

(c) not be in the best interests of the child.

Right to education and well-being.

9. (1) A child has a right to access education, preventive health services, adequate diet, clothing, shelter, medical attention, social services or any other service required for the child's development.

(2) A child shall not be denied or hindered from medical treatment by reason of religious or other beliefs.

(3) A child has a right to education regardless of the type or severity of the disability he may have.

Right to social activity.

10. A child shall not be deprived of or hindered from participating in sports, or in positive cultural and artistic activities or other leisure activities except where it is not in the best interest of the child.

Rights of children with disabilities.

11. A child with disability has a right to special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation, education, and training to help him enjoy a full and decent life in dignity and achieve the greatest degree of self-actualisation, self-reliance and social integration possible.

Right of opinion.

12. (1) A child has the right to express his opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.

(2) The opinion of the child shall be given due weight in accordance with the age and maturity of the child.

Right to protection from exploitative labour.

13. A child has a right to be protected from exploitative labour as provided for under section 236 of this Act and other international instruments on child labour.

Right to protection from harmful and degrading treatment.

14. (1) A child has a right to be protected from torture or other cruel, inhumane or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical, psychological, emotional and mental well-being of a child.

(2) A child should be disciplined in accordance with his age, physical, psychological, emotional and mental condition and no discipline is justifiable if by reason of tender age or otherwise the child is incapable of understanding the purpose of the discipline.

Right to refuse harmful cultural and religious practices.

15. A child has a right to refuse to be compelled to undergo or uphold any custom or practices that are likely to negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development.

Right to be protected from harmful substances.

16. A child has a right to be protected from the use of hallucinogens, narcotics, alcohol, tobacco products or psycho-tropic drugs and any other substances declared harmful and from being involved in their production, trafficking or distribution.

Right to parental property.

17. A child has a right to a reasonable provision out of the estate life, insurance or pension fund of a deceased parent whether or not born in wedlock or orphaned.

Duties and responsibilities of parents and guardians.

18. (1) A parent or guardian, whether -

- (a) married or not; or
- (b) the parents of the child continue to live together or not,

shall not deprive a child of his welfare.

(2) A parent or guardian has a responsibility, whether imposed by law or otherwise, towards the child which include the responsibility to-

- (a) protect the child from neglect, discrimination, violence, abuse, exploitation, exposure to physical and moral hazards and oppression;
- (b) provide good guidance, care, assistance and maintenance for the child to ensure the survival and development of that child;
- (c) ensure that during temporary absence, the child shall be cared for by a competent person;
- (d) exercise joint primary responsibility for raising the children, except where the parent or guardian has surrendered those rights and responsibilities in accordance with the law.

(3) A parent or guardian shall be responsible for the registration of the birth of his children and the name(s) of the parent(s) or guardian shall appear on the birth certificate.

Offence.

19. Any person who contravenes a provision of section 18 commits an offence and is liable on conviction to a fine not exceeding the monetary jurisdiction of a Magistrate or to an appropriate term of imprisonment.

Duties and responsibilities of children.

20. A child shall subject to his age and ability and such limitations as may be contained in this Act, have due regard to his duties and responsibilities to -

- (a) work for the cohesion of the family, respect the parents, guardians, superiors and elders at all times and assist them in cases of need;

- (b) serve the national community by placing physical and intellectual abilities at its service;
- (c) preserve and strengthen social and national solidarity; and
- (d) uphold the positive values of the community in the relations of the child with other members of that community,

General responsibility of all persons.

21. (1) Every person shall have the responsibility to respect, protect and promote the rights of children contained in this Act and any other law to the extent that it is applicable, taking into account the nature of the right and duty imposed by that right and duty.

(2) All officials, employees and representatives of an organ of state shall respect, protect and promote the rights of children contained in this Act. -

General Functions of the Department of Social Welfare.

22. (1) Without limiting any other functions of the Department of Social Welfare, for the proper and efficient administration of this Act, the functions of the Department of Social Welfare are to -

- (a) provide or help provide, information for parents and other members of the community about the development of children and their needs; and
- (b) provide or help provide, preventative and support services to strengthen and support families and to reduce the incidence of harm to children; and

(2) For purposes of this Act, social workers shall by virtue of such status be officers of court.

**PART IV
CHILD IN NEED OF CARE AND PROTECTION**

Child in need of care and protection.

