

CHILDREN'S ACT, 1981

No. 5



of 1981

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An Act to make provision for the custody and care of children; for the appointment of commissioners of child welfare; for the establishment of children's and juvenile courts and of certain institutions for the reception of children; and for other matters connected therewith.

Date of Assent: 9.4.81.

Date of Commencement: 24.4.81.

ENACTED by the Parliament of Botswana

PART I *Preliminary*

Short title
Interpre-
tation

1. This Act may be cited as the **Children's Act, 1981**.
2. In this Act, unless the context otherwise requires, —
 - “approved child welfare institution” means an institution established under section 34 or approved under section 35;
 - “child” means any person who is under the age of 14 years;
 - “child in need of care” has the meaning assigned to it by section 14;
 - “children's court” means a court established by section 5;
 - “commissioner” means a commissioner of child welfare referred to in section 3;
 - “fit person” means a person in charge of an approved child welfare institution;
 - “foster parent” means any person who, whether for reward or otherwise, undertakes the temporary care of any child placed in his custody under section 19 (1) (b);

“guardian” means a person who has for the time being the charge of or control over a child or juvenile or a person appointed according to law to be the guardian of a child;
 “infant” means a person under the age of 7 years;
 “juvenile” means a person who has attained the age of 14 years and is under the age of 18 years;
 “juvenile court” has the meaning assigned to it by section 22;
 “juvenile court assistant” means an officer referred to in section 23 (2);
 “place of safety” means any approved child welfare institution;
 “prescribed” means prescribed by regulations made under section 38;
 “probation officer” means a probation officer appointed under section 32;
 “protected infant” means an infant referred to in section 6 (1);
 “social welfare officer” means an officer of the Ministry of Local Government and Lands designated as such.

PART II Commissioners of Child Welfare and Children’s Courts

3. (1) Every magistrate shall be a commissioner of child welfare (hereinafter referred to as a “commissioner”). Commissioner of child welfare

(2) Where in any area there is no magistrate, the district commissioner or the district officer of the administrative district, or the Chief as the case may be, shall be a commissioner.

4. A commissioner shall perform such functions as may be assigned to him under the provisions of this Act or any regulations made thereunder or by any other law. Functions of Commissioner

5. (1) The Minister may, after consultation with the Chief Justice, establish a children’s court in any district as may be considered necessary. Establishment and jurisdiction of children’s court

- (2) A children’s court shall have jurisdiction in –
- (a) holding an enquiry in respect of a child alleged to be in need of care; and
 - (b) any other matter which may be conferred upon it by this Act or any other law.

PART III Protection of Infants

6. (1) Save as provided in subsection (2), any person who receives an infant (hereinafter referred to as a “protected infant”) and maintains him apart from his parents for a period exceeding 14 days shall by notice in writing inform the nearest social welfare officer or district commissioner or headman in that area: Notice to be given of reception of infant

Provided that, where a protected infant is being maintained by an approved child welfare institution, such institution shall inform the social welfare officer assigned to that institution.

(2) Subject to the provisions of subsection (3), the provisions of subsection (1) shall not apply to the reception of a protected

infant by a grandfather, grandmother, brother, sister, uncle or aunt of the infant, or the husband or wife or widower or widow of any such relative of the infant.

(3) Where a protected infant is an illegitimate child, the relations of such infant as referred to in subsection (2) shall not include any person who is not related to the infant through his mother.

(4) A protected infant shall not be removed from the custody of a fit person except by a social welfare officer who shall inform a commissioner of such removal.

(5) If a person maintaining a protected infant changes his residence he shall forthwith by notice in writing inform the social welfare officer of the district to which he has moved.

(6) If a protected infant dies the person in whose custody the infant was at the time of his death shall forthwith give notice of the death to the social welfare officer and the police in that area, and the social welfare officer shall make the necessary arrangements for the burial of the infant.

Duties of
Commissioner
in connexion
with
protected
infants

7. Where a commissioner has reasonable grounds to believe that —

- (a) a protected infant is being kept; or
- (b) any infant is being kept apart from his parents,

in surroundings or circumstances which are not in the best interests of the infant, he shall cause an enquiry to be made into the conditions in which the infant is being kept.

