

**CHILDREN’S PROTECTION AND WELFARE (AMENDMENT) BILL,
2023**

A BILL

for

An Act to amend the Children’s Protection and Welfare Act of 2011¹ to make provision for the promotion and protection of the rights, general wellbeing and social development of children; the protection and care of children; the establishment of structures to provide care, support and protection of children; and for related matters.

ENACTED by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as the Children’s Protection and Welfare (Amendment) Act, 2023 and shall come into operation on the date of its publication in the Gazette.

Amendment of section 3

2. Section 3 of the Children’s Protection and Welfare Act, 2011, (in this Act referred to as “the principal law”) is amended by inserting the following definitions in their chronological sequence:

“**Central Authority**” means an office authorised to oversee international adoptions as set out in this Act;

“**Director**” means the Director of Child Protection Services in the Ministry;

“**exploitation**” includes exploitation of prostitution or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs;

“**fit and proper person**” includes a person who has not been convicted of child abuse;

“foster care” means care provided by a family, person or institutions other than a guardian or a parent for a temporary period;

“Panel” means the Appeal Panel established under section 54A;

“Permit” means an adoption agency permit issued under section 61C (3)(b);

“refugee child” means a refugee as defined in section 3 of the Refugee Act, 1983²;

“stateless child” means a child who is not considered as a national by any state under the operation of its law;

“trafficking” means recruitment, transportation, harbouring or receipt of persons by means of threat, abuse of power, position of vulnerability, force, coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of sexual or financial exploitation, among other things; and

“unaccompanied child” means a child who has been separated from both parents and relatives and is not under a care of an adult person.

General amendment

3. The principal law is amended by deleting-
 - (a) “Department of Social Welfare” wherever it appears and substituting “Ministry responsible for social development;
 - (b) **“Director Social Welfare” wherever it appears and substituting “Director Child Protection”.**

Insertion of a new section 4A

4. The principal law is amended by inserting the following new section after section 4:

“Family preservation, survival and development

- 4A. (1) A child shall have a right to a–

- (a) be raised in a family, by parents who have capacity to raise a child; and
 - (b) education and access to health services.
- (2) A parent or guardian shall –
- (a) ensure to the maximum extent possible, the survival, protection and development of a child;
 - (b) take full account of the supremacy of the family in any action he does for, on behalf of or to a child.”.

Amendment of section 5

5. Section 5 of the principal law is amended by inserting “and participation” after “capacities.

Insertion of a new section 7A

6. The principal law is amended by inserting, after section 7, the following new section:

“Stateless child

7A. (1) The Minister responsible for home affairs shall, in consultation with the Minister, grant a nationality to a child born in Lesotho, if that child would otherwise be stateless.

(2) The nationality referred to in subsection (1) shall be granted at birth, in accordance with the relevant law and on application being lodged with the Minister responsible for home affairs, by the Minister on behalf of the stateless child.

(3) The Minister may refuse to lodge the application referred to in subsection (2), if the child on whose behalf the application is lodged, has -

- (a) attained 18 years of age and the grace period of one year, after the attainment of 18 years of age has expired;

- (b) resided in Lesotho for a period of less than five years, immediately prior to the lodging of the application;
- (c) been convicted of an offence against national security or has been committed to prison for a term of five years or more; or
- (d) not been proved to have always been stateless.”.

Amendment of section 19

7. The principal law is amended by deleting section 19 and substituting the following:

“Right to parental property

19. A child, whether born out of wedlock or not, has a right to the property of his parents, regardless of the marital status of his biological parents.”.

Insertion of new sections 19A and 19B

8. The principal law is amended by inserting the following sections after section 19:

“Offences against the rights of a child

19A. (1) A parent or guardian is prohibited from –

- (a) giving a child an indecent name;
- (b) failing to register a child within three months after birth, whether born alive or is a still born;
- (c) failing to give a child –
 - (i) access to education;
 - (ii) adequate diet, clothing, shelter, medical attention, social services or any other service required for the development of a child; and

(d) failing to protect a child from the use of hallucinogens, narcotics, alcohol, tobacco products or psycho-tropic drugs and any other substance declared harmful;

(2) An educational institution shall not expel or deny a child access to education on account of pregnancy;

(3) A parent, guardian or relevant institution is prohibited to subject a child to torture or other cruel, inhuman or degrading treatment or punishment.

