



THE JUDICIARY  
OF GHANA



# **FAMILY TRIBUNAL**

## **BENCH BOOK**

# **FAMILY TRIBUNAL**

## **HANDBOOK**

# CONTENTS

|  |    |
|--|----|
| Acknowledgement  | 3  |
| Foreword   | 4  |
| Establishment Of Family Tribunal                               | 5  |
| Composition  | 5  |
| Jurisdiction   | 5  |
| Procedure At The Family Tribunal                               | 6  |
| Forum  | 6  |
| Applications Made To The Family Tribunal Include The Following | 6  |
| Best Interest Of The Child/Welfare Principle                   | 7  |
| Criminal Matters That May Arise In The Family Tribunal         | 7  |
| The Rights Of The Child  | 7  |
| Other Rights   | 8  |
| Guidlines For Self Represented Parties                         | 8  |
| Care And Supervision Orders                                    | 9  |
| Maintenance  | 10 |
| Adoption   | 11 |
| Child Panels   | 11 |
| Appeal   | 12 |
| Key Points To Note   | 12 |
| Control Of Lawyers   | 12 |
| Role Of The Magistrate   | 13 |
| References   | 13 |

# ACKNOWLEDGEMENT

Many people and partners assisted in diverse ways to the realization of this project for the provision of bench books for the District Courts and hand books for the support staff of the courts.

The Judiciary and the Judicial Service of Ghana singles out the Royal Danish Embassy and in particular DANIDA, for appreciation, for their invaluable partnership and support without which these publications would not have been completed. Their commitment to the advancement and improvement in justice delivery in Ghana is highly appreciated.

Special thanks and appreciation also go to Her Ladyship, the Chief Justice of Ghana, the Chairman and Board of Judicial Training Institute (JTI), for their support and encouragement for the project.

A word of acknowledgment and appreciation for the able assistance provided by His Lordship, Justice S. A. Brobbey of the Supreme Court of Ghana, who moderated the validation workshop made up of sixteen (16) Judges and Magistrates with the requisite experience of the Magisterial bench, drawn from all the Regions of Ghana for their significant inputs into the manual.

We are also indebted to Her Ladyship Gertrude Torkornoo and Ms. Sandra Thompson, (Director, Judicial Reforms and Projects) who did the proof reading; Jacob Soung, Mabel Ahele, Fati Abukari, Hannah Edzii and Sophia Okine, all staff of JTI for their various contributions to make this a reality. The Judicial Training Institute (JTI) Ghana, deserves our highest commendation and appreciation for their professional role in ably coordinating the drafting of all the manuals for the Civil Procedure, Criminal Procedure, Juvenile Court and Family Tribunal bench books.

Special thanks to the Ag. Director of Judicial Training Institute (JTI), Justice of the Court of Appeal, Justice J. B. Akamba, for the leadership role he played in the development of the manual and for his tireless effort to see this project to a successful end.

# FOREWORD

The Judicial Training Institute (JTI) on behalf of the Judiciary of Ghana has developed this benchbook to serve as a guide to the panel members of the Family Tribunal in the conduct and performance of their duties. This undertaking forms part of the measures adopted by the Judiciary towards fulfilling its legal and constitutional obligations for the efficient delivery of justice.

The production of this guide is in recognition of the essential role played by the Family Tribunal in justice delivery. The Family Tribunal interfaces with the public in the delivery of justice concerning parentage, custody, access and maintenance of children among others. These are areas in which legal representation is often constrained, hence the need to equip members of the Family Tribunal with the requisite skills and knowledge for effective access to justice and efficient justice delivery.

The benchbook, though comprehensive and concise, provides a standard practice guideline to all Family Tribunal panels across the country, to ensure uniformity of service. It is recommended that this benchbook be studied alongside other relevant materials related to the work of the Family Tribunal.

It is hoped that all Family Tribunal members and support staff will diligently study and apply the guidelines contained in this benchbook.