(2) Where, upon enquiry, the commissioner is satisfied that the conditions in which an infant is being kept are not in the best interest of the infant he may by notice in writing call upon the parents to make, within such time as may be specified by him, suitable provision for the care and custody of the infant.

(3) Where the address or place of residence of the parents or guardian is unknown, or where, notice having been given under subsection (2), the parents or guardian have failed within the time specified in the notice to make suitable provision for the care and custody of the infant, he shall be dealt with in the manner provided in section 17.

Visiting and
examination
of infants

8. (1) A commissioner may by writing under his hand authorize a social welfare officer to visit and inspect any protected infant resident in his district.

(2) A social welfare officer authorized under subsection (1) shall from time to time visit and inspect any protected infant and the premises in which such infant is kept in order to ensure the proper care and maintenance of the infant.

(3) A commissioner may at any time direct that a protected infant, or an infant referred to in section 7 (1) (b), who is kept

within his district be medically examined by a Government medical officer.

(4) Any person having the custody of an infant who refuses to allow the inspection or examination authorized under this section, and any person who hinders the carrying out of any such inspection or examination, shall be guilty of an offence.

9. (1) A commissioner may, by order in writing addressed to the occupier of any premises in which any protected infant is kept, specify the number of infants which may be kept in those premises, and may in such order prohibit the keeping in those premises of any protected infant of an age less than that specified in the order.

Limitation of number and age of protected infants to be kept in premises

(2) Any person who contravenes any provision of this section or of any order made thereunder shall be guilty of an offence.

10. If any person –

(a) from whose custody an infant has been removed in terms of an order made under this Act; or

(b) who has been convicted of an offence under Part IV,

keeps a protected infant without the authority of a commissioner, or if any person knowingly causes a protected infant to be kept by any such person without such authority, he shall be guilty of an offence.

Certain persons may not keep protected infants

PART IV *Prevention of neglect and ill-treatment of Children*

11. (1) Any parent or guardian of a child or any person having the custody of a child who neglects, ill-treats or exploits the child or allows or causes him to be neglected, ill-treated or exploited shall be guilty of an offence.

Neglect or ill-treatment of children

(2) For the purposes of this section a child shall be deemed to have been neglected if the parent or guardian or any person having the custody of the child –

(a) unreasonably fails to provide or pay for adequate food, clothing or housing for the child;

(b) unreasonably fails to make adequate provision for the proper health and care of the child;

(c) unreasonably leaves the child in the care of any person or institution without showing any further interest in the child; or

(d) exposes the child to conditions or circumstances which are likely to cause him physical, mental or psychological distress or damage.

12. (1) Any parent or guardian or any person having the custody of a child who causes or conduces to the seduction, abduction or prostitution of the child or the commission by the child of an immoral act shall be guilty of an offence.

Corruption of children

(2) For the purposes of this section a person shall be deemed to have caused the seduction, abduction or prostitution if, being the

parent or guardian or having the custody of the child, he knowingly allows the child to consort with or enter or continue in the employment of a prostitute or person of known immoral character.

Medical examination and treatment of children

13. Where a commissioner has reason to suspect that a child who is within the area of his jurisdiction is in need of medical attention he may authorize a Government medical officer to examine the child or direct the person in whose custody the child is to remove the child to a hospital for such examination.

PART V *Children in need of Care*

When child is in need of care

14. For the purposes of this Act a child in need of care means a child who –

- (a) has been abandoned or is without visible means of support;
- (b) has no parent or guardian or has a parent or guardian who does not or is unfit to exercise proper control over the child;
- (c) engages in any form of street trading, unless he has been deputed by his parents to help in the distribution of merchandize of a family concern;
- (d) is in the custody of a person who has been convicted of committing upon or in connexion with a child any offence referred to in Part IV; or
- (e) frequents the company of an immoral or violent person, or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution.

Removal of child in need of care to place of safety

15. (1) Where any person observing a child has reasonable cause to believe that the child is in need of care he shall immediately make a report thereof to the social welfare officer or a police officer in the district in which the child is resident.