(4) A person who fails to comply with subsection(1), commits an offence and is liable, on conviction, to a fine not exceeding Ten Thousand Maloti or to imprisonment for a term not exceeding ten years or both.

Right of a refugee child

19B. A refugee child shall have a right to enjoy the same rights as those enjoyed by a Mosotho child.”.

Amendment of section 20

9. Section 20 of the principal law is amended by deleting subsection (5) and substituting the following:

“(5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding Three Thousand Maloti or imprisonment for a period not exceeding three months.”.

Amendment of section 26

10. The principal law is amended by deleting –

(a) subsection (2) and substituting the following:

“(2) A social worker, from the Ministry, who is presented with a child by a police officer, chief or member of the

community pursuant to section 24 shall, before placing a child in a place of safety, take the child for medical examination and treatment.”; and

- (b) subsection (3).

Amendment of section 51

11. Section 51 of the principal law is amended by inserting the following subsections after subsection (2):

“(3) The Children’s Court may place a child in foster care with a person who is not a member of the child’s family.

(4) A foster care order may be made with the consent of the parents or guardian of a child.

(5) A person who intends to place a child in his foster care, is entitled to pick a child of his choice.

(6) A child may, where it is in the best interest of the child, be placed in an institutional foster care.

(7) An institutional foster care where a child is to be placed shall be -

- (a) a non- profit organisation registered in terms of the Society’s Act, 1966³; and

- (b) approved by the Director.

(8) Notwithstanding subsection (4), if the parents or guardian of a child cannot be found or consent is unreasonably withheld, the court may order placement.

(9) A parent or guardian who has given consent for foster care, shall not be allowed to remove the child from the foster care without the consent of the Children’s Court.

Insertion of a new sections 51A – 51D

12. The principal law is amended by inserting the following new sections after section 51:

“Number of children to be placed in foster care per household

51A. (1) A person who operates a foster care facility shall not place more than six children in one household, unless the –

- (a) children are siblings or blood relatives; or
- (b) Children’s Court considers the placement of more than six children to be in the best interest of all the children.

(2) A child who is placed in foster care shall only remain in foster care until he is eighteen years old.

Visiting of foster care facility by the Director

51B. The Director or a social worker assigned by him, shall visit a foster care at least every six months, for purposes of monitoring and evaluating the placement of a child.

Reunification of a child with biological parents

51C. (1) The Children’s Court may issue a placement order for the reunification of a child with his biological parents or relatives by an assigned social worker, where the Children’s Court is of the opinion that the reunification of the child with the biological parents is possible and is in the best interests of the child.

(2) The placement order issued by the Children’s Court pursuant to subsection (1) shall be -

- (a) issued with such terms and conditions as may be necessary; and
- (b) be enforced within a month of the issue of the order.

(3) The assigned social worker shall, on receipt of the order, facilitate the reunification of the child with his biological parents.

(4) Where a child is not reunited with his biological parents, **guardian or relatives** two months after the issue of the order, the assigned social worker shall submit a report to the Children's Court.

(5) A report made pursuant to subsection (4) shall –

- (a) provide reasons for failure to reunite the child with its biological parents; and
- (b) make recommendations on any steps that may be taken to stabilise the life of the child.

(6) The Children's Court shall, after considering the report submitted by the assigned social worker, order -

- (a) the assigned social worker to continue facilitating the reunification; or
- (b) the assigned social worker to stop the reunification process if there are no prospects of reunification.

Termination of foster care

51D. The Children's Court may, if it is in the best interest of a child, terminate the foster care and shall, before terminating the foster care provided to a child, take the following matters into consideration:

- (a) the bond that –
 - (i) exists between the child and the child's biological parent where the biological parent reclaims care of the child; and
 - (ii) developed between the child and the foster parent and the bond between the child and the family of the foster parent;
- (b) the prospects of achieving permanency in the child's life by -
 - (i) referring the child to the biological parent, **guardian or relative;**

(ii) **placing a child in any other foster; or**

(iii) adoption of the child.”.

Amendment of section 52

13. Section 52 of the principal law is amended by inserting the following subsections after subsection (2):

“(3) Where an application for foster care under subsection (1) is made for a child who is above the age of twelve years, the consent of the child is required.