Ag. Director, JTI

May 2011, Accra

## **ESTABLISHMENT OF FAMILY TRIBUNAL**

The Family Tribunal is established by section 33 of the Children's Act, 1998 (Act 560)

## **COMPOSITION**

The Family Tribunal is constituted by a panel consisting of a Chairman and not less than two or more than four other members including a social welfare officer appointed by the Chief Justice on the recommendation of the Director of Social Welfare. *(See section 34 of Act 560)*

The term Chairman of the panel is synonymous with the magistrate, since the person presiding over the Family Tribunal is usually the magistrate. The decisions of the court are by a majority decision. Where the magistrate is in the minority or has a dissenting opinion the other panel members will write the majority decision.

## **JURISDICTION**

Section 50 of the Courts Act, 1993 (Act 459) as amended by section 5 of Act 620 confers jurisdiction on the District Court to hear and determine matters under the Children's Act, 1998 (Act 560).

Under the Children's Act, 1998 (Act 560) the Family Tribunal has jurisdiction in matters concerning parentage, custody, access and maintenance of children and to exercise other powers conferred by Act 560 or under any other enactment. This is stated in section 35 of Act 560.

Section 18 of the Domestic Violence Act, 2007 (Act 732) provides instances in which reference can be made to the Family Tribunal. Where there is the need for special protection for a child in a situation of domestic violence, the Court may refer matters of temporary custody of the child to a Family Tribunal.

- A child is a person below the age of eighteen years so the Family Tribunal has jurisdiction over a person less than 18 years of age; see section 1 of Act 560. It is therefore important to ascertain the age of the child at the commencement of proceedings in conformity with section 122 of Act 560.

## **PROCEDURE AT THE FAMILY TRIBUNAL**

The procedure is informal and by enquiry and not by adversarial means as pertains in regular court, (Section 37 of Act 560). The process is set in motion where an applicant fills the appropriate forms and submits it to the registrar. The respondent upon service then files a defence either in the form of sworn affidavit or in a statement of defence. The Family Tribunal has the same powers as the District Court in the control of proceedings and the calling of witnesses. *(see section 58 and 61 of Courts Act 459)*

## **FORUM**

The action is instituted in the Family Tribunal in the District in which the applicant or child resides. A Family Tribunal sits either in a different building or room from that in which sittings of other courts are held, or on different days from those on which sittings of other courts are held. [See section 36(1) of Act 560] The Family Tribunal sits in camera. This means that the court's sittings are restricted to those permitted to be present. Those permitted at the trial are the child, counsel, parents, court officials, social welfare, police officials, and interested persons permitted by the tribunal to attend the trial. *[See section 36(1) (a)-(e) of Act 560]*

Additionally section 22 of the Adoption Rules, 2003 (CI 42) states that proceedings are to be conducted in chambers under the rules governing the District Court

## **APPLICATIONS MADE TO THE FAMILY TRIBUNAL INCLUDE THE FOLLOWING**

- a. Care order: section 20 of Act 560
- b. Supervision order: section 21 of Act 560.
- c. Parentage of a child: section 40-42; order for blood test S.42.
- d. Custody: sections 43 and 46 of Act 560. Section 45 mentions the factors to consider in determining the custody of or access to a child.
- e. Access to a child: section 44 and 45 of Act 560.
- f. Maintenance of a child: section 47-48 of Act 560. Attachment of earnings and property to enforce maintenance orders section 51 of Act 560.
- g. Arrears of maintenance: section 51 (5) of Act 560.
  - b. Duration of maintenance order section 53
- h. Continuation of maintenance orders for a child over 18 years: sections 54 of Act 560.

- i. Variation or discharge of maintenance order: S 55 of Act 560. *Amartey v. Sraha* (1976) 1 GLR 279
- j. Fosterage: sections 62 to 64 of Act 560
- k. Adoption of a child: S.65-86 of Act 560.
- l. Protection of the best interests and maintenance of a child in an approved residential home: section 110(3)
- m. Power to order contribution towards maintenance: section 111(1) of Act 560.
- n. Determination of age of a child: section 122 of Act 560.