23. 1) A child is in need of care and protection if -

- (a) a child has been or there is risk that the child will be physically, psychologically or emotionally injured or sexually abused by the parent or guardian or a member of the extended family or any other person;
- (b) the child has been or there is risk that the child will be physically injured or emotionally injured or sexually abused and the parent or guardian or any other person, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse;
- (c) the parent or guardian of the child is unfit, or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into bad association;
- (d) the parent or guardian of the child has neglected or is unwilling to provide for the child's adequate care, food, clothing and shelter, education and health;

- (e) the child -
 - (i) has no parent or guardian; or
 - (ii) has been abandoned by the parent(s) or guardian(s) and after reasonable inquiries the parent(s) or guardian(s) cannot be found, and no other suitable person is willing and able to care for the child;
 - (f) the child needs to be examined, investigated or treated -
 - (i) for the purpose of restoring or preserving the child's health; and
 - (ii) the parent or guardian neglects or refuses to have the child so examined, investigated or treated;
 - (g) the child behaves in a manner that is, or is likely to be, harmful to himself or to any other person and the parent or guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parent or guardian fail and as result the child cannot be controlled by his parent or guardian;
 - (h) there is such a conflict between the child and the parent or guardian, or between the parent or guardian, that family relationships are seriously disrupted, thereby causing the child emotional injury;
 - (i) the child is in the custody of a person who has been convicted of physically assaulting or committing a sexual offence in connection with that child;
 - (j) the child frequents the company of any immoral or vicious person, or is living in circumstances calculated to cause or induce his seduction, corruption or prostitution;
 - (k) the child is caused to be on any street, premises or place for the purpose of -
 - (i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale and as a result the child becomes a habitual beggar;
 - (ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare or retard the educational advancement of the child.
 - (l) the child is affected or infected by HIV/ AIDS and other life threatening conditions;
 - (m) the child cannot be controlled by his parent (s) or guardian or the person in whose custody he is; and
 - (n) the child is below the age of fifteen years and is engaged in regular economic activity detrimental to his health, educational advancement and development.
- (2) For the purposes of this Part, a child is -

- (a) physically injured if there is injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, a haemorrhaging, the rupture of a viscus, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;
- (b) emotionally and psychologically injured if there is impairment of the child's mental or emotional functioning that is evidenced by, among other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;
- (c) sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of -
 - (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or
 - (ii) sexual exploitation by any person for that person's or other person's sexual gratification or for commercial gain.

Taking a child into place of safety.

24. (1) Any police officer, social worker, chief or any designated member of the community working with children who is satisfied on reasonable grounds that a child is in need of care and protection may take a child and place the child into places of safety in the manner prescribed.

(2) Any person or the affected child who is in need of care and protection may, on his own make an application to a social worker, chief or police officer for admission into a place of safety, who shall follow the procedure in subsection (1).

Presentation before Children's Court.

25. (1) Subject to section 26, a child who is taken into a place of safety under section 24 shall be brought before the Children's Court within forty-eight hours exclusive of the time necessary for the journey from the place the child was so taken into custody to the Children's Court in order to review the appropriateness of the taking of the child.

(2) If it is not possible to bring a child before the Magistrate or Children's Court within the time specified under subsection (1), the child shall be brought before a magistrate who may direct that the child be placed in -

- (a) a place of safety; or
- (b) the care of a fit and proper person, until such time as the child can be brought before the Children's Court.

(3) If a child is in a place of safety or in the care of a fit and proper person under subsection (2) -

- (a) the person in charge of the place of safety or such fit and proper person shall have the like control over, and responsibility for the maintenance of the child as the parent or guardian of the child would have had; and

(b) the child shall continue in the care of the person referred to in paragraph (a) notwithstanding that the child is claimed by the parent or guardian or any other person.

(4) A social worker, police officer, chief or any member of the community who takes a child into a place of safety under this section shall, immediately upon such taking, cause the parent or guardian of the child to be notified of such taking.

(5) A police officer, chief or any member of the community who takes a child into temporary care under this section shall, immediately upon such taking, notify a social worker of such taking.

Child in need of medical examination or treatment.

26. (1) If a social worker, police officer, chief or any member of the community who takes a child into a place of safety under section 24 is of the opinion that the child is in need of medical examination or treatment, the social worker, police officer, chief or any member of the community may, instead of bringing the child before the Children's Court or magistrate, as the case may be, present the child before a medical officer.

(2) If a social worker, police officer or chief does not take a child into a place of safety under section 24 but is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct in writing the person who appears to him to have the care of the child for the time being to immediately take a child to a medical officer.

