

- (b) the child is adoptable; and
- (c) the provisions of this Part are complied with

(2) The adoption committee shall conduct an assessment to determine whether a child is adoptable after a report is made by a social worker.

(3) A child is adoptable if-

- (a) the child is an orphan and has no guardian or caregiver who is willing to adopt the child;
- (b) the whereabouts of the child's parent or guardian cannot be Established;
- (c) The child has been abandoned;
- (d) The child's parent or guardian has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected; or
- (e) child is in need of a permanent alternative placement.

Person who can foster or adopt.

57. (1) A child may be adopted by any person eligible under this section.

(2) A prospective adoptive parent shall be -

- (a) fit and proper to be entrusted with parental responsibilities and rights in respect of the child;
- (b) willing and able to undertake, exercise and maintain those responsibilities and rights;
- (c) twenty five years older than the child to be adopted; and
- (d) properly assessed by an adoption social worker for compliance with paragraphs (a) and (b) and by his country's competent authority in the case of foreign nationals.

Establishment of adoption committee.

58. (1) The Minister shall establish, under the Department of Social Welfare, regional committees for adoption.

(2) The Adoption committee shall consist of -

- (a) the Regional Administrator or his representative who shall be the Chairperson;
- (b) social worker from that Region who shall be the secretary;
- (c) a representative of Non-governmental Organisations;
- (d) two other people from the community with interest in the welfare of children selected by the Director of Social Welfare; and
- (e) a representative of the Child Protection and Domestic Violence Unit of the police.

(3) The Adoption Committee shall screen potential adoptive parents and names of children to be put on the register on prospective adoptive parents and adoptable children.

(4) Members of the Adoption Committee shall meet as and when there are applications of potential adoptive parents to screen.

Establishment of a Register on Prospective Adoptive Parents and Adoptable Children.

59. (1) The Director of Social Welfare shall keep and maintain a register to be called the Register on Prospective Adoptive Parents and Adoptable children in order to match the needs of the prospective adoptive parents to the prospective adoptable child.

(2) The name and other identifying information of a child may be entered into the register if the child is adoptable as contemplated in Section 56.

(3) The name or other identifying information of a child shall be removed from the register if the child has been adopted.

(4) A person may be registered in the prescribed manner as a prospective adoptive parent if Section 57 has been complied with.

(5) Registration of a person as a prospective adoptive parent-

(a) is valid for a period of three years;

(b) may be renewed as prescribed;

(c) ceases;

(i) on written notice of withdrawal being given to the Director of Social Welfare;

(ii) on the death of the registered person;

(iii) on cancellation by the Director of Social Welfare if the registered person is no longer-

(aa) a fit and proper person to be entrusted with full parental responsibilities and rights in respect of a child; and

(bb) willing and able to undertake, exercise and maintain those responsibilities and rights

(iv) if the registered person is convicted of an offence involving violence.

(6) Only the Director of Social Welfare and officials in the Department designated by the Director shall have access to the register described in this Section.

Parental rights and responsibilities of foster parent.

60. A foster parent in whose care a child is placed shall have the same rights and responsibilities in respect of the child's care and guardianship as the parent of the child while the child remains in his care.

Duties of the Department of Social Welfare under this Part.

61. (1) The Department of Social Welfare shall facilitate assessment of the adoptive parents and the conditions surrounding the child to be adopted and shall prepare a report to that effect.

(2) In the case of adoption, after the assessment referred to under subsection (1), the Department of Social Welfare through the designated social worker shall present a report in respect of the child to the High Court.

Application for adoption.

62. (1) An application for an adoption order may be made jointly by a husband and wife.

(2) Where an application for an adoption order is made jointly by a husband and a wife, there shall be a written proof to that effect.

(3) Where application for an adoption order is made in respect of a child who has attained the age of ten years and is open for adoption, the consent of the child shall be sought and if the child is below ten years, his opinion shall be taken into consideration.

(4) An adoption order can be terminated by the High Court if the adoption is proved not to be in the best interests of the child.

(5) No payment shall be given to the person who gives away his child for adoption.

Consent of parents or guardians.

63. (1) An adoption order shall only be made with the consent of the parent or guardian of the child.

(2) The High Court may dispense with the consent of any parent or guardian of the child if satisfied that the parent or guardian has neglected or persistently ill-treated the child, or the person cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.

(3) Any consent under this section may be given without the knowledge of the identity of the applicant for the order and where the consent is subsequently withdrawn only because the identity of the applicant was not known, the consent shall be considered to have been unreasonably withheld.

(4) Any parent or guardian of a child who has given consent for the adoption order shall not be entitled to remove the child from the care and guardianship of the applicant except with the permission of the High Court and in recognition of the best interests of the child.

(5) The High Court may require the consent of any person for an adoption order if it considers that the person has any rights or obligations in respect of a child such as under an agreement, a court order or under Swazi law and custom.

(6) Where an application for adoption is made in respect of a child who is born out of wedlock, the natural father of the child, if known and available, shall be consulted.

(7) Where an application for adoption is made in respect of a child who was abandoned and his parents or guardian could not be traced, the parents or guardian shall have no power to claim back the child from the adoptive parents.