(2) A social welfare officer or police officer to whom a report has been made under subsection (1) may remove or cause to be removed to a place of safety the child in question and shall as soon thereafter as may be, subject to the provisions of section 17 (5), bring the child or cause him to be brought before the children's court of the district in which the child is resident.

(3) Where it appears to a commissioner that a child within the area of his jurisdiction is in need of care he may by order in writing authorize a police officer to enter without a warrant any premises to search for the child and take him to a place of safety to be there kept until he can be brought before a children's court.

(4) Where a child has been removed or taken to a place of safety the social welfare officer in that district shall, before the child is taken to a children's court, enquire into and submit to the court a report containing such information on the general conduct, home environment, school records and medical history (if any) of the child, together with such recommendations thereon as he may consider necessary.

(5) Any person who hinders or obstructs a social welfare officer or a police officer in the exercise of the powers conferred on him under this section shall be guilty of an offence.

16. (1) A commissioner shall preside over a children's court holding an enquiry into a child in need of care and the court shall sit in a room other than that in which any other court ordinarily sits.

Procedure of court holding enquiry in respect of children in need of care

(2) The proceedings of the court shall be held as informally as possible and shall be aimed at protecting the interests of the child.

(3) No person shall be present at the enquiry except —

- (a) officers and members of the court;
- (b) the child concerned and his parents or guardian;
- (c) the social welfare officer referred to in section 15 (4); and
- (d) such other persons as the court may specially authorize to be present.

17. (1) Any child alleged to be a child in need of care may be brought before the children's court of the district in which the child resides or happens to be by a social welfare officer or a police officer or the person having custody of the child.

Holding of enquiry by children's court

(2) The court before which a child is brought under subsection (1) shall hold an enquiry and determine whether or not the child is in need of care.

(3) In determining whether or not a child is in need of care the court shall take into consideration the report and the recommendations made by the social welfare officer under section 15 (4).

Power of parent or guardian to bring child before children's court

(4) A children's court holding an enquiry as to whether or not a child is in need of care may at any time during the enquiry order a Government medical officer to examine the child.

(5) Where it appears to a children's court that a child who is alleged to be a child in need of care and who is subject to the court's jurisdiction should not, by reason of his infancy, ill-health or other sufficient cause, be brought before the court, it may hold the enquiry in the absence of the child.

18. The parent or guardian of a child may bring the child before a children's court and if he proves that he is unable to control the child and satisfies the court that —

- (a) it is expedient to deal with the child as a child in need of care; and
- (b) he understands the results which may follow, and consents to the making of an order under section 19.

the court may make an order under that section in relation to the child.

19. (1) Where a children's court, after holding an enquiry as provided in section 17, is satisfied that a child is a child in need of care, it may order that the child be —

Power of children's court in respect of children in need of care

- (a) returned to or remain in the custody of his parents or

guardian or the person in whose custody he was immediately before the commencement of the proceedings;

- (b) placed in the custody of a suitable foster parent;
- (c) sent to a children's home; or
- (d) sent to a school of industries.

(2) An order made under paragraph (a) or (b) may also specify that the child be placed under the supervision of a social welfare officer.

(3) Where an order has been made under the preceding provisions the parent or guardian of the child shall ensure that the child complies with the order.

(4) A social welfare officer may during the period in which a child is placed under his supervision, and shall on the termination thereof, furnish to the commissioner of the district in which the child resides a report of the behaviour, progress and welfare of the child.

Failure of child to comply with order

20. Any child who fails to comply with an order relating to him under section 19 shall be guilty of an offence and liable on conviction to –

- (a) a caution or reprimand; or
- (b) corporal punishment in the customary manner which shall be administered in accordance with the provisions of section 301 of the Criminal Procedure and Evidence Act.

Commission of offence by parent or guardian

21. Any parent or guardian who fails to ensure that his child or ward complies with an order made in respect of the child or ward under section 19 shall be guilty of an offence and liable on conviction to a fine not exceeding P100 or to a term of imprisonment not exceeding 3 months.