(3) If the person referred to under subsection (2) fails to comply within forty-eight hours with a direction made under that subsection, a social worker, police officer or chief may take the child into temporary care for the purpose of presenting the child before a medical officer.

Medical examination and treatment.

27. (1) A medical officer before whom a child is presented under section 26(1) or (3) -

- (a) shall conduct or cause to be conducted an examination of the child;
- (b) may, in examining the child and if so authorised by a social worker or police officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the child's condition;
- (c) may provide or cause to be provided such treatment as the medical officer considers necessary as a result of the diagnosis.

(2) The child who is presented before a medical officer under subsection (1) shall be exempted from medical fees with the authority of a social worker.

Authorisation of hospitalisation.

28. (1) If the medical officer who examines a child under section 26 is of the opinion that the hospitalisation of the child is necessary for the purposes of medical care or treatment, a social worker or police officer may authorise the child to be hospitalised.

(2) Where a police officer authorises the child to be hospitalised, he or she shall inform a social worker where an exemption for medical expenses is necessary.

Control over hospitalised children.

29. If a child is hospitalised under section 28, the Director of Social Welfare shall have the same control over, and responsibility for the maintenance of, that child as the person in charge of a place of safety would have had if a child had been placed in that place of safety.

Authorisation of medical treatment.

30. (1) If, in the opinion of the medical officer, the child referred to under section 26 requires treatment for a minor illness, injury or condition, a social worker or police officer may authorise such treatment.

(2) If, in the opinion of the medical officer, the child referred to in section 26 is suffering from a serious illness, injury or condition or requires surgery or psychiatric treatment, a social worker or police officer -

- (a) shall immediately notify or take reasonable steps to notify and consult the parent or guardian of the child or any person having authority to consent to such treatment; and
- (b) may, with the written consent of the parent or guardian or such person, authorise such medical or surgical or psychiatric treatment as may be considered necessary by a medical officer.

(3) If a medical officer has certified in writing that there is immediate risk to the health of a child, a social worker or police officer may authorise, without obtaining the consent referred to in subsection (2), such medical or surgical or psychiatric treatment as may be considered necessary by the medical officer but only under any of the following circumstances -

- (a) that the parent or guardian of the child or any person having authority to consent to such treatment has unreasonably refused to give, or abstained from giving, consent to such treatment;
- (b) that the parent or guardian or the person referred to in paragraph (a) is not available or cannot be found within a reasonable time; or
- (c) the social worker believes on reasonable grounds that the parent or guardian or the person referred to in paragraph (a) has ill-treated, neglected, abandoned or exposed, or sexually abused, the child.

Steps to be taken after medical examination or treatment.

31. (1) A child who is taken into a place of safety under section 24 and is medically examined or treated under section 27 shall be brought before Children's Court within forty- eight hours -

- (a) of the completion of such examination or treatment; or
- (b) if the child is hospitalised, on his discharge from the hospital.

(2) If it is not possible to bring the child before a Children's Court within the time specified in subsection (1), the child shall be brought before a magistrate who may direct that the child be placed in -

- (a) a place of safety; or

(b) the care of a fit and proper person,

until such time as the child can be brought before Children's Court.

(3) A child who -

(a) is taken into care under section 26 (3); and

(b) subsequently undergoes medical examination or treatment,

shall be returned to the person from whose care the child was taken upon the completion of such examination or treatment or, if the child is hospitalised, upon discharge from the hospital.

No liability incurred for giving authorisation.

32. (1) If a child is examined or treated pursuant to section 27 or 30 -

(a) the social worker or police officer who authorises such examination or treatment;

(b) the medical officer who examines or treats the child; and

(c) all persons acting in aid of the medical officer,

shall not incur any civil or criminal liability at law by reason only that a child is examined or treated pursuant to that section.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of any negligent medical examination or treatment of a child.

Duty of medical officer.

33. (1) If a medical officer believes on reasonable grounds that a child he is examining or treating is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a social worker or police officer.

(2) Any medical officer who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni or to imprisonment to a term not less than six months or both.

Duty of member of the family.

34. (1) If any member of the family of a child believes on reasonable grounds that the child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a social worker.

(2) Any member of the family who fails to comply with subsection (1) commits an offence and shall on conviction be released on a binding agreement on conditions to be determined by the court.

Duty of child care provider.

35. (1) If a child care giver believes on reasonable grounds that a child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall inform a social worker or a police officer.

(2) Any child care giver who fails to comply with subsection (1) commits an offence is liable on conviction to a fine not exceeding five thousand emalangeni or to imprisonment for a term not exceeding three months or both.

