THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

As amended by

Children's Amendment Act 41 of 2007

LEGEND:

- Act and amendment Act in black
- Department of Social Development regulations in red
- Department of Social Development forms in green
- Dept of Justice regulations in blue
- Dept of Justice forms in purple

CHILDREN'S
ACT 38 OF 2005

[ASSENTED TO 8 JUNE 2006]

[Date of commencement of section 1 up to and including 11, 13 up to and including 21, 27, 30, 31, 35 up to and including 40, 130 up to and including 134, 305(1)(b), 305(1)(c), 305(3), 305(4), 305(5), 305(6), 305(7), 307 up to and including 311, 313, 314, 315 and the second, third, fifth, seventh and ninth items of Schedule 4: 1 July 2007]

(English text signed by the President)

As amended by

Children's Amendment Act 41 of 2007

ACT

To give effect to certain rights of children as contained in the Constitution; to set out principles relating to the care and protection of children; to define parental responsibilities and rights; to make further provision regarding children's courts; to provide for partial care of children; to provide for early childhood development; to provide for the issuing of contribution orders; to provide for prevention and early intervention; to provide for children in alternative care; to provide for foster care; to provide for child and youth care centres and drop-in centres; to make new provision for the adoption of children; to provide for inter-country adoption; to give effect to the Hague Convention on Inter-country Adoption; to prohibit child abduction and to give effect to the Hague Convention on International Child Abduction; to provide for surrogate motherhood; and to create certain new offences relating to children; and to provide for matters connected therewith.
[Long title substituted by section 1 of Children's Amendment Act 41 of 2007]

Preamble

WHEREAS the Constitution establishes a society based on democratic values, social justice and fundamental human rights and seeks to improve the quality of life of all citizens and to free the potential of each person;

AND WHEREAS every child has the rights set out in section 28 of the Constitution;

AND WHEREAS the State must respect, protect, promote and fulfil those rights;

AND WHEREAS protection of children's rights leads to a corresponding improvement in the lives of other sections of the community because it is neither desirable nor possible to protect children's rights in isolation from their families and communities;

AND WHEREAS the United Nations has in the Universal Declaration of Human Rights proclaimed that children are entitled to special care and assistance;

AND WHEREAS the need to extend particular care to the child has been stated in the Geneva Declaration on the Rights of the Child, in the United Nations Declaration on the Rights of the Child, in the Convention on the Rights of the Child and in the African Charter on the Rights and Welfare of the Child and recognised in the Universal Declaration of Human Rights and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children;

AND WHEREAS it is necessary to effect changes to existing laws relating to children in order to afford them the necessary protection and assistance so that they can fully assume their responsibilities within the community as well as that the child, for the full and harmonious development of his or her personality, should grow up in a family environment and in an atmosphere of happiness, love and understanding,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows:-

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CHAPTER 1

INTERPRETATION, OBJECTS, APPLICATION AND IMPLEMENTATION OF ACT
(ss 1-5)

Interpretation

1. (1) In this Act, unless the context indicates otherwise-

'abandoned', in relation to a child, means a child who-
(a) has obviously been deserted by the parent, guardian or care-giver; or
(b) has, for no apparent reason, had no contact with the parent, guardian, or care-giver for a period of at least three months;

'abuse', in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes-
(a) assaulting a child or inflicting any other form of deliberate injury to a child;
(b) sexually abusing a child or allowing a child to be sexually abused;
(c) bullying by another child;
(d) a labour practice that exploits a child; or
(e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally;
'adopted child' means a child adopted by a person in terms of any law;

'adoption compliance certificate'-
(a) in relation to a convention country, means a certificate issued in terms of Article 23 of the Hague Convention on Inter-country Adoption; or
(b) in relation to a non-convention country, means a similar certificate prescribed in the relevant agreement;

'adoption registrar' means the person designated by the Director-General in terms of section 247 (1);
'adoption service' includes-
(a) counselling of the parent of the child and, where applicable, the child;
(b) an assessment of a child by an adoption social worker in terms of section 230 (2);
(c) an assessment of a prospective adoptive parent by an adoption social worker in terms of section 231 (2);
(d) the gathering of information for proposed adoptions as contemplated in section 237; and
(e) a report contemplated in section 239 (1) *(b)*;

'adoption social worker' means-
(a) a social worker in private practice-
(i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); and
(ii) who is accredited in terms of section 251 to provide adoption services; or
(b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services;

'adoption working agreement', for the purpose of Chapter 16, means a written agreement entered into by a child protection organisation accredited in terms of section 259 in the Republic with an equivalent organisation in another country to facilitate inter-country adoptions between the Republic and the country concerned;

'adoptive parent' means a person who has adopted a child in terms of any law;

'after-care' means the supportive service provided by a social worker or a social service

professional to monitor progress with regard to
the child's developmental adjustment as part of-
(a) family preservation or reunification services;
(b) adoption or placement in alternative care; or
(c) discharge from alternative care;
'alternative care' means care of a child in accordance with section 167;

'area', in relation to-
(a) a metropolitan or local municipality, means the area for which the municipality has been established; and
(b) a district municipality, means those parts of the area for which the municipality has been established which do not fall within the area of a local municipality;

[Definitions of 'after care', 'alternative care' and 'area' inserted by section 3(a) of Act 41 of 2007]

'artificial fertilisation' means the introduction, by means other than natural means, of a male gamete into the internal reproductive organs of a female person for the purpose of human reproduction, including-
(a) the bringing together of a male and female gamete outside the human body with a view to placing the product of a union of such gametes in the womb of a female person; or
(b) the placing of the product of a union of male and female gametes which have been brought together outside the human body, in the womb of a female person;

'assessment of a child' means a process of investigating the developmental needs of a child, including his or her family environment or any other circumstances that may have a bearing on the child's need for protection and therapeutic services;

'assessment of a programme' means a process, conducted by a suitably qualified person, of determining whether the provision and the content of a programme complies with prescribed national norms and standards;
[Definitions of 'assessment of a child' and 'assessment of a programme' inserted by section 3(b) of Act 41 of 2007]

'authorised officer', in relation to any specific act, means a person who is authorised in writing by the presiding officer of the children's court to perform that act;

'Bill of Rights' means the Bill of Rights contained in Chapter 2 of the Constitution;

'care', in relation to a child, includes, where appropriate-
(a) within available means, providing the child with-
  (i) a suitable place to live;
  (ii) living conditions that are conducive to the child's health, well-being and development; and
  (iii) the necessary financial support;
(b) safeguarding and promoting the well-being of the child;
(c) protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards;
(d) respecting, protecting, promoting and securing the fulfilment of, and guarding against any infringement of, the child's rights set out in the Bill of Rights and the principles set out in Chapter 2 of this Act;
(e) guiding, directing and securing the child's education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child's age, maturity and stage of development;
(f) guiding, advising and assisting the child in decisions to be taken by the child in a manner appropriate to the child's age, maturity and stage of development;
(g) guiding the behaviour of the child in a humane manner;
(h) maintaining a sound relationship with the child;
(i) accommodating any special needs that the child may have; and
(j) generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child;

'care-giver' means any person other than a parent or guardian, who factually cares for a child and includes-

(a) a foster parent;
(b) a person who cares for a child with the implied or express consent of a parent or guardian of the child;
(c) a person who cares for a child whilst the child is in temporary safe care;
(d) the person at the head of a child and youth care centre where a child has been placed;
(e) the person at the head of a shelter;
(f) a child and youth care worker who cares for a child who is without appropriate family care in the community; and
(g) the child at the head of a child-headed household;

'child' means a person under the age of 18 years;

'child and youth care centre' means a facility described in section 191 (1);
[Definition of 'child and youth care centre' inserted by section 3(c) of Act 41 of 2007]

'children's court' means a children's court referred to in section 42;

'Child Care Act' means the Child Care Act, 1983 (Act 74 of 1983);

'child-headed household' means a household recognised as such in terms of section 137;
[Definition of 'child headed household' inserted by section 3(d) of Act 41 of 2007]

'child labour' means work by a child which-

(a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
(b) places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development;

'circumcision', in relation to a female child, means the removal of the clitoris by any means;

'clerk of the court' means clerk of the court of the relevant magistrate's court; means the person appointed by the Director-General: Justice and Constitutional Development as the clerk of the children's court of the relevant magistrate's court;

'cluster foster care' means the reception of children in foster care in accordance with a cluster foster care scheme registered by the provincial head of social development;

'cluster foster care scheme' means a scheme providing for the reception of children in foster care, managed by a nonprofits organisation and registered by the provincial head of social development for this purpose;
[Definitions of 'cluster foster care' and 'cluster foster care scheme' inserted by section 3(e) of Act 41 of 2007]

'commercial sexual exploitation', in relation to a child, means-

(a) the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person; or
(b) trafficking in a child for use in sexual activities, including prostitution or pornography;

'commissioning parent' means a person who enters into a surrogate motherhood agreement with a surrogate mother;

'contact', in relation to a child, means-

(a) maintaining a personal relationship with the child; and
(b) if the child lives with someone else-
    (i) communication on a regular basis with the child in person, including-
        (aa) visiting the child; or

(bb) being visited by the child; or

(ii) communication on a regular basis with the child in any other manner, including-

(aa) through the post; or

(bb) by telephone or any other form of electronic communication;

'contribution order' means an order referred to in section 161, and includes a provisional contribution order referred to in section 162 (2);

'convention country' means, in accordance with the wording of Article 45 of the Hague Convention on Inter-country Adoption, any country in which the Convention has entered into force, except for a country against whose accession the Republic has raised an objection under Article 44 of the Convention;

'delegation', in relation to a duty, includes an instruction to perform the duty;

'Department' means the national department responsible for the provision of social development services;

'designated child protection organisation' means an organisation designated in terms of section 107 to perform designated child protection services;

'designated child protection service' means a child protection service referred to in section 105;

[Definitions of 'designated child protection organisation' and 'designated child protection service' inserted by section 3(f) of Act 41 of 2007]

'designated social worker' means a social worker in the service of-

(a) the Department or a provincial department of social development;

(b) a designated child protection organisation; or

(c) a municipality;

'Director-General' means the Director-General of the Department, or where the context indicates the Director-General of another department, that Director-General;

'Divorce Act' means the Divorce Act, 1979 (Act 70 of 1979);

'divorce court' means the divorce court established in terms of section 10 of the Administration Amendment Act, 1929 (Act 9 of 1929);

'drop-in centre' means a facility referred to in section 213;

'early childhood development programme' means a programme referred to in section 91 (3);

'early childhood development services' means services referred to in section 91 (2);

'early intervention programme' means a programme referred to in section 143 (2);

[Definitions of 'drop-in centre', 'early childhood development programme',' early childhood development services' and 'early intervention programme' inserted by section 3(g) of Act 41 of 2007]

'exploitation', in relation to a child, includes-

(a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage;

(b) sexual exploitation;

(c) servitude;

(d) forced labour or services;

(e) child labour prohibited in terms of section 141; and

(f) the removal of body parts;

'family advocate' means a family advocate appointed in terms of the Mediation in Certain Divorce Matters Act;

'family member', in relation to a child, means-
(a) a parent of the child;
(b) any other person who has parental responsibilities and rights in respect of the child;
(c) a grandparent, brother, sister, uncle, aunt or cousin of the child; or
(d) any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship;

'foster care' means care of a child as described in section 180 (1) and includes foster care in a registered cluster foster care scheme;

'foster parent' means a person who has foster care of a child by order of the children's court, and includes an active member of an organisation operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child;
[Definitions of 'foster care' and 'foster parent' inserted by section 3(h) of Act 41 of 2007]

'gamete' means either of the two generative cells essential for human reproduction;

'genital mutilation', in relation to a female child, means the partial or complete removal of any part of the genitals, and includes circumcision of female children;

'guardian' means a parent or other person who has guardianship of a child;

'guardianship', in relation to a child, means guardianship as contemplated in section 18;

'Hague Convention on Inter-country Adoption' means the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption signed at the Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 1 to this Act;

'Hague Convention on International Child Abduction' means the Hague Convention on the Civil Aspects of International Child Abduction signed at the Hague on 25 October 1980, a copy of the English text of which is set out in Schedule 2 to this Act;

'High Court' means the High Court contemplated in section 166 of the Constitution;

'in need of care and protection', in relation to a child, means a child who is in a situation contemplated in section 150 (1);

'labour inspector' means a labour inspector appointed under section 63 of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);

'Maintenance Act' means the Maintenance Act, 1998 (Act 99 of 1998);

'marriage' means a marriage-
(a) recognised in terms of South African law or customary law; or
(b) concluded in accordance with a system of religious law subject to specified procedures,
and any reference to a husband, wife, widower, widow, divorced person, married person or spouse must be construed accordingly;

'MEC for social development' means the member of the Executive Council of a province who is responsible for social development in the province;

'Mediation in Certain Divorce Matters Act' means the Mediation in Certain Divorce Matters Act, 1987 (Act 24 of 1987);

'medical practitioner' means a person registered or deemed to be registered as a medical practitioner under the Health Professions Act, 1974 (Act 56 of 1974) and includes a dentist so registered or deemed to be registered;

'mental illness' means mental illness as defined in the Mental Health Care Act, 2002 (Act 17 of 2002);

'midwife' means a person registered as a midwife under the Nursing Act, 1978 (Act 50 of 1978);
[Definition of 'midwife' inserted by section 3(i) of Act 41 of 2007]

'Minister' means the Cabinet member responsible for social development, or where the context indicates another Minister, that Minister;
'municipality' means a metropolitan, local or district municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), but to the extent that a municipality may or must implement a provision of this Act in or in relation to an area which falls within the area of both a local municipality and a district municipality, 'municipality' in such a provision means the relevant local municipality;
[Definition of 'municipality' inserted by section 3(j) of Act 41 of 2007]

'Municipal Systems Act' means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

'National Child Protection Register' means the register referred to in section 111;

'neglect', in relation to a child, means a failure in the exercise of parental responsibilities to provide for the child's basic physical, intellectual, emotional or social needs;

'nurse' means a person registered as a nurse under the Nursing Act, 1978 (Act 50 of 1978);
[Definition of 'nurse' inserted by section 3(k) of Act 41 of 2007]

'organ of state' means an organ of state as defined in section 239 of the Constitution;

'orphan' means a child who has no surviving parent caring for him or her;

'parent', in relation to a child, includes the adoptive parent of a child, but excludes-
(a) the biological father of a child conceived through the rape of or incest with the child's mother;
(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation; and
(c) a parent whose parental responsibilities and rights in respect of a child have been terminated;

'parental responsibilities and rights', in relation to a child, means the responsibilities and the rights referred to in section 18;

'partial care' means partial care referred to in section 76;
[Definition of 'partial care' inserted by section 3(l) of Act 41 of 2007]

'party', in relation to a matter before a children's court, means-
(a) a child involved in the matter;
(b) a parent;
(c) a person who has parental responsibilities and rights in respect of the child;
(d) a prospective adoptive or foster parent of the child;
(e) the department or the designated child protection organisation managing the case of the child; or
(f) any other person admitted or recognised by the court as a party;

'permanency plan' means a documented plan referred to in section 157 (1);
[Definition of 'permanency plan' inserted by section 3(m) of Act 41 of 2007]

'person unsuitable to work with children' means a person listed in Part B of the National Child Protection Register;

'police official' means any member of the South
African Police Service or a municipal police service appointed in terms of the South African Police Service Act, 1995 (Act 68 of 1995);

'prescribed' means prescribed by regulation;

'presiding officer' means a presiding officer of a children's court designated in terms of section 42;

'prevention programme' means a programme referred to in section 143 (1);
[Definition of 'prevention programme' inserted by section 3(n) of Act 41 of 2007]

'provincial department of social development' means the department within a provincial administration responsible for social development in the province;

'provincial head of social development' means the head of the provincial department of social development;

'psychologist' means a psychologist registered or deemed to be registered as such in terms of the Health Professions Act, 1974 (Act 56 of 1974);

'Public Service Act' means the Public Service Act, 1994 (Proclamation 103 of 1994);

'quality assurance process' means the process referred to in section 211;
[Definition of 'quality assurance process' inserted by section 3(o) of Act 41 of 2007]

'RACAP' means the Register on Adoptable Children and Prospective Adoptive Parents contemplated in section 232;

'regulation' means a regulation made in terms of this Act;

'removal of body parts' means the removal of any organ or other body part from a living person in contravention of the National Health Act, 2003 (Act 61 of 2003);

'residential care programme' means a programme described in section 191 (2) which is or must be offered at a child and youth care centre; and
[Definition of 'residential care programme' inserted by section 3(p) of Act 41 of 2007]

'respondent' means any person legally liable to maintain or to contribute towards the maintenance of a child for whose maintenance, treatment or special needs a contribution order is sought or has been made in terms of Chapter 10;

'school' means-
(a) an independent school registered or deemed to be registered in terms of section 46 of the South African Schools Act, 1996 (Act 84 of 1996); or
(b) a public school contemplated in Chapter 3 of the South African Schools Act, 1996 (Act 84 of 1996);

'secure care' means the physical containment in a safe and healthy environment-
(a) of children with behavioural and emotional difficulties; and
(b) of children in conflict with the law;
[Definition of 'secure care' inserted by section 3(q) of Act 41 of 2007]

'serve', in relation to any notice, document or other process in terms of this Act, means to serve such notice, document or other process in accordance with the procedure provided for the serving of process in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the rules applying to the proceedings of magistrates' courts;

'sexual abuse', in relation to a child, means-
(a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;

(b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
(c) using a child in or deliberately exposing a child to sexual activities or pornography; or
(d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child;

'social service professional' includes a probation officer, development worker, child and youth care worker, youth worker, social auxiliary worker and social security worker who are registered as such in terms of the Social Service Professions Act, 1978 (Act 110 of 1978);

'social worker' means a person who is registered or deemed to be registered as a social worker in terms of the Social Service Professions Act, 1978 (Act 110 of 1978);

'street child' means a child who-
(a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets; or
(b) because of inadequate care, begs or works on the streets but returns home at night;

'surrogate mother' means an adult woman who enters into a surrogate motherhood agreement with the commissioning parent;

'surrogate motherhood agreement' means an agreement between a surrogate mother and a commissioning parent in which it is agreed that the surrogate mother will be artificially fertilised for the purpose of bearing a child for the commissioning parent and in which the surrogate mother undertakes to hand over such a child to the commissioning parent upon its birth, or within a reasonable time thereafter, with the intention that the child concerned becomes the legitimate child of the commissioning parent;

'temporary safe care', in relation to a child, means care of a child in an approved child and youth care centre, shelter or private home or any other place, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell;

'traditional authority' means any authority which in terms of indigenous law or any other law administers the affairs of any group of indigenous people or any other persons resident within an area under the control of a traditional leader;

'this Act' includes-
(a) any regulation made in terms of this Act;

Definitions

1.(1) In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates—
"disciplines" means different professionals working with a person to resolve a common problem or achieve a common goal through continuous intercommunication, re-examination and evaluation;
"Mayor" means the appointed head of a town, city or metropolitan council;
"positive discipline" includes discussing any negative effects of a child's behaviour with him or her;
"registration holder" means the holder of a registration of a partial care facility, an early childhood development programme, a child and youth care centre or a drop-in centre;
"the Act" means the Children's Act, 2005 (Act No. 38 of 2005);
"the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007" means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No.32 of 2007;
"the Criminal Procedure Act, 1977" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977;
"the National Register for Sex Offenders" means the National Register for Sex Offenders established under section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;
"the Social Service Professions Act, 1978" means the Social Service Professions Act, 1978 (Act No. 110 of 1978).

(b) the rules regulating the proceedings of the children's courts in terms of section 52;

CHAPTER I
DEFINITIONS

Definitions

1. *In these Regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates—*

"applicant" *includes any person, institution or body vested with parental authority that applies for assistance under the Hague Convention;*

"apply" *means making a formal written request under the Hague Convention and "application" has a corresponding meaning;*

"Chief Family Advocate" *means the Chief Family Advocate referred to in section 276(1)(a) of the Act;*

"chairperson of the pre-hearing conference" *means the person who sets up and conducts a pre-hearing conference as provided for in section 69(4)(a) of the Act;*

"clerk" *means a clerk of the children's court;*

"court" *means a children's court;*

"day" *does not include a Saturday, Sunday or public holiday;*

"department" *means the Department of Justice and Constitutional Development;*

"Director-General" *means the Director-General of the department, or a person delegated by him or her;*

"facilitator" *means a facilitator of a family group conference as provided for in regulation 13(1) of these Regulations;*

"family group conference" *means a family group conference as provided for in section 70 of the Act and regulation 13 of these Regulations;*

"Hague Convention" *for purposes of Chapter IV of these Regulations, means the Hague Convention on International Child Abduction;*

"lay forum" *means a lay forum as provided for in section 71 of the Act and regulation 14 of the Regulations;*

"pre-hearing conference" *means a pre-hearing conference as provided for in section 69 of the Act and regulation 12 of these Regulations;*

"regional head" *means the person appointed in the position of manager of each of the nine regional offices of the department;*

"respondent", *for the purposes of Chapter IV of these Regulations, includes a person who removed or retained a child, or who prevented the exercise of rights of access to a child; and*
*"**the Act**" means the Children's Act, 2005 (Act No. 38 of 2005)*

'trafficking', in relation to a child-
(a) means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic-
(i) by any means, including the use of threat, force or other forms of coercion,

abduction, fraud, deception, abuse
of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or

(ii) due to a position of vulnerability,

for the purpose of exploitation; and

(b) includes the adoption of a child facilitated or secured through illegal means;

'UN Protocol to Prevent Trafficking in Persons' means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime, 2000, a copy of the English text of which is set out in Schedule 3.

(2) In addition to the meaning assigned to the terms **'custody'** and **'access'** in any law, and the common law, the terms **'custody'** and **'access'** in any law must be construed to also mean **'care'** and **'contact'** as defined in this Act.

(3) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

(4) Any proceedings arising out of the application of the Administration Amendment Act, 1929 (Act 9 of 1929), the Divorce Act, the Maintenance Act, the Domestic Violence Act, 1998 (Act 116 of 1998), and the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), in so far as these Acts relate to children, may not be dealt with in a children's court.

[Date of commencement of section 1: 1 July 2007]

Objects of Act

2. The objects of this Act are-

(a) to promote the preservation and strengthening of families;

(b) to give effect to the following constitutional rights of children, namely-

(i) family care or parental care or appropriate alternative care when removed from the family environment;

(ii) social services;

(iii) protection from maltreatment, neglect, abuse or degradation; and

(iv) that the best interests of a child are of paramount importance in every matter concerning the child;

(c) to give effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic;

(d) to make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;

(e) to strengthen and develop community structures which can assist in providing care and protection for children;

(f) to protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;

(g) to provide care and protection to children who are in need of care and protection;

(h) to recognise the special needs that children with disabilities may have; and

(i) generally, to promote the protection, development and well-being of children.

[Date of commencement of section 2: 1 July 2007]

Conflicts with other legislation

3. (1) In the event of a conflict between a section of this Act and-

(a) provincial legislation relating to the protection and well-being of children, the conflict must be resolved in terms of section 146 of the Constitution; and

(b) a municipal by-law relating to the protection and well-being of children, the conflict must be resolved in terms of section 156 of the Constitution.

(2) In the event of a conflict between a regulation made in terms of this Act and-

(a) an Act of Parliament, the Act of Parliament prevails;

(b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and

(c) a municipal by-law, the conflict must be resolved in terms of section 156 of the Constitution.

(3) For the proper application of subsection (2) *(b)* the Minister must in terms of section 146 (6) of the Constitution submit all regulations made in terms of this Act and which affect a province, to the National Council of Provinces for approval.

(4) In this section **'regulation'** means-

(a) a regulation made in terms of this Act; and

(b) a rule regulating the proceedings of children's courts in terms of section 52.

[Date of commencement of section 3: 1 July 2007]

Implementation of Act

4. (1) This Act must be implemented by organs of state in the national, provincial and, where applicable, local spheres of government subject to any specific section of this Act and regulations allocating roles and responsibilities, in an integrated, co-ordinated and uniform manner.

(2) Recognising that competing social and economic needs exist, organs of state in the national, provincial and where applicable, local spheres of government must, in the implementation of this Act, take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.

[Date of commencement of section 4: 1 July 2007]

Inter-sectoral implementation of Act

5. To achieve the implementation of this Act in the manner referred to in section 4, all organs of state in the national, provincial and, where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.

[Date of commencement of section 5: 1 July 2007]

CHAPTER 2

GENERAL PRINCIPLES

(ss 6-17)

General principles

6. (1) The general principles set out in this section guide-

(a) the implementation of all legislation applicable to children, including this Act; and

(b) all proceedings, actions and decisions by any organ of state in any matter concerning a child or children in general.

(2) All proceedings, actions or decisions in a matter concerning a child must-

(a) respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests of the child standard set out in section 7 and the rights and principles set out in this Act, subject to any lawful limitation;

(b) respect the child's inherent dignity;

(c) treat the child fairly and equitably;

(d) protect the child from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or a family member of the child;

(e) recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age; and

(f) recognise a child's disability and create an enabling environment to respond to the special needs that the child has.

(3) If it is in the best interests of the child, the child's family must be given the opportunity to express their views in any matter concerning the child.

(4) In any matter concerning a child-

(a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and

(b) a delay in any action or decision to be taken must be avoided as far as possible.

(5) A child, having regard to his or her age, maturity and stage of development, and a person who has parental responsibilities and rights in respect of that child, where appropriate, must be informed of any action or decision taken in a matter concerning the child which significantly affects the child.

[Date of commencement of section 6: 1 July 2007]

Best interests of child standard

7. (1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely-

(a) the nature of the personal relationship between-
  (i) the child and the parents, or any specific parent; and
  (ii) the child and any other care-giver or person relevant in those circumstances;

(b) the attitude of the parents, or any specific parent, towards-
  (i) the child; and
  (ii) the exercise of parental responsibilities and rights in respect of the child;

(c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;

(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from-
  (i) both or either of the parents; or
  (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child-
  (i) to remain in the care of his or her parent, family and extended family; and
  (ii) to maintain a connection with his or her family, extended family, culture or tradition;

(g) the child's-
  (i) age, maturity and stage of development;
  (ii) gender;
  (iii) background; and
  (iv) any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) any disability that a child may have;

(j) any chronic illness from which a child may suffer;

(k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;

(l) the need to protect the child from any physical or psychological harm that may be caused by-
  (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
  (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;

(m) any family violence involving the child or a family member of the child; and

(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

(2) In this section **'parent'** includes any person who has parental responsibilities and rights in respect of a child.

[Date of commencement of section 7: 1 July 2007]

Application

8. (1) The rights which a child has in terms of this Act supplement the rights which a child has in terms of the Bill of Rights.

(2) All organs of state in any sphere of government and all officials, employees and representatives of an organ of state must respect, protect and promote the rights of children contained in this Act.

(3) A provision of this Act binds both natural or juristic persons, to the extent that it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

[Date of commencement of section 8: 1 July 2007]

Best interests of child paramount

9. In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied.

[Date of commencement of section 9: 1 July 2007]

Child participation

10. Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

[Date of commencement of section 10: 1 July 2007]

Children with disability or chronic illness

11. (1) In any matter concerning a child with a disability due consideration must be given to-

(a) providing the child with parental care, family care or special care as and when appropriate;

(b) making it possible for the child to participate in social, cultural, religious and educational activities, recognising the special needs that the child may have;

(c) providing the child with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and

(d) providing the child and the child's care-giver with the necessary support services.

(2) In any matter concerning a child with chronic illness due consideration must be given to-

(a) providing the child with parental care, family care or special care as and when appropriate;

(b) providing the child with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and

(c) providing the child with the necessary support services.

(3) A child with a disability or chronic illness has the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his or her health, well-being or dignity.

[Date of commencement of section 11: 1 July 2007]

Social, cultural and religious practices

12. (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.

(2) A child-

(a) below the minimum age set by law for a valid marriage may not be given out in marriage or engagement; and

(b) above that minimum age may not be given out in marriage or engagement without his or her consent.

(3) Genital mutilation or the circumcision of female children is prohibited.

(4) Virginity testing of children under the age of 16 is prohibited.

(5) Virginity testing of children older than 16 may only be performed-

(a) if the child has given consent to the testing in the prescribed manner;

(b) after proper counselling of the child; and

(c) in the manner prescribed.

(6) The results of a virginity test may not be disclosed without the consent of the child.

(7) The body of a child who has undergone virginity testing may not be marked.

(8) Circumcision of male children under the age of 16 is prohibited, except when-

(a) circumcision is performed for religious purposes in accordance with the practices of the religion concerned and in the manner prescribed; or

(b) circumcision is performed for medical reasons on the recommendation of a medical practitioner.

(9) Circumcision of male children older than 16 may only be performed-

(a) if the child has given consent to the circumcision in the prescribed manner;

(b) after proper counselling of the child; and

(c) in the manner prescribed.

(10) Taking into consideration the child's age, maturity and stage of development, every male child has the right to refuse circumcision.

VIRGINITY TESTING

Consent to undergo virginity test

3.(1) Consent to undergo a virginity test by a child who is older than 16 years of age must be in a form identical to **Form 1** and must be–

(a) completed in writing and signed by the child;

(b) signed by the person conducting the virginity test;

(c) accompanied by proof of the age of the child as established in terms of regulation 4(3)*(b); and*

(d) *commissioned by a Commissioner of Oaths.*

(2) Where a person whose signature is required in terms of paragraph *(a)* or *(b)* of sub-regulation (1) is incapable of furnishing a signature, a thumbprint of the person must be effected on **Form 1** and duly attested by a commissioner of oaths.

(3) A child who is older than16 years of age and who has a disability related to brain damage which renders the said child incapable of making a decision regarding a virginity test or a child with multiple disabilities who is not able to make such a decision, cannot be subjected to a virginity test.

(4) A copy of the form contemplated in sub-regulation (1) must be retained by the person performing the virginity test for a period of three years after consent, as contemplated in this regulation, has been furnished.

FORM 1

CONSENT TO A VIRGINITY TEST BY A CHILD
(Regulation 3(1))
[SECTION 12(5) OF THE CHILDREN'S ACT 38 OF 2005]

Part 1: Particulars of child and of person performing virginity test

[Child to be aged 16 years or older]

Full name of child	
Date of Birth/ID number	
Residential address of child	
Telephone contact details:	
Cell phone number	
Age of child (16 or older)*	

* Proof of age to be attached

Particulars of person administering virginity test

Name	
ID No (where applicable)	
Residential Address	

Telephone contact details	
Cell phone number	

Part 2: Pre-test counselling, and acquisition of voluntary and informed consent

I confirm that the child to undergo the virginity test has received proper counselling about the risks, benefits and social implications of a virginity test.

I confirm that I have received sufficient proof that the child to undergo virginity test is 16 years or older.

I have explained to the child consenting to treatment the following in a language that is understandable to the child: -

- The nature of the virginity test and method to be followed
- Any risks associated with a virginity test
- The social implications of virginity test
- Any other implications or possible consequences of a virginity test
- The confidential nature of the results of a virginity test,
- The voluntary nature of the test

I have given the child an opportunity to ask questions relating to the above.

Signature of person performing the virginity test

Date: Place:

PLEASE SEE REVERSE HEREOF-----

REVERSE SIDE OF FORM 1

Part 3. Consent by child

I, …… (insert child's name)

- understand that a virginity test is going to be performed on me, and that I am voluntarily undergoing this test
- understand the risks and possible consequences of a virginity test that have been explained to me
- confirm that I have been given an opportunity to ask questions about a virginity test and the results of such a test
- consent to a virginity test but understand that I may at any time before the procedure withdraw my consent

I understand that the results of the virginity test will be confidential unless I give my consent for the results to be disclosed.

I believe that I have sufficient information to give this informed consent.

Signature of child

Date_____

Place_____

Signature of witness

Date_____

Place_____

Manner of conducting virginity test

4.(1) A person who conducts a virginity test must ensure that–

(a) each child is tested individually and in private;

(b) the test is conducted in a hygienic manner, which at all times includes–

(i) the use of a separate pair of sterile surgical gloves for each test in the case of a virginity test involving the inspection of any bodily orifice of the child being tested;

(ii) disposal of such surgical gloves after each virginity test in accordance with medical standards for the disposal of surgical gloves;

(iii) sterilisation of any instrument used in the performance of any virginity test in accordance with medical standards for the sterilisation of instruments; and

(iv) avoidance of direct blood contact or contact with any bodily fluid between the child undergoing the virginity test and the person performing the virginity test; and

(c) the least invasive means of testing for virginity is used with due regard to the child's right to bodily integrity.

(2) A virginity test may be performed on a girl child only by a female person and on a boy child only by a male person.

(3) *(a)* No virginity test may be performed on a child unless—

(i) the consent and the required proof of age contemplated in regulation 3 have been submitted to the person conducting the test; and

(ii) the child has been given proper counselling by a parent, guardian or caregiver and a social service professional.

(b) The age of a child consenting to a virginity test must be established by having regard to an identity document or birth certificate of the child, an affidavit furnished by the child's parent or care-giver confirming the age of the child or an estimation of age contemplated in section 48(2) of the Act.

(4) Any person who contravenes any provision of this regulation is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

PART II
MALE CIRCUMCISION

Circumcision for social or cultural purposes

5.(1) Circumcision of a male child older than 16 may only be performed—

(a) after the child has given consent in a form identical to **Form 2**;

FORM 2

CONSENT TO SOCIAL OR CULTURAL CIRCUMCISION
(Regulation 5)
[SECTION 12(9) OF THE CHILDREN'S ACT 38 OF 2005]

PART A: PARTICULARS OF CHILD

Full name of child	
Date of birth /ID number	
Residential address of child	
Telephone contact details	
Cell phone number	

PART B: MEDICAL PRACTITIONER OR PERSON ADMINISTERING CIRCUMCISION

Name	
Address of practice	
ID number	
HPCSA registration number (in the case of a medical practitioner)	
Telephone contact details	Phone : Fax : E-mail :
Cell phone number	
Medical diagnosis requiring circumcision	
Date of circumcision	

- I confirm that I have received sufficient proof that the child is 16 years or older.
- I confirm that appropriate conservative treatment has been used and a circumcision is medically necessary (if administered by a medical practitioner).
- I confirm that appropriate anaesthesia will be used (if administered by a medical practitioner).
- I have explained to the child the following:

  - ❑ The nature of a circumcision.
  - ❑ The different methods to perform a circumcision.
  - ❑ The method to be followed
  - ❑ Any risks associated with a circumcision
  - ❑ Any complications associated with a circumcision
  - ❑ Any other implications or possible consequences of a circumcision
  - ❑ Other information (if any): _____
    _____

I have given the child an opportunity to ask questions.

_____
Signature of person administering circumcision/medical practitioner

Date:

PLEASE SEE REVERSE HEREOF

REVERSE SIDE OF FORM 2

PART C: CONSENT BY CHILD

I, _____(insert name)

- understand that a circumcision is going to be performed on me, and that I am voluntarily undergoing this surgical procedure.
- understand the nature and implications as well as any risks and possible consequences of a circumcision that have been explained to me.
- confirm that I have been given an opportunity to ask questions.
- consent to a circumcision but understand that I may at any time before the procedure withdraw my consent.
- confirm that I have been given the opportunity to refuse the circumcision in terms of section 12(10) of the Act.

_____
Signature of child
Date:

_____
Signature of witness
Date:

PART D: ASSISTANCE BY PARENT OR GUARDIAN

(TO BE COMPLETED IN THE CASE OF A MALE CHILD OVER 16 YEARS BUT UNDER 18 YEARS)

I, _____ (insert name) have assisted the child to consent to a circumcision and declare that the child is over the age of 16 years but under the age of 18 years and is, to the best of my knowledge, of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of a circumcision.

I confirm that the child has been given the opportunity to refuse the circumcision in terms of Section 12(10) of the Act.

_____
Parent / guardian
Date:

(b) after proper counselling of the child by a parent, guardian, caregiver or social service professional;

(c) in accordance with the cultural or social practices of the child concerned; and

(d) by a medical practitioner or by a person with knowledge of the social or cultural practices of the child concerned and who has been properly trained to perform circumcisions.

(2) The medical practitioner or person contemplated in sub-regulation (1)*(d)* must at all times ensure that—

(a) sterile surgical gloves are worn during the circumcision and that they are disposed of after each circumcision;

(b) any instrument used during a circumcision is disposed of after each circumcision unless sterilised in accordance with medical standards for the sterilisation of surgical instruments;

(c) there is no direct blood contact, contact with any body fluid or contact with any foreign substance between the child undergoing the circumcision and the person performing the circumcision or any other person or child; and

(d) the disposal of any instruments used for circumcision including any human tissue takes place in accordance with medical standards for the disposal of surgical instruments and human tissue.

Circumcision for religious purposes

6.(1) Circumcision performed for religious purposes on male children must be performed in accordance with the practices of the religion concerned and must be performed by a medical practitioner or by a person from the religion concerned who has been properly trained to perform circumcisions.

(2) The medical practitioner or person contemplated in sub-regulation (1) must ensure that—

(a) sterile surgical gloves are worn during the circumcision and that they are disposed of after each circumcision;

(b) any instrument used during a circumcision is disposed of after each circumcision unless sterilised in accordance with medical standards for the sterilisation of surgical instruments;

(c) there is no direct blood contact, contact with any body fluid or contact with any foreign substance between the child undergoing the circumcision and the person performing the circumcision or any other person or child; and

(d) the disposal of any instruments used for circumcision including any human tissue takes place in accordance with medical standards for the disposal of surgical instruments and human tissue.

(3) Consent to the religious circumcision of a male child —

(a) under the age of 16 years must be given by both parents of the male child and where more than one person has guardianship of the child or where a parental responsibilities and rights agreement exists, both of those persons, and must be in a form identical to **Form 3**; or

(b) older than 16 years must be given by the child concerned and in a form identical to **Form 3**.

FORM 3

CONSENT TO RELIGIOUS CIRCUMCISION
(Regulation 6)

[SECTION 12(8) OF THE CHILDREN'S ACT 38 OF 2005]

PART A: PARTICULARS OF CHILD

Full name of child	
Date of birth/ID number	
Residential address of child	
Postal address	
Telephone Contact details	Phone: Fax: E-mail:

Cell phone number	
Age of child	

PART B: MEDICAL PRACTITIONER OR PERSON ADMINISTERING CIRCUMCISION

Name	
ID number	
Address of practice	
HPCSA registration number (in the case of a medical practitioner)	
Contact details	Phone : Fax : E-mail :
Date of circumcision	

I have explained to the person consenting the following:

- ❑ The nature of a circumcision
- ❑ Any risks associated with a circumcision
- ❑ Any complications associated with a circumcision
- ❑ Any other implications or possible consequences of a circumcision
- ❑ Other information (if any): _____

_____

I have given the person giving consent an opportunity to ask questions.
I confirm that appropriate anaesthesia will be used

_____
Signature of ***** medical practitioner / person administering the circumcision

Date:

PLEASE SEE REVERSE HEREOF

REVERSE SIDE OF FORM 3

PART C: CONSENT BY PARENTS OR GUARDIAN WHERE CHILD IS UNDER THE AGE OF 16

We/I, _____

- understand that a religious circumcision is going to be performed.
- understand the nature and implications as well as any risks and possible consequences of a circumcision that have been explained to me/us.
- confirm that I/we have been given an opportunity to ask questions.
- consent to a religious circumcision but understand that I/we may at any time before the procedure withdraw my/our consent.

_____
Parent / guardian
Date:

_____
Signature of witness
Date:

Information on health care

13. (1) Every child has the right to-

(a) have access to information on health promotion and the prevention and treatment of ill-health and disease, sexuality and reproduction;

(b) have access to information regarding his or her health status;

(c) have access to information regarding the causes and treatment of his or her health status; and

(d) confidentiality regarding his or her health status and the health status of a parent, care-giver or family member, except when maintaining such confidentiality is not in the best interests of the child.

(2) Information provided to children in terms of this subsection must be relevant and must be in a format accessible to children, giving due consideration to the needs of disabled children.

[Date of commencement of section 13: 1 July 2007]

Access to court

14. Every child has the right to bring, and to be assisted in bringing, a matter to a court, provided that matter falls within the jurisdiction of that court.

[Date of commencement of section 14: 1 July 2007]

Enforcement of rights

15. (1) Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights or this Act has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

(2) The persons who may approach a court, are:

(a) A child who is affected by or involved in the matter to be adjudicated;

(b) anyone acting in the interest of the child or on behalf of another person who cannot act in their own name;

(c) anyone acting as a member of, or in the interest of, a group or class of persons; and

(d) anyone acting in the public interest.

[Date of commencement of section 15: 1 July 2007]

Responsibilities of children

16. Every child has responsibilities appropriate to the child's age and ability towards his or her family, community and the state.

[Date of commencement of section 16: 1 July 2007]

Age of majority

17. A child, whether male or female, becomes a major upon reaching the age of 18 years.

[Date of commencement of section 17: 1 July 2007]

CHAPTER 3

PARENTAL RESPONSIBILITIES AND RIGHTS

(ss 18-41)

Part 1
Acquisition and loss of parental responsibilities and rights
(ss 18-29)

Parental responsibilities and rights

18. (1) A person may have either full or specific parental responsibilities and rights in respect of a child.

(2) The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right-

(a) to care for the child;
(b) to maintain contact with the child;
(c) to act as guardian of the child; and
(d) to contribute to the maintenance of the child.

(3) Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must-

(a) administer and safeguard the child's property and property interests;
(b) assist or represent the child in administrative, contractual and other legal matters; or
(c) give or refuse any consent required by law in respect of the child, including-
  (i) consent to the child's marriage;
  (ii) consent to the child's adoption;
  (iii) consent to the child's departure or removal from the Republic;
  (iv) consent to the child's application for a passport; and
  (v) consent to the alienation or encumbrance of any immovable property of the child.

(4) Whenever more than one person has guardianship of a child, each one of them is competent, subject to subsection (5), any other law or any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or responsibility arising from such guardianship.

(5) Unless a competent court orders otherwise, the consent of all the persons that have guardianship of a child is necessary in respect of matters set out in subsection (3) *(c)*.

[Date of commencement of section 18: 1 July 2007]

Parental responsibilities and rights of mothers

19. (1) The biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child.

(2) If-

(a) the biological mother of a child is an unmarried child who does not have guardianship in respect of the child; and
(b) the biological father of the child does not have guardianship in respect of the child,

the guardian of the child's biological mother is also the guardian of the child.

(3) This section does not apply in respect of a child who is the subject of a surrogacy agreement.

[Date of commencement of section 19: 1 July 2007]

Parental responsibilities and rights of married fathers

20. The biological father of a child has full parental responsibilities and rights in respect of the child –

(a) if he is married to the child's mother; or
(b) if he was married to the child's mother at-
  (i) the time of the child's conception;
  (ii) the time of the child's birth; or
  (iii) any time between the child's conception and birth.

[Date of commencement of section 20: 1 July 2007]

Parental responsibilities and rights of unmarried fathers

21. (1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section 20, acquires full parental responsibilities and rights in respect of the child-

(a) if at the time of the child's birth he is living with the mother in a permanent life-partnership; or

(b) if he, regardless of whether he has lived or is living with the mother-

(i) consents to be identified or successfully applies in terms of section 26 to be identified as the child's father or pays damages in terms of customary law;

(ii) contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and

(iii) contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

(2) This section does not affect the duty of a father to contribute towards the maintenance of the child.

(3) *(a)* If there is a dispute between the biological father referred to in subsection (1) and the biological mother of a child with regard to the fulfilment by that father of the conditions set out in subsection (1) *(a)* or *(b)*, the matter must be referred for mediation to a family advocate, social worker, social service professional or other suitably qualified person.

Mediation and participation of child concerning parental responsibilities and rights

8.(1) A family advocate, social worker, social service professional or other suitably qualified person who conducts mediation in the case of a dispute between the biological father of the child and the biological mother of the child with regard to the fulfilment by that father of the conditions set out in section 21(1) of the Act, may certify the outcome of that mediation in a form identical to **Form 6**.

FORM 6

STATEMENT OF OUTCOME OF MEDIATION

(Regulation 8)

[SECTION 21(3) OF THE CHILDREN'S ACT 38 OF 2005]

File No:

1. I certify that the Section 21(3) mediation between:

……..…

(Applicant)

and

……

(Respondent)

concerning the minor children:

1. ……(insert name, gender and date of birth)

2…..……. (insert name gender and date of birth)

3……..…….. (insert name, gender and date of birth)

Was resolved ----------

----------(give details)

Remains unresolved----------

---(give details)

2. Copy of parental responsibilities and rights agreement (where applicable): (to be attached)

3.1 Details of family advocate (where applicable)

Official stamp

3. cial services professional or other suita

red as such at the Social Work Cou

number)……

□ Psychologist registered to practice at the Medical and Dental
number)……

❑ Other suitably qualified person (details of reasons why suit
furnished in the space below)*

Name of Family Advocate

Signature of Family advocate

Place

Date

……

……

……

……

……

*Annex supporting documentation where necessary

Full name

Signature

Date

(2) A certificate of non-attendance of the mediation required by section 21(3) of the Act may be completed in a form identical to **Form 7** by a family advocate, social worker, social services professional or other suitably qualified person who has notified a respondent to attend such mediation and where such respondent has failed to attend.

FORM 7

CONFIRMATION OF NON-ATTENDANCE OF MEDIATION

(Regulation 8

[SECTION 21(3) OF THE CHILDREN'S ACT 38 OF 2005]

File No:

I confirm that as regards the Section 21(3) mediation between:

……..…

(Applicant)

and

……

(Respondent)

concerning the minor children:

1. …… (insert name, gender and date of birth)

2.…..…… (insert name gender and date of birth)

3.……..…….. (insert name, gender and date of birth)

(A) the Respondent was notified of the mediation session to be held on ----------(give date and time) by means of:

(B) the Respondent failed to attend the mediation session.

Details of Family Advocate (where applicable)

Official stamp	Name of Family Advocate --- Signature of Family advocate --- Place --- Date

Details of Social worker, social service professional or other suitable qualified person

- ❑ Social worker registered as such at the Council for Social Services Professions (give practice number)……..
- □ Psychologist registered to practice at the Medical and Dental Council (give practice number)…….
- ❑ Other suitably qualified person (details of reasons why suitably qualified to be furnished in the space below)*

……

……

……

……

……

……

……

*Annex supporting documentation where necessary

Full name

Signature

Date

(3) *(a)* Due consideration must be given to the views and wishes of the child or children in the development of any parental responsibilities and rights agreement, bearing in mind the child's or children's age, maturity and stage of development.

(b) Bearing in mind the child's or children's age, maturity and stage of development, such child or children must be informed of the contents of the parental responsibilities and rights agreement by the family advocate, the children's court, the High Court, a social worker, social service professional, psychologist or the child's or children's legal representative.

(4) Where a child or children referred to in sub-regulation (3) in respect of whom a parental responsibilities and rights agreement is concluded is or are not in agreement with the contents of the agreement, this should be recorded on the agreement, and the matter referred for mediation by a family advocate, social worker, social service professional or other suitably qualified person.

(b) Any party to the mediation may have the outcome of the mediation reviewed by a court.

(4) This section applies regardless of whether the child was born before or after the commencement of this Act.

[Date of commencement of section 21: 1 July 2007]

Parental responsibilities and rights agreements

22. (1) Subject to subsection (2), the mother of a child or other person who has parental responsibilities and rights in respect of a child may enter into an agreement providing for the acquisition of such parental responsibilities and rights in respect of the child as are set out in the agreement, with –

(a) the biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of either section 20 or 21 or by court order; or

(b) any other person having an interest in the care, well-being and development of the child.

(2) The mother or other person who has parental responsibilities and rights in respect of a child may only confer by agreement upon a person contemplated in subsection (1) those parental

responsibilities and rights which she or that other
person has in respect of the child at the time of the conclusion of such an agreement.

(3) A parental responsibilities and rights agreement must be in the prescribed format and contain the prescribed particulars.

(4) Subject to subsection (6), a parental responsibilities and rights agreement takes effect only if-

(a) registered with the family advocate; or

(b) made an order of the High Court, a divorce court in a divorce matter or the children's court on application by the parties to the agreement.

(5) Before registering a parental responsibilities and rights agreement or before making a parental responsibilities and rights agreement an order of court, the family advocate or the court concerned must be satisfied that the parental responsibilities and rights agreement is in the best interests of the child.

(6) Where a family advocate is required to satisfy himself or herself as contemplated in section 22(5) of the Act that a parental responsibilities and rights agreement is in the best interests of the child, this must be done in a form identical to **Form 5**.

FORM 5

STATEMENT OF FAMILY ADVOCATE CONCERNING PARENTAL RESPONSIBILITIES AND RIGHTS AGREEMENT

(Regulation 7)

[SECTION 22(5) OF THE CHILDREN'S ACT 38 OF 2005]

I …… (Name and surname), being the Family Advocate at the abovementioned High Court/ Divorce court/children's court hereby confirm that the parental responsibilities and rights agreement referred to in section 22(3) between …… and ……
(insert names of parties)

- ❑ was prepared with my assistance (tick if applicable)
- ❑ complies with the best interests of the child/children…… (insert names of children).

I confirm that information about the contents of this parental responsibilities and rights agreement have been furnished to the child or children, bearing in mind the child/children's age, maturity and stage of development ----------
---

I confirm that the child or children been given an opportunity to express their views, and that these views have been given due consideration ----------
---

Signed

Date

Particulars of Family advocate

Official stamp

Name of Family Advocate

Signature of Family advocate

Place

Date

(6) *(a)* A parental responsibilities and rights agreement registered by the family advocate may be amended or terminated by the family advocate on application-

(i) by a person having parental responsibilities and rights in respect of the child;
(ii) by the child, acting with leave of the court; or
(iii) in the child's interest by any other person, acting with leave of the court.

(b) A parental responsibilities and rights agreement that was made an order of court may only be amended or terminated on application-

(i) by a person having parental responsibilities and rights in respect of the child;
(ii) by the child, acting with leave of the court; or
(iii) in the child's interest by any other person, acting with leave of the court.

(7) Only the High Court may confirm, amend or terminate a parental responsibilities and rights agreement that relates to the guardianship of a child.

General requirements pertaining to parental responsibilities and rights agreements

7.(1) A parental responsibilities and rights agreement must

(a) be in writing;
(b) be in a form identical to **Form 4;**

FORM 4

GENERAL REQUIREMENTS REGARDING PARENTAL RESPONSIBILITIES AND RIGHTS AGREEMENT

(Regulation 7)

[SECTION 22 OF THE CHILDREN'S ACT 38 OF 2005]

Part A: Particulars of mother of child/children or other holders of parental responsibilities and rights/ Particulars of father or person(s) upon whom parental responsibilities and rights are being conferred

Mother or Holder 1.

Surname	
Full Names	
ID No/Date of Birth/Passport no	
Residential Address	
Home telephone no	
Cell phone no	
Email address	

Work Address	
Work telephone no	
Relationship to child/children	

Father or person(s) upon whom parental responsibilities and rights are being conferred

Surname	
Full Names	
ID No/Date of Birth/Passport no	
Residential Address	
Home telephone no	
Cell phone no	
Email address	
Work Address	
Work telephone no	
Relationship to child/children	

Details of further co-holders of parental responsibilities and rights in respect of whom this parental responsibilities and rights agreement applies must be furnished on a separate page and attached to this **Form** as an annexure.

Part B: Details of child or children in respect of whom parental responsibilities and rights agreement has been concluded

First Child

Surname	
Full names	
ID No/date of birth/Passport no	
Residential address	
Contact no	

Second Child

Surname	
Full names	
ID No/date of birth/Passport no	
Residential address	
Contact no	

Third Child

Surname	
Full names	

ID No/date of birth/passport no	
Residential address	
Contact no	

Details of additional children in respect of whom this parental responsibilities and rights agreement applies must be furnished on a separate page and attached to this Form as an annexure.

Part C: Supporting Documentation

Please find the following supporting documentation attached:

- ❑ Particulars relating to guardianship of the child/children (NB: agreement then to be made an order of the High Court)
- ❑ Particulars relating to the care of the child/children
- ❑ Particulars relating to contact with the child/children
- ❑ Particulars relating to the financial responsibilities for the maintenance of the child/children
- ❑ Particulars relating to other matters incidental to the exercise of parental responsibilities and rights

Part D: Agreement

I_____(being the mother of/person having parental responsibilities and rights in respect of (insert child or children's names)_____ hereby agree to confer those parental responsibilities and rights as set out in the attached documents upon_____(insert name of father/other person having an interest in the care, well-being and development of the child).

Details of parental responsibilities and rights conferred (optional)

Part E: Details of application for registration of parental responsibilities and rights agreement to be made an order of court

TO: The Family Advocate/Clerk of the Court/ Registrar of the High Court

Place:

Date:

We,……..……

……

……..……..(initials and surnames)

hereby apply for registration of the attached parental responsibilities and rights agreement at the Office of the Family Advocate to be made an order of the honourable court.

---------- ----------

Signed (Mother/other person) Signed (Father/other person)

Date

Particulars of Family advocate (where applicable)

Official stamp

Name of Family Advocate

Signature of Family advocate

Place

Date

(c) contain particulars of those aspects pertaining to the care of, contact with, financial responsibility for the child; and

(d) contain incidental matters related to the upbringing of the child or children that are being conferred by the mother or other person having parental responsibilities and rights upon the biological father or any other person having an interest in the care, well-being and development of the child.

(2) **Form 4** must be attached to the application for registration of the parental responsibilities and rights agreement as contemplated in sub-regulation (1).

(3) Where parental responsibilities and rights agreement is to be made an order of the High Court, that agreement may contain particulars relating to the guardianship of the child.

(4) Where parental responsibilities and rights are to be exercised in substantially the same manner by the biological father or any other person or persons having an interest in the care, well-being and development of the child with respect to more than one child in the same family, such parental responsibilities and rights agreement must be completed for each child.

(5) The applicant or applicants for the registration of a parental responsibilities and rights agreement must file copies of such agreement with the family advocate, children's court or High

Court, as the case may be, to enable each co-holder of parental responsibilities and rights to retain a copy of the registered agreement.

Assignment of contact and care to interested person by order of court

23. (1) Any person having an interest in the care, well-being or development of a child may apply to the High Court, a divorce court in divorce matters or the children's court for an order granting to the applicant, on such conditions as the court may deem necessary-

(a) contact with the child; or

(b) care of the child.

(2) When considering an application contemplated in subsection (1), the court must take into account-

(a) the best interests of the child;

(b) the relationship between the applicant and the child, and any other relevant person and the child;

(c) the degree of commitment that the applicant has shown towards the child;

(d) the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child; and

(e) any other fact that should, in the opinion of the court, be taken into account.

(3) If in the course of the court proceedings it is brought to the attention of the court that an application for the adoption of the child has been made by another applicant, the court-

(a) must request a family advocate, social worker or psychologist to furnish it with a report and recommendations as to what is in the best interests of the child; and

(b) may suspend the first-mentioned application on any conditions it may determine.

(4) The granting of care or contact to a person in terms of this section does not affect the parental responsibilities and rights that any other person may have in respect of the same child.

Assignment of guardianship by order of court

24. (1) Any person having an interest in the care, well-being and development of a child may apply to the High Court for an order granting guardianship of the child to the applicant.

(2) When considering an application contemplated in subsection (1), the court must take into account-

(a) the best interests of the child;

(b) the relationship between the applicant and the child, and any other relevant person and the child; and

(c) any other fact that should, in the opinion of the court, be taken into account.

(3) In the event of a person applying for guardianship of a child that already has a guardian, the applicant must submit reasons as to why the child's existing guardian is not suitable to have guardianship in respect of the child.

Certain applications regarded as inter-country adoption

25. When application is made in terms of section 24 by a non-South African citizen for guardianship of a child, the application must be regarded as an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 16 of this Act.

Person claiming paternity

26. (1) A person who is not married to the mother of a child and who is or claims to be the biological father of the child may-

(a) apply for an amendment to be effected to the registration of birth of the child in terms of section 11 (4) of the Births and Deaths Registration Act, 1992 (Act 51 of 1992), identifying him as the father of the child, if the mother consents to such amendment; or

(b) apply to a court for an order confirming his paternity of the child, if the mother-

(i) refuses to consent to such amendment;

(ii) is incompetent to give consent due to mental illness;

(iii) cannot be located; or

(iv) is deceased.

(2) This section does not apply to-

(a) the biological father of a child conceived through the rape of or incest with the child's mother; or

(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation.

Assignment of guardianship and care

27. (1) *(a)* A parent who is the sole guardian of a child may appoint a fit and proper person as guardian of the child in the event of the death of the parent.

(b) A parent who has the sole care of a child may appoint a fit and proper person to be vested with care of the child in the event of the death of the parent.

(2) An appointment in terms of subsection (1) must be contained in a will made by the parent.

(3) A person appointed in terms of subsection (1) acquires guardianship or care, as the case may be, in respect of a child-

(a) after the death of the parent; and

(b) upon the person's express or implied acceptance of the appointment.

(4) If two or more persons are appointed as guardians or to be vested with the care of the child, any one or more or all of them may accept the appointment except if the appointment provides otherwise.

[Date of commencement of section 27: 1 July 2007]

Termination, extension, suspension or restriction of parental responsibilities and rights

28. (1) A person referred to in subsection (3) may apply to the High Court, a divorce court in a divorce matter or a children's court for an order-

(a) suspending for a period, or terminating, any or all of the parental responsibilities and rights which a specific person has in respect of a child; or

(b) extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.

(2) An application in terms of subsection (1) may be combined with an application in terms of section 23 for the assignment of contact and care in respect of the child to the applicant in terms of that section.

(3) An application for an order referred to in subsection (1) may be brought-

(a) by a co-holder of parental responsibilities and rights in respect of the child;

(b) by any other person having a sufficient interest in the care, protection, well-being or development of the child;

(c) by the child, acting with leave of the court;

(d) in the child's interest by any other person, acting with leave of the court; or

(e) by a family advocate or the representative of any interested organ of state.

(4) When considering such application the court must take into account-

(a) the best interests of the child;

(b) the relationship between the child and the person whose parental responsibilities and rights are being challenged;

(c) the degree of commitment that the person has shown towards the child; and

(d) any other fact that should, in the opinion of the court, be taken into account.

Court proceedings

29. (1) An application in terms of section 22 (4) *(b)*, 23, 24, 26 (1) *(b)* or 28 may be brought before the High Court, a divorce court in a divorce matter or a children's court, as the case may be, within whose area of jurisdiction the child concerned is ordinarily resident.

(2) An application in terms of section 24 for guardianship of a child must contain the reasons why the applicant is not applying for the adoption of the child.

(3) The court hearing an application contemplated in subsection (1) may grant the application unconditionally or on such conditions as it may determine, or may refuse the application, but an application may be granted only if it is in the best interests of the child.

(4) When considering an application contemplated in subsection (1) the court must be guided by the principles set out in Chapter 2 to the extent that those principles are applicable to the matter before it.

(5) The court may for the purposes of the hearing order that-

(a) a report and recommendations of a family advocate, a social worker or other suitably qualified person must be submitted to the court;

(b) a matter specified by the court must be investigated by a person designated by the court;

(c) a person specified by the court must appear before it to give or produce evidence; or

(d) the applicant or any party opposing the application must pay the costs of any such investigation or appearance.

(6) The court may, subject to section 55-

(a) appoint a legal practitioner to represent the child at the court proceedings; and

(b) order the parties to the proceedings, or any one of them, or the state if substantial injustice would otherwise result, to pay the costs of such representation.

(7) If it appears to a court in the course of any proceedings before it that a child involved in or affected by those proceedings is in need of care and protection, the court must order that the question whether the child is in need of care and protection be referred to a designated social worker for investigation in terms of section 155 (2).

Part 2

Co-exercise of parental responsibilities and rights

(ss 30-32)

Co-holders of parental responsibilities and rights

30. (1) More than one person may hold parental responsibilities and rights in respect of the same child.

(2) When more than one person holds the same parental responsibilities and rights in respect of a child, each of the co-holders may act without the consent of the other co-holder or holders when exercising those responsibilities and rights, except where this Act, any other law or an order of court provides otherwise.

(3) A co-holder of parental responsibilities and rights may not surrender or transfer those responsibilities and rights to another co-holder or any other person, but may by agreement with that other co-holder or person allow the other co-holder or person to exercise any or all of those responsibilities and rights on his or her behalf.

(4) An agreement in terms of subsection (3) does not divest a co-holder of his or her parental responsibilities and rights and that co-holder remains competent and liable to exercise those responsibilities and rights.

[Date of commencement of section 30: 1 July 2007]

Major decisions involving child

31. (1) *(a)* Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph *(b)* involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.

(b) A decision referred to in paragraph *(a)* is any decision-

(i) in connection with a matter listed in section 18 (3) *(c)*;

(ii) affecting contact between the child and a co-holder of parental responsibilities and rights;

(iii) regarding the assignment of guardianship or care in respect of the child to another person in terms of section 27; or

(iv) which is likely to significantly change, or to have an adverse effect on, the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's well-being.

(2) *(a)* Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph *(b)*, that person must give due consideration to any views and wishes expressed by any co-holder of parental responsibilities and rights in respect of the child.

(b) A decision referred to in paragraph *(a)* is any decision which is likely to change significantly, or to have a significant adverse effect on, the co-holder's exercise of parental responsibilities and rights in respect of the child.

[Date of commencement of section 31: 1 July 2007]

Care of child by person not holding parental responsibilities and rights

32. (1) A person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, must, whilst the child is in that person's care-

(a) safeguard the child's health, well-being and development; and

(b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards.

(2) Subject to section 129, a person referred to in subsection (1) may exercise any parental responsibilities and rights reasonably necessary to comply with subsection (1), including the right to consent to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or guardian of the child.

(3) A court may limit or restrict the parental responsibilities and rights which a person may exercise in terms of subsection (2).

(4) A person referred to in subsection (1) may not-

(a) hold himself or herself out as the biological or adoptive parent of the child; or

(b) deceive the child or any other person into believing that that person is the biological or adoptive parent of the child.

Part 3
Parenting plans
(ss 33-35)

Contents of parenting plans

33. (1) The co-holders of parental responsibilities and rights in respect of a child may agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

(2) If the co-holders of parental responsibilities and rights in respect of a child are experiencing difficulties in exercising their responsibilities and rights, those persons, before seeking the intervention of a court, must first seek to agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

(3) A parenting plan may determine any matter in connection with parental responsibilities and rights, including-

(a) where and with whom the child is to live;

(b) the maintenance of the child;

(c) contact between the child and-

(i) any of the parties; and

(ii) any other person; and

(d) the schooling and religious upbringing of the child.

(4) A parenting plan must comply with the best interests of the child standard as set out in section 7.

Participation of child in preparation of parenting plans

11.(1) Bearing in mind the child's age, maturity and stage of development, such child must be consulted during the development of a parenting plan, and granted an opportunity to express his or her views, which must be accorded due consideration.

(2) When a parenting plan has been agreed the child must, bearing in mind the child's age, maturity and stage of development, be informed of the contents of the parenting plan by the family advocate, a social worker, social service professional, psychologist, suitably qualified person or the child's legal representative.

(5) In preparing a parenting plan as contemplated in subsection (2) the parties must seek-

(a) the assistance of a family advocate, social worker or psychologist; or

(b) mediation through a social worker or other suitably qualified person.

Preparation of parenting plans

10.(1) The co-holders of parental responsibilities and rights as contemplated in section 30 and who are experiencing difficulty in exercising their responsibilities and rights as envisaged in section 33(2) of the Act must seek to agree on a parenting plan on matters referred to in section 33(3) of the Act.

(2) The parenting plan contemplated in sub-regulation (1) must be prepared:

(a) with the assistance of a family advocate, social worker or psychologist as contemplated in section 33(5)*(a)* of the Act, and must be completed in writing in a form identical to **Form 9**; or

FORM 9

STATEMENT OF FAMILY ADVOCATE, SOCIAL WORKER OR PSYCHOLOGIST THAT PARENTING PLAN WAS PREPARED AFTER ASSISTANCE

(Regulation 10)

[SECTION 33(2) AND (5) OF THE CHILDREN'S ACT 38 OF 2005]

I …… (Name and surname)

□ Family Advocate at the abovementioned High Court/ Divorce court/children's court

□ Social worker registered as such at the Council for social services professions (give practice number……)

□ Psychologist registered to practice at the Medical and Dental Council (give practice number)……

hereby confirm that the parenting plan referred to in **Form 8** between …….. and …….

(insert names of parties)

was prepared after assistance by myself and complies with the best interests of the child/children……..……..……

…… (insert names of child/children)

I confirm that information about the contents of this parenting plan been furnished to the child or children, bearing in mind his, her or their age, maturity and stage of development ----------

---

I confirm that the child or children have been given an opportunity to express their views, and their views have been given due consideration

---

Name of Family Advocate/ Social worker/Psychologist

Signature of Family Advocate/Social worker/Psychologist

Signed

Date

Particulars of Family advocate (where applicable)

Official stamp

(b) after mediation by a social worker or other suitably qualified person as contemplated in section 33(5)*(b)* of the Act, and must be completed in writing in a form identical to **Form 10**.

FORM 10

STATEMENT OF SOCIAL WORKER OR OTHER SUITABLY QUALIFIED PERSON THAT PARENTING PLAN WAS PREPARED AFTER MEDIATION

(Regulation 10)

[SECTION 34(3) OF THE CHILDREN'S ACT 38 OF 2005]

I ……(Name and surname)

□ Social worker registered as such at the Council for social services professions (give practice number……)

□ Other suitably qualified person (details of reasons why suitably qualified to be furnished in the space below)*

……

……

……

……

……

……

*Annex supporting documentation where necessary

hereby confirm that the parenting plan referred to in **Form 8** between ……and …….

(insert names of parties)

was prepared after mediation by myself and complies with the best interests of the child/children……

……..……

. (insert names of children)

The parties confirm that information about the contents of this parenting plan been furnished to the child or children bearing in mind the child or children's age, maturity and stage of development ----------

---

The parties confirm that the child or children have been given an opportunity to express their views, and have given these views due consideration----------

---

---------- Telephone contact details:

Signed Address:

---------- Organisation:

Date

Signature of Parties:

1……..

2…….

Formalities

34. (1) A parenting plan-

(a) must be in writing and signed by the parties to the agreement; and

(b) subject to subsection (2), may be registered with a family advocate or made an order of court.

PART II
PARENTING PLANS

General provisions concerning application for registration of parenting plans

9.(1) An application for the registration of a parenting plan at the office of the family advocate or for it to be made an order of court must be completed in writing in a form identical to **Form 8** and must—

(a) be signed by the parties to the parenting plan or, if a person whose signature is required is incapable of furnishing a signature, a thumbprint of that person must be effected and duly attested by a commissioner of oaths;

(b) contain the titles, full names, dates of birth, identity numbers or passport numbers (as the case may be), residential, work addresses, and contact details of all co-holders of parental responsibilities and rights named in the parenting plan; and

(c) contain the full names, dates of birth, identity numbers or passport numbers (as the case may be), residential addresses and contact details of any child or children named in the parenting plan.

FORM 8

APPLICATION FOR REGISTRATION OF A PARENTING PLAN OR FOR PARENTING PLAN TO BE MADE AN ORDER OF COURT

(Regulation 9)

[SECTION 34(2) OF THE CHILDREN'S ACT 38 OF 2005]

Part A: Particulars of holders of parental responsibilities and rights to whom the attached parenting plan applies

Holder 1.

Surname	
Full Names	
ID No/Date of Birth/passport no	
Residential Address	
Home telephone no	
Cell phone no	
Email address	
Work Address	
Work Telephone no	
Relationship to child/children	

Holder 2.

Surname	
Full Names	
ID No/Date of Birth/passport no	
Residential Address	
Home telephone no	
Cell phone no	
Email address	
Work Address	
Work telephone no	
Relationship to child/children	

Holder 3.

Surname	
Full Names	
ID No/Date of Birth/passport no	
Residential Address	
Home telephone no	
Cell phone no	

Email address	
Work Address	
Work telephone no	
Relationship to child/children	

Details of further co-holders of parental responsibilities and rights in respect of whom this application applies to be furnished on a separate page and attached to this Form as an annexure.

Part B: Details of child or children in respect of whom parenting plan applies

First Child

Surname	
Full names	
ID No/date of birth/passport no	
Residential address	
Contact no	

Second Child

Surname	
Full names	
ID No/date of birth/passport no	
Residential address	
Contact no	

Third Child

Surname	
Full names	
ID No/date of birth/passport no	
Residential address	
Contact no	

Details of additional children in respect of whom application applies to be furnished on a separate page and attached to this Form as an annexure.

Part C: Details of application for registration of parenting plan or for parenting plan to be made an order of court

TO: The Family Advocate/Clerk of the Court/ Registrar of the High Court

Place:

Date:

We,……..……

……

……..

(initials and surnames)

hereby apply for registration of the attached parenting plan at the Office of the Family Advocate/ hereby apply for the attached parenting plan to be made an order of the honourable court (delete whichever is not applicable).*

---------- ----------

Signed: Signed:

Date

* Attach written copy of parenting plan signed by the parties to the agreement/ attach copy of **Form 7**

Part D: [Note to Applicants: This Part to be completed only where a parenting plan has been prepared with the assistance of a family advocate, social worker or psychologist, or after mediation by a social worker or other suitably qualified person in instance where co-holders of parental responsibilities have experienced difficulties in exercising their responsibilities and rights [section 33(2) and (5) of the Children's Act, 2005)]

Attached to this application is:

□ **Form 9**

□ **Form 10**

(Tick whichever is applicable)

---------- ----------

Signature of applicant Signature of applicant

Date

(2) Where parental responsibilities and rights are to be exercised in the same manner by the holders of those responsibilities and rights with respect to more than one child in the same family, the application for registration of the parenting plan must be completed for each child.

(3) The applicant or applicants for the registration of a parenting plan must file copies of such plan with the family advocate, children's court or High Court, as the case may be, to enable each co-holder to retain a copy of the registered parenting plan.

(2) An application by co-holders contemplated in section 33 (1) for the registration of the parenting plan or for it to be made an order of court must-

(a) be in the prescribed format and contain the prescribed particulars; and

(b) be accompanied by a copy of the plan.

(3) An application by co-holders contemplated in section 33 (2) for the registration of a parenting plan or for it to be made an order of court must-

(a) be in the prescribed format and contain the prescribed particulars; and

(b) be accompanied by-

(i) a copy of the plan; and

(ii) a statement by-

(aa) a family advocate, social worker or psychologist contemplated in section 33 (5) *(a)* to the effect that the plan was prepared after consultation with such family advocate, social worker or psychologist; or

(bb) a social worker or other appropriate person contemplated in section 33 (5) *(b)* to the effect that the plan was prepared after mediation by such social worker or such person.

(4) A parenting plan registered with a family advocate may be amended or terminated by the family advocate on application by the co-holders of parental responsibilities and rights who are parties to the plan.

(5) A parenting plan that was made an order of court may be amended or terminated only by an order of court on application-

(a) by the co-holders of parental responsibilities and rights who are parties to the plan;

(b) by the child, acting with leave of the court; or

(c) in the child's interest, by any other person acting with leave of the court.

(6) Section 29 applies to an application in terms of subsection (2).

Refusal of access or refusal to exercise parental responsibilities and rights

35. (1) Any person having care or custody of a child who, contrary to an order of any court or to a parental responsibilities and rights agreement that has taken effect as contemplated in section 22 (4), refuses another person who has access to that child or who holds parental responsibilities and rights in respect of that child in terms of that order or agreement to exercise such access or such responsibilities and rights or who prevents that person from exercising such access or such responsibilities and rights is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(2) *(a)* A person having care or custody of a child whereby another person has access to that child or holds parental responsibilities and rights in respect of that child in terms of an order of any court or a parental responsibilities and rights agreement as contemplated in subsection (1) must upon any change in his or her residential address forthwith in writing notify such other person of such change.

(b) A person who fails to comply with paragraph *(a)* is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

[Date of commencement of section 35: 1 July 2007]

Part 4
Miscellaneous
(ss 36-41)

Presumption of paternity in respect of child born out of wedlock

36. If in any legal proceedings in which it is necessary to prove that any particular person is the father of a child born out of wedlock it is proved that that person had sexual intercourse with the mother of the child at any time when that child could have been conceived, that person is, in the absence of evidence to the contrary which raises a reasonable doubt, presumed to be the biological father of the child.

[Date of commencement of section 36: 1 July 2007]

Refusal to submit to taking of blood samples

37. If a party to any legal proceedings in which the paternity of a child has been placed in issue has refused to submit himself or herself, or the child, to the taking of a blood sample in order to carry out scientific tests relating to the paternity of the child, the court must warn such party of the effect which such refusal might have on the credibility of that party.

[Date of commencement of section 37: 1 July 2007]

Effect of subsequent marriage of parents on child

38. (1) A child born of parents who marry each other at any time after the birth of the child must for all purposes be regarded as a child born of parents married at the time of his or her birth.

(2) Subsection (1) applies despite the fact that the parents could not have legally married each other at the time of conception or birth of the child.

[Date of commencement of section 38: 1 July 2007]

Rights of child born of voidable marriage

39. (1) The rights of a child conceived or born of a voidable marriage shall not be affected by the annulment of that marriage.

(2) No voidable marriage may be annulled until the relevant court has inquired into and considered the safeguarding of the rights and interests of a child of that marriage.

(3) Section 6 of the Divorce Act and section 4 of the Mediation in Certain Divorce Matters Act apply, with the necessary changes required by the context, in respect of such a child as if the proceedings in question were proceedings in a divorce action and the annulment of the marriage were the granting of a decree of divorce.

(4) Section 8 (1) and (2) of the Divorce Act apply, with the necessary changes as the context may require, to the rescission or variation of a maintenance order, or an order relating to the care or guardianship of, or contact with, a child, or the suspension of a maintenance order or an order relating to contact with a child, made by virtue of subsection (3).

(5) A reference in any law-

(a) to a maintenance order or an order relating to the custody or guardianship of, or access to, a child in terms of the Divorce Act must be construed as a reference also to a maintenance order or an order relating to the custody or guardianship of, or access to, a child in terms of that Act as applied by subsection (3);

(b) to the rescission, suspension or variation of such an order in terms of the Divorce Act must be construed as a reference also to the rescission, suspension or variation of such an order in terms of that Act as applied by subsection (4).

(6) For purposes of this Act, the father of a child conceived of a voidable marriage where such marriage has been annulled is regarded to be in the same position as the father of a child who has divorced the mother of that child.

[Date of commencement of section 39: 1 July 2007]

Rights of child conceived by artificial fertilisation

40. (1) *(a)* Whenever the gamete or gametes of any person other than a married person or his or her spouse have been used with the consent of both such spouses for the artificial fertilisation of one spouse, any child born of that spouse as a result of such artificial fertilisation must for all purposes be regarded to be the child of those spouses as if the gamete or gametes of those spouses had been used for such artificial fertilisation.

(b) For the purpose of paragraph *(a)* it must be presumed, until the contrary is proved, that both spouses have granted the relevant consent.

(2) Subject to section 296, whenever the gamete or gametes of any person have been used for the artificial fertilisation of a woman, any child born of that woman as a result of such artificial fertilisation must for all purposes be regarded to be the child of that woman.

(3) Subject to section 296, no right, responsibility, duty or obligation arises between a child born of a woman as a result of artificial fertilisation and any person whose gamete has or gametes have been used for such artificial fertilisation or the blood relations of that person, except when-

(a) that person is the woman who gave birth to that child; or

(b) that person was the husband of such woman at the time of such artificial fertilisation.

[Date of commencement of section 40: 1 July 2007]

Access to biographical and medical information concerning genetic parents

41. (1) A child born as a result of artificial fertilisation or surrogacy or the guardian of such child is entitled to have access to-

(a) any medical information concerning that child's genetic parents; and

(b) any other information concerning that child's genetic parents but not before the child reaches the age of 18 years.

(2) Information disclosed in terms of subsection (1) may not reveal the identity of the person whose gamete was or gametes were used for such artificial fertilisation or the identity of the surrogate mother.

(3) The Director-General: Health or any other person specified by regulation may require a person to receive counselling before any information is disclosed in terms of subsection (1).

CHAPTER 4

CHILDREN'S COURTS

(ss 42-75)

Part 1
Establishment, status and jurisdiction

(ss 42-51)

Children's courts and presiding officers

42. *(1) For the purposes of this Act, every magistrate's court, as defined in the Magistrates' Courts Act, 1944 (Act 32 of 1944), shall be a children's court and shall have jurisdiction on any matter arising from the application of this Act for the area of its jurisdiction.*

(2) Every magistrate shall be a presiding officer of a children's court and every additional magistrate shall be an assistant presiding officer of a children's court for the district of which he is magistrate, additional magistrate or assistant magistrate.

(3) For the purposes of this Act, the Minister for Justice and Constitutional Development may, after consultation with the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), appoint a magistrate or an additional magistrate as a dedicated presiding officer of the children's court, within existing resources.

(4) The presiding officer of the children's court is subject to the administrative control of the head of an administrative region, defined in section 1 of the Magistrates' Courts Act, 1944 (Act 32 of 1944).