Knowledge of adoption by child.

64. (1) An adoptive parent shall, under the guidance of a social worker, inform the adopted child of the fact that the child is adopted and the child's parentage but this disclosure shall only be made if it is in the best interests of the child and if the child is of an understanding age.

(2) No person other than the adoptive parent shall disclose an adoption to the adopted child.

(3) Subject to subsection (1), the adopted child shall, where possible, have access to photos, letters or any form of artifacts that might help the child understand his roots better.

(4) If the adopted child has any siblings, the child should be informed of any siblings and be helped to maintain a link with the siblings, either through visits, letters or other communication channels.

(5) Any person who fails to comply with the provisions of this section, commits an offence and is liable on conviction to a fine not exceeding hundred thousand Emalangeni or to imprisonment for a term not exceeding two years or both.

Inter-country adoption.

65. (1) A person who is not a citizen of Swaziland may adopt a Swazi child, if he -

- (a) has stayed in Swaziland for at least one year;
- (b) has fostered a child for at least one year under the supervision of a social worker;
- (c) does not have a criminal record;
- (d) has a report concerning his suitability to adopt a child from his country's social welfare office or other competent national authority; and
- (e) has satisfied the High Court that his country of origin will respect and recognize the adoption order and will grant resident status to the child.

(2) For the purposes of an application under this section, the social worker referred to under subsection (1) (b), shall be required to submit a social enquiry report in the manner prescribed to assist the High Court in the application, and the High Court may, in addition, require some other person to make a report in respect of the application.

(3) The restrictions and conditions under sections 67 and 68 shall apply in respect of an application under this section.

(4) The High Court shall make an interim adoption order for a period not less than two years on condition that supervision of the child be done by social workers of the country where the adoptive parents reside and postpone the determination of the application.

(5) Where a foreign child has been adopted by a Swazi who is residing in Swaziland, that person shall report the matter to the Department of Social Welfare which shall provide the High Court with such information relevant to the adoption.

(6) Where a foreign child has been adopted by a Swazi who is residing in Swaziland, that child shall be afforded all citizenship rights in Swaziland.

(7) Where a person who is not a citizen of Swaziland has adopted a Swazi child while residing in Swaziland, such a person shall on departure report to the Ministry of Foreign Affairs which shall arrange that the supervision of the child be done by the social workers of the country to which the adoptive parents are departing.

(8) For the purposes of subsection (5), the High Court shall order the Department of Social Welfare to report regularly on the welfare status of the concerned child.

(9) A person who contravenes any provision of this section shall be guilty of an offence and shall on conviction be liable to a fine up to a maximum of E15 000.00 or imprisonment up to a maximum of two years or both.

(10) Applications for intercountry adoptions shall only be approved where the prospective adoptive parents reside in a country which has ratified the Hague Convention on Intercountry Adoptions.

Procedure in adoption proceedings.

66. (1) When the High Court hears adoption applications, the High Court shall -

- (a) proceed in camera unless open proceedings will be in the best interests of the child;
- (b) admit documentary evidence relating to the consent required for the order;
- (c) require a social worker to represent the interests of the child in the proceedings relating to an adoption order or an interim order;
- (d) require a social worker to prepare a social enquiry report in the manner prescribed to assist the court to determine whether the adoption order is in the best interests of the child or not; and
- (e) request for any other information that the High Court may need.

Conditions for adoption order.

67. (1) When considering an application for the adoption of a child the court shall take into account all relevant factors, including -

- (a) the religious and cultural background of -
 - (i) the child;
 - (ii) the child's parent; and
 - (iii) the prospective adoptive parent;

(b) a report contemplated in section 66 (1) (d);

(c) A report contemplated in section 65 (1) (d)

(2) Before the High Court makes an adoption order, the High Court shall be satisfied that -

- (a) the consent required under this Part for an adoption order has been obtained and that the parent or guardian of the child understands that the effect of the adoption order will mean permanent deprivation of parental rights;

- (b) the adoption is in the best interests of the child and that the wishes of the child have been considered if the child is capable of forming an opinion;
- (c) if the child is under ten years of age, the child's opinion has been sought and considered;
- (d) if the child is at least ten years of age, the child's consent to the adoption has been obtained unless it is impossible for the child to grant such consent; and
- (e) the arrangement for the adoption of the child are in accordance with the prescribed requirements
- (f) the social welfare competent authority of the country concerned has agreed to the adoption of the child
- (g) the applicant has not received or agreed to receive any payment and that no person has made or agreed to make any payment or given or agreed to give any reward to the applicant for the adoption except where the High Court has ordered otherwise.

(3) The High Court may impose conditions when granting an adoption order and may require the applicant to enter a binding agreement and make such provisions in respect of the child as the High Court considers necessary.

(4) The adoption order shall include the following particulars if known -

- (a) date, place and country of birth of the child;
- (b) name, gender and surname of the child before and after the adoption;
- (c) name, surname, age, address, citizenship and occupation of the adoptive parent(s);
and
- (d) date of the adoption order,

unless the High Court directs otherwise.

Restriction on making adoption orders.

