

CHILDREN'S ACT, 2009

No. 8



of 2009

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An Act to make provision for the promotion and protection of the rights of the child; for the promotion of the physical, emotional, intellectual and social development and general well-being of children; for the protection and care of children; for the establishment of structures to provide for the care, support, protection and rehabilitation of children; and for matters connected therewith.

Date of Assent: 16th June 2009

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – Preliminary

1. This Act may be cited as the Children’s Act, 2009.
2. In this Act, unless the context otherwise requires —
 - “absent parent” means a biological parent who is not ordinarily resident with the child;
 - “adopted child” means a child adopted under the Adoption Act;
 - “adoptive parent” means a person who adopts or has adopted a child under the Adoption Act;
 - “child” means any person who is below the age of 18 years;
 - “child in need of protection” has the meaning assigned to it by section 42;
 - “children’s court” means a court established by section 36;
 - “child welfare institution” includes an institution licensed under section 97 or established under section 111 to provide services catering for the care, maintenance, health, education, development, protection, or general well-being of children, and a place of safety, a school of industries, a residential care facility or other community based organisation which provides care or welfare services for children;
 - “commissioner” means a commissioner of child welfare referred to in section 41;
 - “community leader” means a *kgosi*, *kgosana* or other like traditional leader in a community;
 - “fit person” means any person of good repute and right standing in the society who is emotionally, physically, mentally and financially capable of caring for, maintaining, guiding and controlling a child;
 - “foster parent” means any person who, whether for reward or otherwise, undertakes the temporary care of any child placed in that person’s custody or care under section 69;
 - “guardian” means a person who has the charge of, or control over, a child, or a person appointed according to law to be the guardian of a child;
 - “harm” in relation to a child, includes any form of harm or ill-treatment inflicted deliberately on a child, and —
 - (a) assaulting a child;
 - (b) sexually abusing a child or allowing a child to be sexually abused;
 - (c) work that is harmful to the child because it is economically exploitative, hazardous, interferes with the child’s education, or is harmful to the child’s health or physical, mental, spiritual, moral or social development;and

Short title

Interpretation

Cap 28:01

(d) exposing or subjecting a child to behaviour that may harm the child physically, emotionally or psychologically;

“parent”, in relation to a child, means a biological parent, adoptive parent, foster parent or step-parent, but excludes —

(a) the biological father of a child through the rape of, or incest with, the mother of the child; and

(b) a parent whose parental duties and rights in respect of the child have been terminated in terms of this Act or by a court;

“place of safety” means any child welfare institution which has been established or licensed under this Act, or the home of a family approved under this Act or regulations thereto to receive and care for children in need of protection on an emergency or temporary basis;

“probation officer” means a person appointed under section 91;

“relative”, in relation to a child, includes the child’s —

(a) grand-parent;

(b) sibling;

(c) uncle or aunt; or

(d) cousin;

“service provider” means any person or body licensed in terms of this Act or any other law to provide services for the health education, development and protection and general well-being of a child;

“school of industries” means a child welfare institution licensed under this Act which provides vocational training and rehabilitation services to children who are or have been in conflict with the law;

“step-parent”, in relation to a child, means the spouse of the child’s biological parent, which spouse is not the child’s biological parent; and

“social worker” means a person who holds a qualification in social work, or such other qualification as may be prescribed, and is employed as such by Government or such other institution as may be approved under this Act or any other law.

PART II – *Application, Objects and Guiding Principles of the Act*

Conflict with
other legislation

3. In the event of any conflict or inconsistency between the provisions of this Act and any other legislation, the provisions of this Act shall take precedence, except where the exercise of the rights set out in this Act has or would have the effect of harming the child’s emotional, physical, psychological or moral well-being, or of prejudicing the exercise of the rights and freedoms of others, national security, the public interest, public safety, public order, public morality or public health.

Objects of the
Act

4. The objects of the Act are to —

(a) promote the well-being of children, families and communities in Botswana;

(b) provide for the protection and care of children where their parents have not provided, or are unable or unlikely to provide, that protection and care;

- (c) protect children from harm;
- (d) acknowledge the primary responsibility of parents and families to care for and protect children, and to support and assist them in carrying out that responsibility;
- (e) acknowledge the role played by communities in promoting and safeguarding the well-being of children and to encourage and support them in carrying out that role; and
- (f) protect children from unlawful or exploitative labour practices.

5. A person or the court performing a function or exercising a power under this Act shall regard the best interests of the child as the paramount consideration.

Best interests
of the child
paramount

6. (1) The following factors shall be taken into account in determining the best interests of the child —

Determining the
best interests of
the child

- (a) the need to protect the child from harm;
- (b) the capacity of the child's parents, other relative, guardian or other person to care for and protect the child;
- (c) the child's spiritual, physical, emotional and educational needs;
- (d) the child's age, maturity, sex, background, and language;
- (e) the child's cultural, ethnic or religious identity;
- (f) the likely effect on the child of any change in the child's circumstances;
- (g) the importance of stability and continuity in the child's living arrangements and the likely effect on the child of any change in, or disruption of, those arrangements;
- (h) any wishes or views expressed by the child, having regard to the child's age, maturity and level of understanding in determining the weight to be given to those wishes or views; and
- (i) any other factor which will ensure the general well-being of the child.

(2) The provisions of subsection (1) shall not be construed as limiting the factors that may be taken into account in determining what is in the best interests of the child.

7. The following principles shall be observed in the administration of this Act —

Guiding
principles

- (a) no decision or action shall be taken whose result or likelihood is to discriminate against any child on the basis of sex, family, colour, race, ethnicity, place of origin, language, religion, economic status, parents, physical or mental status, or any other status;
- (b) every child shall be cared for and protected from harm;
- (c) the parents, family and community of a child have the primary responsibility of safeguarding and promoting the child's well-being;
- (d) every child shall have stable, secure and safe relationships and living arrangements;
- (e) a child's parents, other relatives, guardian and any other people who are significant in the child's life shall be given an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the child's life;

- (f) the people referred to in paragraph (e) shall be given adequate information, in a manner and language they understand, regarding —
 - (i) decision-making processes under this Act that are likely to have a significant impact on the child's life,
 - (ii) the outcome and implications of any decision about the child, including an explanation of the reasons for the decision, and
 - (iii) any relevant complaint or review procedure;
- (g) decisions about a child shall be consistent with cultural, ethnic and religious values and traditions relevant to the child; and
- (h) decisions about a child shall be made promptly having regard to the age, circumstances and needs of the child.

8. (1) Every child who is of such age, maturity and level of understanding as to be able to participate in decisions which have a significant impact on that child's life shall have a right to do so.

(2) For the purpose of ensuring that the child is able to participate in the decision-making process, the child shall be given —

- (a) adequate information, in a manner and language that the child understands, about —
 - (i) the decision to be made,
 - (ii) the reasons for the involvement of persons or institutions other than his or her parents, other relatives or guardian,
 - (iii) the ways in which the child can participate in the decision-making process, and
 - (iv) any relevant complaint or review procedures;
- (b) the opportunity to express the child's wishes and views freely, according to the child's age, maturity and level of understanding;
- (c) any assistance that is necessary for the child to express those wishes and views;
- (d) adequate information regarding how the child's wishes and views will be taken into account;
- (e) adequate information about the decision made and a full explanation of the reasons for the decision; and
- (f) an opportunity to respond to the decision made.

(3) Decisions under this Act that are likely to have a significant impact on a child's life include but are not limited to —

- (a) decisions about the alternative care of the child;
- (b) decisions in the course of preparing, modifying or reviewing care or alternative care agreements or plans for the child;
- (c) decisions about the provision of social services to the child; and
- (d) decisions about contact with the child's parents, other relatives, guardian or other persons who are significant in the child's life.

PART III – *Bill of Child Rights*

9. The rights set out in this Part supplement the rights set out in Chapter II of the Constitution. Application
10. (1) Every child has an inherent right to life. Right to life
(2) In order to ensure the enjoyment of this right, no person shall take any action or make any decision the effect of which will be to deprive a child of survival and development to the child's full potential.
11. Every child has a right to a name, from birth, which neither stigmatizes nor demeans the dignity of that child. Right to a name
12. (1) Every child has a right to a nationality from birth. Right to a nationality
(2) In order to ensure the enjoyment of nationality, the parent or other person specified in the Births and Deaths Registration Act shall give notice of the child's birth to the Registrar of Births in such manner as is prescribed under that Act. Cap. 30:01
(3) A birth certificate issued by the Registrar of Births under that Act shall be proof of the nationality of the child.
(4) The birth certificate shall indicate the name, citizenship and address of the biological mother and the biological father of the child whether the child is born in or out of wedlock.
(5) Any person who unreasonably withholds information for the purposes of subsection (4) shall be guilty of an offence and shall be liable to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than three months but not more than six years, or both."
13. (1) Subject to the child's best interests, every child has a right to know and be cared for by both of his or her biological parents, and to appropriate alternative care where the child is removed from the family environment. Right to know and be cared for by parents
(2) A child who is born out of wedlock and does not live with both of his or her biological parents has a right to access the absent parent, and to be nurtured, supported and maintained by such absent parent in accordance with the provisions of this and any other Act which deals with the care and maintenance of children.
(3) Any parent, other relative or guardian or other person who, without reasonable excuse, refuses the absent parent access to the child shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than three months but not more than six months, or both.
(4) No person shall separate a child from his or her parents, other relatives or guardian unless it is in the child's best interests to do so.
(5) Subject to a child's age, maturity and level of understanding, any person seeking to separate the child from his or her parents, other relatives or guardian shall seek the child's consent.
(6) Any person who contravenes the provisions of subsection (4) or (5) shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than three months but not more than six years, or both.