## **BEST INTEREST OF THE CHILD/ WELFARE PRINCIPLE**

In any matter concerned with a child the best interest of the child should be the paramount consideration. This is known as the welfare principle, (section 2 of Act 560). No guidance is to be found in the law as to how to determine the best interest of the child but reference may be made to the following cases, *Antwi v. Antwi* (1962) 1 GLR 321, *Re Dankwa* (1961) GLR 352, *Ansah v. Ansah* (1982-83) GLR 1127.

## **CRIMINAL MATTERS THAT MAY ARISE IN THE FAMILY TRIBUNAL**

The Family Tribunal is basically a civil court but in some situations some matters may arise incidental to civil trials which may amount to criminal offences. These include:

- a. Unlawful removal of a child in lawful custody of another: section 59(a) of Act 560.
- b. Failure by a parent or person legally liable to supply necessities of life, health, education and reasonable shelter: section 59(b) of Act 560.
- c. Bringing an action for maintenance while application for maintenance is pending in matrimonial proceedings: Section 59(c) of Act 560.
- d. Without the approval of the court, paying or receiving payment for adoption or arrangement leading to adoption: section 83 of Act 560

## **THE RIGHTS OF THE CHILD**

Under Section 38 of Act 560 the child has a right to legal representation, to give an account and express an opinion and also has a right to his/her privacy during proceedings. The child has also a right of appeal which shall be explained to him/her, guardians and parents. Section 39 prohibits publication of information that may lead to the identification of a child. A person who contravenes this is



liable to pay a fine not exceeding ₵5 million (GH₵500.00) or imprisonment for a term not exceeding one year or to both.

## **OTHER RIGHTS**

Other rights of the child which may be enforced by the Family Tribunal include:

- a. The right against discrimination on grounds of gender, race, age, religion, disability, health status, custom, ethnic origin, rural or urban background, birth or other status, socio-economic status or because the child is a refugee. (Section 3 of Act 560).
- b. The right to a name and nationality. Section 4 of Act 560.
- c. The right to grow up with parents. Section 5 of Act 560.
- d. The right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents. Section 6(2) of Act 560.
- e. The right to parental property. Section 7 of Act 560.
- f. The right to education and well-being. Section 8 of Act 560.
- g. The right to social activity. Section 8 of Act 560.
- h. The right of opinion. Section 11 of Act 560.
- i. Protection from exploitative labour. Section 12 of Act 560.
- j. Protection from torture and degrading treatment. Section 13 of Act 560.
- k. The right to refuse betrothal and marriage. Section 14 of Act 560.  
The penalty for contravening these provisions is payment of a fine not exceeding ₵5 million (GH₵500.00) or imprisonment for a term not exceeding one year or to both.

## **GUIDELINES: MATTERS IN WHICH ONE OR MORE OF THE PARTIES IS SELF-REPRESENTED**

- a. A judge/magistrate should ensure as far as is possible that procedural fairness is afforded to all parties whether represented or appearing in person in order to ensure a fair trial.
- b. A judge/magistrate should inform the litigant in person of the manner in which the trial is to proceed, the order of calling witnesses and the right which he or she has to cross examine the witnesses.
- c. A judge/magistrate should explain to the litigant in person any procedures relevant to the litigation.
- d. A judge/magistrate should generally assist the litigant in person by taking basic information from witnesses called, such as name, address and occupation.
- e. If a change in the normal procedure is requested by the other parties such as the calling of witnesses out of turn the judge/magistrate may, if he/she considers that there is any serious possibility of such a change causing any injustice to a litigant in person, explain to unrepresented

party the effect and perhaps the undesirability of the interposition of witnesses and his or her right to object to that course.