68. An adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants -

- (a) is twenty-five years older than the child; or
- (b) is a relative of the child and is twenty-one years of age.

Effect of adoption on parental rights.

69. (1) Where an adoption order is made -

- (a) the rights, duties, obligations and liabilities including those under customary law of the parents of the child or of any other person connected with the child of any nature whatsoever shall cease; and

(b) the adoptive parent of the child shall assume the parental rights, duties, obligations and liabilities of the child with respect to care, guardianship and education as if the child were born to the adoptive parent.

(2) Where an adoption order is made jointly to a husband and wife, they shall assume the parental responsibilities jointly and the child shall relate to them as parents as if born naturally to them as husband and wife.

(3) Where an adoption order is made to an individual person, he shall assume the parental responsibilities and the child shall relate to him as a parent as if born naturally to him.

(4) The adopted child shall be a member of the clan, lineage or other group, and as such will give the child all rights to the family rituals in accordance with Swazi law and custom.

Devolution of property on adoption.

70. (1) Where an adoptive parent dies intestate, his property shall devolve in all respects as if the adopted child is the natural child of the adoptive parent.

(2) An adopted child shall not inherit from the natural parents on intestacy.

(3) If it appears to the High Court on a claim made that the disposition of the property devolving on an intestacy has been exercised unfairly against the adopted child, the High Court may order such provisions as the High Court deems equitable to be made to the adopted child out of the property devolving on intestacy in accordance with the law.

Testamentary disposition.

71. (1) In a testamentary disposition of property, whether or not in writing made after the date of an adoption order -

- (a) any reference whether expressed or implied to the child of the adoptive parent shall unless the contrary intention appears, be construed as a reference to the adopted child;
- (b) where a disposition made by the adoptive parent prior to adoption order makes no provision for the adopted child, the adopted child may apply to the High Court to vary the disposition to provide for the adopted child from the estate of the adoptive parent;
- (c) any reference to a child of the adopted child's natural parents in a will shall not be construed as including a reference to the adopted child unless the contrary intention appears;
- (d) any reference to a person related to the adoptive parent shall unless the contrary intention appears be construed as a reference to a person as if he were the relative of the adopted child.

Register of adopted children.

72. (1) The Director of Social Welfare shall maintain a register of adopted children, whether adopted inside or outside Swaziland, in which shall be recorded particulars of the adoption orders or interim orders as the High Court may direct to be made under this Part.

(2) Every adoption order or interim order made by the High Court shall be served on the Director of Social Welfare by the Registrar of the High Court within seven days of the making of the order.

Access to information in the adoption register

73. (1) The information in the adoption register may not be disclosed to any person except -

- (a) to an adopted child after the child has attained the age of 18;
- (b) for any official purposes subject to conditions determined by the Director of Social Welfare;
- (c) by an order of court if the court finds that such disclosure is in the best interests of the adopted child.

Issue of adoption compliance certificate

74. When the High Court has approved the adoption of a child in terms of Section 67 the Director of Social Welfare may issue an adoption compliance certificate.

**PART X
SALE, HARBOURING AND ABDUCTION OF CHILDREN**

Unlawful transfer of possession, custody or control of child.

75. (1) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration, commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

(2) Any person who without lawful authority or excuse harbours or has in his possession, custody or control a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any person within or outside Swaziland, commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

(3) For the purposes of subsection (2), if any person harbours or has in his possession, custody or control a child without lawful authority or excuse, the child shall, until the contrary is proved, be presumed to be a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration.

Responsibilities of a social worker.

76. (1) If a social worker has reasonable cause to believe that a child -

- (a) has been brought into Swaziland either -
 - (i) after having been transferred for valuable consideration; or
 - (ii) by fraud, misrepresentation or any false pretence;
- (b) has been transferred to the custody or control of any person for valuable consideration either within or outside Swaziland; or

(c) is being detained against his will by some person other than his parent or guardian, the social worker shall immediately cause the arrest of the person(s) suspected and assist the police in investigating the matter.

(2) A child referred to in this Part is considered to be a child in need of care and protection in terms of section 23(1)(a) and the social worker shall take the child into a place of safety in terms of the procedure set out in section 24 of this Act.

Taking a child without appropriate consent.

77. (1) Any person, parent or guardian who -

- (a) does not have the lawful custody of a child; and
- (b) takes a child, without appropriate consent, whether within or outside Swaziland,

commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

(2) A person has lawful custody of a child under this section if he has been conferred custody of the child by virtue of any law or by an order of the Children's Court or any other Court.

(3) It shall be a defence under this section if a person takes or sends a child away without the consent of the person having lawful custody of the child if on reasonable cause -

- (a) the person has taken all reasonable steps to communicate with the other person but has been unable to communicate with him;
- (b) the person has reasonable grounds to believe that the child has been abused, neglected, abandoned or exposed in a manner likely to cause a child physical, psychological or emotional injury; or
- (c) the other person has unreasonably refused to consent although he was aware of all the relevant circumstances.

Recovery order.

78. (1) If it appears to the Children's Court that there is reason to believe that a child had been taken or sent away without the consent of the person who has lawful custody of the child as described in section 74, the Children's Court may make a recovery order.