PART VI *Juvenile Courts*

Establishment of juvenile courts

22. (1) A magistrate's court or a customary court sitting for the purpose of –

- (a) hearing a charge against a juvenile; or
- (b) exercising any other jurisdiction conferred on a juvenile court by or under this Act or any other law,

is in this Act referred to as a juvenile court.

(2) A juvenile court shall not have jurisdiction to hear and determine any charge against any person other than those persons who are between the ages of 7 years and 18 years.

(3) Where a child or juvenile is charged jointly with a person who is aged 18 years or over, the child or juvenile shall be given a separate trial from the other accused person.

Officers of juvenile court

23. (1) The Chief Justice may from time to time assign a magistrate to preside over a juvenile court.

(2) The Attorney-General shall assign to a juvenile court an officer, to be known as a "juvenile court assistant", who, at any proceedings of a juvenile court, shall –

(a) adduce any available evidence relevant to the proceedings;
and

(b) generally assist the court in performing its functions under this Act.

(3) A probation officer shall be present at any sitting of a juvenile court.

(4) There shall be attached to every juvenile court a clerk of the court, appointed in accordance with the provisions of section 26, who shall perform the same functions as those of a clerk of a magistrate's court.

24. (1) A juvenile court shall be held informally and shall sit in a room other than that in which any other court ordinarily sits.

Sitting of
juvenile
court

(2) No person shall be present at any sitting of a juvenile court except —

(a) officers and members of the court;

(b) the juvenile concerned and his parents or guardian;

(c) the social welfare officer concerned in the case; and

(d) such other persons as the court may specially authorize to be present.

25. (1) No person shall publish the name or address of any person before a juvenile court, or the name or address of any school which that person is or has been attending, or any photograph of that person, or any matter likely to lead to the identification of that person, save with the written permission of the court or insofar as is required by the provisions of this Act.

Prohibition
of publication

(2) Any person who contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding P100 or to a term of imprisonment not exceeding 3 months, or to both.

26. Save as is provided in this Act or any other law, the provisions of the Magistrates' Courts Act and the rules made thereunder in relation to —

Application of
Magistrate's
Courts Act
(Cap. 04:04)
and rules

(a) the appointment and functions of officers;

(b) the issue and service of process;

(c) the conduct of proceedings;

(d) the execution of judgments; and

(e) the imposition of penalties for non-compliance with an order of the court or an obstruction of execution of any judgment, or contempt of court,

shall apply in like manner to a juvenile court.

27. (1) Any person having a reasonable cause to believe that an offence has been committed by a child or a juvenile may make a complaint thereof to the commissioner in the district in which the offence was alleged to have been committed.

Institution of
proceedings
against a
child or
juvenile

(2) If, on receipt of a complaint, the commissioner is satisfied that *prima facie* an offence has been committed, he shall cause a probation officer to enquire into and report to him on the general

conduct, home environment, school records and medical history (if any) of the child or juvenile.

(3) After consideration of the report submitted under subsection (2) the commissioner may –

- (a) deal with the child or juvenile in accordance with the provisions of section 17; or
- (b) commit the child or juvenile to a juvenile court for trial.

Manner of dealing with child or juvenile charged with offence

28. Where a child or juvenile charged with an offence is tried by a juvenile court and the court is satisfied of his guilt the court may, after taking into consideration the general conduct, home environment, school records and medical history (if any) of such child or juvenile, dispose of the case by –

- (a) dismissing the charge;
- (b) discharging the offender on his entering into a recognizance;
- (c) placing the offender on probation for a period of not less than 6 months or more than 3 years;
- (d) sending the offender to a school of industries for a period not exceeding 3 years or until he attains the age of 21 years; or
- (e) ordering the parent or guardian of the offender to pay a fine, damages or costs.

Court to explain order for probation to offender

29. (1) Before making an order for probation under section 28 the court shall explain to the offender in ordinary language the effect of the order and that if he fails to comply therewith or commits another offence while on probation he will be liable to be sentenced for the original offence as well as any other penalty which the court may consider fit to impose.