(4) A person intending to apply for foster care under subsection (1) in respect of a child, shall seek and obtain the consent of the parents or guardian of the child to be fostered **and, where there is no one responsible to the child, the person shall seek consent of a relative or the Ministry.”**

Insertion of new section 52A

14. The principal law is amended by inserting the following new section after section 52:

“Determination of placement of child in foster care

52 A. (1) The Children’s Court shall, before making an order for the placement of a child in foster care, consider a report by an assigned social worker.

(2) The report referred to in subsection (1) shall contain information on the cultural, religious and linguistic background of a child.

(3) The Children’s Court may make an order for the placement of a child in the foster care of a person who has a different cultural, religious or linguistic background from that of the child, where there is –

(a) a bond between a prospective parent and the child; and

- (b) no person who is suitable and willing and has a similar background to foster the child.”.

Amendment of section 53

15. The principal law is amended by deleting section 53 and substituting with the following:

“Parental rights and responsibilities of foster parents

53. (1) A foster parent in whose care a child is placed shall -
- (a) provide a safe and healthy environment which is conducive to the growth and development of the child; and
 - (b) assist and facilitate in reuniting the child with its biological parents or family members where the biological parents are not available or cannot be found.
- (2) A foster parent shall not change the full names of the fostered child.”.

Amendment of section 54

16. Section 54 of the principal law is amended –

- (a) in subsection (1), by deleting the words “facilitate assessment of” and substituting “assess”; and
- (b) by deleting subsection (2) and substituting the following:

“(2) The Director shall, with the approval of the Minister, be responsible for –

 - (a) assessing a potential foster and adoptive parent and the conditions surrounding a child to be fostered or adopted;

- (b) promotion and provision of short and long term alternative care for children;
- (c) ensuring that children grow up in family settings;
- (d) determining the adoptability of a child and suitability of prospective adoptive parents;
- (e) providing the compulsory parental course and prepare the families and members of the extended family before the adoption takes place;
- (f) granting or denying consent to prospective adoptive parents, if they do not meet the prescribed requirements;
- (g) assessing the prospective adoptive parents and make home study investigation;
- (h) compiling reports and make recommendations on the suitability for adoption to the High Court;
- (i) monitoring the placement of a child after the finalisation of the adoption process;
- (j) ensuring that all adoptions are in the best interest of the child;
- (k) ensuring proper matching and placement of a child;
- (l) recruiting prospective adoptive parents; and
- (m) registering adoptable children and prospective parents.

Insertion of a new section 54A

17. The principal law is amended by inserting the following new section after section 54:

“Appeal panel

54A. There shall be an appeal panel which shall adjudicate on appeals against the decisions of the Director, consisting of –

- (a) the Principal Secretary, who shall be the Chairperson;
- (b) Director of Operations and Community Development;
and
- (c) Director of Legal Services from the Ministry responsible for social development.”.

Amendment of section 56

18. Section 56 of the principal law is amended by inserting the following new subsections after subsection (4):

“(5) An adoptive parent shall –

- (a) be entitled to –
 - (i) two months bonding leave, in the case of a child who is below one year of age; and
 - (ii) three weeks bonding leave, in the case of a child who is above one year of age;
- (b) not be allowed to pick a child of his choice, except where a child who is being adopted is already in **his care or relative;**
- (c) be given a child who matches his description.

(6) **Notwithstanding subsection (5)(a),** an adoptive parent shall be entitled to two months bonding leave, in the case of a child who is above one year, unless there is already an existing bond.”.

Amendment of section 57

19. Section 57 of the principal law is amended-

- (a) in paragraph (a) by deleting “or”;
- (b) in paragraph (b) by deleting the full-stop and substituting a semi-colon and “or”; and
- (c) by adding the following new paragraph after paragraph (b):
 - “(c) is a person who is above the age of fifty years and is a relative of that child.”.

Insertion of new sections 61A – 61F

20. The principal law is amended by inserting the following new sections after section 61:

“The Central Authority

61A. (1) The following functions of the Central Authority shall be performed by the Director **in collaboration with Director, Legal Services:**

- (a) registering, authorizing, monitoring and supervising adoption agencies;
- (b) prevention of improper financial gain for costs and expenses paid for adoptions;
- (c) development of standards, guidelines, policies and practices for adoption agencies;
- (d) development of evaluation tools for registration of adoption agencies;

- (e) inspection of premises and websites for adoption agencies to ensure the quality of the agency and accuracy of information provided;
- (f) keeping of records for all registered adoption agencies;
- (g) observing the international developments and research;
- (h) negotiating with authorities and organisations in other countries;
- (i) **adhering to the subsidiary principle; and**
- (j) **keeping a register of prospective and adoptable children.**

(2) The Minister responsible for home affairs shall not register an adopted child, except by and with the advice and consent of the Director.