(2) A recovery order may be made by the Children's Court on application being made by or on behalf of any person who has the lawful custody of the child.

(3) For the purposes of this section, a "recovery order" may -

- (a) direct any person who is in a position to do so to produce the child on request to any authorised person;
- (b) authorise the removal of the child by any authorised person;

- (c) require any person who has information as to the child's whereabouts to disclose that information to the authorised person;
- (d) authorise any police officer to enter into any premises specified in the order and search for the child.

(4) Any person who intentionally obstructs an authorised person from exercising the powers under subsection (3) commits an offence and is liable conviction to imprisonment for a term not exceeding fifteen years.

PART XI
CHILDREN IN CONFLICT WITH THE LAW, AGE OF CRIMINAL
RESPONSIBILITY AND AGE DETERMINATION

Age of criminal responsibility and prosecution requirements.

79. (1) No child below the age of twelve years shall be prosecuted for a criminal offence.

(2) No prosecution for a criminal offence may be instituted against a child between the ages of twelve and fourteen until the inquiry magistrate is satisfied that the child possesses the capacity to appreciate the difference between right and wrong and has the ability to act in accordance with that appreciation.

(3) An inquiry to establish whether a child appreciates the difference between right and wrong and is able to act in accordance with that appreciation shall be conducted by an inquiry magistrate.

(4) It shall be presumed that a child between the ages of twelve and fourteen lacks the capacity to appreciate the difference between right and wrong, and cannot act in accordance with a full appreciation, unless the Crown proves beyond a reasonable doubt that such child, as a matter of fact has that appreciation and is able to act in accordance with that appreciation.

(5) Evidence of the intellectual, emotional, psychological and social development of a child is relevant to any enquiry into whether such child possesses the capacity to appreciate the difference between right and wrong and has the ability to act in accordance with that appreciation.

(6) The evidence referred to under subsection (5) shall be supported by a report from a person with expertise in child development or child psychology, who shall testify before an inquiry magistrate in person as to the content and findings of the report.

(7) The evidence referred to in subsection (5) may be challenged by any person present at the inquiry and any evidence in rebuttal may be adduced.

Purposes of assessment of age.

80. (1) The purposes of assessment of age are to -

- (a) establish the probable age of the child;
- (b) establish the prospects of the child being able to be diverted by a social worker;
- (c) establish the prospects for diversion by a prosecutor or inquiry magistrate;

- (d) provide information to support recommendations to the prosecutor and the inquiry magistrate regarding release of the child into the care of a parent or guardian or placement in a place of safety;
- (e) in the case of children below the minimum age of prosecution, to establish what measures, if any, need to be taken.

(2) Assessment is effected by a social worker and may take place at a magistrate's court, the offices of the Department of Social Welfare, a private house, a police station or any other suitable place identified by the social worker concerned.

(3) No person other than the following is entitled to attend assessment of a child as referred to under this section-

- (a) the child in respect of whom the assessment is conducted;
- (b) the child's parent or guardian;
- (c) the prosecutor in whose district the assessment is being conducted;
- (d) a legal representative;
- (e) the police officer responsible for arresting the child;
- (f) a medical officer; and
- (g) any person whose presence is necessary or desirable for the completion of the assessment process.

Duties of police officer in relation to age assessment.

81. (1) Subject to subsection (2), if a police officer is uncertain about the exact age of the person suspected of having committed an offence, but has reason to believe that this age of that person would render that person subject to protections under this Act, he shall take such person to a social worker for assessment into the age within the periods prescribed under or, if a social worker is not readily available, to a medical officer.

(2) Where a police officer has reasonable grounds to believe that a child is below the minimum age of prosecution as described under section 79, he shall not arrest the child.

Age assessment by social worker.

82. (1) The social worker referred to under section 81 shall receive, obtain or request any evidence relevant to assessment into the age of a child or person.

(2) Upon receipt of information referred to under subsection (1), the social worker shall make an assessment in respect of the age of the person brought before him and shall for this purpose, consider the evidence received in the following order of cogency-

- (a) a valid birth certificate, identity document or passport;
- (b) any other form of registration of birth, identity or age acknowledged by the office of the office of the Registrar General;

- (c) statements from a parent, guardian, or person likely to have knowledge of the age of the child or a statement made by the child or person who alleges that he is a child;
- (d) an estimation of age made by a medical practitioner;
- (e) a previous determination of age by a magistrate under this Act;
- (f) secondary documentary evidence, such as a hospital birth record, baptismal certificate, school registration forms, school reports, and other evidence of a similar nature if relevant to establishing a probable age.

(3) The social worker shall make an assessment as to the probable age of the child or person concerned.

(4) Where the social worker, after making the assessment, concludes that a child or person referred to him by a police officer in terms of section 81 is over the age of eighteen years or is below the minimum age of prosecution as referred to under section 79, such child or person is not subject to the provisions of this Section.

(5) The conclusions of the social worker under subsection (4) shall not remain valid after evidence to the contrary before an inquiry magistrate.

(6) Where the social worker concludes that a child is, by virtue of his age, subject to the provisions of this Act, he shall proceed with the assessment of the child, and the age assessment can form the basis of-

- (a) the decisions of the social worker referred to under section 89; and
- (b) the recommendations of the social worker referred to under section 90.