(2) Where an order for probation is made by a juvenile court under section 27 the court shall forthwith give a copy of the order to the probation officer assigned to the court and shall also give a copy to –

- (a) the offender;
- (b) the probation officer responsible for the supervision of the offender; and
- (c) the person in charge of any institution in which the probationer may be required by the order to reside.

Discharge or amendment of order for probation

30. A juvenile court which has made an order for probation may, upon application made to it by the probationer or by the probation officer, either vary the order or cancel it.

Appeals and review

31. Any child or juvenile or his parents or guardian dissatisfied with any decision or order of a juvenile court may appeal or make an application for a review to the High Court against such decision or order, in accordance with the provisions of any law in force for the time being regulating appeals or applications for review to the High Court from a magistrate's court.

32. (1) The Minister shall appoint such persons as may be considered necessary who are qualified by experience and character to be probation officers. Appointment of probation officers

(2) The functions of probation officers shall be –

- (a) to enquire into and report to a juvenile court upon –
 - (i) the general conduct, home environment and the character of a child or juvenile on trial before that court; and
 - (ii) the cause and circumstances contributing to the delinquency of the child or juvenile;
- (b) to devise and carry out any measures for the observation and correction of tendencies to delinquency in children or juveniles, and for the discovery and removal of any conditions causing or contributing to juvenile delinquency;
- (c) to supervise or control any child, juvenile or other person convicted of an offence and placed under the supervision of a probation officer; and
- (d) to perform such other duties as may be conferred on them under this Act or regulations made thereunder.

(3) A probation officer shall be an officer of a children's or juvenile court and such other court as may be prescribed.

33. The Minister may appoint a Probation Committee consisting of such number of persons as he may consider desirable, chosen by reason of their experience and character, who shall review the work of probation officers and perform such other functions in connexion with probation as may be prescribed. Appointment of Probation Committee

PART VII *Establishment of Homes, Schools and Institutions for the Reception of Children*

34. (1) The Minister may establish and maintain any –

- (a) place of safety for the reception of children or juveniles under this Act;
 - (b) children's home for the reception, care and upbringing of children in need of care;
 - (c) youth shelter for the reception of juveniles who have been arrested and are waiting to appear before a juvenile court;
 - (d) school of industries for the reception, care and training of juvenile delinquents in specific skills;
 - (e) attendance centre for the training of juvenile delinquents; and
 - (f) such other place as the Minister may consider necessary for the reception of children or juveniles under this Act.
- Establishment of premises for reception of children and juveniles

(2) Any place of safety or home or other institution established under this section shall be known as an "approved child welfare institution".

35. (1) The Minister may, upon the application of an owner or principal or manager of any house, school or other institution Approved homes and institutions

established for the boarding, care, maintenance, education or vocational training of children or juveniles, in writing approve such home, school or other institution to be a fit place for the reception of children or juveniles under this Act.

(2) Any place approved under this section shall be deemed to be an approved child welfare institution.

(3) Regulations may provide for the management and the proper maintenance of any place approved under this section.

(4) The owner or principal or manager of any approved child welfare institution may enter into an agreement for the use of that institution or any part thereof as a place for the reception of children or juveniles on such terms as may be agreed between such person and the Minister.

Obligation
of owner, etc.,
of approved
child welfare
institution

36. The owner or principal or manager of an approved child welfare institution shall, unless he satisfies the Minister that it is undesirable that any more children or juveniles should be admitted to the institution or otherwise committed to his care, be obliged to accept any child or juvenile who is sent or transferred to his institution or otherwise committed to his care.

Offences
and penalty

37. Any person found guilty of an offence under this Act for which no other penalty is provided shall be liable on conviction to a fine not exceeding P100 or to a term of imprisonment not exceeding 3 months, or to both.

Regulations

38. The Minister may, by statutory instrument published in the Gazette, make regulations providing for any matter which under this Act is to be provided for by regulations or to be prescribed.

PASSED by the National Assembly this 30th day of March, 1981.

I.P. GONTSE,
Clerk of the National Assembly.