- f. A judge/magistrate may provide general advice to a litigant in person that he or she has the right to object to inadmissible evidence, and to inquire whether he or she so objects. A judge/magistrate is not obliged to provide advice on each occasion that particular question or documents arise.
- g. If a question is asked, or evidence is sought to be tendered in respect of which the litigant in person has a possible claim of privilege, to inform the litigant of his or her rights.
- h. A judge/magistrate should attempt to clarify the substance of the submissions of the litigant in person, especially in cases where, because of garrulous or misconceived advocacy, the substantive issues are either ignored, given little attention or obfuscated- (Neil v Nott (1994) 121 ALR 148 at 150).
- i. Where the interests of justice and the circumstances of the case requires it, a judge/magistrate may:
  - Draw attention to the law applied by the court in determining issues before it.
  - Question witnesses;
  - Identify applications or submissions which ought to be put to the court;
  - Suggest procedural steps that may be taken by a party;
  - Clarify the particulars of the orders sought by a litigant in person or the bases for such orders.

Source: Diana Bryant, Chief Justice – Family Court of Australia

## CARE AND SUPERVISION ORDERS

The Family Tribunal may issue a care order to the Department of Social Welfare on an application by a probation officer or social welfare officer, (section 20(1) of Act 560). The maximum duration of a care order is 3 years or until the child attains 18 years whichever is earliest. The Family Tribunal may make an interim order or vary the order (section 20 (4) of Act 560).

The meaning of care and protection and the situations under which a child may be in need of care and protection are explained in section 18 of Act 560

Note:

- a. The care order mandatorily transfers the parental rights with respect to the particular child to the Social Welfare Department.
- b. By section 20 (3) of Act 560 the Social Welfare Officer has the discretion to determine where to place the child.
- c. The tribunal must ensure that the social welfare officer includes in his report where the child will be placed and to satisfy the court in the report that the child will be comfortable so that the order will not cause

more harm to the child.

The Family Tribunal may issue a supervision order to the Department of Social Welfare on an application by a probation officer or social welfare officer; See section 21(1) of Act 560. A supervision order is aimed at preventing any significant harm being caused to a child whilst he remains at his family home in the custody of his parents, guardian or relative; See *Section 21(2) of Act 560*.

The maximum duration of a supervision order is 1 year or until the child attains 18 years, (*Section 21 (4) of Act 560*).

## **MAINTENANCE**

An application for maintenance of a child may be made by any of the persons or the institution listed in section 48 of Act 560. In making maintenance orders, the Family Tribunal shall consider the factors listed in section 49 of the Act.

In accordance with section 50 (1) of Act 560, a Family Tribunal may request a probation officer or social welfare officer to prepare a social enquiry report on the issue of maintenance for its consideration. Although the Family Tribunal must consider the social enquiry report it is a recommendation only and not binding. Where the Family Tribunal does not accept the recommendations reasons must be given.

Maintenance may be awarded to the mother of a child whether married to the father or not; see section 51 (1) of Act 560). Such maintenance may include medical expenses for the duration of her pregnancy, delivery or death of the child; a periodic allowance for the maintenance of the mother during her period of pregnancy and for a further period of nine months after the delivery of the child and the payment of a reasonable sum for the continued education of the mother if she is a child herself. An order may also be made for arrears of maintenance against any person liable to pay the maintenance, (*Section 51 (5) of the Act*).

By section 53 (1) of Act 560 generally a maintenance order expires when the child attains 18 years or dies before that age. Section 54 (1) makes provision to continue a maintenance order after a child has attained 18 years if the child is engaged in a course of continuing education or training after that age. A maintenance order lapses even before a child attains the age of 18 years if the child becomes gainfully employed.

Note however that no action may be brought for a maintenance order if an application for maintenance is pending in matrimonial proceedings, (*See section 58 of Act 560*).

## **ADOPTION**

The Family Tribunal in the jurisdiction where the applicant or the child resides has concurrent jurisdiction with the High Court and the Circuit Court to hear applications for adoption orders; see *section 65 of Act 560*.