(7) Where the social worker is uncertain as to the probable age of the child or person, or where the age of a child or person is in dispute, the social worker shall cause the child or person to be taken to a medical officer for assessment of age unless the child or person has already been taken to the medical officer by the police under section 81, in which case the provisions of section 83 apply.

Age estimation by medical officer.

83. (1) Any police officer or social worker may refer a child or person to a medical officer for an estimation of the age of the child or person.

(2) Where a medical officer concludes that a child or person referred to him for estimation of age is -

- (a) over the age of eighteen years, that person is deemed to be an adult and is not subject to the provisions of this Act, or
- (b) below the minimum age of prosecution as referred to under section 79, that child shall be referred back to the social worker for further attention in terms of section 89; or
- (c) over the minimum age of prosecution as referred to under section 79 and under the age of eighteen years, that child shall be referred back to the social worker concerned, together with the record of the estimation of age for further procedures under this Act.

(3) Where a medical officer concludes that he is unable to make accurate assessment of the person's age and it is not clear as to whether that person is subject to the provisions of this Act, he shall refer such person back to the social worker concerned for the purposes of determination of age by an inquiry magistrate.

Age determination to be effected at preliminary inquiry.

84. (1) The social worker to whom a child has been referred by a medical officer under section 83 (3), shall cause that child or person to appear before an inquiry magistrate for purposes of the determination of the age of that child or person and shall place such inquiry magistrate in possession of a completed age assessment together with relevant documentation referred to under section 86 (1)

(2) The inquiry magistrate shall, on the available evidence and with due regard to the provisions of section 82 (2), make a determination as to the age of a child or person which shall be entered into the record as the age of the child or person, and shall be considered to be the correct age until such time as any contrary evidence is placed before the court in which the inquiry magistrate presides or any other court.

(3) For the purposes of the determination referred to under subsection (2), the inquiry magistrate may require any documentation, evidence or statements relevant to age determination from any person, body or institution to be placed before him.

(4) If an inquiry magistrate determines that a person is over the age of eighteen years, he shall close the preliminary inquiry and direct that the matter be transferred to a court other than the Children's Court for criminal proceedings.

(5) Where an inquiry magistrate makes a determination under subsection (2), he shall cause a record of the determination to be forwarded to the office of the Registrar General for the purposes of issuing relevant identification documents.

(6) Where necessary, an inquiry magistrate may cause a subpoena to be served on any person to produce the documentation, evidence or statements referred to under subsection (3).

Age assessment and determination by officer presiding in criminal court.

85. (1) Where a person appearing in a criminal court other than a preliminary inquiry or the Children's Court alleges that he is below the age of eighteen years at any stage in a criminal trial before sentence, or where it appears to such court that, that person may be below the age of eighteen years, the officer presiding in that court may conduct the inquiry as to the age of that person in accordance with the provisions of section 84 (2) and (3).

(2) If the age of the person referred to under subsection (1) is found to be below eighteen years and the trial has not yet commenced, the presiding officer concerned shall transfer the matter to an inquiry magistrate for further proceedings under this Act.

(3) If the age of the person referred to under subsection (1) is found to be below the age of eighteen years and the trial has commenced, the proceedings shall continue to be conducted before the presiding officer concerned, but the remainder of the proceedings shall be conducted under the provisions of this Act.

(4) The presiding officer concluding a trial under subsection (3) may, after conviction, deal with the matter in a manner similar to which the Children's Court would do.

Parent or guardian to attend assessment.

86. (1) Any parent or guardian who has been issued with a written notice or a summons to appear at an assessment of a child, shall attend such an assessment unless exempted from the obligation to do so under subsection (3).

(2) If a person referred to under subsection (1) has not been notified to attend the assessment, the social worker concerned may at any time before such assessment direct a police officer to issue a written notice to such person to appear at an assessment.

(3) A person who has been notified under subsection (1) or (2) may apply to the social worker concerned for exemption from the obligation to attend the assessment in question, and if such social worker exempts such person, he shall do so in writing.

(4) A person who has been notified under subsection (1) or (2) and who has not been exempted from the obligation to attend the assessment under subsection (3) and who fails to attend the assessment in question, commits an offence and is liable on conviction to a community based sanction.

Duties of a social worker in relation to social assessment.

87. (1) A social worker shall assess all children-

- (a) who have been arrested and who remain in detention in police custody within 48 hours of such arrest subject to the provisions of section 97 (a);
- (b) who have been arrested and released from detention in police custody under section 104, within 48 hours of arrest;
- (c) in respect of whom an alternative method of securing attendance at assessment has been effected under section 94, within seventy-two hours of such an alternative having been employed.

(2) The social worker shall make every effort to locate a parent or a guardian for the purposes of concluding the assessment process of the child unless, all reasonable efforts to locate such person or persons have failed, then the social worker may conclude the assessment in the absence of such person or persons.