Duty of member of the community.

36. (1) If any member of the community believes on reasonable grounds that a child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a chief, police or social worker.

(2) Any member of the community who fails to comply with subsection (1) commits an offence is liable on conviction to a fine not exceeding three thousand Emalangeni or to imprisonment for a term not exceeding two months or both.

Functions of Children's Court in cases of children in need of care.

37. (1) If the Children's Court is satisfied that any child brought before the Children's Court under section 25 or 31 is a child in need of care and protection, the Children's Court may -

- (a) order the parent or guardian to enter into a binding agreement to exercise proper care and guardianship for a period specified by the Children's Court;
- (b) make an order placing the child in the custody of a fit and proper person for a period specified by the Children's Court;
- (c) without making any other order or in addition to an order made under paragraph (a) or (b), make an order placing the child under the supervision of -
 - (i) a social worker; or
 - (ii) some other person appointed for the purpose by the Children's Court, for a period specified by the Children's Court;
- (d) make an order placing the child in a place of safety for a period of two years from the date of the order or until he attains the age of eighteen years, whichever is the shorter; or
- (e) in the case of a child who has no parent or guardian or who has been abandoned, make an order placing the child in the care, custody and guardianship of a foster parent found to be suitable by the Director of Social Welfare for a period of two years or until the child attains the age of eighteen years, whichever is the shorter, and pending that, place the child in a place of safety.

(2) For the purposes of subsection(1), the Department of Social Welfare shall submit a report about the suitability of a caregiver or foster parent, which makes an assessment whether the person is fit and proper to be entrusted with parental responsibilities and rights in respect of the child, and willing and able to undertake, exercise and maintain those responsibilities and rights.

(3) If the Children's Court makes an order under subsection (1) (e), the Director of Social Welfare shall, in order to give effect to the order, immediately endeavour to place the child in the care, custody and control of a foster parent.

(4) If at any subsequent time the foster parent intends to return the child who has been placed in his care, custody and guardianship under subsection (1) (e), he shall report in person to a social worker and bring the child before the social worker, and the social worker shall place the child temporarily in a place of safety and inform the Children's Court.

(5) If during the period mentioned under subsection (1) (e) the parent or guardian of the child concerned has not claimed the child or made any appearance, the Children's Court may-

- (a) at the expiry of that period; and
- (b) if the Children's Court is satisfied that reasonable steps have been taken by a social worker to trace the parent or guardian of the child,

make an order placing the child for adoption by the foster parent or any person who wishes to adopt the child, and in any such case, the parent's or guardian's consent for the adoption of the child shall be dispensed with.

(6) Before making an order under subsection (1) or (5), the Children's Court shall consider and take into account a report prepared by a social worker in the manner prescribed which -

- (a) shall contain such information as to the social background, general conduct, home surrounding, school record and medical history of a child as may enable the Children's Court to deal with the case in the best interests of the child; and
- (b) may include any written report of a registered medical practitioner or any other person whom the court thinks fit to provide a report on the child.

(7) In order to enable a social worker to prepare and submit the report referred to in subsection (6), the Children's Court may -

- (a) adjourn the case for a period not exceeding two months; and
- (b) make in respect of the child, as an interim order having effect only during the period of adjournment, any order which the Children's Court could have made under subsection (1).

(8) The Children's Court may, in making any order under subsection (1), impose such conditions or give such directions as the Children's Court may deem fit for the purpose of ensuring the safety and well-being of the child in respect of whom such order is made, and such conditions or directions may include the following -

- (a) that the parent or guardian of the child accompanied by the child shall attend interactive workshops held at designated places;
- (b) if the child is placed at a place of safety, a social worker shall accompany the parent or guardian for the first visit to see the child and thereafter the parent or guardian shall visit the child on a regular basis as determined by the Children's Court; or
- (c) if the child is in an educational institution, that the parent or guardian shall consult with the child's teacher and principal of the institute once a month.

(9) Any parent or guardian who fails to comply with any of the conditions imposed or directions given under subsection (7) commits an offence and is liable on conviction to a fine not exceeding twenty five thousand Emalangeni or to imprisonment for a period not exceeding two years or to both.

(10) An order under subsection (1) shall not be made without giving the child, parent or guardian of the child an opportunity to attend the proceedings and to be heard.

(11) Notwithstanding subsection (9), an order under subsection (1) may be made if the Children's Court is satisfied on information given by a social worker that the parent or guardian of the child, having been required to attend, has failed to do so, or is not available or cannot be found within a reasonable time.