Adoption agencies

61B. (1) A person shall not operate an adoption agency, unless he is registered and has obtained a permit from the Director.

(2) A person who intends to operate an adoption agency shall make an application for registration to the Director.

Application for an adoption agency

- 61C (1) An application made pursuant to section 61B (2) shall be-
- (a) made to the Director in a form prescribed in Schedule III; and
 - (b) accompanied by a -
 - (i) fee prescribed by the Minister; and

- (ii) a certificate of registration indicating that an organisation is registered under the Societies' Act 1966;
- (iii) financial statements of the person indicating that he will be able to operate an adoption agency and render adoption services;
- (iv) copies of educational certificates confirming that a person has qualifications in social service profession;
- (v) re-registration certificate issued by the Lesotho Council of Social Service Professions;
- (vi) proof that a person has experience in family placement;
- (vii) documentary proof of a clearly delineated organisational structure and resources to make adoption arrangements;
- (viii) a written policy and working procedures regulating the adoption work of the organisation;
- (ix) documentary proof of at least two staff members with social services profession and experience.
- (x) a declaration or an affidavit of a case known by and pending against the members of the organisation; and
- (xi) an organisations plan which shall contain the following:
 - (aa) a detailed national or intercountry adoption programme;
 - (bb) awareness and recruitment programme for prospective parents;

- (cc) monitoring and evaluation mechanisms and tools for adoption activities;
- (dd) mechanisms or plans for purposes of termination of adoption services; and
- (ee) storage for existing and closed files.

(2) The Director may impose any other requirements which the adoption agency has to meet.

(3) The Director shall, where-

- (a) the application has been submitted pursuant to subsection (2), require a person who has submitted the application to appear in person before the Director, for an interview; and
- (b) he is satisfied that the application meets all the requirements, issue an adoption agency permit under such terms and conditions as he may consider necessary.

(4) The permit issued pursuant to subsection (3)(b) shall be valid for a period of three years and is renewable.

(5) The process for renewal and the documents accompanying the application for renewal of the permit, shall be the same as those submitted when applying for the initial permit.

(6) Where the Director is not satisfied that the application meets the requirements, he may-

- (a) require the person who has made the application to submit further documents or appear in person to support his application;
- (b) refuse to issue the permit where the issuing of the permit will not be in the best interest of children.

(7) Where the Director refuses to issue a permit pursuant to subsection (6)(b), he shall notify the person, in writing, within thirty days of his decision to refuse to issue the permit.

(8) A person who is not satisfied with the decision of the Director to refuse an adoption permit, may appeal to the Minister within seven days of receipt of the notice and the Minister shall, within seven days of receipt of appeal, convene a panel constituted under section 54A to adjudicate on the appeal.

(9) The Minister may confirm, vary or revoke the decision of the Director by and with the advice and recommendation of the panel.

(10) Where a person who is issued a permit under this Act fails to meet the requirements provided under this Act or is in breach of the terms and conditions of his permit, the Director may, by and with the advice and recommendation of the panel, suspend or revoke his permit.

(11) The Director shall, in consultation with the panel, and, before he suspends or revokes a permit issued under subsection (3)(b)-

- (a) notify the holder of a permit of his intention to suspend or revoke the permit in writing;
- (b) provide the holder of the permit with reasons for his decision to suspend or revoke the permit;
- (c) give the permit holder an opportunity to respond in person or in writing; and
- (d) give the permit holder an opportunity to remedy the breach or defects within the period specified in the notice.

(12) The Director shall, in consultation with the Panel, where the permit holder remedies all the defects relating to his permit, withdraw the notice of intention to suspend or revoke the permit.

(13) Where the Director reasonably believes that the continued registration of an adoption agency is likely to result in the irreparable harm to children, he may immediately suspend or revoke the permit without prior notice to the permit holder.

(14) A person who intentionally and unlawfully conspires to commit any fraudulent conduct that defies the provisions of this section

commits an offence and shall be liable, on conviction, to a fine not exceeding Forty Thousand Maloti or imprisonment for a period not exceeding fifteen years or both.