(5) The presiding officer of the children's court must perform such functions as may be assigned to him or her under this Act or any other law.

(6) For purposes of giving full effect to this Act, magistrates or additional magistrates may be designated as presiding officers for one or more children's courts.

(7) The Minister for Justice and Constitutional Development may, after consultation with the head of an administrative region, by notice in the Gazette define the area of jurisdiction of each children's court and increase or reduce the area of jurisdiction of each children's court in the relevant administrative region.

(8) The children's court hearings must, as far as is practicable, be held in a room which-

(a) *is furnished and designed in a manner aimed at putting children at ease;*

(b) *is conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings without compromising the prestige of the court;*

(c) *is not ordinarily used for the adjudication of criminal trials; and*

(d) *is accessible to disabled persons and persons with special needs.*

(9) A children's court sits at a place within the district or province designated by the Minister for Justice and Constitutional Development as a magistrate's court.

(10) The publication of a notice referred to in subsection (7) does not affect proceedings which have been instituted but not yet completed at the time of such publication.

Status

43. *A children's court is a court of record and has a similar status to that of a magistrate's court at district level.*

Geographical area of jurisdiction of children's court

44. *(1) The children's court that has jurisdiction in a particular matter is-*

(a) the court of the area in which the child involved in the matter is ordinarily resident; or

(b) if more than one child is involved in the matter, the court of the area in which any of those children is ordinarily resident.

(2) Where it is unclear which court has jurisdiction in a particular matter, the children's court before which the child is brought has jurisdiction in that matter.

Matters children's court may adjudicate

45. *(1) Subject to section 1 (4), a children's court may adjudicate any matter, involving-*

(a) the protection and well-being of a child;

(b) the care of, or contact with, a child;

(c) paternity of a child;

(d) support of a child;

(e) the provision of-

(i) early childhood development services; or

(ii) prevention or early intervention services;

(f) maltreatment, abuse, neglect, degradation or exploitation of a child, except criminal prosecutions in this regard;

(g) the temporary safe care of a child;

(h) alternative care of a child;

(i) the adoption of a child, including an inter-country adoption;

(j) a child and youth care centre, a partial care facility or a shelter or drop-in centre, or any other facility purporting to be a care facility for children; or

(k) any other matter relating to the care, protection or well-being of a child provided for in this Act.

(2) A children's court-

(a) may try or convict a person for non-compliance with an order of a children's court or contempt of such a court;

(b) may not try or convict a person in respect of a criminal charge other than in terms of paragraph (a); and

(c) is bound by the law as applicable to magistrate's courts when exercising criminal jurisdiction in terms of paragraph (a).

(3) Pending the establishment of family courts by an Act of Parliament, the High Courts and Divorce Courts have exclusive jurisdiction over the following matters contemplated in this Act:

(a) The guardianship of a child;

(b) the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child;

(c) artificial fertilisation;

(d) the departure, removal or abduction of a child from the Republic;

(e) applications requiring the return of a child to the Republic from abroad;

(f) the age of majority or the contractual or legal capacity of a child;

(g) the safeguarding of a child's interest in property; and

(h) surrogate motherhood.

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

Orders children's court may make

46. *(1) A children's court may make the following orders:*

(a) An alternative care order, which includes an order placing a child-

(i) in the care of a person designated by the court to be the foster parent of the child;

(ii) in the care of a child and youth care centre; or

(iii) in temporary safe care;

(b) an order placing a child in a child-headed household in the care of the child heading the household under the supervision of an adult person designated by the court;

(c) an adoption order, which includes an inter-country adoption order;

(d) a partial care order instructing the parent or care-giver of the child to make arrangements with a partial care facility to take care of the child during specific hours of the day or night or for a specific period;

(e) a shared care order instructing different care-givers or child and youth care centres to take responsibility for the care of the child at different times or periods;

(f) a supervision order, placing a child, or the parent or care-giver of a child, or both the child and the parent or care-giver, under the supervision of a social worker or other person designated by the court;

(g) an order subjecting a child, a parent or care-giver of a child, or any person holding parental responsibilities and rights in respect of a child, to-

(i) early intervention services;

(ii) a family preservation programme; or

(iii) both early intervention services and a family preservation programme;

(h) a child protection order, which includes an order-

(i) that a child remains in, be released from, or returned to the care of a person, subject to conditions imposed by the court;

(ii) giving consent to medical treatment of, or to an operation to be performed on, a child;

(iii) instructing a parent or care-giver of a child to undergo professional counselling, or to participate in mediation, a family group conference, or other appropriate problem-solving forum;

(iv) instructing a child or other person involved in the matter concerning the child to participate in a professional assessment;

(v) instructing a hospital to retain a child who on reasonable grounds is suspected of having been subjected to abuse or deliberate neglect, pending further inquiry;

(vi) instructing a person to undergo a specified skills development, training, treatment or rehabilitation programme where this is necessary for the protection or well-being of a child;

(vii) instructing a person who has failed to fulfil a statutory duty towards a child to appear before the court and to give reasons for the failure;

(viii) instructing an organ of state to assist a child in obtaining access to a public service to which the child is entitled, failing which, to appear through its representative before the court and to give reasons for the failure;

(ix) instructing that a person be removed from a child's home;

(x) limiting access of a person to a child or prohibiting a person from contacting a child; or

(xi) allowing a person to contact a child on the conditions specified in the court order;

(i) a contribution order in terms of this Act;

(j) an order instructing a person to carry out an investigation in terms of section 50; and

(k) any other order which a children's court may make in terms of any other provision of this Act.

(2) A children's court may withdraw, suspend or amend an order made in terms of subsection (1), or replace such an order with a new order.

Referral of children by other court for investigation

47. *(1) If it appears to any court in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection as is contemplated in section 150, the court must order that the question whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155 (2).*

(2) If, in the course of any proceedings in terms of the Administration Amendment Act, 1929 (Act 9 of 1929), the Matrimonial Affairs Act, 1953 (Act 37 of 1953), the Divorce Act, the Maintenance Act, the Domestic Violence Act, 1998 (Act 116 of 1998) or the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), the court forms the opinion that a child of any of the parties to the proceedings has been abused or neglected, the court-

(a) may suspend the proceedings pending an investigation contemplated in section 155 (2) into the question whether the child is in need of care and protection; and

(b) must request the Director for Public Prosecutions to attend to the allegations of abuse or neglect.

(3) A court issuing an order in terms of subsection (1) or (2) may also order that the child be placed in temporary safe care if it appears to the court that this is necessary for the safety and well-being of the child.

Additional powers

48. *(1) A children's court may, in addition to the orders it is empowered to make in terms of this Act-*

(a) grant interdicts and auxiliary relief in respect of any matter contemplated in section 45 (1);
(b) extend, withdraw, suspend, vary or monitor any of its orders;
(c) impose or vary time deadlines with respect to any of its orders;
(d) make appropriate orders as to costs in matters before the court; and
(e) order the removal of a person from the court after noting the reason for the removal on the court record.

(2) A children's court may for the purposes of this Act estimate the age of a person who appears to be a child in the prescribed manner.

Lay-forum hearings

49. *(1) A children's court may, before it decides a matter or an issue in a matter, order a lay forum hearing in an attempt to settle the matter or issue out of court, which may include-*

(a) mediation by a family advocate, social worker, social service professional or other suitably qualified person;
(b) a family group conference contemplated in section 70; or
(c) mediation contemplated in section 71.

(2) Before ordering a lay forum hearing, the court must take into account all relevant factors, including-

(a) the vulnerability of the child;
(b) the ability of the child to participate in the proceedings;
(c) the power relationships within the family; and
(d) the nature of any allegations made by parties in the matter.

Investigations

50. *(1) A children's court may, subject to section 155 (9), before it decides a matter, order any person-*

(a) to carry out an investigation or further investigation that may assist the court in deciding the matter; and
(b) to furnish the court with a report and recommendation thereon.

(2) An investigation or further investigation must be carried out-

(a) in accordance with any prescribed procedures; and
(b) subject to any directions and conditions determined in the court order.

(3) The court order may authorise a designated social worker or any other person authorised by the court to conduct the investigation or further investigation to enter any premises mentioned in the court order, either alone or in the presence of a police official, and on those premises-

(a) remove a child in terms of sections 47 and 151;
(b) investigate the circumstances of the child;
(c) record any information; and
(d) carry out any specific instruction of the court.

(4) In addition to the powers a police official has in terms of the South African Police Service Act, 1995 (Act 68 of 1995), the police official accompanying the designated social worker or other person authorised to conduct the investigation or further investigation may-

(a) enter the premises mentioned in the court order and conduct any search;
(b) question any person;
(c) request the name, address and identification details of any person on or residing or suspected to be residing on those premises;
(d) remove any person, from the child's home or place of normal residence in the manner

contemplated in section 153 if the police official has a reasonable suspicion that the person-

(i) has caused the child harm; or

(ii) is likely to cause the child harm if the person is not so removed.

(e) record any information; and

(f) carry out any specific instruction of the court.

(5) A police official referred to in subsection (4) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises contemplated in subsection (4) (a), including the breaking of any door or window of such premises: Provided that such police official must first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

Part 2: Investigations, Conferences and Forums

Investigations

11. *(1) An order of a court in terms of section 50 of the Act to carry out an investigation or further investigation must be on a form which corresponds substantially with Form 9 of the Annexure.*

FORM 9

ORDER OF A CHILDREN'S COURT TO CARRY OUT AN INVESTIGATION IN TERMS OF SECTION 50 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 11]

File No.: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

IN THE MATTER:

FULL NAME(S) OF CHILD(REN)	GENDER	ID NUMBERS/DATE OF BIRTH

Child(ren) AND

NAME(S) OF OTHER PARTY(IES)	ID NUMBER(S)/DATE OF BIRTH

Other party(ies) involved

TO:

_____

ADDRESS:

_____

_____

YOU ARE HEREBY ORDERED:

To carry out an investigation or further investigation that may assist this court in deciding the matter at hand as provided for in section 50 of the Children's Act, 2005 (Act No. 38 of 2005); and

To furnish this court with a report and a recommendation as provided for in regulation 11 (5) of the Regulations relating to Children's Courts and International Child Abduction, 2009 within the period as specified in regulation 11 (6) of the Regulations relating to Children's Courts and International Child Abduction, 2009.

Signed at_____this_____day of_____20_____

_____

Presiding officer of the children's court

(2) A person who has been ordered by a court in terms of section 50(1) of the Act to carry out an investigation or further investigation may, for the purpose of performing his or her functions—

(a) question any person who is likely to give material or relevant information about any matter that the court ordered him or her to investigate; and

(b) request a person to identify himself or herself to the satisfaction of the investigator.

(3) An investigator may, in investigating a matter so ordered by a court and with due consideration to expediting the investigation of that matter, request any person to—

(a) meet with him or her at a specific time and place on a specific date; and

(b) provide him or her at the meeting, with information relating to the matter and documentary proof of the information, if applicable.

(4) (a) A request referred to in subregulation (2) may be made in the manner the investigator deems fit.

(b) An investigator must keep a written record of—

(i) the manner in which the request referred to in paragraph (a) was made;

(ii) any matter he or she investigates;

(iii) any meetings held with him or her; and

(iv) the outcome of the investigation.

(5) After the investigator has concluded the investigation ordered by a court he or she must compile a written report which must contain the following information:

(a) The matter which was investigated;

(b) the reason for the investigation;

(c) the manner of the investigation; and

(d) the outcome of the investigation.

(6) The investigator must submit the report referred to in subregulation (5) to the court within 10 days after the conclusion of the investigation.

Appeals

51. *(1) Any party involved in a matter before a children's court may appeal against any order made or any refusal to make an order, or against the variation, suspension or rescission of such order of the court to the High Court having jurisdiction.*

(2) An appeal in terms of subsection (1) must be noted and prosecuted as if it were an appeal against a civil judgment of a magistrate's court, subject to section 45 (2) (c).

Part 2
Court proceedings
(ss 52-68)

Rules and court proceedings

52. *(1) Except as is otherwise provided in this Act, the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and of the rules made in terms thereof as well as the rules made under the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), apply, with the necessary changes required by the context, to the children's court in so far as these provisions relate to-*

(a) the issue and service of process;
(b) the appearance in court of advocates and attorneys;
(c) the execution of court orders;
(d) contempt of court; and
(e) penalties for-
(i) non-compliance with court orders;
(ii) obstruction of the execution of judgements; and
(iii) contempt of court.

(2) Rules made in terms of subsection (1) must be designed to avoid adversarial procedures and include rules concerning-

(a) appropriate questioning techniques for-
(i) children in general;
(ii) children with intellectual or psychiatric difficulties or with hearing or other physical disabilities which complicate communication;
(iii) traumatised children; and
(iv) very young children; and
(b) the use of suitably qualified or trained interpreters.

Who may approach court

53. *(1) Except where otherwise provided in this Act, any person listed in this section may bring a matter which falls within the jurisdiction of a children's court, to a clerk of the children's court for referral to a children's court.*

(2) The persons who may approach a court, are:

(a) A child who is affected by or involved in the matter to be adjudicated;
(b) anyone acting in the interest of the child;
(c) anyone acting on behalf of a child who cannot act in his or her own name;
(d) anyone acting as a member of, or in the interest of, a group or class of children; and
(e) anyone acting in the public interest.

CHAPTER III
CHILDREN'S COURTS

Part 1: Children's Court Proceedings

Bringing matter to court

6. *(1) A person referred to in section 53 of the Act, who intends to bring a matter to court in terms of that section, must notify the clerk of his or her intention to do so on a form which corresponds substantially with Form 2 of the Annexure.*

FORM 2

BRINGING MATTER TO CHILDREN'S COURT IN TERMS OF SECTION 53 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 6]

Note:

1. Affidavits of other persons or other documentary evidence in support of the matter must be attached.

2. *Your attention is drawn to the fact that the children's court may adjudicate the matter, refer the matter for mediation to a lay-forum or refer the matter for a family group conference. If the matter is referred back to the children's court the clerk will inform you accordingly.*

File No:_____

[If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.]

PART A ***PARTICULARS OF CHILD(REN)***		
Surname:		
Child 1	***Full names:*** *(state surname of each child as well if surnames are not similar)*	***Gender***
Child 2		
Child 3		
Child 4		
Child 5		

Child 1	***ID. No./Date of birth:***												
													/ /
Child 2													/ /
Child 3													/ /
Child 4													/ /
Child 5													/ /

Residential address(es):
(If the addresses are not the same for each child please indicate the addresses on a separate Page.)

Code (_____)

Residential telephone number: (if any)
(If the numbers are not the same, for each child please indicate the numbers on a separate page.)

(_____)

Cellular number:(if any)

Child 1	
Child 2	
Child 3	
Child 4	
Child 5	

Physical address (where documents can be served):
(If the addresses are not the same for each child please indicate the addresses on a separate page)

Code (_____)

Other relevant information which may assist the court to make a decision regarding the manner in which the matter could best be dealt with in terms of the Children's Act, 2005 (Act No, 38 of 2005)
(such as financial position, availability of transport, socio-economic status, if an interpreter will be needed and if special requirements are needed e.g. wheelchair access)

PART B
PARTICULARS OF *CHILD WHO IS AFFECTED BY OR INVOLVED IN THE MATT§R/PERSON *ACTING IN THE INTEREST OF THE CHILD/*ON BEHALF OF THE CHILD WHO CANNOT ACT IN HIS/HER OWN NAME/ *MEMBER OF A GROUP OF CLASS OF CHILDREN/*IN THE PUBLIC INTEREST (SECTION 53(2))

Surname:	
Full names:	

ID. No./Date of birth:	/ /
Capacity or relationship of person acting in terms of section 53(2):	
Registration number of corporate body (if applicable)	
Residential address:	Code (_____)
Phone number(h):	(_____)
Cellular phone number:	
'Business address:	
	Code(_____)
Phone number(b):	(_____)
Fax number	(_____)
Physical address: (where documents can be served)	Code(_____)
E-mail address:	

PART C
PARTICULARS OF PERSONS HAVING AN INTEREST IN THE MATER

Surname:	
Full names:	
ID. No./Date of birth:	/ /
Capacity of person acting in terms of section 53(2)(b)-(e).	
Registration number of corporate body: (if applicable)	
Residential address (if applicable):	Code (_____)
Phone number(h):	(_____)
Cellular phone number:	
Business address:	Code (_____)
Phone number(b):	(_____)
Fax number:	(_____)
Physical address (where documents can be served):	Code (_____)
E-mail address:	

PART D:
PARTICULARS OP MATTER

Nature of matter brought to court: (Please give full details of the matter e.g., registration/amendment of parenting plans, removal of child to safe care, children in need of care and protection, placement in youth care centers, adoption etc.)	
Documents: Are there any documents relating to the matter? (If so please attach):	

Signed at_____this_____day of_____20_____

_____
Signature/thumbprint/mark of person bringing the matter to court

_____
Full names of person witnessing person who made a thumbprint/mark

_____
Signature of witness to thumbprint/mark

(2) The clerk must, within five days after receipt of the notice referred to in subregulation (1), refer the matter to a presiding officer of the court, who must, within seven days after receiving the documentation relating to the matter, refer—

(a) the matter for mediation to a—
(i) family group conference in terms of section 70 of the Act; or
(ii) lay-forum in terms of section 71 of the Act;
(b) the matter for a pre-hearing conference in terms of section 69(1) of the Act; or
(c) the matter to court.

Deviation from time periods

8. *(1) A party to the proceedings in a court, or his or her legal representative, may request the court for a deviation from any period of time prescribed in these Regulations, which request must be in writing, stating the reasons for the request and submitting any proof to substantiate his or her reasons.*

(2) A court may—

(a) grant a deviation from any period of time prescribed in these Regulations, on the conditions that the court deems fit, if any other party—
(i) did not raise any objections; or
(ii) did not respond but that party's rights will not be affected if a deviation from any period of time prescribed in these Regulations is granted;
(b) refuse a deviation from any period of time prescribed in these Regulations, if any other party—
(i) raises an objection and that party's rights may be affected if a deviation from any period of time prescribed in these Regulations is granted; or
(ii) does not respond but that party's rights may be affected if a deviation from any period of time prescribed in these Regulations is granted.

Additional powers of court

10. *(1) A court may, if there is any uncertainty regarding the age of a person who appears to be a child—*

(a) request any documentation, evidence or statements relevant to the estimation of the age of that person from any person, body or institution; or
(b) refer that person to a medical practitioner employed by the state of the court's choice for an estimation of that person's age.

(2) The medical practitioner referred to in subregulation (1)(b), must complete a form which corresponds substantially with Form 7 of the Annexure.

FORM 7
MEDICAL REPORT AND AGE ASSESSMENT OF CHILD IN TERMS OF SECTION 48(2) OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 10(2)]

A.

MEDICAL REPORT OF PERSON WHOSE AGE IS ESTIMATED

I	***PERSONAL PARTICULARS***
Surname:	
Full names:	
Gender	

Residential address:								
								Code (_____)
Phone number(h):	*(_____)*							
II	***MEDICAL PARTICULARS***							
General								
Height:					*Weight:*			
Condition of								
Lungs:								
Heart:								
Teeth:								
Apparent impairment: Indicate degree								
Sight:								
Hearing:								
Speech:								
Orthopaedic:								
Neurological:								
Intellectual:								
Other								
Presence of	***Yes***	***No***	*Presence of any infections:*	***Yes***	***No***	*Presence of any injuries:*	***Yes***	***No***
If 'Yes' to presence of any disease infection/injury, specify:								
	Normal	***Abnormal***	***If abnormal: specify***					
*Physical development according to *his/her age:*								
	Adequate	***Deficient***	***If deficient: specify***					
Nutrition:								
	Yes	***No***	***If 'No': Specify***					
Vaccinations:								
	Yes	***No***	***If 'Yes': Specify***					
Substance abuse:								
	Yes	***No***	***If 'Yes': Specify***					
Other observations:								
Medical or other treatment required or recommended:	***Yes***	***No***	***If 'Yes': Specify***					

Date_____Place_____

_____
Medical Practitioner

D.S. Ref No.:_____

B.

MEDICAL ASSESSMENT OF AGE

Surname:	
Full names:	
ASSESMENT	
Height:	
Weight:	
Breasts:	
Molar teeth:	
Pubic hair:	
Auxiliary:	
Facial:	
Genitals:	

OPINION

*On the grounds of the above-examination, and *his/her general appearance, dressed and undressed, * his/her—*

(a)
age is assessed at being between_____and_____Most probable age_____;

(b)
possible date of birth, taking the above-mentioned into account, could be: _____

REMARKS:

Date_____Place _____

_____
Medical Practitioner

(3) In the absence of a valid birth certificate, identity document or passport, the court must, on all the available evidence make an estimation of the age and possible date of birth of the person referred to in subregulation (1) by using, as a guide—
(a) Form 7 of the Annexure completed by a medical practitioner as provided for in subregulation (1)(b); or
(b) a record of immunisation issued by a clinic.
(4) An estimation of age in terms of subregulation (3), must be entered into the court record as the estimated age and date of birth of the person.
(5) Where a court makes an estimation of age in terms of subregulation (3), a form which corresponds substantially with Form 8 of the Annexure must be completed and handed to the social worker involved with the matter to be handed in at the Department of Home Affairs to be dealt with in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) and the Identification Act, 1997 (Act No. 68 of 1997).

FORM 8
COURT CERTIFICATE OF ESTIMATED AGE OF CHILD

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 10(5)]

File No.: _____

REPUBLIC OF SOUTH AFRICA

CONFIDENTIAL

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

TO: *DEPARTMENT OF HOME AFFAIRS*

_____

_____

CERTIFICATE

*It is hereby certified that the *age(s) of the *child(ren) mentioned hereunder *has/have been estimated/confirmed to be as indicated by the corresponding *date(s) of birth provided below:*

NAME	***GENDER***	***DATE***

*The estimate was made in terms of section 48(2) of the Children's Act, 2005 (Act No 38 of 2005) for the purposes of *a children's court inquiry/adoption proceedings where such age is a relevant fact. The confirmed age was based on sufficient evidence available.*

_____

Date

_____

Presiding officer of the children's court

Note:
This document is not an official birth certificate.

Legal representation

54. *A person who is a party in a matter before a children's court is entitled to appoint a legal practitioner of his or her own choice and at his or her own expense.*

Legal representation of children

55. *(1) Where a child involved in a matter before the children's court is not represented by a legal representative, and the court is of the opinion that it would be in the best interests of the child to have legal representation, the court must refer the matter to the Legal Aid Board referred to in section 2 of the Legal Aid Act, 1969 (Act 22 of 1969).*

(2) The Board must deal with a matter referred to in subsection (1) in accordance with section 3B of that Act, read with the changes required by the context.

Attendance at proceedings

56. *Proceedings of a children's court are closed and may be attended only by-*

(a) *a person performing official duties in connection with the work of the court or whose presence is otherwise necessary for the purpose of the proceedings;*

(b) *the child involved in the matter before the court and any other party in the matter;*

(c) *a person who has been instructed in terms of section 57 by the clerk of the children's court*

to attend those proceedings;

(d) the legal representative of a person who is entitled to legal representation;

(e) a person who obtained permission to be present from the presiding officer of the children's court; and

(f) the designated social worker managing the case.

Compulsory attendance of persons involved in proceedings

57. *(1) The clerk of the children's court may, by written notice in the prescribed manner, request a party in a matter before a children's court, a family member of a child involved in the matter or a person who has another interest in the matter, to attend the proceedings of the children's court.*

(2) The person in whose physical control the child is must ensure that the child attends those proceedings except if the clerk of the children's court or the court directs otherwise.

Attendance of proceedings

7. *(1) If the presiding officer of the court decides under regulation 6(2)(c) that the matter should be referred to court, or if the matter was referred back to the court by a facilitator of a family group conference or by a chairperson of a lay forum, the presiding officer of the court in question must assign a date for the matter to be heard in court, which date must be within 30 days after the presiding officer of the court has decided that the matter must be heard in court or after the matter was referred back to the court by a facilitator of a family group conference or a chairperson of a lay forum.*

(2) The clerk must, within five days after the presiding officer of the court has assigned a court date as referred to in subregulation (1), and at least 15 days before the date of the hearing, notify the parties, to attend the proceedings of the court, on a form which corresponds substantially with Form 4 of the Annexure.

FORM 4
NOTICE TO ATTEND PROCEEDINGS OF THE CHILDREN'S COURT IN TERMS OF SECTION 57 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 7)]

*File No:*_____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

IN THE MATTER OF THE FOLLOWING CHILD(REN):

FULL NAME(S) OF CHILD(REN)	***GENDER***	***ID NUMBERS/DATE OF BIRTH***

TO: *(a party in the matter before the children's Court/a family member of a child involved in the matter/a person who has another interest in the matter)* _____

ADDRESS: _____

YOU ARE HEREBY REQUIRED:

To appear before this court at_____on the_____day of_____at _____(time) and on any subsequent day the court thereafter requires, in respect of the abovementioned child(ren), regarding the following matter: _____

ATTENDANCE OF CHILDREN REQUIRED:

☐ *YES* ☐ *NO*

TO THE PERSONS WHO ARE HEREBY GIVEN NOTICE:

(1)

You must attend the proceedings at the place and time aforesaid and must remain in attendance until its conclusion or until excused by the court.

(2)

You must bring the said child (ren) before the court at the abovementioned time and place, except if otherwise directed.

(3)

If you fail to attend the proceedings or to remain in attendance during the proceedings, the court may -

(a)

issue a warrant for your arrest and in a summary manner inquire into your failure to attend or remain in attendance and, unless you satisfy the court that your failure was not due to fault on your part, sentence you to a fine or to imprisonment; and

(b)

order you to pay any costs.

(4)

Should legal representation be required it is recommended that this be arranged timeously.

(5)

You must ensure that all your witnesses are present at the proceedings of the hearing. If you wish any witness to be subpoenaed by the court, you are requested to submit full particulars of the witnesses (i.e. full names, identity numbers and physical addresses) to the clerk of the court, within fourteen days before the date of the hearing. The costs of the service of the subpoena of any witness will be borne by the person who requests the subpoena unless, in exceptional cases, the court directs that the state bears such costs.

(6)

Your attention is drawn to the fact that the court may decide to—

(a)

refer the matter to a family group conference or a lay-forum for mediation and that the matter may be referred back to the children's court for a hearing;

(b)

hold a pre-hearing conference; or

(c)

hear the matter.

Signed at_____this_____day of_____20

_____

Clerk of the children's court

PLEASE SEE REVERSE HEREOF

REVERSE OF FORM 4

RETURN OF SERVICE
FOR OFFICIAL PURPOSES ONLY

I, _____, certify that I have—

*

delivered a copy of the notice to _____personally;

or

*

*offered a copy of the notice to _____a person apparently not younger than the age of 16 years and apparently residing or employed at the *residence/place of employment/place of business of _____, since he/she could not conveniently be found and at the same time informing him/her of the nature and exigency thereof;*

or

*

**affixed/placed a copy of the notice to/in the *outer/principal door/security gate/post box of the *residence/place of employment/place of business of _____, since he/she prevented the service by keeping his/her *residence/place of employment/place of business closed.*

Signed at _____this _____day of _____20_____

_____
Signature of sheriff/clerk of the children's court/
person authorised by presiding officer of the children's court

Full first names and surname _____

(Block letters)

Designation (rank) _____Ex Officio Republic of South Africa. Business address _____Code

(Street address must be stated)

(3) The notice referred to in subregulation (2) must be—

(a) served personally on a party by a sheriff, a clerk, or a person authorised by the presiding officer of the court;

(b) submitted to a party by registered post; or

(c) served or submitted in any other manner as directed by the presiding officer of the court.

(4) A written report as provided for in section 63(1) of the Act must be submitted to the presiding officer of the court no later than 10 days prior to the hearing of the matter.

Rights of persons to adduce evidence, question witnesses and produce argument

58. *The following persons have the right to adduce evidence in a matter before a children's court and, with the permission of the presiding officer of the children's court, to question or cross-examine a witness or to address the court in argument:*
(a) A child involved in the matter;
(b) a parent of the child;
(c) a person who has parental responsibilities and rights in respect of the child;
(d) a care-giver of the child;

(e) a person whose rights may be affected by an order that may be made by the court in those proceedings; and

(f) a person who the court decides has a sufficient interest in the matter.

Witnesses

59. *(1) The clerk of the children's court must, in the prescribed manner, summons a person to appear as a witness in a matter before the court to give evidence or to produce a book, document or other written instrument on request by-*

(a) the presiding officer in the matter;

(b) the child or a person whose rights may be affected by an order that may be made by the court in those proceedings; or

(c) the legal representative of a person referred to in paragraph (b).

(2) A summons referred to in subsection (1) must be served on the witness as if it were a summons to give evidence or to produce a book, document or other written instrument at a criminal trial in a magistrate's court.

(3) Sections 188 and 189 of the Criminal Procedure Act, 1977 (Act 51 of 1977), read with such changes as the context may require, apply to a person who has been summonsed in terms of subsection (1) or required by the presiding officer to give evidence.

(4) A person summonsed in terms of subsection (1) (a) and who complied with the summons, is entitled to an allowance from state funds equal to that determined for witnesses summonsed to appear in criminal trials in a magistrate's court.

(5) A person summonsed in terms of subsection (1) (b) or (c) is not entitled to an allowance from state funds except if the presiding officer so orders.

Witnesses

9. *(1) The clerk may subpoena any person to appear as a witness in a matter before the court at least 10 days before the date of the hearing on a form that corresponds substantially with Form 6 of the Annexure.*

FORM 6
SUBPOENA TO WITNESS TO APPEAR BEFORE THE CHILDREN'S COURT IN TERMS OF SECTION 59 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 9]

File No.: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

In the matter of an inquiry in terms of section 59 of the Children's Act, 2005 (Act No. 38 of 2005), in connection with the following child(ren):

NAME(S)OF CHILD(REN)	***GENDER***	***DATE OF BIRTH***

TO:

_____

ADDRESS:

_____
_____
_____

1.

You are hereby required to appear as a witness before the court at the request of:

(a)

The presiding officer of the court of the court. _

(b)

The child or a person whose rights may be affected by an order of the court. _

(c)

The legal representative of a person referred to in (b). _

2.

You are hereby further required:

(a)

to appear before this court at _____on the _____day of _____at _____(time) and on any subsequent day to which the hearing may be postponed to give evidence at this inquiry _____

(b)

produce the following books or documents:

(i)

_____

(ii)

_____

(iii)

_____

(iv)

_____

(v)

_____

Dated at _____this _____day of _____20_____

_____
Clerk of the children's court

NOTE:

.

A person subpoenaed by the court and who complies with the subpoena is entitled to witness fees from state funds.

.

A person subpoenaed at the request of the child or a person whose rights may be affected by an order of the court, or the legal representative of the child or a person whose rights may be affected by an order of the court, is not entitled to witness fees from state funds, except if the presiding officer of the court so orders.

.

If you fail to obey this subpoena, a warrant for your arrest may be issued and, unless you can satisfy the court that your failure was not due to fault on your part you may be sentenced to a fine or to imprisonment.

PLEASE SEE REVERSE HEREOF

REVERSE OF FORM 6

RETURN OF SERVICE
FOR OFFICIAL PURPOSES ONLY

I, _____, certify that I have—

*

delivered a copy of the subpoena to _____personally;

or

*

*offered a copy of the subpoena to_____a person apparently not younger than the age of 16 years and apparently residing or employed at the *residence/place of employment/place of business of_____since he/she could not conveniently be found and at the same time informing him/her of the nature and exigency thereof;*

or

*

**affixed/placed a copy of the subpoena to/in the *outer/principal door/security gate/post box of the *residence/place of employment/place of business of_____, since he/she prevented the service by keeping his/her*residence/place of employment/place of business closed.*

Signed at _____this _____day of _____20_____

_____
Signature of sheriff/clerk of the children's court/
person authorised by presiding officer of the children's court

Full first names and surname _____

(Block letters)

Designation (rank) _____Ex Officio Republic of South Africa

Business address_____Code_____

(Street address must be stated)

(2) A person referred to in section 59(1)(b) or (c) of the Act, who intends to have a witness subpoenaed must, within 15 days before the date of the hearing, request the clerk to issue a subpoena to that witness, and the clerk must without delay issue the subpoena.

(3) The subpoena referred to in subregulation (1) must be—

(a) served personally on a party by a sheriff, a clerk, or a person authorised by the presiding officer of the court;

(b) submitted to a party by registered post; or

(c) served or submitted in any other manner as directed by the presiding officer of the court.

Conduct of proceedings

60. *(1) The presiding officer in a matter before a children's court controls the conduct of the proceedings, and may-*

(a) call any person to give evidence or to produce a book, document or other written instrument;

(b) question or cross-examine that person; or

(c) to the extent necessary to resolve any factual dispute which is directly relevant in the matter, allow that person to be questioned or cross-examined by-

(i) *the child involved in the matter;*
(ii) *the parent of the child;*
(iii) *a person who has parental responsibilities and rights in respect of the child;*
(iv) *a care-giver of the child;*
(v) *a person whose rights may be affected by an order that may be made by the court in those proceedings; or*
(vi) *the legal representative of a person who is entitled to a legal representative in those proceedings.*

(2) If a child is present at the proceedings, the court may order any person present in the room where the proceedings take place to leave the room if such order would be in the best interests of that child.

(3) Children's court proceedings must be conducted in an informal manner and, as far as possible, in a relaxed and non-adversarial atmosphere which is conducive to attaining the co-operation of everyone involved in the proceedings.

Keeping of records

33. *(1) (a) A court is a court or record and proceedings before it in terms of section 57 of the Act must be recorded verbatim, in narrative form or by mechanical means.*

(b) Despite paragraph (a), a court must, in respect of each matter before it, record the information indicated in Form 17 of the Annexure in so far as it is applicable.

FORM 17

RECORD OF PROCEEDINGS IN THE CHILDREN'S COURT IN TERMS OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 33]

File No: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

IN THE MATTER OF PROCEEDINGS OF THE CHILDREN'S COURT, IN TERMS OF THE CHILDREN'S ACT, 2005, IN RESPECT OF THE FOLLOWING CHILD(REN):

FULL NAME(S) OF CHILD(REN)	***GENDER***	***ID NUMBER/DATE OF BIRTH***	***PRESENT AT PROCEEDINGS***	***NOT PRESENT AT PROCEEDINGS***

BEFORE PRESIDING OFFICER:

_____
_____

On the _____day of _____20_____

The above-mentioned child (ren) was/were-

□ brought before the court □ not brought before the court

Reasons why the child(ren) was/were not brought before the court:

AND THERE APPEARED:

Social worker:

Interpreter:

Clerk of the court:

Mother/Guardian/caregiver:

Father/Guardian/caregiver:

Respondent:

Party(ies) allowed to join proceedings:

Legal representative(s):

Witnesses:

THE FOLLOWING EVIDENCE WAS ADDUCED:

FINDING/ORDER:

_____
Signature of presiding officer

(2) (a) The record of proceedings includes any judgment handed down or ruling or order made by the court, any viva voce evidence given in court, any exception taken or objection made to any evidence received or tendered and the proceedings of the court generally, including the addresses of any of the parties or the record of any inspection in loco.

(b) The court must mark each document submitted as evidence and note that mark on the record.

(3) Rule 30(5) to (12) of the Rules of Court made under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), applies with the changes required by the context and in so far as it is applicable in respect of the transcription of any court records and copies thereof.

(4) A record of proceedings may only be disposed of after the expiry of—

(a) a period of 10 years since the date of finalisation of the matter in question; or

(b) a period of three years after a contribution order was made, in the case of records relating to contribution orders.

(5) Any party to the proceedings may have access to that record of proceedings—

(a) during office hours at the court where the matter was dealt with; and

(b) under the supervision of the clerk.

(6) Any person, other that a party to the proceedings, may in writing apply to the presiding officer of the court where the matter was dealt with, to have access to the record of proceedings, stating reasons why access should be granted.

(7) The presiding officer of the court may—

(a) refuse access to the record of proceedings; or

(b) grant access to record of proceedings, or any part thereof—

(i) during office hours at the court where the matter was dealt with;

(ii) under the supervision of the clerk;

(iii) against payment of the amount, as amended from time to time, prescribed in terms of section 7 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and

(iv) on any other conditions he or she may determine;

(8) Notwithstanding the provisions of subregulation (7), a presiding officer of the court may give approval in a specific case for the record of proceedings to be accessible free of charge—

(a) for official or research purposes; and

(b) for the purpose of publishing a report on the proceedings in a publication which is intended to be read mainly by social workers, probation officers, medical practitioners, dentists, child and youth care workers, nurses, psychologists, educationists, lawyers, criminologists, jurists or members of any other relevant profession.

Participation of children

61. *(1) The presiding officer in a matter before a children's court must-*

(a) allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development and any special needs that the child may have, is able to participate in the proceedings and the child chooses to do so;

(b) record the reasons if the court finds that the child is unable to participate in the proceedings or is unwilling to express a view or preference in the matter; and

(c) intervene in the questioning or cross-examination of a child if the court finds that this would be in the best interests of the child.

(2) A child who is a party or a witness in a matter before a children's court must be questioned through an intermediary as provided for in section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) if the court finds that this would be in the best interests of that child.

(3) The court-

(a) may, at the outset or at any time during the proceedings, order that the matter, or any issue in the matter, be disposed of separately and in the absence of the child, if it is in the best interests of the child; and

(b) must record the reasons for any order in terms of paragraph (a).

Professional reports ordered by court

62. *(1) A children's court, for the purposes of deciding a matter before it or any issue in the matter, may order, if necessary, that a designated social worker, family advocate, psychologist, medical practitioner or other suitably qualified person carry out an investigation to establish the circumstances of-*

(a) the child;

(b) the parents or a parent of the child;

(c) a person who has parental responsibilities and rights in respect of the child;

(d) a care-giver of the child;

(e) the person under whose control the child is; or

(f) any other relevant person.

(2) A person referred to in subsection (1) may, subject to section 63 (1) and (2)-

(a) obtain supplementary evidence or reports from other suitably qualified persons;

(b) be required by the court to present the findings of the investigation to the court by-

(i) testifying before the court; or

(ii) submitting a written report to the court.

Evidence

63. *(1) A written report, purported to be compiled and signed by a medical practitioner, psychologist, family advocate, designated social worker or other suitably qualified person who on the face of the report formed an authoritative opinion in respect of a child or the circumstances of a child involved in a matter before a children's court, or in respect of another person involved in the matter or the circumstances of such other person, is, subject to the decision of the presiding officer, on its mere production to the children's court hearing the matter admissible as evidence of the facts stated in the report.*

(2) The written report contemplated in subsection (1) must be submitted to the children's court within the prescribed period prior to the date of the hearing of the matter.

(3) If a person's rights are prejudiced by a report referred to in subsection (1) the court must-

(a) disclose the relevant parts of the report to that person within the prescribed period prior to the date of the hearing of the matter if that person is a party to the proceedings; and

(b) give that person the opportunity-

(i) to question or cross-examine the author of the report in regard to a matter arising from the report; or

(ii) to refute any statement contained in the report.

Adjournments

64. *(1) The proceedings of a children's court may be adjourned only-*

(a) on good cause shown, taking into account the best interests of the child;

(b) for a period of not more than 30 days at a time.

(2) A presiding officer of a children's court may excuse any person from appearing at adjournment proceedings.

Monitoring of court orders

65. *(1) A children's court may monitor-*

(a) compliance with an order made by it in a matter; or

(b) the circumstances of a child following an order made by it.

(2) For purposes of monitoring compliance with an order made by a children's court or the circumstances of a child following an order, the court-

(a) when making that order, may order-

(i) any person involved in the matter to appear before it at any future date; or

(ii) that reports by a designated social worker be submitted to the court within a specified period or from time to time as specified in the order;

(b) at any time after making an order or when a report of non-compliance mentioned in subsection (4) is referred to it, may call or recall any person involved in the matter to appear before it.

(3) When a person appears before the court in terms of subsection (2) the court may-

(a) inquire whether the order has been or is being complied with, and if not, why the order has not been complied with or is not being complied with;
(b) confirm, vary or withdraw the order; or
(c) enforce compliance with the order, if necessary through a criminal prosecution in a magistrate's court or in terms of section 45 (2).

(4) Any person may report any alleged non-compliance with an order of a children's court, or any alleged worsening of the circumstances of a child following a court order, to the clerk of the children's court, who must refer the matter to a presiding officer for a decision on possible further action.

Protection of court case records

66. *Subject to the Promotion of Access to Information Act, 2000 (Act 2 of 2000), no person has access to children's court case records, except-*
(a) for the purpose of performing official duties in terms of this Act;
(b) in terms of an order of court if the court finds that such access would not compromise the best interests of the child;
(c) for the purpose of a review or appeal; or
(d) for the purpose of bona fide research or the reporting of cases in law reports, provided the provisions of section 74 are complied with.

Appointment or designation of clerks of children's courts

67. *(1) Subject to the laws governing the public service, the Director-General: Justice and Constitutional Development may, for every children's court, appoint or designate one or more officials in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the children's court, who must generally assist the court to which they are attached in performing its functions and who must perform the functions as may be prescribed in this Act or by way of regulation or in any other law.*

(2) If a clerk of the children's court is for any reason unable to act as such or if no clerk of the children's court has been appointed or designated for any children's court under subsection (1), the presiding officer of the children's court may designate any competent official in the Department to act as a clerk of the children's court for as long as the said clerk of the children's court is unable to act or until a clerk of the children's court is appointed or designated under subsection (1), as the case may be.

(3) For purposes of giving full effect to this Act persons may be appointed or designated as clerk of the children's court for one or more children's courts.

CHAPTER II
CLERKS OF CHILDREN'S COURTS

Application for appointment as clerk

2. *An application for appointment as a clerk, as provided for in section 67(1) of the Act, must be in writing on Form Z 83(81/971431) as prescribed by the Department of Public Service Administration and must be submitted to the Director-General.*

Appointment requirements for clerk

3. *A person may be appointed as a clerk by the Director-General if he or she complies with the appointment requirements as stipulated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the appointment policies developed by the department for a post of administrative clerk in the department.*

Conditions of appointment of clerk

4. *(1) The Director-General may appoint a person as a clerk for the period agreed to between the Director-General and the person, who is entitled to an all inclusive remuneration package equal to that of an administrative clerk in the department.*

(2) The conditions of service of a person appointed as a clerk in terms of subregulation (1) are the same as the conditions of service applicable in respect of a person appointed as clerk of a magistrate's court in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Additional functions, powers and duties of clerk

5. *In addition to the functions determined by the Act, a clerk must—*

(a) upon receipt of a notification as provided for in regulation 6 open a file and number the matter with a consecutive number for the year;

(b) keep and update a register regarding all the matters brought to the court which corresponds substantially with Form 1 of the Annexure;

FORM 1

REGISTER REGARDING MATTERS BROUGHT TO THE CHILDREN'S COURT IN TERMS OF SECTION 53 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 5]

File number:					***Entry made by (name of clerk):***	***Date***	***Signature***
IN THE MATTER OF:							
Full name(s) of child(ren)	*Child*						
	1						
	2						
	3						
	4						
	Child						
Date of birth	*1*						
	2						
	3						
	4						
	Child						
Gender	*1*						
	2						
	3						
	4						
AND:							
Full names of parents/care-givers/guardians							
PARTICULARS OF MATTER;							
Date notice/application is received							
Reason for notice/application							
Presiding officer							
Referred: (Pre-hearing conference/Family group conference/other lay forum)	*Yes*		*No*				
	To:						
Date referred:							
Referred back to court:							
Date Received back:							
Date of hearing:							
Outcome reached:							
Date reached:							
Contribution orders: made/not made/considered:	*Made*		*Not made*		*Under conside-ration*		
Contribution orders	*Made*		*Not*		*Date*		

under consideration:			*made*		*made/not made*				

(c) mark every document received afterwards relating to that matter with the number as assigned to the specific matter;

(d) file any documentation received on the appropriate file;

(e) assist, to the best of his or her ability, any person who requires assistance with the completion of any document relating to the proceedings in the court;

(f) perform the duties assigned to him or her in terms of these Regulations;

(g) inform a witness who is subpoenaed by the presiding officer of the court in the matter that he or she is entitled to witness fees and ensure that the witness is assisted in this regard, where necessary;

(h) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act; and

(i) keep a register of investigators appointed by the court in terms of section 75(1)(b) of the Act, in which the following must be entered—

(i) the full names of the investigator;

(ii) the identity number of the investigator;

(iii) the address and contact details of the investigator; and

(iv) the matter for which the investigator was appointed.

Referral of matters by clerk of children's court

68. *If it comes to the attention of the clerk of the children's court that a child may be in need of care and protection, the clerk must refer the matter to a designated social worker for investigation in terms of section 155 (2).*

Part 3
Pre-hearing conferences, family group conferences, other lay-forums and settling matters out of court
(ss 69-73)

Pre-hearing conferences

69. *(1) If a matter brought to or referred to a children's court is contested, the court may order that a pre-hearing conference be held with the parties involved in the matter in order to-*

(a) mediate between the parties;

(b) settle disputes between the parties to the extent possible; and

(c) define the issues to be heard by the court.

(2) Pre-hearing conferences may not be held in the event of a matter involving the alleged abuse or sexual abuse of a child.

(3) The child involved in the matter may attend and may participate in the conference unless the children's court decides otherwise.

(4) The court may-

(a) prescribe how and by whom the conference should be set up, conducted and by whom it should be attended;

(b) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(c) consider the report on the conference when the matter is heard.

Pre-hearing conferences

12. *(1) If a court has ordered that a pre-hearing conference as provided for in section 69 of the Act must be held, the court—*

(a) must direct who must attend the pre-hearing conference;

(b) must direct who will chair the pre-hearing conference; and

(c) may, if necessary, direct that a court interpreter must attend the pre-hearing conference.

(2) The clerk must, within three days after an order referred to in subregulation (1) is made—

(a) assign a date for the pre-hearing conference, which must be within 10 days after the order was made; and

(b) notify the parties involved on a form which corresponds substantially with Form 3 of the Annexure, of the date, place and time of the pre-hearing conference, and keep record of how the parties were notified.

FORM 3
NOTICE TO PARTIES TO ATTEND A PRE-HEARING CONFERENCE IN TERMS OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 12]

File No:_____

REPUBLIC OF SOUTH AFRICA

THE CHILDREN'S COURT FOR THE DISTRICT OF:_____

HELD AT:_____

IN THE MATTER:

FULL NAME(S) OF CHILD(REN)	***GENDER***	***ID NUMBERS/DATE OF BIRTH***

Child(ren)

AND

NAME(S) OF OTHER PARTY(IES)	***ID NUMBER(S)/DATE OF BIRTH***

Other party(ies) involved

TO:

_____
_____

ADDRESS:

_____
_____
_____
_____
_____
_____

YOU ARE HEREBY REQUIRED:

To attend a pre-hearing conference at_____on the_____day of_____at_____time) and on any subsequent day that may be required, regarding the following matter:

_____
_____
_____
_____
_____

_____
_____
_____
_____

Dated at_____this_____day of_____20_____

_____
Clerk of the children's court

(3) At a pre-hearing conference the chairperson of the pre-hearing conference must—
(a) give directions in respect of the conduct of the proceedings as he or she deems fit; and
(b) if a party is unrepresented, inform him or her of his or her right to be represented at his or her own expense by a legal representative of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid, and of the institutions which he or she may approach for legal assistance.

(4) The chairperson of a pre-hearing conference must, within five days after the conclusion of the pre-hearing conference, submit to the court a full written report of the pre-hearing conference, containing—
(a) any agreement reached between the parties;
(b) any settlement reached between the parties;
(c) any matters to be dealt with by the court; and
(d) any other matter the chairperson deems necessary.

(5) If a party fails to attend a pre-hearing conference without any good cause, after having been notified thereof as provided for in subregulation (2)(b), the chairperson of the pre-hearing conference may—
(a) proceed with the pre-hearing conference in the absence of that party;
(b) postpone the pre-hearing conference if that party is likely to make a valuable contribution regarding the best interests of the child in question; or
(c) refer the matter back to the court for a hearing.

Family group conferences

70. *(1) The children's court may cause a family group conference to be set up with the parties involved in a matter brought to or referred to a children's court, including any other family members of the child, in order to find solutions for any problem involving the child.*

(2) The children's court must-
(a) appoint a suitably qualified person or organisation to facilitate at the family group conference;
(b) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and
(c) consider the report on the conference when the matter is heard.

Family group conferences

13. *(1) If a court orders that the matter must be referred to a family group conference as provided for in section 70 of the Act for mediation, the presiding officer of the court must appoint a person or organisation as provided for in subregulation (2), as facilitator of the family group conference.*

(2) The facilitator of a family group conference may be any suitably qualified person, including, but not limited to—
(a) a family advocate;
(b) a social worker;
(c) a social service professional; or
(d) a traditional leader.

(3) On receipt of an order as provided for in regulation 6(2)(a)(i) the clerk must, within three days, in the manner determined by the court—
(a) refer the matter to the facilitator by means of a form which corresponds substantially with Part A of Form 5 of the Annexure;
(b) submit all certified copies of all the relevant documentation relating to the matter, to the facilitator;
(c) retain original documents relating to the matter;
(d) forward a copy of the referral to the parties; and

(e) notify the parties of the documents submitted to the facilitator.

(4) After a facilitator has received the documentation as provided for in subregulation (3), he or she must convene a family group conference within 10 days but not later than 15 days after receipt of the documentation by—

(a) setting the time, date and place of the conference; and

(b) taking steps to ensure that all persons entitled to attend the conference are notified within a reasonable time, of the time, date and place of the conference.

(5) No notice referred to in subregulation (4)(b) needs be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subregulation does not affect the validity of the proceedings of a family group conference.

(6) Where a family group conference fails to take place on the time, date and place determined in terms of subregulation (4), the facilitator must arrange for an alternative date and notify the persons entitled to attend the family group conference accordingly.

(7) The facilitator must confer with the parties and endeavour to obtain an agreement or settlement in respect of the matter.

(8) Before entering into discussions at a family group conference, and subject to any directions given by the presiding officer of the court, the parties must decide whether the facilitator is to file—

(a) a full report on the conference, including anything that the facilitator considers to be relevant to the matter; or

(b) a report that either sets out any agreement reached by the parties or states only that the parties did not reach agreement on the matter.

(9) The report referred to in subregulation (8) and any agreement or settlement reached between the parties must be submitted to the clerk within 15 days after conclusion of the family group conference, who must submit it to the court for the court to make any agreement or settlement reached an order of the court.

(10) If a facilitator refers the matter back to the court for a hearing, that referral must be in writing on a form which corresponds substantially with Part B of Form 5 of the Annexure, stating the reasons why the matter was referred back.

(11) A court must, within five days from the date on which the matter was received back, order that the matter must be heard in court and the clerk must—

(a) within three days after that order, assign a date for the matter to be heard in court; and

(b) notify the parties involved in the matter on a form which corresponds substantially with Form 4 of the Annexure of the date, place and time of the hearing.

FORM 4

NOTICE TO ATTEND PROCEEDINGS OF THE CHILDREN'S COURT IN TERMS OF SECTION 57 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 7)]

File No:_____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

IN THE MATTER OF THE FOLLOWING CHILD(REN):

FULL NAME(S) OF CHILD(REN)	GENDER	ID NUMBERS/DATE OF BIRTH

TO: (a party in the matter before the children's Court/a family member of a child involved in the matter/a person who has another interest in the matter) _____

ADDRESS: _____

YOU ARE HEREBY REQUIRED:

To appear before this court at_____on the_____day of_____at _____(time) and on any subsequent day the court thereafter requires, in respect of the abovementioned child(ren), regarding the following matter: _____

ATTENDANCE OF CHILDREN REQUIRED:

☐ YES ☐ NO

TO THE PERSONS WHO ARE HEREBY GIVEN NOTICE:

(1) You must attend the proceedings at the place and time aforesaid and must remain in attendance until its conclusion or until excused by the court.

(2) You must bring the said child (ren) before the court at the abovementioned time and place, except if otherwise directed.

(3) If you fail to attend the proceedings or to remain in attendance during the proceedings, the court may -

(a) issue a warrant for your arrest and in a summary manner inquire into your failure to attend or remain in attendance and, unless you satisfy the court that your failure was not due to fault on your part, sentence you to a fine or to imprisonment; and

(b) order you to pay any costs.

(4) Should legal representation be required it is recommended that this be arranged timeously.

(5) You must ensure that all your witnesses are present at the proceedings of the hearing. If you wish any witness to be subpoenaed by the court, you are requested to submit full particulars of the witnesses (i.e. full names, identity numbers and physical addresses) to the clerk of the court, within fourteen days before the date of the hearing. The costs of the service of the subpoena of any witness will be borne by the person who requests the subpoena unless, in exceptional cases, the court directs that the state bears such costs.

(6) Your attention is drawn to the fact that the court may decide to—

(a) refer the matter to a family group conference or a lay-forum for mediation and that the matter may be referred back to the children's court for a hearing;

(b)

hold a pre-hearing conference; or

(c) hear the matter.

Signed at_____this_____day of_____20

_____
Clerk of the children's court

PLEASE SEE REVERSE HEREOF

REVERSE OF FORM 4

RETURN OF SERVICE
FOR OFFICIAL PURPOSES ONLY

I, _____, certify that I have—

* delivered a copy of the notice to _____personally;

or

* offered a copy of the notice to _____a person apparently not younger than the age of 16 years and apparently residing or employed at the *residence/place of employment/place of business of _____, since he/she could not conveniently be found and at the same time informing him/her of the nature and exigency thereof;

or

* *affixed/placed a copy of the notice to/in the *outer/principal door/security gate/post box of the *residence/place of employment/place of business of _____, since he/she prevented the service by keeping his/her *residence/place of employment/place of business closed.

Signed at _____this _____day of _____20_____

_____
Signature of sheriff/clerk of the children's court/
person authorised by presiding officer of the children's court

Full first names and surname _____

(Block letters)

Designation (rank) _____Ex Officio Republic of South Africa. Business address _____Code

(Street address must be stated)

Other lay-forums

71. *(1) The children's court may, where circumstances permit, refer a matter brought or referred to a children's court to any appropriate lay-forum, including a traditional authority, in an attempt to settle the matter by way of mediation out of court.*

(2) Lay-forums may not be held in the event of a matter involving the alleged abuse or sexual abuse of a child.

(3) The children's court may-

(a) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought

to the notice of the court; and

(b) consider a report on the proceedings before the lay-forum to the court when the matter is heard.

Lay forums

14. *(1) If a court orders that the matter must be referred for mediation to a specified lay forum as provided for in section 71 of the Act, the clerk must, within three days of receipt of the order, in the manner determined by the court—*

(a) refer the matter to a specific lay forum by means of a form which corresponds substantially with Part A of Form 5 of the Annexure;

FORM 5
REFERRAL OF MATTER TO *FAMILY GROUP CONFERENCE/ LAY-FORUM IN TERMS OF SECTIONS 70 AND 71 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulations 13 and 14]

File no. _____

REPUBLIC OF SOUTH AFRICA

A	***REFERRAL TO 'FAMILY GROUP CONFERENCE/*LAY FORUM***

I, _____, presiding officer of the children's court at _____In the matter between:

FULL NAME(S) OF CHILD(REN)	***GENDER***	***ID NUMBERS/DATE OF BIRTH***

Child(ren)

AND

NAME(S) OF OTHER PARTY(IES)	***ID NUMBER(S)/DATE OF BIRTH***

Other party(ies) involved

*Hereby refer the matter in terms of section *70/71 of the Children's Act, 2005 (Act No. 38 of 2005) *to a family group conference/lay-forum:_____*

_____
_____
_____
_____
_____

(name, address, tel. no of facilitator/lay-forum)

Reasons for referral:

_____

_____
_____
_____
_____
_____

Signed at_____this_____day of_____20_____

_____
Presiding officer of the children's court

B REFERRAL OF MATTER TO CHILDREN'S COURT

I, _____in my capacity as facilitator of the family group conference/chairperson of the lay- forum held at _____on_____, to which the abovementioned matter was referred, hereby refer the matter back to the children's court for the following reasons:

_____
_____
_____
_____
_____

Signed at_____this_____day of_____20_____

_____
**Facilitator: Family Group Conference/Chairperson: Lay-forum*

(b) submit certified copies of all the relevant documentation relating to the matter, to the lay forum;
(c) retain original documents relating to the matter;
(d) forward a copy of the referral to the parties; and
(e) notify the parties of the documents submitted to the lay forum.

(2) After a lay forum has received the documentation referred to in subregulation (1), that lay forum must within five days, appoint a person to act as chairperson, who must arrange a meeting within 10 days but not later than 15 days after receipt of the documentation by the lay forum by—
(a) setting the time, date and place of the meeting; and
(b) taking steps to ensure that all persons entitled to attend the meeting are notified within a reasonable time, of the time, date and place of the meeting.

(3) No notice referred to in subregulation (2)(b) need be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subregulation does not affect the validity of the proceedings of a lay forum meeting.

(4) Where a lay forum meeting fails to take place, the chairperson must arrange for an alternative date and notify the persons entitled to attend the lay forum meeting accordingly.

(5) The chairperson of a lay forum must confer with the parties and endeavour to obtain an agreement or settlement.in respect of the matter.

(6) Before entering into discussions at a lay forum, the parties to that lay forum must, subject to any directions given by the presiding officer of the court, decide whether the chairperson is to file—
(a) a full report of the meeting, including anything that the chairperson considers relevant to the matter; or
(b) a report that either sets out any agreement or settlement reached by the parties or states only that the parties did not reach agreement on the matter.

(7) The report referred to in subregulation (6), together with any agreement or settlement reached by the lay forum, must be submitted to the clerk within 15 days after conclusion of the proceedings of the lay forum, who must submit it to the court for the court to make any agreement or settlement reached an order of the court.

(8) If a lay forum refers the matter back to the court for a hearing, that referral must be in writing on a form which corresponds substantially with Part B of Form 5 of the Annexure, stating the reasons why the matter was referred back.

(9) The court must, within five days from the date on which the matter was received back, order that the matter must be heard in court and the clerk must—

(a) within three days after that order, assign a date for the matter to be heard in court; and

(b) notify the parties involved in the matter on a form which corresponds substantially with Form 4 of the Annexure of the date, place and time of the hearing.

Settling of matters out of court

72. *(1) If a matter is settled out of court and the settlement is accepted by all parties involved in the matter, the clerk of the children's court must submit the settlement to the children's court for confirmation or rejection.*

(2) The court must consider the settlement and, if it is in the best interests of the child, may-

(a) confirm the settlement and make it an order of court;

(b) before deciding the matter, refer the settlement back to the parties for reconsideration of any specific issues; or

(c) reject the settlement.

Other functions

73. *The clerk of the children's court may attend every children's court hearing.*

Part 4

Miscellaneous matters

(ss 74-75)

Publication of information relating to proceedings

74. *No person may, without the permission of a court, in any manner publish any information relating to the proceedings of a children's court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings.*

Regulations

75. *(1) The Minister for Justice and Constitutional Development, after consultation with the Minister, may make regulations concerning-*

(a) the procedures to be followed at or in connection with the proceedings of children's courts and the powers, duties and functions of clerks of the children's court in as far as they relate to the proceedings of children's courts;

(b) the form of any application, authority, certificate, consent, notice, order, process, register or subpoena to be made, given, issued or kept;

(c) the carrying out and monitoring of investigations in terms of section 50 (2), procedures regulating such investigations and the gathering of evidence;

(d) the holding of pre-hearing conferences in terms of section 69, procedures regulating such conferences and information that must be submitted to a children's court;

(e) the holding and monitoring of family group conferences or other lay-forums in terms of sections 70 and 71, procedures regulating such conferences and other lay-forums and information that must be submitted to a children's court;

(f) the qualifications and experience of persons facilitating family group conferences, including special requirements that apply to persons facilitating in matters involving the alleged abuse of children;

(g) documents in connection with matters brought to a children's court and records of the proceedings of children's courts, including regulations determining-

(i) the person by whom, the period for which and the manner in which those documents and records must be kept; and

(ii) access to those documents and records;

(h) the keeping of records with regard to matters brought to and dealt with by the children's court;

(i) the submission of court statistics and progress reports on those matters to the Magistrates' Commission established by section 2 of the Magistrates Act, 1993 (Act 90 of 1993);

(j) the payment of remuneration to persons who are not in the employ of the state as contemplated in sections 49, 50, 62, 69, 70 and 71; and

(k) any other matter required or permitted to be prescribed under this Act.

(2) Section 306 (2) and (3), read with such changes as the context may require, applies to the making of regulations in terms of subsection (1).

Submission of statistics to Magistrates Commission

34. *(1) Each regional head must, when preparing quarterly reports on the Implementation of the Medium Term Strategic Framework of the Department (MTSF), include in his or her implementation report, on a form which corresponds substantially with Form 18 of the Annexure, statistics as indicated in Form 18.*

(2) The Director-General must, as soon as possible after receipt of the reports referred to in subregulation (1), consolidate the statistics in question and make them available to the Magistrates Commission in accordance with Form 18 of the Annexure.

FORM 18

STATISTICS IN TERMS OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 34]

PERIOD FOR WHICH STATISTICS ARE SUBMITTED

FROM _____TO _____

Actions	*Eastern Cape*	*Free State*	*Gauteng*	*Limpopo*	*Mpumalanga*	*North West*	*Northern Cape*	*Kwazulu-Natal*	*Western Cape*
No. of adoptions:									
No. of Inter-country adoptions									
No. of children found in need of care:									
No of children placed into foster care.									
No. of children receiving protection and alternative care orders(including kinship care, places of safety, children's homes and places of care):									
Parental rights and responsibilities: No. of applications for access:									
No. of parenting plans registered:									
No. of parenting plans varied:									
No. of interdicts applied for and granted:									
No. of auxiliary orders applied for and granted									
No. of monitoring orders made:									
No. of lay forums ordered:									
No. of pre-hearing conferences ordered:									
No. of family group conferences ordered:									
No. of lay forums held.									
No. of pre-hearing conferences held:									
No. of family group conferences held.									
No. of children legally represented by Legal Aid Board:									
No. of investigations and professional reports ordered (including from a medical doctor, psychologist, social worker, SAPS and educator}:									
No. of cost orders:									
No. of applications made to have rights enforced:									
No. of applications made to have the outcome of mediation in terms of section 21:									
No. applications made to the children's court to have a PRR agreement made an order of court									
No. of applications made to the children's courts to amend/terminate a PRR agreement									
No. of applications made for assignment of care or contact									

No. of applications made by a biological father to have paternity confirmed:									
No. of applications made for the termination/extension/ suspension/restriction of parental rights and responsibilities									
No of applications made to have parenting plan made an court order.									
No. of applications made to amenttoeimtnate parenting plan-									
No. of applications made to adjudicate care and contact disputes:									
Total									

Remuneration of persons not in employ of state

35. *(1) The remuneration paid to persons not in the employ of the state as provided for in section 75(1)(j) of the Act must be paid by the state if the person acted by direction of the court.*

(2) A person referred to in subregulation (1) is entitled to the following remuneration for each 24 hours or part thereof for which that person is absent from his or her residence or place of sojourn:

(a) The reasonable actual expenses if it is necessary to hire accommodation for the night; and

(b) (i) R200; or

(ii) the reasonable actual expenses incurred for meals on submission of proof of the expenses to the satisfaction of the court manager.

(3) The remuneration provided for in subregulation (2) is payable for the full period for which the person referred to in subregulation (1) is absent from his or her residence or place of sojourn.

(4) In calculating the period of absence for purposes of subregulation (2), a person referred to in subregulation (1) is allowed 24 hours for each distance of 300 kilometres or part thereof travelled.

(5) The remuneration provided for in subregulation (2) is not payable if the fare of a person referred to in subregulation (1) includes the cost of meals and accommodation.

(6) A person referred to in subregulation (1) may claim his or her actual real travel expenses: Provided that he or she may only use air transport at state expense only if the magistrate's court manager—

(a) is satisfied that the use thereof is warranted; and

(b) has approved that the person may make use of air transport.

(7) On satisfactory proof having been produced, a person referred to in subregulation (1) is entitled to be reimbursed for his or her reasonable actual expenses incurred in respect of parking and toll fees.

(8) A magistrate's court manager may, at the written request of a person referred to in subregulation (1), and on receipt of satisfactory proof from that person that he or she has suffered loss of earnings as a result of his or her assistance in a matter as provided for in section 49, 50, 62, 69, 70 or 71 of the Act, by direction of a court, order that the person be paid an amount equal to the actual loss of earnings he or she suffered, but not exceeding R2 500 per day, in addition to any other amount to which he or she is entitled under this regulation.

(9) If a person referred to in subregulation (1) is required to submit a professional report to the court, he or she is entitled to an amount determined by the magistrate's court manager, which may not exceed R500.

(10) The Director-General may authorise a deviation from the amounts provided for in subregulations (8) and (9), on the written request of a person referred to in subregulation (1), supporting his or her request by proof, to the satisfaction of the Director-General.

(11) The remuneration paid to a person not in the employ of the state as provided for in section 75(1)(j) of the Act must be paid by a party if the person acted at the request of that party, which amount will be an amount agreed upon by the party and the person not in the employ of the state.

Patent errors

37. *A court may, upon the application by any person affected by a decision of that court, or of its own accord, correct patent errors in any ruling in respect of which no appeal is pending.*

Offences and penalties

38. *Any person who submits false information, fails to submit any information if so required, or who does not adhere to a direction in terms of a provision of these Regulations is guilty of an*

offence and is on conviction liable to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Short title and commencement

39. *These regulations are called the Regulations relating to Children's Courts and International Child Abduction, 2010 and shall come into operation on 1 April 2010.*

CHAPTER 5

PARTIAL CARE

(ss 76-90)

Partial care

76. Partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents or care-givers and the provider of the service, but excludes the care of a child-

(a) by a school as part of tuition, training and other activities provided by the school;
(b) as a boarder in a school hostel or other residential facility managed as part of a school; or
(c) by a hospital or other medical facility as part of medical treatment provided to the child.

Types of partial care

12.(1) For the purposes of registration of partial care the following different types of partial care may be provided:

(a) early childhood development services as contemplated in section 91(2) of the Act for children up to school going age;
(b) an after school service, other than a service provided by a school as defined in the South African School's Act 1996, (Act No. 84 of 1996), for a child attending a primary school or a secondary school;
(c) a private hostel; and
(d) temporary respite care services for children including children with disabilities.

(2) For purposes of this Chapter "after school service" means the provision of meals, homework support, sporting activity support, life skills education and guidance and counselling support.

(3) For purposes of this Chapter "private hostel" means a place which is operating during school terms and where children sleep over, are provided with meals, healthcare, life skills education, where their laundry is done and where the children receive guidance and counselling support, school attendance support, sporting activity support and cultural activity support.

(4) For purposes of this Chapter "temporary respite care services" means a temporary service offered to children and to children with disabilities which is aimed at the provision of temporary care and relief and includes day care or sleepover, the provision of meals, school attendance support, sporting activity support, health care and laundry facilities and assistance with personal hygiene.

Strategy concerning partial care

77. (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses.

(2) The MEC for social development must-

(a) maintain a record of all the registered partial care facilities in the province; and
(b) within the national strategy contemplated in subsection (1), provide for a provincial strategy

to ensure an appropriate spread of partial care facilities in the province.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies contemplated in subsections (1) and (2).

Provision of partial care

78. (1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund partial care facilities and services for the province, taking into consideration the national and provincial strategies contemplated in section 77.

(2) A partial care facility referred to in subsection (1)-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with-

(i) the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed; and

(ii) the structural safety, health and other requirements of the municipality of the area where the partial care facility is situated.

(3) The owner or manager of a partial care facility or provider of a partial care service only qualifies for funding contemplated in subsection (1) if such owner, manager or provider complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

(4) The funding of partial care facilities must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make facilities accessible to children with disabilities.

National norms and standards for partial care

79. (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must determine national norms and standards for partial care by regulation.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A safe environment for children;

(b) proper care for sick children or children that become ill;

(c) adequate space and ventilation;

(d) safe drinking water;

(e) hygienic and adequate toilet facilities;

(f) safe storage of anything that may be harmful to children;

(g) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility;

(h) a hygienic area for the preparation of food for children;

(i) measures for the separation of children of different age groups;

(j) the drawing up of action plans for emergencies; and

(k) the drawing up of policies and procedures regarding health care at the facility.

(3) A partial care facility for children with disabilities or chronic illnesses must, in addition to the national norms and standards contemplated in subsection (1)-

(a) be accessible to such children;

(b) provide facilities that meet the needs of such children; and

(c) employ persons that are trained in and provide training to persons employed at the facility on-

(i) the needs, health and safety of such children;

(ii) appropriate learning activities and communication strategies for such children; and

(iii) basic therapeutic interventions.

(4) A partial care facility may offer programmes appropriate to the developmental needs of the children in that facility as may be prescribed.

National norms and standards for partial care

13. The national norms and standards for partial care contemplated in section 79 of the Act are contained in **Part I of Annexure B.**

PART I
NATIONAL NORMS AND STANDARDS FOR PARTIAL CARE

For the purposes of section 79(2) of the Act, the following are national norms and standards for partial care:

1. A safe environment for children

(a) Children must experience safety and feel cared for whilst at the partial care facility.
(b) Premises inside and outside must be safe, clean and well-maintained.
(c) Equipment used must be safe, clean and well-maintained.
(d) There must be adult supervision at all times.
(e) The structure must be safe and weatherproof.
(f) Floors must be covered in washable and easy to clean material that is suitable for children to play and sleep on and walls must be safe and easy to clean.
(g) All reasonable precautions must be taken to protect children and staff from the risk of fire, accidents or other hazards.
(h) Safety measures must be undertaken when transporting children. Such safety measures include ensuring that—
    (i) transport operators transporting children are registered, suitably trained, screened against Part B of the Child Protection Register and possess the necessary licences and permits as prescribed by the National Land Transport Transition Act, 2000 (Act No. 22 of 2000),and other relevant national transport policies and regulations determined by the Department of Transport;
    (ii) the requirements published by the Minister of Transport periodically in terms of the National Land Transport Transition Act , 2000 are adhered to;
    (iii) transport is appropriate to the ages of children transported and that it is accessible and suitable to children with disabilities and other special needs;
    (iv) transport providers comply with safety measures regulated by the Department of Transport, including adherence to speed limits, and that all passengers are seated regardless of the transport mode used;
    (v) vehicles used to transport children are safe and have the necessary safety characteristics, such as windows and doors opening instructions, safety equipment and appropriate speed devices;
    (vi) children are not transported in open vehicles;
    (vii) there is an adult supervisor in a vehicle transporting children under the age of nine years; and
    (viii) there is no overloading of children in vehicles.

2. Proper care for sick children or children who become ill

(a) Staff must have the ability to identify children who are ill and be able to refer them for appropriate health services.
(b) Policies and procedures relating to the health care of children whilst at the partial care facility must be in place. Such policies and procedures must cover the following:
    (i) Criteria for identifying ill children;
    (ii) safe keeping of all medication at a partial care facility;
    (iii) procedures for dealing with children who are ill; and
    (iv) guidelines for preventing the spread of diseases at the partial care facility.
(c) The following procedure regarding children who are ill must be adhered to:
    (i) After identifying children who are ill, the illness or problem must be reported to the parent(s), care-giver or family as soon as possible;
    (ii) the child must be removed from other children to a safe place or room designed to care for ill children;
    (iii) any child assessed to have an infectious disease (measles, chickenpox, etc) must be immediately isolated from other children and referred to the nearest hospital or clinic for further assessment and treatment;

(iv) if a child is already on prescribed medication, that child must receive the medication as prescribed and as advised by the parents; and

(v) in cases of emergency, the child must be taken to the nearest hospital or clinic for treatment and appropriate referral.

(d) The following medical records must be kept:

(i) up-to date records of each child's medical history;

(ii) records of each child's immunisation programme and Vitamin A schedule; and

(iii) records of health incidents and accidents occurring at the facility.

(e) Every partial care facility must have a first-aid kit.

3. **Adequate space and ventilation**

(a) The partial care facility must have adequate ventilation and sufficient light.

(b) Space for different activities and functions must be clearly demarcated.

(c) Where applicable, new buildings and alterations to buildings must comply with the building standards as set out by the National Building Regulations and Building Standard Act, 1997 (Act No.103 of 1997).

4. **Safe drinking water**

(a) Safe and clean drinking water must always be available.

(b) Where water is not from a piped source, it must be treated and made safe using approved national health guidelines for the treatment of water by adding one teaspoon of bleach to 25 litres of water.

(c) All water containers must be covered at all times.

5. **Hygienic and adequate toilet facilities**

(a) Partial care facilities catering for toddlers must have potties, toilets and washbasins.

(b) Toilet and hand washing facilities must be reachable for children over the age of three years.

(c) For children up to the age of three years—

(i) there must be appropriate toilets;

(ii) where there are no sewerage or ablution facilities, potties must be made available;

(iii) every child under the age of three years must have his or her own potty;

(iv) waste from potties must be disposed of hygienically;

(v) potties must be cleaned after use and disinfected in a properly demarcated area; and

(vi) there must be a clearly demarcated nappy changing area with a surface that can be easily cleaned. This area must be situated away from the food preparation area.

(d) For children between the ages of three and six years—

(i) where sewerage systems are available, there must be one toilet and one hand washing basin for every 20 children;

(ii) where no sewerage facilities are available, an appropriate toilet must be available at the partial care facility or immediately adjacent to the partial care facility;

(iii) where no running water is available, there must be a minimum of 25 litres of drinkable water supplied on a daily basis;

(iv) where no washbasins are available, one suitable container for every 20 children must be made available, provided that such container is cleaned and changed regularly and closed; and

(v) all toilets must be safe and hygienic.

(e) For children of six years and older, there must be—

(i) hygienic and safe toilets; and

(ii) one toilet and one hand washing basin for every 20 children.

(f) There must be adult supervision at all times when children use the toilet.

(g) Where applicable the local authority regulations and by-laws in respect of physical characteristics of building and health requirements must be adhered to.

6. **Safe storage of anything that may be harmful to children**

(a) Medicine, cleaning substances and any dangerous substances must be kept out of reach of children.
(b) Medicine and dangerous substances must be kept in separate locked or childproof cupboards.
(c) Dangerous objects, materials, sharp instruments and utensils must be kept out of reach of children.
(d) Dangerous substances may not be used in the vicinity of children.
(e) Electrical plugs must be covered.
(f) Paraffin, gas and other electric appliances must be kept out of reach of children.
(g) Cleaning agents must be kept in clearly marked containers and out of reach of children.

7. **Access to refuse disposal services or other adequate means of disposal of refuse generated at the partial care facility**

(a) Where possible, refuse must be disposed of according to municipality regulations.
(b) Waste disposal methods must be safe and covered.
(c) Waste must be kept out of reach of children.
(d) Waste disposal areas must be disinfected regularly.

8. **A hygienic area for the preparation of food for children**

(a) There must be a separate, clean and safe area for the preparation of food as well as for cleaning up after food preparation.
(b) There must be a separate clean and safe area for serving food to the children.
(c) There must be cooling facilities for storage of perishable food.
(d) The food preparation area must be clearly marked and out of reach of children.
(e) There must be a sufficient supply of clean water as well as cleaning agents.
(f) There must be sealed containers to store all prepared food before serving such food.

9. **Measures for the separation of children of different age groups**

(a) Where possible, children must be separated into the following age categories in separate rooms or places to ensure their development:
  (i) Children under the age of 18 months;
  (ii) children between the ages of 18 and 36 months;
  (iii) children between the ages of three and four years; and
  (iv) children between the ages of four and six years.
(b) Where a partial care facility provides after care facilities to children of school going age, these children must be kept separate from the the children in the abovementioned age groups in order to ensure that they are able to rest and complete their homework upon their return from school.
(c) Where more than 50 children are enrolled for a full day at a partial care facility, there must be a separate room or place to be used as an office and as a sickbay.

10. **The drawing up of action plans for emergencies**
(a) Reasonable precautions to protect children from risk of fire, accidents and other hazards must be taken.
(b) Policies and procedures for dealing with structural and environmental emergencies and disasters must be in place.
(c) Emergency procedures with relevant contact details must be visibly displayed.
(d) Emergency plans must include evacuation procedures.
(e) Emergency plans must be up-to-date, regularly tested and reviewed.
(f) Staff must be trained in dealing with emergencies.
(g) Children must be made aware of emergency procedures.

11. **The drawing up of policies and procedures regarding health care at the partial care facility**

Policies must—

(a) include procedures to deal with infectious diseases at the partial care facility;
(b) include procedures for dealing with the medical needs of sick children and of children with chronic illnesses;
(c) ensure that there are standards relating to cleanliness and hygiene at the partial care facility;
(d) ensure that there is an adequate supply of cleaning agents and towels at the partial care facility;
(e) provide for the training of staff in first aid;
(f) include record keeping and registers pertaining to storage and use of medicines at the partial care facility;
(g) promote confidentiality when dealing with health related information;
(h) encourage staff to take care of their health, undergo regular medical check-ups, and must include procedures to deal with contagious diseases contracted by staff in order to prevent transmission to children; and
(i) promote ongoing staff training and development on keeping a healthy environment, identifying illnesses, preventing the spread of diseases and infectious diseases as well as promoting universal health precaution.