(3) The social worker shall explain to the child in language that the child understands -

- (a) the purposes of the assessment; and
- (b) that the child has the right to -
 - (i) contradict or challenge any information against the child;
 - (ii) remain silent;
 - (iii) have the parent or guardian contacted;
 - (iv) have a person referred to under paragraph (iii) or a legal representative present during the noting by a police officer or a magistrate of a confession, admission, pointing out or during an identification parade;
 - (v) choose and to be represented by a legal practitioner at the child's own cost; and

(vi) be provided with legal representation by the State or court.

(4) The social worker shall interview the child, the child's parents or guardian in order to effect the necessary assessment.

(5) The social worker may contact or consult with any other person who has any information relevant to the assessment of the child.

(6) The social worker shall obtain evidence relevant to the age assessment referred to under section 82.

(7) Unless the child is the child below the minimum age of prosecution as referred to under section 79, the social worker shall make a report with the following recommendations -

- (a) the prospects of diversion;
- (b) the possible release of the child into the care of a parent or guardian; or
- (c) the placement, where applicable, of a child in a place of safety.

(8) Transfer or conversion of a matter to the Children's Court shall be considered by the social worker.

(9) If the social worker recommends that the matter be transferred to the Children's Court the report shall reflect his recommendation and reasons as well as recommendations as to the temporary placement of the child pending the opening of the Children's Court inquiry.

(10) The report mentioned in subsection (7) shall be submitted to the prosecutor for the opening of the preliminary inquiry.

Powers of social worker to obtain relevant evidence or secure attendance of relevant persons.

88. A social worker may, by issuing a notice, require the arresting officer or any other police officer to-

- (a) bring a child forthwith from police custody for assessment;
- (b) obtain documentation relevant to proof of a child's age from a specified place or a specified person;
- (c) notify a specific parent or guardian to appear at an assessment.

Powers of social worker in relation to children below the minimum age of prosecution.

89. (1) After assessment under section 80 (1) (a) and (d) of a child below the minimum age of prosecution, the social worker concerned may-

- (a) refer the child or the family of the child for counselling or therapeutic intervention;
- (b) arrange the provision of support services to the child or family of the child;
- (c) arrange a conference, which shall be attended by the child, parents or an appropriate adult, and which may be attended by any other person likely to be able to provide information material for the purposes of the conference; or

(d) decide to take no action.

(2) The purpose of the conference convened by the social worker under subsection (1) (c) is to assist such social worker to -

- (a) establish fully the circumstances surrounding the allegations against the child;
- (b) formulate a written plan appropriate to the child and relevant to the circumstances;
or
- (c) make an order in terms of this section.

(3) The written plan under subsection (2) (b) shall-

- (a) specify the objectives to be achieved for the child concerned and the period within which those objectives should be achieved;
- (b) contain details of the service and assistance to be provided for the child and for any parent or guardian;
- (c) specify the persons or organisations who will provide such services and assistance;
- (d) state the responsibilities of the child and of such child's parent or guardian;
- (e) state personal objectives for the child and of such child's parent or guardian; and
- (f) contain such other matters relating to the education, employment, recreation and welfare of the child as are relevant.

(4) The social worker shall record the outcome of the assessment and the decision made or given under subsection (1), as well as the reasons for such decision or order.

Powers of social worker in respect of children above the minimum age of prosecution alleged to have committed offences referred to in the Schedule.

90. After an assessment in terms of section 87 the social worker shall forward a written report to the senior prosecutor of the Children's Court having jurisdiction in the matter.

Powers of social worker in respect of children above the age of prosecution alleged to have committed offences not referred to in the Schedule.

91. (1) After an assessment under section 80 (1) (a), (c), (d) and (e) of a child above the age of minimum prosecution as referred to under section 79, the welfare officer concerned shall, where the child is alleged to have committed an offence not referred to in the Schedule, make an age assessment and an assessment report, which together with supporting information, shall be submitted to the prosecutor for the opening of the preliminary inquiry.

(2) If it appears to the social worker that the child concerned does not intend to accept responsibility for the alleged offence, that fact shall be indicated in the assessment report referred to under subsection (1).

(3) After an assessment referred to under subsection (1), the welfare officer may recommend -

- (a) the diversion of the child to a specified process, programme or appropriate alternative order mentioned under section 128;
- (b) that no further action be taken in respect of the alleged offence;
- (c) that the matter be transferred to the Children's Court for appropriate action;
- (d) that the matter not be diverted and be referred to the prosecutor ;
- (e) that the child be released to a parent or guardian, or on his own recognisance;
- (f) an appropriate placement, including placement in the care of a fit and proper person ; or
- (g) detention in a secure care facility or correctional facility with due regard to the circumstances referred to under section 115.

PART XII
POLICE POWERS AND DUTIES

Meaning and purpose of arrest.

92. (1) An arrest, for purposes of this Act, may be made by a police officer with or without a warrant unless the child to be arrested submits to custody.

(2) The effect of an arrest, for the purposes of this Act, is that the child arrested is in lawful custody until lawfully discharged or released from such custody.

(3) The purpose of arrest under this Act, is to bring the child before a preliminary inquiry or for assessment under section 91.

(4) An arrest shall be made with due regard to the dignity and well- being of the child.

