen years.

Duty of a Foster. **17.** It shall be the duty of every Foster Parent, to provide in respect of the foster child or young person, all such care and protection, exercise all such control and discharge all other obligations, including the provision of adequate education and any special care that may be needed in view of the emotional trauma suffered by such child or young person, as if such Foster Parent is the natural parent of the foster child or young person.

Duties of the Monitoring Officer in regard to the child or young person in respect of whom a Foster Care Order is made. **18.**

(1) Where a Foster Care Order is made under section 16 of this Act, it shall be the duty of the person appointed as the Monitoring Officer under subsection (2) of that section, to monitor the performance and the discharge of the duties and obligations imposed upon the Foster Parent, and submit a report once in every three months, in the Form specified in the Ninth Schedule to this Act, to the Authority.

(2) The Chairman of the Authority shall submit, a copy of the report sent, to the Authority under subsection (1) to the Panel for its evaluation and consideration and the Panel shall be required to submit to the Authority its comments on the evaluation of the report within one week of its receipt.

Monitoring Officer to have right to enter any premises etc. **19.**

(1) A Monitoring Officer shall have the power in the performance of his duties under subsection (1) of section 18, to enter and inspect at any time the premises in which the child or young person, as the case may be, is for the time being resident and to question any person or persons as he may consider necessary.

(2) Any person obstructing a Monitoring Officer in the performance of his duties, shall be guilty of an offence under this Part of this Act, and shall on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding two years.

(3) Where the person found guilty of obstructing a Monitoring Officer under subsection (2) is the Foster Parent of the child or young person, in addition to the penalty imposed by that subsection, the Magistrate's Court shall have the power to revoke the Foster Care Order issued in respect of such Foster Parent.

Revocation of Foster Care **20.**

Order.

(1) Where on receipt of the comments of the Panel, the Authority is of the view that the care and protection given, and the exercise of the control and discharge of the duties and obligations imposed upon the Foster Parent is not being carried out in the best interest of the child or young person concerned, the Court may on application made for the revocation of the Foster Care Order by the Authority, revoke such Order and direct the relevant Monitoring Officer to remove the child or young person concerned from the custody of the foster parent and provide alternate care as shall be specified by the Court. A revocation of a Foster Care Order shall be in such form as specified in the Tenth Schedule to this Act.

(2) Where a Foster Care Order is revoked, the Magistrate's Court which revoked the same may on receipt of an application for foster care from any other person, issue a fresh Foster Care Order, and the provisions of section 13 to section 19 shall apply in respect to such application.

No adoption under Adoption of Children Ordinance unless child is under foster care.

21. No Court shall entertain an application for adoption of a child referred to in paragraph (a) and paragraph (b) of section 7 of this Act under the Adoption of Children Ordinance (Chapter 61), unless and until such child shall have first been placed in foster care under a Foster Care Order issued under section 16 of this Act.

Application for adoption of a foster care.

22.

(1) Any person, including a Foster Parent may, where such person is desirous of adopting a child, make an application for the same under the Adoption of children Ordinance, to the District Court within whose jurisdiction such child is currently resident, and the Court may subject to the provisions of this Act, make an order authorizing such adoption. No adoption order shall take effect until the expiration of a period of one year from the date of the making of the Foster Care Order.

(2) An application for adoption under subsection (1) may be made at anytime after the expiration of a period of nine months since a child has been placed under foster care.

(3) In the event of there being more than one application under subsection (1) in respect of any child, the Court shall make such order as it seems fit, taking into consideration the best interest of the child.

(4) Where an application made for adoption is granted by a District Court, an order of renewal of the Foster Care Order

made in respect of that child shall forthwith be deemed to have abated.

Provisions of **23.**
sections 3
and 4 of the
Adoption of
Children
Ordinance to
apply.

(1) The provisions of sections 3 and 4 of the Adoption of Children Ordinance shall apply in respect of an adoption under this Part of this Act, provided that in the case of a child under ten years of age, no adoption order shall be made without the consent of the Authority.

(2) In satisfying itself as regards the matters set out in paragraph (b) of section 4 of the Adoption of Children Ordinance, the Court shall, where the adoption application is made by the foster parent of the child concerned, take into consideration the reports submitted by the Monitoring Officer relating to such child during the period of foster care.

Issue of birth **24.**
certificate.