Partial care facility to be registered

80. (1) Any person or organisation may establish or operate a partial care facility provided that the facility-

(a) is registered with the provincial government of the province where that facility is situated;
(b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and
(c) complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

(2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

(3) Partial care facilities operated or managed by a national or provincial state department or by a municipality must comply with subsection (1).

(4) As from the date on which this section takes effect an existing place of care registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of this section as a partial care facility.

(5) A facility referred to in subsection (4) is regarded as a registered partial care facility for a period of five years from the date on which that subsection takes effect, unless its registration is cancelled in terms of section 84 before the expiry of that period.

Application for registration and renewal of registration

81. (1) An application for registration or conditional registration of a partial care facility or for the reinstatement or renewal of registration must-

(a) be lodged with the provincial head of social development of the province where the facility is situated in accordance with a prescribed procedure;
(b) contain the prescribed particulars; and
(c) be accompanied by-
(i) a report by a social service professional on the viability of the application; and
(ii) any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Application for registration of partial care facility

14.(1) Subject to the provisions of sub-regulation (2), an application for the registration, conditional registration, the reinstatement or renewal of registration of a partial care facility must be lodged with the provincial head of social development of the province where the facility is situated in a form identical to **Form 11**.

FORM 11
APPLICATION FOR THE REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION / REINSTATEMENT OF A PARTIAL CARE FACILITY
(* DELETE WHICH IS NOT APPLICABLE)
(Regulation 14)
[SECTION 81 OTHE CHILDREN'S ACT 38 OF 2005]

(A) NATURE OF APPLICATION

This is an application in respect of:

	A crèche, providing partial care for children from birth to an age of 3 years
	An educare centre, providing partial care for children from 3 years until school going age
	An after school centre, providing partial care for children attending a primary or secondary school
	A private hostel, providing partial care for children attending a primary or secondary school
	A temporary respite care facility, providing temporary full-time partial care during the temporary absence of their parents or a parent or care-giver of a child
	A place of care providing partial care for children with disabilities who require a high level of support

(Indicate the partial care facility or facilities in respect of which application is made)

(B) PARTICULARS OF APPLICATION

Name of partial care facility: _____

Physical address:_____

_____

Postal address: _____

_____ Postal code: _____

Name of person or body who manages the partial care facility or who wishes to establish it:

_____

Physical address of person or body: _____

_____

Telephone : _____ Cell phone: _____

Fax number: _____ E-mail: _____

The number of children that will be accommodated in each category of partial care in respect of which application is made: _____

_____

_____

(C) SUPPORTING DOCUMENTS

The following supporting documents must accompany the application:

- An exposition of the prescribed or other skills with supporting documents of the applicant or manager of the partial care facility including a copy of any qualification which would enhance partial care of children;
- A report by a social service professional on the viability of the application as prescribed by section 81(1)(c) of the Act;
- a business plan containing the information prescribed by regulation 14(4)(a);
- the constitution containing the information prescribed by regulation 14(4)(b);
- an original copy of the approved plans or a copy of the plans that has been submitted for approval if the application for the approval of the plans is still under consideration
- the emergency plan; and
- clearance certificates that the name of the applicant and the names of all staff members do not appear in the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act;

(D) GENERAL REMARKS

Any additional remarks by the applicant in support of the application: _____

_____

_____

_____

_____

_____

_____

I certify that the above-mentioned particulars
are, to the best of my knowledge, true and correct.

_____	_____	_____
SIGNATURE OF APPLICANT	CAPACITY	DATE

(2) If the performance of the functions contemplated in sections 80 and 81 of the Act has been assigned in terms of section 88 of the Act to the municipal manager of a municipality, an application contemplated in sub-regulation (1) must be lodged with that municipal manager.

(3) An application contemplated in sub-regulation (1) must contain the following:

(a) The particulars of the applicant;

(b) the physical and postal address of the partial care facility;

(c) the type or types of partial care in respect of which the application is made;

(d) the number of children that will be accommodated in each of the types of partial care in respect of which the application is made;

(e) the qualifications, skills and experience of the applicant in partial care in type or types of partial care in respect of which the application is made; and

(f) a description of the contents of the programmes and services to be offered, including the aims and objectives.

(4) An application contemplated in sub-regulation (1) must be accompanied by the following additional documents:

(a) A business plan containing –

(i) the business hours of the partial care facility;

(ii) the fee structure;

(iii) the day care plan;

(iv) the staff composition; and

(v) the disciplinary policy;

(b) the constitution of the partial care facility which must contain the following information:

(i) The name of the partial care facility;

(ii) the type or types of services to be provided;

(iii) the composition, powers and duties of the management;

(iv) the powers, obligations and undertaking of management to delegate all authority with regard to care, behaviour management and development of children to the head of the partial care facility, where applicable;

(v) the procedure for amending the constitution; and

(vi) a commitment from the management to ensure compliance with the national norms and standards for partial care facilities reflected in Annexure B;

(c) an original copy of the approved building plans or a copy of the building plans that has been submitted for approval if the application for the approval of the building plans is still under consideration;

(d) an emergency plan;

(e) clearance certificates to the effect that the name of the applicant and the name of any employee do not appear in Part B of the National Child Protection Register, or the National Register for Sex Offenders issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively; and

(f) a health certificate issued by the local municipality in whose area the facility is to operate confirming compliance with the structural health requirements of that municipality.

Consideration of application

82. (1) The provincial head of social development must-

(a) within six months of receiving the application consider an application for registration or conditional registration or for the renewal of registration and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions;

(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

(2) When considering an application the provincial head of social development must take into account all relevant factors, including whether-

(a) the facility complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed;

(b) the applicant is a fit and proper person to operate a partial care facility;

(c) the applicant has the necessary funds and resources available to provide the partial care services of the type applied for;

(d) each person employed at or engaged in the partial care facility is a fit and proper person to assist in operating a partial care facility; and

(e) each person employed at or engaged in the partial care facility has the prescribed skills and training to assist in operating that partial care facility.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a partial care facility.

(4) The provincial head of social development must consider the report contemplated in section 81 (1) (c) (i) of a social service professional before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding section 78 (3) a provincial head of social development may assist the owner or manager of a partial care facility to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

Consideration of application for registration of partial care facility

15.(1) The provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 88 of the Act, the municipal manager or the social service professional, where the municipal manager has delegated the function to consider applications for the registration of a partial care facility to such social service professional concerned in terms of section 88 (3) of the Act, may, subject to section 83 of the Act, grant an application contemplated in regulation 14(1) for a period not exceeding five years.

(2) On granting an application contemplated in regulation 14(1), the provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 88 of the Act, the municipal manager or social service professional concerned, must issue to the applicant a certificate of registration or conditional registration or for the reinstatement or renewal of registration in a form identical to **Form 12**.

FORM 12

CERTIFICATE OF REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION /

REINSTATEMENT OF A PARTIAL CARE FACILITY
(* DELETE WHICH IS NOT APPLICABLE)
(Regulation 15)
[SECTION 82 0F THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that:

	the following partial care facility has been registered in terms of section 82 of the Act
	the following partial care facility has been conditionally registered in terms of section 83 of the Act;
	the registration of the following partial care facility has been renewed in terms of section

	82 of the Act
	the registration of the following partial care facility has been conditionally renewed in terms of section 83 of the Act
	the reinstatement of the following partial care facility has been approved in terms of section 84

on _____ (insert date).

Name of partial care facility: _____

Physical address of partial care facility:

_____

_____

_____

The validity of this registration expires on: _____ (insert date)

The partial care facility is registered subject to the following conditions indicating the maximum number of children that may be accommodated:

Indicate registration (Yes or No)	Type of partial care facility	Maximum number of children that may be accommodated
	Crèche	
	Educare centre	
	After school centre	
	Private boarding hostel	
	Temporary respite care facility	
	Place of care providing partial care for children with disabilities requiring a high level of support	

PLEASE SEE REVERSE SIDE

REVERSE SIDE OF FORM 12

The registration or renewal of registration is subject to the following additional conditions:

_____

_____

_____

_____

_____

_____

Provincial Head: Social Development
Municipal Manager
Province/Municipality: _____
Date of issue: _____

(3) In rejecting an application for registration of a partial care facility, the provincial head of social development or the municipal manager, where the function has been assigned to him or her in terms of section 88 of the Act or the social service professional concerned, where the municipal manager has delegated such function to him or her in terms of section 88 (3) of the Act, must duly inform the applicant of the refusal in a form identical to **Form 13** by registered post and must furnish reasons for such rejection to the applicant.

FORM 13

REFUSAL TO GRANT AN APPLICATION FOR THE REGISTRATION OF A PARTIAL CARE FACILITY

(Regulation 15)
[SECTION 82 OF THE CHILDREN'S ACT 38 OF 2005]

Name of applicant: _____

Name of partial care facility: _____

Physical address of partial care facility: _____

_____

_____

Date of application: _____

The application has been refused for the following reasons:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____

_____

_____

_____

PROVINCIAL HEAD OF SOCIAL DEVELOPMENT

MUNICIPAL MANAGER

PROVINCE/ MUNICIPALITY: _____

DATE: _____

Conditional registration

83. The registration or renewal of registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of partial care that may or must be provided in terms of the registration;

(b) stating the period for which the conditional registration will remain valid; and

(c) providing for any other matters that may be prescribed.

Cancellation of registration

84. (1) The provincial head of social development may cancel the registration or conditional registration of a partial care facility by written notice to the registration holder if-

(a) the facility is not maintained in accordance with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed;

(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;

(c) the registration holder or the management of the facility contravenes or fails to comply with a provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to operate a partial care facility; or

(e) a person who is not a fit and proper person to assist in operating a partial care facility is employed at or engaged in operating the facility.

(2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1) (a), (b), (c) or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(3) The provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 79, any requirements as may be prescribed or any provision of this Act where the cancellation was due to non-compliance with those national norms and standards, conditions, requirements or provision.

Notice of enforcement

85. (1) A provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person or organisation operating an unregistered partial care facility-

(i) to stop operating that facility; or

(ii) to apply for registration in terms of section 81 within a period specified in the notice; or

(b) a person or organisation operating a registered partial care facility otherwise than in

accordance with the provisions of this Act
or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered partial care facility and who is instructed in terms of subsection (1) (a) (ii) to apply for registration within a specified period, may, despite the provisions of section 80, continue operating the facility during that period and, if that person or organisation applies for registration, until that application has been processed.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a partial care facility, whether registered or not, to stop operating that facility.

(4) The High Court may grant an order for costs against the owner or manager of the partial care facility referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Appeal against and review of certain decisions

86. (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal referred to in subsection (1) may apply to the competent division of the High Court to review that decision.

Appeal against certain decisions

16.(1) An appeal contemplated in section 86(1) of the Act must be in a form identical to **Form 14.**

FORM 14

AN APPEAL AGAINST A DECISION OF A PROVINCIAL HEAD OF SOCIAL DEVELOPMENT IN TERMS OF SECTION 86 OF THE ACT IN RESPECT OF A PARTIAL CARE FACILITY
(Regulation 16)
[SECTION 86 OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Name of partial care facility: _____

Physical address of partial care facility: _____

_____

This is appeal against a decision of the provincial head of social development of _____ (Insert name of province) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision against which this appeal is lodged (Indicate yes or no)	Grounds on which appeal is lodged
	Section 82: Consideration of application for registration
	Section 82: Consideration of application for conditional

	registration
	Section 82: Consideration of application for renewal of registration
	Section 83: Conditions on which registration was granted
	Section 84: Cancellation of registration
	Section 84: Consideration of application for re-instatement
	Other grounds of appeal

The reasons provided by the provincial head of social development for his or her decision are attached.

My reasons for appealing against the decision are attached.

_____

APPLICANT/REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the MEC for social development in the province where the decision was taken by the provincial head of social development.

(2) The MEC may, upon receipt of the applicant's or registration holder's written appeal and the provincial head of social development's reasons for the decision confirm, vary or set aside that decision.

(3) An appeal contemplated in section 88(6) of the Act must be in a form identical to **Form 15.**

FORM 15

AN APPEAL AGAINST A DECISION OF A MUNICIPAL OFFICIAL IN TERMS OF SECTION 88(6) OF THE ACT IN RESPECT OF A PARTIAL CARE FACILITY
(Regulation 16)
[SECTION 88 OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Name of partial care facility: _____

Physical address of partial care facility: _____

_____

This is appeal against a decision of municipal official of _____ (Insert name of municipality) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision	Grounds on which appeal is lodged

against which this appeal is lodged (Indicate yes or no)	The sections stated below refers to the sections in respect of which functions have been assigned to a municipality in terms of section 102 of the Act
	Section 82: Consideration of application for registration
	Section 82: Consideration of application for conditional registration
	Section 82: Consideration of application for renewal of registration
	Section 83: Conditions on which registration was granted
	Section 84: Cancellation of registration
	Section 84: Consideration of application for re-instatement
	Other grounds of appeal

The reasons provided by the municipal official for his or her decision are attached.

My reasons for appealing against the decision are attached.

_____

APPLICANT / REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the municipal council of the municipality where the decision was taken

(4) The municipal council may, upon receipt of the applicant's or registration holder's written appeal and the official in the employ of the municipality's reasons for the decision confirm, vary or set aside that decision.

Record and inspection of and provision for partial care facility

87. (1) A provincial head of social development must-

(a) maintain a record of all partial care facilities in the province, the types of partial care facility and the number of each type of facility;

(b) compile a profile of the children in that province in the prescribed manner; and

(c) conduct inspections at the prescribed intervals of partial care facilities in the province to enforce the provisions of this Act.

(2) A provincial strategy contemplated in section 77 (2) must include a strategy for the provision of partial care facilities in the province, which must include measures-

(a) facilitating the establishment and operation of sufficient partial care facilities in that province;

(b) prioritising those types of partial care facilities most urgently required; and

(c) liaising with municipalities on facilitating the identification and provision of suitable premises.

Exemption from registration as partial care facility

17. Partial care provided during excursions, training programmes, social activities, cultural activities, sporting activities, camps or other activities, including overnight partial care, organised

and provided by a religious denomination, a social organisation, a cultural organisation or a sports club is exempted from registration in terms of section 80 of the Act.

Management of partial care facility

18.(1) A register or registers must be kept by a partial care facility or provider of a partial care service in which the following particulars must be entered:

(a) The full name, sex, date of birth and identity number of each child;
(b) the names, addresses and contact particulars of the child's parent, primary care-giver or family members;
(c) the date of the child's admission to the partial care facility and the date of discharge from partial care;
(d) any disability, chronic medical condition or dietary requirement and any other critical information for the care and development of the child; and
(e) any period of absence of the child from the partial care facility.

(2) A partial care facility or the provider of a partial care service must keep a separate file in respect of each child in which the following information must be filed:

(a) All documents relating to the child received at the time of admission;
(b) any document or correspondence relating to the child;
(c) reports and notes by the provider of a programme within a partial care facility on any developmental delay or disability of the child with particular reference to any possible deviation from the normal development of the child having regard to his or her age;
(d) reports and notes by the provider of a programme within a partial care facility on any irregular behavioural pattern of the child; and
(e) reports and notes on any injury or bruise observed during the daily care of the child, including any observations which may relate to the possible abuse of the child.

(3) A file must be kept of each staff member employed at a partial care facility including any period of absence from the partial care facility.

(4) A disciplinary register must be kept in which the name of the child, the nature of the behaviour in respect of which discipline was imposed and the nature of the disciplinary measure must be recorded.

(5) Any register or file kept in terms of this regulation must be kept for a period of at least three years after the date of termination of the partial care service in respect of a child at a partial care facility.

(6) Any irregular or dysfunctional behaviour of a child in a partial care facility must be brought to the attention of the parent or the caregiver of the child.

(7) Quarterly progress reports must be furnished to the parent or the caregiver of each child in a partial care facility.

Employment of staff at partial care facility

19.(1) Any person employed at a partial care facility in a managerial or supervisory capacity or who is directly involved in the partial care of a child must possess the following skills:

(a) The ability to implement a programme for early childhood development, where applicable, at the level in respect of which that partial care facility has been registered;
(b) the ability to write reports and notes;
(c) the ability to identify irregular and dysfunctional behaviour in a child;
(d) basic numeracy skills;
(e) a basic knowledge about child development; and
(f) the ability to assess age related developmental milestones.

(2) Any person employed at a partial care facility after registration of the facility in terms of these Regulations must provide his or her employer with—

(a) a certified copy of his or her identity document or work permit;
(b) proof of his or her skills; and
(c) .clearance certificates to the effect that his or her name does not appear in Part B of the National Child Protection Register, or the National Register for Sex Offenders issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively.

(3) An employee at a partial care facility who works with a child in such facility must be able to communicate with the child in a language, including sign language, which such child understands.

Closure of partial care facility

20.(1) When—

(a) the registration or conditional registration of a partial care facility has been cancelled as contemplated in section 84 of the Act; or
(b) a written notice of enforcement instructing a person or organisation operating an unregistered partial care facility to terminate its operation has been issued under of section 85 of the Act,

that person or organisation must be allowed a period of not more than 90 days in order to wind up the affairs of that facility and to allow the parents or care-givers of children in that facility to make alternative arrangements for partial care.

(2) When a person or organisation providing partial care intends to terminate its operation, such person or organisation must give the parents or care-givers of children admitted at such a facility a period 90 days written notice of such intention.

Inspection of partial care facility

21.(1) All partial care facilities must be subjected to inspection and monitoring to determine compliance with these Regulations and Part I of Annexure B.

(2) The inspection and monitoring contemplated in sub-regulation (1) must be executed by a person designated by the provincial head of social development.

(3) All inspections and monitoring visits must be followed by a report that must be submitted to the provincial head of social development and the management of the partial care facility.

(4) Inspection of a partial care facility must take place every five years or may take place at shorter intervals if inspection is a condition for registration or where inspection of the facility becomes necessary for the cancellation of a registration referred to in section 84(2) (a) of the Act.

(5) Inspection as a result of a written complaint may at any time be ordered by the provincial head of social development.

Assignment of functions to municipality

88. (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 80, 81, 82, 83, 84, 85 and 87 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service professional in the employ of the municipality.

(4) A delegation in terms of subsection (3)-

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8) *(a)* The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may-

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

Assignment of functions to municipalities

22.(1) Before a provincial head of social development may assign functions to a municipal manager as contemplated in section 88 of the Act, he or she must conduct a needs assessment on the assignment of the functions referred to in that section in consultation with the municipality concerned.

(2) Before assigning all or part of the functions contemplated in section 88 of the Act, a provincial head of social development must be satisfied that the municipality concerned has—

(a) adequate staff, including social service professionals, who are suitably qualified and skilled;

(b) the ability to render assistance to build capacity to ensure compliance with the relevant norms and standards; and

(c) the capacity to manage the functions to be assigned.

(3) An agreement between the provincial head of social development and a municipality contemplated in section 88(2) of the Act must be in writing and signed by both parties in the presence of two witnesses.

(4) An agreement between a provincial head of social development and a municipality contemplated in section 88(2) of the Act must contain the following particulars:

(a) A strategic plan containing a business plan for a period of three years, an operational plan for a period of one year and a budget for a period of three years;

(b) a service level agreement;

(c) an organogram for the establishment responsible for the administration of the assigned functions; and

(d) a provision to the effect that the items contemplated in paragraphs *(a), (b)* and *(c)* must be reviewed and updated annually.

Serious injury, abuse or death of child in partial care facility

89. (1) If a child is seriously injured or abused while in partial care or following an occurrence at

a partial care facility, the person operating the
partial care facility or a person employed at the partial care facility must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation to be conducted into the circumstances of the serious injury or abuse.

(2) If a child dies while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately after the child's death report such death to-

(a) the parent, guardian or care-giver of the child;

(b) a police official; and

(c) the provincial head of social development.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

Regulations

90. The Minister may make regulations in terms of section 306 concerning-

(a) the national norms and standards that partial care facilities must comply with;

(b) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter, for the renewal of such registration and for the suspension or cancellation of registration;

(c) the different types of partial care that may be provided in terms of such registration;

(d) the period for which registration is valid;

(e) the requirements that the different types of partial care facilities have to comply with;

(f) the management of partial care facilities;

(g) the procedure to be followed with regard to the children in a partial care facility if the partial care facility is closed down;

(h) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; and

(i) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 6

EARLY CHILDHOOD DEVELOPMENT

(ss 91-103)

Early childhood development

91. (1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school-going age.

(2) Early childhood development services means services-

(a) intended to promote early childhood development; and

(b) provided by a person, other than a child's parent or caregiver, on a regular basis to children up to school-going age.

(3) An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child's developmental age and stage.

Strategy concerning early childhood development

93. (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses.

(2) The MEC for social development must-

(a) maintain a record of all the early childhood development programmes registered in the province; and

(b) within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed early childhood development system.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

Provision of early childhood development programmes

93. (1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development programmes for that province.

(2) An early childhood development programme must-

(a) be provided in accordance with this Act; and

(b) comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(3) The provider of an early childhood development programme only qualifies for funding contemplated in subsection (1) if such provider complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(4) The funding of early childhood development programmes must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make early childhood development programmes available to children with disabilities.

(5) An early childhood development programme must be provided by-

(a) a partial care facility providing partial care services for any children up to school-going age; and

(b) a child and youth care centre which has in its care any children up to school-going age.

(6) Any other person or organisation not disqualified in terms of section 97 (3) may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

National norms and standards for early childhood development programmes

94. (1) The Minister must determine national norms and standards for early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.

(2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:

(a) The provision of appropriate developmental opportunities;

(b) programmes aimed at helping children to realise their full potential;

(c) caring for children in a constructive manner and providing support and security;

(d) ensuring development of positive social behaviour;

(e) respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child; and

(f) meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children.

(3) An early childhood development programme provided in terms of this section must be appropriate to the needs of the children to whom the programme is provided, including children with a disability, chronic illness and other special needs.

National norms and standards for early childhood development

23. The national norms and standards for early childhood development programmes contemplated in section 94 of the Act are contained in **Part II of Annexure B**.

PART II
NATIONAL NORMS AND STANDARDS FOR EARLY CHILDHOOD DEVELOPMENT PROGRAMMES

For the purposes of section 94(2) of the Act, the
following are national norms and standards for early childhood development programmes:

1. **The provision of appropriate developmental opportunities**

Programmes must—

(a) be delivered by members of staff who have the knowledge and training to deliver developmental programmes;
(b) be appropriate to the developmental stages of children;
(c) respect and nurture the culture, spirit, dignity, individuality, language and development of each child;
(d) provide opportunities for children to explore their world; and
(e) be organised in a way that each day offers variety and creative activities.

2. **Programmes aimed at helping children to realise their full potential**

(a) Children must receive care, support and security.
(b) Programmes must promote children's rights to rest, leisure and play through the provision of a stimulating environment.
(c) Programmes must promote self discovery.
(d) Programmes must be evaluated and monitored.
(e) Programmes must promote and support the development of motor, communication and sensory abilities in children.
(f) Programmes must promote self control, independence and developmentally appropriate responsibility.
(g) Activities must promote free communication and interaction amongst children.
(h) Programmes must respect and nurture the culture, spirit, dignity, individuality, language and development of each child.

3. **Caring for children in a constructive manner and providing support and security**

(a) Creative play and exploratory learning opportunities must be provided to children.
(b) Programmes must adhere to the following conditions:
    (i) Toilet facilities must be safe and clean for children;
    (ii) where there are no sewerage facilities, sufficiently covered potties must be available;
    (iii) every child under the age of three years must have his or her own potty;
    (iv) for ages three to six years, one toilet and one hand washing basin must be provided for every twenty children;
    (v) there must be a place for the bathing of children;
    (ii) discipline must be effected in a humane way and promote integrity with due regard to the child's developmental stage and evolving capacities. Children may not be punished physically by hitting, smacking, slapping, kicking or pinching;
    (vii) programmes must adhere to policies, procedures and guidelines related to health, safety and nutrition practices. These must relate to—
        (aa) practices aimed at preventing the spread of contagious diseases;
        (bb) at least one meal per day must be provided;
        (cc) all meals and snacks should meet the nutritional requirements of children; and
        (dd) where children are bottle-fed, a suitable facility must exist for cleaning the bottles; and
        (ee) children must be supervised by an adult at all times.
(c) Programmes must meet the following requirements in relation to staff:
    (i) Staff must be trained in implementing early childhood development programmes;
    (ii) staff must be equipped with basic information, knowledge and skills to recognise children's serious illnesses and how to deal with those;
    (iii) staff must be trained in first aid;
    (iv) the staff–to–child ratio must—
        (aa) for children between the ages one month and 18 months be, 1:6;
        (bb) for children between the ages 18 months and three years be 1:12;

(cc) for children between the ages three and four years be 1:20; and

(dd) for children between the ages five and six years, 1:30; and

(v) for every staff member stipulated above, there must be an assistant.

4. **Ensuring development of positive social behaviour**

(a) Programmes must promote understanding of and respect for diversity in gender, language, religion and culture.

(b) Activities must include parents and care-givers in the development of positive social behaviour in children.

(c) Programmes must promote the development of positive social values.

(d) Programmes must be conducted in a non-discriminatory manner.

(e) Staff must demonstrate behaviour that promotes positive behaviour by modelling attitudes and interactions with children.

5. **Respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child**

(a) Programmes must promote appreciation and understanding for children's culture and language.

(b) Educators must utilize one medium of instruction in class.

(c) Children must be allowed to communicate in the language of their choice and preference outside class.

(d) Cultural diversity must be encouraged and respected by educators and children alike.

(e) Programmes may, where appropriate, facilitate late birth registration.

(f) Programmes must contribute to the development of a sense of identity in children.

6. **Meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children**

(a) Programmes must be appropriate to the developmental stages and evolving capacity of children.

(b) Programmes must ensure that parents and care-givers are involved in the development of children.

(c) Programmes must provide education and support to parents, caregivers and families to fulfil their responsibilities towards child-rearing and the holistic development of their children.

(d) Programmes must be accessible to especially vulnerable children in their homes.

(e) For children up to three years of age, programmes should, as much as possible, include household visits for increased accessibility to children.

(f) Programmes must promote cognitive development in children.

(g) Programmes must promote the development of fine sensory and motor skills in children.

(h) Activities must promote a positive relationship between the centre, families and the community.

(i) Programmes must teach age appropriate self control and independent behaviour.

(j) Existing community resources and strengths must be utilised in promoting the development of children.

(k) The emotional needs of children must be addressed and children must be encouraged to express their emotions in a safe, supportive and protective environment.

(l) Parents, care-givers and families of vulnerable children, children with disabilities and child-headed households must be provided with information, knowledge and skills to promote the development of their children.

(m) Children must be enabled to develop a positive sense of identity and self worth.

(n) Programmes must be based on an integrated approach.

(o) Children should feel valued and respected when participating in activities.

Early childhood development programme to be registered

95. (1) A person or organisation providing an early childhood development programme must-

(a) register the programme with the provincial head of social development of the province

where that programme is provided;

(b) provide the programme in accordance with any conditions subject to which the programme is registered; and

(c) comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

(3) An early childhood development programme provided by a national or provincial state department or a municipality must comply with subsection (1).

Application for registration and renewal of registration

96. (1) An application for registration or conditional registration of an early childhood development programme or for the renewal of registration must-

(a) be lodged with the provincial head of social development of the province where the early childhood development programme is provided in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of an early childhood development programme before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Application for registration of early childhood development programme

24.(1) Subject to the provisions of sub-regulation (2), an application for the registration or conditional registration of an early childhood development programme or the renewal of such programme must be lodged with the provincial head of social development of the province where the early childhood development programme is to provided and must be in a form identical to **Form 16.**

FORM 16
APPLICATION FOR THE REGISTRATION/ CONDITIONAL REGISTRATION/ RENEWAL OF REGISTRATION OF AN EARLY CHILDHOOD DEVELOPMENT PROGRAMME
(Regulation 24)
[SECTION 96 OF THE CHILDREN'S ACT 38 OF 2005]

(A) PARTICULARS OF APPLICANT

Name of applicant: _____

Physical address:_____

_____

Postal address: _____

_____ Postal code: _____

_____

Telephone: _____ Cell phone: _____

Fax number:_____ E-mail: _____

(B) CHILDREN

Number of children to whom the programme will be presented----------

Age Groups	Number of Children	Gender	Number of children with special needs	Number of staff per child age group
1 month – 18 months				
18 months – 3 years				
3 – 4 years				
5 – 6 years				
Total				

Days of operation:
From……To……

Hours Operation:
From……..To……

(C) SUPPORTING DOCUMENTS

The following supporting documents must be attached for the registration purposes:

- the overview of the early childhood development programme in respect of which application is made for registration;
- an implementation plan for the early childhood development programme in respect of which application is made;
- the staff composition including an exposition of the prescribed and other skills with supporting documents and including copies of any qualifications and Identity documents in respect of staff that will be responsible to provide the early childhood development programme;

Name of the Practitioner	Position	ID Number	Gender	Qualifications/Other Certificates	Date of appointment/ Experience

- In the case of a partial care or child youth care centre, the relevant registration as a partial care or child and youth care centre;
- a clearance certificate that the name of the applicant does not appear in the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 0f 2007 or in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act.

(D) GENERAL REMARKS

Any additional remarks by the applicant in support of the application: _____

_____

_____

_____

I certify that the above-mentioned particulars are, to the best of my knowledge, true and correct.

_____ _____ _____

SIGNATURE OF APPLICANT CAPACITY DATE

(2) If the performance of the functions contemplated in sections 96 and 97 of the Act has been assigned to the municipal manager as contemplated in section 102 of the Act, an application referred to in sub-regulation (1) must be lodged with the municipal manager or a social service professional in the employ of the municipality and to whom the municipal manager has delegated such function.

(3) An application contemplated in sub-regulation (1) must contain the following:

(*a*) The name and identity number of the applicant;

(b) the physical and postal address of the applicant;

(c) the contact particulars of the applicant;

(d) the particulars of the early childhood development programme in respect of which the application is made;

(e) an implementation plan for the early childhood development programme in respect of which the application is made;

(f) the staff composition of people who will be responsible to provide the early childhood development programme;

(g) the financial statements of the partial care facility or child and youth care centre; and

(h) a clearance certificate issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively to the effect that the name of the applicant and staff members do not appear in Part B of the National Child Protection Register or the National Register for Sex Offenders.

Consideration of application

97. (1) The provincial head of social development must-

(a) within six months of receiving the application consider an application for registration or

conditional registration or for the renewal
of registration, and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions;

(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

(2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether-

(a) the early childhood development programme complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed;

(b) the applicant is a fit and proper person to provide an early childhood development programme;

(c) the applicant has the prescribed skills, training, funds and resources available to provide the early childhood development programme as applied for; and

(d) the early childhood development programme meets the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of the children to whom the programme will be presented.

(3) A person unsuitable to work with children is not a fit and proper person to provide or assist in the provision of early childhood development programmes.

(4) The provincial head of social development must consider the assessment referred to in subsection (6) of a suitably qualified person before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding the provisions of section 93 (3), a provincial head of social development may assist a person providing an early childhood development programme to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(6) A provincial head of social development must authorise a suitably qualified person to assess the provision and content of an early childhood development programme in order to determine whether the programme complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(7) Section 304 (2) and (3), read with such changes as the context may require, applies to any assessment in terms of subsection (6).

Consideration of application for registration of early childhood development programme

25.(1) The provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 102 of the Act, the municipal manager or social service professional concerned, may grant an application contemplated in regulation 24(1) for a period not exceeding five years.

(2) On granting an application contemplated in regulation 24(1), the provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 102 of the Act, the municipal manager or social service professional concerned, must issue to the applicant a certificate of registration or conditional registration or renewal of registration in a form identical to **Form 17**.

FORM 17

CERTIFICATE OF REGISTRATION
OF AN EARLY CHILDHOOD DEVELOPMENT PROGRAMME
(Regulation 25)
[SECTION 97 OF THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that an early childhood development programme :

☐ has been registered in terms of section 97 of the Act;

☐ has been conditionally registered in terms of section 97 of the Act; or

☐ has been renewed in terms of section 97 of the Act.

on _____ (insert date) in favour of _____

The total Number of children to whom the programme will be presented----------

Number of children with special needs----------

Age Groups	Number of Children
1 month – 18 months	
18 months – 3 years	
3 – 4 years	
5 – 6 years	
Total	

Days of operation:
From……To……

Hours Operation:
From……..To……

Physical address of partial care facility/ child and youth care centre or an organization that implement the early childhood development programme:
_____

_____

_____

The validity of this registration expires on: _____ (insert date)

The registration or renewal of registration is subject to the following additional conditions:

_____

_____

_____

_____

_____

_____
Provincial Head: Social Development/

Municipal Manager

Province/Municipality:

_____

Date of issue: _____

(3) In rejecting an application for registration of an early childhood development programme, the provincial head of social development or, where the function has been assigned to a municipality in terms of section 102 of the Act, the municipal manager or social service professional concerned, must duly inform the applicant of the refusal in a form identical to **Form 18** by registered post and must furnish reasons for such rejection to the applicant.

FORM 18

REJECTION OF AN APPLICATION FOR THE REGISTRATION OF AN EARLY CHILDHOOD DEVELOPMENT PROGRAMME
(Regulation 25)
[SECTION 97 OF THE CHILDREN'S ACT 38 OF 2005]

Name of applicant: _____

Name of partial care facility or child and youth care centre:

_____

Physical address: _____

_____

Date of application: _____

The application has been refused for the following reasons:

_____
_____
_____
_____
_____
_____
_____
_____

_____

PROVINCIAL HEAD OF SOCIAL DEVELOPMENT/

MUNICIPAL MANAGER

PROVINCE/ MUNICIPALITY: _____

DATE:

_____

Qualification, skills and training required for early childhood development programmes

27. An applicant for registration of an early childhood development programme must posses the following qualifications, skills and training:

(a) (i) The National Certificate in Early Childhood Development at National Qualification Framework (NQF) Level 1 to 6 of the South African Qualifications Authority;

(ii) an appropriate early childhood development qualification; or

(iii) a minimum of three years experience of working in the early childhood development field;

(b) appropriate knowledge about early childhood development;

(c) the ability to identify, record and report on the progress and developmental needs of the child to inform early childhood development opportunities and interventions;

(d) the ability to design and produce stimulating indoor and outdoor activities and routines according to the developmental needs of the children;

(e) the ability to stimulate, extend and promote all-round development through appropriate adult-child, adult-adult and child-child interactions to enhance emotional, cognitive, spiritual, physical and social development;

(f) the ability to create awareness of, promote and ensure the all-round safety, protection, security, rights and development of the child according to his or her needs in conjunction with community resources;

(g) the ability to provide early childhood development programmes that are appropriate to the needs of the children to whom the services are provided, including children with disabilities, chronic illnesses or other special needs; and

(h) the ability to implement systems, policies and procedures and to manage physical, financial and human resources.

Assessment and compulsory monitoring of early childhood development programmes

28.(1) All early childhood development programmes must be subjected to assessment and monitoring to determine compliance with the national norms and standards for early childhood development contained in Part II of Annexure B and the assessment must be in a form identical to **Form 21**.

FORM 21
ASSESSMENT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMME
(Regulation 28)
[SECTION 103 OF THE CHILDREN'S ACT 38 OF 2005]

Name of Department of Social Development official:

Date of visit:

(A) **EARLY CHILDHOOD DEVELOPMENT PROGRAMME**

Name of ECD Programme:

Date opened:

Postal Address:

Physical Address:

Telephone number (if available):

Hours of opening:

(B) STAFF

Supervisor:

ECD Qualifications:

Other relevant qualifications:

Number of other practitioners:

ECD Qualifications of practitioners:

Other relevant qualifications:

Number of other staff:

(C) CHILDREN

Number of children registered:

Number of children present on day of review:

Age	Girls	Disabled	Boys	Disabled	Total
0 – 18 months					
18 months to 3 years					
3 – 4 years					
5 – 6 years					

TOTAL					

(D MANAGEMENT

Admission / Registration forms available:	Yes/No
Are the Admission / Registration forms up to date?	Yes/No
Are there job descriptions for all staff?	Yes/No
Is there a Staff Development Plan?	Yes/No
Admission policy	Yes/No
Admission policy of HIV/AIDS infected and affected children	Yes/No
Admission policy of children with disabilities	Yes/No

Other policies: Specify

Outings procedure:

Complaints procedure:

Emergency plan:

First Aid kit:

Attendance Register:

Accident register:

Abuse register:

(E) Active learning

Daily programme

Acceptable/Not acceptable

Acceptable with a few adaptations:

Comments:

Toys

Enough for number of children:

Clean and safe:

Developmentally appropriate:

Comments:

Equipment

Acceptable/Not acceptable

Acceptable with a few adaptations:

Comments:

Children's work displayed?	Yes/No
Appropriate books available?	Yes/No
Creative materials available?	Yes/No
Puzzles available?	Yes/No

(F) OBSERVATION BY REVIEWER

Practitioner – child interactions

Detail:

Child – child interactions

Detail:

Discipline

Detail:

Provision of variety of play materials

Detail:

Any other relevant observations

Detail:

(G) SUPPORT

Changes agreed with practitioners

1. Give details of the change agreed:

By when:

Support from DoSD:

2. Give details of the change agreed:

By when:

Support from DoSD:

3. Give details of the change agreed:

By when:

Support from DoSD:

SIGNED:

Quality Assurance Reviewer (name and date):

Supervisor/Practitioner (name and date):

(2) The assessment and monitoring contemplated in sub-regulation (1) must, subject to sub-regulation (3), be executed by a person designated by the provincial head of social development.

(3) The assessment and monitoring contemplated in sub-regulation (1) must, where the power or function has been delegated to the municipal manager, be executed by such municipal manager or by a social service professional where the municipal manager has delegated his or her power or function to such social service professional.

(4) All assessment and monitoring visits must be followed by a full report and development plan that must be submitted to the provincial head of social development and the management of the early childhood development programme.

(5) Assessment and monitoring of early childhood development programmes must take place every two years.

Conditional registration

98. The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of early childhood development programme that may or must be provided in terms of the registration;
(b) stating the period for which the conditional registration will remain valid; and
(c) providing for any other matters that may be prescribed.

Cancellation of registration

99. (1) A provincial head of social development may cancel the registration or conditional registration of an early childhood development programme by written notice to the registration holder if-

(a) the programme is not run in accordance with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed;
(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
(c) the registration holder contravenes or fails to comply with a provision of this Act;
(d) the registration holder becomes a person who is not a fit and proper person to provide an early childhood development programme; or
(e) a person who is not a fit and proper person to provide or assist in the provision of an early childhood development programme provides or assists in the provision of such a programme.

(2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1) (a), (b), (c) or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
(b) reinstate the registration if the registration holder corrects the cause of the cancellation

within that period.

(3) A provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed or any provisions of this Act where the cancellation was due to non-compliance with those national norms and standards, requirements, conditions or provisions.

(4) The cancellation of the registration or conditional registration of an early childhood development programme in terms of subsection (1) does not affect the registration or conditional registration of a partial care facility or a child and youth care centre.

Notice of enforcement

100. A provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person operating or managing a partial care facility or a child and youth care centre which does not provide an early childhood development programme, to comply with section 93 (5) within a period specified in the notice;

(b) a person operating or managing a partial care facility or a child and youth care centre which does provide an early childhood development programme but of a standard that does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed, to comply with those national norms and standards and other requirements within a period specified in the notice; or

(c) a person who provides an early childhood development programme which does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed-

(i) to stop the provision of that programme; or

(ii) to comply with those national norms and standards and other requirements within a period specified in the notice.

Appeal against and review of certain decisions

101. (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal referred to in subsection (1) may apply to the competent division of the High Court to review that decision.

Appeal against certain decisions

26.(1) An appeal contemplated in section 101(1) of the Act must be in a form identical to **Form 19.**

FORM 19

AN APPEAL AGAINST
A DECISION OF A PROVINCIAL HEAD OF SOCIAL DEVELOPMENT IN TERMS OF SECTION 101 OF THE ACT
IN RESPECT OF AN EARLY CHILDHOOD DEVELOPMENT PROGRAMME
(Regulation 26)
[SECTION 101 OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Physical address of appellant: _____

_____

_____

_____

This is appeal against a decision of the provincial head of social development of _____ (Insert name of province) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision against which this appeal is lodged (Indicate yes or no)	Grounds on which appeal is lodged
	Section 97: Consideration of application for registration
	Section 97: Consideration of application for conditional registration
	Section 97: Consideration of application for renewal of registration
	Section 98: Conditions on which registration was granted
	Section 99: Cancellation of registration
	Other grounds of appeal

The reasons provided by the provincial head of social development for his or her decision are attached.

My reasons for appealing against the decision are attached.

_____

APPLICANT / REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the MEC for social development in the province where the decision was taken by the provincial head of social development.

(2) The MEC may, upon receipt of the applicant's or registration holder's written appeal and the provincial head of social development's reasons for the decision confirm, vary or set aside that decision.

(3) An appeal contemplated in section 102(6) of the Act must be in a form identical to **Form 20.**

FORM 20

AN APPEAL AGAINST A DECISION OF A MUNICIPAL OFFICIAL IN TERMS OF SECTION 102(6) OF THE ACT IN RESPECT OF AN EARLY CHILDHOOD DEVELOPMENT PROGRAMME (Regulation 26)

[SECTION 102(6) OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Physical address of appellant

_____

_____

_____

This is appeal against a decision of municipal official of _____ (Insert name of municipality) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision against which this appeal is lodged (Indicate yes or no)	Grounds on which appeal is lodged The sections stated below refers to the sections in respect of which functions have been assigned to a municipality in terms of section 102 of the Act
	Section 97: Consideration of application for registration
	Section 97: Consideration of application for conditional registration
	Section 97: Consideration of application for renewal of registration
	Section 98: Conditions on which registration was granted
	Section 99: Cancellation of registration
	Other grounds of appeal

The reasons provided by the municipal official for his or her decision are attached.

My reasons for appealing against the decision are attached.

_____

APPLICANT / REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the municipal council of the municipality where the decision was taken.

(4) The municipal council may, upon receipt of the applicant's or registration holder's written appeal and the official in the employ of the municipality's reasons for the decision confirm, vary or set aside that decision.

Assignment of functions to municipality

102. (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service professional in the employ of the municipality.

(4) A delegation in terms of subsection (3)-

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide on the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8) *(a)* The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may-

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

Assignment of functions to municipalities

29.(1) Before a provincial head of social development may assign functions to a municipal manager as contemplated in section 102 of the Act, he or she must conduct a needs assessment on the assignment of the functions referred to in that section in consultation with the municipality concerned.

(2) Before assigning all or part of the functions contemplated in section 102 of the Act, a provincial head of social development must be satisfied that the municipality concerned has—

(a) adequate staff, including social service professionals, who are suitably qualified and skilled;

(b) the ability to render assistance to build capacity to ensure compliance with the relevant norms and standards; and

(c) the capacity to manage the functions to be assigned.

(3) An agreement between a provincial head of social development and a municipality contemplated in section 102(1) of the Act must be in writing and signed by both parties in the presence of two witnesses.

(4) An agreement between a provincial head of social development and a municipality contemplated in section 102(1) of the Act must contain the following particulars:

(a) A strategic plan containing a business plan for a period of three years, an operational plan for a period of one year and a budget for a period of three years;

(b) a service level agreement;

(c) an organogram for the establishment responsible for the administration of the assigned functions: and

(d) a provision to the effect that the particulars contemplated in paragraphs *(a)*, *(b* and*(c)* must be reviewed and updated annually.

Regulations

103. The Minister may make regulations in terms of section 306 concerning-

(a) the national norms and standards that early childhood development programmes must comply with;

(b) any other requirements with which early childhood development programmes must comply;

(c) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;

(d) the assessment and compulsory monitoring of early childhood development programmes; and

(e) any other matter necessary to facilitate the implementation of this Chapter.

[Chapters 5 and 6 inserted by section 4 of Act 41 of 2007]

CHAPTER 7

PROTECTION OF CHILDREN

(ss 111-142)

Part 1
Child protection system
(ss 104-110)

Strategy concerning child protection

104. (1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development and the South African Police Service, must develop a comprehensive inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system.

(2) The MEC for social development must, within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed child protection system.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

Provision of designated child protection services

105. (1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund designated child protection services for that province.

(2) Designated child protection services-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with the prescribed national norms and standards contemplated in section 106

and such other requirements as may be prescribed.

(3) Designated child protection services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 106 and such other requirements as may be prescribed.

(4) Designated child protection services may be provided by-

(a) the Department;

(b) a provincial department of social development; and

(c) a designated child protection organisation.

(5) Designated child protection services include-

(a) services aimed at supporting-

(i) the proceedings of children's courts; and

(ii) the implementation of court orders;

(b) services relating to-

(i) prevention services;

(ii) early intervention services;

(iii) the reunification of children in alternative care with their families;

(iv) the integration of children into alternative care arrangements;

(v) the placement of children in alternative care; and

(vi) the adoption of children, including inter-country adoptions;

(c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children;

(d) intervention and removal of children in appropriate cases;

(e) the drawing up of individual development plans and permanency plans for children removed, or at risk of being removed, from their family; and

(f) any other social work service as may be prescribed.

National norms and standards for child protection

106. (1) The Minister must determine national norms and standards for child protection by regulation after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development and the South African Police Service.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) Prevention and early intervention programmes;

(b) assessment of a child;

(c) therapeutic programmes;

(d) after-care;

(e) family reunification and reintegration;

(f) foster care services;

(g) integration into alternative care;

(h) adoption services;

(i) permanency plans;

(j) education and information; and

(k) child-headed households.

CHAPTER 6
CHILD PROTECTION SYSTEM
(Sections 104 – 110 and 142*(a)* – *(f)* of the Act)

National norms and standards for child protection services

30. The national norms and standards for child protection services contemplated in section 106 of the Act are contained in **Part III of Annexure B**.

PART III
NATIONAL NORMS AND STANDARDS FOR CHILD PROTECTION

For the purposes of section 106(2) of the Act, the
following are national norms and standards for child protection:

1. Prevention and early intervention programmes

Prevention and early intervention programmes must—

(a) strengthen and support family structures and build capacity;
(b) be aimed at the improvement of the well-being of families and children;
(c) if applicable, reunify and reintegrate family members;
(d) be aimed at the identification of high risk families and children;
(e) be family centred with family members seen as the main focus;
(f) focus on the strengths and capabilities of family members;
(g) if applicable, provide for the development of family plans in participation with family members;
(h) enable family members to take responsibility and accountability for their involvement in programmes;
(i) take the needs of children into account and the safety of the children in particular;
(j) if applicable, provide for assessment and permanency planning;
(k) if applicable, be based on a multi-disciplinary and inter-sectoral approach;
(l) be sensitive to the linguistic needs, religious and cultural values of children and their families;
(m) be home-based and community based;
(n) make provision for the training, support and supervision of service providers; and
(o) if applicable, ensure that early intervention decisions are based on developmental assessment.

2. **Assessment of children who have been abused or deliberately neglected**

Assessment of children who have been abused or deliberately neglected must be—

(a) undertaken by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to conduct assessments;
(b) undertaken within 48 hours of receipt of reports on abuse or deliberate neglect of children;
(c) done in accordance with the broad risk assessment framework contemplated in regulation 35;
(d) conducted by service providers who have appropriate knowledge of indicators of abuse or neglect and an understanding of the multi-disciplinary approach;
(e) followed by informing the child, his or her parents, guardians or care-givers of the outcome of the assessment and any decisions affecting them;
(f) conducted in a manner that involves the child, his or her family and any significant other persons and must be conducive to their participation;
(g) sensitive to the linguistic needs, religious and cultural values of children and their families;
(h) conducted in such a manner that the persons involved can understand the assessment and the implications thereof;
(i) aimed at the provision of sufficient and helpful information to the child, his or her family and significant other persons;
(j) aimed at securing an appropriate care plan and individual development plan for the child;
(k) conducted in a safe and protected environment; and
(l) sensitive to the child's need for support and assistance during assessment, especially for children with disabilities.

3. **Therapeutic programmes**

Therapeutic programmes must –

(a) be conducted by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to render such programmes;
(b) take account of the assessment framework, the assessment report and any other relevant information;
(c) be based on a multi-disciplinary and inter-sectoral approach;
(d) be sensitive to the linguistic needs and religious and cultural values of children and their families;
(e) be aimed at meeting the needs of the recipient as indicated during assessment;

(f) ensure that the recipients feel emotionally and physically safe in the therapeutic situation and that information is kept confidential;
(g) ensure that the goals, time periods and expected outcomes of all therapeutic interventions are discussed and agreed upon and that recipients understand their rights and have sufficient information to make informed choices;
(h) assist recipients to use their strengths while they are assisted to deal with trauma;
(i) be conducted in a non-discriminatory manner and in a comfortable, friendly and safe environment that is conducive to the best interests of recipients;
(j) make provision for the involvement of the child, his or her family and significant other persons during therapy;
(k) ensure that recipients are provided with the name and contact number of the case manager or social worker;
(l) provide adequate opportunity for additional consultation and counselling;
(m) monitor the growth and progress of recipients;
(n) ensure that records are kept and data captured;
(o) be aimed at the minimisation of secondary abuse and trauma;
(p) ensure that recipients are free to express dissatisfaction with service providers and that concerns and complaints are addressed seriously; and
(q) be reviewed on a regular basis according to the needs of recipients.

4. **After care services**

After care services must—

(a) be provided by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to render such services;
(b) be based on a multi-disciplinary and inter-sectoral approach;
(c) be sensitive to the linguistic needs, religious and cultural values of children and their families;
(d) be rendered in a non-discriminatory manner;
(e) ensure that recipients are provided with the name and contact number of the case manager or social worker;
(f) ensure that after care programmes are sufficiently monitored and regularly reviewed;
(g) ensure that records are kept and data captured on programmes available to children and on the number and identifying particulars of children attending the programme;
(h) be aimed at the identification of high risk situations and behaviour and the appropriate minimisation of risk;
(i) focus on the strengths and capacity of recipients; and
(j) be home based and community based.

5. **Family reunification and integration services**

Family reunification and integration services must—

(a) be provided by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to render such services;
(b) be based on a multi-disciplinary and inter-sectoral approach;
(c) be sensitive to the linguistic needs, religious and cultural values of children and their families;
(d) be rendered in a non-discriminatory manner;
(e) strengthen and support family structures and render capacity building;
(f) improve the well-being and resilience of families and children;
(g) be aimed at the identification of high risk families and children;
(h) focus on the strengths of families;
(i) ensure that family plans are developed with the participation of all family members;
(j) enable families to take responsibility and accountability for their involvement in programmes;
(k) provide for the referral of recipients to other appropriate programmes;
(l) if applicable, provide for family development, family skills training, family group conferencing and mentorship;
(m) if applicable, address parenting skills, conflict management, role clarification, gender and partner abuse, unemployment, substance abuse and deviant behaviour;

(n) prevent and deal with out-of-home placements with the purpose of keeping families together except where this would not be in the best interests of the child;
(o) ensure the provision of family centred programmes; and
(p) facilitate the participation of family members and be aimed at the empowerment of families.

6. **Foster care services**

Foster care services, supervision and arrangements around such supervision must—

(a) be based on a care plan and an individual development plan for the child concerned;
(b) where applicable, include participation of the child and his or her family during the placement process;
(c) take account of the need for maximum appropriate access to information to enable the child and his or her family to participate in decisions;
(d) ensure support and capacity building with regard to the child and his or her foster parents;
(e) allow foster parents to participate in the planning and drafting of a care plan and individual development plan and to be consulted and informed of plans;
(f) be conducted in a manner that makes the child, his or her family and the foster parents aware of what is expected from them, their rights and responsibilities;
(g) be sensitive to the religious, cultural, and linguistic background of the child;
(h) take account of the child's physical, emotional and social needs;
(i) be appropriate to the child's developmental needs and be based on respect for the child's individuality, strengths, dignity, cultural, religious and linguistic heritage;
(j) encourage, ensure and provide the opportunity for choice, decision-making and the building and strengthening of rapport and relationships;
(k) ensure that basic needs are appropriately met;
(l) ensure that the care plan and individual development plan are based on a proper developmental assessment of the child;
(m) allow the child to observe his or her religion, to meet with others of similar background, to dress in accordance with his or her religion and to observe dietary requirements without difficulty, ridicule or embarrassment;
(n) ensure the provision of support and strengthening services to foster parents and the monitoring of their roles to ensure outcomes around placement;
(o) be based on a clear written policy and procedures regarding foster care services; and
(p) ensure that care plans and individual development plans are reviewed regularly_by the social worker managing the foster care with the participation of the child and foster parents, within their respective abilities.

7. **Integration into alternative care services**

Integration into alternative care services must—

(a) be rendered by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to render integration programmes;
(b) be based on a multi-disciplinary and inter-sectoral approach;
(c) be sensitive to the linguistic needs, religious and cultural values of children and their families;
(d) be aimed at meeting the needs of recipients as indicated during assessment;
(e) ensure that the recipients feel emotionally and physically safe in the therapeutic situation and that information is kept confidential;
(f) be conducted in a non-discriminatory manner;
(g) make provision for the involvement of the child, his or her family and significant other persons;
(h) ensure that recipients understand their rights and responsibilities and are provided with sufficient information to make informed choices;
(i) ensure that recipients are provided with the name and contact number of the case manager or social worker;
(j) ensure that a comfortable, child-friendly and safe environment is available for children;
(k) ensure that programmes are conducive to the best interests of recipients;
(l) provide adequate opportunity for additional consultation and counselling;
(m) monitor the growth and progress of recipients;
(n) be aimed at the minimisation of secondary abuse and trauma;

(o) ensure that recipients are free to express dissatisfaction with service providers and that concerns and complaints are addressed seriously;
(p) allow for the review of programmes according to the needs of recipients;
(q) be based on a care plan and an individual development plan for the child concerned;
(r) include participation of the child and his or her family during the placement process;
(s) take account of the need for maximum appropriate access to information to enable the child and his or her family to participate in decisions;
(t) be conducted in a manner that takes account of the child's physical, emotional and social needs;
(u) be appropriate to the child's developmental needs and be based on respect for the child's individuality, strengths, dignity, cultural, religious and linguistic heritage;
(v) encourage, ensure and provide the opportunity for choice, decision-making and the building and strengthening of rapport and relationships;
(w) ensure that basic needs are met appropriately;
(x) ensure that the care plan and individual development plan are based on a proper developmental assessment of the child; and
(y) ensure that care plans and individual development plans are reviewed regularly.

8. **Adoption services**

Adoption services must—
(a) be rendered by relevant service providers;
(b) take the child's needs into account;
(c) provide for assessment of the child;
(d) include awareness campaigns to promote adoption as part of child protection services;
(e) be based on appropriately formulated and implemented policy and procedures;
(f) ensure that the child and his or her family, within their respective abilities, are actively involved in all stages of the adoption process;
(g) be based on an inter-sectoral and multi-disciplinary approach;
(h) take account of and address the changing social, physical, cognitive and cultural needs of the child and his or her family throughout the intervention process before and after adoption;
(i) ensure that all avenues to maintain the child within his or her own family are explored before adoption is considered;
(j) ensure that the child's family has access to a variety of appropriate resources and support;
(k) be based on permanency planning for children qualifying for adoption;
(l) ensure that adoption is dealt with by expert adoption social workers functioning within a statutory accredited adoption system;
(m) ensure that children who are to be adopted are not discriminated against with regard to race, gender, language, religion, disability or any other status and that the biological parents of children who are to be adopted are not discriminated against;
(n) ensure that the child is involved in the decision-making process during adoption procedures;
(o) ensure that inter-country adoption is considered as an alternative means of permanent care for a child when a suitable adoptive or foster family cannot be found nationally;
(p) ensure that the standards of inter-country adoption conform with the Hague Convention on Inter-country Adoption;
(q) ensure that inter-country adoption does not result in financial gain for those involved;
(r) ensure that inter-country adoption is effected by the Central Authority;
(s) provide for the recruitment, assessment and preparation of adoptive parents;
(t) provide for the counselling of the child, his or her biological parents and the adoptive parents;
(u) provide for after-care services to the adoptive family;
(v) provide for the management of enquiries and interpretation of issues regarding descent and origin, accompanied by counselling of all parties;
(w) provide for the tracing by an adult adopted person of his or her biological parents;
(x) ensure that the particular needs of the child are matched with the special strengths of the adoptive family through appropriate assessment and preparation of the parties involved;
(y) provide for assistance to prospective adoptive parents to assess their capacity to adopt and helping them to understand what parenting of an adopted child entails;

(z) provide for assistance to adoptive parents to develop their personal and parenting skills; and

(aa) provide for services to biological parents focusing on crisis intervention and life skills.

9. **Permanency plans**

Permanency plans must—

(a) be designed by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to develop such plans;

(b) clearly identify the reasons why the child is unable to remain with his or her own family, or is being placed under court-ordered supervision with that family, at the time when the plan is being drafted;

(c) clearly specify what it is that needs to be achieved in order to terminate court-ordered supervision or restore the child to the care of his or her family, and what services will be offered for that purpose and by whom;

(d) give priority to enabling the child to remain in or be restored to his or her own family, while also providing for other permanent solutions such as adoption, foster care or independent living arrangements, should this not be achieved despite genuine efforts to provide the necessary services to achieve permanent placement within the child's own family;

(e) take account of the assessment framework, the assessment report and any other relevant information;

(f) be family centred and focused on the strengths and capacities of family members;

(g) be based on a multi-disciplinary and inter-sectoral approach;

(h) be sensitive to the linguistic needs, religious and cultural values of children and their families;

(i) make provision for the involvement of the child, his or her family and significant other persons;

(j) provide sufficient and helpful information to the child, his or her family and significant other persons;

(k) provide assistance to cope with changes in circumstances and environment and include a specific plan for preparing, supporting and monitoring such changes;

(l) be based on approved policy and procedures;

(m) encourage children to identify and express emotions appropriately and empower them to find effective and positive ways to express and manage emotions;

(n) encourage positive interaction with service providers;

(o) encourage children to build and maintain appropriate relations with friends, service providers, family members and significant other persons;

(p) include support to children when relations break down to cope with the impact of having contact or not having contact with family members and significant other persons;

(q) provide for adequate health care and education opportunities;

(r) provide such capacity and support as may be required to enable constructive and effective behaviour;

(s) include measures for preparing children for reintegration into their families and communities;

(t) include measures allowing children to participate in and understand changes to the permanency plan, which should only happen if it is in the best interest of the child concerned;

(u) be reviewed regularly; and

(v) be clear on goals and expectations.

10. **Education and information programmes**

Education and information programmes must—

(a) be rendered by service providers who have the appropriate training, support and supervision to maximise their abilities and capacity to render such programmes;

(b) be based on a multi-disciplinary and inter-sectoral approach;

(c) be rendered in an appropriate and intelligible language;

(d) include fact sheets, pamphlets, guidelines, policies and procedures;

(e) encompass awareness-raising, training and provide access to programmes;

(f) promote the development of a human and children's rights culture;

(g) be aimed at the early identification of high risk families and children;

(h) promote gender sensitivity;

(i) promote responsible values, attitudes and behaviour; and
(j) be based on accepted policies, legislation and programmes.

11. **Child-headed households**

(a) General

(i) Siblings in a child-headed household should, as far as is reasonably possible and practicable, remain together.
(ii) The right to family life of any child-headed household should be promoted in accordance with the objectives of the Act.
(iii) The independent functioning of a child-headed household must be promoted as far as is reasonably possible.
(iv) Support to child-headed households must be aimed at enhancing the capacity of the children living in the child-headed household to function as a family.

(a) Safe and nurturing environment for children

(i) Children must experience safety, support, security and feel cared for while living in a child-headed household, and have their basic needs met.
(ii) Adequate nutrition, water and means for preparing food must be available to meet the basic needs of the children in a child-headed household.
(iii) Adequate care of the health of children living in child-headed households must be undertaken.
(iv) Children living in child-headed households must be able to benefit from the right to rest, leisure and play.
(v) A child-headed household must respect and nurture the culture, spirit, dignity, individuality, language and development of each child living in that household and children must be encouraged to develop positive social values.
(vi) The resources available to the household must be used equitably to promote the well-being of all children living in a child-headed household.
(vii) Children living in child-headed households must have access to psychosocial support.

(c) Birth registration, social assistance, social and community services, access to education and the development of skills

Children living in a child-headed household—

(i) must benefit from official registration of their births in terms of the Births and Deaths Registration Act,1992 (Act No. 51 of 1992);
(ii) must benefit from social assistance, as provided for in the Social Assistance Act, 2004 (Act No.13 of 2004), where the relevant criteria for access to such social assistance are met;
(iii) may benefit from emergency assistance or aid, as may from time to time be available, including food, goods or transport assistance;
(iv) who are of school going age, must attend school regularly, and receive any necessary assistance to enable them to access education;
(v) must have access to social services and community services generally and to resources which promote their capacities and increase their ability to participate in community life; and
(vi) must be enabled to develop the skills necessary to participate in social and economic life.

(d) Property

Children living in a child-headed household must be—

(i) enabled to assume responsibility for any property or possessions belonging to that household; and
(ii) assisted to maintain and preserve any property belonging to the household, where such children wish to preserve such property, but may freely dispose of property in the best interests of the household.

(e) Exposure to harm

Children living in a child-headed household—

(i) should not be exposed to violence, abuse, maltreatment or degradation, sexual abuse or harmful or hazardous forms of child labour; and
(ii) must as far as is reasonably possible be protected from community risk factors.

(f) Disability, chronic illness and vulnerability

Child-headed households in which a child with a disability or a chronic illness resides,

(i) must be assisted to obtain any special grants, assistance devices, educational or
(ii)- vocational programme or other form of support necessary to ensure the optimal development of such child.

(g) Participation and consultation

Children living in a child-headed household must—

(i) participate in all matters affecting the functioning of the household; and

(ii) be consulted in any investigation by a designated social worker contemplated in section 150(2) and (3) of the Act.

(h) Monitoring and supervision

Children living in a child-headed household—

(i) must be encouraged to report any change in living arrangements to a designated social worker, an adult appointed in terms of section 137(2) of the Act or any other suitable adult; and

(ii) in respect of whom an adult has been appointed in accordance with section 137(2) of the Act, or in respect of whom an investigation has been concluded in terms of section 150 of the Act, where no finding has been made that the child or children are in need of care and protection, are entitled to be visited on a regular basis, and not less than once every two weeks, for the purposes of monitoring and supervision.

(i) Child heading the household

The child heading the household must give effect to the norms and standards contained in this Annexure to the maximum extent reasonably possible, bearing in mind the child's age, maturity and stage of development, to ensure that other children living in the child headed-household are assured of their rights to survival and development and to protection from harm.

Designation of child protection organisation

107. (1) The Director-General or provincial head of social development, on written application, may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services in the relevant province.

(2) A designation in terms of subsection (1)-

(a) must be in writing;

(b) may be made on such conditions as the Director-General or provincial head of social development may determine; and

(c) must be made for such period as may be prescribed.

(3) The Director-General or provincial head of social development may assign to a designated child protection organisation such powers and duties in terms of this Act necessary for the proper provision of designated child protection services by the organisation.

(4) Sections 310 and 311 read with such changes as the context may require, apply to any assignment in terms of subsection (1).

Existing child welfare organisation

108. (1) Any organisation which, when section 107 takes effect, is a designated welfare organisation within the meaning of the Child Care Act must be regarded as having been designated in terms of section 107 as a child protection organisation to perform the designated child protection services which it performed immediately before that section took effect.

(2) An organisation referred to in subsection (1) is regarded as a designated child protection organisation for a period of five years from the date on which section 107 takes effect, unless its designation is withdrawn in terms of section 109 before the expiry of that period.

Criteria for designation as child protection organisation

31.(1) An organisation complies with the criteria for a child protection organisation contemplated in section 107(1) of the Act if such organisation, upon application to be designated as a child protection organisation, has shown that it—

(a) is a legal person and is registered with the appropriate authority or in terms of service-specific related legislation which requires registration;

(b) is registered as a nonprofit organisation in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), is affiliated to a nonprofit organisation that is so registered or can provide proof that the organisation is in the process of registering under the said Act;

(c) has the necessary capacity and expertise to deliver statutory services in terms of the Act, and that its operation conforms with the MEC for social development's plan for the delivery of child protection services in the relevant province;

(d) has a constitution that embraces the provision of child protection services;

(e) has the ability to provide effective and efficient services which also accommodate the needs of children with disabilities;

(f) promotes an equitable distribution of services, taking into account historical imbalances, including race, gender, disability and the urban and rural areas;

(g) promotes inclusiveness and representation in the management and organisation of services;

(h) is able to account for the utilisation of financial awards made by the Department or the Provincial Department of Social Development in an acceptable manner and in terms of the prescripts of the Public Finance Management Act, 1999 (Act No.1 of 1999), with particular emphasis on the efficiency, economy and effectiveness of programmes and best practice financial management; and

(i) supports and commits itself to partnerships and collaboration with emerging organisations.

(2) An application to be designated as a child protection organisation must include a business plan which contains the following:

(a) Biographic information of the organisation;

(b) information on the management board, staff, volunteers and current beneficiaries of the organisation;

(c) objectives, outputs and outcomes; and

(d) activity-based budgets reflecting the amount of funds required and the purposes for which such funds will be utilised.

(3) An application to be designated as a child protection organisation must be accompanied by the following documents or certified copies thereof:

(a) The organisation's most recent audited financial statements or, if audited statements cannot be furnished, such financial statements as are available accompanied by a sworn statement as to why audited statements cannot be furnished;

(b) proof of such registration as may be required;

(c) social workers' certificates of registration issued under section 17 of the Social Service Professions Act, 1978;

(d) the organisation's constitution and, if available, its code of conduct;

(e) confirmation of the organisation's banking details; and

(f) the organisation's audited financial statements.

(4) The Director-General or the provincial head of social development may designate an appropriate organisation that complies with the requirements specified in sub-regulations (1), (2) and (3) as a child protection organisation for a period not exceeding five years.

(5) An organisation which has been designated as a child protection organisation in terms of section 107 of the Act or deemed to be designated in terms of section 108 of the Act must submit to the Director-General or to the provincial head of social development a new application for designation in accordance with this regulation at least 90 days before the expiry of the period of designation referred to in sub-regulation (4) or section 108(2) of the Act, as the case may be.

Withdrawal of designation

109. (1) The Director-General or provincial head of social development may withdraw the designation of a child protection organisation to perform any, or any specific, designated child protection service-

(a) if the organisation-

(i) breaches or fails to comply with any conditions subject to which the designation was

made; or

(ii) contravenes or fails to comply with a provision of this Act; or

(b) if it is in the best interest of the protection of children.

(2) Before the designation of a child protection organisation is withdrawn as contemplated in subsection (1), the Director-General or provincial head of social development, as the case may be, must conduct quality assurance in the prescribed manner of the child protection organisation concerned.

Quality assurance to evaluate child protection organisation prior to withdrawal of designation

32.(1) A quality assurance referred to in section 109(2) of the Act must be conducted to evaluate a child protection organisation prior to the withdrawal of the designation as a child protection organisation.

(2) The quality assurance contemplated in subregulation (1) must be conducted by the Director-General or by the provincial head of social development and must consist of the assessment of the following:

(a) the business plan and financial statements of the organisation;

(b) adherence to the criteria for designation as a child protection organisation and to the national norms and standards for child protection;

(c) implementation of the designated child protection services;

(d) whether individuals, families, communities and other organisations are receiving an effective and efficient service and whether they are satisfied with the quality of service so received;

(e) monitoring and evaluation framework and the impact of the services received;

(f) compliance and implementation of the appropriate legislation; and

(g) any service delivery challenges.

Reporting of abused or neglected child and child in need of care and protection

110. (1) Any correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.

(2) Any person who on reasonable grounds believes that a child is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.

(3) A person referred to in subsection (1) or (2)-

(a) must substantiate that conclusion or belief to the provincial department of social development, a designated child protection organisation or police official; and

(b) who makes a report in good faith is not liable to civil action on the basis of the report.

(4) A police official to whom a report has been made in terms of subsection (1) or (2) or who becomes aware of a child in need of care and protection must-

(a) ensure the safety and well-being of the child concerned if the child's safety or well-being is at risk; and

(b) within 24 hours notify the provincial department of social development or a designated child protection organisation of the report and any steps that have been taken with regard to the child.

(5) The provincial department of social development or designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4), must-

(a) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;

(b) make an initial assessment of the report;

(c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated;

(d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child; and

(e) submit such particulars as may be prescribed to the Director-General for inclusion in Part A of the National Child Protection Register.

(6) *(a)* A designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4) must report the matter to the relevant provincial department of social development.

(b) The provincial head of social development must monitor the progress of all matters reported to it in terms of paragraph (a).

(7) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) may-

(a) take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation;

(b) if he or she is satisfied that it is in the best interest of the child not to be removed from his or her home or place where he or she resides, but that the removal of the alleged offender from such home or place would secure the safety and well-being of the child, request a police official in the prescribed manner to take the steps referred to in section 153; or

(c) deal with the child in the manner contemplated in sections 151, 152 or 155.

(8) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) must report the possible commission of an offence to a police official.

[Part 1 of Chapter 7 inserted by section 5(a) of Act 41 of 2007]

Reporting of abuse or deliberate neglect of child

33.(1) A report by a person contemplated in section 110(1) of the Act, who on reasonable grounds concludes as provided for in that section that a child has been abused in a manner causing physical injury, sexually abused, emotionally abused or deliberately neglected, must be made to the relevant authority in a form identical to **Form 22** by completing that form to the best of that person's ability and by including in the form such particulars as are available to him or her.

FORM 22

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD
(Regulation 33)
[SECTION 110 OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT, DESIGNATED CHILD PROTECTION ORGANISATION OR POLICE OFFICIAL

NOTE:	**A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD**

TO: The Head of the Department

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(*a*) of the Act, you are hereby advised that a child has been abused in a manner causing physical injury/ sexually abused/deliberately neglected or is in need of care and protection.

Source of report (do not identify person) □ Victim □ Relative □ Parent □ Neighbour/friend □ Professional (specify) …… □ Other (specify) ……			
Date Reported to child protection organisation:	DD	MM	CCYY

1. CHILD: (COMPLETE PER CHILD)						
Surname			Full name(s)			
Gender:	M	F	Date of Birth:	DD	MM	CCYY
School Name:			Grade:		Age / Estimated Age:	
* ID no:			* Passport no:			
Contact no:						

2. CATEGORY OF CHILD IN NEED OF CARE AND PROTECTION		
□ Street child	□ Child labour	□ Child trafficking
□ Commercial sexual exploitation	□ Exploited children	□ Child abduction

3. OTHER INTERVENTION – CONTACT PERSON TRUSTED BY CHILD	
Surname:	Name:
Address:	Telephone number:
Other children interviewed: □ Yes □ No	Number :

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

4. ALLEGED ABUSER						
4.1) Surname				Full Name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID No:				Age:		

* Passport No:	* Drivers license:
Also known as:	Relationship to child: □ Father □ Mother □ Grand father □ Grand mother □ Step father □ Step mother □ Foster father □ Foster mother □ Uncle □ Aunt □ Sibling □ Caregiver □ Professional: social worker/police officer/teacher/caregiver/priest/dr/ volunteer □ Other (specify)
Street Address (include postal code):	
Postal Code:	

4.2) WHEREABOUTS OF ALLEGED PERPETRATOR:

□ Section 153 (Request for removal by SAPS) □ Still in home

□ In hospital
(Name/Place…….)

□ In detention
(Place……..……..)

□ Living somewhere else □ Whereabouts unknown □ Un-identified

5. PARENTS OF CHILD (If other than above)						
Surname: Father / Step-father				Full name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID no:				Age:		
Surname: Mother / Step-mother				Full name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID no:				Age:		
Also known as:				Names and ages of siblings or other children if helpful for tracking		
Street Address (include postal code):						Postal Code:

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

6. ABUSE

Date of Incident:			Date unknown:	Episodic/ongoing from (date)			Reported to CPR:		
DD	MM	CCYY		DD	MM	CCYY	DD	MM	CCYY

Place of incident:
□ Child's home □ Field □ Tavern □ School □ Friend's place
□ Partial Care □ ECD Centre □ Neighbour □ Child and youth care centre
□ Other (specify) □ Foster home □ Temporary safe care

6.1) TYPE OF ABUSE (Tick only the one that indicates the key motive of intent)

Physical	Emotional	Sexual	Deliberate neglect

6.2) INDICATORS (Check any that apply)

PHYSICAL: □ Abrasions □ Bruises □ Burns/Scalding □ Fractures
□ Other physical illness □ Cuts □ Welts □ Repeated injuries
□ Fatal injury (date of death) □ Injury to internal organs □ Head injuries

□ No visible injuries (elaborate)	□ Poisoning (specify)	□ Other Behavioural or physical (specify)

EMOTIONAL: □ Withdrawal □ Depression □ Self destructive aggressive behaviour

□ Corruption through exposure to illegal activities □ Deprivation of affection
□ Exposure to anti-social activities □ Exposure to family violence
□ Parent or care giver negative mental condition □ Inappropriate and continued criticism
□ Humiliation □ Isolation □ Threats □ Development Delays □ Oppression
□ Rejection □ Accusations □ Anxiety □ Lack of cognitive stimulation

□ Mental, emotional or developmental condition requiring treatment (specify)

SEXUAL: □ Contact abuse □ Rape □ Sodomy
□ Masturbation □ Oral sex area □ Molestation
□ Non contact abuse (flashing, peeping) □ Irritation, pain, injury to genital

□ Other indicators of sexual molestation or exploitation (specify)

DELIBERATE NEGLECT: □ Malnutrition □ Medical □ Physical □ Educational
□ Refusal to assume parental responsibility □ Neglectful supervision □ Abandonment

6.3) Indicate overall degree of Risk to child:
□ Mild □ Moderate □ Severe □ Unknown

6.4) When applicable, tick the secondary type of abuse Multiple Abuse: □ Yes □ No

Sexual	Physical	Emotional	Deliberate Neglect

Brief explanation of occurrence(s) (including a statement describing frequency and duration)

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

7. MEDICAL INTERVENTION (*)		
Treated outside hospital: □ Yes □ No	Examined by: □ Doctor □ Reg. Nurse	Hospitalised: □ For assessment □ For treatment □ As place of safety
Where (name of Hospital)	Contact person	Telephone Number

8. CHILDREN'S COURT INTERVENTION (*)			
Removal of child to temporary safe care (Section 152): □ Yes □ No	Date		
	MM	DD	CCYY

9. SAPS: (ACTION RELATED TO ALLEGED ABUSER(S)) – (*)				
Reported to SAPS: □ Yes □ No	Charges laid: □ Yes □ No	Date		
		DD	MM	CCYY
CASE NR	Police Station		Telephone Nr	
Name of Police Officer	Rank of Police Officer			

10. CHILD KNOWN TO WELFARE ORGANISATION/ SOCIAL DEVELOPMENT?		
10.1) Child known to welfare?: □ Yes □ No		
Name of Organisation	Contact number	Reference number

11. DETAILS OF PERSON WHO REPORTS ALLEGED ABUSE (Refers to a profession, mandatory obliged to report child abuse)		
Name of informant	Employer	
Employer Address	Work Telephone Nr	Fax Number
Email Address		

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	

FULL NAMES OF CHILD:	

CAPACITY Section 110 (1)						
	Caregiver	Correctional Official	Child and Youth Care Centre	Dentist	Doctor	Drop in Centre
	Homeopath	Labour Inspector	Legal Practitioner	Midwife	Member of staff – partial care facility	Medical Practitioner
	Minister of Religion	Nurse	Occupational Therapist	Psycho-logist	Police Official	Physio-therapist
	Religious leader		Social service professional		Social worker	
	Speech therapist		Shelter		Traditional leader	
	Teacher		Traditional health practitioner		Volunteer Worker – partial care facility	
	Other (specify)					

I declare that the particulars set out in the above mentioned statement are true and correct to the best of my knowledge.

Signature of person reporting alleged abuse: _____

Date:_____

Official Stamp of Department / child protection organisation

(2) The provincial department of social development, designated child protection organisation or police official to whom a report contemplated in sub-regulation (1) has been made, must submit the particulars of the abuse in a form identical to **Form 23** to the Director-General for inclusion in Part A of the National Child Protection Register.

FORM 23

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD TO DIRECTOR-GENERAL

(Regulation 33)
[SECTION 110(5) OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO DIRECTOR-GENERAL

NOTE: A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD

TO: The Director-General

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(*a*) of the Act, you are hereby advised that we have received a report that a child has been abused in a manner causing physical injury/sexually abused/deliberately neglected or is in need of care and protection. * Kindly include the particulars listed below in Part A of the National Child Protection Register.