(5) Subject to subsection (6), if it is clear that the child cannot be arrested without the use of minimum force, the police officer arresting the child may use such force as may be reasonably necessary and proportional in the circumstances, to overcome any resistance.

(6) Where the use of minimum force is placed in dispute in civil matters, the onus of proving that the minimum force was used rests on the person so alleging.

(7) The police officer arresting or attempting to arrest a child under this section is not justified in using deadly force that is intended or is likely to cause death or serious bodily harm to such child, except if he on reasonable grounds believes-

- (a) that the force is immediately necessary for the purposes of protecting him, any person lawfully assisting him or any other person from eminent death or serious bodily harm;
- (b) that there is a substantial risk that the suspect will cause eminent death or serious bodily harm if the arrest is delayed; or
- (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life-threatening violence or a strong likelihood that it will cause serious bodily harm.

Powers of arrest and arrest by police officer without warrant.

93. (1) A police officer may, subject to subsections (2) and (3), without warrant arrest any child -

- (a) who commits or attempts to commit any offence in his presence;
- (b) whom he reasonably suspects of having committed an offence, including the offence of escaping from lawful custody;
- (c) who willfully obstructs him in the execution of his duty;
- (d) who is reasonably suspected of having failed to observe any condition imposed in the passing of sentence or in postponing or suspending the operation of any sentence under this Act.

(2) Any police officer may arrest any child referred to under subsection (1) whose age is above the minimum age of prosecution referred to under section 79 but below the age of eighteen years for the purposes of bringing that child for assessment by a social worker as referred to under section 87.

(3) In deciding whether to effect an arrest, a police officer is obliged to consider whether an alternative method of securing the appearance of the child at assessment, as referred to under section 94, can be used, or whether an informal caution referred to under section 101 (1) can be used.

Alternatives to arrest.

94. (1) Alternatives to arrest shall include the following-

- (a) requesting the child in language that the child understands to accompany the police officer to the place where assessment can be effected;
- (b) written notification to the child and, if available, the parents, guardian or family of that child to appear for assessment at a place and on a date and at a time specified in the written notice;
- (c) granting of a recognisance by a police officer at the place of arrest, to be noted in the pocket book of the police officer concerned, informing the child to appear at the assessment at a specified date, time and place and, the police officer shall as soon as is reasonably possible inform a social worker of the granting of such recognisance;
- (d) accompanying the child to his home, where a written notice referred to under paragraph (b) can be given to the child and parents, guardian or family;
- (e) opening a docket for the purposes of consideration by the Director of Public Prosecutions as to whether the matter should be set down for the holding of a preliminary inquiry or whether the child should be charged.

(2) Subject to the provisions of subsection (1), a child may be summoned to appear at assessment at a place on a date and a time specified in the summons upon application by a prosecutor to the clerk of the Children's Court.

(3) Where an alternative to arrest as referred to under subsection (1) has been employed, a child shall be required to appear for assessment within 72 hours of such alternative being employed, or in the case of the issuing of a summons, within 72 hours of the summons being served on the child.

Arrest by private person without warrant.

95. (1) Any private person may without warrant arrest any child whom he reasonably believes to be above the minimum age of prosecution as referred to under section 79, and below the age of eighteen years -

- (a) who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence;
- (b) whom he reasonably believes to have committed any offence and to be escaping from and being freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence;
- (c) whom he is by any law authorised to arrest without warrant in respect of any offence specified in that law.

(2) Minimum force, where necessary, shall be used in effecting an arrest under this section.

(3) The provisions of section 92 (5) and (6) relating to the use of force and deadly force, with the changes required by the context, apply to this section.

(4) Any private person who has effected an arrest as referred to in this section shall hand the child over to the chief, police or social worker as soon as possible.

Issue of warrant of arrest.

96. (1) An inquiry magistrate or presiding officer in the Children's Court may issue a warrant for the arrest of any child presumed to be below the age of eighteen years and above the minimum age of prosecution as referred to under section 79 upon the written application of the Director of Public Prosecutions or a police officer which -

- (a) sets out the offence alleged to have been committed;
- (b) alleges that such offence was committed within the area of jurisdiction of such a magistrate or where such offence was not committed within such area of jurisdiction, which alleges that the child in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and
- (c) states that from information taken upon oath, there is a reasonable suspicion that the child in respect of whom the warrant is applied has committed the alleged offence.

(2) A warrant of arrest issued under this section shall direct that the person described in that warrant be arrested by a police officer in respect of the offence set out in the warrant and that he shall be brought before a social worker for assessment as referred to under section 87.

(3) A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed.

(4) A warrant of arrest may be suspended by an inquiry magistrate or presiding officer in a Children's Court, and the officer required to execute such warrant, may, instead of arresting a child, employ one of the alternatives to arrest as referred to under section 94.

Duties of police officer upon arrest with or without warrant.