Right to appropriate parental guidance	14. Every child has a right to parental guidance appropriate to that child's age, maturity and level of understanding in order to ensure that the child grows to his or her maximum potential.
Right to health	15. (1) Every child has a right to the highest attainable standard of health and medical care. (2) Where the parents, other relatives or guardian of a child are unable, due to financial constraints, physical disability, ill health or other reasonable cause to ensure the child's enjoyment of the right referred to in this section, the Minister shall cause to be taken such steps as are necessary to ensure the child's enjoyment of those rights.
Right to shelter	16. Every child has a right to adequate and safe housing.
Right to clothing	17. A parent shall ensure that his or her child is adequately clothed.
Right to education	18. (1) Every child has a right to free basic education. (2) A parent, other relative or guardian who, without reasonable excuse, denies a child the opportunity of going to school shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000, but not more than P10 000.
Right to leisure, play and recreation	19. Every child has a right to leisure, play and recreation which are appropriate to the age, maturity and level of development of the child.
Right to freedom of expression	20. (1) Every child has a right to freely express his or her views and opinions, and to freely receive and communicate ideas and information. The right to freedom of expression shall be exercised subject to the child's best interests taking into account — (a) the child's age, maturity and level of understanding; (b) the need for parental guidance and to protect the child from pornography and other influences which may cause emotional, physical, psychological or moral harm to the child; (c) the public interest, national security, public morality, public health and the rights and freedoms of other people.
Right to freedom of religion, etc.	21. While a parent, other relative or guardian may provide a child with guidance on political and other matters, no parent, other relative or guardian shall force that child to adopt any particular religion, philosophy or doctrine.
Right to freedom of association	22. Every child has the right to freedom of association subject to the child's age, maturity and level of understanding, of parental guidance, national security, public health or morals, and the rights and freedoms of others.
Right to privacy	23. (1) Every child has a right to have his or her privacy protected. (2) The right to privacy shall be exercised subject to the child's best interests taking into account — (a) the child's age, maturity and level of understanding; (b) the need for parental guidance and to protect the child from pornography and other influences which may cause emotional, physical, psychological or moral harm to the child; (c) the public interest, national security, public morality, public health and the rights and freedoms of other people.

24. (1) Every child has a right to be protected against work and other labour practices which —

Right to protection against harmful labour practices

- (a) are inappropriate for a person of that child's age; or
- (b) place at risk the child's education, physical or mental health, or spiritual, moral or social development or well-being.

(2) Any employment of a child as permitted by the Employment Act shall be for purposes of apprenticeship.

Cap. 47:01

(3) Any contract for apprenticeship shall be with the written consent of the child's parent, other relative or guardian.

(4) The duties of an employer towards an apprentice shall be to —

- (a) train and instruct the child in a trade, in accordance with such standards and conditions as may be prescribed, in order to impart such knowledge and skills as the child may use to his or her future benefit; and
- (b) provide a safe and healthy environment for the child, and to take responsibility for any harm that may come to the child in the course of the apprenticeship.

(5) Every person who lawfully employs a child shall submit the records of such employment to the Ministry responsible for labour and if he or she fails to do so, shall be guilty of an offence and shall be sentenced to a fine of P10 000.

(6) Any person who unlawfully employs a child shall be guilty of an offence and shall be sentenced to a fine of not less than P 10 000 but not more than P30 000, or to imprisonment for a term of not less than 12 months, but not more than five years, or both.

25. (1) Every child has a right to be protected from sexual abuse and exploitation, including prostitution and pornography.

Right to protection against sexual abuse and exploitation

(2) Any parent, guardian, teacher or other person who, without reasonable excuse, fails to report a case of child abuse or exploitation of which he or she is aware shall be guilty of an offence and liable to a fine of not less than P10 000 but not more than P30 000, or to imprisonment for a term of not less than two years but not more than three years, or both.

(3) Any person, including a parent, who connives with another person who sexually abuses or exploits a child shall be guilty of an offence and liable to a fine of not less than P30 000 but not more than P50 000, or to imprisonment for a term of not less than five years but not more than fifteen years, or both.

(4) The Minister shall devise or cause to be devised programmes to prevent the sexual exploitation of children.

26. (1) Every child has a right to be protected from involvement in armed conflict and other forms of violent conflict.

Right to protection from involvement in armed conflict

(2) Any person who recruits or enlists a child for purposes of engaging in or supporting armed conflict or any other form of violent conflict shall be guilty of an offence and shall be sentenced to a fine of not less than P30 000 but not more than P50 000, or to imprisonment for a term of not less than five years but not more than fifteen years.

PART IV – *Parental Duties and Rights*

Parental duties

27. (1) The primary duty to care for and maintain a child shall rest upon the biological parents of the child.

(2) The duties of the biological parents of a child shall, where those parents do not live together, be carried out jointly by them unless it would not be in the best interests of the child.

(3) Where both or one of the biological parents is deceased, or the biological parents do not live together as a nuclear family and the absent parent plays no role in the child's life, the other relatives, guardian, adoptive parent, step-parent or foster parent of the child shall be deemed to have assumed the parental duties associated with the biological parents of the child.

(4) Subject to subsections (1) to (3), every parent shall have the duties, in respect of his or her child to –

- (a) ensure that the basis of every decision and action he or she takes concerning the child is in the child's best interests;
- (b) provide for the physical, emotional, educational and material needs of the child;
- (c) provide direction and guidance to the child in accordance with the age, maturity and level of understanding of the child;
- (d) seek professional advice, including advice from family members and community leaders, and comply with such advice where it is in the best interests of the child to do so;
- (e) encourage the child's participation in household decisions and actions subject to the child's age, maturity and level of understanding;
- (f) raise each child in the household as being of equal dignity as other persons in the household, irrespective of sex;
- (g) ensure the child inherits adequately from his or her estate;
- (h) respect the child's dignity and refrain from administering discipline which violates such dignity or adversely affects the physical, emotional or psychological well-being of the child or any other child living in the household;
- (i) bring up the child to respect and value the family and the institution of marriage; and
- (j) do all such other things as are necessary to ensure the good health, safety, educational development and general well-being of the child.

Cap. 08:01

(5) Subsection (4) (h) shall not be construed as prohibiting the corporal punishment of a child in such circumstances or manner as may be set out in this Act, the Penal Code or any other law.

Cap. 31:01

(6) Where the biological parent of a child dies intestate or fails to make adequate provision for his or her surviving child in a will or other bequest, the child shall be awarded such portion of such parent's estate as is required by the Administration of Estates Act or any other relevant law to be awarded to the child.

(7) Any person who dispossesses a child of his or her inheritance or who, without the authority of a court, takes possession of any portion of a deceased's estate under which a child is or may be a beneficiary, shall be guilty of an offence and shall be sentenced to a fine of not less than P20 000 but not more than P30 000, or to imprisonment for a term of not less than six months but not more than two years, or both.

28. (1) Subject to the best interests of the child, and to section 78, every parent shall have the right, in relation to that child, to — Parental rights

- (a) have the child live with him or her;
- (b) control and guide the child's upbringing;
- (c) maintain personal relations with, and have access to, the child if the child does not live with him or her;
- (d) represent the child in all contractual and other legal matters regarding the child's property and other interests;
- (e) participate, in the prescribed manner, in court and other proceedings related to his or her child;
- (f) appoint a guardian or revoke the appointment of a guardian where one has been appointed, subject to the court's approval; and
- (g) have access to parenting skills programmes put in place in terms of this Act or any other law.

(2) A person who, under this section, exercises parental rights in respect of any child shall do so with the express or implied consent of other persons who have similar rights in respect to the child, subject to the best interests of the child.

(3) Any person, who is not married to the mother of a child, who is or claims to be the biological father of the child, may —

- (a) apply to the Registrar of Births and Deaths for an amendment to be effected to the certificate of registration of birth of the child;
- (b) apply to a court for an order confirming his paternity of the child, if the mother —
 - (i) is incompetent to give consent due to mental illness,
 - (ii) cannot be located, or
 - (iii) is deceased.