Source of report (do not identify person) **□ Victim □ Relative □ Parent □ Neighbour/friend** **□ Professional (specify)** **……** **□ Other (specify)** **……**			
Date Reported to child protection organisation:	**DD**	**MM**	**CCYY**

1. CHILD: (COMPLETE PER CHILD)						
Surname			**Full name(s)**			
Gender:	**M**	**F**	**Date of Birth:**	**DD**	**MM**	**CCYY**
School Name:			**Grade:**		**Age / Estimated Age:**	
*** ID no:**			*** Passport no:**			
Contact no:						

2. DISABILITY (*)	
Disability: **□ Yes** **□ No**	**Nature** **□ Blind □ Deaf □ Hard of hearing** **□ Physical disability □ Intellectual Disability** **- Mental disability: □ Developmental □ Psychiatric** **□ Other**

3. CHRONIC ILLNESS (*)	
Chronic illness: **□ Yes** **□ No**	**Nature** **□ Diabetic □ Cancer □ Liver □ HIV/ Aids** **□ Epileptic □ Tuberculoses □ Cardiac disease** **□ Other**

4. CATEGORY OF CHILD IN NEED OF CARE AND PROTECTION		
□ Street child	□ Child labour	□ Child trafficking
□ Commercial sexual exploitation	□ Exploited children	□ Child abduction

5. OTHER INTERVENTION – CONTACT PERSON TRUSTED BY CHILD	
Surname:	Name:
Address:	Telephone number:
Other children interviewed: □ Yes □ No	Number :

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

6. ALLEGED ABUSER						
6.1) Surname				Full Name(s)		
Date of Birth:	DD	MM	CCYY	Gender:	M	F
ID No:				Age:		
* Passport No:				* Drivers license:		
Also known as:				Relationship to child: □ Father □ Mother □ Grand father □ Grand mother □ Step father □ Step mother □ Foster father □ Foster mother □ Uncle □ Aunt □ Sibling □ Caregiver □ Professional: social worker/police officer/teacher/caregiver/priest/dr/ volunteer □ Other (specify)		
Street Address (include postal code):						
Postal Code:						

6.2) WHEREABOUTS OF ALLEGED ABUSER:

□ Section 153 (Request for removal by SAPS) □ Still in home

□ In hospital
(Name/Place…….)

□ In detention
(Place……..……..)

□ Living somewhere else □ Whereabouts unknown □ Unidentified

6.3 ABUSE HAS BEEN CONFIRMED: □ Yes □ No			**Date**	**DD**	**MM**	**CCYY**
Type: □ Physical □ Emotional □ Sexual □ Deliberate Neglect						

7. PARENTS OF CHILD (If other than above)						
Surname: Father / Step-father				**Full name(s)**		
Date of Birth:	**DD**	**MM**	**CCYY**	**Gender:**	**M**	**F**
ID no:				**Age:**		
Surname: Mother / Step-mother				**Full name(s)**		
Date of Birth:	**DD**	**MM**	**CCYY**	**Gender:**	**M**	**F**
ID no:				**Age:**		
Also known as:				**Names and ages of siblings or other children if helpful for tracking**		
Street Address (include postal code):						**Postal Code:**

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

8. ABUSE									
Date of Incident:			**Date unknown:**	**Episodic/ongoing from (date)**			**Reported to CPR:**		
DD	MM	CCYY		**DD**	**MM**	**CCYY**	DD	MM	CCYY
Place of incident: **□ Child's home □ Field □ Tavern □ School □ Friend's place** **□ Partial Care □ ECD Centre □ Neighbour □ Child and youth care centre** **□ Other (specify) □ Foster home □ Temporary safe care**									
8.1) TYPE OF ABUSE (Tick only the one that indicates the key motive of intent)									
Physical			**Emotional**	**Sexual**			**Deliberate neglect**		
8.2) INDICATORS (Check any that apply)									
PHYSICAL: **□ Abrasions □ Bruises □ Burns/Scalding □ Fractures** **□ Other physical illness □ Cuts □ Welts □ Repeated injuries** **□ Fatal injury (date of death) □ Injury to internal organs □ Head injuries**									
□ No visible injuries (elaborate)			**□ Poisoning (specify)**				**□ Other Behavioural or physical (specify)**		

EMOTIONAL: □ Withdrawal □ Depression □ Self destructive aggressive behaviour

□ Corruption through exposure to illegal activities □ Deprivation of affection
□ Exposure to anti-social activities □ Exposure to family violence
□ Parent or care giver negative mental condition □ Inappropriate and continued criticism
□ Humiliation □ Isolation □ Threats □ Development Delays □ Oppression
□ Rejection □ Accusations □ Anxiety □ Lack of cognitive stimulation

□ Mental, emotional or developmental condition requiring treatment (specify)

SEXUAL: □ Contact abuse □ Rape □ Sodomy
□ Masturbation □ Oral sex area □ Molestation
□ Non contact abuse (flashing, peeping) □ Irritation, pain, injury to genital

□ Other indicators of sexual molestation or exploitation (specify)

DELIBERATE NEGLECT: □ Malnutrition □ Medical □ Physical □ Educational
□ Refusal to assume parental responsibility □ Neglectful supervision □ Abandonment

8.3) Indicate overall degree of Risk to child:
□ Mild □ Moderate □ Severe □ Unknown

8.4) When applicable, tick the secondary type of abuse Multiple Abuse: □ Yes □ No

Sexual	Physical	Emotional	Deliberate Neglect

Brief explanation of occurrence(s) (including a statement describing frequency and duration)

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

9. MEDICAL INTERVENTION (*)		
Treated outside hospital: □ Yes □ No	Examined by: □ Doctor □ Reg. Nurse	Hospitalised: □ For assessment □ For treatment □ As place of safety
Where (name of Hospital)	Contact person	Telephone Number

10. CHILDREN'S COURT INTERVENTION (*)			
Removal of child to temporary safe care (Section 152): □ Yes □ No	Date MM	DD	CCYY
Children's Court Opening: □ Yes □ No			
Name of Court	Reference Number	Date	

	DD	MM	CCYY
Movement of children placed in alternative care: - Child absconding from Alternative Care (Section 170) □ Yes □ No			

Date			Where to (place)
DD	MM	CCYY	
-Removal of child already in alternative care (Section 173): □ Yes □ No			
Date			Where to (place)
DD	MM	CCYY	
- Provisional transfer from alternative Care (Section 174) : □ Yes □ No			
Date			Where to (place)
DD	MM	CCYY	
Other (specify):			

11. SAPS: (ACTION RELATED TO ALLEGED ABUSER(S)) – (*)				
Reported to SAPS: □ Yes □ No	Charges laid: □ Yes □ No	Date		
		DD	MM	CCYY
CASE NR	Police Station	Telephone Nr		
Name of Police Officer	Rank of Police Officer			
11.1) Police intervention: □ None □ Joint intervention □ Informal contact □ Charges laid □ Police investigation □ Pending	11.2) Offender guilty of previous abuse: □ Yes □ No □ Suspected □ Unknown			
If Yes, Type of conviction:	Date:			
	DD	MM	CCYY	

(*) = Complete if information is available or applicable

12. TYPE OF FACILITY (If child is placed as a preventative measure or statutory placed – SECTION 191(2)	
Name:	Street address (include postal code):
	Postal code:
Type: □ Reception and temporary safe care □ Reception, and care of street children □ Reception, development and secure care □ Reception, care and development of children on a shared basis	

13. CURRRENT FUNCTIONING OF THE FAMILY:

CAUSATIVE FACTORS	Complete if not known to a welfare organisation : Current Situation		If known to organisation/ department				
13.1) Parents			Deterioration (To be completed on subsequent assessment)		Improvement (To be completed on subsequent assessment)		Unchanged (To be completed on subsequent assessment)
	Yes	No	Slight	Significant	Slight	Significant	
□ Heavy child care responsibilities							
□ lack of support system							
□ marital difficulties							
□ lack of knowledge of child care / development							
□ physical violence/ corporal punishment acceptable							
□ different cultural/ sub-cultural/ religious norms							
□ alcohol/drug abuse							
□ physical illness							
□ mental illness							
□ personality disorder							
□ intellectual limitation							
□ abused in childhood							
13.2) Child		If child is known to Child Protection Organization					
	Current situation		Deterioration		Improvement		Unchanged
	Yes	No	Slight	Significant	Slight	Significant	
□ unwanted							
□ premature							
□ disabled							
□ behaviour problem/ provocative							
□ other							

13.3) Environment			If child is known to Child Protection Organization				
	Current situation		Deterioration		Improvement		Unchanged
□ unemployment	Yes	No	Slight	Significant	Slight	Significant	
□ social isolation	Yes	No					
□ housing: I = informal F= Formal	I	F					
□ finances: U=unemployed E=employed	U	E					
□ other							

13.4) Services provided	By	For	Unavailable	Rejected
□ psychiatric/psychological assessment				
□ psychiatric treatment				
□ counselling				
□ medical treatment				
□ health care workers				
□ parent education courses				
□ parents/ self help group				
□ volunteer support				
□ home community base care				
□ child and youth care worker				
□ foster care				
□ day care				
□ substance abuse treatment				
□ material needs/ financial assistance				
□ housing				
□ employment				
□ child taken into care				
□ other				

13.5) Evaluation of case
13.6) Planning for family and child at risk
13.7) Recommendation

Investigation conducted by: (Name of Organisation):	Date		
	DD	MM	CCYY
Reporting person:			
Caseworker(s) (please print):	Signature:		

14. PERSON(S) WITH WHOM IS CHILD LIVING AT TIME OR AFTER AN INCIDENT (If other than above)			
Surname			First Name(s)
Gender	M	F	Age:

Also known as:	Relationship to child:	Street Address (include postal code) Postal code:

15. INVESTIGATING DESIGNATED SOCIAL WORKER		
Name of Social Worker	Employer	
Employer Address	Work Telephone Number	Fax Number
Email Address	Reference Number	

(*) = Complete if information is available, applicable or information has changed

I declare that the particulars set out in the above mentioned statement are true and correct to the best of my knowledge.

Signature of investigating designated social worker: _____

Date:_____

Official Stamp of Provincial Department / child protection organisation

Request for removal of alleged offender

34. A request by a provincial department of social development or a designated child protection organisation for the removal of an alleged offender from his or her home or from the place where he or she resides as contemplated in section 110(7)*(b)* of the Act, must—

(a) contain particulars regarding the alleged offender; and

(b) in writing in a form identical to **Form 24**.

FORM 24

REQUEST FOR REMOVAL OF ALLEGED OFFENDER

(Regulation 34)

[SECTION 110(7) OF THE CHILDREN'S ACT

38 OF 2005]

TO: The Station Commander of …….. Police Station
South African Police Service
…….
…….

Dear Sir / Madam

After investigation we have concluded that it would be in the best interest of …….. (name(s) of child/children concerned) if the person, whose details are reflected below and who is suspected of abusing or neglecting the mentioned child or children, is removed from……
……(physical address of place where alleged offender resides)

Details of alleged offender:

Full names: ……
Surname: ……
Also known as:*……..
Gender: ……
ID no:* ……
Occupation: ……
Relationship with child: …….
(* - if available or applicable)

Details of incident(s) giving rise to suspicion of abuse or neglect:

……
……
……
……

Motivation for removal of alleged offender:

.....
.....
.....
.....

You are hereby requested to issue a written notice to the alleged offender in terms of section 153 of the Children's Act, 38 of 2005, and to take such other steps as required by that section.

Name of person submitting request: …….

Signature: ……..

Capacity / rank:

Part 2
National Child Protection Register
(ss 111-128)

Keeping of National Child Protection Register

111. (1) The Director-General must keep and maintain a register to be called the National Child Protection Register.

(2) The National Child Protection Register consists of a Part A and a Part B.

Confidentiality of National Child Protection Register

112. (1) All Parts of the Register must be kept confidential and information in the Register may be accessed and disclosed only as provided for in this Act.

(2) The Director-General must take adequate steps-

(a) to protect the information in the Register; and

(b) if the Register is kept in electronic format, to secure the Register from unauthorised intrusion.

Part A of Register

Purpose of Part A of Register

113. The purpose of Part A of the Register is-

(a) to have a record of abuse or deliberate neglect inflicted on specific children;

(b) to have a record of the circumstances surrounding the abuse or deliberate neglect inflicted on the children referred to in paragraph *(a)*;

(c) to use the information in the Register in order to protect these children from further abuse or neglect;

(d) to monitor cases and services to such children;

(e) to share information between professionals that are part of the child protection team;

(f) to determine patterns and trends of abuse or deliberate neglect of children; and

(g) to use the information in the Register for planning and budgetary purposes to prevent the abuse and deliberate neglect of children and protect children on a national, provincial and municipal level.

Contents of Part A of Register

114. (1) Part A of the Register must be a record of-

(a) all reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act;

(b) all convictions of all persons on charges involving the abuse or deliberate neglect of a child; and

(c) all findings by a children's court that a child is in need of care and protection because of abuse or deliberate neglect of the child.

(2) Part A of the Register must reflect-

(a) in the case of reported incidents referred to in subsection (1) *(a)*-
  (i) the full names, surname, physical address and identification number of the child;
  (ii) the age and gender of the child;
  (iii) whether the child has a disability and if so, the nature of the disability;
  (iv) whether the child has a chronic illness and if so, the nature of the chronic illness;
  (v) the nature and a brief account of the incident, including the place and date of the incident;
  (vi) the full names, surname, physical address and identification number of the parents or care-giver of the child; and
  (vii) the name and physical address of the institution, child and youth care centre, partial care facility or shelter or drop-in centre, if the incident occurred at such a place;

(b) in the case of a conviction referred to in subsection (1) *(b)*-
  (i) the full names, surname, physical address and identification number of the child;
  (ii) the age and gender of the child;
  (iii) whether the child has a disability and if so, the nature of the disability;
  (iv) whether the child has a chronic illness and if so, the nature of the chronic illness;
  (v) the full names, surname, physical address, identification number and occupation of the convicted person;
  (vi) the nature and a brief account of the charge and conviction, including the place and date of the incident of which the person was charged; and
  (vii) details of the relationship between the convicted person and the child;

(c) in the case of a finding by a children's court referred to in subsection (1) *(c)*-
  (i) the full names, surname, physical address and identification number of the child;
  (ii) the age and gender of the child;
  (iii) whether the child has a disability and if so, the nature of the disability;
  (iv) whether the child has a chronic illness and if so, the nature of the chronic illness;
  (v) a brief summary of the court's reasons for finding the child to be in need of care and protection;
  (vi) information on the outcome of the court's finding on the child;
  (vii) the full names, surname, physical address and identification number of the parents or care-giver of the child; and
  (viii) a brief summary of the services rendered to the child found to be in need of care; and

(d) any other prescribed information.

Contents of Part A of National Child Protection Register

39.(1) *(a)* A provincial department of social development or a designated child protection organisation must notify the Director-General in writing of a report relating to a child in need of care and protection or a report relating to the abuse or deliberate neglect of a child as contemplated in sections 110(5) and 114(1)*(a)* of the Act made by any person referred to in section 110(1), (2) or (4) of the Act, within 21 days of conclusion of the investigation by that department or organisation if the department or organisation is satisfied that the safety or well-being of the child concerned is at risk and that the report is not frivolous or obviously unfounded.

(b) The notification contemplated in paragraph *(a)* must-
  (i) if not submitted electronically, be contained in a sealed envelope marked confidential;
  (ii) reflect the particulars set out in section 114(2)*(a)* of the Act and in sub-regulation (4)*(a)*; and
  (iii) be in a form identical to **Form 22**

FORM 22

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD
(Regulation 33)
[SECTION 110 OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT, DESIGNATED CHILD PROTECTION ORGANISATION OR POLICE OFFICIAL

NOTE: A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD

TO: The Head of the Department

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(*a*) of the Act, you are hereby advised that a child has been abused in a manner causing physical injury/ sexually abused/ deliberately neglected or is in need of care and protection.

Source of report (do not identify person)
□ Victim □ Relative □ Parent □ Neighbour/friend

□ Professional (specify)
……

□ Other (specify)
……

Date Reported to child protection organisation:	**DD**	**MM**	**CCYY**

1. CHILD: (COMPLETE PER CHILD)						
Surname			**Full name(s)**			
Gender:	**M**	**F**	**Date of Birth:**	**DD**	**MM**	**CCYY**
School Name:			**Grade:**		**Age / Estimated Age:**	
*** ID no:**			*** Passport no:**			
Contact no:						

2. CATEGORY OF CHILD IN NEED OF CARE AND PROTECTION		
□ Street child	**□ Child labour**	**□ Child trafficking**
□ Commercial sexual exploitation	**□ Exploited children**	**□ Child abduction**

3. OTHER INTERVENTION – CONTACT PERSON TRUSTED BY CHILD	
Surname:	**Name:**
Address:	**Telephone number:**
Other children interviewed: □ Yes □ No	**Number :**

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

4. ALLEGED ABUSER						
4.1) Surname				**Full Name(s)**		
Date of Birth:	DD	MM	**CCYY**	**Gender:**	**M**	**F**
ID No:				**Age:**		
*** Passport No:**				*** Drivers license:**		
Also known as:				**Relationship to child:** □ Father □ Mother □ Grand father □ Grand mother □ Step father □ Step mother □ Foster father □ Foster mother □ Uncle □ Aunt □ Sibling □ Caregiver □ Professional: social worker/police officer/teacher/caregiver/priest/dr/ volunteer □ Other (specify)		
Street Address (include postal code):						
Postal Code:						

4.2) WHEREABOUTS OF ALLEGED PERPETRATOR:

□ Section 153 (Request for removal by SAPS) **□ Still in home**

□ In hospital
(Name/Place…….)

□ In detention
(Place……..)

□ Living somewhere else **□ Whereabouts unknown** **□ Un-identified**

5. PARENTS OF CHILD (If other than above)						
Surname: Father / Step-father				**Full name(s)**		
Date of Birth:	**DD**	**MM**	**CCYY**	**Gender:**	**M**	**F**
ID no:				**Age:**		
Surname: Mother / Step-mother				**Full name(s)**		
Date of Birth:	**DD**	**MM**	**CCYY**	**Gender:**	**M**	**F**
ID no:				**Age:**		
Also known as:				**Names and ages of siblings or other children**		

	if helpful for tracking
Street Address (include postal code):	**Postal Code:**

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

6. ABUSE

Date of Incident:			**Date unknown:**	**Episodic/ongoing from (date)**			**Reported to CPR:**		
DD	MM	CCYY		**DD**	**MM**	**CCYY**	DD	MM	CCYY

Place of incident:
□ Child's home □ Field □ Tavern □ School □ Friend's place
□ Partial Care □ ECD Centre □ Neighbour □ Child and youth care centre
□ Other (specify) □ Foster home □ Temporary safe care

6.1) TYPE OF ABUSE (Tick only the one that indicates the key motive of intent)

Physical	**Emotional**	**Sexual**	**Deliberate neglect**

6.2) INDICATORS (Check any that apply)

PHYSICAL: **□ Abrasions □ Bruises □ Burns/Scalding □ Fractures**
□ Other physical illness □ Cuts □ Welts □ Repeated injuries
□ Fatal injury (date of death) □ Injury to internal organs □ Head injuries

□ No visible injuries (elaborate)	**□ Poisoning (specify)**	**□ Other Behavioural or physical (specify)**

EMOTIONAL: **□ Withdrawal □ Depression □ Self destructive aggressive behaviour**

□ Corruption through exposure to illegal activities □ Deprivation of affection
□ Exposure to anti-social activities □ Exposure to family violence
□ Parent or care giver negative mental condition □ Inappropriate and continued criticism
□ Humiliation □ Isolation □ Threats □ Development Delays □ Oppression
□ Rejection □ Accusations □ Anxiety □ Lack of cognitive stimulation

□ Mental, emotional or developmental condition requiring treatment (specify)

SEXUAL: **□ Contact abuse □ Rape □ Sodomy**
□ Masturbation □ Oral sex area □ Molestation
□ Non contact abuse (flashing, peeping) □ Irritation, pain, injury to genital

□ Other indicators of sexual molestation or exploitation (specify)

DELIBERATE NEGLECT: **□ Malnutrition □ Medical □ Physical □ Educational**
□ Refusal to assume parental responsibility □ Neglectful supervision □ Abandonment

6.3) Indicate overall degree of Risk to child:

□ Mild	□ Moderate	□ Severe	□ Unknown
6.4) When applicable, tick the secondary type of abuse Multiple Abuse: □ Yes □ No			
Sexual	Physical	Emotional	Deliberate Neglect
Brief explanation of occurrence(s) (including a statement describing frequency and duration)			

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

7. MEDICAL INTERVENTION (*)		
Treated outside hospital: □ Yes □ No	Examined by: □ Doctor □ Reg. Nurse	Hospitalised: □ For assessment □ For treatment □ As place of safety
Where (name of Hospital)	Contact person	Telephone Number

8. CHILDREN'S COURT INTERVENTION (*)			
Removal of child to temporary safe care (Section 152): □ Yes □ No	Date		
	MM	DD	CCYY

9. SAPS: (ACTION RELATED TO ALLEGED ABUSER(S)) – (*)				
Reported to SAPS: □ Yes □ No	Charges laid: □ Yes □ No	Date		
		DD	MM	CCYY
CASE NR	Police Station	Telephone Nr		
Name of Police Officer	Rank of Police Officer			

10. CHILD KNOWN TO WELFARE ORGANISATION/ SOCIAL DEVELOPMENT?		
10.1) Child known to welfare?: □ Yes □ No		
Name of Organisation	Contact number	Reference number

11. DETAILS OF PERSON WHO REPORTS ALLEGED ABUSE (Refers to a profession, mandatory obliged to report child abuse)		
Name of informant	Employer	
Employer Address	Work Telephone Nr	Fax Number
Email Address		

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

CAPACITY Section 110 (1)						
	Caregiver	Correctional Official	Child and Youth Care Centre	Dentist	Doctor	Drop in Centre
	Homeopath	Labour Inspector	Legal Practitioner	Midwife	Member of staff – partial care facility	Medical Practitioner
	Minister of Religion	Nurse	Occupational Therapist	Psycho-logist	Police Official	Physio-therapist
	Religious leader		Social service professional		Social worker	
	Speech therapist		Shelter		Traditional leader	
	Teacher		Traditional health practitioner		Volunteer Worker – partial care facility	
	Other (specify)					

I declare that the particulars set out in the above mentioned statement are true and correct to the best of my knowledge.

Signature of person reporting alleged abuse: _____

Date:_____

Official Stamp of Department / child protection organisation

(c) The Director-General must upon receipt of the notification, cause the particulars set out in the notification to be included in Part A of the National Child Protection Register forthwith.

(2) *(a)* The Director-General must be notified in writing of the conviction of a person on a charge as contemplated in section 114(1)*(b)* of the Act, or of a finding as contemplated in section 114(1)*(c)* of the Act, by the registrar or clerk of the court concerned, as the case may be, within 14 days of such conviction or finding.

(b) The notification contemplated in paragraph *(a)* must—

(i) if not submitted electronically, be contained in a sealed envelope marked confidential;

(ii) reflect the particulars set out in section 114(2)*(b)* and *(c)* of the Act and in sub-regulation (4)*(b)* and *(c)*; and

(iii) be in a form identical to **Form 25**.

FORM 25
NOTIFICATION OF CONVICTIONS OR FINDINGS OF ABUSE OR DELIBERATE NEGLECT OF CHILDREN FOR INCLUSION IN PART A OF THE NATIONAL CHILD PROTECTION REGISTER
(Regulation 39)
[SECTION 114 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General

Department of Social Development

Private Bag X901

Pretoria

0001

Dear Sir / Madam

Pursuant to section 114(1) (b) and (c) of the Children's Act, (No. 38 of 2005,) you are hereby advised that a person has been convicted on a charge involving the abuse or deliberate neglect of a child / a finding has been made by a children's court that a child is in need of care and protection because of abuse or deliberate neglect. * Kindly include the following particulars in Part A of the National Child Protection Register. (* - delete which is not applicable)

FOR COMPLETION IN ALL CASES:

1. CHILD DETAILS: (Victim)						
Surname of child			**Full name(s) of child**			
Gender:	**M**	**F**	**Date of Birth:**	**DD**	**MM**	**CCYY**
			***Age / Estimated**			

	Age:	
*** ID no:**	*** Passport no:**	
Physical Address:		
*** Disability of child and its nature** **Nature:** □ Blind □ Deaf □ Hard of hearing □ Intellectual Disability □ Physical disability **Mental disability:** □ Developmental □ Psychiatric □ Other	*** Chronic illness of child and its nature:** **Nature:** □ Diabetic □ Cancer □ Liver □ HIV/Aids □ Epileptic □ Tuberculoses □ Cardiac disease □ Other	

(* - Complete where available or applicable)

2. FOR COMPLETION IN CASE OF CONVICTION (Section 114(1)(b)):			
Surname of convicted person:			**Full Names of convicted person:**
Name convicted under:			
*** He or she is also known as**			**Physical Address:**
SA Citizen: □ Yes □ No			**Nationality:**
Gender:	**M**	**F**	**Occupation of convicted person:**
Identification no:			*** Passport no:**
***Driver's licence no:**			*** Prisoner identification no:**
Court details:			
Court Name:			
Court Type:			**Court Case no:**

Court Address:				
Brief account of conviction:				
Sentence imposed:	**Type of offence:**			
	Place of offence:			
	Date of offence:	**DD**	**MM**	**CCYY**
	Date of conviction:	**DD**	**MM**	**CCYY**
	Date of sentence:	**DD**	**MM**	**CCYY**

3. APPEAL AGAINST OR REVIEW OF THE CONVICTION
Appeal approved by the court: □ **Yes** □ **No**
If Yes, Complete the following: □ has been lodged by the convicted person on …**DD… /…MM…./…CCYY...** (date); □ is likely to be lodged by the convicted person; □ has not been lodged by the convicted person

4. SAPS	
Name of Station:	
CAS number:	**CR number:**
FP number:	**NRSO No:**

(* - Complete where available or applicable)

5. FOR COMPLETION IN CASE OF FINDING OF CHILDREN'S COURT (Section 114(1)(c))		
Details of parents / caregiver of child:		
Father / Caregiver - Surname	**Father / Caregiver - Full Name(s)**	
Father / Caregiver Identity no:	**Age:**	*** Driver's license:**
Mother / Caregiver– Surname	**Mother / Caregiver– Full Name(s)**	

Mother / Caregiver Identity No:	**Age:**	*** Driver's license:**
*** Physical Address of parents / caregiver:**		

Court details in which findings were made:	
Name of Children's Court	**Address of Children's Court**

Brief summary of reasons for findings:

Information on outcome of finding
(nature of order made by children's court in terms of section 46 and /or 156 of the Act):

Brief summary of services rendered to the child as per social worker's / other professional's report:

Children's Court Case number:	**Date of finding:**	**DD**	**MM**	**CCYY**

(* - Complete where available or applicable)

3. ATTACHED DOCUMENTS:

The following additional information is attached (if available):

□ report by social worker / other professional

□ court order

□ court minutes

Yours sincerely

_____

(Signature of registrar or clerk of the court)

_____

(Date)

Postal Address of Court:

_____

_____

Telephone number of Court:

Official Stamp of the Registrar of the Court or Date of the Court

(c) The Director-General must upon receipt of a notification contemplated in paragraph *(a)*, cause the particulars set out in the notification to be included in Part A of the National Child Protection Register forthwith.

(3) A registrar or clerk of the court who has notified the Director-General of a conviction of a person as contemplated in sub-regulation (2), must inform the Director-General in writing of any successful appeal against or review of such conviction within seven days of receipt of a notice of the outcome of the appeal or review, upon which the Director-General must remove the name and particulars of the relevant person from Part A of the National Child Protection Register forthwith.

(4) The particulars to be included in Part A of the National Child Protection Register in terms of section 114(2) of the Act must include—

(a) in the case of section 114(2)*(a)* of the Act relating to reports of abuse or deliberate neglect made to the Director-General-

(i) the child's passport number, where applicable;

(ii) the whereabouts of the alleged perpetrator;

(iii) the persons with whom the child was living at the time of the incident;

(iv) previous history of abuse or deliberate neglect of the child, if any; and

(v) the title, full names, surname, physical address and capacity of the person who reported the abuse or deliberate neglect of the child;

(b) in the case of section 114(2)*(b)* of the Act relating to convictions on charges involving abuse or deliberate neglect-

(i) the child's passport number, where applicable;

(ii) the convicted person's alias or nickname, passport number, driver's license number or relevant prisoner identification number, where applicable; and

(iii) the particulars of the court in which the trial took place and the case number; and

(c) in the case of section 114(2)*(c)* of the Act relating to a finding by a children's court that a child is in need of care and protection because of abuse or deliberate neglect-

(i) the child's passport number, where applicable; and

(ii) the particulars of the children's court in which the finding was made and the case number.

Access to Part A of Register

115. Only the Director-General and officials of the Department designated by the Director-General have access to Part A of the Register, but the Director-General may, on such conditions as the Director-General may determine, allow access to-

(a) a provincial head of social development, or an official of a provincial department of social development designated by the head of that department, for the purpose of performing his or her functions in terms of this Act;

(b) designated child protection organisations;

(c) a member of the unit of the South African Police Service tasked with child protection; or

(d) any other person for the purpose of conducting research on child abuse or deliberate neglect or related issues on condition that the full names, surname, physical address and identification number of the child must be excluded.

Disclosure of information in Part A of Register

116. (1) No person may disclose any information in Part A of the Register except-

(a) for the purpose of protecting the interests, safety or well-being of a specific child;

(b) within the scope of that person's powers and duties in terms of this Act or any other legislation;

(c) for the purpose of facilitating an investigation by the South African Police Service following a criminal charge involving abuse or deliberate neglect of a specific child;

(d) to a person referred to in section 117 on written request by such person; or

(e) when ordered by a court to do so.

(2) The general rule with regard to the disclosure of information in Part A of the Register is that it must be in the best interests of the child, unless the information is disclosed following an inquiry in terms of section 117.

Inquiries on information in Part A of Register

117. (1) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part A of Register, and if so, the reasons why his or her name was entered in the Register.

(2) Inquiries in terms of subsection (1) must be directed in the prescribed format to the Director-General on a confidential basis.

(3) The Director-General must respond to such inquiries in writing within 21 working days and indicate whether the relevant person's name is in Part A of the Register.

Inquiries on information in Part A of National Child Protection Register

40.(1) An inquiry by anyone in terms of section 117 of the Act to establish whether or not his or her name appears in Part A of the National Child Protection Register, must be—

(a) directed to the Director-General;

(b) contained in a sealed envelope marked confidential;

(c) accompanied by a certified copy of the affected person's birth certificate, identity document or passport; and

(d) in a form identical to **Form 26**.

FORM 26

INQUIRY BY PERSON TO ESTABLISH WHETHER HIS/HER NAME IS INCLUDED IN PART A OF NATIONAL CHILD PROTECTION REGISTER

(Regulation 40)

[SECTION 117 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General
Department of Social Development
Private Bag xxx
PRETORIA
0001

Dear Sir / Madam

In terms of section 117 of the Children's Act, 38 of 2005, I …….
…… (full names and surname) wish to inquire whether my name is included in Part A of the National Child Protection Register. A certified copy of one of the following documents is attached as verification of my identity (mark with an "x"):

□ birth certificate (only if not in possession of identity document)
□ Identity document
□ passport
□ other

In the event that my name is included in Part A of the Register, kindly furnish reasons why this was done.

Please note that section 117 of the Act requires you to respond to this enquiry within 21 working days.

My postal address is:
……..
……..
……..
……..

My other contact details (telephone or e-mail address) are
……

……..

Yours sincerely

(Name)

(Date)

(2) If the person making the inquiry in terms of sub-regulation (1) is a child below the age of 12 years, such child must be assisted in making the inquiry by his or her parent, guardian, care-giver or by a designated social worker, unless it is demonstrated to the satisfaction of the Director-General that the child is of sufficient maturity to make the inquiry on his or her own.

(3) In furnishing reasons for the inclusion of an affected person's name in Part A of the National Child Protection Register as contemplated in sub-regulation (1)*(d)*, the Director-General must provide-

(a) particulars regarding the date, time and place of the incident or act that led to the inclusion of the affected person's name in Part A of the National Child Protection Register; and

(b) a brief description of the incident or act that led to the inclusion.

Part B of Register

Purpose of Part B of Register

118. The purpose of Part B of the Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register in order to protect children in general against abuse from these persons.

Contents of Part B of Register

119. Part B of the Register must be a record of persons found in terms of section 120 to be unsuitable to work with children, and must reflect-

(a) the full names, surname, last known physical address and identification number of the person;

(b) the fingerprints of the person, if available;

(c) a photograph of the person, if available;

(d) a brief summary of the reasons why the person was found to be unsuitable to work with children;

(e) in the case of a person convicted of an offence against a child, particulars of the offence of which he or she has been convicted, the sentence imposed, the date of conviction and the case number; and

(f) such other prescribed information.

PART II
PART B OF NATIONAL CHILD PROTECTION REGISTER

Contents of Part B of National Child Protection Register

41. The particulars to be included in Part B of the National Child Protection Register in terms of section 119 of the Act of a person found unsuitable to work with children in terms of section 120 of the Act must be in a form identical to **Form 27.**

FORM 27

PARTICULARS OF PERSON FOUND UNSUITABLE TO WORK WITH CHILDREN

(Regulation 41)

[SECTION 119 OF THE CHILDREN'S ACT 38 OF 2005]

CONFIDENTIAL

PART B OF NATIONAL CHILD PROTECTION REGISTER **PARTICULARS OF PERSON**	
• **Full names of person**	
• **Surname of person**	
• **ID number of person**	
• **Last known physical address of person**	
• **Gender of person**	
• **Date of birth of person**	
• **Also known as**	
• **Offence of which person was convicted (if applicable)**	
• **Sentence (if applicable)**	
• **Date of conviction (if applicable)**	
• **Case number (if applicable)**	
• **Place of offence and date of offence**	
Brief summery of reason why person was found to be unsuitable to work with children	
Fingerprints of person (attached)	
Photograph of person (attached)	

Finding persons unsuitable to work with children

120. (1) A finding that a person is unsuitable to work with children may be made by-
(a) a children's court;
(b) any other court in any criminal or civil proceedings in which that person is involved; or
(c) any forum established or recognised by law in any disciplinary proceedings concerning the conduct of that person relating to a child.

(2) A finding in terms of subsection (1) may be made by a court or a forum contemplated in subsection (1) of its own volition or on application by-
(a) an organ of state involved in the implementation of this Act;
(b) a prosecutor, if the finding is sought in criminal proceedings; or
(c) a person having a sufficient interest in the protection of children.

(3) Evidence as to whether a person is unsuitable to work with children may be heard by the court or forum either in the course of or at the end of its proceedings.

(4) In criminal proceedings, a person must be found unsuitable to work with children-
(a) on conviction of murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child; or
(b) if a court makes a finding and gives a direction in terms of section 77 (6) or 78 (6) of the Criminal Procedure Act, 1977 (Act 51 of 1977) that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by reason of mental illness or mental defect not criminally responsible for the act which constituted murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child.

(5) Any person who has been convicted of murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child during the five years preceding the commencement of this Chapter, is deemed to have been found unsuitable to work with children.

(6) A finding in terms of subsection (1) *(b)* that a person is unsuitable to work with children is not dependent upon a finding of guilty or innocent in the criminal trial of that person.

Disputes concerning findings

121. The person in respect of whom a finding in terms of section 120 has been made may-
(a) appeal against the finding to a higher court, if the finding was made by a court, or
(b) have the finding reviewed by a court, if the finding was made by a forum contemplated in section 120 (1) *(c)*.

Findings to be reported to Director-General

122. (1) The registrar of the relevant court, or the relevant administrative forum, or, if the finding was made on application in terms of section 120 (2), the person who brought the application, must notify the Director-General in writing-
(a) of any finding in terms of section 120 that a person is unsuitable to work with children; and
(b) of any appeal or review lodged by the affected person.

(2) The Director-General must enter the name of a person found unsuitable to work with children as contemplated in section 120 in Part B of the Register regardless of whether appeal proceedings have been instituted or not.

(3) If, after appeal or review proceedings have been concluded, a finding in terms of section 120 that a person is unsuitable to work with children is reversed, the Director-General must forthwith remove the name of the person from the Register.

Findings to be reported to Director-General

42.(1) *(a)* A notification contemplated in section 122(1) of the Act must be forwarded to the Director-General within 21 working days of a finding that a person is unsuitable to work with children.
(b) A notification contemplated in sub-regulation (1) must—
(i) be contained in a sealed envelope marked confidential;

(ii) indicate whether any appeal or review of the finding has been lodged by the affected person or is likely to be lodged;

(iii) reflect the particulars, set out in section 119 of the Act and in regulation 41, of the person found in terms of section 120 of the Act to be unsuitable to work with children; and

(iv) be in a form identical to **Form 28**.

FORM 28

NOTIFICATION OF FINDING OF UNSUITABILITY TO WORK WITH CHILDREN FOR INCLUSION IN PART B OF NATIONAL CHILD PROTECTION REGISTER
(Regulation 42)
[SECTION 122 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General

Department of Social Development

Private Bag X901

Pretoria

0001

In terms of section 122 of the Children's Act, (No. 38 of 2005), you are hereby advised that a finding has been made by a court or administrative forum that a certain person is unsuitable to work with children. Kindly include the following particulars of this person in Part B of the National Child Protection Register.

1. PERSON IS UNSUITABLE TO WORK WITH CHILDREN:						
Title:						
Gender:	**M**	**F**	**Date of Birth:**	**DD**	**MM**	**CCYY**
*** He / she is also known as:**						
*** Identity no:**			*** Passport no:**			
*** Drive's licence no:**			*** Prisoner Identity no:**			
Last known physical address:			**Postal Address:**			

Court / Forum details which made finding of unsuitability:	
Court Name:	
Court Type:	**Court Case no:**
Court Address:	

Brief account of conviction:				
Sentence imposed:	**Type of offence:**			
	Place of offence:			
	Date of offence:	**DD**	**MM**	**CCYY**
	Date of conviction:	**DD**	**MM**	**CCYY**
	Date of sentence:	**DD**	**MM**	**CCYY**
Case no:	**Date of finding:**	**DD**	**MM**	**CCYY**
Guilty: □ **Yes** □ **No**				

(* - if applicable)

2. APPEAL AGAINST OR REVIEW OF THE FINDING:
Appeal approved by court: □ **Yes** □ **No**
If Yes, Complete the following: □ has been lodged by the above-mentioned person on ……..…/…..…/..…… (date); □ is likely to be lodged by the above-mentioned person; □ has not been lodged by the above-mentioned person

3. ATTACHED DOCUMENTS:
The following additional particulars are attached (if available): □ fingerprints of person * □ photograph of person * □ court order * □ minutes of administrative forum * (* - if available or applicable)

Yours sincerely

_____

(Signature of registrar, clerk of the court or person who convened meeting of administrative forum)

Telephone No._____

_____

(Date)

Official Stamp of the Registrar of the Court

(2) In the event that a relevant administrative forum contemplated in section 122(1) of the Act, has no official or staff member acting in the capacity of registrar or clerk of the court, the person responsible for convening the meeting or hearing of the administrative forum where the finding of the unsuitability of a person to work with children was made must notify the Director-General of the finding as contemplated in section 122 of the Act and sub-regulation (1).

(3) The Court which has considered an appeal against or reviewed a finding that a person is unsuitable to work with children in terms of section 121 of the Act, must notify the Director-General in writing of any successful appeal against or review of such finding within seven days of receiving notice of the outcome of the appeal or review.

(4) Upon receipt of a notice in terms of sub-regulation (3) the Director-General must remove the name and particulars of the relevant person from Part B of the National Child Protection Register forthwith.

Consequences of entry of name in Part B of Register

123. (1) No person whose name appears in Part B of the Register may-

(a) manage or operate, or participate or assist in managing or operating, an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre, a cluster foster care scheme, a school, club or association providing services to children;

(b) work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre, a school, club or association providing services to children, or in implementing a cluster foster care scheme, either as an employee, volunteer or in any other capacity;

(c) be permitted to become the foster parent or adoptive parent of a child;

(d) work in any unit of the South African Police Service tasked with child protection;

(e) be employed in terms of the Public Service Act in a position where that person works with or has access to children;

(f) be employed in terms of the Municipal Systems Act in a position where that person works with or has access to children; or

(g) work in any other form of employment or activity as may be prescribed.

(2) No person managing or operating or who participates or assists in managing or operating an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school may allow a person whose name appears in Part B of the Register to work with or have access to children at the centre, facility, shelter or school, either as an employee, volunteer or in any other capacity.

(3) No designated child protection organisation may allow a person whose name appears in Part B of the Register to work with or have access to children on its behalf, either as an employee, volunteer or in any other capacity.

(4) The South African Police Service may not allow a person whose name appears in Part B of the Register to work in a unit of the Service tasked with child protection.

(5) The head of a state department may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children.

(6) The municipal council of a municipality may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children.

Consequences of entry of name in Part B of National Child Protection Register

43. Further to the provisions of section 123(1) of the Act relating to types of prohibited employment or activity of a person whose name appears in Part B of the National Child Protection Register, no such person may-

(a) be employed or involved in any position, where he or she will be placed in a position of authority, supervision or care of a child;

(b) be employed or involved in any position, where he or she will be able to gain access to a child or to a place or places where children are present or congregate;

(c) own or have any economic or business interest in any entity, business concern or trade relating to the supervision or care of a child if such interest would cause that person to have direct access to or would place him or her in a position of authority, supervision or care of a child.

Disclosure of entry of name in Part B of Register

124. (1) If the name of a person is entered in Part B of the Register and that person-

(a) works with or has access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school either as an employee, volunteer or in any other capacity, that person must disclose that fact to the person who manages or operates the institution, centre, facility, shelter or school;

(b) works with or has access to children on behalf of a designated child protection organisation either as an employee, volunteer or in any other capacity, that person must disclose that fact to the organisation;

(c) works in a unit of the South African Police Service tasked with child protection, that person must disclose that fact to the South African Police Service;

(d) is employed in terms of the Public Service Act in a position where he or she works with or has access to children, that person must disclose that fact to the head of the state department in which he or she is employed; or

(e) is employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, that person must disclose that fact to the municipal council of the municipality concerned.

(2) A person contemplated in subsection (1) who fails to disclose the fact that his or her name is entered in Part B of the Register is guilty of misconduct and his or her services may be terminated as a result thereof.

Access to Part B of Register

125. (1) Only the following persons have access to Part B of the Register:

(a) the Director-General;

(b) officials in the Department designated by the Director-General;

(c) a provincial head of social development;
(d) officials in the provincial department of social development designated by the provincial head of social development; and
(e) the manager or person in control of a designated child protection organisation dealing with foster care and adoption.

(2) The Director-General may, on such conditions as the Director-General may determine, allow officials of a provincial education department designated by the head of that department access to Part B of the Register for the purpose of implementing section 123 in relation to schools under the jurisdiction of that department.

Establishment of information in Part B of Register

126. (1) Before a person is allowed-
(a) to work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or school, the person managing or operating the institution, centre, facility, shelter or school must establish whether or not that person's name appears in Part B of the Register;
(b) to work with or have access to children on behalf of a designated child protection organisation, the organisation must establish whether or not that person's name appears in Part B of the Register;
(c) to work in a unit of the South African Police Service tasked with child protection, the Service must establish whether or not that person's name appears in Part B of the Register;
(d) to be employed in terms of the Public Service Act in a position where he or she works with or has access to children, the head of the state department in which he or she is to be employed must establish whether or not that person's name appears in Part B of the Register; or
(e) to be employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, the municipal council of that municipality must establish whether or not that person's name appears in Part B of the Register.

(2) Within 12 months of the commencement of this chapter-
(a) the person managing or operating an institution, centre, facility, shelter or school contemplated in subsection (1) *(a)* must establish whether the name of any person who works with or has access to children at the institution, centre, facility, shelter or school appears in Part B of the Register;
(b) a designated child protection organisation contemplated in subsection (1) *(b)* must establish whether the name of any person who works with or has access to children on behalf of the organisation appears in Part B of the Register;
(c) the South African Police Service must establish whether the name of any person who works in a unit of the South African Police Service tasked with child protection appears in Part B of the Register;
(d) the head of every state department must establish whether the name of any person employed in terms of the Public Service Act in a position where he or she works with or has access to children appears in Part B of the Register; and
(e) the municipal council of every municipality must establish whether the name of any person employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children appears in Part B of the Register.

(3) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.

(4) Inquiries in terms of subsection (1), (2) or (3) must be directed in writing to the Director-General on a confidential basis.

(5) In the event of an inquiry made to the Director-General in terms of-
(a) subsection (1), the Director-General must respond in writing within 21 working days by indicating whether the person's name appears in Part B of the Register or not;
(b) subsection (2), the Director-General must respond in writing within six months by indicating whether the person's name appears in Part B of the Register or not; and
(c) subsection (3), the Director-General must respond in writing within 21 working days by indicating whether the person's name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.

Establishment of information in Part B of National Child Protection Register

44.(1) *(a)* An inquiry by an employer ("the applicant") in terms of section 126(1) or (2) of the Act to establish whether or not the name of a person ("the affected person") appears in Part B of the National Child Protection Register prior to or during his or her employment, must be –

(i) directed to the Director-General;

(ii) contained in a sealed envelope marked confidential;

(iii) accompanied by an authentic letterhead or other form of appropriate identification of the applicant, duly signed by an authorised representative of the applicant;

(iv) accompanied by a certified copy of the identity document or passport of the person whose signature is required in terms of subparagraph (iii); and

(v) in a form identical to **Form 29** which must contain the following particulars–

(aa) the name under which the applicant's business is conducted, its physical address, postal address, telephone numbers and any other relevant contact details;

(bb) details of the position that will be or is held by the affected person; and

(cc) the full names and surname, including any alias or nickname, identity number or passport number or driver's license number, physical address, postal address, telephone numbers and any other relevant contact details of the affected person.

FORM 29

INQUIRY BY EMPLOYER TO ESTABLISH WHETHER PERSON'S NAME APPEARS IN PART B OF NATIONAL CHILD PROTECTION REGISTER

(Regulation 44)

[SECTION 126 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General
Department of Social Development
Private Bag xxx
PRETORIA
0001

Dear Sir / Madam

In terms of section 126 of the Children's Act, 38 of 2005, I …….
…… (full names and surname) wish to inquire whether the name of a person in my employ or that I wish to employ appears in Part B of the National Child Protection Register. A certified copy of one of the following documents is attached as verification of my identity (mark with an "x"):

□ birth certificate (only if not in possession of identity document or passport)

□ identity document

□ passport

In the event that his/her name is included in Part B of the Register, kindly furnish reason why this was done.

Please note that section 126 of the Act

requires you to respond to this inquiry within 21 working days.

Name of business :

Physical address of business :

Postal address of business :

Telephone numbers of business :

Position held or to be held by person:

Personal details of person employed or to be employed.

Full names :

Surname :

Physical address :

Postal address :

Telephone number :

Alias or nickname :

ID number :

Passport number :

Yours sincerely

(Signature)

(Date)

(b) An inquiry by a person ("the affected person") in terms of section 126(3) of the Act to establish whether or not his or her name appears in Part B of the National Child Protection Register, must be –

(i) directed to the Director-General;

(ii) contained in a sealed envelope marked confidential;

(iii) accompanied by a certified copy of the affected person's birth certificate, identity document or passport; and

(iv) in a form identical to **Form 30** which must contain the following particulars–

(aa) the full names, surname, physical address and postal address of the affected person; and

(bb) a request for the furnishing of reasons why the affected person's name was included in Part B of the National Child Protection Register in the event that such an entry is found.

FORM 30

INQUIRY BY PERSON TO ESTABLISH WHETHER HIS/HER NAME IS INCLUDED IN PART B OF NATIONAL CHILD PROTECTION REGISTER

(Regulation 44)

[SECTION 126 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General

Department of Social Development

Private Bag xxx
PRETORIA
0001

Dear Sir / Madam

In terms of section 126 of the Children's Act, 38 of 2005, I ……. ……. (full names and surname) wish to inquire whether my name is included in Part B of the National Child Protection Register. A certified copy of one of the following documents is attached as verification of my identity (mark with an "x"):

□ birth certificate (only if not in possession of identity document or passport)
□ identity document
□ passport

In the event that my name is included in Part B of the Register, kindly furnish reason why this was done.
Please note that section 126 of the Act requires you to respond to this inquiry within 21 working days.

My personal details are:
Full names :
Surname :
Physical address :
Postal address :
Telephone numbers :

Yours sincerely

(Signature)
(Date)

(2) In furnishing reasons for the inclusion of an affected person's name in Part B of the National Child Protection Register as contemplated in sub-regulation (1)*(b)*(iv)*(bb)*, the Director-General must give–
(a) particulars regarding the date, time and place of the incident or act that led to the inclusion of the affected person's name in Part B of the National Child Protection Register; and
(b) a brief description of the incident or act that led to the inclusion.

(3) The Director-General must respond to an inquiry in terms of sub-regulation (1) within the periods referred to in section 126(5) of the Act by way of a form determined by the Director-General.

(4) The Director-General must, upon each entry of a person's name in Part B of the National Child Protection Register as being unsuitable to work with children, notify the affected person of such entry in writing within 21 working days of such entry by way of a form determined by the Director-General.

Disclosure of names in Part B of Register prohibited

127. (1) No person may disclose the fact that the name of a particular person appears in Part B of the Register except-

(a) within the scope of that person's powers and duties in terms of this Act or any other law;

(b) to a body referred to in section 126 (1) or (2) on written request by such person or institution;

(c) to a person referred to in section 126 (3); or

(d) when ordered by a court to do so.

(2) The general rule with regard to the disclosure of information in Part B of the Register is that it must be in the best interests of the child, unless the information is disclosed following an inquiry in terms of section 126.

(3) The Director-General must inform a person found unsuitable to work with children when that person's name and particulars are entered in Part B of the Register.

Removal of name from Register

128. (1) A person whose name appears in Part B of the Register may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.

(2) Application for the removal of a name and particulars from the Register may be made-

(a) to any court, including a children's court;

(b) to the Director-General, if the entry was made in error; or

(c) to the High Court if the Director-General refuses an application in terms of paragraph *(b)*.

(3) An application in terms of subsection (1) to remove a person's name and particulars from Part B of the Register on the ground that the affected person has been rehabilitated, may only be made after at least five years have lapsed since the entry was made and after considering the prescribed criteria.

(4) The name and particulars of a person convicted more than once of an offence with regard to a child may not be removed from Part B of the Register.

Removal of name from National Child Protection Register

45.(1) *(a)* An application to the Director-General for the removal of a person's name and information from Part B of the National Child Protection Register based on an erroneous entry as contemplated in section 128(2)*(b)* of the Act must be accompanied by an affidavit by such person and must be in a form identical to **Form 31**.

FORM 31

APPLICATION FOR REMOVAL OF NAME ERRONEOUSLY ENTERED IN PART B OF NATIONAL CHILD PROTECTION REGISTER
(Regulation 45)
[SECTION 128(2) OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General

Department of Social Development

Private Bag X901

Pretoria

0001

Dear Sir / Madam

In terms of section 128(2)(*b*) of the Children's Act, (No. 38 of 2005), I wish to apply for the removal of my name and particulars from Part B of the National Child Protection

Register. A certified copy of one of the following documents is attached as verification of my identity.

1. IDENTIFYING PARTICULARS			
CPR NO:			
Surname:			**Full name(s) :**
Gender:	**M**	**F**	**Identity no:**
Physical address:			**Postal address:**

1. REMOVAL OF INFORMATION
1.1 IDENTIFYING DOCUMENTS:
□ SAP 91(a) application for fingerprint screening □ birth certificate (only if not in possession of identity document or passport) □ identity document □ passport □ other

It has come to my notice that my name and particulars have been wrongly included in Part B of the Register for one or more of the following reasons, clarified below:

2. REASONS:
□ incorrect identity number □ incorrect reflection of name, surname and other particulars □ incident linked to the wrong person □ incident linked to the wrong child □ other

3. CLARIFICATION:

4. CONTACT DETAILS:	
Postal address:	**Physical address:**
Email:	
Telephone No:	**Cellular No:**

5. ATTACHED DOCUMENTS:
The following additional particulars are attached: □ an affidavit setting out the grounds for this application

Please note that regulation 51(1)(b) requires you to notify me of the outcome of this application within 21 working days.

Yours sincerely

_____

(Signature)

_____

(Date)

(b) The Director-General must notify the applicant of the outcome of an application contemplated in paragraph *(a)* within 21 working days of receipt of the application by way of a form determined by the Director-General.

(2) An application to a court for the removal of a person's name and any information relating to that person from Part B of the National Child Protection Register in terms of section 128(3) of the Act, unless the application is based on an erroneous entry of that person's name and information in the National Child Protection Register—

(a) must be accompanied by proof of the rehabilitation of that person, which must include—

(i) a report, obtained at the applicant's own cost, compiled by a psychologist or psychiatrist duly registered or deemed to be registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), or a social worker registered in terms of the Social Service Professions Act, 1978, to the effect that the applicant has been rehabilitated and is unlikely to commit another act or offence

similar to that
which has led to the inclusion of the applicant's name in Part B of the National Child Protection Register;

(ii) an outline of the steps taken by the applicant to rehabilitate himself or herself since the time of entry of the applicant's name in Part B of the National Child Protection Register;

(iii) an official document obtained from the South African Police Service confirming that the applicant has not been convicted of any offence in relation to a child during the period that the applicant's name had been included in Part B of the National Child Protection Register up until the time of making the current application; and

(iv) an affidavit by the applicant that no proceedings with regard to the maltreatment, abuse, deliberate neglect or degradation of a child are pending against him or her in any court or administrative forum at the time of making the current application; and

(b) may only be lodged, in the case where that person—

(i) has been convicted of an offence in relation to a child, which conviction gave rise to the inclusion of that person's name in Part B of the National Child Protection Register, and sentenced to –

(aa) a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)*(i)* of the Criminal Procedure Act, 1977, for a period of at least six months without the option of a fine, whether the sentence was suspended or not, after a period of 10 years has lapsed after that person has been released from prison or the period of suspension has lapsed;

(bb) a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)*(i)* of the Criminal Procedure Act, 1977, for a period less than six months without the option of a fine, whether the sentence was suspended or not, after a period of seven years has lapsed after that person has been released from prison or the period of suspension has lapsed;

(cc) any other form of lesser punishment or compliance with an order of court, after a period of five years has lapsed since the inclusion of that person's particulars in Part B of the National Child Protection Register;

(ii) is alleged to have committed an offence in relation to a child, which alleged offence gave rise to the inclusion of that person's name in Part B of the National Child Protection Register, in respect of whom a court has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, after a period of five years has lapsed after that person has recovered from the mental illness or mental defect in question and is discharged in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), from any restrictions imposed upon him or her.

(3) In considering an application in terms of section 128(3) of the Act and sub-regulation (2), the court -

(a) may direct the applicant to submit such other information as the court may consider necessary in order to satisfy it that the applicant has been rehabilitated;

(b) may require the applicant to be evaluated by an additional registered psychologist or psychiatrist or social worker designated by the court, at the applicant's own cost or at state expense in the case of an indigent applicant;

(c) may have regard to evidence submitted by or on behalf of the victim of the incident or act that led to the inclusion of the applicant's name in Part B of the National Child Protection Register; or

(d) may cause the application to be investigated by a designated social worker, psychologist or psychiatrist; and

(e) must have due regard to the provisions of section 128(4) of the Act

(4) The clerk or registrar of the court, as the case may be, must notify the Director-General in writing, in a form identical to **Form 32**, of the finding of the court regarding an application for the removal of a person's name and information from Part B of the National Child Protection Register within 14 days of such finding, upon which the Director-General, if the application for removal had been successful, must cause the name and information to be removed forthwith.

FORM 32

NOTIFICATION OF OUTCOME OF APPLICATION TO REMOVE NAME AND INFORMATION FROM PART B OF NATIONAL CHILD PROTECTION REGISTER

(Regulation 45)

[SECTION 128 OF THE CHILDREN'S ACT 38 OF 2005]

TO: The Director-General
Department of Social Development
Private Bag xxx
PRETORIA
0001

Dear Sir / Madam

Pursuant to section 128 of the Children's Act, 38 of 2005, you are hereby advised that the court has considered an application by a person whose name and information have been included in Part B of the National Child Protection Register to be removed from the Register. In the event that the application had been successful as reflected below, kindly remove the name and any information pertaining to the applicant from the Register without delay. The following details are submitted:

Full names and surname of applicant: ……..

Physical address of applicant: ……

……

Identification number of applicant:*

……..

Any other relevant details: ……

Outcome of application (finding):……..

……

Name and address of court in which finding was made: ……..

……

Date of finding: ……

Case number:

……

(* - if available)

Register reference number: ……

_____

(Signature of registrar or clerk of the court)

_____

(Date)

Postal address of court:

……

(5) The Director-General must notify each person of the removal of his or her name and information from Part B of the National Child Protection Register upon the direction of a court within 14 working days of such removal by way of a form determined by the Director-General.

Updating of information in Part B of National Child Protection Register

46. A person whose name has been included in Part B of the National Child Protection Register and who has been duly informed of such inclusion in terms of section 127(3) of the Act, must notify the Director-General of any change in his or her name or names, sex, identity number, physical or postal address within 14 days of such change.

Part 3
Protective measures relating to health of children
(ss 129-142)

Consent to medical treatment and surgical operation

129. (1) Subject to section 5 (2) of the Choice on Termination of Pregnancy Act, 1996 (Act 92 of 1996), a child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either subsection (2), (3), (4), (5), (6) or (7).

(2) A child may consent to his or her own medical treatment or to the medical treatment of his or her child if-

(a) the child is over the age of 12 years; and

(b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.

Consent by child to performance of surgical operation

48.(1) Consent by a child to the performance of a surgical operation must be completed in writing by the person performing such operation or by a representative of the institution at which such operation is going to be performed, and signed by the child and must be furnished in a form identical to **Form 34**.

FORM 34

CONSENT TO SURGICAL OPERATION

BY A CHILD

(Regulation 48)

[SECTION 129(3) OF THE CHILDREN'S ACT 38 OF 2005]

NB Child to be 12 years of age or older and of sufficient maturity and having the mental capacity to understand the benefits, risks and social implications of the surgical operation

Part A: Details concerning the child, the particulars of the person performing the surgical operation or

institution where it is to be performed and the parent/guardian assisting the child

Full name of child	
Date of Birth/ID number/passport no	
Address of child	
Contact details	
Age of child (12 or older)	

Particulars of person/hospital/clinic/surgery/other institution* performing the surgical operation

Name	
Practice no/hospital/clinic/surgery/ staff position	
Address	
Contact details	
Nature of surgical operation	
Details of other institution performing surgical operation	

*****Please furnish details concerning the name and type of institution in the space provided

Particular of parent(s) or guardian(s) assenting to surgical operation

Parent/Guardian 1

Full name of parent/guardian	
Date of Birth/ID number/passport no	
Address of parent	
Contact details	
Relationship to child	

Parent/guardian 2 (where necessary or desirable)

Full name of parent/guardian	
Date of Birth/ID number/passport no	
Address of parent	
Contact details	
Relationship to child	

Part B: Explanation of nature, consequences, risks and benefits of surgical operation

I ……(name of person seeking child's consent to perform a surgical operation confirm that I have explained to ……(name of child consenting to surgical operation the following in a manner that is understandable to the child: -

- The nature of the problem requiring a surgical operation
- The most suitable surgical operation in my opinion
- Any risks associated with the surgical operation
- The benefits associated with surgical operation
- Any alternative forms of treatment
- The social implications of the treatment or surgical operation (if any)
- Any other implications or possible consequences of the surgical operation (specify in space provided below)

……
……
……

I have given the child an opportunity to ask questions relating to the above.

I have satisfied myself that the child is 12 years or older and is of sufficient maturity and has the mental capacity to understand the risks, benefits, social and other implications of the surgical operation.

I have satisfied myself that…… (insert name of parent(s)/guardian(s)) has duly assisted the child to give consent to the surgical operation.

Signature of person seeking consent to perform the surgical operation

……
Name of person seeking consent to perform the surgical operation (write in full)

……
Designation of person seeking consent to perform the surgical operation

Date:

Part C Consent of the child.

I, ……(insert child's name) understand that the following surgical operation is going to be performed on me:

I……(insert child's name) understand the risks and benefits and possible consequences of this surgical operation that have been explained to me, and I confirm that I have been given an opportunity to ask questions about my condition, alternative forms of treatment, and the risks of non-treatment, and possible consequences of the surgical operation.

I believe that I have sufficient information to give my informed consent, and do so freely.

Signature of child

……
Name of Child (write in full)

Date……..

I……(insert name of parent(s) or guardian (s) assisting the child to consent to a surgical operation confirm that the child is 12 years or older and is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the following surgical operation……(insert type of surgical operation, and that ……...(insert name of child) has been duly assisted by me to furnish consent.

Signature parent(s)/guardian(s)

……..
Full name of parent or guardian

……
Date

(2) A parent or guardian who duly assists a child to consent to the performance of a surgical operation on such child must assent to this in writing on the same form contemplated in sub-regulation (1).

(3) A child may consent to the performance of a surgical operation on him or her or his or her child if-

(a) the child is over the age of 12 years; and

(b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and

(c) the child is duly assisted by his or her parent or guardian.

Consent to surgical operation of child where parent is a child below 18 years of age

49. The parent or guardian of a child parent who duly assists such child parent to consent to the performance of a surgical operation on the child concerned, must assent to this in writing in a form identical to **Form 35**.

FORM 35

CONSENT TO SURGICAL OPERATION OF A CHILD BY A PARENT

(Regulation 49)

[SECTION 129(3) OF THE CHILDREN'S ACT 38 OF 2005]

Part A: Details concerning the child, the parent aged under 18 years of the child upon whom the surgical operation is to be performed, the parent(s) or guardian of the child parent aged below 18 years, and the particulars of the person performing the surgical operation or institution where it is to be performed

Child upon whom surgical operation is to be performed

Full name of child	
Date of Birth/ID number/passport no	
Address of child	

Contact details	
Age of child (12 or older)	

Parent aged below 18 years giving consent ("child parent')

Full name of child parent	
Date of Birth/ID number/passport no	
Address of child	
Contact details	
Age of child parent	

Parent/Guardian assisting the child parent to give consent

Full name of parent/guardian	
Date of Birth/ID number/passport no	
Address of parent	
Contact details	
Relationship to child parent	

Particulars of person/hospital/clinic/surgery/other institution* performing surgical operation

Name	
Practice no/hospital/clinic/surgery/ staff position	
Address	
Contact details	
Nature of surgical operation	
Details of other institution performing surgical operation*	

Part B: Explanation of nature, consequences, risks and benefits of surgical operation

I ……(name of person seeking consent to perform a surgical operation) confirm that I have explained to ……(name of child parent consenting to surgical operation) the following in a manner that is understandable to him /her: -

- ❑ The nature of the problem requiring a surgical operation
- ❑ The most suitable surgical operation in my opinion
- ❑ Any risks associated with the surgical operation
- ❑ The benefits associated with surgical operation
- ❑ Any alternative forms of treatment
- ❑ The social implications of the treatment or surgical operation (if any)
- ❑ Any other implications or possible consequences of the surgical operation (specify in space provided))

……
……
……

I have given the child parent an opportunity to ask questions relating to the above.
I have satisfied myself that the child parent is 12 years or older and is of sufficient maturity and has the mental capacity to understand the risks, benefits, social and other implications of the surgical operation upon

……
…….(insert name of child upon whom surgical operation is to be performed).

I have satisfied myself that……..…… (insert name of parent(s)/guardian(s)) has duly assisted the child giving consent to the surgical operation.

Signature of person seeking consent to perform the surgical operation

……
Name of person seeking consent to perform the surgical operation (write in full)

……
Designation of person seeking consent to perform the surgical operation

Date:

Part C Consent of the child parent.

I, ……(insert name of child parent) understand that the following surgical operation is going to be performed (insert type of surgical operation):
……
……
……on……..(insert name of child upon whom surgical operation to be performed).

I understand the risks and benefits and possible consequences of this surgical operation that have been explained to me, and I confirm that I have been given an opportunity to ask questions about the health condition of my child, alternative forms of treatment, and the risks of non-treatment, and possible consequences of the surgical operation.

I believe that I have sufficient information to give my informed consent, and do so freely.

Signature of child parent

……
Name of child parent (write in full)

Date…….

Part D Declaration of parent/guardian of child parent

I……(insert name of parent(s) or guardian (s)) assisting the child parent to consent to a surgical operation) confirm that he / she is 12 years or older and is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the following surgical operation…….(insert type of surgical operation), and that ……..(insert name of child) has been duly assisted by me to furnish consent.

Signature parent(s)/guardian(s)

……..
Full name of parent or guardian

……
Date

(4) The parent, guardian or care-giver of a child may, subject to section 31, consent to the medical treatment of the child if the child is-

(a) under the age of 12 years; or

(b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the treatment.

(5) The parent or guardian of a child may, subject to section 31, consent to a surgical operation on the child if the child is-

(a) under the age of 12 years; or

(b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the operation.

(6) The superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent may consent to the medical treatment of or a surgical operation on a child if-

(a) the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and

(b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.

(7) The Minister may consent to the medical treatment of or surgical operation on a child if the parent or guardian of the child-

(a) unreasonably refuses to give consent or to assist the child in giving consent;

(b) is incapable of giving consent or of assisting the child in giving consent;

(c) cannot readily be traced; or

(d) is deceased.

(8) The Minister may consent to the medical treatment of or surgical operation on a child if the child unreasonably refuses to give consent

Consent by Minister to medical treatment of or surgical operation on child in certain circumstances

47. An application to the Minister for the Minister to consent to the medical treatment of or surgical operation on a child in terms of section 129(7) and (8) of the Act must be made in writing in a form identical to **Form 33**.

FORM 33

APPLICATION FOR CONSENT TO MEDICAL TREATMENT OR SURGICAL OPERATION BY MINISTER

(Regulation 47)

[SECTION 129(7) OF THE CHILDREN'S ACT 38 OF 2005]

Part A: Details concerning the applicant, the child, the particulars of the person/institution providing medical treatment or performing the surgical operation and the parent/guardian assisting the child

Full name of child	
Date of Birth/ID number/passport no*	
Address of child	
Contact details	
Age of child	

*Please attach copy of birth certificate/ ID Number/ Passport where applicable

Applicant details

Full name of applicant	
Date of Birth/ID number/passport no*	
Address of child	
Contact details	
Relationship to child/official designation/other details explaining why applicant in this matter	

Particulars of person/hospital/clinic/surgery/other institution* providing medical treatment/performing surgical operation

Name	
Practice no/hospital/clinic/surgery/ staff position	
Address	
Contact details	
Nature of surgical operation	
Details of other institution performing surgical operation*	

*****Please furnish details concerning the name and type of institution in the space provided

Part B: Details of medical treatment/surgical operation

Please provide detailed description of envisaged medical treatment or surgical operation and reason(s) why this treatment or operation is required:-

……
……
……
……
……
……

Part C: Motivation for seeking consent of the Minister

- ❑ Parent/guardian unreasonably refusing to give consent or to assist the child in giving consent

Motivation:……
……
……
……
……
……
……

- ❑ Parent/guardian incapable of giving consent or of assisting the child to give consent

Motivation:……
……
……
……
……
……

- ❑ Parent cannot readily be traced/ is deceased*

Steps taken to trace
parents:……
……
……
……
……

* attach copy of parent's or guardian's death certificate

- ❑ Child unreasonably refusing to give consent

Motivation……
……
……
……
……
……

Part D: Consent/ refusal of consent by Minister

- ❑ I ……(insert name) duly authorized, hereby give consent for the medical treatment to be given to/surgical operation to be performed upon (delete whichever is not applicable)
  ……..(insert child's name).

- ❑ I ……(insert name), duly authorized, do not consent to the medical treatment/ the performance on the surgical operation applied for.

Tick whichever is applicable

……..
Signature

……..
Full name

……..
Designation

Official stamp

---.

Date

(9) A High Court or children's court may consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent .

(10) No parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (3) or withhold consent in terms of subsections (4) and (5) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

HIV-testing

130. (1) Subject to section 132, no child may be tested for HIV except when-

(a) it is in the best interests of the child and consent has been given in terms of subsection (2); or

(b) the test is necessary in order to establish whether-

(i) a health worker may have contracted HIV due to contact in the course of a medical procedure involving contact with any substance from the child's body that may transmit HIV; or

(ii) any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court.

(2) Consent for a HIV-test on a child may be given by-

(a) the child, if the child is-

(i) 12 years of age or older; or

(ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a test;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(c) the provincial head of social development, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(d) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(e) the superintendent or person in charge of a hospital, if-

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and

(ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(f) a children's court, if-

(i) consent in terms of paragraph *(a)*, *(b)*, *(c)* or *(d)* is unreasonably withheld; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

[Date of commencement of section 130: 1 July 2007]

HIV-testing for foster care or adoption purposes

131. If HIV-testing of a child is done for foster care or adoption purposes, the state must pay the cost of such tests where circumstances permit.

[Date of commencement of section 131: 1 July 2007]

Counselling before and after HIV-testing

132. (1) A child may be tested for HIV only after proper counselling, by an appropriately trained person, of-

(a) the child, if the child is of sufficient maturity to understand the benefits, risks and social

implications of such a test; and

(b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

(2) Post-test counselling must be provided by an appropriately trained person to-

(a) the child, if the child is of sufficient maturity to understand the implications of the result; and

(b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

[Date of commencement of section 132: 1 July 2007]

Confidentiality of information on HIV/AIDS status of children

133. (1) No person may disclose the fact that a child is HIV-positive without consent given in terms of subsection (2), except-

(a) within the scope of that person's powers and duties in terms of this Act or any other law;

(b) when necessary for the purpose of carrying out the provisions of this Act;

(c) for the purpose of legal proceedings; or

(d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by-

(a) the child, if the child is-

(i) 12 years of age or older; or

(ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(c) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(d) the superintendent or person in charge of a hospital, if-

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and

(ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(e) a children's court, if-

(i) consent in terms of paragraph *(a)*, *(b)*, *(c)* or *(d)* is unreasonably withheld and disclosure is in the best interests of the child; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

[Date of commencement of section 133: 1 July 2007]

Access to contraceptives

134. (1) No person may refuse-

(a) to sell condoms to a child over the age of 12 years; or

(b) to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge.

(2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child if-

(a) the child is at least 12 years of age;

(b) proper medical advice is given to the child; and

(c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.

(3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 110.

[Date of commencement of section 134: 1 July 2007]

[Subsection (3) of section 134 amended by section 5(b) of Act 41 of 2007]

Part 4
Other protective measures
(ss 135-141)

Application to terminate or suspend parental responsibilities and rights

135. (1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a High Court, a divorce court in divorce matters or a children's court for an order-

(a) suspending for a period, terminating or transferring any or all of the parental responsibilities and rights which a specific person has in respect of a child; or

(b) restricting or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.

(2) An application in terms of subsection (1) may be brought without the consent of a parent or care-giver of the child if the child, at the time of the application-

(a) is older than seven years, and has been in alternative care for more than two years;

(b) is older than three years but not older than seven years, and has been in alternative care for more than one year; or

(c) is three years or younger, and has been in alternative care for more than six months.

(3) Section 29, read with such changes as the context may require, applies in respect of any proceedings in terms of this section.

Consideration of application to terminate or suspend parental responsibilities and rights

136. When considering an application referred to in section 135 the court must-

(a) be guided by the principles set out in Chapters 2 and 3 to the extent that those principles are applicable to the matter before it; and

(b) take into account all relevant factors, including-

(i) the need for the child to be permanently settled, preferably in a family environment, taking into consideration the age and stage of development of the child;

(ii) the success or otherwise of any attempts that have been made to reunite the child with the person whose parental responsibilities and rights are challenged;

(iii) the relationship between the child and that person;

(iv) the degree of commitment that that person has shown towards the child;

(v) whether there had been any contact between the parent and the child over the year preceding the application; and

(vi) the probability of arranging for the child to be adopted or placed in another form of alternative care.

Child-headed household

137. (1) A provincial head of social development may recognise a household as a child-headed household if-

(a) the parent, guardian or care-giver of the household is terminally ill, has died or has abandoned the children in the household;

(b) no adult family member is available to provide care for the children in the household;

(c) a child over the age of 16 years has assumed the role of care-giver in respect of the children in the household; and

(d) it is in the best interest of the children in the household.

(2) A child-headed household must function under the general supervision of an adult designated by-

(a) a children's court; or

(b) an organ of state or a non-governmental organisation determined by the provincial head of social development.

(3) The supervising adult must-

(a) perform the duties as prescribed in relation to the household; and

(b) be a fit and proper person to supervise a child-headed household.

Duties of supervising adult in relation to child-headed households

50. An adult designated in terms of section 137(2) of the Act to supervise a recognised child-headed household must, subject to the provisions of section 137(6) of the Act—

(a) facilitate psychological, social and emotional support to all members of that household when required;

(b) ensure that all members of that household who are by law required to attend school or who are required to attend an appropriate education programme, do so;
(c) assist with the supervision of homework of members of that household;
(d) educate the members of that household with regard to basic health and hygiene and, if possible, sexually transmitted infections depending on the age and maturity of the child;
(e) assist with the health care requirements of any member of that household, including the supervision of the taking of medicine and assistance to members with disabilities and ensuring that the children access health care facilities and that their health needs are met;
(f) assist the members of that household with legal documentation when required;
(g) compile a roster indicating the responsibility of various members of that household in relation to domestic chores in consultation with the members of the household to prepare children for independent living;
(h) in consultation with a social worker or a social service professional, attempt to reconnect the members of the household with their parents or relatives and supervise contact between the children and relatives or parents where it is deemed appropriate by the social worker or social service professional;
(i) engage the members of that household in issues that affect the household;
(j) ensure proper provision of resources due to that household, if any, in terms of section 137(5)(a) of the Act for that household's basic needs;
(k) ensure, subject to paragraph (j), proper utilisation of available resources and adherence to a financial budget;
(l) keep record of all expenditure of that household;
(m) utilise available and applicable child protection services to ensure the safety and well-being of the members of that household if and when required;
(n) assist the member heading that household with his or her responsibilities;
(o) be available to a child when the child requires services after hours;
(p) report incidents of abuse to the relevant authority in a form identical to **Form 22**; and
(q) report any death within that household to a police official and to the provincial head of social development.

FORM 22

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD
(Regulation 33)
[SECTION 110 OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT, DESIGNATED CHILD PROTECTION ORGANISATION OR POLICE OFFICIAL

NOTE:	A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD

TO: The Head of the Department

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(*a*) of the Act, you are hereby advised that a child has been abused in a manner causing physical injury/ sexually abused/ deliberately neglected or is in need of care and protection.

Source of report (do not identify person) □ Victim □ Relative □ Parent □ Neighbour/friend □ Professional (specify) …… □ Other (specify) ……			
Date Reported to child protection organisation:	**DD**	**MM**	**CCYY**

1. CHILD: (COMPLETE PER CHILD)						
Surname			**Full name(s)**			
Gender:	**M**	**F**	**Date of Birth:**	**DD**	**MM**	**CCYY**
School Name:			**Grade:**		**Age / Estimated Age:**	
*** ID no:**			*** Passport no:**			
Contact no:						

2. CATEGORY OF CHILD IN NEED OF CARE AND PROTECTION		
□ Street child	□ Child labour	□ Child trafficking
□ Commercial sexual exploitation	□ Exploited children	□ Child abduction

3. OTHER INTERVENTION – CONTACT PERSON TRUSTED BY CHILD	
Surname:	**Name:**
Address:	**Telephone number:**
Other children interviewed: □ Yes □ No **Number :**	

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

4. ALLEGED ABUSER	
4.1) Surname	**Full Name(s)**

Date of Birth:	DD	MM	**CCYY**	**Gender:**	**M**	**F**
ID No:				**Age:**		
*** Passport No:**				*** Drivers license:**		
Also known as:				**Relationship to child:** □ Father □ Mother □ Grand father □ Grand mother □ Step father □ Step mother □ Foster father □ Foster mother □ Uncle □ Aunt □ Sibling □ Caregiver □ Professional: social worker/police officer/teacher/caregiver/priest/dr/ volunteer □ Other (specify)		
Street Address (include postal code):						
Postal Code:						

4.2) WHEREABOUTS OF ALLEGED PERPETRATOR:

□ Section 153 (Request for removal by SAPS) □ Still in home

□ In hospital
(Name/Place…….)

□ In detention
(Place……..……..)