(1) Where the child in respect of whom an adoption order is made under section 22 is not in possession of a birth certificate, the Court shall specify in the order made the date of birth of such child where such date is known, or where the date is not known, the Court shall specify as the date of birth of such child, such date as is stated in a certificate issued by a Medical Practitioner to be the probable date of birth of such child.

(2) The Court once it makes its order on the adoption application, shall also direct the Registrar General of Births and Deaths to issue forthwith a certificate of birth to the child, where the child concerned is not in possession of a birth certificate.

Provisions of **25.** An adoption order made under this Act shall, notwithstanding anything to the contrary contained in the Adoption of Children Ordinance, be deemed for all purposes to be an adoption order made under that Ordinance, and the provisions of that Ordinance shall, apply mutatis mutatis mutandis apply to and in respect of such order.

Authority to act **26.** The Authority shall have the power and discharge the duties and notwithstanding functions assigned to such Authority under this part of this Act, the National Child Protection Authority Act, No. 50 of 1998.

Interpretation. **27.** Unless the context otherwise requires, for the purposes of this Act-

"child" means a person under eighteen years of Age ;
"Medical Practioner" means a Medical Practioner registered under a Medical Ordinance (Chapter 105) ' and
"young person" means a person who has attained eighteen years but under twenty-one years of age.

PART III PRESCRIPTION

Adverse possession not considered to be interrupted. **28.**

(1) Adverse possession of immovable property which had commenced prior to December 26, 2004 by a person affected by the Tsunami shall not be considered to have been interrupted for a period of one year from December 26, 2004, if that person was prevented from continuing in his possession as a result of the Tsunami.

(2) Possession of immovable property by a person referred to in subsection (1), shall not be considered to have been interrupted by reason only of the fact that such property was in the possession of any other person or persons during the period December 26, 2004 to December 26, 2005

Exclusion of certain period from the calculation of lime prescribed for the filing of certain actions etc. **29.** In calculating the prescribed lime within which any action, appeal or application is required to be instituted or filed or any act is required to be done in any Court or tribunal by any written law or where any act is required to be done within a prescribed lime by any written law, the period commencing from December 26, 2004 and ending on December 26, 2005 shall be excluded, if the person who was required to institute or file such action or do the particular act within the prescribed time is a person who was affected by the Tsunami and such person was unable to take such step as a result of the Tsunami.

PART IV

ACTIONS UNDER SECTION 66 OF THE PRIMARY COURTS PROCEDURE ACT

Possession of land affected by the Tsunami. **30.**

(1) Where information relating to a land situated within the area affected by the Tsunami is filed under section 66 of the Primary Courts' Procedure Act, No. 44 of 1979 at any time during the period December 26, 2004 to December 26, 2005 and an inquiry is held by such Court to determine as to who is entitled to possession of the land, notwithstanding anything to the contrary in section 68 of such Act, the person who was in possession of such land on December 26, 2004 or where such person has died or

is missing, any person or persons who were in possession of the land with that person, shall be deemed to be the person or persons who are in possession of such land and the Judge shall make order declaring such person or persons to be entitled to possess the land.

(2) Where the person or persons who had been in possession of any land referred to in subsection (1) had been forcibly dispossessed of such land at any time within two months prior to December 26, 2004 by the person or persons deemed to be in possession of such land under that subsection, the Judge shall direct that the person or persons so dispossessed be restored back in possession and prohibit any disturbance of such possession otherwise than under the authority of an order or decree of competent court.

PART V

TENANTS OF PREMISES

Tenant or lessee's rights not to be terminated. **31.** Where any person was, on December 26, 2004, a tenant or a lessee of any premises or any land affected by the Tsunami, his tenancy or leasehold rights shall not stand terminated, by reason only of the fact that the subject matter of the tenancy or the lease was destroyed or made unsuitable for occupation or possession as a result of the Tsunami.

PART VI

OFFENCES IN RESPECT OF TSUNAMI RELIEF PROPERTY

Penally for certain offences under the Penal Code committed in relation to Tsunami relief property. **32,** Where any person is found guilty of having committed the offence of criminal misappropriation, criminal breach of trust, theft, extortion, robbery, cheating or retention of stolen property within the meaning of the Penal Code, in relation to any property including money intended for the purpose of affording relief to those affected by the Tsunami, such person shall on conviction be liable to a penal sanction equal to twice the penal sanction imposed for that offence under the Penal Code.

Sinhala text to prevail in case of inconsistency. **33.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Schedules