29. (1) Where the biological parents of a child are not married to one another and do not live together, they may enter into a co-parenting agreement. Co-parenting agreements

(2) The agreement shall set out —

- (a) which parent the child shall reside with;
- (b) which parent shall determine the child's upbringing;
- (c) the times the child will spend with the absent parent;
- (d) the financial and other responsibilities of each parent towards the child; and
- (e) such other matters as may be prescribed.

(3) The agreement shall be in writing and shall be in such form as may be prescribed.

(4) The parents of the child shall file a copy of the agreement with the clerk of the children's court in the district in which the child resides.

(5) The agreement may be varied or revoked at the instance of either parent.

(6) The parent wishing to vary or revoke the agreement shall give the other parent written notice of the intention to do so, and shall set out the grounds upon which he or she seeks the variation or revocation.

(7) The said parent shall make application to vary or revoke the agreement to the children's court in the district in which the child resides.

(8) The children's court shall, in proceedings for the variation or revocation of a co-parenting agreement, ensure that the best interests of the child are the paramount consideration.

(9) In proceedings under this section, the court shall take into account any views expressed by the child.

PART V – *Community and Governmental Support to Parents*

Support from
community
leaders

30. A community leader shall have a duty to receive and have discussed in *kgotla* or similar gatherings matters that may be affecting or may affect the common well-being of children in his or her community.

Support from
central
Government

31. (1) The Minister shall put in place and ensure the implementation of policies and programmes for child well-being.

(2) The Minister shall cause to be implemented child welfare programmes in collaboration with civil society organisations.

Support from
service
providers

32. (1) Every service provider, including Government, shall discharge its duties to children and to the communities they live in with diligence, fairness, respect for people's dignity and worth, and without discrimination or being swayed by personal interest.

(2) The Minister shall cause to be put in place such programmes as are necessary to build the capacity of service providers to enable them to better discharge their duties.

(3) Social workers shall, in *kgotla* or similar gatherings, bring, to the attention of parents and community leaders, matters which are promoting or adversely affecting the well-being of children.

(4) A social worker shall advise communities on matters that must be referred to a Village Child Protection Committee.

(5) Every public health worker shall render health and child development advice to adolescents and parents.

(6) Every service provider shall account, through *kgotla* and other similar gatherings to members of the community for which she or he is officially responsible, on the discharge of her or his duties in the promotion of child survival, development, participation, and protection.

(7) A service provider who abuses a child in any manner whatsoever shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than six months but not more than twelve months, or both.

(8) A service provider convicted under this section shall be barred from working directly with children for a period of ten years.

33. (1) There is hereby established, for every community, a committee to be known as a Village Child Protection Committee (referred to in this Act as the “Village Child Committee”).

Establishment
of Village
Child
Protection
Committees

(2) The composition, functions and powers of the Community Committees shall be as set out in the First Schedule.

PART VI – *Children’s Consultative Forum*

34. (1) There is hereby established a body to be known as the Children’s Consultative Forum (referred to in this Act as “the Forum”).

Establishment of
Children’s
Consultative
Forum

(2) The composition, functions and powers of the Forum shall be as set out in the Second Schedule.

PART VII – *National Children’s Council*

35. (1) There is hereby established a body to be known as the Botswana National Children’s Council, (referred to in this Act as “the Council”).

Establishment
of National
Children’s
Council

(2) The composition, functions and powers of the Council shall be as set out in the Third Schedule.

PART VIII – *Children’s Courts*

36. (1) For the purposes of this Act, every magistrate’s court shall be a children’s court.

Establishment
and jurisdiction
of children’s
court

(2) A children’s court shall adjudicate any matter involving —

- (a) the holding of an investigation in respect of a child alleged to be in need of protection;
- (b) an application for a protection order;
- (c) an application for foster care or adoption;
- (d) the neglect, ill-treatment, abuse or exploitation of a child;
- (e) the hearing and determination of charges against children aged between 14 and 18 years;
- (f) the removal or abduction of a child from Botswana; and
- (g) any other matter which may be conferred upon it by this Act or any other law.

(3) Nothing in this Act shall be construed as limiting the inherent jurisdiction of the High Court as upper custodian of all children.

37. (1) Every magistrate shall be a presiding officer of a children’s court.

Officers of
children’s court

(2) Where, in any area, there is no magistrate, the district commissioner or the district officer of the administrative district shall preside over matters involving children.

(3) The Chief Justice may assign a magistrate as a dedicated presiding officer of a children’s court.

	(4) The Director of Public Prosecutions shall assign, to a children's court, an officer (in this Act referred to as "a children's court assistant"), who, at any proceedings of a children's court, shall — (a) adduce any available evidence relevant to the proceedings; and (b) generally assist the court in performing its functions under this Act. (5) A probation officer shall be an officer of a children's court and shall be present at any sitting of a children's court. (6) There shall be attached, to every children's court, a clerk of the court, who shall perform the same functions as those of a clerk of a magistrate's court.
Application of Magistrates' Courts Act and rules	38. Except 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 the — (a) appointment and functions of officers; (b) issue and service of process; (c) conduct of proceedings; (d) execution of judgment; and (e) 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 children's court.
Sitting of children's court	39. (1) A children's court shall be held informally and shall sit in a room other than that in which any other court ordinarily sits. (2) No person shall be present at any sitting of a children's court except — (a) officers and members of the court; (b) the child concerned and his or her parents, other relatives or guardian; (c) the social worker concerned in the case; and (d) such other person as the court may specially authorise to be present.
Protection orders which children's court may make	40. (1) A children's court may make the following child protection orders — (a) a care order being an order to care for a child or place a child under care; (b) an adoption order; (c) a supervision order, being an order placing a child, a parent or guardian, or both a child and parent, other relative or guardian under the supervision of a social worker or such other person as may be designated by the court; (d) an interim supervision order, being an order to protect a child pending the determination of a matter; (e) an interdict; (f) an order that a child remain in, be removed from, or be returned to, the care of a person designated by the court; (g) an order limiting access, to a child, of such person as the court shall name, or allowing access, to a child, of such person as it may name; (h) an exclusion order, being an order to exclude a person from having contact with a child; (i) a writ of <i>mandamus</i>; and (j) any other order that will protect a child from harm or advance his or her well-being.

- (2) Without derogating from the generality of the provisions of subsection (1) (j), the children's court may make an order —
 - (a) to return, to any child who has been dispossessed of any inheritance, such inheritance; or
 - (b) to return, to the estate of any deceased person, any portion thereof to which the child is or may be a beneficiary.
- (3) Where the person has disposed of the said inheritance or portion of a deceased's estate to which a child is or may be a beneficiary, the court shall order that person to reimburse, to the child, an amount equivalent to the value of the said inheritance or portion.

PART IX – Commissioners of Child Welfare

- 41.** (1) Every magistrate shall be a commissioner of child welfare (referred to in this Act as a “commissioner”).
- (2) Where, in any area, there is no magistrate, the district commissioner or the district officer of the administrative district shall be a commissioner.
- (3) A district commissioner or district officer acting in the capacity of a commissioner may receive, from any person, a report regarding the neglect, ill-treatment or exploitation of any child, including a child in foster care.
- (4) Where the commissioner acting under subsection (3) receives a report, he or she shall cause a social worker to investigate the allegation which is the subject matter of the report.
- (5) The social worker shall, upon completing his or her investigations, submit a written report to the commissioner, containing his or her recommendations regarding what action should be taken in respect of the child.
- (6) The commissioner shall take such action as he or she considers appropriate in the circumstances.

Commissioners
of child
welfare

PART X – Children in Need of Protection

- 42.** For the purposes of this Act, a child in need of protection means a child —
- (a) who has been abandoned, neglected, ill-treated or exploited and —
 - (i) no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or
 - (ii) his or her parents or other relatives have been found but are unwilling or unable to care for the child;
 - (b) who has no parent, other relative or guardian, or has a parent, relative or guardian who does not or is unable to care for the child or exercise proper control over the child due to mental or physical incapacitation;
 - (c) whose parent, other relative or guardian is imprisoned, in detention, or is in any other way displaced;
 - (d) who has a disability and is subjected to discrimination or is deprived of proper parental care as a result of that disability;

Child in need of
protection

Reporting case
of child in need
of protection

- (e) who heads a household or lives in a household headed by a child;
- (f) who displays behaviour which cannot be managed by the parent, other relative, guardian or other person having custody or control of the child;
- (g) who is involved in work which is harmful to his or her emotional, physical, psychological, social or educational development or well-being;
- (h) who is in the custody or care of a person who is suspected, by a social worker or police officer, of committing or having committed a sexual or other offence against a child, or has been convicted of such an offence, which offence causes or has caused the child physical, emotional or psychological harm;
- (i) who frequents the company of an immoral or violent person, or is otherwise living in circumstances calculated to cause or conduce to that child's seduction, prostitution or corruption;
- (j) who is displaced as a result of war, civil disturbance or natural disaster and is without parental care and support;
- (k) who is involved in armed conflict; or
- (l) who is in any other situation or circumstance which is or is likely to adversely affect the child's physical, emotional, psychological or general well-being.