(12) If the Children's Court is not satisfied that a child brought before it under this section is in need of care and protection, the Children's Court shall order the child to be returned to the care and custody of his parent or guardian with close monitoring by a social worker.

(13) The Children's Court may, on the application of -

- (a) a social worker;
- (b) the person in charge of a place of safety;
- (c) the parent or guardian of a child;
- (d) the child; or
- (e) any person who has information,

amend, vary or rescind any order made under this section if the Children's Court is satisfied that it is in the best interests of the child to do so; or upon proof that the circumstances under which the order was made have since changed after the making of the order.

PART V

CHILD IN NEED OF REHABILITATION AND URGENT PROTECTION

Child in need of rehabilitation.

38. A child is in need of rehabilitation if there is reasonable cause to believe that the child -

- (a) is being induced to perform any sexual act, or is in any physical or social environment which may lead to the performance of such act;
- (b) lives in or frequents any brothel or place of assignation;
- (c) is habitually in the company or under the control of brothel-keepers or procurers or persons employed or directly interested in the business carried on in brothels or in connection with prostitution; or
- (d) is a victim of sexual violence or labour exploitation or is denied access to education;
or
- (e) is a habitual substance abuser.

Removal of a child in need of rehabilitation to a place of safety.

39. (1) Any social worker, police officer or chief who is satisfied on reasonable grounds that a child is in need of rehabilitation may order the child to be removed to a place of safety and the child shall be temporarily kept in such place of safety.

(2) Any child who is temporarily kept under subsection (1) shall be brought before the Children's Court within 48 hours exclusive of the time necessary for the journey from the place where the child was so removed to the Children's Court.

(3) If it is not possible to bring a child before the Children's Court within the time specified in subsection (2), the child shall be kept in a place of safety for a period not exceeding seven days within which the child shall be brought before the Children's Court.

(4) If the Children's Court is satisfied that the child brought before it is in need of rehabilitation, the Children's Court may order the child to be kept in a place of safety until -

- (a) an inquiry into the circumstances of the child's case has been completed; and
- (b) a report of the inquiry has been submitted to the Children's Court by the social worker.

(5) If the Children's Court is not satisfied that a child brought before it is in need of rehabilitation, the Children's Court shall order the child to be returned to the care of the parent or guardian.

Orders upon completion of an inquiry.

40. (1) An inquiry referred to under section 39 (4) shall be made by a social worker.

(2) A social worker shall complete the inquiry and submit a report to the Children's Court within a period not exceeding one month from the date of admission of a child to a place of safety under section 39 (1).

(3) If after considering the report submitted under subsection (2), the Children's Court is satisfied that any child brought before it is a child in need of rehabilitation, the Children's Court may, subject to the other provisions in this section -

- (a) order the child to be kept in a place of safety for a period not exceeding three years from the date of the admission of the child into a place of safety under section 39 (1) and the order shall be an authority for his admission into a place of safety;
- (b) make an order placing the child for such period not exceeding three years from the date of the order in the care of the person whether a relative or not who is willing and whom the Children's Court considers to be a fit and proper person to undertake care of such child;
- (c) make an order requiring the parent or guardian of a child to enter into a binding agreement, with or without sureties, as the Children's Court may determine, for such period not exceeding three years from the date of the order subject to such conditions as the Children's Court thinks fit for the proper care and guardianship of the child; or

(d) make an order placing the child under the supervision of a social worker, subject to such conditions as the Children's Court thinks fit and for such period not exceeding three years from the date of the order.

(4) An order made under subsection (3) (a) or (d) may have the effect of extending the period of such placement or supervision, as the case may be, until the child attains the age of eighteen years.

(5) The Children's Court may, on its own or on an application by or on behalf of the child, parent, guardian, social worker or person in charge of a place of safety, reduce the period of placement upon evidence of material change in the circumstances that gave rise to the order of placement.

(6) The Children's Court shall, when making an order under subsection (3) (a) or (d), order the parent or guardian of a child to enter into a binding agreement for the duration of the order with such conditions which may include-

- (a) in the case of the provisions of subsection (3) (a), regular visits to the place of safety where the child is kept; and
- (b) in the case of the provisions of subsection (3) (d), ensuring that the child remains indoors within stipulated times.

(7) Any person who is ordered to enter into a binding agreement under subsection (3) or (7), as the case may be and fails to comply with any of the conditions for the agreement, commits an offence and is liable on conviction to a fine of not less than ten thousand Emalangeni or to imprisonment for a period of not less than six months or both.