Functions duties and responsibilities of adoption agencies

61D. The functions duties and responsibilities of an adoption agency are to-

- (a) register adoptable children and prospective parents
- (b) assist and support families during the whole adoption process;
- (c) counsel and inform prospective adoptive parents about the procedures and requirements in different countries;
- (d) provide the necessary information and counselling to biological parent before consenting to the adoption of a child;
- (e) provide information on the adopted children's lives and make sure that the follow up reports are implemented;
- (f) compile reports and make recommendations to the High Court;
- (g) to monitor the placement of a child with an adoptive parent after the finalisation of an adoption;
- (h) ensure that all adoptions are in the best interest of a child;
- (i) ensure proper matching and placement of a child both nationally or internationally;
- (j) recruit prospective adoptive parents;
- (k) ensure that the subsidiarity principle is adhered to, before placing a child internationally;

- (l) establish working relationship or agreements with accredited organisations internationally;
- (m) negotiate with the contracting country and make the necessary arrangements for the adoption;
- (n) make arrangements for court processes;
- (o) closely monitor the bonding of the child with the new parents before and after the adoption;
- (p) monitor the progress of a child in a foreign country by ensuring that post placement reports are received every six months;
- (q) provide continuous development and training of staff;
- (r) work with post adoption services and arrange motherland tours to different countries and
- (s) ensure that the after-care services are rendered to adoptive families.

Monitoring and supervising of adoption agencies by the Director

61E. (1) An adoption agency shall once a year, report and submit a report on the performance of its activities to the Director.

(2) Without limiting the generality of subsection (1), a report may include a mission report, training report, incident report, report on changes in the personnel of the adoption agency and financial reports.

(3) Where an adoption agency has submitted a report pursuant to subsection (1), the Director may recommend some changes to an activity carried out and the adoption agency shall make the recommended change.

(4) The Director may, where an adoption agency fails to make the recommended change, suspend the permit issued to the adoption agency until the changes are made.

(5) An adoption agency shall keep a record of all its communication with the Director.

(6) An adoption agency shall report any incident or complaint concerning the adoption of a child.

Keeping of records by adoption agency

61F. An adoption agency shall keep and maintain a record of-

- (a) all children adopted and those whose adoption process has not been finalised;
- (b) adoptive parents and adoption agencies responsible for the adoption of children whether nationally or internationally; and
- (c) all communication made with the Director.

Disclosure of information and advertising by adoption agencies

61G. An adoption agency shall not disclose information relating to an adoptable child or advertise on its website or on any other print media, information relating to a particular child”.

Amendment of section 66

21. Section 66 of the principal law is amended-

- (a) in subsection (1), by deleting the words “a fine not exceeding Twenty Thousand Maloti or to imprisonment for a period not exceeding five years or both” and substituting the words “is liable, on conviction, to imprisonment for a period not exceeding 25 years”;
- (b) in subsection (2), by deleting the words “a fine not exceeding One Hundred Thousand Maloti or to imprisonment for a period not exceeding five years” and substituting the words “is liable, on conviction, to life imprisonment”; and
- (c) by inserting the following new subsections after subsection (3):

“(4) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, shall be considered as trafficking in persons under Trafficking in Persons Act, 2011⁴, even if the act does not involve any of the means set out in the definition of the word “trafficking” under section 2.

(5) A person, parent or guardian shall not cause a child to travel without the parental or guardian’s supervision, except where a child travels to school and in such a case, the child shall have a written consent of the parent or guardian.

(6) A child shall not cross the border into or out of Lesotho unless accompanied by an adult person who is not his parent or guardian, and who has a written consent of the parent or guardian, including where a child travels to school.”.

Amendment of section 67:

22. Section 67 of the principal law is amended-

- (a) in subsection (1) by deleting-
 - (i) in paragraph (b) the word “or” between the words “fraudulent” and “deceitful” and substituting the word “and”; and
 - (ii) the words, “a fine not exceeding One Million Maloti”.
- (b) by inserting the following new subsections immediately after subsection 2:
 - “(3) A person who is convicted of trafficking a child shall, in addition to any punishment, pay compensation to the child he trafficked.
 - (4) The court shall determine the period within which compensation shall be payable and method of payment.