Issues of restrictions on making adoption orders, consent of parents and guardians, conditions for adoption order, interim order, effect of adoption on parental rights, devolution of property on adoption, customary adoption, inter-country adoption and the procedure rules for adoption among others are discussed in section 67-86 of the Act.

An application for an adoption order must include the following; recommendation from the Social Welfare Department, a medical report on the child and applicant(s), the consent of the parents/ guardians and the best interest of the child. [See The Adoption Rules, 2003 (C.I. 42 contains all the required forms needed for an adoption order)].

Note:

In the light of the fact that an adoption order determines the final parentage of a child, it is important to be mindful of the child's interest.

## **CHILD PANELS**

Child panels are quasi-judicial reconciliation bodies set up under section 27 of Act 560 by the District Assembly for the sole purpose of mediating in matters concerning children's rights, parental duties and minor criminal matters such as petty stealing and threatening offences. Sections 28-32 of Act 560 spell out the functions, composition, meetings of Child Panel in exercising civil and criminal jurisdiction.

Upon receipt of complaints, the person against whom the complaint is made and in some cases the child may be invited to appear before the child panel. Appearance before the Child Panel is voluntary as they have no power to compel appearance before them or to order arrest.

A complainant dissatisfied with a decision of the panel in civil disputes may reinstitute action in the Family Tribunal and in criminal cases request prosecution by the police.

## **APPEAL**

An appeal from the decision of the Family Tribunal is heard at the High Court.

## **KEY POINTS TO NOTE**

The Children's Act 1998 (Act 560) provides strong statutory safeguards for the interests of children.

In whatever capacity children come before the courts, special measures and processes need to be adopted to ensure that they are treated fairly, their rights are respected, their views heard and their confidence in the judicial process maintained. It is also necessary to ensure that the evidence of a child is not treated more favourably than that of the other party. While it is important to cater for a child's needs and comfort, judicious efforts to that end should never be such as to amount to a suggestion that the child's evidence is likely to be more credible than that of any other witness.

Where a child has not been present in court but decisions have been made about the child's welfare, such information must be imparted to the child without delay in a manner appropriate to his/her age and understanding.

## **CONTROL OF LAWYERS**

The Panel should ensure that lawyers do not attempt over-rigorous cross examination and that they use language that is free of jargon and appropriate to the age of the child.

The questions should be unambiguous and the child should be given full opportunity to answer. If a child does not understand a question, the child may be tempted to give the answer that the child thinks the questioner wants, rather than the true answer. The child may also be afraid to disagree with a powerful adult figure. Judicial vigilance is always necessary.

In line with this, the need to limit the distress experienced by a child must not overcome the necessity of giving a party a proper opportunity to challenge the evidence of the child.

## **ROLE OF THE MAGISTRATE**

In Family Tribunal proceedings the magistrate may be pro-active and not reactive as in formal proceedings which are adversarial in nature. In their desire to do justice the magistrate must avoid giving the impression of being seen as counsel for the other side in cases involving the unrepresented.

It is important that magistrates appreciate their role when presiding over cases involving the unrepresented.

The magistrate should ensure that the court interpreters are sensitive to the needs of the child and report what they say verbatim. The interpreter must avoid the temptation to make sense of the child's statements.

Where a child has a disability, the court should be made aware of the exact nature and extent of the disability for it to make appropriate directions and arrangements to minimise discomfort or embarrassment for the child.

There is little guidance for the management of cases involving a child or child witnesses. In managing such cases, the evidence is heard promptly in order not to traumatise the child.

## **REFERENCES**

Practice and Procedure in the Trial Courts and Tribunals of Ghana – Justice Mr. S.A. Brobbey.

Child Abuse and the Role of the Judiciary (April 2002) Article by Justice Mrs. Agnes Dordzie.

Equal Treatment Bench Book – Judicial Studies Board – March 2004.