□ Living somewhere else □ Whereabouts unknown □ Un-identified

5. PARENTS OF CHILD (If other than above)						
Surname: Father / Step-father				**Full name(s)**		
Date of Birth:	**DD**	**MM**	**CCYY**	**Gender:**	**M**	**F**
ID no:				**Age:**		
Surname: Mother / Step-mother				**Full name(s)**		
Date of Birth:	**DD**	**MM**	**CCYY**	**Gender:**	**M**	**F**
ID no:				**Age:**		
Also known as:				**Names and ages of siblings or other children if helpful for tracking**		
Street Address (include postal code):						**Postal Code:**

(*) = Complete if available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

6. ABUSE

Date of Incident:			Date unknown:	Episodic/ongoing from (date)			Reported to CPR:		
DD	MM	CCYY		DD	MM	CCYY	DD	MM	CCYY

Place of incident:
□ Child's home □ Field □ Tavern □ School □ Friend's place
□ Partial Care □ ECD Centre □ Neighbour □ Child and youth care centre
□ Other (specify) □ Foster home □ Temporary safe care

6.1) TYPE OF ABUSE (Tick only the one that indicates the key motive of intent)

Physical	Emotional	Sexual	Deliberate neglect

6.2) INDICATORS (Check any that apply)

PHYSICAL: □ Abrasions □ Bruises □ Burns/Scalding □ Fractures
□ Other physical illness □ Cuts □ Welts □ Repeated injuries
□ Fatal injury (date of death) □ Injury to internal organs □ Head injuries

□ No visible injuries (elaborate)	□ Poisoning (specify)	□ Other Behavioural or physical (specify)

EMOTIONAL: □ Withdrawal □ Depression □ Self destructive aggressive behaviour

□ Corruption through exposure to illegal activities □ Deprivation of affection
□ Exposure to anti-social activities □ Exposure to family violence
□ Parent or care giver negative mental condition □ Inappropriate and continued criticism
□ Humiliation □ Isolation □ Threats □ Development Delays □ Oppression
□ Rejection □ Accusations □ Anxiety □ Lack of cognitive stimulation
□ Mental, emotional or developmental condition requiring treatment (specify)

SEXUAL: □ Contact abuse □ Rape □ Sodomy
□ Masturbation □ Oral sex area □ Molestation
□ Non contact abuse (flashing, peeping) □ Irritation, pain, injury to genital
□ Other indicators of sexual molestation or exploitation (specify)

DELIBERATE NEGLECT: □ Malnutrition □ Medical □ Physical □ Educational
□ Refusal to assume parental responsibility □ Neglectful supervision □ Abandonment

6.3) Indicate overall degree of Risk to child:
□ Mild □ Moderate □ Severe □ Unknown

6.4) When applicable, tick the secondary type of abuse Multiple Abuse: □ Yes □ No

Sexual	Physical	Emotional	Deliberate Neglect

Brief explanation of occurrence(s) (including a statement describing frequency and duration)

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

7. MEDICAL INTERVENTION (*)		
Treated outside hospital: □ Yes □ No	Examined by: □ Doctor □ Reg. Nurse	Hospitalised: □ For assessment □ For treatment □ As place of safety
Where (name of Hospital)	Contact person	Telephone Number

8. CHILDREN'S COURT INTERVENTION (*)			
Removal of child to temporary safe care (Section 152): □ Yes □ No	Date		
	MM	DD	CCYY

9. SAPS: (ACTION RELATED TO ALLEGED ABUSER(S)) – (*)				
Reported to SAPS: □ Yes □ No	Charges laid: □ Yes □ No	Date		
		DD	MM	CCYY
CASE NR	Police Station	Telephone Nr		
Name of Police Officer	Rank of Police Officer			

10. CHILD KNOWN TO WELFARE ORGANISATION/ SOCIAL DEVELOPMENT?		
10.1) Child known to welfare?: □ Yes □ No		
Name of Organisation	Contact number	Reference number
11. DETAILS OF PERSON WHO REPORTS ALLEGED ABUSE (Refers to a profession, mandatory obliged to report child abuse)		
Name of informant	Employer	
Employer Address	Work Telephone Nr	Fax Number
Email Address		

(*) = Complete if information is available or applicable

SURNAME OF CHILD:	
FULL NAMES OF CHILD:	

CAPACITY **Section 110 (1)**	**Caregiver**	**Correctional Official**	**Child and Youth Care Centre**	**Dentist**	**Doctor**	**Drop in Centre**
	Homeopath	**Labour Inspector**	**Legal Practitioner**	**Midwife**	**Member of staff – partial care facility**	**Medical Practitioner**
	Minister of Religion	**Nurse**	**Occupational Therapist**	**Psycho-logist**	**Police Official**	**Physio-therapist**
	Religious leader		**Social service professional**		**Social worker**	
	Speech therapist		**Shelter**		**Traditional leader**	
	Teacher		**Traditional health practitioner**		**Volunteer Worker – partial care facility**	
	Other (specify)					

I declare that the particulars set out in the above mentioned statement are true and correct to the best of my knowledge.

Signature of person reporting alleged abuse: _____

Date:_____

Official Stamp of Department / child protection organisation

(4) A person unsuitable to work with children is not a fit and proper person to supervise a child-headed household.

(5) *(a)* The child heading the household or the adult contemplated in subsection (2) may collect and administer for the child-headed household any social security grant or other grant in terms of the Social Assistance Act, 2004 (Act 13 of 2004) or other assistance to which the household is entitled.

(b) An adult that collects and administers money for a child-headed household as contemplated in paragraph (a) is accountable in the prescribed manner to the organ of state or the non-governmental organisation that designated him or her to supervise the household.

(6) The adult referred to in subsection (2) may not take any decisions concerning such household and the children in the household without consulting-

(a) the child heading the household; and

(b) given the age, maturity and stage of development of the other children, also those other children.

Accountability of supervising adult regarding administration of money

51.(1) An adult designated in terms of section 137(2) of the Act must, for purposes of accountability—

(a) in consultation with the members of such household, bearing in mind the varying financial needs of different members of such household, develop a monthly expenditure plan reflecting available financial resources and payment;

(b) ensure that the monthly expenditure plan is signed by the child at the head of such household; and

(c) submit the monthly expenditure plan, duly signed as contemplated in paragraph *(b)*, to an organ of state or a non-governmental organisation, as the case may be, which designated the adult to supervise the child-headed household, together with the original documents, receipts, invoices and other documentation that may serve as proof of the expenditure incurred.

(2) The organ of state or a non-governmental organisation which designated the adult referred to in sub-regulation (1) may, upon the absence of a counter-signature as contemplated in that sub-regulation or, if there is reason to believe that there is a misappropriation or maladministration of money, cause the matter to be investigated and may take the steps that may be required by the circumstances, including the institution of criminal charges against that adult and the replacement of the adult by another supervising adult.

(7) The child heading the household may take all day-to-day decisions relating to the household and the children in the household.

(8) The child heading the household or, given the age, maturity and stage of development of the other children, such other children, may report the supervising adult to the organ of state or non-governmental organisation referred to in subsection (2) (b) if the child or children are not satisfied with the manner in which the supervising adult is performing his or her duties.

(9) A child-headed household may not be excluded from any grant, subsidy, aid, relief or other assistance or programmes provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child.

Unlawful removal or detention of child

138. (1) No person may without lawful authority or reasonable grounds-

(a) remove a child from the care of a person who lawfully cares for the child; or

(b) detain a child with the result that the child is kept out of the care of a person entitled to lawfully care for the child.

(2) For the purposes of subsection (1) a person must be regarded as detaining a child if that person-

(a) causes the child to be detained; or

(b) induces the child to remain with him or her or any other person.

Unlawful taking or sending of child out of Republic

139. (1) No person may take or send a child out of the Republic-

(a) in contravention of an order of a court prohibiting the removal of the child from the Republic; or

(b) without consent-

(i) obtained in terms of section 18 (5) from persons holding relevant parental responsibilities and rights in respect of that child;

(ii) obtained in terms of section 169 with regard to a child in alternative care; or

(iii) of a court.

(2) For the purposes of subsection (1) a person must be regarded as-

(a) taking a child out of the Republic if that person-

(i) causes the child to be taken, or in any way assists in taking the child, out of the Republic; or

(ii) causes or induces the child to accompany or to join him or her or any other person when departing from the Republic; or

(b) sending a child out of the Republic if that person causes the child to be sent, or in any way assists in sending the child, out of the Republic.

Child safety at place of entertainment

140. (1) A person providing entertainment to children on any premises or enclosure must comply with subsection (2) if-

(a) access to the premises or enclosure where the entertainment is provided requires the use of doors, stairs, escalators, lifts or other mechanical means;

(b) the majority of the people attending the entertainment are children; and

(c) the number of people, including children, who attend the entertainment exceeds 50.

(2) A person providing entertainment to children in the circumstances specified in subsection (1) must-

(a) determine the number of people, including children, who can safely be accommodated on the premises or enclosure and each part of the premises or enclosure;

(b) station a sufficient number of adult attendants to prevent more people, including children, from being admitted to the premises or enclosure, or any part of the premises or enclosure, than the number of people determined in terms of paragraph (a) for the premises or enclosure or that part of the premises or enclosure;

(c) control the movement of people admitted to the premises or enclosure, or any part of the premises or enclosure, while entering or leaving the premises or enclosure or that part of the premises or enclosure; and

(d) take all reasonable precautions for the safety of the children and other people attending the entertainment.

(3) No alcohol or tobacco products may be sold, served or made available to children at places of entertainment.

(4) If the person providing the entertainment is not the owner of the premises or enclosure where the entertainment is provided, the owner or the owner's agent must take all reasonable steps to ensure that subsections (2) and (3) are complied with.

(5) *(a)* A person authorised by a municipality in whose area a [sic] premises or [an] enclosure is situated where entertainment described in subsection (1) is or is to be provided, or on reasonable suspicion is or is to be provided, may enter such enclosure in order to inspect whether subsections (2) or (3) are complied with.

(b) Section 304 (2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a).

Child labour and exploitation of children

141. (1) No person may-

(a) use, procure or offer a child for slavery or practices similar to slavery, including but not limited to debt bondage, servitude and serfdom, or forced or compulsory labour or provision of services;

(b) use, procure, offer or employ a child for purposes of commercial sexual exploitation;

(c) use, procure, offer or employ a child for trafficking;

(d) use, procure or offer a child or attempt to do so for the commission of any offence listed in Schedule 1 or Schedule 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or

(e) use, procure, offer or employ a child for child labour.

(2) A social worker or social service professional who becomes aware of-

(a) any instance of a contravention of subsection (1) (a), (b), (c) or (d) must report it to a police official; and

(b) any instance of child labour or a contravention of the provisions of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997) must report it to the Department of Labour.

[Part 4 of Chapter 7 inserted by section 5(c) of Act 41 of 2007]

Regulations

142. The Minister may make regulations in terms of section 306-

(a) prescribing criteria for determining organisations which may be designated as child protection organisations;

(b) prescribing national norms and standards and codes of good practice to guide designated child protection organisations, organs of state and social workers involved in the provision of designated child protection services;

(c) prescribing a broad risk assessment framework to guide decision-making in the provision of designated child protection services;

Broad risk assessment framework to guide decision-making in provision of designated child protection services

35.(1) The aim of the broad risk assessment framework contemplated in section 142*(c)* of the Act is to provide guidelines for—

(a) identification of children who are being abused or deliberately neglected;

(b) assessment of risk factors to support a conclusion of abuse and neglect on reasonable grounds as contemplated in section 110 of the Act;

(c) investigation by a provincial department of social development or a designated child protection organisation upon receipt of a report of the abuse or neglect of a child; and

(d) appropriate protective measures to be taken in respect of a child.

(2) The broad risk assessment framework includes the following guidelines:

(a) The presence of indicators of physical abuse, including bruises in any part of the body; grasp marks on the arms, chest or face; variations in bruising colour; black eyes; belt marks; tears around or behind the ears; cigarette or other burn marks; cuts; welts; fractures; head injuries; convulsions that are not due to epilepsy or high temperature; drowsiness; irregular breathing; vomiting; pain; fever or restlessness;

(b) the presence of emotional and behavioural indicators of physical, psychological or sexual abuse, including aggression; physical withdrawal when approached by adults; anxiety; irritability; persistent fear of familiar people or situations; sadness; suicidal actions or behaviour; self-mutilation; obsessive behaviour; neglect of personal hygiene; age of child demonstrating socially inappropriate sexual behaviour or knowledge; active or passive bullying; unwillingness or fearfulness to undress or wearing layers of clothing;

(c) the presence of developmental indicators of physical, psychological or sexual abuse, including failure to thrive; failure to meet physical and psychological developmental norms; withdrawal; stuttering; unwillingness to partake in group activities; clumsiness; lack of coordination or orientation or observable thriving of children away from their home environment;

(d) the presence of indicators of deliberate neglect, including underweight; reddish scanty hair; sores around the mouth; slight water retention on the palm or in the legs; extended or slightly hardened abdomen; thin and dry skin; dark pigmentation of skin, especially on extremities; abnormally thin muscles; developmental delay; lack of fatty tissue; disorientation; intellectual disability; irritability; lethargy, withdrawal, bedsores and contractures;

(e) a disclosure of abuse or deliberate neglect by the child; or

(f) a statement relating to a pattern or history of abuse or deliberate neglect from a witness relating to the abuse of the child.

(3) A person who, due to the presence of indicators referred to in sub-regulation (2), suspects that a child has been sexually abused, or abused in a manner causing physical injury or deliberately neglected, must assess the total context of the child's situation in accordance with the following guidelines:

(a) Many indicators may be non-specific to abuse or neglect;

(b) a cluster or pattern of indicators as opposed to a single isolated indicator will provide support for a conclusion of abuse or neglect;

(c) information about specific times of any incidents, places where incidents have taken place and the context within which incidents have taken place, which must be noted in writing, may provide support for a conclusion of abuse or neglect;

(d) abuse may be unintentional, but failure on the part of the parent or care-giver to prevent abuse of the child may amount to neglect;

(e) abuse may be physical, psychological or sexual without any visible indicators and is likely to exist if the child continuously reports threats of harm or punishment;

(f) a series of minor incidents, any of which may, when considered in isolation, not amount to abuse or neglect, may constitute abuse or neglect when considered together;

(g) the child's age, personality and temperament should be taken into account;

(h) discrepancies in the rendition of incidents by the child and his or her parent or care-giver may either provide or diminish support for a conclusion of abuse or neglect; and

(i) any unexplained delay in seeking medical treatment for a child who is seriously injured, should be considered as a possible indicator of abuse or neglect.

(4) The provincial department of social development or the designated child protection organisation to whom a report has been made in terms of section 110(1), (2) or (4) of the Act must—

(a) make an assessment of the indicators referred to in sub-regulation (2) by taking the guidelines in sub-regulation (3) into account; and

(b) if a further investigation is required –

(i) establish the facts surrounding the circumstances giving rise to the concern;

(ii) evaluate the child's parental circumstances, including parental characteristics, mental stability, maturity; physical or emotional impairment, substance abuse, capabilities, temperament, employment status, level of support given to the parent or care-giver by friends; the capacity and disposition of the parent or care-giver to give the child guidance and to give adequate and appropriate support to a child with disabilities; emotional bonding between the parent or care-giver and the child; and a history of parental abuse or neglect of the child;

(iii) evaluate the child's family circumstances, including family violence; inappropriate discipline; dependency; marital stress; and family or parental composition;

(iv) evaluate the child's environmental circumstances, including poverty; overcrowding; homelessness; isolation; high mobility of the parents; the presence of social, environmental or financial stress; and the type of neighbourhood and community;

(v) identify sources who may verify the alleged abuse;

(vi) identify the level of risk that the child's safety or well-being is exposed to, including factors indicating that the child has suffered, or is likely in the near future to suffer, a non-accidental physical injury due to conditions which his or her parent or care-giver has failed to correct, or due to their having failed, to provide adequate protection; that the child is displaying symptoms of emotional damage and the unwillingness of the parent to address the problem or to seek assistance; that the child has been sexually

abused by a member of the household; and that the child is in need of medical treatment, without which he or she will suffer severe ill-effects;

(vii) identify actual and potential protective and supportive factors in the home and broader environment to minimise risk to the child; and

(viii) decide on the appropriate protective measures or intervention as provided for in the Act.

(5) In deciding upon the appropriate protective measures or intervention as provided for in the Act, the provincial department of social development or a designated child protection organisation must take account of the following:

(a) The total context of the child's situation, given his or her age, and the level of risk that the child is exposed to, bearing in mind that certain injuries may be more prevalent in younger than older children;

(b) the feasibility of prevention and early intervention measures to protect the child, as well as other measures that would minimise the level of risk yet allowing the child to remain in his or her home environment, including the removal of the alleged abuser;

(c) the emotional risk to the child involved in a sudden, unprepared removal; and

(d) the placement of the child in alternative care be considered only in cases where a serious and immediate danger to the child outweighs the trauma involved in such a removal.

(d) prescribing criteria for determining suitable persons who may conduct investigations into cases of child abuse or neglect;

Criteria for determining suitable persons to investigate child abuse or neglect

36. A person is suitable to conduct investigations into cases of alleged child abuse or neglect as contemplated in section 142*(d)* of the Act if such person—

(a) is a registered social worker in terms of the Social Service Professions Act, 1978, and is employed—

(i) by the Department or a provincial department of social development; or

(ii) by a designated child protection organisation;

(b) has sufficient experience in the field of child protection or is working under the supervision of a person who has at least five years experience in child protection;

(c) has not been found unsuitable to work with children and has no previous convictions relating to child abuse;

(d) upholds the rights of the child and children's best interests; and

(e) is able to work in a multi-disciplinary team with the objective of securing the best protection plan based on a child's developmental needs.

(e) prescribing the powers and responsibilities of persons contemplated in paragraph (d);

Powers and responsibilities of persons suitable to investigate child abuse or neglect

37. A person who is suitable in terms of regulation 36 to conduct investigations into cases of alleged child abuse or neglect, and who has received a report alleging the abuse or neglect of a child, must—

(a) investigate that report in accordance with regulation 35 within a reasonable time that may be required by the severity of the case;

(e) in cases of sexual abuse cases refer the child, within 72 hours, to a medical health professional for medical treatment;

(c) if necessary, accompany the child or cause the child to be accompanied to a police station for purposes of laying a complaint;

(d) if necessary, accompany the child or cause the child to be accompanied to a medical facility for purposes of medical treatment;

(d) facilitate counselling and support to reduce trauma to the child and his or her family members, and if necessary, refer the child to other relevant disciplines;

(e) co-ordinate the available and applicable child protection services to ensure the safety and well-being of the child;

(f) develop and implement a child protection plan in consultation with the child, his or her parents, guardian or care-giver and, if required, other relevant disciplines;

(g) review the child protection plan on a six-monthly basis or earlier, depending on the severity of the abuse or neglect;

(h) ensure that the prescribed particulars of the child are recorded in Part A of the National Child Protection Register; and

(i) take the protective measures contemplated in the Act prescribed in Section 151 and 152 of the Act.

(f) prescribing the conditions for the examination or assessment of children who have been abused or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child.

[Paragraphs (a) to (e) inserted by section 6 of act 41 of 2007]

Conditions for examination or assessment of abused or neglected children and consent of such children

38.(1) A child who is suspected of having been abused or neglected must, upon the examination or assessment of such child—

(a) be addressed, in a language which he or she can understand;

(b) be accompanied by a support person of the child's choice, unless he or she is of sufficient maturity and mental capacity to understand the reasons for the assessment or examination and expresses a wish not to be accompanied by such person;

(c) be treated with empathy, care and understanding, with due regard to the child's right to privacy and confidentiality;

(d) as far as possible be examined or assessed in a child-friendly environment;

(e) not be subjected to the presence of any other person who is not required to be present at the examination or assessment; and

(f) not be subjected to cruel or degrading language.

(2) A child must, prior to his or her being examined or assessed for purposes of establishing whether such child has been abused or neglected, consent, either verbally or in writing, to the assessment or examination if such child is of sufficient maturity and has the mental capacity to understand the reasons for the examination or assessment: Provided that an assessment or examination may proceed in the absence of a child's consent if it is deemed to be in the best interests of such child, in which case the reasons for proceeding with the assessment or examination must be noted in writing by the person doing the assessment or examination and explained to the child and to his or her parent, guardian or care-giver.

(g) prescribing the manner and format in which the National Child Protection Register must be established and maintained;

(h) prescribing criteria for finding persons unsuitable to work with children;

(i) prescribing the procedure to be followed and the time periods to be adhered to when reporting a finding that a person is unsuitable to work with children to the Director-General;

(j) prescribing criteria for the assessment of applications for the removal of names of persons from Part B of the National Child Protection Register; and

(k) prescribing any other matter necessary to facilitate the implementation of this Chapter.

CHAPTER 8

PREVENTION AND EARLY INTERVENTION
(ss 143-149)

Prevention and early intervention programmes

143. (1) Prevention programmes means programmes-
(a) designed to serve the purposes mentioned in section 144; and
(b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if not attended to, may lead to statutory intervention.
(2) Early intervention programmes means programmes-
(a) designed to serve the purposes mentioned in section 144; and
(b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care.

Purposes of prevention and early intervention programmes

144. (1) Prevention and early intervention programmes must focus on-
(a) preserving a child's family structure;
(b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline;
(c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;
(d) promoting appropriate interpersonal relationships within the family;
(e) providing psychological, rehabilitation and therapeutic programmes for children;
(f) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
(g) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
(h) diverting children away from the child and youth care system and the criminal justice system; and
(i) avoiding the removal of a child from the family environment.
(2) Prevention and early intervention programmes may include-
(a) assisting families to obtain the basic necessities of life;
(b) empowering families to obtain such necessities for themselves;
(c) providing families with information to enable them to access services;
(d) supporting and assisting families with a chronically ill or terminally ill family member;
(e) early childhood development; and
(f) promoting the well-being of children and the realisation of their full potential.
(3) Prevention and early intervention programmes must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems.

Strategy for securing prevention and early intervention programmes

145. (1) The Minister, after consultation with interested persons, and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention programmes to families, parents, care-givers and children across the Republic.
(2) The MEC for social development must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the provision of properly resourced, co-ordinated and managed prevention and early intervention programmes.
(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

Provision of prevention and early intervention programmes

146. (1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province.

(2) Prevention and early intervention programmes must-

(a) be provided in accordance with this Act; and

(b) comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.

(3) The provider of prevention and early intervention programmes only qualifies for funding contemplated in subsection (1) if the programmes comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.

(4) The funding of prevention and early intervention programmes must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make prevention and early intervention programmes available to children with disabilities.

National norms and standards for prevention and early intervention programmes

147. (1) The Minister must determine national norms and standards for prevention and early intervention programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) Outreach services;

(b) education, information and promotion;

(c) therapeutic programmes;

(d) family preservation;

(e) skills development programmes;

(f) diversion programmes;

(g) temporary safe care; and

(h) assessment of programmes.

National norms and standards for prevention and early intervention programmes

52. The national norms and standards for prevention and early intervention programmes contemplated in section 147 of the Act are contained in **Part IV of Annexure B**.

PART IV
NATIONAL NORMS AND STANDARDS FOR PREVENTION AND EARLY INTERVENTION PROGRAMMES

For the purposes of section 147(2) of the Act, the following are national norms and standards for prevention and early intervention programmes:

1. **Outreach services**

Outreach services must—

(a) be aimed at reaching out to especially vulnerable children and families in order to meet the needs of the children;

(b) be aimed at meeting the needs of children in the context of family and community;

(c) be aimed at the development of community-based services and facilities to promote safety and well-being of children in communities;

(d) ensure that children and families are able to access documents, including birth certificates, to facilitate access to social security and other social services;

(e) be accessible to children in different settings, including homes, schools and partial care facilities;

(f) ensure that children and their families have access to resources that maximise strengths and develop new capacities that promote resilience and increase their ability to benefit from existing developmental opportunities;

(g) provide opportunities for children to identify their needs in their communities;
(h) be based on a multi-disciplinary and inter-sectoral approach;
(i) promote the identification of children at high risk of getting into the child care or criminal justice system;
(j) include home-based care, community-based care, home visitation and community outreach support to particularly vulnerable children and families, including children and family members infected and affected by HIV/Aids and other chronic illnesses, children with disabilities and orphans;
(k) teach communities to recognise the signs of abuse and deliberate neglect of children and the risk factors associated with abuse and neglect;
(l) utilize community strengths and resources to promote neighbourhoods that enable the safety and well-being of children;
(m) be aimed at addressing community risk factors including abuse, violence, substance abuse and crime;
(n) be conducted in a non-discriminatory manner; and
(o) be sensitive to language, religious, cultural norms and beliefs of communities.

2. Education, information and promotion programmes

Education, information and promotion programmes must—
(a) provide education and awareness on children's rights and responsibilities;
(b) promote the importance of the early years, particularly early childhood development;
(c) promote advocacy for the rights of children as well as for the needs of the most vulnerable children and families;
(d) provide children and families with information and assistance on how to access the full range of government and civil society services available to vulnerable families and children; including health, social services, education, housing, water, electricity, food parcels, disaster relief and social assistance;
(e) provide information and support to high risk families;
(f) provide information and support to families affected by HIV/Aids and other chronic illnesses;
(g) provide information and support to families of children with disabilities;
(h) use available media and other communication measures;
(i) be delivered in the language of the target groups;
(j) provide information on the nature and type of services to children, families and communities;
(k) promote values aimed at protecting children in their communities;
(l) be provided in the language of particular communities and be sensitive to the cultural values and norms of such communities;
(m) promote opportunities for community dialogue on matters pertaining to children; and
(n) provide information on community risk factors and available resources to address them.

3. **Therapeutic programmes**

Therapeutic programmes must—
(a) provide psychosocial care and support to children and families;
(b) promote the emotional well-being and growth of the child;
(c) be appropriate to the developmental needs as well as the developmental stage of the child;
(d) be delivered in an emotionally and physically safe environment and not harmful to the child;
(e) must be conducted by service providers with appropriate training, support, supervision and mentoring;
(f) be based on the assessment of the particular needs of each individual child and family;
(g) assist recipients to use their strengths whilst they are assisted with their psychosocial needs;
(h) be conducted in a non-discriminatory manner;
(i) involve the child, his or her family and significant persons;
(j) ensure that recipients are provided with a name and contact number of the service provider;
(k) provide additional consultation and counselling;
(l) ensure that proper records are kept and data captured;
(m) be aimed at minimisation of secondary abuse and trauma;
(n) ensure that recipients are free to express dissatisfaction with service providers and that concerns and complaints are addressed seriously;

(o) be reviewed on a regular basis according
to the needs of the recipients; and
(p) be sensitive to the linguistic needs, religious and cultural norms and values of children and their families.

4. **Family preservation**

Family preservation must—
(a) be aimed at the identification of high risk families and children;
(b) be aimed at preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
(c) address factors that put children at risk of imminent removal from their environment;
(d) address the particular needs of families in their diverse forms;
(e) be rendered by service providers with appropriate training, support and supervision to maximise their abilities and capacity to conduct assessments and appropriate interventions;
(f) be intensive in nature and delivered by a multi-disciplinary team within six months; seek to strengthen and support family support structures and render capacity development;
(g) be aimed at improving the well-being and resilience of families;
(h) be home-based and family-centred with family members seen as the main focus;
(i) focus on and utilize the strengths of families;
(j) ensure that family plans are developed with the participation of family members;
(k) teach skills and develop capacity of parents, care-givers and families to address family risk factors;
(l) enhance positive family relations and promote a family climate that promotes the care, protection and development of children;
(m) ensure that children are safe from harm whilst in the family;
(n) promote communication and positive relationships within families;
(o) strengthen extended family as well as neighbourhood and community networks in promoting the well-being of the child;
(p) promote reunification of children with their families;
(q) ensure the participation of children, family members and other significant people in the child's life;
(r) be based on a multi-disciplinary and inter-sectoral approach;
(s) enable families to take responsibility and accountability for their involvement in programmes;
(t) be sensitive to the linguistic needs, religious and cultural norms and values of children and their families; and
(u) have a system for monitoring and assessing impact of programme.

5. **Skills development programmes**

Skills development programmes must be—
(a) aimed at improving children's and adult literacy;
(b) aimed at alleviating poverty and its adverse effects on children;
(c) aimed at creating employment and improving family income;
(d) aimed at providing skills to enable them to care for sick and chronically ill children_and children with disabilities;
(e) sensitive to the linguistic needs, religious and cultural norms and values of children and their families; and
(f) aimed at parenting skills and capacity development programmes.

6. **Diversion programmes**

Diversion programmes must—
(a) promote the child's dignity, well-being, development of sense of self-worth and ability to contribute to society;
(b) be appropriate to the age and maturity of the child;
(c) be based on an assessment of the particular needs of the child, using an approved developmental assessment framework which covers—
    (i) detail on risk factors present in the child's life, including—
        (aa) social relationships, including family and peer relationships;
        (bb) education, including school grade, attendance and performance;
        (cc) history of antisocial behaviour;

(dd) substance abuse;
(ee) medical or psychiatric history;
(ff) whether the child has been found in need of care; and
(gg)- the child's developmental areas that the programme is designed to address; and

(ii) strength assessment;

(d) not interfere with the child's schooling;
(e) impart useful skills;
(f) not be exploitative, harmful or hazardous to a child's physical or mental health;
(g) include a restorative justice element which aims at healing relationships, including the relationship with the victim;
(h) include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including the victim of the offence, and may include compensation or restitution;
(i) involve parents and care-givers where available;
(j) be presented in a location which is reasonably accessible to the child;
(k) ensure that a child who cannot afford transport in order to attend selected diversion programme should, as far as it is reasonably possible, be provided with the means to do so;
(l) promote the participation of children in decision-making;
(m) be provided by suitably trained persons, with regular supervision;
(n) have a system for monitoring the child's progress, including his or her compliance with the conditions of a diversion order;
(o) have a system for monitoring the quality of programme delivery;
(p) adhere to national policy guidelines; and
(q) be sensitive to the linguistic needs, religious and cultural norms and values of children and their families.

7. **Temporary safe care**

(a) Placement of a child in temporary safe care must be based on the assessment of the needs of the child.
(b) Temporary safe care must promote the safety, security, dignity and well-being of the child.
(c) Temporary safe care service providers must be properly screened and approved in the manner contemplated in regulation 57.
(d) Temporary safe care service providers must demonstrate the ability to deliver an effective and efficient service to the child.
(e) Temporary safe care may not be disruptive to the child's life and regular routine.
(f) Temporary safe care must allow access to the child by relevant persons, including the parent, guardian, care-giver, next of kin or other professional as the need may be, if it is in the best interest of the child.
(g) The identity and location of temporary safe care may not be revealed to the alleged offender or any person not acting in the best interests of the child for the protection of the child.
(h) Temporary safe care must be sensitive to the linguistic needs, religious and cultural norms and values of children and their families.
(i) There must be continuous monitoring and assessment of the well-being of a child in temporary safe care.

8. **Assessment of programmes**

Assessment of programmes must—

(a) be undertaken by service providers who have the appropriate training, support and competencies to conduct such assessments;
(b) be conducted annually;
(c) be undertaken in response to any well-founded report or complaint submitted to the provincial head for social development;
(d) enable and facilitate sustained quality service delivery through support, guidance and capacity building;
(e) be strength-based, holistic and appropriate to the cultural context of the programme;

(f) be aimed at promoting decision-making about future programmes;
(g) result in the development of a plan for capacity building and improved service delivery within 30 days of assessment;
(h) be aimed at protecting and promoting the rights of children as contained in the Constitution of the Republic of South Africa, 1996, this Act and other relevant statutes;
(i) monitor adherence to the national norms and standards made in terms of the Act and ensure that decisive and appropriate action is taken where violations of the norms and standards occur;
(j) be done with the participation of children and programme staff;
(k) consider the following factors:
(i) The degree to which the programme reached the intended target;
(ii) the demographic profile of the target group;
(iii) whether recipients are receiving quality services;
(iv) the impact of the intervention on children, families and communities;
(v) the availability and efficient utilisation of programme resources;
(vi) quantitative and qualitative data on targets and services rendered as required by regulatory bodies;
(vii) sustainability of programme efforts;
(viii) ability of staff to implement the programme;
(ix) management function, ability and competency; and
(x) compliance with registration conditions as well as current national statutory financial regulations;
(l) ensure participation of families and communities;
(m) ensure the safety and well-being of children;
(n) be aimed at addressing and meeting the developmental needs of children;
(o) be aimed at building community support for programmes;
(p) ensure that programmes promote positive social values; and
(q) may be conducted by a multi-disciplinary panel.

Court may order early intervention programme

148. (1) Before making an order concerning the temporary or permanent removal of a child from that child's family environment, a children's court may order-
(a) the provincial department of social development, a designated child protection organisation, any other relevant organ of state or any other person or organisation to provide early intervention programmes in respect of the child and the family or parent or care-giver of the child if the court considers the provision of such programmes appropriate in the circumstances; or
(b) the child's family and the child to participate in a prescribed family preservation programme.
(2) An order made in terms of subsection (1) must be for a specified period not exceeding six months.
(3) When a case resumes after the expiry of the specified period, a designated social worker's report setting out progress with early intervention programmes provided to the child and the family, parent or care-giver of the child, must be submitted to the court.
(4) After considering the report, the court may-
(a) decide the question whether the child should be removed; or
(b) order the continuation of the early intervention programme for a further specified period not exceeding six months.
(5) Subsection (1) does not apply where the safety or well-being of the child is seriously or imminently at risk.

Report to include summary of prevention and early intervention programmes

149. When a report of a designated social worker is produced before a court in order to assist a court in determining a matter concerning a child, the report must contain a summary of any prevention and early intervention programmes provided in respect of that child and the family, parent or care-giver of the child.

[Chapter 8 inserted by section 7 of Act 41 of 2007]

CHAPTER 9

CHILD IN NEED OF CARE AND PROTECTION
(ss 150-160)

Part 1
Identification of child in need of care and protection
(ss 150-154)

Child in need of care and protection

150. (1) A child is in need of care and protection if, the child-
(a) has been abandoned or orphaned and is without any visible means of support;

Abandoned or orphaned children

56.(1) If it appears to a designated social worker that a child has been abandoned or orphaned, whether for purposes of determining if such child is in need of care and protection or if such child can be made available for adoption, such social worker must cause an advertisement to be published in at least one local newspaper circulating in the area where the child has been found calling upon any person to claim responsibility for the child.

(2) In determining whether a child has been abandoned or orphaned for purposes of section 150(1)*(a)* of the Act, a presiding officer must-

(a) be satisfied that the child has been abandoned or orphaned ;

(b) be furnished with a copy of the advertisement contemplated in sub-regulation (1) and be satisfied that, for the purposes of-

(i) section 150(1)*(a)* of the Act, a period of at least one month has lapsed since the publication of the advertisement; or

(ii) section 157(3) of the Act, a period of at least three months has lapsed since the publication of the advertisement,

and that no person has claimed responsibility for the child;

(c) have regard, in the case of an orphaned child, to the death certificate or certificates of the child's parent or parents, guardian or care-giver, obtained by the social worker concerned, or, if such certificate cannot be obtained, to an affidavit by a person or persons who can testify to the death of the child's parent, guardian or care-giver; and

(d) have regard, in the case of an abandoned child, to an affidavit, setting out the steps taken to trace the child's parent, guardian or care-giver, by the social worker concerned to the effect that the child's parent, guardian or care-giver cannot be traced and an affidavit by any other person, if any, who can testify to the fact that the child has had no contact with his or her parent, guardian or care-giver for a period of at least three months.

(b) displays behaviour which cannot be controlled by the parent or care-giver;
(c) lives or works on the streets or begs for a living;
(d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;
(e) has been exploited or lives in circumstances that expose the child to exploitation;
(f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;
(g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
(h) is in a state of physical or mental neglect; or
(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is.

(2) A child found in the following circumstances may be a child in need of care and protection and must be referred for investigation by a designated social worker:

(a) a child who is a victim of child labour; and
(b) a child in a child-headed household.

(3) If after investigation a social worker finds that a child referred to in subsection (2) is not a child in need of care and protection as contemplated in subsection (1), the social worker must where necessary take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation.

Removal of child to temporary safe care by court order

151. (1) If, on evidence given by any person on oath or affirmation before a presiding officer it appears that a child who resides in the area of the children's court concerned is in need of care and protection, the presiding officer must order that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155 (2).

(2) A presiding officer issuing an order in terms of subsection (1) may also order that the child be placed in temporary safe care if it appears that it is necessary for the safety and well-being of the child.

(3) When referring the question whether the child is in need of care and protection in terms of subsection (1) or when making an order in terms of subsection (2), the children's court may exercise any of the functions assigned to it in terms of section 50 (1) to (3).

(4) An order issued in terms of subsection (2) must identify the child in sufficient detail to execute the order.

(5) A person authorised by a court order may, either alone or accompanied by a police official-

(a) enter any premises mentioned in the order;
(b) remove the child from the premises; and
(c) on those premises exercise any power mentioned in section 50 (3) *(a)* to *(d)*.

(6) A police official referred to in subsection (5) may use such force as may be reasonably necessary to overcome any resistance against the entry of the premises contemplated in subsection (5) *(a)*, including the breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

(7) The person who has removed a child in terms of the court order must-

(a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child, if that person can readily be traced; and
(b) within 24 hours refer the matter to a designated social worker for investigation in terms of section 155 (2); and
(c) report the matter to the relevant provincial department of social development.

(8) The best interests of the child must be the determining factor in any decision whether a child in need of care and protection should be removed and placed in temporary safe care, and all relevant facts must for this purpose be taken into account, including the safety and well-being of the child as the first priority.

Removal of child to temporary safe care

53. (1) A person authorised by a court order, a designated social worker or a police official who removes a child and places such child in temporary safe care-

(a) in terms of a children's court order contemplated in section 151(2) of the Act; or
(b) without a court order in terms of section 152(1) of the Act,

must complete a form identical to **Form 36** and submit it to the temporary safe care as soon as is practicable.

FORM 36

AUTHORITY FOR REMOVAL OF CHILD TO TEMPORARY SAFE CARE

(Regulation 53)

[SECTIONS 150-152 OF THE CHILDREN'S ACT 38 OF 2005]

TEMPORARY SAFE CARE	
Temporary safe care where child is to be placed	

AUTHORITY

Authority is hereby given for the placement of the following child/children until this authority is confirmed by the presiding officer of a children's court.

DETAILS OF CHILD(REN)

NAME(S) AND SURNAME	GENDER	DISABILITY	DATE OF BI ESTIMATED

REASONS FOR REMOVAL OF CHILD

(Mark with an "x") **(Attach a substantiated statement containing the specific details/circumstances of the removal, reflecting dates and facts relevant to the chain of events)**

MARK	SECTION OF ACT	REASONS FOR REMOVAL
	151(2)	**I have removed the above-mentioned child/children in terms of a children's court order** (Document attached as per Annexure)
	47(3)	**I have removed the above-mentioned child/children in terms of an order of another court** (Document attached as per Annexure)
	170(4)	I have apprehended the above-mentioned child/children who has/have absconded or failed to return to alternative care (Document attached as per Annexure)
		I have reason to believe that the child/children is/are in need of care and protection due to the following:
	150(1)(a)	has been abandoned or orphaned and is without any visible means of support

MARK	SECTION OF ACT	REASONS FOR REMOVAL
	150(1)(b)	displays behaviour which cannot be controlled by the parent or care-giver
	150(1)(c)	lives or works on the streets or begs for a living
	150(1)(d)	is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency
	150(1)(e)	has been exploited or lives in circumstances that expose the child to exploitation
	150(1)(f)	lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being
	150(1)(g)	may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child
	150(1)(h)	is in a state of physical or mental neglect
	150(1)(i)	is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is.
		I have found the child/children in the following circumstances and I have reason to believe that the child/children may be in need of care and protection:
	150(2)(a)	a child who is a victim of child labour
	150(2)(a)	a child in a child-headed household

RESPONSIBLE PERSON

Details of parent(s), guardian or care-giver from whose custody child/children was/were removed

Name(s) and surname		
Residential address		
Work address		
Telephone numbers	Residence	
	Office	
	Cellular	
Facsimile number		
Email address		
Relationship to the child		

ADDITIONAL INFORMATION: CHILD(REN)

(Special needs, medical conditions, behaviour, etc)

OFFICIAL CONDUCTING REMOVAL OF CHILD(REN)

Details of person conducting removal of child(ren)

Name(s) and surname		
Rank/position		
Identity number		
Social worker/police official/authorized person		
Work address Registration number		
Telephone numbers	Office	
	Cellular	
Facsimile number		
Email address		

ACKNOWLEDGMENT OF RECEIPT

PARENT(S), GUARDIAN OR CARE-GIVER			
Signature			
Name& surname			
Place			
Date		Time	

TEMPORARY SAFE CARE			
Signature			
Name & surname			
Place			
Date		Time	

COPIES OF AUTHORITY

A **true copy** of this authority must be provided to the following and must be confirmed by the issue of a **Form 37 court order** within the applicable time limits:

Care-giver from whose custody child/children was/were removed and who can readily be traced	Within 24 hours
Temporary safe care facility	With admittance
Social worker (case worker)	Within 24 hours
Provincial Department of Social Development	Within 24 hours
Children's Court (clerk of the children's court)	Not later than the next court day
Office record (case file, case docket)	Filed as soon as possible

REFERRAL

Case referred to Organisation/Social worker

Name & surname	
Organisation	
Telephone number	
Facsimile number	
Reference number	

SEE NOTES ON NEXT PAGE

Note 1

A. Directions for social workers:

A true copy of this authority is to be delivered or handed, after removal of the child/children, to the

- § parent/guardian/care-giver who can readily be traced within 24 hours;
- § relevant clerk of the children's court by not later than the next court day; and
- § closest office of the relevant provincial department of social development within 24 hours.

B. Directions for police officials:

A true copy of this authority is to be delivered or handed, after removal of the child/children, to

- § the parent/guardian/care-giver who can readily be traced within 24 hours;
- § the relevant clerk of the children's court by not later than the next court day;
- § the closest office of the relevant provincial department of social development within 24 hours;
- § a designated social worker within 24 hours.

C. General

- § The parent/guardian/care-giver must be informed of the date, time and place of the review of the detention of the child/children and the right to furnish the court with information which must be the first court day after the removal of the child. The person issuing this authority must bring the child/children or cause the child/children to be brought before the children's court of the district of removal.
- § The place where the child is placed in temporary safe care must report to the children's court concerned if the placement is not confirmed by court order within seven days.

Note 2

Section 152(1) of the Act makes it clear that, before a child may be removed to temporary safe care without a court order, ALL of the following factors HAVE to be present –

- The child must be in need of care and protection;
- The child must require immediate emergency protection;
- The delay in obtaining a court order may jeopardize the child's safety and well-being; and
- Removal is the best way to secure the child's safety and well-being.

(2) The person or police official referred to in sub-regulation (1) must –

(a) give the relevant parent, guardian, care-giver, next of kin, social worker, religious counsellor, medical practitioner, psychologist, psychiatrist, legal representative, child and youth care worker or any other person, approved by the designated social worker, access to the child at all reasonable times, subject to the terms of the court order and provided that such access is in the best interests of the child; and

(b) notify the designated social worker immediately of any difficulties with such placement and of any change in the child's residential address.

Bringing of child before children's court to decide whether child is in need of care and protection

54. (1) A child –

(a) whose placement in temporary safe care has been confirmed by a presiding officer; or

(b) who is not in temporary safe care but is the subject of an investigation as to whether he or she is in need of care and protection,

(c) who is a victim of trafficking and has been returned to the Republic as contemplated in section 286(1) of the Act; or

(d) who is a victim of trafficking and is found in the Republic as contemplated in section 289(1) of the Act,

must be brought or caused to be brought before the children's court of the district where the child resides, is found or happens to be, by a designated social worker or, in the case of a child referred to in paragraph *(b)*, be brought by his or her parent, guardian or care-giver for a decision on whether the child is in need of care and protection by not later than 90 days after –

(i) the removal of the child to temporary safe care, in the case of a child contemplated in paragraph *(a)*;

(ii) the commencement of the investigation, in the case of a child contemplated in paragraph *(b)*;

(iii) the date of return of the child to the Republic, in the case of a child contemplated in paragraph *(c)*; or

(iv) the date upon which the child was found in the Republic, in the case of a child contemplated in paragraph *(d)*.

(2) The parent, guardian or care-giver of a child as contemplated in sub-regulation (1)*(a), (b) or (c)* must be notified by the clerk of the court to attend proceedings of the children's court where a decision will be made as to whether the child is in need of care and protection in a form identical to **Form 37**.

FORM 37

NOTIFICATION TO PARENT, GUARDIAN OR CARE-GIVER TO ATTEND CHILDREN'S COURT PROCEEDINGS

(Regulation 54)

[SECTIONS 151, 152 and 286 OF THE CHILDREN'S ACT 38 OF 2005]

TO:……..

…….

…….

…….

…….

Dear Sir/Madam

You are hereby advised to attend proceedings of the children's court where a decision will be made as to whether…….

(full names and surname of child) is in need of care and protection.

Date and time of hearing:

Place of hearing:

_____

Clerk of the court

Date:

Address of court

Removal of child to temporary safe care without court order

152. (1) A designated social worker or a police official may remove a child and place the child in temporary safe care without a court order if there are reasonable grounds for believing-

(a) that the child-

(i) is in need of care and protection; and

(ii) needs immediate emergency protection;

(b) that the delay in obtaining a court order for the removal of the child and placing the child in temporary safe care may jeopardise the child's safety and well-being; and

(c) that the removal of the child from his or her home environment is the best way to secure that child's safety and well-being.

(2) If a designated social worker has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the social worker must-

(a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child, if that person can readily be traced; and

(b) not later than the next court day inform the relevant clerk of the children's court of the removal of the child; and

(c) report the matter to the relevant provincial department of social development.

(3) If a police official has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the police official must-

(a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child, if that person can readily be traced; and

(b) refer the matter to a designated social worker for investigation contemplated in section 155 (2); and

(c) without delay but within 24 hours notify the provincial department of social development of the removal of the child and of the place where the child has been placed; and

(d) not later than the next court day inform the relevant clerk of the children's court of the removal of the child.

(4) The best interests of the child must be the determining factor in any decision whether a child in need of care and protection should be removed and placed in temporary safe care, and all relevant facts must for this purpose be taken into account, including the possible removal of the alleged offender in terms of section 153 from the home or place where the child resides, and the safety and well-being of the child as the first priority.

(5) Misuse of a power referred to in subsection (1) by a designated social worker in the service of a designated child protection organisation-

(a) constitutes unprofessional or improper conduct as contemplated in section 27 (1) *(b)* of the Social Service Professions Act, 1978 (Act 110 of 1978) by that social worker; and

(b) is a ground for an investigation into the possible withdrawal of that organisation's designation.

(6) Misuse of a power referred to in subsection (1) by a designated social worker employed in terms of the Public Service Act or the Municipal Systems Act constitutes unprofessional or improper conduct as is contemplated in section 27 (1) *(b)* of the Social Service Professions Act, 1978 (Act 110 of 1978) by that social worker.

(7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act 68 of 1995).

(8) Any person who removes a child must comply with the prescribed procedure.

Written notice to alleged offender

153. (1) A police official to whom a report contemplated in section 110 (1) or (2) or a request contemplated in section 110 (7) has been made, may, if he or she is satisfied that it will be in the

best interests of the child if the alleged offender is
removed from the home or place where the child resides, issue a written notice which-

(a) specifies the names, surname, residential address, occupation and status of the alleged offender;

(b) calls upon the alleged offender to leave the home or place where the child resides and refrain from entering such home or place or having contact with the child until the court hearing specified in paragraph *(c)*;

(c) calls upon the alleged offender to appear at a children's court at a place and on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the child resides: Provided that the date so specified shall be the first court day after the day upon which the notice is issued; and

(d) contains a certificate under the hand of the police official that he or she has handed the original of such written notice to the alleged offender and that he or she has explained to the alleged offender the importance thereof.

[Subsection (1) amended by section 8 of Act 41 of 2007]

(2) The police official must forthwith forward a duplicate original of the written notice to the clerk of the children's court.

(3) The mere production to the court of the duplicate original referred to in subsection (2) is prima facie proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender.

(4) The provisions of section 55 of the Criminal Procedure Act, 1977 (Act 51 of 1977) apply, with the necessary changes, to a written notice handed to an alleged offender in terms of subsection (1).

(5) A children's court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued, appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice.

(6) The court may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender-

(a) issue an order prohibiting the alleged offender from entering the home or place where the child resides or from having any contact with the child, or both from entering such home or place and having contact with the child, for such period of time as the court deems fit;

(b) order that the alleged offender may enter the home or the place where the child resides or have contact with the child upon such conditions as would ensure that the best interests of the child are served;

(c) order that the alleged offender will be responsible for the maintenance of his or her family during the period contemplated in paragraph *(a)*;

(d) refer the matter to a designated social worker for an investigation contemplated in section 155 (2); or

(e) make such other order with regard to the matter as the court deems fit.

(7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act 68 of 1995).

Other children in need of care and protection

154. If there are reasonable grounds for believing that a child at the same place or on the same premises as a child placed in temporary safe care in terms of section 47, 151 or 152 is in need of care and protection, the person under whose care the child placed in temporary safe care is or the provincial head of social development may refer that child to a designated social worker for investigation contemplated in section 155 (2).

Part 2
Children's court processes
(ss 155-160)

Decision of question whether child is in need of care and protection

155. (1) A children's court must decide the question of whether a child who was the subject of proceedings in terms of section 47, 151, 152 or 154 is in need of care and protection.

(2) Before the child is brought before the children's court, a designated social worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection.

Report by designated social worker

55.(1) A report by a designated social worker compiled in terms of section 155(2) of the Act must be in a form identical to **Form 38** and must—

(a) contain an introduction and personal details of the social worker;
(b) reflect a history of and background to the matter to be decided by the children's court;
(c) give reasons for the removal of the child, if applicable;
(d) address any relevant factors referred to in section 150 of the Act;
(e) contain details of previous interventions and family preservation services that have been considered or attempted;
(f) contain an evaluation of the matter to be decided by the children's court;
(g) indicate whether, after investigation, the child concerned is considered to be in need of care and protection;
(h) contain a recommendation as to which order or orders in terms of section 156 of the Act, including an order in terms of section 46 of the Act, would be appropriate to the child;
(i) list sources of information;
(j) contain recommendations, where necessary, regarding measures to assist the child's parent, guardian or care-giver, including-
(i) counselling;
(ii) mediation;
(iii) prevention and early intervention services;
(iv) family reconstruction and rehabilitation;
(v) behaviour modification;
(vi) problem solving; and
(vii) referral to another suitably qualified person or organisation;
(k) contain an assessment of the therapeutic, educational, cultural, linguistic, developmental, socio-economical and spiritual needs of the child; and
(l) address any written request by a presiding officer to the designated social worker concerned.

FORM 38

SECTION 155(2) REPORT BY DESIGNATED SOCIAL WORKER TO BE CONSIDERED BY CHILDREN'S COURT

(Regulation 55)

[SECTION 155(2) OF THE CHILDREN'S ACT 38 OF 2005]

File no. …… Court file no. ……

Department of …… or Welfare Organisation

PROFESSIONAL REPORT

BY

FULL NAMES: ……..

SIGNATURE: ……...

QUALIFICATIONS: …….

REGISTRATION NO.: ……

REGISTERED SOCIAL WORKER

ADDRESS: ……

……

……

……

TEL. NO.: ……

DATE: ……

SUPERVISOR'S OR SENIOR'S SIGNATURE:

……

DATE: ……

A. INTRODUCTION (Nature of report; outline of what report attempts to achieve)

……

……

……

B. IDENTIFYING DETAILS OF CHILD/CHILDREN FORMING SUBJECT OF REPORT

FULL NAME(S)	GENDER	DATE OF BIRTH/ ESTIMATED AGE/ IDENTITY NUMBER

Residential address: ……

Home language: ……

Religious affiliation (if applicable): ……

Present care-giver (name and address): …….....

……

C. FAMILY COMPOSITION

Biological parents (names, identity numbers,
ages, addresses, contact numbers, qualifications, marital status, employer):

……

……

……

Siblings (names, gender and ages of all siblings to be indicated – child concerned to be indicated with an asterisk(*)): …….....

……

……

Alternate care-giver(s) – adoptive parents, foster or stepparents, guardian or care-giver (names, identity numbers, ages, addresses, contact numbers, qualifications, marital status, employer)……

……

……

Other persons living with family (names, ages and relationship to child/children): ……

……

……

D. SOURCES OF INFORMATION (Persons from whom information had been obtained to compile report – indicate names, addresses, contact numbers and relationship to the child/children)……

……

……

E. FAMILY PROFILE

Family background (background information on parents – place of birth, education, family history, employment history)

……

……

……

Family structure (persons constituting the family – all persons living in household)

……

……

……

Family relationships (nature of parents' relationship, relationship with other members of family and extended family)

……

……

……

……Physical factors and health (relating to parents - also indicate any disabilities and/or substance abuse):

……

……

……

Psychological factors (relating to parents - also indicate any mental disabilities): ……

……

……

……

Housing and environment (type, size, ownership, impression): ……

……

……

……

Religious and cultural aspects (affiliation, participation, role): ……

……

……

Socio-cultural aspects (community activities, status, norms and values):……....

……

……

……

Financial aspects (income and expenditure of parents): ……

……

……

……

F. CHILD/CHILDREN CONCERNED (Any relevant supporting documents to be attached as annexure)

Child concerned (name): ……

Present living circumstances (if not living with biological parents):……

……

……

……

Physical factors and health (also indicate any disabilities and/or substance abuse):……

……

……

……Psychological factors (also indicate any mental disabilities):…….

……

……

Relationships with parents, siblings or peers: …….....

……

……

……

Schooling (abilities, problems, difficulties and achievements): ……

……

……

……

G. SPECIAL CIRCUMSTANCES FOR CONSIDERATION

Abandoned or orphaned children (discuss circumstances): ……

……

……

Children with special needs (indicate needs / requirements): ……

……

……

H. VIEWS OF THE CHILD/CHILDREN CONCERNED (Reflect emotions, feelings, preferences, personal needs and any other relevant observations by child/children)

……

……

……

……

I. FACTORS RESULTING IN INVESTIGATION

Events leading to investigation (complete chain of events; also discuss factors listed in section 150 of the Act):……...

……

……

……

Previous interventions (previous decisions or inquiries in respect of child/children to be indicated, whether child had been removed to temporary safe care; family preservation

services rendered or attempted; whether child
had been a victim of trafficking and returned to or found in the Republic):

……

……

……

Evidence and facts (allegations of abuse/neglect; incidents; claims – affidavits and any other supporting documents to be attached as annexure):

……

……

Medical evidence (In cases of assault or abuse; any supporting documents to be attached as annexure):……..……

……

……

……

J. MEASURES TO ASSIST FAMILY

Steps taken to improve family situation (counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving, referral): …….....……

……

……

K. PRIVATE FAMILY ARRANGEMENTS (If applicable)

……

……

……

L. EVALUATION (Positive and negative factors, causes and results)

……

……

M. CONCLUSION (Finding by social worker whether child is in need of care and protection)

In view of the above information I am of the opinion that ……
…….. (name(s) of child/children) is/are* in need of care and protection/not in need of care and protection* as described in section 150(1).../150(2)…* (quote applicable subsections if found to be in need of care) of the Children's Act 38 of 2005.

* (delete which is not applicable)

N. RECOMMENDATION (Indicate which order or orders in terms of section 156 of the Act, INCLUDING AN ORDER IN TERMS OF SECTION 46, would be appropriate to the child – section number and subsection to be reflected. Motivate the recommendation and include recommendation on duration of order and level of supervision required, if applicable)

……
……
……

O. RECOMMENDED MEASURES TO ASSIST CHILD'S FAMILY (Mark with an "x" and substantiate)

□ counselling ……..
……

□ mediation ……..
……

□ prevention and early intervention services…….
……

□ family reconstruction and rehabilitation ……
……

□ behaviour modification ……..
……..

□ problem solving ……..
……

□ referral to another suitably qualified person or organisation ……
……

□ other
……..…
……

P. RECOMMENDED MEASURES TO ASSIST CHILD (Mark with an "x" and substantiate)

□ therapeutic needs ……
……

□ educational needs
……
……

□ cultural needs……
……

□ linguistic needs ……
……

□ developmental needs (attach separate forms as Annexures if required)……..……
……

□ socio-economical needs……..
……

□ spiritual needs ……
……

□ other needs……
……

Q. WRITTEN REQUEST BY PRESIDING OFFICER (Address any written request by a presiding officer to the designated social worker concerned)

……
……
……
……
……

R. PERMANENCY PLAN (To be completed if recommended that the child be removed from care of parent or care-giver)

I have taken account of the following factors:

- the ideal that every child should be provided with the opportunity to grow up within his or her family and where this is proved not to be in his or her best interest or not possible, to have a permanency plan which works towards life-long relationships in a family or community setting;
- the best way of securing stability in the child's life in terms of section 157(1)*(b)* of the Act;
- the age of the child;
- the developmental stage the child;
- the child's therapeutic, educational, cultural, linguistic, developmental, socio-economical and spiritual needs; and
- the views of the child,

and concludes as follows (discuss above factors):

In view of the above I recommend that the child (mark with an "x") –

□ be placed in foster care with relatives or non-relatives as geographically close to the parent or care-giver as possible to encourage visiting by such persons

Reasons and indication of names, details, circumstances and suitability of proposed foster parents: ……...

……

……

……

……

□ be adopted by relatives

Reasons and indication of names, details, circumstances and suitability of proposed adoptive parents

……

……

……

□ be placed under the guardianship of relatives

Reasons and indication of names, details, circumstances and suitability of proposed guardians:

……

……

……

□ be adopted by non-relatives, preferably of similar ethnic, cultural and religious backgrounds

Reasons and indication of names, details, circumstances and suitability of proposed adoptive parents:……

……

……

……

□ be placed in permanent foster care with relatives or non-relatives or with a cluster foster care scheme

Reasons and indication of names, details, circumstances and suitability of proposed permanent foster parents or scheme:……

……

……

(2) A permanency plan must explore the following options, taking into account that the first option is the most desirable and the last option the least desirable:

(a) If the child is to be removed from the care of his or her parent, guardian or care-giver, the possibility of placing the child in foster care with relatives or non-relatives as geographically close to the parent or care-giver as possible to encourage visiting by the parent or care-giver;

(b) the possibility of adoption of the child by relatives;

(c) the possibility of a relative or relatives obtaining guardianship of the child;

(d) the possibility of adoption of the child by non-relatives, preferably of similar ethnic, cultural and religious backgrounds; or

(e) the possibility of placing the child in foster care with relatives or non-relatives or with a cluster foster care scheme.

(3) A permanency plan approved by a children's court must, unless the children's court, in terms of section 157(1)*(b)*(v) of the Act, directs otherwise, be evaluated by the social worker concerned within six months of its implementation and thereafter at intervals of six months with a view to establishing, unless he or she had been adopted or placed in foster care, whether the child may be returned to the care of his or her parent or care-giver

(3) The designated social worker must report the matter to the relevant provincial department of social development.

(4) *(a)* If, after an investigation contemplated in subsection (2), the designated social worker finds that the child is not in need of care and protection, he or she must indicate the reasons for the finding in the report, which must be submitted to the children's court for review.

(b) The designated social worker must where necessary indicate in the report the measures recommended to assist the family, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation.

(5) If, after an investigation contemplated in subsection (2), the designated social worker finds the child to be in need of care and protection, that child must be brought before the children's court.

(6) The children's court hearing the matter may-

(a) adjourn the matter for a period not exceeding 14 days at a time; and

(b) order that, pending decision of the matter, the child must-

(i) remain in temporary safe care at the place where the child is kept;

(ii) be transferred to another place in temporary safe care;

(iii) remain with the person under whose control the child is;

(iv) be put under the control of a family member or other relative of the child; or

(v) be placed in temporary safe care.

(7) If the court finds that the child is in need of care and protection, the court may make an appropriate order in terms of section 156.

(8) If the court finds that the child is not in need of care and protection, the court-

(a) must make an order that the child, if the child is in temporary safe care, be returned to the person in whose control the child was before the child was put in temporary safe care;

(b) may make an order for early intervention services in terms of this Act; or

(c) must decline to make an order, if the child is not in temporary safe care.

(9) When deciding the question of whether a child is a child in need of care and protection in terms of subsection (1) the court must have regard to the report of the designated social worker referred to in subsection (2).

Orders when child is found to be in need of care and protection

156. (1) If a children's court finds that a child is in need of care and protection the court may make any order which is in the best interests of the child, which may be or include an order-

(a) referred to in section 46;

(b) confirming that the person under whose control the child is may retain control of the child, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;

(c) that the child be returned to the person under whose care the child was before the child was placed in temporary safe care, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;

(d) that the person under whose care the child was must make arrangements for the child to be

taken care of in a partial care facility at
the expense of such person, if the court finds that the child became in need of care and protection because the person under whose care the child was lacked the time to care for the child;

(e) if the child has no parent or care-giver or has a parent or care-giver but that person is unable or unsuitable to care for the child, that the child be placed in-

(i) foster care with a suitable foster parent;

(ii) foster care with a group of persons or an organisation operating a cluster foster care scheme;

(iii) temporary safe care, pending an application for, and finalisation of, the adoption of the child;

(iv) shared care where different care-givers or centres alternate in taking responsibility for the care of the child at different times or periods; or

(v) a child and youth care centre designated in terms of section 158 that provides a residential care programme suited to the child's needs;

(f) if the child lives in a child-headed household, that the child must remain in that household subject to section 137;

[Paragraph (f) inserted by section 9 of Act 41 of 2007]

(g) that the child be placed in a facility designated by the court which is managed by an organ of state or registered, recognised or monitored in terms of any law, for the care of children with disabilities or chronic illnesses, if the court finds that-

(i) the child has a physical or mental disability or chronic illness; and

(ii) it is in the best interests of the child to be cared for in such facility;

(h) that the child be placed in a child and youth care centre selected in terms of section 158 which provides a secure care programme suited to the needs of the child, if the court finds-

(i) that the parent or care-giver cannot control the child; or

(ii) that the child displays criminal behaviour;

(i) that the child receive appropriate treatment or attendance, if needs be at state expense, if the court finds that the child is in need of medical, psychological or other treatment or attendance;

(j) that the child be admitted as an inpatient or outpatient to an appropriate facility if the court finds that the child is in need of treatment for addiction to a dependence-producing substance; or

(k) interdicting a person from maltreating, abusing, neglecting or degrading the child or from having any contact with the child, if the court finds that-

(i) the child has been or is being maltreated, abused, neglected or degraded by that person;

(ii) the relationship between the child and that person is detrimental to the well-being or safety of the child; or

(iii) the child is exposed to a substantial risk of imminent harm.

(2) The court that makes an order contemplated in subsection (1) may order that the child concerned be kept in temporary safe care until such time as effect can be given to the court's order.

(3) An order made by the court in terms of subsection (1)-

(a) is subject to such conditions as the court may determine which, in the case of the placement of a child in terms of subsection (1) *(e)* (i), (ii), (iii), (iv) or (v), may include a condition-

(i) rendering the placement of the child subject to supervision services by a designated social worker or authorised officer;

(ii) rendering the placement of the child subject to reunification services being rendered to the child and the child's parents, care-giver or guardian, as the case may be, by a designated social worker or authorised officer; or

(iii) requiring the person in whose care the child has been placed, to co-operate with the supervising designated social worker or authorised officer or to comply with any requirement laid down by the court, failing which the court may reconsider the placement; and

(b) may be reconsidered by a children's court at any time, and be confirmed, withdrawn or amended as may be appropriate.

(4) If a court finds that a child is not in need of care and protection the court may nevertheless issue an order referred to in subsection (1) in respect of the child, excluding a placement order.

Court orders to be aimed at securing stability in child's life

157. (1) Before a children's court makes an order in terms of section 156 for the removal of the child from the care of the child's parent or care-giver, the court must-

(a) obtain and consider a report by a designated social worker on the conditions of the child's life, which must include-

(i) an assessment of the developmental, therapeutic and other needs of the child;

(ii) details of family preservation services that have been considered or attempted; and

(iii) a documented permanency plan taking into account the child's age and developmental needs aimed at achieving stability in the child's life and containing the prescribed particulars; and

(b) consider the best way of securing stability in the child's life, including whether such stability could be secured by-

(i) leaving the child in the care of the parent or care-giver under the supervision of a designated social worker, provided that the child's safety and well-being must receive first priority;

(ii) placing the child in alternative care for a limited period to allow for the reunification of the child and the parent or care-giver with the assistance of a designated social worker;

(iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent or care-giver;

(iv) making the child available for adoption; or

(v) issuing instructions as to the evaluation of progress made with the implementation of the permanency plan at specified intervals.

(2) A designated social worker facilitating the reunification of a child with the child's family in terms of subsection (1) *(b)* (ii) must-

(a) investigate the causes why the child left the family home;

(b) address those causes and take precautionary action to prevent a recurrence; and

(c) provide counselling to both the child and the family before and after reunification.

(3) A very young child who has been orphaned or abandoned by its parents must be made available for adoption in the prescribed manner and within the prescribed period except when this is not in the best interests of the child.

Abandoned or orphaned children

56.(1) If it appears to a designated social worker that a child has been abandoned or orphaned, whether for purposes of determining if such child is in need of care and protection or if such child can be made available for adoption, such social worker must cause an advertisement to be published in at least one local newspaper circulating in the area where the child has been found calling upon any person to claim responsibility for the child.

(2) In determining whether a child has been abandoned or orphaned for purposes of section 150(1)*(a)* of the Act, a presiding officer must-

(a) be satisfied that the child has been abandoned or orphaned ;

(b) be furnished with a copy of the advertisement contemplated in sub-regulation (1) and be satisfied that, for the purposes of-

(i) section 150(1)*(a)* of the Act, a period of at least one month has lapsed since the publication of the advertisement; or

(ii) section 157(3) of the Act, a period of at least three months has lapsed since the publication of the advertisement,

and that no person has claimed responsibility for the child;

(c) have regard, in the case of an orphaned child, to the death certificate or certificates of the child's parent or parents, guardian or care-giver, obtained by the social worker concerned, or, if such certificate cannot be obtained, to an affidavit by a person or persons who can testify to the death of the child's parent, guardian or care-giver; and

(d) have regard, in the case of an abandoned child, to an affidavit, setting out the steps taken to trace the child's parent, guardian or care-giver, by the social worker concerned to the effect that the child's parent, guardian or care-giver cannot be

traced and an affidavit by any
other person, if any, who can testify to the fact that the child has had no contact with his or her parent, guardian or care-giver for a period of at least three months.

(4) When issuing an order involving the removal of the child from the care of the child's parent or care-giver, the court may include in the court order instructions as to the implementation of the permanency plan for the child.

Placement of child in child and youth care centre

158. (1) A children's court may issue an order placing a child in the care of a child and youth care centre only if another option is not appropriate.
(2) If a children's court decides that a child should be placed in the care of a child and youth care centre, the court must-
(a) determine the residential care programme best suited for the child; and
(b) order that the child be placed in a child and youth care centre offering that particular residential care programme.
(3) The provincial head of social development in the relevant province must place the child in a child and youth care centre offering the residential care programme which the court has determined for the child, taking into account-
(a) the developmental, therapeutic, educational and other needs of the child;
(b) the permanency plan for the child which was considered by the court, and any instructions issued by the court with regard to the implementation of the permanency plan;
(c) any other instructions of the court;
(d) the distance of the centre from the child's family or community;
(e) the safety of the community and other children in the centre, in the case of a child in need of secure care; and
(f) any other relevant factors.
(4) The provincial head of social development must, as a general rule, select a centre offering the programme ordered by the court which is located as close as possible to the child's family or community.

Duration and extension of orders

159. (1) An order made by a children's court in terms of section 156-
(a) lapses on expiry of-
(i) two years from the date the order was made; or
(ii) such shorter period for which the order was made; and
(b) may be extended by a children's court for a period of not more than two years at a time.
(2) When deciding on an extension of the period of a court order in terms of subsection (1), the court must take cognisance of the views of-
(a) the child;
(b) the parent and any other person who has parental responsibilities and rights in respect of the child;
(c) where appropriate, the management of the centre where the child is placed; and
(d) any alternative care-giver of that child.
(3) No court order referred to in subsection (1) extends beyond the date on which the child in respect of whom it was made reaches the age of 18 years.

Regulations

160. The Minister, after consultation with the Minister for Justice and Constitutional Development in respect of court orders, may make regulations prescribing-
(a) the particulars which permanency plans must contain;
(b) the manner in, and intervals at which, permanency plans must be evaluated;
(c) procedures for determining whether a child has been abandoned or orphaned; and
(d) generally, any other ancillary or incidental administrative or procedural matter that may be necessary to prescribe in order to facilitate the implementation or administration of this Chapter.

CHAPTER 10

CONTRIBUTION ORDER
(ss 161-166)

Issue of contribution order

161. (1) A children's court may make an order instructing a respondent to pay a sum of money or a recurrent sum of money-

(a) as a contribution towards the maintenance or treatment of, or the costs resulting from the other special needs of a child-
  (i) placed in alternative care; or
  (ii) temporarily removed by order of the court from the child's family for treatment, rehabilitation, counselling or another reason; or

(b) as a short-term emergency contribution towards the maintenance or treatment of, or the costs resulting from, the other special needs of a child in urgent need.

(2) A contribution order takes effect from the date on which it is made unless the court orders that it takes effect from an earlier or later date.

(3) A children's court may vary, suspend or rescind a contribution order or revive the order after it has been rescinded.

(4) If a court other than the court which made a contribution order varies, suspends, rescinds or revives the order in terms of subsection (3), the clerk of the first-mentioned court must immediately inform the clerk of the last mentioned court of such variation, suspension, rescission or revival.

Contribution orders

36. (1) A clerk must, at the request of the presiding officer of the court, issue a summons on a form which corresponds substantially with Form 12 of the Annexure, calling on a respondent to appear before the court at a time and place stated in the summons in order to show cause why a contribution or attachment of wages order should not be made against him or her, as provided for in section 161 of the Act.

FORM 12
SUMMONS IN CONTRIBUTION OR ATTACHMENT OF WAGES ORDER PROCEEDINGS

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 36(1)]

File No: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

TO:

_____

(respondent)

OF:

_____

_____

_____

YOU ARE HEREBY summonsed to appear before this court, and to bring proof of your income, at_____(time) on the_____day of_____to show cause why a *contribution order/ attachment of wages order should not be made against you in terms of section 161 of the Children's Act, 2005 (Act No. 38 of 2005), in respect of the maintenance of

_____
_____
_____
_____

(full name(s) of child(ren))

on the grounds set out in the particulars endorsed hereunder.

PARTICULARS OF GROUNDS OF ALLEGED LIABILITY:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Dated at_____this_____day of_____20_____

_____
Clerk of the Children's Court

NOTE
If you fail to obey this summons to attend the hearing or to remain in attendance during the hearing, the court may issue a warrant for your arrest and in a summary manner inquire into your failure to attend *or* remain in attendance and, unless you satisfy the court that your failure was not due to fault on your part, sentence you to a fine or to imprisonment.

PLEASE SEE REVERSE HEREOF

REVERSE OF FORM 12

RETURN OF SERVICE
FOR OFFICIAL PURPOSES ONLY

I, _____, certify that I have—

* delivered a copy of the summons to_____personally;

or

* offered a copy of the summons to_____a person apparently not younger than the age of 16 years and apparently residing or employed at the *residence/place of employment/place of business of_____since he/she could not conveniently be found and at the same time informing him/her of the nature and exigency thereof;

or

* *affixed/placed a copy of the summons to/in the *outer/principal door/security gate/post box of the *residence/place of

employment/place of business of_____, since he/she prevented the service by keeping his/her*residence/place of employment/place of business closed.

Signed at_____this_____day of_____20_____

_____
Signature of Sheriff/clerk/person authorised by Presiding officer

Full first names and surname _____
(Block letters)

Designation (rank) _____Ex Officio Republic of South Africa

Business address _____Code_____

(Street address must be stated)

(2) *(a)* A notice of an application by a presiding officer of the court for the variation, suspension, rescission or revival of a contribution or attachment of wages order shall be on a form which corresponds substantially with Form 13 of the Annexure and must be duly served on the respondent.

FORM 13
NOTICE OF HEARING OF APPLICATION FOR VARIATION, SUSPENSION, RESCISSION OR REVIVAL OF CONTRIBUTION OR ATTACHMENT OF WAGES ORDER

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 36(2)*(a)*]

File No: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

IN THE MATTER of * a contribution order/an order for the attachment of wages for the maintenance of:

_____
_____
_____

(full name(s) of child(ren))

TO:

_____
(respondent)

ADDRESS:

_____
_____
_____

TAKE NOTICE that application for the * variation/suspension/rescission/revival of the *contribution order/order for the attachment of wages made by the court against you at _____on

_____for the maintenance of the abovementioned * child(ren) will be heard before this court on the _____day of _____at_____

Dated at _____this _____day of _____20 _____

_____
Clerk of the children's court

NOTE
If you fail to obey this notice to attend the hearing or to remain in attendance during the hearing, the court may issue a warrant for your arrest and in a summary manner inquire into your failure to attend or remain in attendance and, unless you satisfy the court that your failure was not due to fault on your part, sentence you to a fine or to imprisonment.

PLEASE SEE REVERSE HEREOF

REVERSE OF FORM 13

RETURN OF SERVICE
FOR OFFICIAL PURPOSES ONLY

I, _____, certify that I have—

* delivered a copy of the notice to _____personally;

or

* offered a copy of the notice to _____a person apparently not younger than the age of 16 years and apparently residing or employed at the *residence/place of employment/place of business of _____, since he/she could not conveniently be found and at the same time informing him/her of the nature and exigency thereof;

or

* *affixed/placed a copy of the notice to/in the *outer/principal door/security gate/post box of the *residence/place of employment/place of business of _____, since he/she prevented the service by keeping his/her*residence/place of employment/place of business closed.

Signed at _____this _____day of _____20 _____

_____
Signature of Sheriff/clerk/
Person authorised by presiding officer of the children's court

Full first names and surname _____

_____
(Block letters)

Designation (rank) _____Ex Officio Republic of South Africa

Business address _____

_____ Code

(Street address must be stated)

(b) An application by a respondent for the variation, suspension, rescission or revival of a contribution or attachment of wages order shall be made on a form which corresponds

substantially with Form 14 of the Annexure, and
shall be lodged with the clerk or the presiding officer of the court, as the case may be.

FORM 14

APPLICATION FOR THE VARIATION, SUSPENSION, RESCISSION OR REVIVAL OF CONTRIBUTION OR ATTACHMENT OF WAGES ORDER

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 36(2)*(b)*]

File No: _____

REPUBLIC OF SOUTH AFRICA

TO THE CLERK OF THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

FROM:

_____

(respondent)

OF:

_____
_____
_____

I HEREBY APPLY for the *variation/suspension/rescission/revival of the *contribution order/order for the attachment of wages made by the court against me at _____the _____day of _____20 _____for the maintenance of my child(ren):

_____
_____
_____
_____
_____

GROUNDS FOR APPLICATION:

_____
_____
_____
_____

Dated at _____this _____day of _____20_____

_____*Respondent*

(3) A summons referred to in subregulation (1) and a notice referred to in subregulation (2)*(a)* shall be—

(a) served personally on a person by a sheriff, clerk, or a person authorised by the presiding officer of the court;

(b) submitted to the person by registered post; or

(c) served or submitted in any other manner as directed by a presiding officer of the court.

(4) A contribution order or a provisional contribution order shall be made on a form which corresponds substantially with Form 15 of the Annexure, and a certified copy thereof shall be handed to the respondent or be sent to him or her by registered mail.

FORM 15

CONTRIBUTION ORDER

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 36(4)]

File No.: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

IN THE MATTER OF A CONTRIBUTION ORDER FOR THE MAINTENANCE OF:

_____
_____
_____

(full name(s) of child (ren))

BY:

_____
_____

(respondent)

BEFORE: _____(presiding officer of the children's court) on the _____day of _____20 _____

After hearing the evidence adduced and the court being satisfied that a contribution order has to be made against the said respondent in terms of section 161 of the Children's Act 2005 (Act No. 38 of 2005),

IT IS ORDERED THAT:

_____
_____(respondent) contribute *weekly/monthly towards the maintenance of the said child(ren) the amount of R _____with effect from _____

The first payment to be made on:

_____

and thereafter on:

_____

Payments must be made to the following person/ institution:

_____

Signed at _____this _____day of _____20 _____

_____
Presiding officer of the children's court

NOTICE
The said respondent must in terms of section 166 of the Children' Act, 2005 (Act No. 38 of 2005) without delay give notice in writing to the clerk of the children's court of any change in his or her residential address or place of work, failing which he or she shall be liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(5) The clerk shall send a copy of the said contribution order to—

(a) the Director-General: Social Development; and

(b) the social worker involved in the case.

(6) An order to an employer in terms of section 165 of the Act for the deduction of an amount from the wages of respondent in compliance with a contribution order shall be made on a form which corresponds substantially with Form 16 of the Annexure and a certified copy thereof shall be handed to the respondent or be sent to him or her by registered mail by the clerk.

FORM 16

ORDER TO AN EMPLOYER TO DEDUCT AN AMOUNT FROM A RESPONDENT'S WAGES

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 36(6)]

File No.: _____

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF:

_____

HELD AT:

_____

TO:

_____

(name of employer)

TAKE NOTICE:

A contribution order for R _____per *week/month has been made against _____(full name of respondent) in terms of section 161 of the Children's Act, 2005 (Act No. 35 of 2005), for the maintenance of * his/her child(ren).

IT IS HEREBY ORDERED THAT—

in payment of the contribution order made against the said respondent, you deduct * weekly/monthly an amount of R _____from the wages of the said respondent and pay it forthwith to the following person/institution:

_____

GIVEN at _____this _____day of _____20

_____
Presiding officer of the children's court

Jurisdiction

162. (1) A contribution order may be made, varied, suspended, rescinded or revived by the children's court of the area in which-

(a) the respondent is ordinarily resident, carries on business or is employed; or

(b) the child involved in the matter is ordinarily resident.