(5) For the purposes of this section a person shall include a parent, a lawful guardian or person whom the child is in his lawful custody.”.

Amendment of section 70

23. Section 70 of the principal law is amended in subsection (1)(b) by-

- (a) inserting, “and gives away” after “takes”;
and**
- (b) deleting “appropriate consent”, after
“without”, and substituting “proper
authority”.**

Insertion of new sections 76A-76H

24. The principal law is amended by inserting the following new sections after section 76:

“Prohibition of child betrothal and child marriage

76A. (1) A child has no capacity to consent to a contract of marriage.

(2) A person shall not -

- (a) enter into a contract of marriage with a child; or
- (b) solemnise, abet, aid or permit marriage of a child or coerce or force a child to betrothal.

(3) A marriage entered into contrary to this section is voidable and may be annulled by the following people and under the following circumstances:

- (a) one or both parties to the marriage, if one or both parties were children at the time the marriage was entered into;
- (b) a child to the marriage, where a child is married to an adult person;

- (c) an adult person to the marriage where the adult person is married to a child; or
- (d) a third party, in consultation with an appropriate authority in any of the circumstances specified in above paragraphs.

(4) A marriage entered into by or solemnised between a person and a child, is of no force and effect and shall be annulled at the option of the child, a parent or a guardian, a relative or a member of the public on a good course shown to the court.

(5) A court shall, on the request of a child, adult person or third party, dissolve the marriage that was entered into after the commencement of this Act.

(6) Religion, culture, custom, ethnicity or nationality shall not be a defence for a child marriage.

(7) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding Ten Thousand Maloti or imprisonment for a period not exceeding Ten years or both.

(8) **For purposes of this section-**

“appropriate authority” means the Ministry responsible for social development.

Property and citizenship on dissolution of child marriage

76B. (1) Any property acquired by either party during the subsistence of a child marriage, except property that was inherited or brought into the marriage, shall be considered to have been lawfully acquired by both parties to the marriage and shall be distributed equally between the parties.

(2) Any citizenship rights that have accrued or due to accrue to a child of a prohibited marriage, shall be considered to have been lawfully acquired by and accruing to the child in terms of the relevant law.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction **to imprisonment for a period not exceeding Twenty- Five years.**

A child born in a child marriage

76C. A child born in a prohibited child marriage under this Act shall-

- (a) be considered to be legitimate for all legal, judicial or administrative purposes; and
- (b) enjoy the same rights and responsibilities as those of a legitimate child.

Sexual violence, rape or harmful practices during subsistence of prohibited marriage

76D.(1) A child in a prohibited child marriage shall not be subjected to any sexual violence, rape or harmful practices.

(2) A child in a prohibited child marriage has a right to refuse sexual acts, including acts that put the child at risk of infection, such as HIV or any other sexually transmitted infection.

(3) Child marriage shall not constitute a defence to a charge of sexual violence or rape.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to imprisonment for period not exceeding Twenty years.

Amendment of section 81

25. The principal law is amended by deleting section 81 and substituting the following:

“Duties of police officers in relation to age assessment

81. (1) If a police officer is uncertain about the exact age of a person suspected of having committed an offence but has reasonable believe that

the age of that person would render that person subject to protection under this Act, he shall take that person to a medical officer for assessment of age within the prescribed period.

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

Amendment of section 133

26. Section 133 of the principal law is amended by inserting the following subsections after subsection (3):

“(4) When an offence is committed by an adult against a child, that case shall be tried in a children’s court.

(5) The Chief Justice shall make the children’s court rules of procedure.”

Amendment of section 135

27. Section 135(1) (c) of the principal law is amended by inserting “or social worker responsible for social development” after “guardian.”

Amendment of section 136

28. Section 136 (1) (c) of the principal law is amended by inserting “or social worker responsible for social development” after “guardian”.

Amendment of section 138

29. Section 138 (5) of the principal law is amended in line 2, by inserting “a Court Intermediary or”, after “of”.

Amendment of section 140

30. The principal law is amended by deleting section 140.

Amendment of section 156

31. Section 156 of the principal law is amended-

(a) by deleting subsection (1) and substituting the following:

“(1) A child may be committed to the Juvenile Training Centre for a maximum period of three years, except that this commitment may not be imposed on a child who is less than fourteen years old.”.