(8) A child who is kept in a place of safety under subsection (3) (a) shall, on the expiration of the period of placement whether by-

- (a) lapse of time; or
- (b) reason of any reduction made pursuant to subsection (6),

be placed under the supervision of a social worker or other person appointed by the Director of Social Welfare for such purpose.

(9) The period of supervision for the purpose of subsection (8) shall be determined by the Children's Court after hearing the recommendations of the social worker and consulting with the child, parent or guardian but the period of such supervision shall not in any case exceed one year from the date of expiration of the period of placement of the child.

(10) The Children's Court may on the application of the child, parent or guardian exempt the child from the application of subsection (8) if satisfied that the case warrants such exemption.

Child in need of urgent protection.

41. (1) A child is in need of urgent protection if there is reasonable cause to believe that-

- (a) that child is being threatened or intimidated for purposes of prostitution or for purposes of having sexual intercourse with another or for any immoral purpose;
- (b) the child is being forced to marry;

- (c) the child is pregnant and suicidal or rejected by the family due to this condition;
- (d) the child is subjected to hazardous conditions of labour;
- (e) the child is forced to undergo cultural or spiritual rituals;
- (f) the child is compelled to leave school; or
- (g) the child is confined or detained by another person in contravention of this Act.

(2) Any person or the affected child who is in need of urgent protection may, on his own make an application to a social worker, chief or police officer for admission into a place of safety.

(3) A social worker at the place of safety shall satisfy himself that the child brought under subsection (1) is in need of urgent protection, and if the circumstances so warrant, admit the child.

(4) If the person in charge of the place of safety receives any child under subsection (3), that child shall be attended to by a social worker within forty-eight hours of admission and the social worker shall make an assessment and produce a full report of the circumstances.

(5) A child admitted under subsection (3) shall reside in the place of safety for as long as the social worker is satisfied that the child is in need of urgent protection.

(6) The social worker-

- (a) who receives a child under subsection (3); or
- (b) to whom the child is brought under subsection (4),

shall immediately inform the Children's Court of such admission with a full report of the circumstances and shall, in the like manner, inform the Children's Court of the child's departure.

PART VI
ADMINISTRATION OF PROPERTY OF CHILDREN BY OFFICE
OF THE MASTER OF THE HIGH COURT

Reporting of estate to the office of the Master of the High Court.

42. (1) Where a parent is survived by minor children, the surviving parent, guardian, closest relative, or any member of the community shall report the estate to the office of the Master of the High Court within two months after the death of the parent.

(2) A child has a right to the death certificate of a deceased parent.

Seeking permission of the office of the Master of the High Court for alienation, disposal off or sale of children's property.

43. (1) A surviving parent, guardian, closest relative or any member of the community shall seek permission of the office of the Master of the High Court prior to mortgaging, alienating, disposing off or selling children's property.

(2) A surviving parent, guardian or closest relative who fails to comply with the provisions of this section, commits an offence and is liable on conviction to a fine not exceeding fifteen thousand Emalangeni or to imprisonment for a term not exceeding five years or both.

(3) Reimburse the victim to the value of the property that was disposed off through a sale or otherwise.

Duties of the office of the Master of the High Court.

44. Without limiting any other functions of the office of the Master of the High Court, for the proper and efficient administration of this Act, the office of the Master of the High Court shall

- (a) in administering a child's share of parental property, ensure that the best interests of the child are met;
- (b) where the assets of the estate are being alienated, disposed off or sold, ensure that permission has been granted and the children are not left destitute or homeless;
- (c) have power to administer and confiscate property belonging to children and to delegate such powers to any person or institution;
- (d) where the office of the Master of the High Court discovers that the property belonging to children has been negligently used by the successful heir or any other person, request the concerned person to pay that property failing which the Office of the Master of the High Court shall make an application to court for such a person to pay that property or for a writ of execution to be issued by the court;
- (e) where parents married in community of property have deserted, neglected or abandoned children, hear evidence to verify the contribution of the surviving spouse towards maintenance of such children;
- (f) where the surviving spouse is found not to have made any contribution under paragraph (e) -
 - (i) give to such spouse a child's share only;
 - (ii) exercise discretion to award any amount of money depending on the circumstances of the case; or
 - (iii) divide the half share of the abandoning spouse between his children.
- (g) have power to invest the money brought to the office with any financial institution;
- (h) on inquiry by the minor children of the deceased estate concerned, provide adequate information on the status of the properties or monies invested on their behalf;
- (i) assist a minor child of a deceased estate to open an account in a financial institution;
- (j) notify the Director of Social Welfare in writing of the opening of such an account;
- (k) cause the Director of Social Welfare to undertake periodic reviews of the socio-economic status of the child.