43. (1) Where any person has reasonable cause to believe that a child is in need of protection, that person shall immediately make a report to a social worker or a police officer in the district in which the child is resident.

(2) A social worker or police officer to whom a report has been made under subsection (1) shall immediately investigate the allegation.

(3) For purposes of the investigation under subsection (2), the social worker or police officer shall interview the person making the report as well as the child concerned.

(4) The social worker or police officer shall first seek the permission of the child's parent, other relative or guardian before interviewing the child.

(5) If the social worker or police officer believes, on reasonable grounds, that the investigation would be jeopardised or the child may be exposed to harm should the child's parents or guardian know about the investigation, the social worker or police officer shall interview the child without informing the child's parent, other relative or guardian.

(6) If the social worker is satisfied, following an investigation under this section, that a child is a child in need of protection, the social worker shall compile a report and submit it to the children's court.

(7) The social worker's report shall contain his or her recommendations regarding the manner in which the child should be dealt with.

(8) Where the social worker has reasonable cause to believe that a criminal offence has been perpetrated against the child, the social worker shall immediately report the case to the police.

(9) If, on receipt of a report made under subsection (2), a police officer is satisfied that *prima facie* an offence has been committed, the police officer shall investigate the alleged offence and forward the docket to the Director of Public Prosecution who shall take such steps as are appropriate in respect of the matter.

(10) A person who makes a report under this section may do so anonymously.

(11) No action shall lie against any person who makes a report in good faith but whose report does not reveal the commission of any offence under this Part in respect of a child.

(12) The police shall accord effective protection to any person who, having reported a case under this section or any other section of this Act, is threatened or harassed by a person so reported.

(13) Any person who, without reasonable cause, fails to report a case of a child in need of protection shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000.

44. (1) Where a social worker or police officer acting under section 43 believes, on reasonable ground that the child is likely to suffer harm if not immediately removed to a place of safety, the social worker or police officer may —

- (a) enter the place where he or she believes the child to be;
- (b) search the place to find the child; and
- (c) immediately remove the child to a place of safety.

(2) The social worker or police officer acting under subsection (1) shall do so with such assistance and using such force as is necessary or reasonable in the circumstances.

(3) Where a social worker or police officer moves a child to a place of safety other than the child's usual place of residence, the social worker or police officer shall immediately take steps or cause steps to be taken to contact and inform the child's parent, other relative or guardian —

- (a) that the child has been moved to a place of safety; and
- (b) the location thereof.

(4) Where the child's parent, other relative or guardian cannot be contacted, the social worker or police officer shall immediately make, or cause to be made, arrangements for the care of the child until an application can be made to court under this Part in respect of the child.

(5) Any person who hinders or obstructs a social worker or police officer in the exercise of the powers conferred on him or her under this section shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P15 000, or to imprisonment for a term of not less than six months but not more than twelve months, or both.

(6) The provisions of this section shall not be construed as preventing the child's parent, other relative or guardian from resuming care of the child, or as affecting existing parental rights in respect of the child.

45. (1) A child alleged to be a child in need of protection shall be brought before the children's court by a social worker or police officer by way of a written application to the children's court in the district in which the child resides.

(2) The application shall —

- (a) be filed with the court;
- (b) specify the order sought;
- (c) state the grounds upon which it is made; and
- (d) any other information as the Minister may prescribe.

Children
needing
immediate
protection

Application
for protection
order

(3) The clerk of court of the children's court shall fix a time and date of hearing for an application made under subsection (1) as soon as the application is filed, taking into account the principle that it is in the best interests of the child that the application be heard as early as possible.

(4) The applicant shall, as soon as practicable after the application is filed —

(a) personally serve a copy of it on the child's parents, other relative or guardian, or, if this is not possible, serve the notice by leaving a copy thereof at the parents', other relative's or guardian's residential address or by posting it to the parents', other relative's or guardian's last known address; and

(b) inform the child about the application.

(5) The copy of the application shall set out the date and place of the hearing.

46. The child's parents, other relative or guardian shall be the respondents to the application.

47. (1) The children's court may hear and decide the application in the absence of the child's parents, other relative or guardian if —

(a) the parents, other relative or guardian have been given reasonable notice of the hearing and fail to attend or continue to attend the hearing; or

(b) it is satisfied that it was not practicable to give the parents, other relative or guardian notice of the hearing.

(2) The children's court may hear and decide the application in the child's absence if the child is unable, due to ill-health or other reasonable cause, to attend or continue attending the hearing.

(3) The court shall not decide the application without taking into account any views expressed by the child.

(4) The provisions of this section shall not be construed as limiting the jurisdiction of the court to exclude a person from a proceeding.

48. (1) Where a children's court is satisfied that a child is a child in need of protection, it shall make a protection order in respect of that child.

(2) An order made hereunder may also specify that the child be placed under the supervision of a social worker.

(3) A social worker may, during the period in which a child is placed under his or her supervision, and shall, on the termination thereof, furnish, to the court which made the order, a report of the behavior, progress and welfare of the child.

(4) Before making a protection order granting long-term guardianship of a child, the court shall satisfy itself that —

(a) there is no parent, other relative or guardian able and willing to care for and protect the child within the foreseeable future; or

(b) the child's need for emotional security will be best met in the long-term by making the order.

(5) The court shall not grant long-term guardianship of a child to a person who is not a member of the child's family unless the child is already in custody or guardianship under a protection order.

Respondents
to application

Hearing in
absence of
the parties

Making of
protection order

49. A protection order shall indicate its duration, which duration shall not extend beyond the child's eighteenth birthday.

Duration of protection order

50. The parent, other relative or guardian of a child may file an application with a children's court on the grounds that he or she is unable to protect and care for that child, or is unable to control the child and if the parent, other relative or guardian satisfies the court that —

Parent may apply for protection order

- (a) it is expedient to deal with the child as a child in need of protection; and
- (b) the parent, other relative or guardian understands the results which may follow, and consents to the making of an order under section 48, the court may make an order under that section in relation to the child.

51. (1) A care agreement is an agreement entered into between the parents, other relative or guardian of a child, and the person or institution in whose care the court places such child.

Care agreements

(2) The concerned parties shall take the child's views into account in drawing up the care agreement unless the child is unable to form and express a view on account of his or her age and level of maturity or understanding.

(3) A care agreement shall be signed by the parties thereto and shall set out —

- (a) the name of the person or institution in whose care the child is to be placed;
- (b) the period of the placement;
- (c) the location of the place of placement;
- (d) the arrangements regarding contact between the child and the child's parents, other relative or guardian;
- (e) such other matter as may be prescribed.

(4) If it is in the best interests of the child to do so, a care agreement can be extended for such period as the parties thereto, with the leave of the children's court, may agree.

(5) A care agreement shall be reviewed at such intervals as the Minister may prescribe to ensure that the child's best interests are taken account of as he or she matures, or as the child's or the child's parents, other relative's or guardian's circumstances change.

52. The parent, other relative or guardian and such other persons as the situation demands shall give, to the child with disabilities, such parental care, special assistance or care as will —

Children with disabilities

- (a) ensure the dignity of the child;
- (b) promote the child's self esteem and self-reliance; and
- (c) enable the child to actively participate in social, cultural, religious and educational activities subject to the child's mental and physical capabilities.

53. The Minister shall provide or cause to be provided, for refugee and displaced children, such basic social services as are necessary for their survival or sustenance.

Refugee and displaced children

Rehabilitation of
abused children

54. The Minister shall cause to be put in place programmes and rehabilitative measures, including community-based counselling and other forms of psychosocial support, to reintegrate abused or exploited children.

Register of child
abusers

55. (1) The Head of the Department responsible for children's affairs (referred to in this Part as "the Director") shall open and maintain a register of service providers and other persons who have been convicted of any offence under this Part, and any service provider or person whose name appears in the register shall not be employed by any person who has children in their care and, in the case of an institution, the licence issued to that institution shall be revoked.

(2) In the register shall be entered such particulars as are required by this Act or such further particulars as the Minister may, by regulations, prescribe.

(3) Any person may, upon payment of the prescribed fee, and in accordance with any conditions which may be prescribed, consult, inspect or make a copy of, or obtain an extract from any register referred to in this section.

(4) Entries made in the register shall be a permanent record and may be removed only in accordance with such conditions, and in such manner, as may be prescribed.

PART XI – Offences

Neglect or ill-
treatment of
children

56. (1) Any parent, other relative or guardian of a child or any other person having the custody of a child, who neglects, ill-treats or exploits the child or allows or causes that child to be neglected, ill-treated or exploited shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P20 000, or to imprisonment for a term of not less than six months, but not more than two years.