(b) in subsection (2), line 1, by deleting the word “sentence” between “a” and “referred” and substituting the word “committal”.

Insertion of a new section

32. The principal law is amended by inserting the following new sections after section 175:

“Registration of places of safety for children in need of care and protection

175A. (1) A person shall not operate a place of safety, unless he registers the place with the Minister in accordance with section 175.

(2) A person who intends to operate a place of safety, shall make an application to the Minister for registration in terms of section 175B.

(3) The Minister may refuse or grant the application on conditions to be determined by the Minister.

(4) Where an application is granted, the Minister shall issue a registration certificate stating the conditions on which the application is granted.

(5) The registration certificate issued by the Minister under subsection (4) shall be valid for three years and may be renewed under the same conditions.

(6) The Minister may amend or revoke the registration certificate before the expiry date, if the holder of

the registration certificate fails to comply with the stated conditions.

(7) The Minister shall give three months notice to the holder of the registration certificate, if he intends to amend or revoke the registration certificate and shall indicate the date on which the amendment or revocation shall be effected.

(8) A person to whom the certificate has been issued, shall not transfer the registration certificate to another person.

(9) Where a person who has been granted a registration certificate intends to stop operating the place of safety or where his registration certificate has been cancelled, he shall ensure that the children under his place of safety and care are accommodated in another place of safety.

(10) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding Ten Thousand Maloti or imprisonment for a period not exceeding ten years or both.

Prerequisites of registration

175B. A person who applies for registration of a place of safety shall prove that –

- (a) he has –
 - (i) a credible record and police clearance;
 - (ii) enough financial resource for the running costs and maintenance of the facility;
- (b) a manager or director of the care facility who is a professionally qualified person and experienced in children's issues and has knowledge of the rights of children;
- (c) the structures and place accommodating the children –

- (i) have accessible toilets and bathrooms for children with disabilities;
 - (ii) have secured surroundings which may include swimming pools and dams;
 - (iii) are of an international standard design in and around the premises and have spacious and accessible rooms, dormitories or ramps;
- (d) there is enough staff to the ratio of children;
- (e) the place of safety –
 - (i) is within walking distance to a nearby school;
 - (ii) has after school care program which is therapeutical and developmental;
 - (iii) has a social worker and other professional;
 - (iv) has appropriate recreational facilities; and
 - (v) has any other requirement which may be necessary.

Compliance with conditions of operation

- 175C. (1) Where a person who owns or takes care of a place of safety intends to close it down, he shall –**
- (a) give the Minister three month's notice of the closure;

- (b) furnish the Minister with full report on the accommodation of the concerned children; and**
- (c) give the Minister the profile of each child, assets bought with Government funds and other relevant records.**

(2) Where there is reasonable belief that the prescribed conditions have not been complied with by the person who owns or takes care of a place of safety, the Minister may order that steps be taken to facilitate compliance.

(3) A person who fails to comply with the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding Ten Thousand Maloti or imprisonment for period not exceeding ten years or both.

Functions of the Director, Child Protection Services

175D. (1) The Director shall perform the following functions or assign a person to perform them on his behalf-

- (a) visit and monitor a registered place of safety in order to ensure compliance every six months;**
- (b) enquire into the wellbeing of the children placed in a place of safety, with or without the assistance of a health care provider;**
- (c) direct any person who has in his possession, the books, documents, or records of a place of safety, to submit them for inspection;**
- (d) compile a report on the outcome of the inspection;**
- (e) provide a person who owns or takes care of a place of safety, with the findings of the inspection;**
- (f) develop standards, guidelines, policies and practices for the wellbeing of children;**

- (g) establish mechanisms for receiving complaints;**
- (h) keep records for all registered places of safety; and**
- (i) observe the international developments and research.**

(2) A social worker who is assigned to exercise his functions for purposes of subsection (1), shall produce proof of identity issued by the Director, upon entering the premises, to the person who owns or takes care of a place of safety or any person who is in charge of the place;

(3) Where there has been non-compliance with this Act, the Director shall issue a three months compliance order to the person who owns or takes care of a place of safety;

(4) A compliance order shall remain valid until there has been compliance and the Director has issued a compliance certificate in respect of that order;

(5) A person who owns or takes care of a place of safety shall not –

- (a) obstruct a social worker or any person assigned to perform his duties in terms of this Act;**
- (b) refuse to allow the social worker or an assigned person to access the children in the place of safety; or**
- (c) refuse to give a social worker or any assigned person access to books, records or other documents in respect of a place of safety.**

(6) A person who owns or takes care of a place of safety shall submit annual financial reports to the Minister.