(2) A provisional contribution order may be made by a children's court having jurisdiction in terms of subsection (1) *(b)* against a respondent resident in any country which is a proclaimed country within the meaning of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act 80 of 1963), or a designated country within the meaning of the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989 (Act 6 of 1989).

Effect of contribution order

163. (1) A contribution order and a provisional contribution order have the effect of a maintenance order and a provisional maintenance order in terms of the Maintenance Act and the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act 80 of 1963), as the case may be.

(2) Sections 31 and 40 of the Maintenance Act, read with such changes as the context may require, apply to a person who refuses or fails to comply with a contribution order.

Payments to be made to person determined by court

164. A contribution order must instruct the respondent to pay the sum stated therein to such person or institution as the court may determine.

Attachment of wages of respondent

165. (1) A children's court which has made a contribution order against a respondent may-

(a) order the employer of the respondent-

(i) to deduct the amount of the contribution which that respondent has been ordered to pay, from the respondent's wages, salary or remuneration; and

(ii) to such person or institution specified in the order; or

(b) vary, suspend or rescind such an order or revive the order after it has been rescinded.

(2) The employer must promptly pay any amount deducted under an order in terms of subsection (1) to such person or institution as may be specified in the order.

Change of residence or work by respondent

166. A respondent against whom a contribution order is in force must-

(a) give notice, in writing, to the clerk of the children's court which made the order of any change in that person's residential address or place of work; and

(b) state in that notice the new residential address or the name and address of the new employer, as the case may be.

CHAPTER 11

ALTERNATIVE CARE

(ss 167-179)

Alternative care

167. (1) A child is in alternative care if the child has been placed-

(a) in foster care;

(b) in the care of a child and youth care centre following an order of a court in terms of this Act or the Criminal Procedure Act, 1977 (Act 51 of 1977); or

(c) in temporary safe care.

(2) A child may not be in temporary safe care or be kept or retained at any place or facility, including a registered child and youth care centre, for longer than six months without a court order placing the child in alternative care.

(3) *(a)* The provincial head of social development must approve a person, facility, place or premises for temporary safe care in the prescribed manner.

(b) A person, facility, place or premises for temporary safe care must comply with the prescribed criteria.

(4) As from the date on which this section takes effect an existing place of safety approved in terms of the Child Care Act must be regarded as having been approved as temporary safe care in terms of this section.

Manner and criteria for approval of person, facility, place or premises for temporary safe care

57.(1) Subject to sub-regulation (2), approval to provide temporary safe care to a child must be in writing in a form identical to **Form 39** a copy of which must be handed to the relevant person, the head of the relevant place, facility or premises immediately upon approval.

FORM 39

APPROVAL TO PROVIDE TEMPORARY SAFE CARE

(Regulation 57)

[SECTION 167 OF THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that:

the following facility has been approved for temporary safe care:

the following place has been approved for temporary safe care:

the following premises has been approved for temporary safe care:

the following person has been approved for temporary safe care:

Name of facility/ place / premises/ person:

……

Physical address of facility/ place/ premises/ person:

……

Provincial Head of Social Development

Date:

(2) Approval to provide temporary safe care to a child may not be granted to a person, facility, place or premises unless the relevant provincial head of social development or the person authorised to grant approval is satisfied that-

(a) the child will be cared for in a healthy, hygienic and safe environment in line with the reasonable standards of the community where the temporary safe care is to be provided;

(b) the child will be provided with adequate nutrition and sleeping facilities;

(c) the person responsible for providing the child with temporary safe care has not been found to be unsuitable to work with children in terms of section 120 of the Act and is willing to provide such care;

(d) the area in which the child is to be placed in temporary safe care will not be severely disruptive to the child's daily routine; and

(e) care will be provided in accordance with the definition of "care" in section 1 of the Act.

Leave of absence

168. (1) Leave of absence may, subject to subsection (2) and such limitations and conditions as may be prescribed, be granted to a child in alternative care-

(a) by the management of a child and youth care centre in whose care the child has been placed;

(b) by the person in whose alternative care the child has been placed; and

(c) by the provincial head of social development in the relevant province, in the case of a child in temporary safe care.

(2) If a child has been placed in alternative care under the supervision of a designated social worker, leave of absence may only be granted with the approval of that social worker.

(3) The management or person referred to in subsection (1), designated social worker or the provincial head of social development in the province may at any time cancel any leave of absence granted in terms of subsection (1).

(4) In the case of foster care, the supervising designated social worker may at any time cancel any leave of absence granted in terms of subsection (1).

(5) When a child's leave of absence has been cancelled, the management or person referred to in subsection (1), designated social worker or the provincial head of social development must request that the child be returned to the child and youth care centre or person, or to the place where the child is in temporary safe care.

Limitations and conditions for leave of absence of child from alternative care

58.(1) Leave of absence may, subject to sub-regulation (2), be granted to a child in alternative care in terms of section 168(1) of the Act at any time and for a period not exceeding six weeks at any given moment.

(2) No leave of absence may be granted to a child in alternative care—

(a) unless the leave will serve the best interests of the child;

(b) unless suitable arrangements for the accommodation, care and supervision of the child have been made by a social worker for the duration of the child's leave; and

(c) where such leave is based only on staff shortages or on an absence of developmental programmes at a child and youth care centre during the holiday period.

Child in alternative care prohibited from leaving Republic

169. (1) A child in alternative care may not leave the Republic without the written approval of the provincial head of social development first being obtained.

(2) In granting approval in terms of subsection (1), the provincial head of social development may determine terms and conditions to protect the best interest of the child in alternative care.

Child absconding from alternative care

170. (1) Any police official or designated social worker may apprehend a child in alternative care who-

(a) has absconded from the child and youth care centre or person in whose care or temporary safe care that child has been placed; or

(b) has been granted leave of absence by the child and youth care centre or person in whose care or temporary safe care that child has been placed and who on cancellation or expiration of such leave of absence fails to return to that centre or person.

(2) If a police official or designated social worker contemplated in subsection (1) has reasonable grounds to believe that a child is in or on certain premises, the police official or designated social worker may, without a warrant, enter and search the premises for the purpose of apprehending the child.

(3) A police official referred to in subsection (1) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises as contemplated in subsection (1), including the breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

(4) On apprehending a child in alternative care who has absconded or failed to return in terms of subsection (1), the police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the fact that the child has been apprehended and of any steps that have been taken with regard to the child.

(5) A child so apprehended or a child who returns, of his or her own accord, to the centre or person in whose alternative care he or she was before absconding-

(a) must without delay be brought before a presiding officer of a children's court; and

(b) may, until brought before a presiding officer of a children's court, be kept in temporary safe care in terms of section 152.

(6) When the child is brought before a presiding officer of a children's court, the presiding officer must-

(a) order that the child be put in the temporary safe care of a child and youth care centre or appropriate facility or person determined by the presiding officer and kept there until the proceedings in terms of this section are completed and any order made or action taken in terms of this section is given effect to;

(b) inquire into the reasons why the child absconded from, or failed to return to the relevant child and youth care centre or person, and may for this purpose question the child; and

(c) order that the child-

(i) be returned to that centre or person;

(ii) may not be returned to that centre or person pending any action by the provincial head of social development in the relevant province in terms of subsection (8), if the presiding officer is of the opinion that there are good reasons why the child should not be returned to that centre or person; or

(iii) be placed in another form of alternative care.

(7) The presiding officer of the children's court must order the clerk of the children's court to-

(a) report to the provincial head of social development in the relevant province the result of an inquiry in terms of subsection (6); and

(b) notify the provincial head of social development of any order made in terms of subsection (6) (c).

(8) When an order has been made in terms of subsection (6) (c) (ii) the provincial head of social development may, after consideration of the report of the children's court and such inquiry as the provincial head of social development may consider necessary-

(a) transfer the child in terms of section 171;

(b) remove the child from alternative care in terms of section 173;

(c) discharge the child from alternative care in terms of section 175; or

(d) order that the child be returned to the child and youth care centre or person in whose care or temporary safe care that child has been placed.

Transfer of child in alternative care

171. (1) The provincial head of social development in the relevant province may, subject to subsection (5), by order in writing transfer a child in alternative care from the child and youth care centre or person in whose care or temporary safe care that child has been placed to any other child and youth care centre or person.

(2) The provincial head of social development may not transfer a child to a child and youth care centre in another province without the permission of the provincial head of social development in that province and without the prescribed financial arrangements regarding the placement being made.

(3) (a) If the provincial head of social development transfers a child in terms of subsection (1) to the care of the child's parent, guardian or former care-giver under the supervision of a designated social worker, the order must specify the requirements with which the child and that parent, guardian or former care-giver must comply.

(b) If any requirement referred to in paragraph (a) is breached or not complied with, the

designated social worker concerned may bring
the child before a children's court, which may, after an inquiry, vary the order issued by the provincial head of social development or make a new order in terms of section 156.

(4) Before the provincial head of social development issues an order in terms of subsection (1), a designated social worker must consult-

(a) the child, taking into consideration the child's age, maturity and stage of development;

(b) the parent, guardian or care-giver of the child, if available;

(c) the child and youth care centre or person in whose care or temporary safe care that child has been placed; and

(d) the child and youth care centre or person to whom the child is to be transferred.

(5) If the provincial head of social development transfers a child from a secure care child and youth care centre to a less restrictive child and youth care centre or to the care of a person, the provincial head of social development must be satisfied that the transfer will not be prejudicial to other children.

(6) No order in terms of subsection (1) may be carried out without ratification by a children's court if the child is transferred-

(a) from the care of a person to a child and youth care centre; or

(b) from the care of a child and youth care centre to a secure care or more restrictive child and youth care centre.

Fees payable on transfer or provisional transfer of child in alternative care

59.(1) For the purposes of section 171(1) of the Act, the monthly fees payable by a provincial department of social development in respect of a child in alternative care in that province, must, upon transfer of that child to a child and youth care centre, or a person in whose care or temporary safe care that child has been placed in that province, be paid by the provincial department of social development to a child and youth care centre, or a person in whose care or temporary safe care that child has been transferred and placed.

(3) The fees referred to in sub-regulation (1) are payable from the date of arrival of the child at the person or centre referred to in that sub-regulation.

(4) For the purposes of section 171(2) of the Act, the monthly fees payable by a provincial department of social development in respect of a child in alternative care in that province ("sending province"), must, upon transfer of that child to a child and youth care centre or to a person in another province ("receiving province"), be terminated by the sending province and must be paid, in accordance with the rates applicable in the receiving province.

(5) The fees referred to in sub-regulation (3) are payable from the date of arrival of the child in the receiving province, by the provincial department of social development in such other province until the child is transferred, removed or discharged from the child and youth care centre or from the care of a person in such other province.

Change in residential care programme

172. (1) The provincial head of social development in the relevant province may, subject to subsection (3), determine that-

(a) a child in a child and youth care centre be released from a residential care programme;

(b) another residential care programme be applied to such a child; or

(c) an additional residential care programme be applied to such a child.

(2) To give effect to subsection (1), the provincial head of social development may transfer the child to another child and youth care centre or to a person in terms of section 171.

(3) No determination in terms of subsection (1) may be carried out without ratification by a children's court if that determination requires that a residential care programme be applied to the child, which programme-

(a) includes the secure care of a child; or

(b) is more restrictive than the child's current residential care programme.

Removal of child already in alternative care

173. (1) The provincial head of social development in the relevant province may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child, pending any action in terms of subsection (2)-

(a) be removed from the child and youth care centre or person in whose care or temporary safe care the child is; and

(b) be put in temporary safe care at a place specified in the notice.

(2) The provincial head of social development must, within six months from the date on which a child has been moved and placed in temporary safe care in terms of subsection (1) and after such inquiry as the provincial head of social development may consider necessary-

(a) transfer the child in terms of section 171;

(b) discharge the child from alternative care in terms of section 175; or

(c) issue a notice directing that the child be returned to the child and youth care centre or person in whose care or temporary safe care the child was immediately before the subsection (1) notice was issued.

Provisional transfer from alternative care

174. (1) A provincial head of social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be provisionally transferred from alternative care into another form of care that is not more restrictive, as from a date specified in the notice, for a trial period of not more than six months.

Procedures before issue of notice of provisional transfer of child from alternative care

60.(1) The procedure for assessing the best interest of the child before the issue of a notice of provisional transfer of the child from alternative care as contemplated in section 174(1) of the Act comprises of an assessment-

(a) which must be conducted by a designated social worker in consultation with —

(i) the parent, guardian or care-giver of the child or the person in whose custody the child had been prior to placement in alternative care, if available, and provided that their parental responsibilities and rights have not been terminated; or

(ii) the foster parent, the head of the child and youth care centre or the head of the facility, place or premises where the child had been placed in temporary safe care, as the case may be; and

(iii) the child himself or herself; and

(b) which must take account of—

(i) the child's basic need for love, parental care and permanent family life;

(ii) the child's need for protection and security;

(iii) the child's physical and psychological well-being;

(iv) the ascertainable wishes and feelings of the child, considered in the light of his or her age and understanding;

(v) the likely effect on the child of any changes in his or her circumstances;

(vi) the child's age, sex, background and any individual characteristics;

(vii) the harm which the child has suffered; and

(viii) the capability of the child's immediate family or family members to meet the child's needs; and

(c) the outcome of which must be contained in a report that addresses all factors referred to in paragraph *(b)*.

(2) Before a child can be reunited with his or her immediate family or other family members and a notice of provisional transfer of the child from alternative care as contemplated in section 174(1) of the Act can be issued a designated social worker rendering family reunification services, must compile a report in consultation with-

(a) the parent, guardian or care-giver of the child or the person in whose custody the child had been prior to placement in alternative care;

(b) the foster parent, the head of the child and youth care centre or the head of the facility, place or premises where the child had been placed in temporary safe care, as the case may be; and

(c) the child himself or herself; and

(3) A report contemplated in sub-regulation (2) must -

(a) be based on the developmental assessment of the child and his or her ecological circumstances, and which report must reflect the existing and future individual developmental and permanency plans for the child to meet developmental and permanency goals as stipulated in the plans;

(b) reflect the incidence of parental contact or contact by relatives with the child during the period of his or her placement in alternative care; and

(c) include a fully motivated recommendation-

(i) on the possibility or desirability of reunifying the child with his or her immediate family or other family members; and

(ii) if family reunification is desirable, on the nature of activities which can be employed to promote an environment conducive to the development of the strengths and skills of the parent, guardian, care-giver, family members and the child.

(4) The reports contemplated in sub-regulations (1)(c) and (2) may be combined in a single report and must be submitted to the provincial head of social development as soon as possible.

(2) A notice of provisional transfer in terms of subsection (1) may be issued only after-

(a) procedures prescribed by regulation have been followed-

(i) to assess the best interest of the child; and

(ii) to reunite the child with the child's immediate family or other family members, if applicable; and

(b) a report on such assessment and reunification has been submitted to and considered by the provincial head of social development.

(3) Provisional transfer must be managed by a designated social worker to establish the feasibility of-

(a) reunification of the child with the child's immediate family or other family members;

(b) integration into another family; or

(c) a transfer to another child and youth care centre of any other form of placement.

(4) The provincial head of social development-

(a) must revoke the transfer if the child so requests and the social worker so recommends; and

(b) may at the end of or at any time during the trial period confirm the child's placement or discharge the child from alternative care in terms of section 175.

(5) The notice of provisional transfer shall be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

Discharge from alternative care

175. (1) The provincial head of social development in the relevant province may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be discharged from alternative care as from a date specified in the notice.

(2) A notice of discharge in terms of subsection (1) may be issued only after-

(a) procedures prescribed by regulation have been carried out-

(i) to assess the best interest of the child; and

(ii) to reunite the child with the child's immediate family or other family members, if applicable; and

(b) a report on such assessment and reunification by a designated social worker has been submitted to and considered by the provincial head of social development.

(3) A notice of discharge relieves the alternative care-giver from any further responsibilities in relation to the child.

Procedure before issue of notice of discharge of child from alternative care

61. The procedure for assessing the best interest of the child and for the reunification of the child with his or her immediate family or other family members as prescribed in regulation 60 apply with the necessary changes required by the context in respect of the discharge of a child from alternative care.

Manner in which children in alternative care must be transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care

62.(1) A child in alternative care—

(a) who is to be transferred from a child and youth care centre or person to another child and youth care centre or person in terms of section 171 of the Act;

(b) whose residential care programme has been changed and is to be transferred to another child and youth care centre or person in terms of section 172 of the Act;

(c) who is to be removed from current alternative care to a specified place of temporary safe care in terms of section 173 of the Act;

(d) who is to be provisionally transferred to another form of care in terms of section 174 of the Act; or

(e) who is to be discharged from alternative care in terms of section 175 of the Act,

must be accompanied by a social worker, social service professional or escort, who must, be employed by the provincial department of social development or by an designated child protection organisation.

(2) The travel arrangements for the child and the social worker, social service_professional or escort for the purposes of sub-regulation (1) must be made by the child and youth care centre, or a person in whose care or temporary safe care the child is or the provincial department of social development.

(3) The costs related to the transport of a child in terms of this regulation, including the costs of an escort, must be paid for out of funds made available for this purpose by the provincial department of social development.

(4) A child who is being transported in terms of this regulation—

(a) may not be transported in the back of a marked police vehicle;

(b) must be allowed such reasonable breaks as may be required given the distance that is to be travelled;

(c) must have access to water and food if the distance to be travelled exceeds 100 kilometres; and

(d) must be given access to adequate overnight facilities, shelter and food in the event that the distance to be travelled requires staying over.

Remaining in alternative care beyond age of 18 years

176. (1) A person placed in alternative care as a child is entitled, after having reached the age of 18 years, to remain in that care until the end of the year in which that person reaches the age of 18 years.

(2) A provincial head of social development may on application by a person placed in alternative care as a child, allow that person to remain in that care until the end of the year in which that person reaches the age of 21 years if-

(a) the current alternative care-giver is willing and able to care for that person; and

(b) the continued stay in that care is necessary to enable that person to complete his or her education or training.

Manner in which applications for extension of alternative care beyond 18 years of age are to be made

63. An application for the extension of placement in alternative care as contemplated in section 176(2) of the Act must be made in terms of regulation 28(3)(d) of the Regulations relating to the

application for and payment of social assistance
and the requirements or conditions in respect of eligibility for social assistance made under the Social Assistance Act 2004 (Act No. 13 of 2004).

Appeal against and review of certain decisions

177. (1) A child or person aggrieved by a decision or action in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide on the appeal within 90 days of receipt thereof.

(2) A child or person who is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1) may apply to the competent division of the High Court to review that decision.

Serious injury, abuse or death of child in alternative care

178. (1) If a child in alternative care is seriously injured or abused, the management of the child and youth care centre, person or organisation in whose care or temporary safe care the child has been placed must immediately report the matter to the provincial head of social development, who must cause an investigation to be conducted into the circumstances of the serious injury or abuse.

(2) If a child in alternative care dies, the management of the child and youth care centre or person in whose care or temporary safe care the child has been placed must immediately after the child's death report such death to-

(a) the parent or guardian of the child, if he or she can be traced;
(b) a police official;
(c) the provincial head of social development; and
(d) the social worker dealing with the matter.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

Serious injury, abuse or death of child in alternative care

64. Serious injury, abuse or death of any child in alternative care must be reported in terms of section 178(1) or (2) of the Act in a form identical to **Form 40**.

FORM 40

REPORTING OF SERIOUS INJURY, ABUSE OR DEATH

OF CHILD IN ALTERNATIVE CARE

(Regulation 64)

[SECTION 178 OF THE CHILDREN'S ACT 38 OF 2005]

A. Serious injury or abuse of child in alternative care.

To: The Provincial Head of Social Development

……

……

……

……

Pursuant to section 178 of the Children's Act, 38 of 2005, you are hereby informed that a child in alternative care has been seriously injured or abused.

Details of child :
Name :
Surname :
ID number :
Date of birth :
Gender :
Age :

Date and place of serious injury or abuse :
Type of serious injury or abuse :
Brief explanation of incident of serious injury or abuse: ……
……
……..
……
……
……

Brief explanation of medical intervention: ……
……
……
……

Details of alleged abuser:
……
……
……

B. Death of child in alternative care

To: The Provincial Head of Social Development/ Police official/ Social worker/ Parent or guardian of child

……..
……..
……..
……..

Pursuant to section 178 of the Children's Act, 38 of 2005, you are hereby informed that a child in alternative care has died.

Details of child :
Name :
Surname :

ID number :

Date of birth :

Gender :

Age :

Date and place of death :

Brief explanation of incident leading to death of child: ……

……

……..……

……

……..……

……..

Brief explanation of medical intervention: ……

……

……..

……

……

I declare that the information set out above is true and correct to the best of my knowledge.

_____

Name of person in whose care or temporary safe care the child had been placed

_____

Name of organization in whose care or temporary safe care the child had been placed

Date:

Regulations

179. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 306 prescribing-

(a) the manner in which a person, facility, place or premises for temporary safe care must be approved;

(b) the criteria that a person, facility, place or premises for temporary safe care must comply with;

(c) limitations or conditions for leave of absence from alternative care;

(d) the manner in which children in alternative care must be transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care;

(e) fees payable to a child and youth care centre on transfer or provisional transfer of a child in

alternative care to that centre;

(f) the manner in which applications for remaining in alternative care beyond 18 years of age are to be made; and

(g) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 12

FOSTER CARE

(ss 180-190)

Foster care

180. (1) A child is in foster care if the child has been placed in the care of a person who is not the parent or guardian of the child as a result of-

(a) an order of a children's court; or

(b) a transfer in terms of section 171.

(2) Foster care excludes the placement of a child-

(a) in temporary safe care; or

(b) in the care of a child and youth care centre.

(3) A children's court may place a child in foster care-

(a) with a person who is not a family member of the child;

(b) with a family member who is not the parent or guardian of the child; or

(c) in a registered cluster foster care scheme.

Purposes of foster care

181. The purposes of foster care are to-

(a) protect and nurture children by providing a safe, healthy environment with positive support;

(b) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and

(c) respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity.

Prospective foster parent

182. (1) Before a children's court places a child in foster care, the court must follow the children's court processes stipulated in Part 2 of Chapter 9 to the extent that the provisions of that Part are applicable to the particular case.

(2) A prospective foster parent must-

(a) be a fit and proper person to be entrusted with the foster care of the child;

(b) be willing and able to undertake, exercise and maintain the responsibilities of such care;

(c) have the capacity to provide an environment that is conducive to the child's growth and development; and

(d) be properly assessed by a designated social worker for compliance with paragraphs (a), (b) and (c).

(3) A person unsuitable to work with children is not a fit and proper person to be entrusted with the foster care of a child.

(4) Subsections (2) and (3), read with such changes as the context may require, apply to any person employed at or involved in a nonprofit organisation managing a cluster foster care scheme.

Cluster foster care

183. (1) A cluster foster care scheme must be managed in the following manner:

(a) The organisation operating or managing the cluster foster care scheme must be a nonprofit organisation registered in terms of the Nonprofit Organisations Act, 1997 (Act 71 of 1997);

(b) the organisation referred to in paragraph
(a) must-
(i) comply with the prescribed requirements; and
(ii) have been approved for providing cluster foster care by the provincial head of social development; and
(c) the scheme in terms of which cluster foster care is provided must-
(i) comply with the prescribed requirements; and
(ii) have been registered with the provincial head of social development in the prescribed manner.
(2) The management of a cluster foster care scheme must be monitored by the provincial head of social development.

PART II
CLUSTER FOSTER CARE

Requirements for approval of organisation to manage and provide cluster foster care

67. No organisation shall manage any cluster foster care scheme unless such organisation –
(a) is registered as a non-profit organisation in terms of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997); and
(b) has been approved by the provincial head of social development to provide cluster foster care.

Requirements for registration as cluster foster care scheme

68. (1) Any organisation contemplated in section 183(1)(a) of the Act that wants to operate or manage a cluster foster care scheme must apply for that scheme to be registered with the provincial department of social development in a form identical to **Form 42**.

FORM 42

APPLICATION FOR THE REGISTRATION OF A CLUSTER FOSTER CARE SCHEME

(Regulation 68)

[SECTION 183 OF THE CHILDREN'S ACT 38 OF 2005]

(A) PARTICULARS OF APPLICANT

Name of applicant: _____
NPO number: _____
Physical address:_____
_____
Postal address: _____
_____ Postal code: _____
Physical address; _____
_____
Telephone : _____ Cell phone: _____
Fax number:_____ E-mail: _____
Names of Office
Bearers_____
_____
_____
_____
_____
_____

(B) PARTICULARS OF THE CLUSTER FOSTER CARE SCHEME

Name of cluster foster care scheme _____
Physical address:_____
_____
Postal address_____
Geographical area/locality in which cluster foster care scheme will operate
_____
Names and identity numbers of office bearers of cluster foster care scheme (if applicable)
_____
_____
_____
_____
_____
_____

(B) SUPPORTING DOCUMENTS

The following supporting documents must accompany the application:

- A description of the manner in which the cluster foster care scheme will provide services, programmes and support to children and to the active members of the organisation who are to be assigned responsibility for the foster care of such children

- Details of the number of children the scheme proposes to receive, the numbers of active members that it is proposed will provide foster care, and the proposed allocation of children to active members who will be assigned responsibility for their foster care

- Any additional details concerning the children the cluster foster care scheme will receive (e g special needs, language or culture)

- Details of the proposed management of the scheme, including financial management and the manner in which foster parents will be recruited.

- Details concerning the employment of a social worker(s) or particulars of the formal agreement with a designated child protection organisation to provide child protection services

- a clearance certificate that the name of the applicant and any office bearers referred to in this application do not appear in the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act.

- Evidence of skills, qualifications and prior experience of the applicant in the field of child care and development

(C) GENERAL REMARKS

Any additional remarks by the applicant in support of the application:
_____
_____
_____
_____
_____
_____
_____

I certify that the above-mentioned particulars are, to the best of my knowledge, true and correct.

_____ _____ _____
SIGNATURE OF APPLICANT CAPACITY DATE

(2) Upon granting an application contemplated in sub-regulation (1) the provincial head of social development must issue to the applicant a certificate of registration in a form identical to **Form 43** and may impose such conditions as he or she deems necessary or expedient.

FORM 43
CERTIFICATE OF REGISTRATION OF A CLUSTER FOSTER CARE SCHEME
(Regulation 68)
[SECTION 183 OF THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that the following cluster foster care scheme_____ managed or operated by _____(insert name of nonprofit organisation managing or operating the cluster foster care scheme

on _____ (insert date).

Physical address of nonprofit organization :
_____
_____

Physical address of cluster foster care scheme :
_____
_____
_____

The registration or renewal of registration is subject to the following additional conditions:
_____
_____
_____
_____

_____
Provincial Head: Social Development
Province: _____
Date of issue: _____

(3) In rejecting an application for registration of a cluster foster care scheme, the provincial head of social development must duly inform the applicant of the rejection in a form identical to **Form 44** by registered post and must furnish written reasons for such rejection.

FORM 44

REJECTION OF APPLICATION FOR THE REGISTRATION OF A CLUSTER FOSTER CARE SCHEME
(Regulation 68)
[SECTION 183 OF THE CHILDREN'S ACT 38 OF 2005]

Name of applicant: _____

Name of cluster foster care scheme:

_____

Physical address of applicant: _____

_____

_____

Date of application: _____

I have refused the application for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

PROVINCIAL HEAD OF SOCIAL DEVELOPMENT

PROVINCE: _____

DATE: _____

(4) Where a non-profit organisation seeks registration for more than one cluster foster care scheme such organisation must complete a form in respect of each scheme.

(5) A head of a provincial department of social development may deregister a registered cluster foster care scheme if such scheme has failed to comply with any condition of registration or if such a scheme has failed to comply with any requirement for registration, provided that 90 days notice is given to the cluster foster care scheme in a form identical to **Form 45** of the intention to deregister such scheme.

FORM 45
NOTICE OF INTENTION TO DEREGISTER CLUSTER FOSTER CARE SCHEME

(Regulation 68)

[SECTION 183 OF THE CHILDREN'S ACT 38 OF 2005]

TO:

Name of nonprofit organisation

Physical Address

Name of cluster foster care scheme:

Physical address

I, by the authority vested in me by the Children Act, 2005, hereby give 90 days notice, which expires on _____ that the registration of the above-named cluster foster care scheme will be withdrawn, and must thereafter cease operating as a foster placement for children.

_____
Provincial Head: Social Development
Province: _____
Date of issue: _____

(6) A cluster foster care scheme which has received a notice contemplated in sub-regulation (5) may make representations to the head of the department of social development of that province in a form identical to **Form 46** within the 90 days notice contemplated in sub-regulation (5).

FORM 46

REPRESENTATIONS TO HEAD OF PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT BY CLUSTER FOSTER CARE SCHEME REGARDING NOTICE OF DEREGISTRATION

(Regulation 68)

[SECTION 183 OF THE CHILDREN'S ACT 38 OF 2005]

Name of cluster foster care scheme.

_____

Address of cluster foster care scheme.

_____

_____

Physical address of cluster foster care scheme.

_____

_____

This is a representation against a notice of deregistration of a cluster foster care scheme to the Head of Social Development of

_____
(Insert name of province)

- The reasons provided by the Head of Social Development of the decision are attached.
- My reasons for representation against the decision are attached.

_____

Representative of cluster foster care scheme.

_____

Date

(7) If a cluster foster care scheme is deregistered as contemplated in sub-regulation (5) after consideration of the representations contemplated in sub-regulation (6), the scheme must be notified thereof, together with the reasons for such decision, in a form identical to **Form 47**.

FORM 47

NOTICE OF DEREGISTRATION AFTER CONSIDERATION OF REPRESENTATION OF CLUSTER FOSTER CARE SCHEME

(Regulation 68)

[SECTION 183 OF THE CHILDREN'S ACT 38 OF 2005]

TO: _____

Name of organization

_____

Physical address

_____

_____

I, by the authority vested in me by the Children's Act, 2005, hereby give notice that the registration of the above-named cluster foster care scheme will be withdrawn and must thereafter cease operating as a cluster foster care scheme for children.

_____

Provincial Head: Social Development

Province: _____

Date of issue:
_____

Functioning and management of cluster foster care scheme

69.(1) A non-profit organisation managing or operating a registered cluster foster care scheme must, in respect of schemes under its management or operation -

(a) keep proper financial records of all social assistance and other monies received for the provision of social services for the support of the foster children placed in such scheme by a children's court; and

(b) operate or be managed according to a written plan or agreement containing details-

(i) of the financial management, the programmes and services to be delivered in terms of that plan or agreement.

(ii) about the system of assessment of children placed in cluster foster care and their placement with active members of the scheme who are to be assigned responsibility for them;

(iii) on how disputes concerning the management, operation or day to day functioning of the scheme are to be resolved, and how decisions are to be taken regarding transfer of children between, or placement with, foster parents who are active members of the scheme assigned responsibility for foster children;

(iv) on the management of the behaviour of children in cluster foster care, and must include a prohibition of physical punishment, humiliating or degrading forms of discipline of such children; and

(v) relating to mechanism by which foster children in a cluster foster care scheme can record any complaint regarding abuse or exploitation.

(2) An organisation contemplated in sub-regulation (1) must submit to the provincial head of social development an annual report containing-

(a) an annual financial report of income received and expenditure incurred;

(b) a report on the number of children and duration of each child placed in cluster foster care over the annual period;

(c) a report on the number of children allocated per active member of an organisation contemplated in section 183(1)(a) of the Act;

(d) a report on the number of active members of the organisation providing foster care to whom responsibility for the foster care of the children in the scheme have been assigned;

(e) the number of active members per physical address and details concerning any transfer of children between active members;

(f) details of child protection services rendered and in respect of which children in the cluster foster care scheme these services have been rendered;

(g) details concerning the delivery of programmes or support to children in cluster foster care or to active members of the organisation providing foster care to whom responsibility for the foster care of the children in the scheme have been assigned;

(h) any detail concerning the provision of services to meet the needs of children with special needs;

(i) the extent to which the rights of children in cluster foster care have been met; and

(j) achievements and challenges.

(3) An organisation contemplated in sub-regulation (1) must ensure that clearance certificates, to the effect that the names of any active members providing foster care to children in the scheme do not appear in Part B of the Register or the National Register for Sex Offenders, issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively.

(4) An organisation contemplated in sub-regulation (1) must have-

(a) in its employ at least one person registered as a social worker with the Council for Social Services Professions for every 50 children served by the cluster foster care scheme or schemes that it manages or operates; or

(b) entered into a formal agreement with a designated child protection organisation to provide the required social work services.

(5) An organisation contemplated in sub-regulation (1) must ensure that the transfer of children between foster parents who are active members of that organisation is carried out in accordance with the procedure determined in section 171 of the Act.

Contents of written plan or agreement

70. A written plan or agreement contemplated in regulation 69(1)(b) may include details in respect of—

(a) visits by the manager or his or her designated subordinate from an organisation contemplated in section 183(1)(a) of the Act to the household of an active member of such organisation to whom responsibility for foster care of the child has been assigned;

(b) the roles and responsibilities of active members of the organisation to whom responsibility for foster care of a child has been assigned; and

(c) cost saving mechanisms to be adopted to the benefit of the children in the cluster foster care scheme.

Provision of services by cluster foster care scheme

71. A cluster foster care scheme must promote the best interests of the children in cluster foster care by providing services which—

(a) provide support, mentoring, supervision and advice to active members of an organisation to whom responsibility for foster care of a child or children in the cluster foster care scheme has been assigned;

(b) require the active members of an organisation to whom responsibility for foster care of children has been assigned to:

(i) ensure that the children in cluster foster care benefit from educational and health services, including early childhood development services;

(ii) fulfil the special needs of any child in cluster foster care, including chronic illness or a disability, by providing psychological, rehabilitation and therapeutic programmes for children with such needs;

(iii) ensure that the rights of children in cluster foster care are respected, protected, promoted and fulfilled; and

(iv) fulfil the social, cultural and religious needs of any child in cluster foster care.

(c) assist the active members of an organisation to whom responsibility for foster care of children has been assigned to obtain the basic necessities of life themselves, including by providing access to income-generation projects and skills development programmes as appropriate;

(d) ensure that a foster care plan as contemplated in section 188(1) *(e)* of the Act is compiled in respect of each child in cluster foster care, as soon as possible, but not later than 21 days after the child's placement in the cluster foster care scheme;

(e) develop appropriate parenting skills and the capacity of active members of an organisation to safeguard the well-being of the children, including the promotion of positive, non-violent forms of discipline;

(f) prevent the neglect, exploitation, abuse, inadequate supervision of children or other failures to meet children's needs on the part of active members of an organisation;

(g) assist a young person with the transition when leaving cluster foster care after reaching the age of 18; and

(h) involve active members of an organisation, as well as the children in cluster foster care, in identifying and seeking solutions to their problems.

Determination of placement of child in foster care

184. (1) Before a children's court places a child in foster care by court order in terms of section

156, the court must consider a report by a
designated social worker about-

(a) the cultural, religious and linguistic background of the child; and

(b) the availability of a suitable person with a similar background to that of the child who is willing and able to provide foster care to the child.

(2) A child may be placed in the foster care of a person from a different cultural, religious and linguistic background to that of the child, but only if-

(a) there is an existing bond between that person and the child; or

(b) a suitable and willing person with a similar background is not readily available to provide foster care to the child.

Number of children to be placed in foster care per household

185. (1) Not more than six children may be placed in foster care with a single person or two persons sharing a common household, except where-

(a) the children are siblings or blood relations; or

(b) the court considers this for any other reason to be in the best interest of all the children.

(2) More than six children may be placed in foster care in terms of a registered cluster foster care scheme.

Duration of foster care placement

186. (1) A children's court may, despite the provisions of section 159 (1) (a) regarding the duration of a court order, after a child has been in foster care with a person other than a family member for more than two years and after having considered the need for creating stability in the child's life, order that-

(a) no further social worker supervision is required for that placement;

(b) no further social worker reports are required in respect of that placement; and

(c) the foster care placement subsists until the child turns 18 years, unless otherwise directed.

(2) A children's court may, despite the provisions of section 159 (1) (a) regarding the duration of a court order and after having considered the need for creating stability in the child's life, place a child in foster care with a family member for more than two years, extend such an order for more than two years at a time or order that the foster care placement subsists until the child turns 18 years, if-

(a) the child has been abandoned by the biological parents; or

(b) the child's biological parents are deceased; or

(c) there is for any other reason no purpose in attempting reunification between the child and the child's biological parents; and

(d) it is in the best interest of the child.

(3) Despite the provisions of subsections (1) and (2), a social service professional must visit a child in foster care at least once every two years to monitor and evaluate the placement.

Reunification of child with biological parent

187. (1) If a children's court placing a child in foster care is of the view that reunification between the child and the child's biological parents is possible and in the best interest of the child, the court must issue the placement order subject to conditions providing for a designated social worker to facilitate such reunification as contemplated in section 156 (3) (a).

(2) If the child has not been reunited with the child's biological parents two months before the expiry of the initial court order or any extension of the order, the designated social worker appointed to facilitate the reunification must submit a report to the children's court-

(a) explaining why the child was not reunited with the biological parents; and

(b) recommending any steps that may be taken to stabilise the child's life.

(3) The children's court considering the report may-

(a) order that the designated social worker must continue facilitating the reunification; or

(b) order the termination of the reunification services if there are no prospects of reunification.

Responsibilities and rights of foster parent

188. (1) The foster parent of a child has those parental responsibilities and rights in respect of

the child as set out in-

(a) the order of the children's court placing the child in the foster care of that foster parent;

(b) the responsibilities and rights of foster parents as may be prescribed;

(c) an order of the children's court amending the initial order;

(d) an order of court assigning parental responsibilities and rights in terms of section 23;

(e) a foster care plan between the parent or guardian of the child and the foster parent; and

(f) any applicable provisions of this Act.

(2) A foster parent may not take any decisions contemplated in section 31 (1) (b) involving a child without giving due consideration to-

(a) any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development; and

(b) any views and wishes expressed by the parent or guardian of the child.

(3) Notwithstanding subsection (2), an order of the children's court may give parental rights and responsibilities 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) family reunification is not in the best interest of the child.

(4) A children's court may in terms of section 65 monitor the suitability of the placement of a child in foster care.

Responsibilities of foster parents

65.(1) A foster parent has the responsibility of providing for the day to day needs of a foster child placed in his or her care, in accordance with the definition of "care" in section 1 of the Act, which includes the responsibility to-

(a) ensure that any social assistance or financial contribution from the child's biological parent or parents is used towards the upbringing of the child and in the child's best interests;

(b) not obstruct contact between the foster child and his or her biological family members and other persons with an interest in the well-being and development of the child, including contact as provided for in any foster care plan or order of court assigning parental responsibilities and rights referred to in section 188(1)*(d)* or *(e)* of the Act, if such contact is in the best interests of the child and if those biological family members and other persons are available for the purposes of maintaining contact with the child;

(c) ensure that if the child is of school-going age, he or she attends school on a regular basis;

(d) co-operate with a designated child protection organisation or designated social worker towards the eventual re-unification of the child with his or her biological parents or family members, as the case may be, where this is indicated in the permanency plan;

(e) co-operate with a designated child protection organisation or designated social worker in any review of the possible extension of the foster care order;

(f) permit a designated child protection agency or designated social worker to have access to his or her home and to the child concerned, for the purposes of monitoring of the foster care placement, provision of reunification services, review of the foster care order or for any other matter relevant to the foster care placement;

(g) respect the views of the child and generally promote his or her well-being, best interests and physical, emotional and social development, and, where applicable, participation in early childhood development programmes;

(h) guide the behaviour of the child in a humane manner and not impose any form of physical violence or punishment, or humiliating or degrading forms of discipline;

(i) where a foster care plan has been formulated in accordance with section 188(1)*(e)* of the Act, comply with the provisions of such plan;

(j) ensure that where the child is from a different cultural, linguistic or religious background, the child is assisted to maintain links with his or her culture, language or religion; and

(k) ensure that the child is treated in a manner substantially similar to other children living in the same household, except where the special needs of that child or any other child in the household require otherwise.

(2) A foster parent must notify the designated social worker or designated child protection organisation, as the case may be, of any change of address.

(3) A foster parent may not designate the day to day care of a foster child to any other person for a continuous period of one week without agreeing thereto with the designated social worker or designated child protection organisation.

(4) A foster parent must notify the designated social worker or designated child protection organisation, as the case may be, within 14 days, of any material changes in his or her living circumstances, or his or her family's living circumstances, which are likely to have a material effect on the foster placement.

Rights of foster parents

66.(1) A foster parent has the right to take all day to day decisions necessary for the care, upbringing and development of the foster child in his or her care.

(2) A foster parent has the right to reasonable privacy of home life, and not to be subjected to threats, harassment and undue intrusions upon the exercise of his or her foster care responsibilities by biological parents or family members of the foster child.

(3) A foster parent has the right to be informed by the designated social worker or the designated child protection organisation, as the case may be, of any fact or occurrence that may substantially affect the foster placement of the child in his or her care.

(4) A foster parent has the right to apply for the adoption of the child and has the right to be informed of any application to adopt the foster child in his or her care.

(5) A foster parent may give notice that he or she has been informed of a pending application for the adoption of a foster child in his or her care, and that he or she does not wish or is unable to adopt the child or to submit an application for the adoption of the foster child, in a form identical to **Form 41**.

FORM 41

STATEMENT BY A FOSTER PARENT REGARDING THE ADOPTION OF A CHILD IN HIS OR HER FOSTER CARE

(Regulation 66)

[SECTION 188 OF THE CHILDREN'S ACT 38 OF 2005]

Note: Separate form must be used for each child.

TO: THE CLERK OF THE CHILDREN'S COURT FOR THE DISTRICT OF…….....
.....HELD AT …….. .....

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF A CHILD

I/We (1) (full names) …….

(2) (full names)……...

Id number (1)……..(2)…….

And residing at:……..

……

Being the foster parent(s) of the child……..

since…….

(full names of child)

Date of birth/ID number of child.....

Relationship to child if applicable (grandmother, aunt, cousin etc).....

hereby state that I/We have been informed of a pending application to adopt the aforementioned child and do not wish to submit an application to adopt the child concerned

---------- ----------

Foster parent 1 Foster parent 2

Place:……..

Date:…….

(6) A foster parent has the right to ongoing training and support from a social worker in order to enable such foster parent to deal effectively with a foster child and the child's biological parents.

(7) A foster parent has the right to be informed about any investigation or assessment of his or her psycho-social background.

(8) A foster parent has the right to be informed about the foster child's educational history, assessments and achievements to ensure the foster child's optimal educational needs.

Termination of foster care

189. (1) Foster care may be terminated by a children's court if it is in the best interest of the child.

(2) Before terminating the foster care of a child, the court must take into account all relevant factors, including-

(a) the bond that exists between the child and the child's biological parent, if the biological parent reclaims care of the child;

(b) the bond that developed between-

(i) the child and the foster parent; and

(ii) the child and the family of the foster parent; and

(c) the prospects of achieving permanency in the child's life by-

(i) returning the child to the 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) adoption of the child.

Regulations

190. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 306-

(a) prescribing the responsibilities and rights of foster parents;

(b) regulating the establishment, functioning and management of cluster foster care schemes;
(c) prescribing the requirements that a nonprofit organisation must comply with to be approved for the establishment and management of a cluster foster care scheme;
(d) prescribing the requirements with which a cluster foster care scheme must comply; and
(e) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 13

CHILD AND YOUTH CARE CENTRES

(ss 191-212)

Child and youth care centre

191. (1) A child and youth care centre is a facility for the provision of residential care to more than six children outside the child's family environment in accordance with a residential care programme suited for the children in the facility, but excludes-
(a) a partial care facility;
(b) a drop-in centre;
(c) a boarding school;
(d) a school hostel or other residential facility attached to a school;
(e) a prison; or
(f) any other establishment which is maintained mainly for the tuition or training of children other than an establishment which is maintained for children ordered by a court to receive tuition or training.

(2) A child and youth care centre must offer a therapeutic programme designed for the residential care of children outside the family environment, which may include a programme designed for-
(a) the reception, care and development of children other than in their family environment;
(b) the reception, care and development of children on a shared basis with the parent or other person having parental responsibilities;
(c) the reception and temporary safe care of children pending their placement;
(d) early childhood development;
(e) the reception and temporary safe care of children to protect them from abuse or neglect;
(f) the reception and temporary safe care of trafficked or commercially sexually exploited children;
(g) the reception and temporary safe care of children for the purpose of-
(i) observing and assessing those children;
(ii) providing counselling and other treatment to them; or
(iii) assisting them to reintegrate with their families and the community;
(h) the reception, development and secure care of children awaiting trial or sentence;
(i) the reception, development and secure care of children with behavioural, psychological and emotional difficulties;
(j) the reception, development and secure care of children in terms of an order-
(i) under the Criminal Procedure Act, 1977 (Act 51 of 1977);
(ii) in terms of section 156 (1) (i) placing the child in a child and youth care centre which provides a secure care programme; or
(iii) in terms of section 171 transferring a child in alternative care;
(k) the reception and care of street children; or
(l) the reception and care of children for any other purpose that may be prescribed by regulation.

(3) A child and youth care centre may in addition to its residential care programmes, offer-
(a) the provision of appropriate care and development of children with disabilities or chronic illnesses;
(b) therapeutic and developmental programmes;
(c) the treatment of children for addiction to dependence-producing substances;
(d) a programme for the treatment of children with a psychiatric condition;
(e) a programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18; or

(f) any other service that may be prescribed.

(4) The provincial head of social development must-

(a) approve any programme offered in terms of subsections (2) and (3) by a child and youth care centre; and

(b) before approving a programme, authorise a suitably qualified person to assess the content of the programme.

Strategy to ensure sufficient provision of child and youth care centres

192. (1) The Minister, after consultation with interested persons and the Ministers of Education, Health, Home Affairs and Justice and Constitutional Development, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions, giving due consideration as provided in section 11, to children with disability or chronic illness.

(2) The MEC for social development must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the establishment of an appropriate spread in the province of properly resourced, co-ordinated and managed child and youth care centres providing the required range of residential care programmes.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

(4) The provincial head of social development must maintain a record of all available child and youth care centres in the province concerned and of the programmes contemplated in section 191 offered by each centre.

Provision of child and youth care centres

193. (1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund child and youth care centres for that province.

(2) Such child and youth care centres-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with-

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed; and

(ii) the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is situated.

(3) An accredited organisation operating a child and youth care centre only qualifies for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.

National norms and standards for child and youth care centres

194. (1) The Minister must determine national norms and standards for child and youth care centres by regulation after consultation with interested persons and the Ministers of Education, Health, Home Affairs and Justice and Constitutional Development.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A residential care programme;

(b) therapeutic programmes;

(c) developmental programmes;

(d) permanency plans for children;

(e) individual development plans;

(f) temporary safe care;

(g) protection from abuse and neglect;

(h) assessment of children;

(i) family reunification and reintegration;

(j) after-care;

(k) access to and provision of adequate health care;

(l) access to schooling, education and early childhood development;
(m) security measures for child and youth care centres; and
(n) measures for the separation of children in secure care programmes from children in other programmes.

CHAPTER 14
CHILD AND YOUTH CARE CENTRES
(Sections 191 – 212 of the Act)

National norms and standards for child and youth care centres

72. The national norms and standards for child and youth care centres contemplated in section 194 of the Act are contained in **Part V of Annexure B.**

PART V

NATIONAL NORMS AND STANDARDS FOR CHILD AND YOUTH CARE CENTRES

For the purposes of section 194(2) of the Act, the following are national norms and standards for child and youth care centres:

1. Residential care programmes

(a) Children must be received in a manner and a climate which is caring and safe, and which minimises trauma and maximises developmental opportunity during engagement or admission processes.
(b) Children must receive services in a safe environment in which they are protected from physical, social and emotional harm.
(c) Children must be accommodated in a safe, healthy, well-maintained environment, which provides appropriate access to the community and which meet their needs in terms of privacy, safety and wellbeing..
(d) All reasonable measures must be taken to ensure that children and staff are safe from the risk of fire, accidents and other hazards..

2. **Therapeutic programmes**

(a) The privacy and confidentiality of children must be respected and protected.
(b) A child must have access to legal or other assistance to prepare for any court process that he or she is involved with.
(c) Children must receive emotional and social care which enables quality interaction with adults and peers, and which promotes positive, sustained relationships at school and with families, significant others and friends.
(d) Every child and youth care centre must offer a residential care programme that provides a therapeutic environment for the care and development of children.
(e) Every child must receive an effective and appropriate developmental assessment and referral service which should lead to appropriate placement.
(f) Every child must be provided with the capacity and support which enables constructive and offensive social behaviour.
(g) Therapeutic programmes must be conducted by service providers with appropriate training, support, supervision and mentoring.
(h) Therapeutic programmes must be conducted in a non-discriminatory manner.
(i) Therapeutic programmes must minimise secondary abuse and trauma.
(j) Therapeutic programmes must ensure that recipients are free to express dissatisfaction with service providers and that concerns and complaints are addressed seriously.
(k) Therapeutic programmes must be reviewed on a regular basis according to the needs of the recipients;
(l) Therapeutic programmes must be sensitive to the linguistic needs, religious and cultural norms and values of children and their families.

3. Developmental programmes

(a) A child's development plan and programme must be based on an appropriate

and competent assessment of his or her developmental needs and strengths.

(b) Every child in a child and youth care centre must have a plan and programme of care and development.

(c) Every child in a child and youth care centre must participate in formulating their care and development plans and must be informed of those plans.

4. Permanency plans for children

(a) Every child in a child and youth care centre must have a permanency plan based on a developmental assessment of the child.

(b) The child must participate in the development of the permanency plan and be informed about the plan and any changes to it.

5. Individual development plans

(a) Children must receive services in accordance with their individual development plan which facilitates their well-being within a temporary programme and which enables them, where necessary, to make a successful transition to new circumstances.

(b) Every child in a child youth care centre has the right to a permanency plan, which include reunification, security and life-long relationships.

(c) Every child has the right to participate in formulating his or her individual development plan and to be informed about their plan, and to be involved in decisions to make changes to their plan.

(d) The individual development plan must be based on an appropriate and competent assessment of their developmental needs and strengths and, where reasonably possible, be in the context of their family and community environments.

(e) The family of the child, or other persons with bonds to the child, must be involved in the child's individual development plan unless it is shown that this would not be in the best interests of the child.

(f) There must be a review of each child's placement and individual development plan at least once every six months while the child remains in the centre.

6. Temporary safe care

(a) Every child and youth care centre must provide temporary safe care to children if appropriate and if the centre allows for it.

(b) Every child should be placed in temporary safe care for the shortest period possible and for the minimum number of days per week appropriate to their needs.

(c) After reception of a child, a developmental assessment must take place to evaluate a more permanent placement of the child.

(d) Children in conflict with the law must be offered the option of diversion in a manner which protects their rights and involves them and their families in decision making.

(e) Children must be given information about their rights and responsibilities within the programme in a manner and form which takes into account their age.

7. Protection from abuse and neglect

(a) Children in child and youth care centres should be received in a caring and safe climate which minimises trauma and maximises developmental opportunity.

(b) The environment should protect children from physical, social and emotional harm, and threats of harm from themselves and others.

(c) Children must be given information about their rights and responsibilities within the programme.

(d) Children must be informed about policy and procedure regarding reportable incidents or actions and must be provided with information and knowledge

which ensure that they can use these procedures effectively when needed.

8. *A*ssessment of children

(a) Assessment of a child in a child and youth care centre must be undertaken by a multi-disciplinary team.

(b) The initial assessment must take place within 48 hours of the child's admission to the centre, and there must be regular reviews of the process.

(c) Assessment must be strengths-based, holistic and appropriate to the child's culture, language and developmental stage.

(d) Assessment must be done with the participation of the child and, as far as it is reasonably possible, with the child's family.

(e) The assessment process must aim to increase insight and competency and must include shared decision-making.

(f) Assessment processes and documentation must be of such a nature that they can be used at the point of reception, and do not need to be repeated.

9. Family reunification and reintegration

Every child should have a care plan which aims to provide life-long relationships with their family or appropriate alternative and re-integration in the family and community within the shortest possible time-frame.

10. Aftercare

Children should receive after care programmes focussing on support in terms of training and education, employment, independent living, family and community integration and psychosocial support.

11. Access to and provision of adequate health care

All children in child and youth care centres must have access to health care services, and where the centre is registered to provide-

(i) care for children with disabilities and chronic illnesses in terms of section 191(3)*(a)* of the Act; or

(ii) treatment for children addicted to dependence producing substances in terms of section 191(3)*(c)* of the Act, such care or treatment.

(iii) where there are a large number of babies in a centre,

such care or treatment.

12. Access to schooling, education and early childhood development

(a) All children in child and youth care centres must have access to schooling, education, other appropriate training, skills programmes or early childhood development programmes where appropriate.

(b) The education must as far as possible, be accessed at a school or other training facility in the community.

(c) Where children cannot access education or other appropriate training in the community, such education or training must be provided at the child and youth care centre.

13. Security measures for child and youth care centres

(a) Children must experience safety and feel cared for.

(b) Premises must be safe.

(c) There must be adult supervision at all times.

(d) All reasonable precautions must be taken to protect children and staff from the risk of fire, accidents or other hazards.

(e) A first aid kit must be available and maintained.

(f) Where obvious signs of injury or trauma are detected, a child must be referred to a hospital or clinic for further assessment and treatment, and his or her parents or care-giver be informed thereof as soon as possible, if their whereabouts are known.

(g) Where it is suspected that a child may have been abused and in need of child protection services, such child must be referred to a designated child protection organisation.

14. Measures for the separation of children in secure care programmes from children in other programmes.

(a) Children in secure care programmes must as far as reasonably possible be kept separately from children in other programmes. Such children must be separated at night, and where they are not separated during the day this must be managed as part of a residential care programme that provides appropriate containment.

Children in secure care programmes who are awaiting trial and children in secure care programmes who have been sentenced may be housed in the same facility, provided that the child and youth care centre is registered to provide appropriate programmes for such children, and that the residential care programmes provide for appropriate containment

Part 1
Establishment and registration of child and youth care centre
(ss 195-207)

Establishment of child and youth care centre by organ of state

195. The MEC for social development must, from money appropriated by the relevant provincial legislature, establish and operate child and youth care centres for that province.

Existing government children's home, place of safety, secure care facility, school of industry and reform school

196. (1) As from the date on which section 195 takes effect-

(a) an existing state operated children's home established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191 (2) (a);

(b) an existing state operated place of safety established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing residential care programmes referred to in section 191 (2) (c) and (e);

(c) an existing state operated secure care facility established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191 (2) (h);

(d) a government industrial school established in terms of section 33 of the Children's Protection Act, 1913 (Act 25 of 1913) and maintained as a school of industries in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191 (2) (i); and

(e) a reformatory established in terms of section 52 of the Prisons and Reformatories Act, 1911 (Act 13 of 1911) and maintained as a reform school in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191 (2) (j).

(2) The provincial department of education must provide education to the children in the facilities mentioned in paragraphs (d) and (e).

(3) A school of industries referred to in paragraph (d) and a reform school referred to in paragraph (e) which are the responsibility of a provincial department of education on the date when this section comes into operation becomes the responsibility of a provincial department of social development within two years of the commencement of this chapter.

(4) All existing government children's homes, places of safety, secure care facilities, schools of industries and reform schools must be registered as child and youth care centres within two years of the commencement of this chapter.

Establishment of child and youth care centre

197. Any national or provincial state department responsible for social development, municipality and accredited organisation may establish and operate a child and youth care centre provided that the centre-

(a) is registered with the relevant provincial department of social development;

(b) is managed and maintained in accordance with this Act and any conditions subject to which the centre is registered;

(c) complies with the prescribed national norms and standards as contemplated in section 194 and such other requirements as may be prescribed; and

(d) complies with the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is or is to be situated.

Existing registered children's home and registered shelter

198. (1) As from the date on which section 197 takes effect an existing privately operated children's home registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of section 197 as a child and youth care centre providing a residential care programme mentioned in section 191 (2) (a).

(2) A children's home referred to in subsection (1) is regarded to be a registered child and youth care centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 203 before the expiry of that period.

(3) An existing shelter registered in terms of the Child Care Act must register as a child and youth care centre within a period of five years from the date on which this section takes effect.

Application for registration or renewal of registration

199. (1) An application for registration or conditional registration of a child and youth care centre established as referred to in section 197 or for the renewal of such a registration must-

(a) be lodged with the provincial head of social development in the relevant province in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by-

(i) a certified copy of the constitution or founding document of the child and youth care centre;

Constitution or founding document of child and youth care centre

88.(1) Every child and youth care centre must operate according to a constitution or founding document.

(2) A constitution or founding document must, include the following particulars:

(a) the name of the organisation operating the child and youth care centre;

(b) the name of the child and youth care centre;

(c) the objectives of the child and youth care centre;

(d) principles of the child and youth care centre, if any;

(e) the structure of the child and youth care centre, including the management board and the appointment of members;

(f) financial matters;

(g) general administration;

(h) procedure for amendment of the constitution or founding document; and

(i) dispute resolution procedures.

(ii) a certificate issued by the municipality in which the child and youth care centre is or is to be situated certifying that the premises in which the centre is or is to be accommodated complies with all structural, safety, health and other requirements of the municipality and any applicable legislation; and

(iii) any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the

provincial head of social development may
determine.

(3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Application for registration of child and youth care centre

78.(1) An application for the registration, conditional registration of a child and youth care centre by an organisation referred to in section 197 of the Act or renewal of such registration must be lodged with the provincial head of social development of the province in which the facility is situated in a form identical to **Form 48**.

FORM 48
APPLICATION FOR THE REGISTRATION /CONDITIONAL REGISTRATION/ RENEWAL OF REGISTRATION
OF A CHILD AND YOUTH CARE CENTRE
(* Delete which is not applicable)
(Regulation 78)
[SECTION 199 OF THE CHILDREN'S ACT 38 OF 2005]

This is an application for:

- Registration in terms of section 199
- Conditional registration in terms of section 201
- Renewal of registration in terms of section 199

(A) PARTICULARS OF APPLICANT

Name of child and youth care centre: _____

Physical address:_____

_____

Postal address: _____

_____ Postal code: _____

Name of person or body who manages the child and youth care centre or who wishes to establish it: _____

Physical address of person or body: _____

_____

Telephone : _____ Cell phone: _____

Fax number:_____ E-mail: _____

Accreditation reference number: _____

(B) MANAGEMENT BOARD

Constitution of the management board:

Chairperson :_____

Vice-chairperson : _____

Secretary : _____

Treasurer : _____

Member : _____

Member : _____

Member : _____

Member : _____

Committees (state nature and number of members:

(a) Nature :_____ Number: _____

(b) Nature :_____ Number: _____

(c) Nature :_____ Number: _____

(d) Nature :_____ Number: _____

Auditors

Name : _____

Address : _____

_____

_____

Telephone number : _____

Registration number : _____

(C) STAFF

Staff provision (names of incumbents not required)

Designation	Sex	Salary or remuneration	Skills, qualifications and experience

(Further particulars must be furnished in an annexure)

If disabled children or children with specials needs are to be catered for state the proposed staff provision:

_____

_____

_____

(D) BUILDINGS, SITE AND EQUIPMENT

Extent of premises:

_____

Extent of buildings:

_____

Extent of playgrounds:

_____

Rooms and amenities for use by children:

Type	Number	Floor space
Bedrooms: Boys Girls		
Dining room		
Kitchen		
Bathrooms Boys Girls		
Washbasins Boys Girls		
Showers Boys Girls		
Toilets Boys Girls		
Recreation rooms		
Isolation room		
Others		

Are all the rooms properly furnished according to community practices and standards:

_____

State what provisions has been made for recreation:

Indoors:

_____

Outdoors:

_____

(E) CHILDREN

Provide details regarding the programme or programmes to be offered:

_____

_____

_____

_____

Total number of children that will be accommodated: _____

Boys: _____

Girls: _____

Particulars of children (reply yes or no):

Destitute and neglected children:

Abused children:

Children with substance abuse challenges:

Children with behaviour challenges:

Children with developmental or psychological disabilities:

Children with physical disabilities (also state nature);
Abandoned children:

Children previously living on the street:

Arrangements for medical and dental care:

Arrangements for education:

Arrangements for religious instruction:

(F) GENERAL

State whether the premises is the property of the applicant:

If rented premises, state monthly rent:

Sate whether the child and youth care centre possesses any other fixed assets:

(G) SUPPORTING DOCUMENTS

The following supporting documents must accompany the application:

- A certified copy of the constitution or founding document of the child and youth care centre as prescribed by section 200(1)(c)(i) of the Act;
- a business plan containing the information as prescribed by regulation 78(2);
- the staff composition employed at a child and youth care centre as prescribed by regulation 78(2));
- the financial statements of the child and youth care centre including an exposition of the funds available to operate the child and youth care centre as prescribed by regulation 78(2);
- the emergency plan as prescribed by regulation 78(2); and
- clearance certificates that the names of any Board member appointed in terms of regulation 15 and the names of any employee do not appear in the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act as prescribed by regulation 78(2).

(H) REMARKS

Any additional remarks by the applicant in support of the application: _____

_____

_____

I certify that the above-mentioned particulars are, to the best of my knowledge, true and correct.

_____	_____	_____
SIGNATURE OF APPLICANT	CAPACITY	DATE

(2) An application contemplated in sub-regulation (1) must contain the following particulars:

(a) The particulars of the applicant;
(b) the physical and postal address of the child and youth care centre;
(c) the constitution of the applicant;
(d) the committees functioning under the management board of the applicant, if any, and the nature of their functions;
(e) the staff composition employed at a child and youth care centre, including staff for the care of children with special needs or disabilities;
(f) the extent of the premises, buildings and playgrounds;
(g) particulars on rooms and amenities for use by children;
(j) particulars of the children that will be or are being cared for at the child and youth care centre;
(k) access to the building by children with disabilities; and
(l) a business plan containing-
(i) a vision;
(ii) a mission;
(iii) a child protection plan;
(iv) short, medium and long term goals
(v) action plans indicating the measures in terms of which those goals referred in sub-paragraph (iv) are to be achieved;
(vi) a detailed description of the programme or programmes to be offered in terms of section 191(2) of the Act; and

(vii) a certificate issued by the relevant authority to the effect that the child and youth care centre complies with national and local building regulations.

(m) the financial statements of the child and youth care centre including an exposition of the funds available to operate the child and youth care centre;

(n) a daily menu and a daily programme of the child and youth care centre;

(o) an emergency plan; and

(p) clearance certificates issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively to the effect that the names of any member of the management board appointed in terms of regulation 84 and that of any employee do not appear in Part B of the National Child Protection Register or the National Register for Sex Offenders, respectively.

(3) A provincial head of social development may allocate a designated social worker or social service professional to render assistance to an applicant in the preparation of an application for registration.

Notice and objection to application

79. The provincial head of social development who has received an application for the registration of a child and youth care centre must:

(a) publish a notice that such an application has been received by him or her, in a local newspaper circulating in the area where the child and youth care centre is or will be situated in at least three official languages within 14 days of the receipt of such an application; and

(b) indicate in the notice referred to in paragraph (a) that the application is available for scrutiny, comment and objection for a period of 21 days after publication of the notice.

Consideration of application

200. (1) The provincial head of social development must-

(a) within six months of receiving the application consider an application for registration or for the renewal of registration and either refuse the application or grant the registration or renewal with or without conditions, having regard to subsection (2);

(b) issue to the applicant a certificate of registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

(2) When deciding an application the provincial head of social development must take into account all relevant factors, including whether-

(a) the child and youth care centre complies with-

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed; and

(ii) the structural, safety, health and other requirements of the municipality in which the child and youth care centre is or is to be situated;

(b) the applicant is a fit and proper person to operate a child and youth care centre;

(c) the applicant has the necessary skills, funds and resources available to operate the child and youth care centre;

(d) each person employed at or engaged in the child and youth care centre is a fit and proper person to assist in operating a child and youth care centre; and

(e) each person employed at or engaged in the child and youth care centre has the prescribed skills to assist in operating a child and youth care centre.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.

(4) The provincial head of social development must consider a report of a designated social worker before deciding an application for registration or renewal of registration.

(5) Notwithstanding the provisions of section 193 (3) a provincial head of social development may assist the person or organisation operating a child and youth care centre to

comply with the prescribed national norms and
standards contemplated in section 194 and such other requirements as may be prescribed.

Consideration of application

80.(1) The provincial head of social development must after receipt of the application as contemplated in regulation 78 consider the application in terms of section 200 of the Act.

(2) Upon granting an application contemplated in regulation 78(1) the provincial head of social development must issue the certificate contemplated in section 200(1)*(b)* of the Act in a form identical to **Form 49** and impose such conditions as he or she may consider necessary.

FORM 49
CERTIFICATE OF REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION
OF A CHILD AND YOUTH CARE CENTRE
(* Delete which is not applicable)
(Regulation 80)
[SECTION 200 OF THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that:

	the following child and youth care centre has been registered in terms of section 200 of the Act;
	the following child or youth care centre has been conditionally registered in terms of section 201 of the Act;
	the registration of the following child and youth care centre has been renewed in terms of section 200 of the Act; or

on _____ (insert date) until _____ (insert date) to accommodate _____ children (insert number).

Name of child and youth care centre: -
_____
Physical address of child and youth care centre:

_____

_____

_____

The validity of this registration expires on: _____ (insert date)

The registration or renewal of registration is subject to the following conditions:

_____

_____

_____

The child and youth care centre is registered to run the following programmes:

_____
_____

_____

The Department of Social Development will provide the following assistance to the child and youth care centre to comply with the conditions of registration and the national norms and standards.

_____

_____

_____

_____
Provincial Head: Social Development
Province: _____
Date of issue: _____

(3) The provincial head of social development may grant the application referred to in sub-regulation (2) for a period not exceeding five years.

(4) In refusing an application for registration or the renewal of registration of a child and youth care centre, the provincial head of social development must duly inform the applicant of the refusal in a form identical to **Form 50** by registered post and must furnish reasons for such refusal.

FORM 50

REFUSAL OF AN APPLICATION FOR THE REGISTRATION / RENEWAL OF REGISTRATION OF A CHILD AND YOUTH CARE CENTRE
(* Delete which is not applicable)
(Regulation 80)
[SECTION 200 OF THE CHILDREN'S ACT 38 OF 2005]

Name of applicant: _____

Name of child and youth care centre:_____

Physical address of child and youth care centre: _____

_____

Date of application: _____

I have refused the application for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

PROVINCIAL HEAD OF SOCIAL DEVELOPMENT

PROVINCE: _____

DATE: _____

Conditional registration

201. The registration or renewal of registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of residential care programme that may or must be provided in terms of the registration;

(b) stating the period for which the conditional registration will remain valid, which may not be longer than one year; and

(c) providing for any other matters that may be prescribed.

Amendment of registration

202. The provincial head of social development in the relevant province may on application in the prescribed circumstances by the holder of a registration of a child and youth care centre amend the registration by written notice to that person.

Amendment of registration

81. If there is a deviation from the conditions and requirements for registration, in terms of the Act, on which the initial application for registration was granted, the holder of a registration of a child and youth care centre must, within 30 days of becoming aware of such deviation, apply to the provincial head of social development in the relevant province for an amendment of the registration.

Cancellation of registration

203. (1) The provincial head of social development in the relevant province may cancel the registration of a child and youth care centre by written notice to the registration holder if-

(a) the centre is not maintained in accordance with-

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed;

(ii) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated;

(iii) any organisational development plan established for the centre as part of the quality assurance process in terms of section 211; or

(iv) any other requirements of this Act;

(b) any condition subject to which the registration or renewal of registration was issued is breached;

(c) the registration holder or the management of the centre contravenes or fails to comply with a provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to operate a child and youth care centre; or

(e) a person who is not a fit and proper person to assist in operating a child and youth care centre is employed at or involved in activities at the centre.

(2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.

(3) The provincial head of social development may in the case of the cancellation of a

registration in terms of subsection (1) (a), (b), (c)
or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) The Director-General or a provincial head of social development may assist a registration holder to comply with-

(a) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed;

(b) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated; or

(c) any provisions of the organisational development plan established for the centre in terms of the quality assurance process contemplated in section 211, where the cancellation was due to a failure to comply with those national norms and standards, requirements or process.

(5) The cancellation of a registration which has not been suspended takes effect from a date specified in the notice referred to in subsection (1), which may not be earlier than 90 days from the date on which that notice was given, except if-

(a) the provincial head of social development and the holder of the registration agree on an earlier date; or

(b) the safety or protection of the children in the centre requires an earlier date.

(6) The provincial head of social development, pending an appeal contemplated in section 207, may suspend the operation of a child and youth care centre, whether registered or not.

Notice of enforcement

204. (1) A provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person or organisation operating an unregistered child and youth care centre-

(i) to stop operating that centre; or

(ii) to apply for registration in terms of section 199 within a period specified in the notice; or

(b) a person or organisation operating a registered child and youth care centre otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered child and youth care centre and who is instructed in terms of subsection (1) (a) (ii) to apply for registration within a specified period may, despite the provisions of section 197 regarding the establishment of child and youth care centres, be given permission by the provincial head of social development to continue operating the centre during that period and, if that person or organisation applies for registration, until that application has been finalised.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a person or organisation operating a child and youth care centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the person or organisation referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Voluntary closure of child and youth care centre

205. The holder of a registration of a child and youth care centre who voluntarily closes a child and youth care centre must-

(a) give written notice to the provincial head of social development in the relevant province; and

(b) surrender the certificate of registration to the provincial head of social development for cancellation.

Child in child and youth care centre to be closed

206. If a child and youth care centre is to be closed as a result of the cancellation of its registration in terms of section 203 or voluntary closure of the centre in terms of section 205 every

child placed in that centre must be transferred in terms of section 171.

Appeal against and review of certain decisions

207. (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1), may apply to the competent division of the High Court to review that decision.

Appeal against certain decisions

90. An applicant or a registration holder aggrieved by a decision of a provincial head of social development may appeal against such decision to the MEC for social development of that province in a form identical to **Form 51** within 90 days of the receipt of such decision.

FORM 51

AN APPEAL AGAINST A DECISION OF A PROVINCIAL HEAD IN TERMS OF SECTION 207 OF THE ACT IN RESPECT OF A CHILD AND YOUTH CARE CENTRE
(Regulation 90)
[SECTION 207 OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Name of child and youth care centre: _____

Physical address of child and youth care centre: _____

_____

This is an appeal against a decision of the provincial head of social development of _____ (Insert name of province) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision against which this appeal is lodged (Indicate yes or no)	Grounds on which the appeal is lodged
	Section 200: Consideration of new application for registration
	Section 200: Consideration of application for renewal of registration
	Section 201: Conditions on which registration was granted
	Section 203: Cancellation of registration
	Other grounds of appeal

The reasons provided by the provincial head of social development for his or her decision are attached.

My reasons for appealing against the decision

are also attached.

_____

APPLICANT OR REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the MEC for social development in the province where the decision was taken by the provincial head of social development.

Part 2
Operation and management of child and youth care centre
(ss 208-211)

Management board

208. (1) Each child and youth care centre must have a management board consisting of no fewer than six and no more than nine members.

(2) The members of a management board are appointed by-

(a) the MEC for social development in the relevant province in accordance with a prescribed procedure, in the case of a child and youth care centre which is operated by the province; and

Appointment of management board

84.(1) If a child and youth care centre is established and operated by a department, a provincial department of social development, or municipality in terms of section 197 of the Act, the management board must be appointed according to the following procedure:

(a) a call for nominations for members of the board must be advertised by the Minister, MEC or the Mayor in a local newspaper in the area where the child and youth care centre is situated, and must be published in at least three official languages;

(b) any person may be nominated, provided that the nomination is made in writing and is accompanied by a *curriculum vitae* of the nominee, as well as a letter indicating that he or she agrees to the nomination;

(c) Upon receipt of the nominations a short list of candidates of not more 15 candidates must be submitted to the Minister, MEC or the Mayor;

(d) the Minister, MEC or the Mayor must, from the list referred to in paragraph (c), and subject to sub-regulation (4) and paragraphs (e) to (g), appoint the following:

(i) not more than two from the public service;

(ii) not more than three from the community in which child and youth care centre is situated;

(iii) one member from the health profession;

(iv) one member of staff;

(v) one member who is a representative of residents of the child and youth care centre; and

(vi) the manager of the child and youth care centre;

(e) no person with a conflict of interests, or a potential conflict of interests may be appointed to a management board;

(f) subject to paragraph *(g)*, a board is appointed for a period of five years; and

(g) in order to allow for effective leadership transition, the Minister, MEC or the Mayor may extend the period of membership of any four members appointed by him or her, for a second five year period.

(2) If a child and youth care centre is a privately operated child and youth care centre, the management board must be appointed by the registration holder in terms of the same procedure as contemplated in sub-regulation (1) and subject to the provisions of sub-regulations (3) and (4).

(3) The registration holder may, instead of persons referred to in sub-regulation (1)(d)(i), appoint any other person that he or she deems appropriate.

(4) No person who has not submitted a clearance certificate, to the effect that his or her name does not appear in Part B of the National Child Protection Register or the National Register for Sex Offenders, issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively, may be appointed to a management board.

(5) Any vacancy on a management board must be filled in the same manner in which the member who vacates that office was appointed, provided that any member so appointed shall hold office for the unexpired portion of the period for which the member whose office became vacant was appointed.

(6) A member of a management board must vacate office if –

(a) at any stage, he or she ceases to comply with the provisions of sub-regulation (1)(d), (3) or (4);

(b) he or she resigns after giving at least 30 days notice in writing to the chairperson, Minister, MEC Mayor or registration holder referred to in 208(2)(b) of the Act, whichever is appropriate; or

(c) in the case of a chairperson, he or she resigns by way of a letter to the Minister, MEC or Mayor in respect of a board constituted in terms of 208(2)*(a)* of the Act or to the registration holder, in respect of a board constituted in terms of section 208(2)*(b)* of the Act;

(b) the registration holder in accordance with a prescribed procedure, in the case of a privately operated child and youth care centre.

(3) In appointing members of the management board, equitable representation by all stakeholders, including the community in which the child and youth care centre is located, must be ensured.

(4) No person unsuitable to work with children may be appointed or continue to serve as a member of a management board.

(5) A management board functions in terms of the Regulations, and may exercise the powers and must perform the duties conferred on it in terms of this Act.

Functioning of management board

85. A management board appointed in terms of regulation 84 must function according to the following procedures:

(a) A management board must meet at least four times a year;

(b) a chairperson must be elected at the first meeting of the board;

(c) the quorum for a meeting of the management board is constituted by a simple majority of its members;

(d) the decisions of the board must as far as possible be made by consensus, but where the matter is put to the vote, a simple majority prevails, and where the votes are split equally the chairperson has the casting vote;

(e) the board may request the attendance of or a report by any member of staff, and may be addressed by any child who is resident at the centre, either at the request of the child or at the board's own request;

(f) minutes must be taken at all meetings, which must include a summary of the discussions and a record of all decisions taken;

(g) the minutes of the previous meeting must be circulated together with an agenda at least two weeks prior to the following meeting, provided that if the meeting is called urgently, this rule may be dispensed with by the chairperson; and

(h) the board may decide on its own procedures regarding matters on which these regulations are silent, provided that there is consensus regarding such procedures, failing which the procedure set out in paragraph *(d)* must be followed.

Responsibilities of management board

86.(1) The management board must ensure that-

(a) its members are trained in the legal framework in terms of which child and youth care centres operate; and

(b) its members perform their duties in good faith and in a manner they reasonably believe to be in the best interests of the children residing in the child and youth care centre.

(2) A management board must-

(a) provide support and advice to the manager;

(b) evaluate the performance of the manager;

(c) review and approve the annual budget for the child and youth care centre;

(d) monitor, review and approve the business plan of the centre; and

(e) ensure that assets of the centre are maintained and protected.

(3) A management board must ensure that it receives regular written reports from the manager.

(6) The management board must create a children's forum as part of the management board to ensure the participation of resident children in the operation of the centre, taking into consideration the age, maturity and stage of development of the children.

Manager and staff of child and youth care centre

209. (1) The person or organisation operating a child and youth care centre must appoint or designate-

(a) a person as the manager of the centre; and

(b) a sufficient number of staff or other appropriate persons to assist in operating the centre.

(2) A person may be appointed or designated in terms of subsection (1) only-

(a) after following an interview process as prescribed;

Interviewing process for manager and staff at child and youth care centre

83.(1) In addition to any requirements contained in any other law relating to the appointment of staff, the following requirements must be adhered to:

(a) The position must be advertised by a person or organisation (registration holder) referred to in section 209(1) of the Act, in at least one local newspaper circulating in the area where the child and youth care centre is located;

(b) the names and *curricula vitarum* submitted must be screened by the interviewing panel that will interview the candidate;

(c) the shortlist of candidates must be subjected to thorough reference checking; and

(d) in the case of support staff referred to in regulation 82(e), the person or organisation (registration holder) referred to in section 209(1) of the Act can decide whether or not that position must be advertised and if so how.