(2) For the purposes of this section, a child shall be deemed to have been neglected if the parent, other relative or guardian or any other 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 that child physical, mental or psychological distress or harm.

(3) A parent, other relative, guardian, or other person in whose custody a child is, who misuses any money given to him or her for the child's support shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term not exceeding three months but not more than six months, or both.

Corruption of
children

57. (1) A parent, other relative or other person having custody of a child who —

- (a) induces, coerces or encourages any child to seduce any person or to engage in prostitution;
- (b) induces, coerces or encourages any person to seduce, prostitute or cause the seduction, or prostitution of any child;

- (c) induces, coerces or encourages a child to commit any other sexually immoral act;
- (d) abducts a child or induces, coerces or encourages any person to abduct a child for purposes of corrupting the child in any manner referred to in this subsection;
- (e) induces, coerces or encourages any person to cause a child or any other person to do any act referred to in this subsection shall be guilty of an offence and shall be sentenced to a fine of not less than P20 000 but not more than P50 000, or to imprisonment for a term of not less than two years but not more than five years, or both.

(2) For the purposes of this section, a person shall be deemed to have caused the seduction, abduction or prostitution of a child if that person knowingly allows the child to consort with or enter or continue in the employment of a prostitute or person of known immoral character.

(3) Any person who is not a parent, other relative or other person having custody of a child, but does any act referred to in subsection (1) commits an offence and shall be liable to the penalties set out in that subsection.

58. (1) No person shall expose a child to pornographic material, make such material available to a child, or involve a child in the making of such material.

Exposing children to pornography

(2) No person shall, in any form or manner, store, keep or distribute any indecent images of a child depicting any form of illegal sexual activity against a child.

59. No person shall encourage, force or allow a child to cohabit with any person in a relationship of a sexual nature.

Cohabitation with children prohibited

60. No person shall expose a child to the use or influence of narcotic or intoxicating drugs or alcohol, neither shall any person use a child in the production or trafficking of such substances.

Exposing children to narcotics, etc.

61. (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment.

Cruel treatment or punishment

(2) No person shall subject a child to correction which is unreasonable in kind or in degree relative to the age, physical and mental condition of the child and which, if the child by reason of tender age or otherwise is incapable of understanding the purpose and fairness thereof.

(3) The provisions of this section shall not be construed as prohibiting the corporal punishment of children in such circumstances or manner as may be set out in this Act or any other law.

(4) The Minister shall cause to be put in place parental guidance programmes aimed at developing the capacity of parents to discipline and guide their children appropriately.

62. (1) Subject to section 61 (3), and section 90, every child has a right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.

Harmful social, cultural and religious practices

(2) A child shall not be subjected, by any person, to —

- (a) a forced marriage;
- (b) a child betrothal;
- (c) genital mutilation or female circumcision; or

	(d) any other cultural rite, custom or tradition which may inflict physical, emotional or psychological pain or harm to the child, or otherwise violate or endanger his or her bodily integrity, life, health, dignity, education or general well-being. (3) Unless it is in the interest of the child, no person shall circumcise a male child except where — (a) the circumcision does not expose the child to any harm and does not conflict with any regulations made under this or any other Act; (b) the circumcision is performed for medical reasons on the recommendation of a medical practitioner; and (c) proper counselling of the child is obtained, subject to the child's age, maturity and level of understanding. (4) A child above the age of 16 may be circumcised only if he consents thereto, has received proper counselling, and it has been certified by a medical practitioner that the procedure is unlikely to cause him any harm taking into consideration his maturity and state of health. (5) Any person who coerces, pressures or deludes a child into participating in any of the practices referred to in this section shall be guilty of an offence and liable to a fine of not less than P10 000 but not more than P30 000, or to imprisonment for a term of not less than 12 months but not more than three years, or both.
Penalty	63. A person who contravenes the provisions of sections 59 to 63 shall be guilty of an offence and liable to a fine of not less than P30 000 but not more than P50 000, or to imprisonment for a term of not less than seven years but not more than ten years, or both.
Where parent, etc. convicted of an offence	64. (1) Where a parent, other relative or guardian or other person having custody of a child, is convicted under this Act, a social worker shall, within 14 days of such conviction, apply to a children's court for an order to place the child into alternative care. (2) A person who is found guilty of abusing or neglecting a child shall not have access to the child unless it is in the best interests of the child for access to the child to be permitted. (3) A person who is permitted access to a child that he or she has abused or neglected shall have such access in such manner as may be prescribed.

PART XII – *Alternative Care of Children in Need of Protection*

Alternative care	65. A child is in alternative care if the child has been placed in foster care or in a child welfare institution in accordance with a protection order.
Protected child	66. (1) A child in need of protection who has been placed in alternative care or a place of safety under this Act is a protected child. (2) Where a person in whose care and custody a protected child changes residence, that person shall immediately, by notice in writing, inform the social worker in the district in which the child resides, indicating the physical address to which he or she has moved with the child.

(3) Where a protected child dies, the person in whose custody the child was at the time of his or her death shall immediately give the social worker and the police in that area notification of the death, and the social worker shall make the necessary arrangements for the burial of the child.

(4) A person in whose custody a protected child is shall not travel outside Botswana with that child for purposes of raising funds or for any other purpose without the prior written approval of the Minister.

(5) Any person who contravenes the provisions of subsection (4) shall be guilty of an offence and liable to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than six months but not more than twelve months, or both.

67. (1) Where a commissioner has reasonable grounds to believe that —

(a) a protected child is being kept; or

(b) any child is being kept from his or her parents, other relatives or guardian in surroundings or circumstances which are not in the best interest of the child,

the commissioner shall cause an enquiry to be made into the conditions in which the child is being kept.

(2) Where, upon enquiry, the commissioner is satisfied that the conditions in which the child is being kept are not in the best interest of the child, the commissioner shall, by notice in writing, direct the parents, other relative or guardian of that child to make such provision, for the care and custody of the child, as the commissioner considers appropriate.

(3) The commissioner shall, in the notice, specify the time within which such provision shall be made.

(4) Where the address or place of residence of the parents, other relatives or guardian of the child is unknown, or where, notice having been given under subsection (2), the parents, other relative or guardian of the child have failed, within the time specified in the notice, to make appropriate provision for the care and custody of the child, the child shall be dealt with in the manner provided for in section 43.

68. (1) A social worker shall, from time to time, visit and inspect any protected child and the premises in which that child is kept in order to ensure the proper care and maintenance of the child.

(2) A commissioner may, at any time, direct that a protected child, or a child referred to in section 67 who is kept within that commissioner's district be medically examined by a Government medical officer.

(3) Any person who, having the custody of a child, refuses to allow the inspection or examination authorised under this section, and any person who hinders the carrying out of any such inspection or examination shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than six months but not more than twelve months, or both.

Duties of
Commissioner
in connection
with protected
children

Visiting and
examination of
children

PART XIII – *Foster care*

Foster care	69. (1) A child is in foster care if the child has been placed in the care of a person who is not the parent, other relative or guardian of the child by an order of the children's court. (2) A child shall not be placed in foster care unless the children's court has, in accordance with sections 42 and 43, satisfied itself that the child concerned is a child in need of protection.
Who may foster a child	70. (1) The court shall not make an order for the foster care of a child to a person who — (a) is not willing or able, emotionally, physically, financially or otherwise, to foster a child; (b) has not been assessed by a social worker to be so able; or (c) has been convicted of an offence under this Act or any other law or is suspected, on reasonable ground, of committing or having committed, such offence. (2) Any of the following persons may apply to the Minister, in such manner as may be prescribed, to foster a child in need of protection — (a) a husband and his wife jointly; (b) such other person as the children's court considers a fit and proper person to foster a child, and will be able to nurture and care for the child in a stable environment.
Determination of placement of child in foster care	71. (1) Before a children's court places a child in foster care, the court shall consider a report by a social worker regarding the — (a) general conduct, home environment, cultural, religious and linguistic background, school records and medical history (if any) of the child; (b) availability of a person with a similar background to that of the child who is willing and able to provide foster care to the child; and (c) suitability of the person willing and able to foster the child, keeping in mind the necessity to ensure the safety and general well-being of the child. (2) In placing a child in foster care, a children's court shall ensure that the child is placed with a person whose cultural, religious and linguistic background is similar to, or the same as, that of the child unless such person is not readily available or willing to provide foster care to the child. (3) A children's court shall not make an order placing a child in the care of any person who — (a) has been accused or convicted of an offence under this Act, or of an offence, under any other law, involving children; or (b) the report of the social worker reveals to be otherwise unsuitable to foster a child.
Number of children to be placed in foster care per household	72. No more than three children may be placed in foster care with any person except where — (a) the children are siblings or are related; or (b) the court considers this for any other reason to be in the best interests of all the children.