Duties of a chief in the administration of the property of children.

45. (1) A chief before whom an heir is presented shall-

- (a) ensure that the names of minor children of the deceased appear in all the documents;
and
- (b) liaise with the office of the Master of the High Court.

(2) The Chief shall ensure that minor children of the deceased are not unduly dispossessed.

Duty of employer in relation to property belonging to children.

46. (1) It shall be the duty of any employer, after the death of his employee who has minor children, to send all the employees benefits to the office of the Master of the High Court who will administer and invest such property where necessary.

(2) An employer who fails to comply with the provisions of this section, commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni.

Duties of financial institutions.

47. (1) No financial institution shall open and operate any account in respect of a minor child who is a beneficiary of a deceased estate without the prior consent of the Master of the High Court.

(2) Any financial institution which contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni.

**PART VII
OFFENCES IN RELATION TO HEALTH AND
WELFARE OF CHILDREN**

Ill-treatment, neglect, abandonment or exposure of children to abuse.

48. (1) Any person who, being a person having the care of a child abuses, neglects, abandons or exposes the child in a manner likely to cause the child physical, psychological or emotional injury or causes or permits the child to be so abused, neglected, abandoned or exposed commits an offence and is liable on conviction for the offence to a community based sanction or to imprisonment for a term of not less than five years.

(2) The Children's Court -

- (a) may, in addition to any punishment specified in subsection (1), order the person convicted of an offence under that subsection to enter into a binding agreement with sureties to be of good behaviour for such period as the Court deems fit; and
- (b) may include in the binding agreement under paragraph (a) such conditions as the Court deems fit.

(3) If a person who is ordered to execute a binding agreement to be of good behaviour under subsection (2) fails to comply with any of the conditions of such bond, he shall be liable to a further term of imprisonment not exceeding five years.

(4) A parent or guardian or other person legally obliged to maintain a child shall be deemed to have neglected the child in a manner likely to cause the child physical, psychological or emotional injury if, being able to so provide from his own resources, he fails to provide adequate food, clothing, medical treatment, lodging, care, guidance and protection to the child.

Children not to be used for begging.

49. Any person who causes or procures any child or, being a person having the care of a child, allows that child to be on any street, premises or place for the purposes of -

- (a) begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale; or
- (b) carrying out illegal hawking, lotteries, gambling or other illegal activities detrimental to the health, welfare and educational advancement of the child,

commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni or to imprisonment for a term not exceeding two years or both.

Leaving a child without supervision and care.

50. Any person who is a person for the time being having the care of a child, leaves that child -

- (a) without making provision for the supervision and care of the child;
- (b) for a period which is unreasonable having regard to all the circumstances; or
- (c) under conditions which are unreasonable having regard to all the circumstances, commits an offence and is liable on conviction to a community based sanction or to a fine not exceeding five thousand Emalangeni or to imprisonment for a term not exceeding two years or both.

PART VIII
CONDITIONS FOR TAKING A CHILD INTO CARE

Conditions for taking a child into care.

51. (1) If a person takes a child into his care -

- (a) that person; and
- (b) the person in whose care the child was at the time of such taking,

shall, not later than one week thereafter, notify the Chief of the area where the child is or a social worker of such taking.

(2) On receiving any notification under subsection (1), the social worker shall make such inquiry as he thinks fit as to -

- (a) the circumstances and the reasons for the taking; and
- (b) the suitability for that purpose of the person who has taken the child into his care.

(3) If, after the inquiry referred to under subsection (2), the social worker deems it expedient to do so in the best interest of the child, he may either -

- (a) order that the child be returned to the care of his parent or the person in whose care, the child was at the time of taking; or
- (b) permit the taking of the child on such terms and conditions as the social worker may require.

(4) If the taking of a child by any person has been permitted under subsection (3) (b) subject to any term or condition and default is made in complying with such term or condition, the social worker may by warrant under his hand order that the child -

- (a) be taken out of the care of such person; or
- (b) be placed in a place of safety or of a relative or other fit and proper person on such terms and conditions as the social worker may require until the child attains the age of eighteen years or for a shorter period.