(2) An interviewing panel must be appointed by a person or organisation (registration holder) referred to in section 209(1) of the Act and must include-

(a) at least two members of the management board where members of the management board have already been appointed;

(b) at least one person who has a qualification in child and youth care; and

(c) a community representative from the community where the child and youth care centre is situated.

(3) When selecting a suitable candidate to be appointed as the manager of a child and youth care centre, the interviewing panel must consider whether the candidate-

(a) is a registered professional from an appropriate discipline;
(b) has specialised knowledge of child and youth care work,
(c) has proven leadership ability;
(d) is able to demonstrate management and administration skills; and
(e) has knowledge and experience of the particular programme or programmes that the child and youth care centre is registered to provide.

(4) In the case of support staff referred to in regulation 82(e) a person or organisation (registration holder) referred to in section 209(1) of the Act, can decide how the interview panel is to be constituted.

(b) if that person has the skills and training as prescribed; and

Required skills of staff of child and youth care centres

82. The persons contemplated in section 209(1) must have some of the training and skills referred to in regulation 75 (1): Provided that where any such person is a professional whose profession requires registration, such person must be registered with the relevant professional body.

(c) if that person is a fit and proper to assist in operating a child and youth care centre.
(3) A person unsuitable to work with children is not a fit and proper person to assist in operating or serving at a child and youth care centre.

Management system

210. A child and youth care centre must be managed-
(a) in accordance with-
(i) a system of management that allows for a division of responsibilities between the management board and the manager of the centre and an appropriate interaction in the exercise of those responsibilities, as may be prescribed;

Management system

87.(1) The manager of a child and youth care centre is responsible for the day to day operation of the child and youth care centre.

(2) The manager and the management board must strive for a co-operative relationship characterised by openness and trust.

(3) The management board is responsible for the approval of policy.

Reporting responsibilities of staff

77. The following incidents must be reported by staff members to the manager of the child and youth care centre within an hour of the discovery or reporting of the incident:

(a) Removal or any attempted removal of a child from the child and youth care centre or programme by anyone who is not permitted to do so;
(b) any situation in which restraint, isolation, or prohibited behaviour management measures are used;
(c) accident or illness requiring medical attention or hospitalisation;
(d) allegations of physical, psychological, emotional, sexual or verbal abuse;
(e) absence of a child or young person from the centre without permission, or as otherwise agreed within the individual development plan;
(f) interventions by security personnel or the South African Police Service;
(g) the death or injury or a child;

(h) any criminal charge or conviction of a service provider, volunteer or other adult involved with the centre;

(i) any substance abuse by a service provider while on duty or when he or she arrives on duty under the influence of alcohol or drugs or he or she deals in drugs;

(j) any strike by workers at the centre; or

(k) any other unusual circumstances that are likely to affect the safety or well-being of any child at the centre.

(ii) the organisational development plan established for the centre in terms of its quality assurance process; and

(iii) any other requirements of this Act; and

(b) in a manner that is conducive to implementing the residential care programme and other programmes offered at the centre.

Behaviour management in child and youth care centres

76.(1) The manager and staff of a child and youth care centre must promote approaches to positive discipline by—

(a) ensuring that children are provided with the skills and support which enable constructive and effective social behaviour;

(b) demonstrating the expected behaviour by modelling this in their attitudes and interactions with the children;

(c) ensuring that children feel respected, and physically, emotionally and socially safe when service providers provide positive discipline; and

(d) ensuring, through programmes and effective role modelling, that children are given opportunity and encouragement to demonstrate and practise positive behaviour.

(2) The following behaviour management actions are expressly prohibited:

(a) Group punishment for individual behaviour;

(b) threats of removal, or removal from a programme;

(c) humiliation or ridicule;

(d) physical punishment;

(e) deprivation of basic rights and needs such as food and clothing;

(f) deprivation of access to family members or significant other persons;

(g) denial, outside of the child's specific development plan, of visits, telephone calls or correspondence with family members and significant other persons;

(h) isolation, except for medical reasons, from service providers or other children admitted to the place of care, other than for the immediate safety of those children or those service providers only after all other possibilities have been exhausted and then under strict adherence to policy, procedure, monitoring and documentation;

(i) restraint, other than for the immediate safety of the children or service providers and as an extreme measure, which measure must be governed by specific policy and procedures compliant with sub-regulations (3), (4) and (5), may be undertaken only by service providers trained in such measure, and must be thoroughly documented and effectively monitored;

(j) assignment of exercise or inappropriate chores;

(k) undue influence by service providers regarding their religious or personal beliefs including sexual orientation or cross-gendered identity;

(l) measures which demonstrate discrimination on the basis of cultural or linguistic heritage, gender, race, religion, sexual orientation or cross-gendered identity;

(m) verbal, emotional or physical harm;

(n) punishment by another child; and

(o) behaviour modification such as punishment or reward systems or privilege systems, other than as a treatment or development technique within a documented individual treatment or development programme which is

developed by a team
including the child and monitored by an appropriately trained multi-disciplinary team.

(3) A child may be isolated from other children, only if he or she cannot be managed and is deemed to be a danger to himself, herself or others, for a period of no longer than two hours, for the purposes of providing support and giving him or her time to regain control and dignity.

(4) *(a)* Any child isolated from other children must be under the constant observation of a social worker, child and youth care worker or psychologist, and must be provided with physical care, emotional support, and counselling which assists in re-integration into the group as soon as possible.
(b) No child may be isolated or locked up as a form of discipline or punishment.
(c) The room where a child is isolated may not be a bathroom or toilet, a windowless room, a basement room, vault or store-room.

(5) A register must be maintained which details the reasons for and the period of a child's isolation, together with a report on the support and counselling provided and the response of the child during the period of isolation.

Quality assurance process

211. (1) The provincial head of social development must ensure that a quality assurance process is conducted in respect of each child and youth care centre in the manner and at the intervals as prescribed.
(2) The quality assurance process must be done in the following manner:
(a) A team connected to the child and youth care centre must conduct an internal assessment of the centre;
(b) a team not connected to the centre must conduct an independent assessment of the centre;
(c) an organisational development plan for the centre containing the prescribed particulars must be established between the teams by agreement; and
(d) the team not connected to the centre must appoint a mentor to oversee implementation of the plan by the management of the centre.
(3) The management board of a child and youth care centre must without delay, after completion of the quality assurance process, submit a copy of the organisational development plan established for the centre in terms of the quality assurance process to the MEC for social development in the province.
(4) A provincial head of social development may assist a child and youth care centre in conducting the quality assurance process as contemplated in subsection (1).

Quality assurance process

89.(1) Every child and youth care centre must undergo a quality assurance process, as required by section 211(1) of the Act and in terms of section 211(2) of the Act, within two years of registration of such centre.

(2) The quality assurance process must be repeated periodically, at intervals of not more than three years from the date on which the previous quality assurance process was finalised.

(3) Notwithstanding the provisions of sub-regulations (1) and (2) and subject to section 211(2) of the Act, the provincial head of social development may order a quality assurance process at any time, where she or he has reason to believe that such centre has failed to comply with any provision of the Act and any regulations made in terms of the Act.

(4) An independent quality assurance team contemplated in section 211(2)*(b)* of the Act must be appointed by the provincial head of social development.

(5) A team contemplated in sub-regulation (4) must-
(a) include members from the government and the non-government sector;

(b) include at least one individual who has specific knowledge, skill and practical experience in the provision of designated child protection services;
(c) have a team leader appointed by the provincial head of social development; and
(d) include any person the provincial head of social development may deem appropriate.

Part 3
Miscellaneous
(s 212)

Regulations

212. The Minister may, where appropriate after consultation with the Ministers of Education, Health and Justice and Constitutional Development, in terms of section 306 make regulations prescribing-

(a) the procedure to be followed in connection with the lodging and consideration of-
  (i) applications for registration of child and youth care centres;
  (ii) applications for renewal or amendment of such registrations; and
  (iii) objections to applications made in terms of subparagraphs (i) and (ii);
(b) the national norms and standards that child and youth care centres must comply with;
(c) the conditions with which applicants must comply before, during or after the lodging of their applications;
(d) consultation processes that must be followed in connection with such applications;
(e) any additional factors that must be taken into account when deciding such applications;
(f) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;
(g) the format and contents of registration certificates;
(h) methods and procedures to enforce compliance with registration conditions;
(i) matters in connection with the physical attributes, operation and management of child and youth care centres, including the number of staff appointed at or designated to a child and youth care centre;
(j) matters in connection with residential care programmes provided at child and youth care centres, including the setting of criteria for-
  (i) the core components of such programmes; and
  (ii) the implementation of such programmes;
(k) the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;
(l) an assessment of and the formulation of an individual developmental and permanency plan for each child;
(m) the powers and duties of the management boards of child and youth care centres;
(n) the composition of management boards, which may include representation for staff and residents;
(o) matters relating to members of management boards, including-
  (i) appointment procedures;
  (ii) qualifications for membership;
  (iii) term of office;
  (iv) filling of vacancies; and
  (v) suspension or termination of membership;
(p) matters relating to the functioning of management boards, including-
  (i) designation and functions of presiding members;
  (ii) the convening and conduct of meetings;
  (iii) quorums; and
  (iv) the appointment and functioning of committees of a board;
(q) matters relating to training, qualifications and experience of staff of child and youth care

centres;

(r) matters relating to the responsibilities of and interaction between the management board and the staff and residents of a child and youth care centre;

(s) the reporting responsibilities of management boards and staff to the department, person or organisation operating the child and youth care centre;

(t) the format of the constitution or founding document of a child and youth care centre and the matters to be regulated in such constitution or founding document;

(u) the rights of children in child and youth care centres;

Rights of children in child and youth care centres

73. Every child who is cared for in a child and youth care centre has the right to-

(a) be informed promptly, in a language which he or she understands, of the reason for his or her admission or detention, as the case may be;

(b) have his or her parent, guardian, next of kin or significant other person informed, within 48 hours of admission, of the place to which he or she has been admitted or in which he or she is being detained, as the case may be, and of the reason for his or her admission or detention, as the case may be;

(c) regular communicate with and be visited by his or her parent or parents, guardian, next of kin, social worker, probation officer, case manager, religious counsellor, health care professional, psychologist, legal representative, child and youth care worker, unless a court order or his or her care or development programme indicates otherwise or unless he or she chooses otherwise.

(d) adequate nutrition, clothing, nurturing and to be given the same quality of care as other children in the child and youth care centre;

(e) be consulted and to express his or her views, according to his or her abilities, about significant decisions affecting him or her;

(f) reasonable privacy, possession and protection of his or her personal belongings;

(g) be informed that prohibited items in his or her possession may be removed and withheld;

(h) be informed of the behaviour that is expected of him or her by service providers, the consequences of his or her failure to meet the expectations of service providers, and assistance that he or she can expect from the service providers regarding the attaining of such behavioural expectations;

(i) care and intervention which respects, protects and promotes his or her cultural, religious, linguistic heritage and the right to learn about and maintain this heritage;

(j) positive discipline appropriate to the his or her level of development;

(k) education or training appropriate to his or her level of maturity, aptitude and ability;

(l) respect and protection from exploitation and neglect;

(m) opportunities of learning and developing his or her capacity to demonstrate respect and care for others;

(n) the necessary support and to an interpreter if language or disability is a barrier to consulting with them on decisions affecting his or her custody or care and development;

(o) privacy during discussions with people referred to in paragraph (c) unless a court order or his or her care or development programme indicates otherwise or unless he or she chooses otherwise; and

(p) have access to community activities and structures unless a court order or his or her care or development programme indicates otherwise.

(v) management, disciplinary and other practices in child and youth care centres;

Complaints procedure in child and youth care centre

74. (1) Each child and youth care centre must have a written complaints procedure, approved by the centre's management board, which must –

(a) be appropriate to the age and stage of development of the children residing at the centre;

(b) allow for children to complain about particular incidents or staff members;

(c) be accessible to the children;

(d) be structured in such a manner that it does not cause conflict;
(e) encourage restorative justice interventions, where appropriate; and
(f) allow for fair procedures for those who have allegations made against them.

(2) A child must, upon admission to the centre, be informed of the complaints procedure.

(w) matters in connection with quality assurance processes and organisational development plans established in terms of such processes for child and youth care centres, including-
(i) the composition of teams to conduct internal and independent assessments;
(ii) the qualifications of team members and the remuneration payable to members of independent teams;
(iii) the manner in which internal and independent assessments must be conducted;
(iv) the core components of organisational development plans;

Core components and implementation of programmes relating to the developmental, therapeutic and recreational needs of children.

75. (1) The core components of programmes to meet the developmental, therapeutic and recreational needs of children at a child and youth care centre are-,

(a) with regard to developmental programmes –
(i) life skills;
(ii) independent living for children disengaging from the residential care programme;
(iii) victim empowerment;
(iv) family preservation;
(v) after care;
(vi) promotion of the rights of children; and
(vii) income generating activities.

(b) with regard to therapeutic programmes –

(i) developmental assessment;
(ii) psycho-social support;
(iii) individual counselling;
(iv) group counselling;
(v) trauma counselling;
(vi) grieve counselling;
(vii) play therapy;
(viii) family therapy including parenting plans, stress management, conflict resolution, positive communication, positive discipline and behaviour change; and
(ix) counselling to children in child labour, commercial sexual exploitation and child trafficking.

(c) with regard to recreational programmes –

(i) sport;
(ii) art;
(iii) drama;
(iv) dancing;
(v) singing; and
(vi) board games

(2) In order to implement the programmes referred to in sub-regulation (1) the following must be done -

(a) a strategy for implementation must exist;
(b) the programmes must be approved by the provincial head of social development;
(c) quality assurance of the programmes must be undertaken;
(d) impact assessment of programmes must be undertaken;

(e) programmes must be evaluated and reviewed; and
(f) awareness of the availability of programmes must be raised.

(v) the implementation, revision and amendment of such plans;
(vi) the monitoring of implementation and reporting of violations of such plans; and
(vii) the qualifications, functions and remuneration of mentors appointed to oversee the implementation of such plans; and

(x) any other matter that may facilitate the implementation of this Chapter.

CHAPTER 14

DROP-IN CENTRES

(ss 213-227)

Drop-in centres

213. (1) A drop-in centre is a facility providing basic services aimed at meeting the emotional, physical and social development needs of vulnerable children.

(2) A drop-in centre must offer any of the following basic services:

(a) Provision of food;
(b) school attendance support;
(c) assistance with personal hygiene; or
(d) laundry services.

(3) A drop-in centre may offer any of the following programmes appropriate to the developmental needs of the children attending that centre:

(a) Guidance, counselling and psychosocial support;
(b) social skills and life skills;
(c) educational programmes;
(d) recreation;
(e) community services;
(f) school holiday programmes;
(g) primary health care in collaboration with the local health clinic;
(h) reporting and referral of children to social workers or social service professionals;
(i) promotion of family preservation and reunification;
(j) computer literacy;
(k) outreach services; and
(l) prevention and early intervention.

Strategy concerning drop-in centres

214. (1) The Minister, after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport must include in the departmental strategy a strategy aimed at ensuring an appropriate spread of drop-in centres throughout the Republic, giving due consideration as provided in section 11, to children with disability or chronic illnesses.

(2) The MEC for social development must-

(a) maintain a record of all the registered drop-in centres in the province concerned; and
(b) within the national strategy referred to in subsection (1), provide for a provincial strategy to ensure an appropriate spread of drop-in centres in the province.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

Provision of drop-in centres

215. (1) The MEC for social development may, from money appropriated by the relevant

provincial legislature, provide and fund drop-in centres for that province.

(2) Such drop-in centres-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with-

(i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and

(ii) the structural safety, health and other requirements of the municipality of the area where the drop-in centre is situated.

(3) The owner or manager of a drop-in centre only qualifies for funding appropriated as contemplated in subsection (1) if the centre complies with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

(4) The funding of drop-in centres must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make drop-in centres accessible to children with disabilities.

National norms and standards for drop-in centres

216. (1) The Minister must determine national norms and standards for drop-in centres by regulation after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A safe environment for the children;

(b) safe drinking water;

(c) hygienic and adequate toilet facilities;

(d) access to refuse disposal services or other adequate means of disposal of refuse; and

(e) a hygienic area for the preparation of food for the children.

CHAPTER 15
DROP-IN CENTRES
(Sections 213 – 227 of the Act)

National norms and standards for drop-in centres

91. The national norms and standards for drop-in centres contemplated in section 216 of the Act are contained in **Part VI of Annexure B.**

PART VI

NATIONAL NORMS AND STANDARDS FOR DROP-IN CENTRES

For the purposes of section 216(2) of the Act, the following are national norms and standards for drop-in centres:

1. **A safe environment for children**

(a) Children must experience safety and feel cared for while at a drop-in centre.

(b) Premises inside and outside must be clean, safe and maintained to a reasonable standard.

(c) Equipment used must be safe, clean and well maintained.

(d) There must be adult supervision at all times.

(e) All reasonable precautions must be taken to protect children and staff from the risk of fire, accidents or other hazards.

(f) A first aid kit must be available and maintained, and persons providing services at a drop-in centre must be trained to administer it.

(g) Any substances, cleaning materials or dangerous objects must be safely stored and kept out of reach of children.

(h) Where obvious signs of injury or trauma are detected, a child must be referred to a hospital or clinic for further assessment and treatment, and his or her parents or care-giver informed as soon as possible, if their whereabouts are known.

(i) Where it is suspected that a child may have been abused and in need of child protection services, such child must be referred to a designated child protection organisation.

(j) Inhumane and degrading treatment and punishment of children in a drop-in centre is prohibited..

2. **Safe drinking water**

(a) Safe and clean drinking water must always be available.

(b) Where water is not from a piped source, it must be treated and made safe using approved national guidelines for the treatment of water by adding one teaspoon of bleach to 25 litres of water.

(c) All water containers must be covered at all times.

3. **Hygienic and adequate toilet facilities**

(a) There must be safe and hygienic toilet and hand washing facilities**.**

(b) Where sewerage systems are available, there must be one toilet and one hand washing facility for every 40 children.

(c) Where no running water is available, there must be a minimum of 25 litres of drinkable water per day, bearing in mind the period of time for which the drop-in centre is open.

(d) Where no washbasins are available, one suitable container for every 20 children must be made available, provided that such container is cleaned regularly and closed.

4. **Access to refuse disposal services or other adequate means of disposal of refuse**

(a) Where possible, refuse must be disposed of according to municipality regulations.

(b) Waste must be kept out of reach of children.

(c) Waste disposal areas must be regularly disinfected.

5. **Hygienic area for the preparation of food**

(a) There must be a separate, clean and safe area for the preparation of food as well as for cleaning up after food preparation.

(b) There must be a separate space for the serving of food to children.

(c) There must be a cooling facility for the storage of perishable food.

(d) There must be a facility for the storage of food.

Drop-in centres to be registered

217. (1) Any person or organisation may establish or operate a drop-in centre provided that the drop-in centre-

(a) is registered with the provincial head of social development of the province where that drop-in centre is situated;

(b) is managed and maintained in accordance with any conditions subject to which the drop-in centre is registered; and

(c) complies with-

(i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and

(ii) the structural, safety, health and other requirements of the municipality.

(2) As from the date on which this section takes effect an existing drop-in centre registered in terms of the Child Care Act must be regarded as having been registered as a drop-in centre in terms of this section.

(3) A drop-in centre referred to in subsection (2) is regarded to be a registered drop-in centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 221 before the expiry of that period.

Application for registration and renewal of registration

218. (1) An application for registration or conditional registration of a drop-in centre or for the renewal of a registration must-

(a) be lodged, in accordance with a prescribed procedure, with the provincial head of social development in which the drop-in centre is or will be situated;

(b) contain the prescribed particulars; and

(c) be accompanied by any documents as may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of a drop-in centre before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

Application for registration of drop-in centre

92.(1) Subject to the provisions of sub-regulation (2), an application for the registration, conditional registration or renewal of registration of a drop-in centre must be lodged with the provincial head of social development of the province where the facility is situated in a form identical to **Form 52**.

FORM 52
APPLICATION FOR THE REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION
OF A DROP-IN CENTRE
(* Delete which is not applicable)
(Regulation 92)
[SECTION 218 OF THE CHILDREN'S ACT 38 OF 2005]

(A) PARTICULARS OF APPLICATION

Name of drop-in centre: _____

Physical address:_____

_____

Postal address: _____

_____ Postal code: _____

Name of person or body who manages the drop-in centre or who wishes to establish it:

_____

Physical address of person or body: _____

_____

Telephone : _____ Cell phone: _____

Fax number:_____ E-mail: _____

The number of children that will be accommodated in the drop-in centre in respect of which application is made: _____

(B) SUPPORTING DOCUMENTS

The following supporting documents must accompany the application:

- a business plan containing the information prescribed by regulation 92(3); and
- clearance certificates that the name of the applicant and the names of all staff members do not appear in the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act;

(C) GENERAL REMARKS

Any additional remarks by the applicant in support of the application: _____

_____

_____

I certify that the above-mentioned particulars are, to the best of my knowledge, true and correct.

_____ _____ _____

SIGNATURE OF APPLICANT CAPACITY DATE

(2) If the performance of the functions contemplated in sections 217 and 218 of the Act has been assigned to a municipal manager or delegated to a social service professional in the employ of the municipality, an application contemplated in sub-regulation (1) must be lodged with the municipal manager of that municipality.

(3) An application contemplated in sub-regulation (1) must, in addition to **Form 52,** be accompanied by the following:

(a) A business plan containing the-

(i) business hours of the drop-in centre;
(iii) staff composition;
(iv) supporting documents of the skills and training of staff members as required by regulation 95;
(v) disciplinary policy and rules; and
(vi) organisational structure.

(b) clearance certificates to the effect that the name of the applicant and the name of any employee do not appear in Part B of the National Child Protection Register or the National Register for Sex Offenders issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively.

Consideration of application

219. (1) The provincial head of social development must-

(a) consider an application for registration or conditional registration or for the renewal of registration, and either reject the application or grant the registration or renewal with or without conditions, having regard to subsection (2); and

(b) issue to the applicant a certificate of registration, conditional registration or renewal of registration in the prescribed form if the application is granted.

(2) When considering an application, the provincial head of social development must take

into account all relevant factors, including
whether-

(a) the drop-in centre complies with-
  (i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and
  (ii) the structural, safety, health and other requirements of the municipality and any other relevant legislation;

(b) the applicant is a fit and proper person to operate a drop-in centre;

(c) the applicant has the necessary skills, funds and resources available to operate the drop-in centre;

(d) each person employed at or engaged in the drop-in centre is a fit and proper person to assist in operating a drop-in centre; and

(e) each person employed at or engaged in the drop-in centre has the prescribed skills and training to assist in operating a drop-in centre.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a drop-in centre.

(4) The provincial head of social development must consider a report of a social service professional before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding the provisions of section 215 (3) a provincial head of social development may assist the person or organisation operating a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

Granting or rejection of application for registration

93.(1) Upon granting an application referred to in regulation 92(1), the provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 225 of the Act, the municipal manager or social service professional concerned, must issue to the applicant a certificate of registration, conditional registration or renewal of registration in a form identical to **Form 53.**

FORM 53

CERTIFICATE OF REGISTRATION / CONDITIONAL REGISTRATION / RENEWAL OF REGISTRATION

OF A DROP-IN CENTRE
(* Delete which is not applicable)
(Regulation 93)
[SECTION 219 OF THE CHILDREN'S ACT 38 OF 2005]

It is hereby certified that:

	the following drop-in centre has been registered in terms of section 219 of the Act;
	the following drop-in centre has been conditionally registered in terms of section 220 of the Act; or
	the registration of the following drop-in centre has been renewed in terms of section 219 of the Act.

on _____ (insert date).

Name of drop-in centre facility: _____

Physical address of drop-in centre:
_____

_____

_____

The validity of this registration expires on: _____ (insert date)

The drop-in centre is registered subject to the condition that the maximum number of children that may be accommodated is: _____

PLEASE SEE REVERSE SIDE

REVERSE SIDE OF FORM 53

The registration or renewal of registration is subject to the following additional conditions:

_____

_____

_____
Provincial Head: Social Development/
Municipal Official
Province/Municipality: _____
Date of issue: _____

(2) The registration contemplated in sub-regulation (1) may be for a period not exceeding five years.

(3) In rejecting an application for registration of a drop-in centre, the provincial head of social development or, where the function has been assigned to a municipality in terms of section 225 of the Act, the municipal manager or social service professional concerned, must duly inform the applicant of the refusal in a form identical to **Form 54** by registered post or by hand delivery.

FORM 54

REJECTION OF AN APPLICATION FOR THE REGISTRATION / CONDITIONAL REGISTRATION /
RENEWAL OF REGISTRATION OF A DROP-IN CENTRE
(* Delete which is not applicable)
(Regulation 93)
[SECTION 219 OF THE CHILDREN'S ACT 38 OF 2005]

Name of applicant: _____

Name of drop-in centre: _____

Physical address of drop-in centre: _____

_____

Date of application: _____

The application has been refused for the following reasons:

_____
_____
_____
_____
_____

_____
PROVINCIAL HEAD OF SOCIAL DEVELOPMENT/
MUNICIPAL OFFICIAL
PROVINCE/ MUNICIPALITY: _____
DATE: _____

Conditional registration

220. (1) The registration or renewal of the registration of drop-in centres may be granted on such conditions as the provincial head of social development may determine, including conditions-
(a) specifying the type of services that may or must be provided in terms of the registration;
(b) stating the period for which the conditional registration will remain valid; and
(c) providing for any other matters that may be prescribed.

(2) A provincial head of social development may assist a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

Cancellation of registration

221. (1) A provincial head of social development may cancel the registration of a drop-in centre by written notice to the registration holder if-
(a) the drop-in centre is not maintained in accordance with-
  (i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and
  (ii) any other requirements of this Act;
(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;
(c) the registration holder or the management of the drop-in centre contravenes or fails to comply with any provision of this Act;
(d) the registration holder becomes a person who is not a fit and proper person to operate a drop-in centre; or
(e) a person who is not a fit and proper person to assist in operating a drop-in centre is employed at or engaged in operating the drop-in centre.

(2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a drop-in centre.

(3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1) (a), (b), (c) or (e)-
(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) A provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

Notice of enforcement

222. (1) The provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person or organisation operating an unregistered drop-in centre-

(i) to stop operating that drop-in centre; or

(ii) to apply for registration in terms of section 217 within a period specified in the notice; or

(b) a person or organisation operating a registered drop-in centre otherwise than in accordance with the conditions subject to which the registration was issued, to comply with those conditions.

(2) A person or organisation operating an unregistered drop-in centre and who is instructed in terms of subsection (1) (a) (ii) to apply for registration within a specified period may, despite the provisions of section 217 regarding the establishment of drop-in centres, be given permission by the provincial head of social development to continue operating the drop-in centre during that period and, if that person or organisation applies for registration, until that application has been finalised.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a drop-in centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the owner or manager of the drop-in centre referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Appeal against and review of certain decisions

223. (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1) may apply to the competent division of the High Court to review that decision.

Appeal against certain decisions

97.(1) An appeal by an applicant or a registration holder aggrieved by a decision of a provincial head of social development must be in a form identical to **Form 56**.

FORM 56

AN APPEAL AGAINST
A DECISION OF A PROVINCIAL HEAD OF SOCIAL DEVELOPMENT IN TERMS OF SECTION 223 OF THE ACT
IN RESPECT OF A DROP-IN CENTRE
(Regulation 97)
[SECTION 223 OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Name of drop-in centre: _____

Physical address of drop-in centre: _____

_____

This is appeal against a decision of the provincial

head of social development of _____ (Insert name of province) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision against which this appeal is lodged (Indicate yes or no)	Grounds on which appeal is lodged
	Section 219: Consideration of application for registration
	Section 219: Consideration of application for conditional registration
	Section 219: Consideration of application for renewal of registration
	Section 220: Conditions on which registration was granted
	Section 221: Cancellation of registration
	Other grounds of appeal

The reasons provided by the provincial head of social development for his or her decision are attached.

My reasons for appealing against the decision are attached.

_____

APPLICANT / REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the MEC for social development in the province where the decision was taken by the provincial head of social development.

(2) An appeal by an applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality must be in a form identical to **Form 57**.

FORM 57

AN APPEAL AGAINST A DECISION OF A MUNICIPAL OFFICIAL IN TERMS OF SECTION 225(6) OF THE ACT IN RESPECT OF A DROP-IN CENTRE
(Regulation 97)
[SECTION 225(6) OF THE CHILDREN'S ACT 38 OF 2005]

Name of appellant: _____

Name of drop-in centre: _____

Physical address of drop-in centre:

_____

_____

This is appeal against a decision of municipal official of _____ (Insert name of municipality) against the exercise of his or discretion in respect of a decision relating to:

Indicate decision against which this appeal is lodged (Indicate yes or no)	Grounds on which appeal is lodged The sections stated below refers to the sections in respect of which functions have been assigned to a municipality in terms of section 225 of the Act
	Section 219: Consideration of application for registration
	Section 219: Consideration of application for conditional registration
	Section 219: Consideration of application for renewal of registration
	Section 220: Conditions on which registration was granted
	Section 221: Cancellation of registration
	Other grounds of appeal

The reasons provided by the municipal official for his or her decision are attached.

My reasons for appealing against the decision are attached.

_____

APPLICANT / REGISTRATION HOLDER

_____

DATE

NOTE: The appeal must be lodged with the municipal council of the municipality where the decision was taken.

Record and inspection of and provision for drop-in centres

224. (1) A provincial head of social development must-

(a) maintain a record of all available drop-in centres in its area; and

(b) conduct regular inspections of drop-in centres in the province in collaboration with the municipality where the drop-in centres are situated to enforce the provisions of this Act.

(2) The provincial strategy contemplated in section 214 (2) must include a strategy for the provision of drop-in centres in the province, which must include measures-

(a) facilitating the establishment of sufficient drop-in centres in the province;

(b) prioritising those types of drop-in centres most urgently required; and

(c) facilitating the identification and provision of suitable premises.

Assignment of functions to municipality

225. (1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 217, 218, 219, 220, 221, 222 and 224 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service professional in the employ of the municipality.

(4) A delegation in terms of subsection (3)-

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8) *(a)* The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may-

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

Assignment of functions to municipalities

96.(1) Before assigning all or part of the functions contemplated in section 225 of the Act, a provincial head of social development must be satisfied that the municipality concerned has-

(a) adequate staff, including social service professionals, who are suitably qualified and skilled;

(b) the ability to render assistance to build capacity to ensure compliance with the relevant norms and standards; and

(c) the capacity to manage the functions to be assigned.

(2) An agreement between a provincial head of social development and a municipality contemplated in section 225(2) of the Act must be in a form identical to **Form 55**

FORM 55

AGREEMENT BETWEEN PROVINCIAL HEAD OF SOCIAL DEVELOPMENT AND MUNICIPALITY IN TERMS OF (Regulation 96)

[SECTION 225(2) OF THE CHILDREN'S ACT 38 OF 2005]

I ----------

----------(full names) in my capacity as the Head of the Provincial Department of Social Development in the ----------Province (name of the province) and duly authorized thereto

AND

I----------(full names) in my capacity as the Mayor of the ----------name of municipality and duly authorized thereto

hereby agree that the functions contemplated in sections 217,218,219,220,221,222 and 224 (delete which is not applicable) of the Children's Amendment Act,2007 (Act No. 41 of 2007) be assigned to the Municipal Manager of the ----------(name of municipality) with effect from----------

----------(date)

SIGNED at ---------- on this ---------- day of----------

As Witnesses:

1. ……

2. ……..

_____

HEAD OF PROVINCIAL DEPARTMENT

SIGNED at ……on this ……..day of ……

As Witnesses:

1. ……

2. ……

_____

MAYOR

Serious injury, abuse or death of child in drop-in centre

226. (1) If a child is seriously injured or abused while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre or a person employed at the drop-in centre must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation into the circumstances of the serious injury or abuse to be conducted.

(2) If a child dies while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre or a person employed at the drop-in centre must immediately after the child's death report such death to-

(a) the parent, guardian or care-giver of the child, if he or she can be traced;

(b) a police official; and

(c) the provincial head of social development.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

Regulations

227. The Minister, after consultation with the Minister of Justice and Constitutional Development where review of decisions by the courts are regulated, may make regulations in terms of section 306 concerning-

(a) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of registration;

(b) the different programmes and services that may be provided in terms of such registration;

(c) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;

(d) the management of drop-in centres; and

(e) any other matter that may be necessary to facilitate the implementation of this Chapter.

[Chapters 11, 12, 13 and 14 inserted by section 10 of Act 41 of 2007]

Management of drop-in centre

94.(1) A register or registers must be kept by a drop-in centre in which the following particulars must be entered:

(a) The full name, gender, date of birth and identity number of each child;

(b) the names, addresses and contact particulars of a child's parent, primary care-giver or family member;

(c) the date of a child's admission to the drop-in centre and date of termination of attendance of the drop-in centre or, in the case of irregular attendance, the dates attended; and

(d) any disability, chronic medical condition or dietary requirement and any other critical information for the care and development of a child.

(2) A drop-in centre must keep a separate file in respect of each child in which the following information must be filed:

(a) All documents relating to the child, received at the time of admission;

(b) any document or correspondence relating to the child;

(c) reports and notes by the provider of a programme within the drop-in centre on the development of the child with particular reference to any irregular behavioural pattern or possible deviations from the normal development of the child having regard to his or her age; and

(d) reports and notes on any injury to or bruises on the child observed during the child's admission at the drop-in centre including any observations which may relate to the possible abuse of the child.

(3) A file must be kept of each staff member employed at, or volunteer providing services at, a drop-in centre.

(4) A disciplinary register must be kept in which the name of the child, the nature of the behaviour and the disciplinary measure imposed.

(5) Any register or file kept in terms of this regulation must be kept for a period of at least three years after the date of termination of attendance by a child at a drop-in centre.

(6) Any irregular or dysfunctional behaviour of a child in a drop-in centre must be brought to the attention of the parent or the care-giver of the child, where their whereabouts are known.

(7) Quarterly progress reports must be furnished to the parent or the caregiver of each child in a drop-in centre, where their whereabouts are known.

Skills and training of persons employed at or engaged in drop-in centre

95.(1) Any person rendering services to children at a drop-in centre, excluding persons who do not work directly with such children, must possess the following skills:

(a) The ability to implement a development programme in a drop-in centre;
(b) report-writing skills;
(c) skills or training on the identification of irregular and dysfunctional behaviour in a child;
(d) basic numeracy skills; and
(e) skills or training on child development.

(2) Any person employed at or engaged at a drop-in centre after registration of the centre in terms of these Regulations must provide his or her employer with-

(a) a certified copy of his or her identity document; and
(b) proof of his or her skills or training.

(3) Any person rendering services to children at a drop-in centre and who works directly with a child in such centre must be able to communicate with the child in a language, including sign language, which such child understands.

(4) If a drop-in centre renders services to children with special developmental and behavioural needs, one or more persons with specialised skills in dealing with such children must be employed or available to provide such specialised services.

CHAPTER 15

ADOPTION

(ss 228-253)

Adoption

228. A child is adopted if the child has been placed in the permanent care of a person in terms of a court order that has the effects contemplated in section 242.

Purposes of adoption

229. The purposes of adoption are to-
(a) protect and nurture children by providing a safe, healthy environment with positive support; and
(b) promote the goals of permanency planning by connecting children to other safe and nurturing family relationships intended to last a lifetime.

Child who may be adopted

230. (1) Any child may be adopted if-
(a) the adoption is in the best interests of the child;
(b) the child is adoptable; and
(c) the provisions of this Chapter are complied with.

(2) An adoption social worker must make an assessment to determine whether a child is adoptable.

(3) A child is adoptable if-
(a) the child is an orphan and has no guardian or caregiver who is willing to adopt the child;
(b) the whereabouts of the child's parent or guardian cannot be established;
(c) the child has been abandoned;
(d) the child's parent or guardian has abused or deliberately neglected the child, or has allowed

the child to be abused or deliberately neglected; or

(e) the child is in need of a permanent alternative placement.

Persons who may adopt child

231. (1) A child may be adopted-

(a) jointly by-

(i) a husband and wife;

(ii) partners in a permanent domestic life-partnership; or

(iii) other persons sharing a common household and forming a permanent family unit;

(b) by a widower, widow, divorced or unmarried person;

(c) by a married person whose spouse is the parent of the child or by a person whose permanent domestic life-partner is the parent of the child;

(d) by the biological father of a child born out of wedlock; or

(e) by the foster parent of the child.

(2) A prospective adoptive parent must be-

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

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

(c) over the age of 18 years; and

(d) properly assessed by an adoption social worker for compliance with paragraphs *(a)* and *(b)*

CHAPTER 16
ADOPTION
(Sections 228 – 253 of the Act)

Register on Adoptable Children and Prospective Adoptive Parents

98.(1) An adoption social worker who is satisfied that a prospective adoptive parent has met the requirements of sections 231(2) of the Act and section 123(1)(c) of the Act must apply for such a person's name to be registered in the Register on Adoptable Children and Prospective Adoptive Parents referred to in section 232 of the Act.

(2) An application as contemplated in sub-regulation (1) must be in a form identical to **Form 58**.

FORM 58

APPLICATION FOR THE REGISTRATION OF AN ADOPTIVE PARENT

(Regulation 98)

[SECTION 232(4) OF THE CHILDREN'S ACT 38 of 2005]

(A) APPLICATION

1. **I** _____ (full name)

an adoption social worker hereby apply for the registration of a prospective adoptive parent(s).

Place of employment:_____

Registration number

Address: _____

_____

_____

Telephone: _____

Fax: _____

E-mail:

……

2. **I** declare that I am in the process of matching prospective adoptive parents with an adoptable child.

3. **I** declare that the names of the prospective adoptive parent(s) *does/do not appear in the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 or in Part B of the National Child Protection Register established by Part 2 of Chapter 7 of the Act.

(B) **PARTICULARS OF PROSPECTIVE ADOPTIVE PARENT(S)**

1. Date of birth: (1) _____
   (2) _____
2. Identity number: (1) _____
   (2) _____
3. Marital status: ☐ Joint applicants: Date of Marriage _____

   ☐ Single applicant: *unmarried/divorced/widow(er)/married to parent of child on: _____
4. Cultural group: (1) _____
   (2) _____
5. Religious affiliation: (1) _____
   (2) _____
6. Home language: _____
7. Province: _____
8. District: _____

PLEASE SEE REVERSE SIDE

REVERSE OF FORM 58

9. Are both applicants South African citizens? | Yes | No |

   If no, state –

   (i) the nationality of: (1) _____
   (2) _____

(ii) *whether the prospective adoptive parent(s) has/have applied for a certificate(s) of naturalization as a South African citizen(s):

(1) | Yes | | No | | (2) | Yes | | No | |

(iii) whether or not proof of such application has been provided:

(1) | Yes | | No | | (2) | Yes | | No | |

I DECLARE THAT the particulars set out in the statement above are true and correct to the best of *my/our knowledge and belief.

(DATED)SIGNED at _____ this _____ day of _____ 20_____

_____

Adoption social worker

Insert an X in the appropriate and *Delete whichever is not applicable

(C) **FOR OFFICIAL USE ONLY**

The Director-General
Department of Social Development
Pretoria

Submission of an application for the registration as adoptive parent/parents together with the report of an adoption social worker for your consideration, please.

_____
Adoption social worker

_____
Initials and surname

Registration number: _____

Postal address: _____

_____

Postal code: _____

Telephone number: Code: _____ Number: _____

Fax number : Code: _____ Number: _____

(3) An adoption social worker who is satisfied that a child is adoptable as contemplated in section 230(3) of the Act must apply for such a child's name to be registered in the Register on Adoptable Children and Prospective Adoptive Parents referred to in section 232 of the Act.

(4) An application as contemplated in sub-regulation (3) must be in a form identical to **Form 59**.

FORM 59

APPLICATION FOR THE REGISTRATION OF AN ADOPTABLE CHILD

(Regulation 98)

[SECTION 232(5)(b) OF THE CHILDREN'S ACT 38 of 2005]

(A) APPLICATION

1. **I** _____ (full name) an adoption social worker hereby apply for the registration of a child as an adoptable child.

Place of employment:_____

Registration number

Address: _____

_____

_____

Telephone: _____

Fax: _____

E-mail: ……

(B) PARTICULARS OF ADOPTABLE CHILD

1. Full names and surname:
2. Date of birth: (1) _____
3. Identity number: (1) _____
4. Cultural group: (1) _____
5. Religious affiliation: (1) _____
6. Home language: _____
7. Province: _____
8. District: _____

PLEASE SEE REVERSE SIDE

REVERSE OF FORM 59

I DECLARE THAT the particulars set out in the statement above are true and correct to the best of *my knowledge and belief.

SIGNED at _____ this

_____ day of _____ 20_____

_____

Adoption social worker

(C) **FOR OFFICIAL USE ONLY**

The Director-General
Department of Social Development
Pretoria

Submission of an application for the registration as an adoptable child for your consideration, please.

_____
Adoption social worker

_____
Initials and surname

Registration number: _____

Postal address: _____

_____

Postal code: _____

Telephone number: Code: _____ Number: _____

Fax number : Code: _____ Number: _____

(5) An application as contemplated in this regulation must be lodged with the Director-General.

(6) The Director-General must inform a prospective adoptive parent and the adoption social worker who applied for registration or the renewal of such registration of his or her decision and provide the relevant registration number.

(3) In the assessment of a prospective adoptive parent, an adoption social worker may take the cultural and community diversity of the adoptable child and prospective adoptive parent into consideration.

(4) A person may not be disqualified from adopting a child by virtue of his or her financial status.

(5) Any person who adopts a child may apply for means-tested social assistance where applicable.

(6) A person unsuitable to work with children is not a fit and proper person to adopt a child.

(7) *(a)* The biological father of a child who does not have guardianship in respect of the child in terms of Chapter 3 or the foster parent of a child has the right to be considered as a prospective adoptive parent when the child becomes available for adoption.

(b) A person referred to in paragraph *(a)* must be regarded as having elected not to apply for the adoption of the child if that person fails to apply for the adoption of the child within 30 days after a notice calling on that person to do so has been served on him or her by the sheriff.

(8) A family member of a child who, prior to the adoption, has given notice to the clerk of the children's court that he or she is interested in adopting the child has the right to be considered as a prospective adoptive parent when the child becomes available for adoption.

Applications for and consent to adoption of children

99.(1) An application for the adoption of a child may be lodged by any person contemplated in section 231(1) of the Act.

(2) An application contemplated in sub-regulation (1) must be in a form identical to **Form 60** and must be lodged with the clerk of the court in the district where the child is resident.

FORM 60

APPLICATION FOR THE ADOPTION OF A CHILD

(Regulation 99)

[SECTION 231(1) OF THE CHILDREN'S ACT 38 OF 2005]

NOTE

☐ Joint applicants complete (1) and (2) ☐ Single applicant completes (1)

TO THE CLERK OF THE CHILDREN'S COURT: _____

(A) APPLICATION

1. ***I/We (1)** _____(full name)

(2) _____ (full name)

residing at _____

hereby apply for the adoption of _____

(full names of the child)

_____(*male/female), born at _____

identity number _____, residing at _____

_____

2. ***I/We request that -**

☐ *my/our identity not be disclosed to a parent or guardian of the child;

☐ *if the order is granted, the surname _____

*be conferred on the child/be retained by the child;

☐ *the parent's/guardian's consent be dispensed with for the following reasons:

☐ _____

_____

_

_____

_

_____

_

3. Notice has been taken that -

(a) *I/We may not give, undertake to give, receive or contract to receive any consideration, in cash or kind, in respect of the proposed adoption of the child, save as prescribed under the Social Work Act, 1978:

(b) a parent may withdraw his/her consent to the adoption up to 60 days after having given such consent and that the application cannot be finalised before the expiry of this period;

(c) a child who is 10 years or older, or under the age of 10 years, but of an age, maturity and stage of development to understand the implications of the withdrawal of such consent up to 60 days after having given such consent;

(d) *I/We may be required to restore custody of the child immediately in favour of the *parent(s), *guardian(s), supervising social worker or *person(s) designated by the children's court upon withdrawal of such consent by a parent or by the child.

REVERSE OF FORM 60

(B) FURTHER PARTICULARS OF APPLICANT(S)

1. Date of birth: (1) _____

(2) _____

2. Identity number: (1) _____

(2) _____

3. Marital status: ☐ Joint applicants: Date of Marriage _____

☐ Single applicant: *unmarried/divorced/widow(er)/married to parent of child on: _____

4. Cultural group: (1) _____

(2) _____

5. Religious affiliation: (1) _____

(2) _____

6. Home language: _____

7. Is the applicant or are both applicants South African citizens? Yes | No

If no, state –

(i) the nationality of: (1) _____

(2)

_____

(ii) *whether the applicant/either of the applicant(s) has/have applied for a certificate(s) of naturalization as a South African citizen(s):

(1) | Yes | No | (2) | Yes | No |

(iii) whether or not proof of such application has been provided:

(1) | Yes | No | (2) | Yes | No |

8. *Is the applicant/either of the applicants related to the child *he/she/they wish(es) to adopt:

(1) | Yes | No | (2) | Yes | No |

If so, what is the relationship?

(1) _____

(2) _____

9. *Is the applicant/ether of the applicants in receipt of any allowance from the State in respect of the child?

(1) | Yes | No | (2) | Yes | No |

If so, state type of allowance: _____ Reference number: _____

Name of beneficiary: _____

***I/WE DECLARE THAT** the particulars set out in the statement above are true and correct to the best of *my/our knowledge and belief.

SIGNED at _____ this _____ day of _____

_____ _____

Applicant (1) ***Applicant (2)***

NOTE

Please attach:

(i) The original birth certificate or identity document of the child.

(ii) A certified copy of the identity document of each applicant.

(iii) Where (i) and (ii) are not available, a sworn statement by an adoption social worker.

(iv) In the case of a foster child, the written statement of the foster parent(s) (**Form 41**).

(v) Where applicable, the written consent of the parent(s) attested to before a commissioner.

(vi) Where applicable, the written consent of the child attested to before a commissioner.

(vii) Where the applicant(s) wish to receive the child into his/her/their custody, a report from an adoption social worker, that the applicant(s) is/are a potentially suitable prospective adoptive parent(s).

Insert an X in the appropriate block and *Delete whichever is not applicable

(3) An application contemplated in sub-regulation (1) must:

(a) in the case of the adoption of a foster child, be accompanied by a written statement of the child's foster parent, in a form identical to Form 41,

FORM 61

CONSENT BY PARENT TO THE ADOPTION OF CHILD

(Regulation 99)

[SECTION 233 OF THE CHILDREN'S ACT 38 OF 2005]

NOTE

☐ A separate form must be used for each child

☐ Where the consent of both parents is required, a separate form should be completed by each parent

IN THE CHILDREN'S COURT FOR THE DISTRICT OF _____HELD AT _____

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF A CHILD

I, _____

(full name), identity number _____, residing at _____

Being the *father/mother of _____

(full name of child)

hereby voluntarily consent to the adoption of the said child by -

☐ (a) _____ ; or

(*full name(s) or persons wishing to adopt the child)

☐ (b) a person or persons unknown to me

FURTHER PARTICULARS OF PARENT

My religious affiliation is _____ *I am/I am not a South African citizen.

☐ I am unmarried and have never been married before

☐ I am married to the *mother/father of the child

☐ I have never been married to the father of

☐ I am divorced from the *mother/father of the

☐ the child ☐ child

☐ My present husband is not the father of the child who was born *prior to/during our marriage

☐ I am the *widow/er of the father/mother of the child

_____

Signature of *father/mother

SIGNED BEFORE ME after I have explained to the said *father/mother the effect of an adoption order as set out in section 242 of the Act, and have informed *him/her that –

(i) *he/she may withdraw this consent in writing before a presiding officer of the children's court at any time during a period of up to 60 days after having given this consent;

(ii) *he/she is not entitled to be present when the application for adoption is considered unless permission to be present has been obtained from the pressing officer of the children's court; and

*he/she has intimated that *he/she understands the legal consequences and requirements.

PLACE _____

_____

DATE _____

Presiding officer: Children's court

Insert an X in appropriate block and *Delete whichever is not applicable

---

REVERSE SIDE OF FORM 61

NOTICE

A. PROHIBITED CONSIDERATION (IN TERMS OF SECTION 249 OF THE CHILDREN'S ACT, 2005)

(1) No person may-

(a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or

(b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.

(2) Subsection (1) does not apply to-

(a) the biological mother of a child receiving compensation for-

(i) reasonable medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;

(ii) reasonable expenses incurred for counseling; or

(iii) any other prescribed expenses;

(b) a lawyer, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;

(c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;

(d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;

(e) a child protection organisation accredited to provide inter-country adoption services receiving the prescribed fees;

(f) an organ of state; or

(g) any other prescribed persons.

B. EFFECT OF AN ADOPTION ORDER (IN TERMS OF SECTION 242 OF THE CHILDREN'S ACT, 2005)

(1) Except when provided otherwise in the order or in a post-adoption agreement confirmed by the court an adoption order terminates-

(a) all parental responsibilities and rights any person, including a parent, step-parent or partner in a domestic life partnership, had in respect of the child immediately before the adoption;

(b) all claims to contact with the child by any family member of a person referred to in paragraph (a);

(c) all rights and responsibilities the child had in respect of a person referred to in paragraph (a) or (b) immediately before the adoption; and

(d) any previous order made in respect of the placement of the child.

(2) An adoption order-

(a) confers full parental responsibilities and rights in respect of the adopted child upon the adoptive parent;

(b) confers the surname of the adoptive parent on the adopted child, except when otherwise provided in the order;

(c) does not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted; and

(d) does not affect any rights to property the child acquired before the adoption.

(3) An adopted child must for all purposes be regarded as the child of the adoptive parent and an adoptive parent must for all purposes be regarded as the parent of the adopted child

.

(b) subject to section 236(1) to (3) of the Act, be accompanied by a written consent of each parent regardless of whether they are married or not, in a form identical to Form 61, and of the child, where such child is a child referred to in section 233(1)(c) of the Act, in a form identical to Form 62, as required by section 233(1)(a) or section 233(1)*(c)* of the Act, as the case may be. Provided that if the parent is a child that parent is assisted by his or her guardian; or

FORM 62

CONSENT BY CHILD TO ADOPTION

(Regulation 99)

[SECTION 233 OF THE CHILDREN'S ACT 38 OF 2005]

IN THE CHILDREN'S COURT FOR THE DISTRICT OF _____

HELD AT _____

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF A CHILD

I, _____
(full name and surname of child)

identity number _____ residing at _____

_____

HEREBY VOLUNTARILY CONSENT TO MY ADOPTION BY

(1) _____

and

(2) _____
(full name(s) and surname of applicant(s))

_____ _____

Date ***Signature of child***

SIGNED BEFORE ME after I have explained to the said child the legal consequences of the consent and of an adoption and after I have informed *him/her that:

(i) *he/she may at any time withdraw the consent before the order of adoption is made by the children's court; and

(ii) *he/she is entitled to be present when the application for adoption is considered.

*he/she has intimated that *he/she understands the above.

_____ _____

Place ***Presiding officer: Children's court***

_____

Date

*Delete whichever is not applicable

(c) subject to section 236(1) to (3) of the Act, in the case of any other person who holds guardianship in respect of the child, be accompanied by a written consent of that guardian, as required by section 233(1)*(b)* of the Act in a form identical to **Form 63;** and

FORM 63

CONSENT BY OTHER PERSON HOLDING GUARDIANSHIP TO THE ADOPTION OF A CHILD

(Regulation 99)

[SECTION 233 OF THE CHILDREN'S ACT 38 OF 2005]

NOTE

☐ A separate form must be used for each child

☐ Where the consent of both parents is required, a separate form should be completed by each parent

IN THE CHILDREN'S COURT FOR THE DISTRICT OF _____

HELD AT _____

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF A CHILD

I,_____ (full name),

identity number _____, residing at _____

_____

Being the *guardian of _____

(full name of child)

hereby voluntarily consent to the adoption of the said child by -

☐ (a)

_____

; or

(*full name(s) or persons wishing to adopt the child)

☐ (b) a person or persons unknown to me

FURTHER PARTICULARS OF GUARDIAN

My religious affiliation is _____

*I am/I am not a South African citizen.

☐ I am unmarried and have never been married before

☐ I am married to the *mother/father of the child

☐ I have never been married to the mother/father of the child

☐ I am divorced from the *mother/father of the child

☐ I am the *widow/er of the father/mother of the child

_____

_____

Signature of *guardian

SIGNED BEFORE ME after I have explained to the said *guardian the effect of an adoption order as set out in section 242 of the Act, and have informed *him/her that –

(i) *he/she may withdraw this consent in writing before a presiding officer of the children's court at any time during a period of up to 60 days after having given this consent;

(ii) *he/she is not entitled to be present when the application for adoption is considered unless permission to be present has been obtained from the pressing officer of the children's court; and

*he/she has intimated that *he/she understands the legal consequences and requirements.

PLACE _____

_____

DATE _____ ***Presiding officer: Children's court***

Insert an X in appropriate block and *Delete whichever is not applicable

PLEASE SEE REVERSE HEREOF

REVERSE SIDE OF FORM 63

NOTICE

A. PROHIBITED CONSIDERATION (IN TERMS OF SECTION 249 OF THE CHILDREN'S ACT, 2005)

(1) No person may-

(a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or

(b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.

(2) Subsection (1) does not apply to-

(a) the biological mother of a child receiving compensation for-

(i) reasonable medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;

(ii) reasonable expenses incurred for counseling; or

(iii) any other prescribed expenses;

(b) a lawyer, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;

(c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;

(d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;

(e) a child protection organisation accredited to provide inter-country adoption services receiving the prescribed fees;

(f) an organ of state; or

(g) any other prescribed persons.

B. EFFECT OF AN ADOPTION ORDER (IN

TERMS OF SECTION 242 OF THE CHILDREN'S ACT, 2005)

(1) Except when provided otherwise in the order or in a post-adoption agreement confirmed by the court an adoption order terminates-

(a) all parental responsibilities and rights any person, including a parent, step-parent or partner in a domestic life partnership, had in respect of the child immediately before the adoption;
(b) all claims to contact with the child by any family member of a person referred to in paragraph (a);
(c) all rights and responsibilities the child had in respect of a person referred to in paragraph (a) or (b) immediately before the adoption; and
(d) any previous order made in respect of the placement of the child.

(2) An adoption order-
(a) confers full parental responsibilities and rights in respect of the adopted child upon the adoptive parent;
(b) confers the surname of the adoptive parent on the adopted child, except when otherwise provided in the order;
(c) does not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted; and
(d) does not affect any rights to property the child acquired before the adoption.

(3) An adopted child must for all purposes be regarded as the child of the adoptive parent and an adoptive parent must for all purposes be regarded as the parent of the adopted child.

(d) be accompanied by a report from an adoption social worker that the applicant is a prospective adoptive parent.

(4) The consent forms referred to in sub-regulation (3)(b) and (c) must be signed in the presence of a presiding officer of the children's court as contemplated in section 233(6)(a) of the Act or in the case of consent given outside the Republic by a person referred to in regulation 100 as contemplated in section 233(6)(b) of the Act.

Register on Adoptable Children and Prospective Adoptive Parents

232. (1) The Director-General must keep and maintain a register to be called the Register on Adoptable Children and Prospective Adoptive Parents for the purpose of-
(a) keeping a record of adoptable children; and
(b) keeping a record of fit and proper adoptive parents.

(2) The name and other identifying information of a child may be entered into RACAP if the child is adoptable as contemplated in section 230 (3).

(3) The name and other identifying information of a child must be removed from RACAP if the child has been adopted.

(4) A person may be registered in the prescribed manner as a prospective adoptive parent if-
(a) section 231 (2) has been complied with; and
(b) the person is a citizen or permanent resident of the Republic.

(5) Registration of a person as a prospective adoptive parent-
(a) is valid for a period of three years;
(b) may be renewed as prescribed;
(c) ceases-
(i) on written notice of withdrawal being given to the Director-General;
(ii) on the death of the registered person;
(iii) on cancellation by the Director-General if the registered person is no longer-
(aa) a fit and proper person to be entrusted with full parental responsibilities and rights in respect of a child; and
(bb) willing and able to undertake, exercise and maintain those responsibilities and

rights.

(iv) if the registered person is no longer a citizen or permanent resident of the Republic;

(v) if a child contemplated in section 150 is removed from the care of that registered person; or

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

(6) Only the Director-General and officials in the Department designated by the Director-General have access to RACAP, but the Director-General may, on such conditions as the Director-General may determine, allow access to-

(a) a provincial head of social development or an official of a provincial department of social development designated by the head of that department;

(b) a child protection organisation accredited in terms of section 251 to provide adoption services; or

(c) a child protection organisation accredited in terms of section 259 to provide inter-country adoption services.

Consent to adoption

233. (1) A child may be adopted only if consent for the adoption has been given by-

(a) each parent of the child, regardless of whether the parents are married or not: Provided that, if the parent is a child, that parent is assisted by his or her guardian;

(b) any other person who holds guardianship in respect of the child; and

Steps to establish details of person who consents to adoption

104.(1) In order to establish the name and address of each person whose consent for an adoption is required in terms of section 233 of the Act, the clerk of the children's court must request the relevant accredited child protection organisation or the relevant adoption social worker to provide him or her with the name and address of such persons.

(2) If the name or address of the person whose consent for adoption is required is not known, the relevant accredited child protection organisation or the relevant adoption social worker may employ a tracing agency or may place an advert in a newspaper in order to obtain the required details.

(c) the child, if the child is-

(i) 10 years of age or older; or

(ii) under the age of 10 years, but is of an age, maturity and stage of development to understand the implications of such consent.

(2) Subsection (1) excludes a parent or person referred to in section 236 and a child may be adopted without the consent of such parent or person.

(3) If the parent of a child wishes the child to be adopted by a particular person the parent must state the name of that person in the consent.

(4) Before consent for the adoption of the child is granted in terms of subsection (1), the adoption social worker facilitating the adoption of the child must counsel the parents of the child and, where applicable, the child on the decision to make the child available for adoption.

(5) The eligibility of the person contemplated in subsection (3) as an adoptive parent must be determined by a children's court in terms of section 231 (2).

(6) Consent referred to in subsection (1) and given-

(a) in the Republic, must be-

(i) signed by the person consenting in the presence of a presiding officer of the children's court;

(ii) signed by the child in the presence of a presiding officer of the children's court if the consent of the child is required in terms of subsection (1) *(c)*;

(iii) verified by the presiding officer of the children's court in the prescribed manner; and

(iv) filed by the clerk of the children's court pending an application for the adoption of the child; or

(b) outside the Republic, must be-

(i) signed by the person consenting in the presence of the prescribed person;

(ii) verified in the prescribed manner and by the prescribed person; and

(iii) submitted to and filed by a clerk of the children's court pending an application for

the adoption of the child.

Consent outside the Republic

100. If consent to adoption is given outside the Republic, it must be signed in the presence of an officer in the service of a South African diplomatic or consular mission, or by a judge, magistrate, justice of the peace or public officer of the country concerned.

(7) The court may on good cause shown condone any deficiency in the provision of a consent given outside the Republic in that the consent-

(a) was not signed in the presence of the prescribed person; or

(b) was not verified in the prescribed manner or by the prescribed person.

Verification of consent

101.(1) Before a presiding officer verifies the consent referred to in regulations 99 and 100 in terms of section 233(6) of the Act, he or she must inform the person giving the consent-

(a) of the effect of an adoption order; and

(b) of the right to withdraw the consent in terms of regulation 102

(2) The presiding officer, in the case of consent given inside the Republic, or the persons referred to in regulation 100, in the case of consent given outside the Republic, must verify the identity of the person giving such consent against a valid identity document or a valid passport.

(8) A person referred to in subsection (1) who has consented to the adoption of the child may withdraw the consent within 60 days after having signed the consent, after which the consent is final.

Withdrawal of consent

102.(1) A parent or guardian who wishes to withdraw the consent must to so in writing, in a form identical to Form 64, in the presence of any presiding officer within 60 days of such consent

FORM 64

WITHDRAWAL OF CONSENT TO ADOPTION BY PARENT OR GUARDIAN OF CHILD

(Regulation 102)

[SECTION 233(8) OF THE CHILDREN'S ACT 38 OF 2005]

TO: THE PRESIDING OFFICER

CHILDREN'S COURT

_____

ADOPTION OF: _____

(full name of child)

BY:_____

*(names of proposed adoptive parent(s)/person(s) unknown to me)

OF:

_____

(district where application was made)

PLEASE TAKE NOTE THAT I, _____

_____

OF _____

_____

HEREBY WITHDRAW MY CONSENT TO THE ADOPTION OF THE AFOREMENTIONED CHILD WHICH CONSEN WAS SIGNED BEFORE THE PRESIDING OFFICER, CHILDREN'S COURT AT _____ **O**

_____

SIGNED AT _____ **this** _____ **day of** _____

_____

_____

Signature of parent

RECEIPT ACKNOWLEDGED:_____**Presiding officer: Children's court**

PLACE: _____

DATE: _____

NOTE

Should consent be withdrawn in a district other than the district in which consent was given or in which the application for adoption is to be heard, the presiding officer: children's court who attached the consent must be expeditiously notified of such withdrawal for his or her further attention.

*Delete whichever is not applicable

(2) A child who wishes to withdraw the consent must do so in writing, in a form identical to **Form 65**, in the presence of any presiding officer with 60 days of such consent.

FORM 65

WITHDRAWAL OF CONSENT BY CHILD TO ADOPTION

(Regulation 102)

[SECTION 233(8) OF THE CHILDREN'S ACT 38 OF 2005]

THE CLERK OF THE CHILDREN'S COURT: _____

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF A CHILD

I, _____

(full name and surname of child)

identity number

_____residing at _____

Hereby voluntarily withdraws my consent for my adoption by

(1) _____

and

(2) _____

(full name(s) and surname of applicant(s))

_____ _____

Date ***Signature of child***

SIGNED BEFORE ME after I have explained to the said child the legal consequences of the withdrawal of consent for adoption and *he/she has intimated that *he/she understands the above.

_____ _____

Place ***Presiding officer: Children's court***

_____

Date

*Delete whichever is not applicable

Post adoption agreements

234. (1) The parent or guardian of a child may, before an application for the adoption of a child is made in terms of section 239, enter into a post-adoption agreement with a prospective adoptive parent of that child to provide for-

(a) communication, including visitation between the child and the parent or guardian concerned and such other person as may be stipulated in the agreement; and

(b) the provision of information, including medical information, about the child, after the application for adoption is granted.

(2) An agreement contemplated in subsection (1) may not be entered into without the consent of the child if the child is of an age, maturity and stage of development to understand the implications of such an agreement.

(3) The adoption social worker facilitating the adoption of the child must assist the parties in preparing a post-adoption agreement and counsel them on the implications of such an agreement.

(4) A court may, when granting an application in terms of section 239 for the adoption of the child, confirm a post-adoption agreement if it is in the best interests of the child.

(5) A post-adoption agreement must be in the prescribed format.

(6) A post-adoption agreement-

(a) takes effect only if made an order of court;

(b) may be amended or terminated only by an order of court on application-

(i) by a party to the agreement; or

(ii) by the adopted child.

Format for post adoption agreements

103.(1) A post adoption agreement contemplated in section 234 of the Act must be in a form identical to **Form 66.**

FORM 66

POST ADOPTION AGREEMENT

(Regulation 103)

[SECTION 234 OF THE CHILDREN'S ACT 38 of 2005]

TO THE CLERK OF THE CHILDREN'S COURT: _____

(A) AGREEMENT

***I/We (1)** _____(full name)

(2) _____ (full name)

residing at _____

in the capacity as **the prospective adoptive *parent/parents**

AND

***I/We (1)** _____ (full name)

(2) _____ (full name)

residing at _____

in the capacity as ***parent/guardian**

HEREBY

AGREE, with the assistance of an adoption social worker who provided counselling, to the following arrangements as contemplated by section 234 of the Children's Act 38 of 2005

_____

_____

_____

Particulars of adoption social worker:

Registration number: …… Organisation: ……

Name: _____

E-mail:……

Telephone: _____

Fax: _____

1. _____ 1. _____

2. _____ 2. _____

*Prospective adoptive *parent/parents

*Parent/parents/guardian

SIGNED at _____ this _____ day of _____20_____

*Delete whichever is not applicable

PLEASE SEE REVERSE HEREOF

(B) FURTHER PARTICULARS OF PARTIES

1. Prospective adoptive *parent/parents

Postal address: _____

_____

_____ Postal code: _____

Telephone numbers: Code: _____ Number:_____ (Office hours)

Code: _____ Number:_____ (Residence)

Mobile phone: _____

2. Parent/parents/guardian

Postal address: _____

_____

_____ Postal code: _____

Telephone numbers: Code: _____ Number: _____ (office hours)

Code: _____ Number: _____ (residence)

Mobile phone: _____

(B) CONSENT OF CHILD

***I**, _____(full names) who stands to be adopted by the prospective adoptive *parent/parents understands the terms of abovementioned agreement and hereby consent to the agreement.

_____ _____

Child Date

***I,** _____ (full names), presiding officer: Children's court _____ declares that the consent was singed and attested before me and that I have satisfied myself that the child is 10 years or older, or under the age of 10 years, but of an age, maturity and stage of development to understand the implications of the agreement.

_____

_____

Presiding officer: Children's court

Date

*Delete whichever is not applicable

(2) A party to a post adoption agreement must inform all other parties to such an agreement of any change to any of the particulars referred to in sub-regulation (1) within seven days of such change.

Freeing orders

235. (1) The court, on application by the Department, a provincial department of social development, a child protection organisation accredited in terms of section 251 to provide adoption services or an adoption social worker may issue an order freeing a parent or person whose consent to the adoption of the child is required in terms of section 233 from parental responsibilities and rights in respect of the child pending the adoption of the child.

(2) The parent or person whose consent to the adoption of the child is required in terms of section 233 must support an application for a freeing order.

(3) A freeing order must authorise a child protection organisation accredited in terms of section 251 to provide adoption services or a person to exercise parental responsibilities and rights in respect of the child pending the adoption of the child.

(4) A freeing order lapses if-

(a) the child has not been adopted within a period of 12 months and there is no reasonable prospects that the child will be adopted;

(b) the order is terminated by the court on the ground that it is no longer in the best interests of the child; or

(c) the child, parent or person who consented to the adoption withdraws such consent in terms of section 233 (8).

(5) A freeing order relieves a parent or person from the duty to contribute to the maintenance of the child pending the adoption, unless the court orders otherwise.

When consent not required

236. (1) The consent of a parent or guardian of the child to the adoption of the child, is not necessary if that parent or guardian-

(a) is incompetent to give consent due to mental illness;

(b) has abandoned the child, or if the whereabouts of that parent or guardian cannot be established, or if the identity of that parent or guardian is unknown;

(c) has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected;

(d) has consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months;

(e) has been divested by an order of court of the right to consent to the adoption of the child; or

(f) has failed to respond to a notice of the proposed adoption referred to in section 238 within 30 days of service of the notice.

(2) Consent to the adoption of a child is not required if-

(a) the child is an orphan and has no guardian or caregiver who is willing and able to adopt the child; and

(b) the court is provided with certified copies of the child's parent's or guardian's death certificate or such other documentation as may be required by the court.

(3) If the parent referred to in subsection (1) is the biological father of the child, the consent of that parent to the adoption is not necessary if-

(a) that biological father is not married to the child's mother or was not married to her at the time of conception or at any time thereafter, and has not acknowledged in a manner set out in subsection (4) that he is the biological father of the child;

(b) the child was conceived from an incestuous relationship between that biological father and the mother; or

(c) the court, following an allegation by the mother of the child, finds on a balance of probabilities that the child was conceived as a result of the rape of the mother: Provided

that such a finding shall not constitute a
conviction for the crime of rape.

(4) A person referred to in subsection (3) *(a)* can for the purposes of that subsection acknowledge that he is the biological father of a child-

(a) by giving a written acknowledgment that he is the biological father of the child either to the mother or the clerk of the children's court before the child reaches the age of six months;

(b) by voluntarily paying maintenance in respect of the child;

(c) by paying damages in terms of customary law; or

(d) by causing particulars of himself to be entered in the registration of birth of the child in terms of section 10 (1) *(b)* or section 11 (4) of the Births and Deaths Registration Act, 1992 (Act 51 of 1992).

(5) A children's court may on a balance of probabilities make a finding as to the existence of a ground on which a parent or person is excluded in terms of this section from giving consent to the adoption of a child.

Gathering of information for proposed adoption

237. (1) When a child becomes available for adoption, the clerk of the children's court must take-

(a) the prescribed steps to establish the name and address of each person whose consent for the adoption is required in terms of section 233; and

(b) reasonable steps to establish the name of any person whose consent would have been necessary but for section 236, and the grounds on which such person's consent is not required.

(2) A person who has consented to the adoption of a child in terms of section 233 and who wants the court to dispense with any other person's consent on a ground set out in section 236, must submit a statement to that effect to the clerk of the children's court.

(3) A clerk of the children's court may request the Director-General: Home Affairs to disclose any information contained in the registration of birth of a child, including the identity and other particulars of a person who has acknowledged being the father or the mother of the child.

(4) If a social worker involved in the proposed adoption of a child obtains information regarding the identity and whereabouts of a person contemplated in subsection (1), the social worker must without delay submit a report containing that information to the clerk of the children's court.

Notice to be given of proposed adoption

238. (1) When a child becomes available for adoption, the presiding officer must without delay cause the sheriff to serve a notice on each person whose consent to the adoption is required in terms of section 233.

(2) The notice must-

(a) inform the person whose consent is sought of the proposed adoption of the child; and

(b) request that person either to consent to or to withhold consent for the adoption, or, if that person is the biological father of the child to whom the mother is not married, request him to consent to or withhold consent for the adoption, or to apply in terms of section 239 for the adoption of the child.

(3) If a person on whom a notice in terms of subsection (1) has been served fails to comply with a request contained in the notice within 30 days, that person must be regarded as having consented to the adoption.

Application for adoption order

239. (1) An application for the adoption of a child must-

(a) be made to a children's court in the prescribed manner;

(b) be accompanied by a report, in the prescribed format, by an adoption social worker containing-

(i) information on whether the child is adoptable as contemplated in section 230 (3);

(ii) information on whether the adoption is in the best interests of the child; and

(iii) prescribed medical information in relation to the child.

(c) be accompanied by an assessment referred to in section 231 (2) *(d)*;

(d) be accompanied by a letter by the provincial head of social development recommending the adoption of the child; and

(e) contain such prescribed particulars.

(2) When an application for the adoption of a child is brought before a children's court, the clerk of the children's court must submit to the court-

(a) any consent for the adoption of the child filed with a clerk of the children's court in terms of section 233 (6);

(b) any information established by a clerk of the children's court in terms of section 237 (2);

(c) any written responses to requests in terms of section 237 (2);

(d) a report on any failure to respond to those requests; and

(e) any other information that may assist the court or that may be prescribed.

(3) An applicant has no access to any documents lodged with the court by other parties except with the permission of the court.

Consideration of adoption application

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

(a) the religious and cultural background of-

(i) the child;

(ii) the child's parent; and

(iii) the prospective adoptive parent;

(b) all reasonable preferences expressed by a parent and stated in the consent; and

(c) a report contemplated in section 239 (1) *(b)*.

(2) A children's court considering an application may make an order for the adoption of a child only if-

(a) the adoption is in the best interests of the child;

(b) the prospective adoptive parent complies with section 231 (2);

(c) subject to section 241, consent for the adoption has been given in terms of section 233;

(d) consent has not been withdrawn in terms of section 233 (8); and

(e) section 231 (7) has been complied with, in the case of an application for the adoption of a child in foster care by a person other than the child's foster parent.

Unreasonable withholding of consent

241. (1) If a parent or person referred to in section 233 (1) withholds consent for the adoption of a child a children's court may, despite the absence of such consent, grant an order for the adoption of the child if the court finds that-

(a) consent has unreasonably been withheld; and

(b) the adoption is in the best interests of the child.

(2) In determining whether consent is being withheld unreasonably, the court must take into account all relevant factors, including-

(a) the nature of the relationship during the last two years between the child and the person withholding consent and any findings by a court in this respect; and

(b) the prospects of a sound relationship developing between the child and the person withholding consent in the immediate future.

Effect of adoption order

242. (1) Except when provided otherwise in the order or in a post-adoption agreement confirmed by the court an adoption order terminates-

(a) all parental responsibilities and rights any person, including a parent, step-parent or partner in a domestic life partnership, had in respect of the child immediately before the adoption;

(b) all claims to contact with the child by any family member of a person referred to in paragraph *(a)*;

(c) all rights and responsibilities the child had in respect of a person referred to in paragraph *(a)* or *(b)* immediately before the adoption; and

(d) any previous order made in respect of the placement of the child.

(2) An adoption order-

(a) confers full parental responsibilities and rights in respect of the adopted child upon the

adoptive parent;

(b) confers the surname of the adoptive parent on the adopted child, except when otherwise provided in the order;

(c) does not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted; and

(d) does not affect any rights to property the child acquired before the adoption.

(3) An adopted child must for all purposes be regarded as the child of the adoptive parent and an adoptive parent must for all purposes be regarded as the parent of the adopted child.

Rescission of adoption order

243. (1) A High Court or children's court may rescind an adoption order on application by-

(a) the adopted child;

(b) a parent of the adopted child or other person who had guardianship in respect of the child immediately before the adoption; or

(c) the adoptive parent of the child.

(2) An application in terms of subsection (1) must be lodged within a reasonable time but not exceeding two years from the date of the adoption.

(3) An adoption order may be rescinded only if-

(a) rescission of the order is in the best interests of the child; and

(b) the applicant is a parent of the child whose consent was required for the adoption order to be made, but whose consent was not obtained; or

(c) at the time of making the adoption order the adoptive parent did not qualify as such in terms of section 231.

(4) Notice of an application for rescission of an adoption order must be given to-

(a) the adoptive parent of that child, if any other person brings the application;

(b) all persons who have consented to the adoption in terms of section 233 or who have withheld consent to the adoption in terms of section 241, if the child or the adoptive parent brings the application;

(c) the Central Authority in the case of an inter-country adoption; and

(d) any other person whom the court finds has a sufficient interest in the matter.

Rescission of an order of adoption

106.(1) If the High Court concerned rescinds an order of adoption in terms of section 243 of the Act, the Registrar of that Court must submit a copy of the court order to the clerk of the relevant children's court.

(2) The clerk of the relevant children's court must, upon receipt of the court order, notify the Director-General of Home Affairs in terms of the Births, Marriages and Deaths Registration Act, 1992 (Act No. 51 of 1992), of that order.

(3) The clerk of the court referred to in sub-regulation (2) must submit one copy of the court order to the Adoption Registrar who must deregister the adoption.

Effect of rescission

244. (1) As from the date on which the rescission of an adoption order takes effect-

(a) the effects of the adoption order as set out in section 242 (2) and (3) no longer applies in respect of the child concerned; and

(b) all responsibilities, rights and other matters terminated by section 242 (1) in respect of the child are restored.

(2) When rescinding an adoption order the court may-

(a) make an appropriate placement order in respect of the child concerned; or

(b) order that the child be kept in temporary safe care until an appropriate placement order can be made.

Recording of adoption in births register

245. (1) After an adoption order has been made by a children's court in respect of a child whose birth has been registered in the Republic, the adoptive parent of the child must apply in terms of the applicable law to the Director-General: Home Affairs to record the adoption and any change of surname of the child in the births register.

(2) An application in terms of subsection (1) must be accompanied by-

(a) the relevant adoption order as registered by the adoption registrar;

(b) the birth certificate of the child;

(c) the prescribed birth registration form; and

(d) a fee prescribed in terms of any applicable law, if any.

Registration of birth and recording of adoption of child born outside Republic

246. (1) After an adoption order has been made by a children's court in respect of a child born outside the Republic, the adoptive parent of the child must apply in terms of any applicable law to the Director-General: Home Affairs to register the birth of the child and to record the adoption of the child in the birth register.

(2) An application in terms of subsection (1) must be accompanied by-

(a) the relevant adoption order as registered by the adoption registrar;

(b) the birth certificate of the adopted child or, if the birth certificate is not available-

(i) other documentary evidence relating to the date of birth of the child; or

(ii) a certificate signed by a presiding officer of a children's court specifying the age or estimated age of the child;

(c) the prescribed birth registration form, completed as far as possible and signed by the adoptive parent; and

(d) a fee prescribed in terms of any applicable law, if any.

Adoption register

247. (1) A person designated by the Director-General as the adoption registrar must, in the prescribed manner, record information pertaining to and keep a register of-

(a) the registration numbers allocated to records of adoption cases;

(b) the personal details of adopted children, of their biological parents and of their adoptive parents;

(c) particulars of successful appeals against and rescissions of adoption orders; and

(d) all other prescribed information in connection with adoptions.

(2) A clerk of the children's court must-

(a) keep a record of all adoption cases by a children's court, including all adoption orders issued by the court, in the prescribed manner;

(b) as soon as is practicable after an adoption order has been issued, forward the adoption order, a copy of the record of the adoption inquiry and other prescribed documents relating to the adoption to the adoption registrar; and

(c) in the case of an inter-country adoption, forward copies of the documents referred to in paragraph *(b)* to the Central Authority.