73. A children's court shall order a child to be placed in foster care for such period as the court considers to be in the best interests of the child.	Duration of foster care placement
74. (1) A social worker shall visit a child in foster care at such intervals as the children's court may specify in the placement order, and make a report thereon.	Visits by social worker
(2) The report of the social worker shall be filed with the children's court.	
75. Where a children's court placing a child in foster care is satisfied that child's placement with the child's biological parents is possible and is in the best interests of the child, the court shall make an order so providing, and providing that a social worker facilitate the process.	Reuniting child with biological parents
76. (1) The court may, in the best interests of the child, and upon application made to it by the child or other interested party, including a social worker, review either the period of placement or the placement of the child in foster care.	Review of placement of child
(2) An application under subsection (1) may be made, inter alia, where —	
(a) the child in foster care or any other person makes an allegation of child abuse or neglect against a foster parent;	
(b) a foster parent makes an allegation of assault, or similar offence against a child they are fostering; or	
(c) the child or foster parent submits any other reason which the court considers to be a valid reason for the review.	
(3) The court shall, in reviewing the placement or period of placement, take into account the report of a social worker made in terms of section 74.	
77. (1) A foster parent shall have such parental duties and rights, in respect of a child placed in his or her care by a children's court, as the court may specify in its placement order.	Duties and rights of foster parent
(2) An order of the children's court may give parental duties and rights to a foster parent in addition to those normally necessary for a foster parent if —	
(a) the child has been abandoned;	
(b) the child is an orphan; or	
(c) reuniting the child with his or her family is not in the best interests of the child.	
78. The parent, other relative or guardian of a child placed in foster care shall have access or contact with the child only if the children's court considers it to be in the best interests of the child, and upon such terms and conditions as the children's court may specify in the placement or other order.	Rights of biological parent or guardian of child in foster care
79. (1) A children's court may terminate the foster care of a child if it is in the best interests of the child or foster parent to do so.	Termination of foster care
(2) A children's court shall, in terminating the foster care of a child, take into account all relevant factors, including —	
(a) any recommendations made to it by a social worker;	
(b) the bond that exists between the child and the child's biological parent, if the biological parent resumes care of the child;	
(c) the bond that has developed between —	

- (i) the child and the foster parent, and
 - (ii) the child and the family of the foster parent; and
 - (d) the prospects of achieving permanency in the child's life by —
 - (i) returning the child to the child's biological parent,
 - (ii) allowing the child to remain permanently in foster care with the foster parent,
 - (iii) placing the child in any other alternative care; or
 - (iv) the adoption of the child.
- Child in foster care prohibited from leaving Botswana
- 80.** (1) A child placed in foster care may not leave Botswana without the prior written approval of the court.
- (2) The court's approval may stipulate such terms and conditions as the court considers necessary to protect the best interests of the child concerned.

PART XIV – *Children in Conflict with the law*

- Institution of proceedings against a child
- 81.** (1) Any person having reasonable cause to believe that an offence has been committed by a child shall make a report thereof to a police officer in the district in which the offence was alleged to have been committed.
- (2) If, on receipt of a complaint, the police officer is satisfied that *prima facie* an offence has been committed, the police officer shall —
- (a) investigate the alleged crime; and
 - (b) cause a social worker to enquire into, and file a report to, the children's court, on the general conduct, home environment, school records and medical history (if any) of the child.
- (3) The social worker shall, in the report, recommend the best way of dealing with the child.
- (4) After concluding his or her investigations into the alleged crime, the police officer shall refer the docket relating to the child's matter to the Director of Public Prosecution who shall take such steps as are appropriate in respect of the matter.
- Age of criminal responsibility
- 82.** (1) A child under the age of 14 years shall not be presumed to have the capacity to commit a criminal offence unless it can be proved that at the time of committing the offence the child had capacity to know that he or she ought not to do so.
- (2) The relevant date for determining the age of a child who is alleged to have committed an offence shall be the date of the alleged offence.
- Trial of children
- 83.** (1) Subject to section 82, a children's court shall not have jurisdiction to hear and determine any charge against any person other than a person aged between 4 years and 18 years.
- (2) Where a child is charged jointly with a person who is aged 18 years or over, the child shall, subject to the evidence, be given a separate trial from the other accused person.
- (3) Where, having regard to the evidence, a child cannot be tried separately from an offender aged 18 years or over, the trial shall be held in a children's court.

84. The presiding officer of a children's court shall ensure that a child testifying or being cross examined in any case before the court shall not do so in the presence of the perpetrator of the offence.

Protection of
child victims
and witnesses

85. Where a child charged with an offence is tried by a children's court and the court is satisfied of his or her guilt, the court shall, after taking into consideration the general conduct, home environment, school records and medical history (if any) of such child dispose of the case by —

Manner of
dealing with
child charged
with offence

- (a) placing the child on probation for a period of not less than six months or more than three years;
- (b) sending the offender to a school of industries for a period not exceeding three years or until he or she attains the age of 21 years;
- (c) sentencing the child to community service for such period as the court considers appropriate;
- (d) sentencing the child to corporal punishment; or
- (e) sentencing the child to imprisonment.

86. (1) Before making an order for probation under section 85, the court shall explain to the offender in ordinary language, and in the language that the offender understands, the effect of the order and that if he or she fails to comply therewith or commits another offence while on probation, he or she will be liable to be sentenced for the original offence as well as any other penalty which the court may consider fit to impose.

Court to explain
order for
probation to
offender

(2) Where an order for probation is made by a children's court under section 85, the court shall immediately 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 offender may be required by the order to reside.

87. A children's court which has made an order for probation may, upon application made to it by the offender or by the probation officer, vary or cancel the order.

Discharge, etc.,
of order for
probation

88. A children's court shall, in the case of a child who is a repeat offender, sentence that child to imprisonment for such term as the children's court considers appropriate, subject to the provisions of the Penal Code.

Repeat
offenders

89. (1) A child charged with murder shall be tried in the High Court which shall, for purposes of the trial, sit as a children's court.

Cap. 08:01

Capital offences

(2) A child convicted of murder shall not be sentenced to death.

(3) A child charged with a capital offence other than murder shall, subject to the provisions of the Penal Code, be sentenced to imprisonment for such term as the court considers appropriate.

90. (1) A sentence of corporal punishment shall not be more than six strokes.

Corporal
punishment

(2) Corporal punishment shall be inflicted in accordance with the provisions of section 305 of the Criminal Procedure and Evidence Act as read with section 28 of the Penal Code.

91. (1) The Minister shall appoint such number of persons as he or she considers necessary, to be probation officers.

Probation
officers

(2) A person shall not be appointed as a probation officer unless he or she is of good character and qualified in matters relating to child welfare.

(3) The functions of probation officers shall be to —

- (a) make an assessment of the risk posed by a child offender to the community;
- (b) prepare a pre-sentence report for the court setting out relevant personal information about the child offender, an analysis of the offences committed, and a proposal about the manner in which the child should be sentenced;
- (c) devise and carry out any measures for the observation and correction of tendencies to delinquency in children, and for the discovery and removal of any conditions causing or contributing to the delinquency of children;
- (d) supervise or control any child or other person convicted of an offence and placed under the supervision of the probation officer (including children sentenced to community service), in order to change the offender's attitude and behaviour;
- (e) work with any child convicted under this or any other Act both during and after sentence;
- (f) make arrangements for the release, from prison, of any child sentenced to imprisonment and to assist in the resettlement of that child in the community;
- (g) to perform such other appropriate duties as may be conferred on them under this Act or regulations made thereunder.

Appointment of
probation
committee

92. The Minister may appoint a probation committee consisting of such number of persons as he or she 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 connection with probation, as may be prescribed.

Certain
publications
prohibited

93. (1) No person shall publish the name or address of any child before a children's court, or the name and address of any school which that child is or has been attending, any photograph of that child, or any matter likely to lead to the identification of that child or cause the child emotional, psychological or other harm, except with the written permission of the court, or insofar as is required by the provisions of this Act.

(2) No person shall disclose or publish any information relating to the previous convictions, records of finger, palm or foot prints of any child unless authorised under this Act or any other law to do so, or unless ordered by the court to do so.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P5 000 or to a term of imprisonment not exceeding three months, or both.

Access to court

94. Except where otherwise provided in this Act, any of the following persons may bring a matter which falls within the jurisdiction of a children's court before that court —

- (a) a child who is affected by or involved in the matter to be adjudicated;
- (b) any person acting in the interest of the child or on behalf of another person who cannot act in their own name;
- (c) any person acting as a member of, or in the interest of, a group or class of persons; and
- (d) any person acting in the public interest.

- 95.** (1) A party in a matter before a children's court may appoint a legal representative of his or her own choice and at his or her own expense.
- (2) The State shall provide counsel to represent any person involved in proceedings before a children's court if that person cannot afford the cost of legal representation.
- 96.** Any child or his or her parents, other relatives or guardian, who is dissatisfied with any decision or order of a children's 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.