97. (1) Where an arrest of a child above the minimum age of prosecution has taken place, the police officer shall-

- (a) if the child is in detention in police custody, bring such child to a social worker in whose area the arrest of the child has taken place promptly for assessment, but not later than 48 hours after arrest and, if by the expiry of this period a social worker cannot practically be traced, the police officer shall request the prosecutor to set the matter down for the holding of a preliminary inquiry as soon as possible;
- (b) inform the child in a language that the child understands of the allegation against him; and
- (c) inform the child in language that the child understands of the following rights-
 - (i) the right to remain silent;
 - (ii) the right to have the child's parent, guardian, chief or any appropriate adult contacted;
 - (iii) the right to have a person referred to under subparagraph (ii) or a legal representative present during the noting of a confession, admission, pointing out or identification parade;
 - (iv) the right to choose and to be represented by a legal representative at his own cost; and
 - (v) the right to be provided legal representation by the State or court.

(2) Where an alternative to arrest as referred to under section 94 has been used, the police officer shall explain the rights set out in paragraph (c) of subsection (1) to the child.

(3) Where an arrest has been effected, the arresting officer shall provide an inquiry magistrate with a written report within 48 hours, giving reasons why alternatives to arrest as referred to under section 94 could not be employed.

Duty of police officer to inform social worker.

98. (1) The police officer shall inform the social worker in whose area the arrest of a person under the age of eighteen years has taken place, of such arrest within 12 hours.

(2) If an alternative method of securing the attendance of the child at assessment as referred to under section 94 has been used, the social worker concerned shall inform the police officer in whose area the assessment will take place as soon as possible and not later than 72 hours after the procedures referred to under section 94 have been effected.

Duty of police officer to notify parents, guardian or family member.

99. (1) Where a child has been arrested, the police officer who has arrested the child, shall notify the child's parents, guardian or a family member of the arrest, and give the relevant person or persons a written notice requiring such person to attend an assessment at a specified time and place.

(2) If one of the persons referred to under subsection (1) is not available, or cannot be traced, the police officer shall request the child to identify another appropriate adult, and if such adult is identified, the police officer shall request that person to attend the assessment at a specified time and place.

(3) Where an alternative method to arrest as referred to under section 94 has been effected, the person employing such alternative shall, as soon as possible thereafter, notify the child's parent, guardian or a member of the family of the use of the procedure referred to under section 94, and give the relevant person notice requiring the person to attend the assessment at a specific time, place and date.

(4) If one of the persons referred to under subsection (3) is not available, or cannot be traced, the person employing an alternative method to arrest shall request the child to identify another appropriate adult, and if such adult is identified, the police officer shall request that person to attend the assessment at a specific time and place.

Duties of police upon request.

100. An arresting officer or another police officer may be required by a social worker, as a matter of urgency, to -

- (a) notify a specific person of the appearance of a child under the age of eighteen years at the assessment;
- (b) give the relevant person a written notice to attend the assessment at a specified time and place;
- (c) obtain documents relevant to proof of age from a specified address or place; or
- (d) transport a specified person or persons to the place where assessment is to be effected.

Cautioning by police.

101. (1) A police officer may apply an informal caution instead of arresting a child.

(2) A formal caution, where recommended by a social worker, prosecutor or an inquiry magistrate, may be administered by a police officer to a child in the presence of the parent or guardian and victim of the child's unlawful conduct.

(3) A formal caution shall be administered in private, whether in a police station or elsewhere, in the presence of a social worker, if available, and the persons mentioned in subsection (2).

(4) The police officer referred to in subsection (2) shall cause a record of the caution to be kept at the applicable police station and shall forward a record to the Commissioner of Police who shall cause a register of cautions to be kept.

(5) The record of a formal cautions referred to in subsection (4) shall be expunged after a period of two years from the date on which a caution was administered.

(6) The register referred to under subsection (4) may be made available to -

- (a) any member of the police;
- (b) any social worker;
- (c) any inquiry magistrate;
- (d) Director of Public Prosecutions; and
- (e) any person for bona fide research purposes with the permission of the Commissioner of Police.

Pre-trial procedures and presence of parent or guardian.

102. (1) No confession, admission or pointing out by a child may be admitted as evidence in the Children's Court where such confession, admission or pointing out was made to a police officer or an inquiry magistrate unless a legal representative, parent or guardian of such child was present at the time of such procedure.

(2) No evidence obtained at an identification parade may be admitted as evidence in the Children's Court unless a legal representative, parent or guardian was present at the time of such procedure.

(3) Fingerprinting of children should be regarded as a measure which should not be resorted to before the finalisation of a preliminary inquiry but, the fingerprints of a child may be taken during the period after arrest and before appearance of the child before the preliminary inquiry if -

- (a) it is essential for the investigation of the case;
- (b) it is required for the purposes of establishing the age of the person in question; or
- (c) it is necessary to establish the prior convictions of a child for the purposes of making a decision on diversion, release from detention in police custody or placement in a particular place of safety.

Detention in police custody before appearance at assessment.

103. (1) Detention of a child in police custody, whether in a police cell, police vehicle, lock-up or other place shall be used as a measure of last resort and for the shortest possible period of time.

(2) The station commander of each police station shall cause a separate cell to be kept, and details regarding the detention in police cells of all persons under the age of eighteen years shall be recorded in the register.

(3) The register referred to under subsection (2) may be examined by a parent, guardian, legal representative, prosecutor, magistrate, social worker, health worker or any other person authorised by the station commander to examine the register.