Manner of recording information in the adoptions register

105.(1) The clerk of the children's court must submit the original of the following documents to the Adoption Registrar designated as such in terms of section 247 of the Act:

(a) the application for adoption;

(b) every consent to the adoption as may be required;

(c) the order of adoption and two copies thereof; and

(d) the child's identity document or birth certificate or where these are not available, a sworn statement to that effect by an adoption social worker.

(2) Upon receipt of the documents contemplated in sub-regulation (1) the Adoption Registrar must register such information in the adoption register.

(3) After completion of the registration contemplated in sub-regulation (2) the Adoption Registrar must enter the date of registration and the registration number on each order of adoption and must forward-

(a) a copy of the order of adoption referred to in sub-regulation(1)*(c)* and the original identity document or birth certificate to the adoptive parents; and

(b) the remaining copy of the adoption order to the relevant clerk of the children's court.

Access to adoption register

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

(a) to an adopted child after the child has reached the age of 18 years;

(b) to the adoptive parent of an adopted child after the child has reached the age of 18 years;

(c) to the biological parent or a previous adoptive parent of an adopted child after the child has reached the age of 18 years, but only if the adoptive parent and the adopted child give their consent in writing;

(d) for any official purposes subject to conditions determined by the Director-General;

(e) by an order of court, if the court finds that such disclosure is in the best interests of the adopted child; or

(f) for purposes of research: Provided that no information that would reveal the identity of an adopted child or his or her adoptive or biological parent is revealed.

(2) The Director-General may require a person to receive counselling before disclosing any information contained in the adoption register to that person in terms of subsection (1) *(a)*, *(b)*, *(c)* or *(e)*.

(3) Notwithstanding subsection (1), an adopted child or an adoptive parent is entitled to have access to any medical information concerning-

(a) the adopted child; or

(b) the biological parents of the adopted child, if such information relates directly to the health of the adopted child.

(4) Notwithstanding subsection (1), parties to a post-adoption agreement as contemplated in section 234 are entitled to have access to such information about the child as has been stipulated in the agreement.

No consideration in respect of adoption

249. (1) No person may-

(a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or

(b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.

(2) Subsection (1) does not apply to-

(a) the biological mother of a child receiving compensation for-

(i) reasonable medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;

(ii) reasonable expenses incurred for counselling; or

(iii) any other prescribed expenses;

Fees payable to accredited child protection organisations

107. The following fees, which must be reviewed annually, must be paid to an accredited child protection organisation in respect of an inter-country adoption:

SERVICE		**MAXIMUM AMOUNT**
(a)	Group orientation	R250, 00 per session;
(b)	Interview/counselling	R250, 00 per hour;
(c)	Home visits	R400, 00 per hour;
(d)	Home study report	R500, 00 per report;
(e)	Court processes	R500, 00 per day;
(f)	Birth registration	R170, 00 per hour;
(g)	Administration costs	R170, 00 per hour;

(h) After-care services
R500, 00 once-off payment; and
(i) Origin enquiry/tracing R200, 00 per hour.

(b) a lawyer, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;
(c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;
(d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;
(e) a child protection organisation accredited to provide inter-country adoption services receiving the prescribed fees;
(f) an organ of state; or
(g) any other prescribed persons.

Only certain persons allowed to provide adoption service

250. (1) No person may provide adoption services except-
(a) a child protection organisation accredited in terms of section 251 to provide adoption services;
(b) an adoption social worker;
(c) the Central Authority in the case of inter-country adoptions; or
(d) a child protection organisation accredited in terms of section 259 to provide inter-country adoption services.

(2) Subsection (1) does not prohibit the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of any other profession.

(3) A welfare organisation referred to in section 107 which was lawfully engaged in providing adoption services when this section took effect may, despite the provisions of subsection (1), continue with such services for a period of two years without being accredited in terms of section 251 to provide adoption services, but must within that period apply for such accreditation in terms of section 251.

[Subsection (3) inserted by section 11 of Act 41 of 2007]

Accreditation to provide adoption service

251. (1) The Director-General may in terms of a prescribed process accredit-
(a) a social worker in private practice as an adoption social worker to provide adoption services; and
(b) a child protection organisation to provide adoption services.

(2) The Director-General must keep a register of all adoption social workers and child protection organisations accredited to perform adoption services.

Accreditation to provide adoption services

108. Any adoption social worker who has registered a speciality in adoption services in terms of the Social Service Professions Act, 1978 (Act no. 110 of 1978) and any organisation designated as a child protection organisation in terms of section 107 of the Act may apply for accreditation in terms of section 251(1) of the Act.

Advertising

252. (1) No person may publish or cause to be published in any form or by any means an advertisement dealing with the placement or adoption of a specific child.

(2) Subsection (1) does not apply in respect of-
(a) the publication of a notice in terms of this Act or a court order;
(b) an advertisement by a child protection organisation accredited to provide adoption services for purposes of recruitment, according to prescribed guidelines; or
(c) other forms of advertisements specified by regulation.

Advertisements

109. A child protection organisation accredited to provide adoption services may, for purposes of recruitment, publish advertisements in one national newspaper and one local newspaper circulating in the area where such organisation has it business premises.

Regulations

253. The Minister, after consultation with the Minister for Justice and Constitutional Development in respect of regulations dealing with court orders, may make regulations-

(a) prescribing procedures for determining whether a child has been abandoned by a parent or other person who has parental responsibilities and rights in respect of the child;

(b) determining procedures to be followed to locate persons whose whereabouts are unknown for obtaining their consent to adoptions;

(c) prescribing procedures for determining the age of a child;

(d) determining procedures for payment for adoption services undertaken by persons or organisations to prevent conflict of interests from arising;

(e) prescribing the requirements that a child welfare organisation has to comply with for accreditation as contemplated in section 251 to provide adoption services;

(f) prescribing the requirements that a child welfare organisation has to comply with for accreditation as contemplated in section 259 to provide inter-country adoption services;

(g) prescribing advertising guidelines for recruitment purposes; and

(h) regarding any other ancillary or incidental administrative or procedural matter that it may be necessary to prescribe to facilitate the proper implementation or administration of this Chapter.

PART III
NATIONAL NORMS AND STANDARDS FOR CHILD PROTECTION

For the purposes of section 106(2) of the Act, the following are national norms and standards for child protection:

8. **Adoption services**

Adoption services must—

(a) be rendered by relevant service providers;

(b) take the child's needs into account;

(c) provide for assessment of the child;

(d) include awareness campaigns to promote adoption as part of child protection services;

(e) be based on appropriately formulated and implemented policy and procedures;

(f) ensure that the child and his or her family, within their respective abilities, are actively involved in all stages of the adoption process;

(g) be based on an inter-sectoral and multi-disciplinary approach;

(h) take account of and address the changing social, physical, cognitive and cultural needs of the child and his or her family throughout the intervention process before and after adoption;

(i) ensure that all avenues to maintain the child within his or her own family are explored before adoption is considered;

(j) ensure that the child's family has access to a variety of appropriate resources and support;

(k) be based on permanency planning for children qualifying for adoption;

(l) ensure that adoption is dealt with by expert adoption social workers functioning within a statutory accredited adoption system;

(m) ensure that children who are to be adopted are not discriminated against with regard to race, gender, language, religion, disability or any other status and that the biological parents of children who are to be adopted are not discriminated against;

(n) ensure that the child is involved in the decision-making process during adoption procedures;

(o) ensure that inter-country adoption is considered as an alternative means of permanent care for a child when a suitable adoptive or foster family cannot be found nationally;

(p) ensure that the standards of inter-country adoption conform with the Hague Convention on Inter-country Adoption;

(q) ensure that inter-country adoption does not result in financial gain for those involved;

(r) ensure that inter-country adoption is effected by the Central Authority;
(s) provide for the recruitment, assessment and preparation of adoptive parents;
(t) provide for the counselling of the child, his or her biological parents and the adoptive parents;
(u) provide for after-care services to the adoptive family;
(v) provide for the management of enquiries and interpretation of issues regarding descent and origin, accompanied by counselling of all parties;
(w) provide for the tracing by an adult adopted person of his or her biological parents;
(x) ensure that the particular needs of the child are matched with the special strengths of the adoptive family through appropriate assessment and preparation of the parties involved;
(y) provide for assistance to prospective adoptive parents to assess their capacity to adopt and helping them to understand what parenting of an adopted child entails;
(z) provide for assistance to adoptive parents to develop their personal and parenting skills; and
(aa) provide for services to biological parents focusing on crisis intervention and life skills.

CHAPTER 16

INTER-COUNTRY ADOPTION

(ss 254-273)

Purposes of Chapter

254. The purposes of this Chapter are-
(a) to give effect to the Hague Convention on Inter-country Adoption;
(b) to provide for the recognition of certain foreign adoptions;
(c) to find fit and proper adoptive parents for an adoptable child; and
(d) generally to regulate inter-country adoptions.

International co-operation

255. (1) The President may on such conditions as he or she deems fit-
(a) enter into an agreement with a foreign State that is not a State Party to the Hague Convention on Inter-country Adoption in respect of any matter pertaining to the inter-country adoption of children; and
(b) enter into an agreement with a foreign State that is a State Party to the Hague Convention on Inter-country Adoption in respect of any matter pertaining to the inter-country adoption of children for the purpose of supplementing the provisions of the Convention or to facilitate the application of the principles contained therein.

(2) An agreement contemplated in subsection (1) may not be in conflict with the provisions of the Hague Convention on Inter-country Adoption.

(3) The President may agree to an amendment to or revocation of an agreement contemplated in subsection (1).

(4) An agreement contemplated in subsection (1) or an amendment to or revocation thereof, shall not be of any force or effect until such agreement, amendment or revocation has been approved by Parliament.

Hague Convention on Inter-country Adoption to have force of law

256. (1) The Hague Convention on Inter-country Adoption is in force in the Republic and its provisions are law in the Republic.

(2) The ordinary law of the Republic applies to an adoption to which the Convention applies but, where there is a conflict between the ordinary law of the Republic and the Convention, the Convention prevails.

Central Authority

257. (1) For the purposes of the Hague Convention on Inter-country Adoption, **'Central Authority'**-

(a) in relation to the Republic, means the Director-General; or

(b) in relation to a convention country, means a person or office designated by such convention country under Article 6 of the Hague Convention on Inter-country Adoption.

(2) The Director-General, after consultation with the Director-General: Justice and Constitutional Development, must perform the functions assigned by the Convention to Central Authorities.

Performance of functions

258. (1) The Central Authority of the Republic may in terms of section 310 delegate any powers or duties of the Central Authority under the Hague Convention on Inter-country Adoption to an official in the Department.

(2) Any powers or duties of the Central Authority in terms of Articles 15 to 21 of the Convention and sections 261 (3) and (4), 262 (3) and (4), 264 (2) and 265 (2) may, to the extent determined by the Central Authority, be performed by-

(a) another organ of state; or

(b) a child protection organisation accredited in terms of section 259 to provide inter-country adoption services.

Accreditation to provide inter-country adoption services

259. (1) The Central Authority may, on application by a child protection organisation-

(a) accredit such organisation to provide inter-country adoption services; and

(b) approve adoption working agreements contemplated in section 260, as long as the prescribed requirements are met.

(2) The Central Authority may accredit a child protection organisation to provide inter-country adoption services for such period and on such conditions as may be prescribed.

(3) A child protection organisation accredited in terms of this section to provide inter-country adoption services-

(a) may receive the prescribed fees and make the necessary payments in respect of inter-country adoptions; and

(b) must annually submit audited financial statements to the Central Authority of fees received and payments made.

(4) Subsection (1) does not prohibit the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of another profession.

CHAPTER 17

INTER-COUNTRY ADOPTION

(Sections 254 – 273 of the Act)

Accreditation to provide inter-country adoption services

110. Any organisation designated as a child protection organisation in terms of section 107 of the Act may apply to the Central Authority for accreditation in terms of section 259(1) of the Act.

Entering into adoption working agreement

260. (1) A child protection organisation accredited in terms of section 259 to provide inter-country adoption services may enter into an adoption working agreement with an accredited adoption agency in another country.

(2) A child protection organisation referred to in subsection (1)-

(a) must provide the Central Authority with certified copies of all adoption working agreements entered into by that child protection organisation for approval thereof; and

(b) may not act in terms of any such adoption working agreements before it has been approved by the Central Authority.

Adoption of child from Republic by person in convention country

261. (1) A person habitually resident in a convention country who wishes to adopt a child habitually resident in the Republic must apply to the central authority of the convention country concerned.

(2) If the central authority of the convention country concerned is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and transmit the report to the Central Authority of the Republic.

Report on person in convention or non- convention country applying to adopt child from Republic

111.(1) In addition to the requirements set out in article 15 of the Hague Convention on Inter-country Adoption, the report on an applicant required by section 261(2) or 262(2) of the Act must include-

(a) identifying information with certified copies of supporting documents;
(b) a medical report of the applicant's health status;
(c) a police clearance certificate;
(d) proof of citizenship and permanent residence;
(e) the applicant's ethnic, religious and cultural background;
(f) a detailed assessment by an adoption social worker;
(g) information regarding the applicant's own childhood;
(h) information regarding other significant family members of the applicant;
(i) information about the character of the applicant;
(j) details of the attitude of other family members towards the adoption;
(k) plans for integration with siblings, where applicable;
(l) plans for relocation of the child from the Republic to the place where the applicant resides;
(m) a description of the adoption counselling that has been received by the applicant;
(n) the applicant's ability to undertake inter-country adoption; and
(o) the reasons why the applicant wishes to adopt a child.

(2) In the event of more than one applicant applying jointly for the adoption of a child, the information set out in sub-regulation (1) must be provided in respect of each applicant.

(3) If an adoptable child is available for adoption, the Central Authority will prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and forward it to the central authority of the convention country concerned.

Report on child in the Republic to be adopted by person from convention or non-convention country

112.(1) In addition to the requirements set out in article 16 of the Hague Convention on Inter-country Adoption, the report on a child required by section 261(3) or 262(3) of the Act must be a comprehensive child study report compiled by an adoption social worker employed by a designated child protection organisation.

(2) The report contemplated in sub-regulation (1) must include-

(a) identifying information of the child with an original birth certificate or identity document, or where these are not available, a sworn statement from the social worker to supplement the lack of documentary information;
(b) detail regarding the child's language, culture, race and religion;
(c) a medical report confirming the health status of the child, and where applicable, a description of any special needs of the child;
(d) information about the child's natural parents, where such information is known, including-
(i) a description of the counselling they have received;
(ii) whether they have consented to the adoption; and

(iii) if their consent is not required, the reasons for such non-requirement;

(e) information regarding the sibling or siblings of the child, where applicable;

(f) comprehensive information regarding the efforts that have been made to provide suitable alternative care within the Republic;

(g) the views of the child concerning the adoption, where the child is capable of forming his or her own view; and

(h) the child's consent, if he or she is ten years of age or older, which must be annexed to the report.

(4) If the Central Authority and the central authority of the convention country concerned both agree on the adoption, the Central Authority will refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 240.

(5) The court may make an order for the adoption of the child if the requirements of section 231 regarding persons who may adopt a child are complied with, the application has been considered in terms of section 240 and the court is satisfied that-

(a) the adoption is in the best interests of the child;

(b) the child is in the Republic;

(c) the child is not prevented from leaving the Republic-

(i) under a law of the Republic; or

(ii) because of an order of a court of the Republic;

(d) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements;

(e) the central authority of the convention country has agreed to the adoption of the child;

(f) the Central Authority of the Republic has agreed to the adoption of the child; and

(g) the name of the child has been in the RACAP for at least 60 days and no fit and proper adoptive parent for the child is available in the Republic.

Order for adoption of child from Republic by person from convention country or non-convention country

113. The order for adoption granted in terms of section 261(5) or 262(5) of the Act must be issued by the children's court in a form identical to **Form 67.**

FORM 67

ORDER OF INTER-COUNTRY ADOPTION

(Regulation 113)

[SECTIONS 261(5) AND 262(5) OF THE CHILDREN'S ACT 38 OF 2005]

IN THE CHILDREN'S COURT FOR THE DISTRICT OF _____HELD AT _____

IN THE MATTER OF AN APPLICATION FOR THE INTER-COUNTRY ADOPTION OF

_____

(full name of child)

identity number _____ on the _____ day of _____ 20_____ before _____, Presiding Officer of the Children's Court.

In the case of an inter-country adoption by a person living in a Hague Convention Country

THE COURT IS SATISFIED THAT: -

- ☐ The adoption is in the best interests of the child;
- ☐ The child is in the Republic; and is not prevented from leaving the Republic;
- ☐ The arrangements for the adoption are in accordance with the Hague Convention;
- ☐ The Central Authority of the convention country, _____, has agreed to the adoption;
- ☐ The Central Authority of the Republic has agreed to the adoption;
- ☐ The name of the child has been in the RACAP for at least 60 days; and
- ☐ No fit and proper adoptive parent for the child is available in the republic.

In the case of an inter-country adoption of a person living in a non-Hague Convention country

THE COURT IS SATISFIED THAT: -

- ☐ The adoption is in the best interests of the child;
- ☐ The child is in the Republic; and is not prevented from leaving the Republic;
- ☐ The arrangements for the adoption are in accordance with the Hague Convention;
- ☐ The competent authority of the non-convention country, _____, has agreed to the adoption;
- ☐ The Central Authority has agreed to the adoption;
- ☐ The name of the child has been in the RACAP for at least 60 days; and
- ☐ No fit and proper adoptive parent for the child is available in the republic.

IT IS ORDERED THAT

_____
(full name of child)

a _____ child, born on the _____ day of _____ 20__
(gender)

be and is hereby adopted by_____
(full name)

born on _____, identity number _____

*and his/her spouse

_____
(full name)

born on _____, identity number _____, in terms of and subject to the provisions of the Children's Act, 2005 (Act No. 38 of 2005).

IT IS FURTHER ORDERED THAT

the family name _____ *be given to the child/be retained by the child.

GIVEN at _____ this _____ day of _____

at _____ : _____ (time).

_____
Presiding Officer: Children's Court

1. Date of registration of adoption _____

2. Adoption register number _____

3. Amendment of the birth register in terms of section 245 of the Children's Act, 2005 (ct No. 38 of 2005), may proceed.

_____ _____
Date ***Registrar of Adoptions***

*Delete whichever is not applicable

(6) *(a)* The Central Authority of the Republic may withdraw its consent to the adoption of the child within a period of 140 days from the date on which it has consented to the adoption, if it is in the best interests of the child to do so.

(b) In the event of the Central Authority of the Republic withdrawing its consent, the child must be returned to the Republic forthwith in the prescribed manner.

Return of child following withdrawal of consent by Central Authority to adoption by person in convention or non-convention country

114.(1) Where the Central Authority of the Republic withdraws its consent to an inter-country adoption given to a convention country pursuant to section 261(6) or 262(6) of the Act, the Central Authority of the Republic must forward a letter setting out the withdrawal of consent to the Central Authority in the convention country with whom the agreement was made, requesting co-operation for the return of the child to the Republic.

(2) The letter contemplated in sub-regulation (1) must be forwarded electronically or through a postal service.

(3) The request for co-operation contemplated in sub-regulation (1) must be stipulated in specific terms, including the time when and the place where the child has to be handed over to an identified representative of the Central Authority of the Republic.

(4) The Central Authority of the Republic must appoint an escort to accompany a child on his or her return to the Republic, who must be a suitably qualified or experienced person employed by the Department or by a designated child protection organisation.

(5) The costs related to the return of the child, including the costs of the person appointed to escort the child, must be paid for out of funds made available for this purpose by the Central Authority of the Republic.

(6) The Central Authority of the Republic must, within seven days of the child's arrival in the Republic, effect an appropriate amendment to the adoption register established in terms of section 247 of the Act and notify the Director-General of the Department of Home Affairs of the child's return.

(7) An order of court contemplated in subsection (5) takes effect only after the period referred to in subsection (6) has lapsed and the Central Authority has not withdrawn its consent within the stated period.

(8) This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

(9) The provisions of Chapter 15 apply to the adoption of a child referred to in subsection (8).

Adoption of child from Republic by person in non-convention country

262. (1) A person habitually resident in a non-convention country who wishes to adopt a child habitually resident in the Republic must apply to the competent authority of the non-convention country concerned.

(2) If the competent authority of the non-convention country concerned is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the prescribed requirements and transmit the report to the Central Authority in the Republic.

(3) If an adoptable child is available for adoption, the Central Authority will prepare a report on the child in accordance with the prescribed requirements and transmit it to the competent authority in the non-convention country concerned.

(4) If the Central Authority and the competent authority in the non-convention country concerned both agree to the adoption, the Central Authority will refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 240.

(5) The court may make an order for the adoption of the child if the requirements of section 231 regarding persons who may adopt a child are complied with, the application has been considered in terms of section 240 and the court is satisfied that-

(a) the adoption is in the best interests of the child;
(b) the child is in the Republic;
(c) the child is not prevented from leaving the Republic-
(i) under a law of the Republic; or
(ii) because of an order of a court of the Republic;
(d) the arrangements for the adoption of the child are in accordance with the prescribed requirements;
(e) the competent authority of the non-convention country concerned has agreed to the adoption of the child;
(f) the Central Authority has agreed to the adoption of the child; and
(g) the name of the child has been in the RACAP for at least 60 days and no fit and proper adoptive parent for the child is available in the Republic.

(6) *(a)* The Central Authority of the Republic may withdraw its consent to the adoption of the child within a period of 140 days from the date on which it has consented to the adoption, if it is in the best interests of the child to do so.

(b) In the event of the Central Authority of the Republic withdrawing its consent, the child must be returned to the Republic forthwith in the prescribed manner.

(7) An order of court contemplated in subsection (5) takes effect only after the period referred to in subsection (6) has lapsed and the Central Authority has not withdrawn its consent within the stated period.

(8) This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

(9) The provisions of Chapter 15 apply to the adoption of a child referred to in subsection (8).

Issue of adoption compliance certificate

263. If the children's court has approved the adoption of a child in terms of section 261 or 262, the Central Authority may issue an adoption compliance certificate.

Adoption of child from convention country by person in Republic

264. (1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a convention country must apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and transmit the report to the central authority of the convention country concerned.

(3) If an adoptable child is available for adoption, the central authority of the convention country concerned shall prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and transmit it to the Central Authority.

(4) If the Central Authority and the central authority of the convention country concerned both agree to the adoption, the central authority in that country will refer the application for adoption for the necessary consent in that country.

Adoption of child from non-convention country by person in Republic

265. (1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a non-convention country must apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the requirements of the non-convention country concerned and transmit the report to the competent authority of that country.

(3) If an adoptable child is available for adoption, the competent authority of the non-convention country concerned shall prepare a report on the child in accordance with the prescribed requirements and transmit it to the Central Authority.

(4) If the Central Authority and the competent authority of the non-convention country concerned both agree to the adoption, the competent authority of that country will refer the application for adoption for the necessary consent in that country.

Recognition of inter-country adoption of child from convention country

266. (1) The adoption in a convention country of a child habitually resident in that convention country by a person habitually resident in the Republic shall be recognised in the Republic if an adoption compliance certificate issued in that country is in force for the adoption.

(2) The adoption in a convention country of a child habitually resident in that convention country by a person habitually resident in another convention country shall be recognised in the Republic if an adoption compliance certificate issued in the convention country where the adoption was granted is in force for the adoption.

(3) If an adoption compliance certificate was not issued in the relevant convention country, the Central Authority may issue a declaration recognising the adoption.

(4) A declaration in terms of subsection (3) is, upon production by any person in a court, admissible as evidence in any proceedings before the court.

(5) The adoption of a child referred to in subsections (1) and (2) shall not be recognised if a declaration is made in terms of section 270 that an adoption or a decision in terms of article 27 of the Hague Convention on Inter-country Adoption has no effect in the Republic.

Evidentiary value of adoption compliance certificate of convention country

267. Subject to section 270, an adoption compliance certificate is evidence, for the purposes of the laws of the Republic, that the adoption to which the certificate relates-

(a) was agreed to by the central authorities of the countries mentioned in the certificate; and

(b) was carried out in accordance with the Hague Convention on Inter-country Adoption and the laws of the countries mentioned in the certificate.

Recognition of inter-country adoption of child from non-convention country

268. The Central Authority may issue a declaration recognising the adoption of a child in a non-convention country if-

(a) the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made; and

(b) the adoption in that country has the same effect it would have had if the order had been made in the Republic.

Effect of recognition of inter-country adoption

269. If the adoption of a child is recognised in terms of section 266 or 268, the adoption has in the Republic the effects set out in section 242.

Refusal to recognise inter-country adoption or Article 27 decision

270. (1) The Central Authority may declare that an adoption to which section 266 or 268 applies or a decision made in terms of article 27 of the Hague Convention on Inter-country Adoption may not be recognised in the Republic if the adoption or decision is manifestly contrary to public policy in the Republic, taking into account the best interests of the relevant child.

(2) If the Central Authority declares that an adoption or decision referred to in subsection (1) may not be recognised, the adoption or decision has no effect in the Republic.

Application to children's court for inter-country adoption of child

271. (1) In the event of a refusal to recognise an inter-country adoption as contemplated in section 270, an application for the adoption of a child from a convention country or a non-convention country may be made to the children's court.

(2) The provisions of Chapter 15, with the necessary changes which the context may require, apply to the adoption of a child referred to in subsection (1).

Access to information

272. Subject to the provisions of section 248 with regard to access to the adoption register, read with such changes as the context may require, the Central Authority may disclose to a person older than 18 years who, as a child, was adopted in accordance with the Hague Convention on Inter-country Adoption, any information in the records of the Central Authority concerning that person's origin.

Processing or facilitating inter-country adoption

273. No person may process or facilitate an inter-country adoption otherwise than in terms of this Chapter.

CHAPTER 17

CHILD ABDUCTION

(ss 274-280)

Purposes of Chapter

274. The purposes of this Chapter are-
(a) to give effect to the Hague Convention on International Child Abduction; and
(b) to combat parental child abduction.

Hague Convention on International Child Abduction to have force of law

275. The Hague Convention on International Child Abduction is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act.

Central Authority

276. (1) For the purposes of the Hague Convention on International Child Abduction, **'Central Authority'**-
(a) in relation to the Republic, means the Chief Family Advocate appointed by the Minister for Justice and Constitutional Development in terms of the Mediation in Certain Divorce Matters Act; or
(b) in relation to a convention country, means a person or office designated for such convention country under Article 6 of the Hague Convention on International Child Abduction.

(2) The Chief Family Advocate must perform the functions assigned by the Convention to Central Authorities.

Delegation of powers and duties

277. (1) The Central Authority of the Republic may, subject to such conditions as he or she may impose, delegate or assign any powers or duties conferred or imposed upon him or her under the Hague Convention on International Child Abduction to any family advocate appointed in terms of the Mediation in Certain Divorce Matters Act.

(2) The delegation, assignment and conditions imposed must be in writing.

Powers of court

278. (1) In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3 of the Hague Convention on International Child Abduction, a High Court may, prior to the making of an order for the return of the child, request the Central Authority to provide a report on the domestic circumstances of the child prior to the alleged abduction.

(2) The court may, prior to the making of an order for the return of the child, order interim protective relief for the child, the applicant or the defendant.

(3) The court must, in considering an application in terms of this Chapter for the return of a child, afford that child the opportunity to raise an objection to being returned and in so doing must give due weight to that objection, taking into account the age and maturity of the child.

Legal representation

279. A legal representative must represent the child, subject to section 55, in all applications in terms of the Hague Convention on International Child Abduction.

Regulations

280. (1) The Minister for Justice and Constitutional Development may make regulations-

(a) to give effect to any provisions of the Hague Convention on International Child Abduction; and

(b) prescribing fees and providing for the recovery of any expenditure incurred in connection with the application of the Convention.

(2) A regulation made under subsection (1) may prescribe a penalty of a fine or of imprisonment for a period not exceeding 12 months for any contravention thereof or failure to comply therewith.

CHAPTER IV
INTERNATIONAL CHILD ABDUCTION

Application for return of child to the Republic

15. (1) An application for the return of a child under Article 8 of the Hague Convention from another contracting state to the Republic, must be in writing on a form that corresponds substantially with Form 10 of the Annexure.

FORM 10
APPLICATION FOR THE RETURN OF A CHILD WRONGFULLY REMOVED/RETAINED IN TERMS OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 15]

REPUBLIC OF SOUTH AFRICA

File No: _____

A	***DETAILS OF THE APPLICANT***
Surname:	
Full names:	
Identity number/ Date of birth	/ /
Nationality:	
Occupation:	
Relationship to child:	
Residential address:	
Phone number(h):	*(_____)*
Business address:	

Phone nurnber(b):	*(_____)*
Cellular number:	
Fax number:	*(_____)*
E-mail address:	
B	***DETAILS OF THE ATTORNEY (IF ANY)***
Name and surname:	
Name of firm:	
Business address:	*Code (_____)*
Phone number.	*(_____)*
Fax number:	*(_____)*
C	***DETAILS OF CHILD*** *(if more than one child, continue on separate page)*
Surname:	
Full names:	
Identity Number/ Date of birth:	/ /
Place of birth:	
Country of habitual residence: (immediately before removal)	
Indicate whether child holds his/her own passport or if child is included on mother's or father's passport:	*Own Passport* / *Mother's Passport* / *Father's Passport*
Passport number	
Nationality:	
Physical description of child: (please enclose a recent photograph)	
D	***DETAILS OF PARENTS***

I. MOTHER		***II. FATHER***	
Surname:		*Surname:*	
Full names:		*Full names:*	
Identity number/ Date of birth:		*Identity number/ Date of birth:*	
Passport number:		*Passport*	

		number:	
Nationality:		Nationality:	
Habitual residence:	Code ( )	Habitual residence:	Code( )
Phone number(h):	( )	Phone number(h):	( )
Cellular number		Cellular number	
E-mail address:		E-mail address:	
Occupation:		Occupation:	
Business address:	Code( )	Business address:	Code( )
Phone number(b):	( )	Phone number(b):	( )
Fax number:	( )	Fax number:	( )
III. DETAILS OF MARRIAGE			
Date of marriage:	_____/_____/_____	Place of marriage:	
Date of divorce: (if applicable)	_____/_____/_____	Place of divorce: (if applicable)	
E	***DETAILS OF PERSON WHO HAS TAKEN OR RETAINED CHILD***		
Surname:			
Full names:			
Identity number/ Date of birth:			/ /
Passport number			
Nationality:			
Occupation:			
Relationship to child:			
Physical description of person: (please enclose a recent photograph)			
Last known residential address: (in the country in which this person now resides)			
Last known residential phone number: (in the country in which this person now resides)	( )		
Last known business address: (in the country in which this person now resides)			

Last known business telephone number: (in the country in which this person now resides)	*(_____)*
Last known cellular number:	
Last known fax number: (in the country in which this person now resides)	*(_____)*
Last known e-mail address: (in the country in which this person now resides)	

F	***PLACE WHERE THE CHILD IS THOUGHT TO BE***
Present address of the child if different to those of the person who has taken the child:	
Details of other persons in the country to which the child has been taken who might be able to supply additional information on the whereabouts of the child; (e.g. names, address, telephone numbers, relationship to the child or taker of the child)	

G	***BRIEF DETAILS OF THE TIME, DATE, PLACE AND CIRCUMSTANCES OF THE REMOVAL OF THE CHILD FROM THE REPUBLIC OR THE RETENTION OF THE CHILD ABROAD***

H	***DETAILS OF COURT PROCEEDINGS THAT HAVE TAKEN PLACE/ARE TAKING PLACE (Provide details of names of parties, name of court, case number (if known) and the stage reached)***
The Republic:	

Outside the Republic:	

I	***EVIDENCE THAT THE APPLICANT HAD RIGHTS OF CUSTODY IN RESPECT OF THE CHILD AND WAS EXERCISING THOSE RIGHTS AT THE TIME OF THE REMOVAL***

J	***OTHER RELEVANT INFORMATION***	
Please indicate whether the applicant is prepared to travel to the country to which the child has been taken, both to attend the court hearing if necessary, and to collect the child should the application be successful or indicate any other person who could do so on their behalf:		*YESNO*
Does the applicant wish an application to be made to overseas court for an order to be made that the person who has taken the child meet any additional costs incurred by them e.g. air fares (Hague Convention on the Civil Aspects of International Child Abduction only):		*YESNO*

_____
Signature of applicant or his or her attorney

_____
Date

_____
Signature and date stamp of the Central Authority of the Republic

(2) An application as provided for in subregulation (1) must be accompanied by—

(a) *recent photographs of the child and of the person alleged to have removed or retained the child;*

(b) *a certified copy of the birth certificate of the child;*

(c) *proof of parental rights and responsibilities;*

(d) *a certified copy of the marriage certificate, where applicable;*

(e) *sworn translations of all the relevant documentation in English, if the documentation is in a language other than English; and*

(f) *a sworn affidavit setting out the chronological exposition of events and circumstances leading to the abduction of the child.*

(3) An application as provided for in subregulation (1) must be submitted to the Central Authority of the Republic, who must, within 48 hours of receipt thereof, forward it to the Central Authority of the country to which the child has been taken.

Access to child wrongfully removed or retained

16. *(1) An application for access to a child wrongfully removed to the Republic or retained in the Republic must be—*

(a) in writing on a form which corresponds substantially with Form 11 of the Annexure; and

FORM 11
APPLICATION FOR ACCESS TO A CHILD WRONGFULLY REMOVED/RETAINED IN TERMS OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010
[Regulation 16(1)]

REPUBLIC OF SOUTH AFRICA

File No:_____

A	***DETAILS OF THE APPLICANT (Parent requesting access to child)***
Surname:	
FulI names:	
Identity number/ Date of birth:	/ /
Nationality:	
Occupation:	
Relationship to child:	
Residential address:	Code (_____)
Phone number(h):	(_____)
Business address:	Code (_____)
Phone number(b):	(_____)
Cellular number:	
Fax number:	(_____)
E-mail address:	
B	***DETAILS OF THE ATTORNEY (if any)***
Name and surname:	
Name of firm:	
Business address:	

| | | |

		marriage:	
Date of divorce: (if applicable)	/ /	*Place of divorce: (if applicable)*	

E	***DETAILS OF PERSON WHOM CHILD IS THOUGHT TO BE***

Surname:											
Full names:											
Identity number/ Date of birth:											/ /
Passport number:											
Nationality:											
Occupation:											
Relationship to child:											
Physical description of person: (please enclose a recent photograph):											
Last known residential address: (in the country in which this person now resides)											
Last known residential phone Number: (in the country in which this person now resides)	(_____)										
Last known business address: (in the country in which this person now resides)											
Last known business telephone number: (in the country in which this person now resides)	(_____)										
Last known cellular number											
Last known fax number: (in the country in which this person now resides)	(_____)										
Last known e-mail address: (in the country in which this person now resides)											

F	***PLACE WHERE THE CHILD IS THOUGHT TO BE***

Present address of the child if different to those of the person who has taken the child:	
Details of other persons in the country to which the. child has been taken who might be able to supply additional information on the whereabouts of the child (e.g. names, address,	

telephone numbers, relationship to the child or taker of the child)	

G	***BRIEF DETAILS OF THE TIME, DATE, PLACE AND CIRCUMSTANCES OF THE REMOVAL OF THE CHILD FROM THE REPUBLIC OR THE RETENTION OF THE CHILD ABROAD***

H	***DETAILS OF COURT PROCEEDINGS THAT HAVE TAKEN PLACE/ARE TAKING PLACE*** *(Provide details of names of parties, name of court, case number (if known) and the stage reached. Please also state what visited arrangements were in place in South Africa)*
The Republic:	
Outside the Republic:	

I	***FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST ARRANGEMENTS***

J	***ARRANGEMENT***	
Please indicate whether the applicant is prepared to travel to the country to which the child has been taken to attend the court hearing if necessary:		*YESNO*

_____
Signature of applicant or his or her attorney

_____
Date:

_____
Signature and date stamp of the Central Authority of the Republic

(a) submitted to the office of any Family Advocate in the Republic, which must, without delay, submit the application to the office of the Chief Family Advocate.

(2) Upon receipt of the application as provided for in subregulation (1), the Chief Family Advocate must bring an application, within 15 days after the child has been located, to the High Court having jurisdiction.

Application to return child to a contracting state

17. *(1) If a child has been wrongfully removed to the Republic or retained in the Republic, the Central Authority of the Republic must—*

(a) upon receipt of the documents from the other country's Central Authority, study the application; and

(b) within 10 days after the child has been located, bring an application to the High Court on behalf of the parent or person with parental rights and responsibilities from whom the child has been wrongfully removed, to have the child returned to his or her place of habitual residence.

(2) An application for assistance made by an applicant to the Chief Family Advocate must, unless the contrary is proved, be deemed to constitute authorisation by the applicant for the Chief Family Advocate or a Family Advocate to exercise any power and perform any duty conferred or imposed on him or her under the Hague Convention, and to appear on the applicant's behalf in any proceedings that may be necessary under the Hague Convention.

Appointment of persons by Chief Family Advocate

18. *(1) Where no Government department is able to grant the assistance sought or where the Chief Family Advocate considers it necessary to give effect to the provisions of the Hague Convention he or she may, subject to any condition he or she may deem appropriate, appoint any person to assist him or her, or a Family Advocate, to exercise any power or perform any duty conferred or imposed upon the Central Authority of the Republic under the Hague Convention.*

(2) The appointment referred to in subregulation (1) and any condition thereof must be in writing and a certified copy of the original appointment must be handed to the person concerned: Provided that in urgent cases the appointment may be made orally but must subsequently be confirmed in writing without delay.

Obstruction of Chief Family Advocate, Family Advocate or person appointed

19. *Any person who hinders or obstructs the Chief Family Advocate, a Family Advocate or a person appointed by the Chief Family Advocate in terms of regulation 18 in the exercise of his or her powers or the performance of any duty conferred or imposed on him or her under the Hague Convention, the Act or these Regulations is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.*

Court appearances

20. *The Chief Family Advocate or a Family Advocate must appear on behalf of an applicant in any court proceedings that may be necessary to give effect to the provisions of the Hague Convention, where the applicant does not—*

(a) qualify for legal aid in terms of the Legal Aid Act, 1969 (Act No. 22 of 1969), read with Article 25 of the Hague Convention; or

(b) wish to appoint a legal representative of his or her choice.

Fees of person appointed by Chief Family Advocate

21. *(1) Any person appointed in terms of regulation 18 who is not in the employ of the Public Service is entitled to the following fees for assistance thus rendered by him or her:*

(a) Where he or she is a tracing agent or some other person appointed to locate a child or any other person: an amount of not more than R500 if the child or other person is located; or

(b) where he or she is a social worker or some other person appointed to investigate and report on the social background, living conditions or other circumstances of a child or to obtain any other information or to harbour, keep safe or escort a child and, for the purposes of rendering such assistance—

(i) the transport allowance as prescribed from time to time for the Public Service; and

(ii) if he or she is required to rent overnight accommodation or is absent for a period of 24 hours or longer from the city or town where he or she normally works or resides—

(aa) the reasonable actual expenses incurred; or

(bb) the subsistence expenses as prescribed from time to time for the Public Service.

(2) A person referred to in subregulation (1) must, when submitting a claim for actual real expenses incurred by him or her, submit the necessary receipts, vouchers or any other proof in support of his or her expenses to the Central Authority of the Republic, whose decision regarding the amounts payable in terms of this regulation is final.

Recovery of expenditure

22. (1) Where an application for the return of a child has been successful, the state may recover from the applicant the expenses incurred or to be incurred in bringing about the return of the child.

(2) Where an application for the return of a child or for the right of access to a child has been successful and no order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant, the State may recover those expenses or costs from the respondent.

(3) Any expenses or costs recovered by the State in terms of subregulation (1) or (2) shall accrue to the National Revenue Fund.

(4) Where an application for the return of a child or for the right of access to a child has been successful and an order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant, those expenses, costs or fees shall accrue to the National Revenue Fund.

Expeditious handling of proceedings

23. *(1) Proceedings for the return of a child under the Hague Convention must be completed within six weeks from the date on which judicial proceedings were instituted in a High Court, except where exceptional circumstances make this impossible.*

(2) The following procedural steps are intended to ensure that applications under the Hague Convention are handled expeditiously:

(a) A High Court file must be clearly marked and must—

(i) draw attention to the nature of the application; and

(ii) state the date on which the six week period will expire;

(b) priority must, where necessary, be given to these applications;

(c) the transcript of the judgment and its approval must be expedited; and

(d) the transcript of the judgment and its approval must be sent to the Central Authority of the Republic without delay.

Procedure in High Court

24. *Where an application has been made to a High Court by the Central Authority of the Republic under the Hague Convention, that Court may, at any time before the application is determined, give any interim direction that it deems fit in order to regulate any aspect of the progress of an application under the Hague Convention and to ensure the welfare of the child in question and to prevent any changes in the circumstances relevant to the determination of the application.*

Declarations by High Court

25. *A High Court may, on an application made for the purposes of Article 15 of the Hague Convention by any person appearing to that Court to have an interest in the matter, make a*

declaration that the removal of any child from,
or his or her retention outside the Republic, was wrongful within the meaning of Article 3 of the Hague Convention.

Proof of documents and evidence

26. *(1) For the purposes of Article 14 of the Hague Convention a decision or determination of a judicial or administrative authority of a country outside the Republic may be proved by a duly authenticated copy of the decision or determination and any document purporting to be such a copy is deemed to be a true copy, unless the contrary is shown.*

(2) For the purposes of subregulation (1), a copy is duly authenticated if it bears the Seal of that country, or is signed by a judge or an officer of the authority in question.

(3) For the purposes of Articles 14 and 30 of the Hague Convention, any document as is mentioned in Article 8 of the Hague Convention, or a certified copy of any such document, is sufficient evidence of anything stated in it.

Power to order disclosure of child's whereabouts

27. *(1) Where in proceedings for the return of a child there is no adequate information available regarding the whereabouts of the child, the High Court may order any person whom it has reason to believe may have relevant information, to disclose it to the Court.*

(2) A person may not be excused from complying with an order under subregulation (1) by reason that to do so may incriminate him or her or his or her spouse.

Evidence in support of application

28. *If a party making an application in terms of this Chapter, does not produce the relevant documents a High Court may—*

(a) fix a time within which the documents are to be produced;
(b) accept equivalent documents; or
(c) dispense with production of the documents.

Response

29. *(1) Subject to subregulation (2), a respondent must file and serve on the parties a response to an application within five days, beginning with the date on which the application is served.*

(2) A High Court may direct a period longer than that provided for in subregulation (1) for service where the respondent has been made a party if he or she appears to that Court to have sufficient interest in the welfare of the child.

(3) The applicant may, within five days, beginning with the date on which a respondent's response is served on him or her, file and serve a statement in reply.

Adjournment

30. *A High Court may not adjourn court proceedings to give effect to the Hague Convention for more than 15 days at any one time.*

Assistance to prevent removal from jurisdiction

31. *(1) If a parent, guardian or person with parental responsibility of a child suspects that there is an imminent danger or a likelihood that the child may be wrongfully removed from the Republic, that parent, guardian or person with parental responsibility must immediately inform the Central Authority of the Republic of that danger or likelihood who must—*

(a) in the case of an imminent danger of wrongful removal, request the assistance of the South African Police Service to—
  (i) inform border posts directly when there is a real and imminent threat that a child is about to be removed unlawfully from the Republic; and
  (ii) liaise with Immigration Officers at the border posts in an attempt to identify the child at risk of removal; or
(b) in the case of a likelihood of wrongful removal, request the Department of Home Affairs not to issue a passport in respect of the child without—
  (i) a High Court's permission; or
  (ii) the consent of the other parent, guardian or person with parental responsibility.

(2) A request for police assistance as provided for in subregulation (1)(a) must be accompanied by the following information—

(a) the name, gender, date of birth, physical description, nationality and passport number of the child;

(b) the name, age, physical description, nationality, passport number and relationship of the person to the child, who is likely to remove the child;
(c) whether the child is likely to assist the person likely to remove him or her;
(d) the name and contact details of the person at the Central Authority of the Republic who is requesting the border post alert referred to in subregulation (1)(a);
(e) the destination to which the child is likely to be removed;
(f) the likely time of travel and border post embarkation;
(g) the grounds for the border post alert referred to in subregulation (1)(a); and
(h) the details of the person to whom the child should be returned if he or she is intercepted.

(3) If a border post is alerted to the danger of a wrongful removal of a child from the Republic, the child's name must be listed and must remain on that list for four weeks, after which it may be removed, unless a further request of a similar nature is made.

Surrender of passport documents

32. *Where a High Court grants an order restraining the removal of a child from the Court's jurisdiction and the child or potential abductor holds a South African passport, the Court may—*
(a) order the surrender of any passport issued to, or which contains particulars of, that child; and
(b) notify the Department of Home Affairs in every case in which the surrender of a South African passport has been ordered, to prevent the re-issue of such a passport.

CHAPTER 18

TRAFFICKING IN CHILDREN

(ss 281-291)

Purposes of Chapter

281. The purposes of this Chapter are-
(a) to give effect to the UN Protocol to Prevent Trafficking in Persons; and
(b) generally to combat trafficking in children.

UN Protocol to Prevent Trafficking in Persons to have force of law

282. The UN Protocol to Prevent Trafficking in Persons is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act.

International co-operation

283. (1) The President may on such conditions as he or she deems fit-
(a) enter into an agreement with a foreign State that is not a State Party to the UN Protocol to Prevent Trafficking in Persons in respect of any matter pertaining to trafficking in children; and
(b) enter into an agreement with a foreign State that is a State Party to the UN Protocol to Prevent Trafficking in Persons in respect of any matter pertaining to trafficking in children for the purpose of supplementing the provisions of the Protocol or to facilitate the application of the principles contained therein.

(2) An agreement contemplated in subsection (1) may not be in conflict with the provisions of the UN Protocol to Prevent Trafficking in Persons.

(3) The President may agree to any amendment or revocation of an agreement contemplated in subsection (1).

(4) An agreement contemplated in subsection (1) or any amendment to or revocation thereof, shall not be of any force or effect until such agreement, amendment or revocation has been approved by Parliament.

Trafficking in children prohibited

284. (1) No person, natural or juristic, or a partnership may traffic a child or allow a child to be trafficked.

(2) It is no defence to a charge of contravening subsection (1) that-

(a) a child who is a victim of trafficking or a person having control over that child has consented to-

(i) the intended exploitation; or

(ii) the adoption of the child facilitated or secured through illegal means; or

(b) the intended exploitation or adoption of a child referred to in paragraph *(a)* did not occur.

(3) In order to establish the liability, in terms of subsection (1), of an employer or principal, the conduct of an employee or agent of or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person is acting-

(a) within the scope of his or her employment;

(b) within the scope of his or her actual or apparent authority; or

(c) with the express or implied consent of a director, member or partner of the employer or principal.

(4) A finding by a court that an employer or principal has contravened subsection (1) serves as a ground for revoking the licence or registration of the employer or principal to operate.

Behaviour facilitating trafficking in children prohibited

285. (1) No person, natural or juristic, or a partnership, may-

(a) knowingly lease or sublease or allow any room, house, building or establishment to be used for the purpose of harbouring a child who is a victim of trafficking; and

(b) advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcast or distribution of information that suggests or alludes to trafficking by any means, including the use of the Internet or other information technology.

(2) Every Internet service provider operating in the Republic must report to the South African Police Service any site on its server that contains information in contravention of subsection (1).

Assistance to child who is victim of trafficking

286. (1) With due regard to the safety of a child and without delay-

(a) the Director-General: Foreign Affairs must facilitate the return to the Republic of a child who is a citizen or permanent resident of the Republic and who is a victim of trafficking; and

(b) the Director-General: Home Affairs must-

(i) facilitate and accept the return of a child contemplated in paragraph *(a)*;

(ii) issue such travel documents or other authorisations as may be necessary to enable such a child to travel to and enter the Republic;

(iii) at the request of another state that is a party to the UN Protocol to Prevent Trafficking in Persons or to an agreement relating to trafficking in children, verify that the child who is a victim of trafficking is a citizen or permanent resident of the Republic; and

(iv) upon the child's entry into the Republic refer the child to a designated social worker for investigation in terms of section 155 (2).

(2) *(a)* If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.

(b) The Director-General may not act in terms of paragraph *(a)* unless he or she is satisfied that the parent, guardian, care-giver or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child

287. If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may-

(a) suspend all parental responsibilities and rights of that parent, guardian, or other person; and

(b) place that child in temporary safe care,
pending an inquiry by a children's court.

Reporting of child who is victim of trafficking

288. An immigration official, police official, social worker, social service professional, medical practitioner or registered nurse who comes into contact with a child who is a victim of trafficking in the Republic must refer that child to a designated social worker for investigation in terms of section 289 (1).

Child who is victim of trafficking found in Republic

289. (1) A child who is a victim of trafficking-
(a) must be referred to a designated social worker for investigation in terms of section 155 (2); and
(b) may, pending such investigation, be placed in temporary safe care.

(2) If, after an investigation contemplated in subsection (1), an illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act, 1998 (Act 130 of 1998).

(3) A finding in terms of section 156 that an illegal foreign child who is a victim of trafficking is a child in need of care and protection serves as authorisation for allowing the child to remain in the Republic for the duration of the children's court order.

Repatriation of child who is victim of trafficking

290. (1) The Director-General may not return a child contemplated in section 289 (2) to his or her country of origin or the country from where the child has been trafficked without giving due consideration to-
(a) the availability of care arrangements in the country to which the child is to be returned;
(b) the safety of the child in the country to which the child is to be returned; and
(c) the possibility that the child might be trafficked again, harmed or killed.

(2) *(a)* If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.

(b) The Director-General may not act in terms of paragraph *(a)* unless he or she is satisfied that the parent, guardian, care-giver or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

Extra-territorial jurisdiction

291. A citizen or permanent resident of the Republic, a juristic person or a partnership registered in terms of any law in the Republic that commits an act outside the Republic which would have constituted an offence in terms of this Chapter had it been committed inside the Republic, is guilty of that offence as if the offence had been committed in the Republic and is liable on conviction to the penalty prescribed for that offence.

CHAPTER 19

SURROGATE MOTHERHOOD
(ss 292-303)

Surrogate motherhood agreement must be in writing and confirmed by High Court

292. (1) No surrogate motherhood agreement is valid unless-
(a) the agreement is in writing and is signed by all the parties thereto;
(b) the agreement is entered into in the Republic;

(c) at least one of the commissioning parents, or where the commissioning parent is a single person, that person, is at the time of entering into the agreement domiciled in the Republic;

(d) the surrogate mother and her husband or partner, if any, are at the time of entering into the agreement domiciled in the Republic; and

(e) the agreement is confirmed by the High Court within whose area of jurisdiction the commissioning parent or parents are domiciled or habitually resident.

(2) A court may, on good cause shown, dispose with the requirement set out in subsection (1) *(d)*.

Consent of husband, wife or partner

293. (1) Where a commissioning parent is married or involved in a permanent relationship, the court may not confirm the agreement unless the husband, wife or partner of the commissioning parent has given his or her written consent to the agreement and has become a party to the agreement.

(2) Where the surrogate mother is married or involved in a permanent relationship, the court may not confirm the agreement unless her husband or partner has given his or her written consent to the agreement and has become a party to the agreement.

(3) Where a husband or partner of a surrogate mother who is not the genetic parent of the child unreasonably withholds his or her consent, the court may confirm the agreement.

Genetic origin of child

294. No surrogate motherhood agreement is valid unless the conception of the child contemplated in the agreement is to be effected by the use of the gametes of both commissioning parents or, if that is not possible due to biological, medical or other valid reasons, the gamete of at least one of the commissioning parents or, where the commissioning parent is a single person, the gamete of that person.

Confirmation by court

295. A court may not confirm a surrogate motherhood agreement unless-

(a) the commissioning parent or parents are not able to give birth to a child and that the condition is permanent and irreversible;

(b) the commissioning parent or parents-

(i) are in terms of this Act competent to enter into the agreement;

(ii) are in all respects suitable persons to accept the parenthood of the child that is to be conceived; and

(iii) understand and accept the legal consequences of the agreement and this Act and their rights and obligations in terms thereof;

(c) the surrogate mother-

(i) is in terms of this Act competent to enter into the agreement;

(ii) is in all respects a suitable person to act as surrogate mother;

(iii) understands and accepts the legal consequences of the agreement and this Act and her rights and obligations in terms thereof;

(iv) is not using surrogacy as a source of income;

(v) has entered into the agreement for altruistic reasons and not for commercial purposes;

(vi) has a documented history of at least one pregnancy and viable delivery; and

(vii) has a living child of her own;

(d) the agreement includes adequate provisions for the contact, care, upbringing and general welfare of the child that is to be born in a stable home environment, including the child's position in the event of the death of the commissioning parents or one of them, or their divorce or separation before the birth of the child; and

(e) in general, having regard to the personal circumstances and family situations of all the parties concerned, but above all the interests of the child that is to be born, the agreement should be confirmed.

Artificial fertilisation of surrogate mother

296. (1) No artificial fertilisation of the surrogate mother may take place-

(a) before the surrogate motherhood agreement is confirmed by the court;

(b) after the lapse of 18 months from the date of the confirmation of the agreement in question by the court.

(2) Any artificial fertilisation of a surrogate mother in the execution of an agreement contemplated in this Act must be done in accordance with the provisions of the National Health Act, 2003 (Act 61 of 2003).

Effect of surrogate motherhood agreement on status of child

297. (1) The effect of a valid surrogate motherhood agreement is that-

(a) any child born of a surrogate mother in accordance with the agreement is for all purposes the child of the commissioning parent or parents from the moment of the birth of the child concerned;

(b) the surrogate mother is obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;

(c) the surrogate mother or her husband, partner or relatives has no rights of parenthood or care of the child;

(d) the surrogate mother or her husband, partner or relatives have no right of contact with the child unless provided for in the agreement between the parties;

(e) subject to sections 292 and 293, the surrogate motherhood agreement may not be terminated after the artificial fertilisation of the surrogate mother has taken place; and

(f) the child will have no claim for maintenance or of succession against the surrogate mother, her husband or partner or any of their relatives.

(2) Any surrogate motherhood agreement that does not comply with the provisions of this Act is invalid and any child born as a result of any action taken in execution of such an arrangement is for all purposes deemed to be the child of the woman that gave birth to that child.

Termination of surrogate motherhood agreement

298. (1) A surrogate mother who is also a genetic parent of the child concerned may, at any time prior to the lapse of a period of sixty days after the birth of the child, terminate the surrogate motherhood agreement by filing written notice with the court.

(2) The court must terminate the confirmation of the agreement in terms of section 295 upon finding, after notice to the parties to the agreement and a hearing, that the surrogate mother has voluntarily terminated the agreement and that she understands the effects of the termination, and the court may issue any other appropriate order if it is in the best interest of the child.

(3) The surrogate mother incurs no liability to the commissioning parents for exercising her rights of termination in terms of this section, except for compensation for any payments made by the commissioning parents in terms of section 301.

Effect of termination of surrogate motherhood agreement

299. The effect of the termination of a surrogate motherhood agreement in terms of section 298 is that-

(a) where the agreement is terminated after the child is born, any parental rights established in terms of section 297 are terminated and vest in the surrogate mother, her husband or partner, if any, or if none, the commissioning father;

(b) where the agreement is terminated before the child is born, the child is the child of the surrogate mother, her husband or partner, if any, or if none, the commissioning father, from the moment of the child's birth;

(c) the surrogate mother and her husband or partner, if any, or if none, the commissioning father, is obliged to accept the obligation of parenthood;

(d) subject to paragraphs *(a)* and *(b)*, the commissioning parents have no rights of parenthood and can only obtain such rights through adoption; and

(e) subject to paragraphs *(a)* and *(b)*, the child has no claim for maintenance or of succession against the commissioning parents or any of their relatives.

Termination of pregnancy

300. (1) A surrogate motherhood agreement is terminated by a termination of pregnancy that may be carried out in terms of the Choice on Termination of Pregnancy Act, 1996 (Act 92 of 1996).

(2) For the purposes of the Choice on Termination of Pregnancy Act, 1996, the decision to terminate lies with the surrogate mother, but she must inform the commissioning parents of her decision prior to the termination and consult with the commissioning parents before the termination is carried out.

(3) The surrogate mother incurs no liability to the commissioning parents for exercising her right to terminate a pregnancy pursuant to this section except for compensation for any payments made by the commissioning parents in terms of section 301 where the decision to terminate is taken for any reason other than on medical grounds.

Payments in respect of surrogacy prohibited

301. (1) Subject to subsections (2) and (3), no person may in connection with a surrogate motherhood agreement give or promise to give to any person, or receive from any person, a reward or compensation in cash or in kind.

(2) No promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate motherhood agreement or the execution of such an agreement is enforceable, except a claim for-

(a) compensation for expenses that relate directly to the artificial fertilisation and pregnancy of the surrogate mother, the birth of the child and the confirmation of the surrogate motherhood agreement;

(b) loss of earnings suffered by the surrogate mother as a result of the surrogate motherhood agreement; or

(c) insurance to cover the surrogate mother for anything that may lead to death or disability brought about by the pregnancy.

(3) Any person who renders a bona fide professional legal or medical service with a view to the confirmation of a surrogate motherhood agreement in terms of section 295 or in the execution of such an agreement, is entitled to reasonable compensation therefor.

Identity of parties

302. (1) The identity of the parties to court proceedings with regard to a surrogate motherhood agreement may not be published without the written consent of the parties concerned.

(2) No person may publish any facts that reveal the identity of a person born as a result of a surrogate motherhood agreement.

Prohibition of certain acts

303. (1) No person may artificially fertilise a woman in the execution of a surrogate motherhood agreement or render assistance in such artificial fertilisation, unless that artificial fertilisation is authorised by a court in terms of the provisions of this Act.

(2) No person may in any way for or with a view to compensation make known that any person is or might possibly be willing to enter into a surrogate motherhood agreement.

CHAPTER 20

ENFORCEMENT OF ACT

(ss 304-305)

Inspection of child and youth care centre, partial care facility, shelter and drop-in centre

304. (1) A person authorised by the Director-
General, a provincial head of social development or a municipality may enter any child and youth care centre, partial care facility, shelter or drop-in centre or any place which on reasonable suspicion is being used as an unregistered child and youth care centre, partial care facility, shelter or drop-in centre, in order-

(a) to inspect that centre, facility, shelter or place and its management; or

(b) to observe or interview any child, or cause a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist.

(2) *(a)* An identity card prescribed by regulation must be issued to each person authorised in terms of subsection (1).

(b) When inspecting such a centre, facility, shelter or place, a person authorised in terms of subsection (1) must, on demand, produce such an identity card.

(3) A person authorised in terms of subsection (1) may for the purposes of that subsection-

(a) determine whether the centre, facility, shelter or place complies with-

(i) the prescribed national norms and standards referred to in section 79, 194 or 216 applicable to it;

(ii) other national norms and standards as may be prescribed by regulation;

[Subparagraphs (i) and (ii) inserted by section 12 of Act 41 of 2007]

(iii) any structural, safety, health and other requirements as may be required by any law; and

(iv) the provisions of this Act;

(b) require a person to disclose information, either orally or in writing, and either alone or in the presence of a witness, about any act or omission which, on reasonable suspicion, may constitute an offence in terms of this Act, or a breach of a provision of this Act or of a condition of registration, and require that any disclosure be made under oath or affirmation;

(c) inspect, or question a person about any record or document that may be relevant for the purpose of paragraph *(b)*;

(d) copy any record or document referred to in paragraph *(c)*, or remove such record or document to make copies or extracts;

(e) require a person to produce or deliver to a place specified by the authorised person, any record or document referred to in paragraph *(c)* for inspection;

(f) inspect, question a person about and if necessary remove, any article or substance which, on reasonable suspicion, may have been used in the commission of an offence in terms of this Act or in breaching a provision of this Act or of a condition of registration;

(g) record information by any method, including by taking photographs or making videos; or

(h) exercise any other power or carry out any other duty that may be prescribed.

(4) A person authorised in terms of subsection (1) must-

(a) provide a receipt for any record, document, article or substance removed in terms of subsection (3) *(d)* or *(f)*; and

(b) return anything removed within a reasonable period unless seized for the purpose of evidence.

(5) A person authorised in terms of subsection (1) must submit a report to the Director-General, the provincial head of social development or a municipality, as may be appropriate, on any inspection carried out by that person in terms of this section.

Offences

305. (1) A person is guilty of an offence if that person-

(a) commits an act in contravention of the prohibition set out in section 12 (2), (3), (4), (6), (7), or (8);

(b) contravenes a provision of section 32 (4), 74, 116 (1), 123 (1), (2) or (3), 127, 133 (1), 249, 250 (1), 252, 273, 301, 302 or 303;

[Date of commencement of subsection (1) paragraphs (a) and (b): 1 July 2007]

(c) fails to comply with section 12 (5), 12 (9), 57 (2), 89 (1), 89 (2), 110 (1), 124, 126 (1), 134 (1), 138 (1), 141 (1), 167 (2), 178 (1), 178 (2), 226 (1), 226 (2) or 232 (6);

[Paragraph (c) substituted by section 13(a) of Act 41 of 2007]

(d) fails to comply with a request in terms of section 57 (1);

(e) misappropriates money for which that person is accountable in terms of section 137 (5) (b);

(f) fails to comply with section 80 (1), 95 (1), 197 (1) or 217 (1) after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to comply with the relevant section;

(g) fails to stop operating an unregistered child and youth care centre, partial care facility or drop-in centre after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to stop operating that child and youth care centre, partial care facility or drop-in centre;

(h) fails to stop providing early childhood development programmes after that person has been instructed by way of a notice of enforcement in terms of section 100 to stop providing those programmes;

(i) directly or indirectly counsels, induces or aids any child to whom leave of absence has been granted in terms of section 168 not to return to the child and youth care centre or person in whose care or temporary safe care that child has been placed, or prevents the child from returning to that centre or person after the expiration of the period of leave or after the cancellation of such leave;

(j) remove a child in alternative care from the Republic without the prior written approval for such removal first being obtained in terms of section 169;

[Paragraphs (e) to (j) inserted by section 13(b) of Act 41 of 2007]

(k) knowing that a child in alternative care has absconded from or failed to return to that care, directly or indirectly counsels, induces or aids that child not to return to such care, or harbours or prevents the child from returning to that care;

(l) hinders or obstructs-

(i) a police official or designated social worker in the execution of a warrant issued in terms of section 151 (2);

(ii) a police official, social worker or authorised officer when removing a child to temporary safe care in terms of section 152 (1);

(m) hinders or interferes with a person in the execution of official duties in terms of section 304;

(n) fails to comply with a request of a person in the execution of his or her official duties in terms of section 50 (4) or section 304 or furnishes false or misleading information to such a person when complying with such a request;

(o) falsely professes to be a person authorised in terms of section 50 (4) or 304 or an assistant of such a person;

(p) has been issued with a written notice as contemplated in section 153 (1) and-

(i) refuses to leave the home or the place where the child resides; or

(ii) has contact with the child in contravention of the written notice;

(q) contravenes or fails to comply with an order of a High Court, Divorce Court in a divorce case and children's court issued in terms of this Act, including section 153 (6), or contravenes or fails to comply with any condition contained in such order;

(r) commits an act in contravention of the prohibition set out in section 285 (1); or

(s) commits an act in contravention of the prohibition set out in section 284 (1).

(2) A person unfit to work with children is guilty of an offence if that person-

(a) operates or assists in any way in operating a partial care facility, child and youth care centre, shelter or drop-in centre;

(b) assumes the foster care or temporary safe care of a child; or

(c) applies for the foster care, temporary safe care or adoption of a child.

(3) A parent, guardian, other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, is guilty of an offence if that parent or care-giver or other person-

(a) abuses or deliberately neglects the child; or

(b) abandons the child.

(4) A person who is legally liable to maintain a child is guilty of an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance.

(5) A person who is the owner, lessor, manager, tenant or occupier of any premises on which the commercial sexual exploitation of a child has occurred is guilty of an offence if that person, on gaining information of that occurrence, fails to promptly take reasonable steps to report the occurrence to the South African Police Service.

(6) Subject to subsection (8), a person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment.

(7) A person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) more than once is liable to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

[Date of commencement of subsections (3) to (7): 1 July 2007]

(8) A person convicted of an offence in terms of subsection (1)*(s)* is, in addition to a sentence for any other offence of which he or she may be convicted, liable to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

CHAPTER 21

ADMINISTRATION OF ACT

(ss 306-312)

Regulations

306. (1) The Minister may make regulations regarding-

(a) any matter referred to in sections 90, 103, 142, 160, 179, 190, 212, 227, 253 and 280;
[Paragraph (a) substituted by section 14 of Act 41 of 2007]

(b) any matter that may be prescribed by the Minister in terms of this Act, after consultation with the Minister for Justice and Constitutional Development where courts, court orders and the review of decisions by the courts are regulated;

(c) codes of ethical practice for persons operating and assisting in the operation of child and youth care centres, partial care facilities, shelters and drop-in centres;

(d) procedures for the interview of persons to be employed or engaged in child and youth care centres, partial care facilities, shelters and drop-in centres;

(e) generally any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Regulations made in terms of subsection (1) may-

(a) apply-
- (i) generally throughout the Republic or in a category of areas;
- (ii) generally to all persons or to a category of persons; or
- (iii) generally to all child and youth care centres, partial care facilities, shelters or drop-in centres or to a category of such centres, facilities, shelters or drop-in centres; or

(b) differentiate between different-
- (i) areas or categories of areas;
- (ii) persons or categories of persons; or
- (iii) child and youth care centres, partial care facilities, shelters or drop-in centres or categories of such centres, facilities, shelters or drop-in centres.

(3) Regulations made in terms of subsection (1) may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to-

(a) imprisonment for a period not exceeding two years;

(b) an appropriate fine; or

(c) both a fine and imprisonment.

Delegation of powers and duties by Minister

307. (1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to-

(a) the Director-General or an officer in the employ of the Department;

(b) an MEC responsible for social development, by agreement with the MEC; or

(c) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1)-

(a) is subject to any limitations, conditions and directions which the Minister may impose;

(b) must be in writing;

(c) may include the power to sub-delegate; and

(d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The Minister may-

(a) not delegate a power or duty-

(i) to make regulations; or

(ii) to publish notices in the *Gazette*;

(b) at any time withdraw a delegation.

[Date of commencement of section 307: 1 July 2007]

Assignment of powers and duties by Minister

308. (1) The Minister may assign any power or duty assigned to the Minister in terms of this Act to an MEC responsible for social development, by agreement with the MEC.

(2) An assignment in terms of subsection (1)-

(a) is subject to any limitations, conditions and directions which the Minister may impose;

(b) must be in writing;

(c) may include the power to delegate; and

(d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister may confirm, vary or revoke any decision taken in consequence of an assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The Minister may-

(a) not assign a power or duty-

(i) to make regulations; or

(ii) to publish notices in the *Gazette*;

(b) at any time withdraw an assignment.

[Date of commencement of section 308: 1 July 2007]

Delegation of powers and duties by MECs for social development

309. (1) An MEC for social development may delegate any power or duty assigned to the MEC in terms of this Act to-

(a) the provincial head of social development or an officer in the employ of the province concerned; or

(b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1)-

(a) is subject to any limitations, conditions and directions which the MEC may impose;

(b) must be in writing;

(c) may include the power to sub-delegate; and

(d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The MEC may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The MEC may-

(a) not delegate a power or duty to publish notices in the *Gazette*; and

(b) at any time withdraw a delegation.

[Date of commencement of section 309: 1 July 2007]

Delegation of powers and duties by Director-General

310. (1) The Director-General may delegate any power or duty assigned to him or her in terms of this Act to-

(a) an official in the employ of the Department;

(b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1)-

(a) is subject to any limitations, conditions and directions which the Director-General may impose;

(b) must be in writing;
(c) may include the power to sub-delegate, in the case of a delegation in terms of subsection (1) *(b)*; and
(d) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Director-General may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
(b) at any time withdraw a delegation.

[Date of commencement of section 310: 1 July 2007]

Delegation of powers and duties by provincial heads of social development

311. (1) The provincial head of social development may delegate any power or duty assigned to him or her in terms of this Act to-

(a) an officer in the employ of the province concerned;
(b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1)-

(a) is subject to any limitations, conditions and directions which the provincial head may impose;
(b) must be in writing;
(c) may include the power to sub-delegate, in the case of a delegation in terms of subsection (1) *(b)*; and
(d) does not divest the provincial head of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The provincial head may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
(b) at any time withdraw a delegation.

[Date of commencement of section 311: 1 July 2007]

Agency agreements

312. (1) The Minister may, subject to the departmental strategic plan, enter into an agreement with a designated child protection organisation or other appropriate person, for the provision of any service that may or must be provided in terms of this Act, by such organisation or person on an agency basis.

(2) The Minister may delegate to such organisation or person such powers and duties in terms of this Act as may be required for the proper performance of the service.

(3) Section 307 read with such changes as the context may require, applies in respect of any delegation in terms of subsection (2).

CHAPTER 22

MISCELLANEOUS MATTERS

(ss 313-315)

Amendment of laws

313. The laws referred to in the second column of Schedule 4 are hereby amended to the extent indicated in the third column of the Schedule.

[Date of commencement of section 313: 1 July 2007]

Transitional matters

314. Anything done in terms of a law repealed
in terms of section 313 which can be done in terms of a provision of this Act, must be regarded as having been done in terms of that provision of this Act.

[Date of commencement of section 314: 1 July 2007]

Short title and commencement

315. This Act is called the Children's Act, 2005, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

[Date of commencement of section 315: 1 July 2007]

SCHEDULE 1

HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (29 May 93)

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PREAMBLE

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The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that inter-country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that inter-country adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions-

CHAPTER I – SCOPE OF THE CONVENTION
(Articles 1-3)

Article 1

The objects of the present Convention are-

(a) to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

(b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in

children;

(c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *(c)*, have not been given before the child attains the age of eighteen years.

CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS
(Articles 4-5)

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin-

(a) have established that the child is adoptable;

(b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests; and

(c) have ensured that-

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing;

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn; and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

(d) have ensured, having regard to the age and degree of maturity of the child, that-

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required;

(2) consideration has been given to the child's wishes and opinions;

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing; and

(4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State-

(a) have determined that the prospective adoptive parents are eligible and suited to adopt;

(b) have ensured that the prospective adoptive parents have been counselled as maybe necessary; and

(c) have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES
(Articles 6-13)

Article 6

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to-

(a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

(b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to-

(a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

(b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(c) promote the development of adoption counselling and post-adoption services in their States;

(d) provide each other with general evaluation reports about experience with inter-country adoption;

(e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall-

(a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

(b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of inter-country adoption; and

(c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION
(Articles 14-22)

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment reasons for adoption, ability to undertake an inter-country adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall-

(a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

(b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

(c) ensure that consents have been obtained in accordance with Article 4; and

(d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if-

(a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

(b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

(c) the Central Authorities of both States have agreed that the adoption may proceed; and

(d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular-

(a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

(b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

(c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who-

(a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

(b) are qualified by their ethical standards and by training or experience to work in the field of inter-country adoption.

(3) A Contracting State which makes the declaration provided for in paragraph (2) shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph (1).

(5) Notwithstanding any declaration made under paragraph (2), the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph (1).

CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION
(Articles 23-27)

Article 23

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *(c)*, were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph (2).

Article 26

(1) The recognition of an adoption includes recognition of-

(a) the legal parent-child relationship between the child and his or her adoptive parents;

(b) parental responsibility of the adoptive parents for the child;

(c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect-

(a) if the law of the receiving State so permits; and

(b) if the consents referred to in Article 4, sub-paragraphs *(c)* and *(d)*, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI – GENERAL PROVISIONS
(Articles 28-42)

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *(a)* to *(c)*, and Article 5, sub-paragraph *(a)*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

(1) No one shall derive improper financial or other gain from an activity related to an inter-country adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units-

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

(c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

(d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII – FINAL CLAUSES
(Articles 43-48)

Article 43

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph (1).

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *(b)* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force-

(a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following-

(a) the signatures, ratifications, acceptances and approvals referred to in Article 43;

(b) the accessions and objections raised to accessions referred to in Article 44;

(c) the date on which the Convention enters into force in accordance with Article 46;

(d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
(e) the agreements referred to in Article 39;
(f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the ____ day of ____ 19___, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

SCHEDULE 2

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

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PREAMBLE

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The States signatory to the present Convention, Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions-

CHAPTER I – SCOPE OF THE CONVENTION
(Articles 1-5)

Article 1

The objects of the present Convention are-
(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where-
(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in sub-paragraph *(a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention-

(a) **'rights of custody'** shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

(b) **'rights of access'** shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES
(Articles 6-7)

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures-

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep other each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III - RETURN OF CHILDREN

(Articles 8-20)

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain-

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for return of the child is based;

(d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by-

(e) an authenticated copy of any relevant decision or agreement;

(f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

(g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that-

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal of retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal of retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be determination on the merits of any custody issue.

Article 20

The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS
(Article 21)

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of such rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS
(Articles 22-36)

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention. Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units-

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provision of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES
(Articles 37-45)

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservations shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force-

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following-

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accession referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciation referred to in Article 44. In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

SCHEDULE 3

TEXT OF THE UN PROTOCOL TO PREVENT TRAFFICKING IN PERSONS

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. GENERAL PROVISIONS
(Articles 1-5)

Article 1

Relation with the United Nations Convention against Transnational Organized Crime
(1) This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
(2) The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
(3) The offences established in accordance with Article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose
The purposes of this Protocol are:
(a) To prevent and combat trafficking in persons, paying particular attention to women and children;
(b) to protect and assist the victims of such trafficking, with full respect for their human rights; and
(c) to promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms
For the purposes of this Protocol:
(a) **'Trafficking in persons'** shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
(b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* of this article shall be irrelevant where any of the means set forth in subparagraph *(a)* have been used;
(c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered **'trafficking in persons'** even if this does not involve any of the means set forth in subparagraph *(a)* of this article;
(d) **'child'** shall mean any person under eighteen years of age.

Article 4

Scope of application
This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.
Article 5

Criminalization
(1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.
(2) Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
(a) Subject to the basic concepts of its legal system, attempting to commit an offence

established in accordance with paragraph (1) of this article;

(b) participating as an accomplice in an offence established in accordance with paragraph (1) of this article; and

(c) organizing or directing other persons to commit an offence established in accordance with paragraph (1) of this article.

II. PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS
(Articles 6-8)

Article 6

Assistance to and protection of victims of trafficking in persons

(1) In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.

(2) Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings; and

(b) assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

(3) Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) medical, psychological and material assistance; and

(d) employment, educational and training opportunities.

(4) Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

(5) Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

(6) Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

(1) In addition to taking measures pursuant to Article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

(2) In implementing the provision contained in paragraph (1) of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

(1) The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

(2) When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

(3) At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

(4) In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

(5) This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

(6) This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. PREVENTION, COOPERATION AND OTHER MEASURES

(Articles 9-13)

Article 9

Prevention of trafficking in persons

(1) States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) to protect victims of trafficking in persons, especially women and children, from revictimization.

(2) States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

(3) Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

(4) States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

(5) States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

(1) Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) the types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

(2) States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other

relevant organizations and other elements of civil society.

(3) A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

(1) Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

(2) Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with Article 5 of this Protocol.

(3) Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

(4) Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph (3) of this article.

(5) Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

(6) Without prejudice to Article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) to ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. FINAL PROVISIONS

(Articles 14-20)

Article 14

Saving clause

(1) Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

(2) The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally

recognized principles of non-discrimination.

Article 15

Settlement of disputes

(1) State Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

(2) Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

(3) Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph (2) of this article. The other States Parties shall not be bound by paragraph (2) of this article with respect to any State Party that has made such a reservation.

(4) Any State Party that has made a reservation in accordance with paragraph (3) of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

(1) This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

(2) This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph (1) of this article.

(3) This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

(4) This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

(1) This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

(2) For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph (1) of this article, whichever is the later.

Article 18

Amendment

(1) After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

(2) Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and *vice versa*.

(3) An amendment adopted in accordance with paragraph (1) of this article is subject to ratification, acceptance or approval by States Parties.

(4) An amendment adopted in accordance with paragraph (1) of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

(5) When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

(1) A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

(2) A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

(1) The Secretary-General of the United Nations is designated depositary of this Protocol.

(2) The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

SCHEDULE 4

LEGISLATION REPEALED

No. and year	Title	Extent of repeal
33 of 1960	Children's Act	The whole

93 of 1962	General Law Further Amendment Act	Section 1
57 of 1972	Age of Majority Act	The whole
74 of 1983	Child Care Act	The whole
82 of 1987	Children's Status Act	The whole
133 of 1993	Prevention of Family Violence Act	Section 4
192 of 1993	Guardianship Act	The whole
72 of 1996	Hague Convention on the Civil Aspects of International Child Abduction Act	The whole
86 of 1997	Natural Fathers of Children born out of Wedlock Act	The whole