Legal
representation

Appeals and
review

PART XV – *Homes, Schools and Institutions for the Reception of Children*

- 97.** (1) No person shall operate a child welfare institution unless he or she is the holder of a licence authorising him or her to operate such institution.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than six months, but not more than 12 months, or both.
- 98.** An application for a licence shall be made in the prescribed form and shall be submitted to such licensing authority as may be prescribed.
- 99.** (1) On receipt of an application made under section 98, the licensing authority shall, as soon as practicable, and at the expense of the applicant, publish or cause to be published, a notice of the application in two consecutive issues of the *Gazette* and of a newspaper circulating in the area in which the applicant intends to carry on business.
- (2) Any person who objects to the issue of a licence in respect of an application advertised under this section shall submit his or her objections and the reasons therefor in writing to the licensing authority within seven days of the second publication of the notice.
- (3) The licensing authority shall meet at least once in each month of the year for the purpose of considering applications submitted to it under section 98.
- 100.** The licensing authority shall, for the purpose of considering an application under section 98, have power to —
- (a) take evidence on oath or affirmation, and for that purpose, to administer oaths and affirmations;
 - (b) summon by notice in the prescribed form, any person to give evidence in respect of such application or to produce any book, plan or document relating thereto;
 - (c) investigate any objection made in respect of the application, or investigate such thing as may be necessary in order to ascertain any of the matters which a licensing authority is required to consider under this Part.

Licence
required to
operate child
welfare
institution

Applications

Notice of
advertisement
of application

Consideration
of applications

Issue of licences

101. (1) Where an application meets the requirements of this Part, the licensing authority shall issue a licence to the applicant containing such conditions as the licensing authority considers appropriate.

(2) The licensing authority shall not issue a licence where the application does not meet the requirements of this Part, or where the licensing authority considers any objections made to the issue thereof to be valid.

(3) The licensing authority shall also not issue a licence to any person who —

(a) has, within a period of two years immediately preceding the date of the application, been convicted of an offence involving child neglect, exploitation or abuse of any kind;

(b) has insufficient funds to meet the needs of the children placed with that person; or

(c) has insufficient funds to operate or maintain the institution for which the licence is sought.

Licences
restricted to
fixed premises

102. A licence issued under this Act shall indicate the premises or area of the country from which the licensee shall operate.

Duration and
renewal of
licences

103. (1) Every licence issued under this Act shall, unless previously renewed or revoked, expire at the end of 12 months.

(2) (a) A licensee shall, one month before the expiry of a licence, apply on the prescribed form for the licence to be renewed.

(b) The licensing authority shall, if the licence has not been revoked, and upon payment of the appropriate fee and any outstanding fines, renew the licence for a further period of one year from the date on which it would otherwise expire.

(3) Where an application for the renewal of a licence is made after the expiry of the licence, the licensing authority may renew the licence for a period of one year upon the payment of a penalty, by the applicant, if the licence expired less than one year before the date of the application for its renewal.

(4) The penalty payable upon an application referred to in subsection (3) shall be a sum equivalent to twice the fee that would have been payable for the period during which the licence had not been renewed.

(5) An application for the renewal of a licence that had expired over a year before the date of the application shall be treated as an application for a new licence.

Suspension and
revocation of
licences

104. (1) Where —

(a) a licensee under this Act is convicted of any offence under this Act or any other law in Botswana;

(b) it would be in the best interests of the children housed by a licensee; or

(c) it would be in the best interests of the inhabitants of a particular area of Botswana,

the licensing authority may suspend or revoke the licensee's licence and may debar that licensee from obtaining another licence for such period as the licensing authority considers appropriate where the licence is revoked.

(2) In the event of the suspension of a licence, the licensing authority may order that such suspension continue until the licensee has complied, to the satisfaction of the licensing authority, with such requirements as the licensing authority may specify.

(3) A licensee shall not be entitled to any refund of fees paid in respect of any licence that has been suspended or revoked in terms of this section.

(4) The licensing authority may suspend a licence pending investigation or cancel the licence of any child welfare institution —

- (a) which has not commenced operations within two years of the grant of the said licence;
- (b) which has ceased to operate; or
- (c) which has commenced business on a licence obtained on false information given in its application.

105. (1) Except where a licensee of a licensed institution operates it personally, the licensee shall appoint a person to be manager of the institution.

Managers of
institutions

(2) A person shall not be appointed under this section if he or she is —

- (a) a minor;
- (b) has, during the preceding two years, been convicted of any offence under this Act; or
- (c) is not, at the time of his or her appointment either —
 - (i) a citizen of Botswana; or
 - (ii) entitled to reside in Botswana in accordance with the provisions of the Immigration Act.

Cap. 25:02

106. (1) Subject to the provisions of this section, a licence issued under this Act shall not be transferred except in the following cases —

Transfer of
licences

- (a) where the licensee is a citizen or wholly citizen-owned company of Botswana, to another citizen or wholly citizen-owned company;
- (b) where the licensee has died, to his or her legal representative;
- (c) where the licensee has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, to his or her trustees;
- (d) in any case where the licensee becomes subject to any legal disability, to his or her legal representative.

(2) An application for the transfer of a licence shall be treated as if it were an application for a new licence and the provisions relating to the procedure and the conditions to be complied with in applying for a new licence shall have effect in respect to an application for the transfer of a licence:

Provided that where the application is made under paragraph (a) of subsection (1), the licensing authority may issue a temporary licence for 90 days to permit the applicant to carry on the business pending the determination of his or her application.

(3) For the purposes of this Act, transferring a licence means issuing it to a person other than the person who holds or has held that licence, or cancelling it in respect of the premises for which it was issued and issuing it for another premises.

Duplicate
licences

107. A licensee whose licence has been lost or destroyed may, on payment of the prescribed fee, obtain a duplicate licence from the licensing authority by which the original licence was issued.

Register of
licences

108. The licensing authority shall keep a register in such form as may be prescribed, containing the particulars of all licences issued in its area.

Display of
licences

109. (1) The licensee shall, on the premises in respect of which the licence is issued, exhibit and keep exhibited, in a conspicuous place on the premises, the licence and a signboard or name plate bearing, in legible characters, the name or style under which the licensee operates.

(2) Whenever the licensee —

- (a) alters the name or style of the licensed institution;
- (b) sells or alienates the licensed institution to another person; or
- (c) sells or alienates the good-will, book-debts or assets of that licensed institution,

notice of the alteration, alienation or sale shall be advertised in two consecutive issues of the *Gazette* and in two consecutive issues of a newspaper circulating in the district in which the licensed institution is operated.

(3) In any case referred to in subsection (2) (a), the licensing authority, if satisfied that the provisions of subsection (2) have been complied with, shall endorse on the licence the alteration in the name or style under which the institution is to be operated.

Authorised
officers

110. (1) The Minister may, by regulations, designate persons to act as authorised officers for the purposes of this section.

(2) An authorised officer shall have power to enter the premises of a licensed institution at any reasonable time; and any member of the Botswana Police Force or the Local Police Force in uniform shall have power to enter the premises of any licensed institution if he or she has reasonable cause to believe that the institution is being operated in contravention of this Act.

(3) An authorised officer empowered to enter premises under subsection (2) may —

- (a) inspect the premises;
- (b) require any person on the premises to furnish any information, including documents, in his or her possession regarding the activities carried out on the premises and the person by whom they are carried on.

(4) A person who obstructs an authorised person exercising any power conferred by this section or who fails to comply with a requirement made by the authorised officer in the exercise of those powers is guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than six months but not more than twelve months, or both.

Establishment
of institutions
for reception
of children

111. (1) Notwithstanding the provisions of this Part, the Minister may establish and maintain any —

- (a) place of safety for the reception of children under this Act;
- (b) children's home for the reception, care and upbringing of children in need of protection; and

- (c) such other place as the Minister may consider necessary for the reception of children under this Act.
- (2) Regulations may provide for the licensing, management, proper maintenance and inspection of any place established under this section.
- (3) The owner, principal or manager of an institution established under this section shall, unless he or she satisfies the Minister that it is undesirable that any more children should be admitted to the institution or otherwise committed to his or her care, be obliged to accept any child who is sent or transferred to his or her institution or otherwise committed to his or her care.

112. An institution licenced or established under this Act which fails, without reasonable excuse, to comply with any regulations or minimum standards prescribed shall be guilty of an offence and shall be sentenced to a fine of not less than P10 000 but not more than P20 000.

Failure to
comply with
regulations or
minimum
standards
imposed

113. (1) Any institution which wishes to travel outside Botswana with children in its care for the purposes of raising funds for that institution for the benefit of those children, or for any other purpose shall not do so without the prior written approval of the Minister.

Travel outside
Botswana by
children in
institution

(2) Any institution which contravenes the provisions of subsection (1) shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000.