(7) Where a person who owns or takes care of a place of safety, fails to comply with a compliance order referred to in subsection (3), the Director, in consultation with the Minister, may close the place of safety.

(8) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding Eight Thousand Maloti or imprisonment for a period not exceeding eight years or both.

(9) An owner of a place of safety shall once a year, report and submit the report to the Director on the activities that it performed.

(10) Without limiting the generality of subsection (1), a report may include mission reports, training reports, incident reports, report on changes in the personnel of the place of safety and financial reports.

(11) Where an owner of a place of safety has submitted a report pursuant to subsection (1) and the Director recommends some changes to an activity carried out, the place of safety shall make the recommended changes.

(12) The Director may, where place of safety fails to make the recommended changes, suspend the permit until the changes are made.

(13) An owner of a place of safety, shall keep a record of all his communication with the Director.

Coordination and monitoring

175E. The Ministry responsible for child protection services shall be responsible for establishing and regulating child protection coordinating structures.”

Amendment of section 175

33. The second, section 175 of the principal law, under the heading “Escape or removal of child from place of safety” is amended by renumbering the section as “176”.”.

Amendment of section 178

34. Section 178 (1) of the principal law is amended by inserting “in collaboration with the Minister responsible for justice and” after the word “may,”

Amendment of section 196

35. Section 196(1) of the principal law is amended in line 2, by deleting the words “facilitate the setting of” and substituting “develop”.

Amendment of section 200

36. Section 200 (4) of the principal law is amended by deleting-

- (a) “and” at the end of paragraph (e);
- (b) paragraph (f) and substituting the following:
 - “(f) a Court Intermediary , social worker’s inquiry report;
and
 - (g) any other matter that it may consider relevant.”

Amendment of section 216

37. Section 216 of the principal law is amended-

- (a) in subsection (4), line 2, after “made”, by inserting
“and it should supersede all deductions made under any garnishee, insolvency and sequestration”; and
- (b) by inserting after subsection (6), the following subsection:
 - “(7) A children’s court may, before granting a maintenance order, request that maintenance investigation be conducted and a report be submitted the children’s court for consideration.”

Amendment of section 228

38. Section 228 of the principal law is amended by-

- (a) deleting-
 - (i) subsection (1) and substituting the following;
“(1) No person shall employ a child.”; and
 - (ii) subsection (2); and
- (b) renumbering subsection (3) as subsection (2).

Amendment of section 229

39. Sections 229 (1) of the principal law is amended by deleting the word thirteen and substituting “fourteen.”

Amendment of Schedules I and II

40. The principal law is amended by deleting Schedules I and II and substituting the following:

“Schedule I

Assault where grievous bodily harm has not been inflicted.

Malicious injury to property where the damage does not exceed M5000.00.

Theft, where the value of the property involved does not exceed M1000.00.

Any statutory offence where the maximum penalty determined by that statute is a fine of less than M500.00 or six months imprisonment.

Conspiracy, incitement or attempt to commit any offence referred to in this schedule.

Schedule II

Abortion

Aggravated Assault

Aggravated theft

Arson

Assault, including assault involving the infliction of grievous bodily harm

Car Theft

Concealment o childbirth

Culpable homicide

Forgery, uttering or fraud, where the amount concerned does not exceed M20,000.00.

House breaking, whether under common law or a statutory provision, with intent to commit an offence, if the amount involved in the offence does not exceed M20,000.00.

Offences relating to drugs

Perjury

Poisoning

Public violence

Receiving Stolen Property

Road Traffic Offences

Robbery, other than robbery with aggravating circumstances, if the amount involved in the offence does not exceed M20,000.00.

Sexual Offences

Stock Theft

Theft where the amount involved does not exceed M20,000.00. Any other offence under any law relating to the illicit possession of dependence producing drugs.

Threats

Unlawful Damage to property

Wrongful Application of funds

Any conspiracy, incitement or attempt to commit any offence referred to under this Schedule.”.

NOTE

¹ Act No. 7 of 2011

² Act No. 18 of 1983

³ Act No. 20 of 1966

⁴ Act No. 1 of 2011