(5) For the purposes of this section, a "person" includes informal, formal and traditional structures -

- (a) not maintained by government; or
- (b) not formally established for purposes of care.

(6) A Chief who is notified under section 51(1) shall notify or cause to be notified a social worker of such taking.

(7) A social worker shall, on receiving any notification under this section, record the particulars of such notification in a register in such form as may be prescribed.

(8) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction to a community based sanction or a fine not exceeding ten thousand Emalangeni or to imprisonment for a term not exceeding five years or both.

Application.

52. (1) The provisions of this Part shall not apply to the taking of a child -

- (a) into the care or guardianship of any person -
 - (i) in accordance with an order of court; or
 - (ii) by any social worker or police officer acting under this Act;
- (b) who is in a place of safety or an orphanage, institution or centre -
 - (i) maintained by government; or
 - (ii) approved by the Minister;
- (c) as a boarder at an educational institution; and

- (d) who is regularly attending an educational institution into the care of a friend or relative of the parent or guardian with the consent of the parent or guardian.

(2) For the purposes of this section care of a child means a relative who has been formally elected and left with up-bringing of orphaned children and any other children left by parents for various reasons.

Subsequent obligations.

53. (1) If the taking of a child has been notified to and permitted by a social worker under section 51, the person who has taken the child shall, if at any subsequent time -

- (a) he intends to return the child to the care, custody or control of the parent or guardian of the child or any other person from whom the child was taken; or
- (b) without his knowledge or consent, the child has left his care, custody or control,

report in person to the social worker and shall, whenever practicable, bring or cause to be brought before the social worker the child and the parent or guardian of the child or any other person from whom the child was taken.

(2) On receiving a report under subsection (1), the social worker shall make a note of the report and shall if -

- (a) the child and the parent or guardian of the child or any other person from whom the child was taken are present at the time such report is received, return the child to the parent or guardian or such person, as the case may be; or
- (b) the parent or guardian of the child or any other person from whom the child was taken is not present at the time such report is received -
 - (i) take the child into temporary care until the child can be returned to the parent or guardian or such person; and
 - (ii) immediately send written information to the last known place of residence of the parent or guardian or such person.

Presentation of child before social worker.

54. (1) If a social worker or any other designated person such as chiefs has reason to believe that there is, within the area of his jurisdiction, a child in respect of whose taking no notification has been made pursuant to section 51, he may, by written notice or summons under his hand addressed to the person who has or is believed to have the care or guardianship of the child, require that person to appear and to present the child before him at the time and place specified in the written notice or summons for the purposes of an inquiry under subsection (4).

(2) If a person to whom a written notice or summons has been served under subsection (1) fails to present a child at the time and place specified in the written notice, the social worker or any other designated person charged with similar responsibility may apply to a magistrate for a search warrant to search for the child and to produce the child before the social worker.

(3) Any child named or described in such warrant may be temporarily -

- (a) placed in a place of safety; or
 - (b) placed in the care of a relative or other fit and proper person on such terms and conditions as the social worker may require, until the social worker has completed his inquiry under this Part.
- (4) A social worker shall make such inquiry as he thinks fit as to -
- (a) the circumstances and the reasons for the taking of the child referred to in subsection (1); and
 - (b) the suitability of the person who has taken the child into his care or guardianship.
- (5) If, after the inquiry mentioned under subsection (4), the social worker deems it expedient in the best interests of the child, he may -
- (a) order that the child be returned to the care of the parent or guardian or the person in whose care the child was at the time of such taking; or
 - (b) permit the taking of the child on such terms and conditions as the social worker may specify.
- (6) If the taking of a child by any person has been permitted under subsection (5) (b) subject to any term or condition and default is made in complying with such term or condition, the social worker may by warrant under his hand order that the child -
- (a) be taken out of the care or guardianship of such person; and
 - (b) be placed in a place of safety or in the care of a relative or other fit and proper person on such terms and conditions as the social worker may specify until the child attains the age of eighteen years or for any shorter period.

PART IX ADOPTION

Adoption

55. (1) A child is adopted if the child has been placed in the permanent care of a person in terms of a court order that has the effects contemplated in Section 69.

(2) The purpose of this part is to give effect to the Hague Convention on Intercountry Adoptions.

(3) For the purposes of the Hague Convention on Intercountry Adoptions in relation to Swaziland 'competent authority' means the Principal Secretary in the Ministry responsible for children's issues.

Child who may be adopted

56. (1) Any child may be adopted if -

- (a) the adoption is in the best interest of the child;