PART XVI – *Child Abduction and Trafficking in Children*

114. Any person, including a parent, other relative or guardian of a child, who abducts or sells any child, traffics in children or uses any child to beg, shall be guilty of an offence and shall be sentenced to a fine of not less than P30 000 but not more than P50 000, or to imprisonment for a term of not less than five years but not more than 15 years.

Abduction and
trafficking in
children

PART XVII – *Miscellaneous*

115. Any person who alleges that a right under Part III or any other Part of this Act has been infringed or threatened may petition the court for a remedy.

Enforcement of
rights

116. Any person found guilty of an offence under this Act for which no other penalty is provided shall be liable to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than six months but not more than twelve months, or both.

Offences and
penalty

117. The Minister may make regulations providing for any matter which is to be provided for under this Act, and generally for the better carrying out of the purposes and provisions of this Act.

Regulations

118. The Children’s Act (hereafter referred to “the repealed Act”) is hereby repealed.

Repeal of
Cap. 28:04

119. The Minister may, by Order published in the *Gazette*, amend the Schedules to this Act.

Amendment of
Schedules

120. All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

Savings

Transitional **121.** Notwithstanding the repeal effected under section 118, any matter commenced under the repealed Act shall be deemed to be valid and shall be continued as if the repealed Act and the regulations made thereunder had not been repealed, until the matter is finalised.

FIRST SCHEDULE
(section 33)

Functions of Village Child Committees	1. The functions of Village Child Committees shall be to — (a) educate their respective communities about the neglect, ill-treatment, exploitation or other abuse of children, and to promote, amongst members of those communities, such education; and (b) monitor the welfare of children in their respective communities.
Composition of Village Child Committee	2. (1) A Village Child Committee shall comprise of the following members — (a) the <i>kgosi</i> or <i>kgosana</i> of the community concerned; (b) a social worker; (c) a man and a woman representing parents in that community; (d) a female child representing the female children in that community, and (e) a male child representing the male children in that community. (2) All members of the Village Child Committee, except for the <i>kgosi</i> or <i>kgosana</i> , shall be elected at a <i>kgotla</i> gathering.
Tenure of office	3. A member of the Community Committee shall hold office for two years, and shall be eligible for reappointment.
Disqualification for appointment as Committee member	4. A person who has been convicted of causing any harm to a child or other person under this or any other Act, who has been certified as being mentally disordered, or who has been convicted of an offence involving moral turpitude shall not be appointed as a member of a Village Child Committee.
Chairperson and Vice chairperson	5. The members of a Village Child Committee shall elect, from among their number, a chairperson and a vice chairperson.
Meetings of Committee	6. (1) A Village Child Committee shall meet as often as its business may require, and at such times and places as the Chairperson shall determine. (2) A Village Child Committee shall regulate its own procedure. (3) At any meeting of the Village Child Committee, the Chairperson shall preside, and in his or her absence the Vice-Chairperson; in the absence of both the Chairperson and the Vice-Chairperson, the members of the Village Child Committee present shall elect from among their number, a chairperson for purposes of the meeting. (4) Two thirds of the members of a Community Committee shall form a quorum.

SECOND SCHEDULE
(section 34)

Functions of Forum	1. The Forum shall discuss issues affecting the education, health, safety or general well-being of children, and shall make such recommendations as it considers appropriate to the National Children's Council.
Composition of Forum	2. The Forum shall comprise of ten child representatives from each district whose selection shall be facilitated by the local district council.
Tenure of office	3. Each member of the Forum shall hold office for a term of two years, and shall be eligible for re-selection.

4. (1) A child who has committed a serious offence or has been convicted of a serious offence shall not be appointed as a member of the Forum. Disqualification for appointment to Forum
- (2) For the purposes of this section, “serious offence” means an offence the maximum penalty for which is death, or imprisonment for not less than two years.
- (3) A person who has not attained the age of 18 years shall not be a member of the Forum.
5. The members of the Forum shall elect, from among their number, a Chairperson and a Vice Chairperson. Chairperson and Vice Chairperson
6. (1) At any meeting of the Forum, the Chairperson shall preside, and in his or her absence the Vice-Chairperson; in the absence of both the Chairperson and the Vice-Chairperson, the members of the Forum present shall elect from among their number, a chairperson for purposes of that meeting. Meetings of Forum
- (2) The Forum shall meet once a year but may, where it is necessary to do so, hold an emergency meeting.
- (3) Every meeting of the Forum shall be convened by the Ministry responsible for children.
- (4) The Department responsible for children shall, at every meeting of the Forum, provide secretarial services.

THIRD SCHEDULE (section 35)

1. The functions of the Council shall be to — Functions of the Council
- (a) coordinate, support, monitor and ensure the implementation of sectoral Ministries’ activities relating to children;
 - (b) guide sectoral Ministries’ interventions as they relate to or impact on children;
 - (c) advocate for a child-centred approach to legislation, policies, strategies and programmes; and
 - (d) advocate for a substantive share of national resources to be allocated to children related initiatives and activities;
2. For the purpose of carrying out its functions under this Act, the Council shall have power to do all such things as appear to it to be necessary or incidental to the proper discharge of its functions, and may, in that behalf, act in association with other persons or bodies who are knowledgeable about children’s rights. Powers of the Council
3. The Council shall comprise of the following members — Composition of Council
- (a) the Permanent Secretary, Ministry of Local Government or his or her representative;
 - (b) the Permanent Secretary, Ministry of Labour and Home Affairs or his or her representative;
 - (c) the Permanent Secretary, Ministry of Education or his or her representative;
 - (d) the Attorney General, or his or her representative; and
 - (e) six other persons, in their personal capacities, appointed by the Minister, in consultation with the Chairperson, from among persons and non – governmental bodies who represent children’s interests and rights.

Chairperson of Council	4. (1) The Council shall have a Chairperson who shall be appointed by the Minister. (2) The Chairperson shall be a person, outside Government, who is well respected and well versed in the area of children's rights. (3) The members of the Council shall appoint, from among their number, a Vice-Chairperson. (4) A member of the Council shall hold office for a term not exceeding four years and shall be eligible for re-appointment for another four year term upon the expiry of his or her term of office.
Disqualification for appointment as a Council Member	5. No person shall be appointed as a Council member, nor shall any person be qualified to hold office who has within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted — (a) in Botswana, of a criminal offence, especially one involving causing harm to a child, or (b) outside Botswana, of an offence, especially one involving causing harm to a child which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.
Vacation of office	6. A Council member shall vacate his or her office — (a) if he or she becomes disqualified in terms of paragraph 5 of this Schedule to hold office as a Council member; (b) if he or she is absent from three consecutive meetings of the Council without reasonable excuse; (c) upon his or her death; (d) upon the expiry of one month's notice, given in writing to the Minister, of his or her intention to resign his or her office; (e) upon the expiry of such time as the Minister may specify in writing, notifying him or her of his or her removal from office by the Minister; (f) if he or she becomes mentally or physically incapable of performing his or her duties as a member of the Council; or (g) if he or she is convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.
Removal and suspension from office by Minister	7. (1) The Minister may, if he or she is satisfied that a Council member has acted improperly as such member, or is mentally or physically incapable of performing his or her duties efficiently, require that member, in writing, to vacate his or her office within such time as he or she may specify. (2) The Minister shall, in writing, suspend from office a Council member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Council.
Filling of vacancies	8. On the death of, or the vacating of office by, a Council member, the Minister shall appoint a person to take the place of the member who died or vacated his or her office until the expiry of the period during which such member would have otherwise continued in office.
Secretariat	9. The Ministry responsible for children shall act as the Council's Secretariat.

10. (1) Subject to the provisions of this Act, the Council shall regulate its own procedure and shall meet every quarter at such places, times and days as the Chairperson may determine.

(2) Meetings of the Council shall be called by the Chairperson; and the Chairperson may also call a special meeting of the Council within seven days of receipt of a request in writing of at least three members of the Council for such special meeting to be held.

(3) Two thirds of the members of the Council shall form a quorum.

(4) At any meeting of the Council, the Chairperson shall preside, and in his or her absence the Vice-Chairperson; in the absence of both the Chairperson and the Vice-Chairperson, the members of the Council present shall elect from among their number, a Chairperson for purposes of that meeting.

(5) The decisions of the Council shall be by a majority of votes and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(6) Minutes of each meeting of the Council shall be kept and shall be confirmed at a subsequent meeting of the Council.

11. The Council's funds shall consist of monies allocated to it from the Consolidated Fund.

12. A Council member shall be paid such allowance and such travelling expenses, incurred in connection with his or her service on the Council, as the Minister may determine.

13. All documents made by, and all decisions of, the Council may be signified under the hand of the Chairperson of the Council, or any member of the Council generally or specially authorised in that behalf.

14. (1) The Council shall, within a period of six months of the end of the financial year, or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report on its operations during such year.

(2) The Minister shall, within 30 days of him or her receiving the Council's report, lay such report before the National Assembly.

Council's funds

Payment of
Members

Signification of
documents

Annual Report