

OBLIGATORY REPORT OF OFFENCES AGAINST CHILDREN

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LEGAL OBLIGATION OF REPORTING NEGLECT, MALTREATMENT OR ABUSE OF CHILDREN

South African legislation regarding children is strongly focused on the principle that “*the best interest of the child*” would in all respects be decisive. It applies to any actions in support, for the sake or in protection of all children. Along with other legislation, the new Children’s Act that came into force on 1 April 2010 forms the pivot of these protection measures aimed at putting a stop to offences against children.

According to the Children’s Act (**38/2005** as amended), the Sexual Offences Act (**Act 32/2007**), as well as the Prevention of Family Violence Act (**Act 133/1993**), a person is **OBLIGED** to report any form of transgression of the mentioned acts. See specific word definitions elsewhere in the brochure.

Take note:

- In accordance with the different acts it is an *offence* to not report maltreatment.
- The investigation will be done by *professionals*.
- The child involved is also entitled to legal representation

In the mentioned legislation it is explicitly specified that the following malpractices against children **must** be reported:

- If the *suspicion or proof exists* that maltreatment of a child (or mentally handicapped person) indeed occurs or had occurred.
- Where a child or mentally handicapped person *has made known to someone* maltreatment, the matter has to be reported.
- The person who *reports* the maltreatment *in good faith* and requests an investigation cannot be criminally prosecuted. Only the court can find a person guilty of maltreatment.
- It needs to be accentuated that the person who reports the matter, is not the *complainant*, but merely the one who is *requesting the investigation*. This investigation cannot *confirm or exclude* the maltreatment. The decision regarding whether or not to prosecute will be taken by the prosecutor.



- (i) Is unsuitable for a person of that child’s age; or
 - (ii) holds a risk to the child’s well-being, education, physical or mental health or spiritual, moral or social development;
- (g) to not be imprisoned, except as last resort, in which case, barring the rights a child enjoys in terms of sections 12 and 35, he/she may only be imprisoned for the shortest suitable period, and has the right to–
- (i) be imprisoned separately from prisoners above the age of 18 years; and
 - (ii) be treated in a manner, and imprisoned in circumstances that take into account the age of the child;
- (h) to, in civil procedures that affect the child, be provided with a legal practitioner by the state on state costs if it would otherwise lead to real injustice; and
- (i) to not be used in armed struggle, and to be protected in times of armed struggle.
- (2) A child’s best interest is of decisive importance in each matter that affects the child.
- (3) In this article “child” means someone under the age of 18 years.

REFERENCES

Constitution of the Republic of South Africa, 1996

Criminal Law (Sexual offences and related matters) Amendment Act, 2007, of Act 32 of 2007

The Children’s Act, Act 38 of 2005. Government Gazette. (No. 28944)

The Children’s Amendment Act 41 of 2007 and Regulations. Government Gazette. (No. 30884)

MYBURGH, N. 2010. Protokol vir die bestuur van kinderverwaarlosing en kindermishandeling. NG Kerk Sinode Hoëveld: SKDB Suid-Transvaal



Prevention of Family Violence Act (Act 133/1993)

Sec 4: Obligation to report violence against a child.

SUPPLEMENTARY INFORMATION

The complete protocol for managing child neglect and child maltreatment can be downloaded at www.kmdr2010.wordpress.com.

The most important principles regarding the protection of the children of South Africa against neglect and maltreatment are summarised in the following documentation, as defined by the government of South Africa:

The United Nation's Convention of the Rights of the Child (1989):0

The document is confirmed by the unity government of South Africa on 16 June 1995. It contains several sections that address child maltreatment.

The African Charter on the Rights and Welfare of the Child (1990):

Section 16 (follows on section 19 of *UN Convention*) states that children have to be protected against maltreatment and torture.

The Constitution of the Republic of South Africa (108/1996):

28. (1) Every child has the right–

- (a) to a name and nationality from birth;
- (b) to family care or parental care, or to appropriate alternative care when the child is removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected against maltreatment, neglect, abuse or humiliation;
- (e) to be protected against exploiting labour practices;
- (f) to not be compelled or allowed to do work or deliver services that–



WHERE SHOULD ANY OF THE ABOVE-MENTIONED OFFENCES BE REPORTED?

- The SAPS at the nearest police office at 10111. Specifically ask whether an official of the Child Protection Unit is available.
- Any NG Welfare office. The social workers of any NG Welfare office, as a registered child protection organisation, are legally designated (authorized) to take the necessary steps by means of the Children's Court to protect children.
 - Take note that not necessarily all welfare organisations, and also no social worker in private practice, have such authorised.
 - However, all social workers are also legally obliged to report offences to the police.
- NG Welfare Head Office in Potchefstroom at 018 297 3928 or visit the web page at www.ngwelsyn.co.za to obtain the numbers.
- Department of Social Development at 011-950-7700 (West Rand), 016-930-2000 (Vaal Region), 018-462-5111 (Klerksdorp), or 018-297-4872 (Potchefstroom).

ETHICAL ASPECTS AND MAKING THE INFORMATION KNOWN IN COURT

The revelation, or not, of highly confidential information which possibly has to be made available to the court, must be very clearly resolved with the child's legal representative.

PEOPLE WHO WORK WITH CHILDREN



The Sexual Offences Act (specifically from Section 40) affects all persons working with children and for instance who take children on camps or other outings. Managements and leadership must ensure that project leaders, or in the case of churches, members of the congregation, youth workers, youth leaders and employers that work within congregation context – have never been found guilty of a transgression of the acts involved, aimed at the protection of children.

In this respect all members of staff of NG Welfare, all volunteers, foster parents, as well as weekend and holiday parents of children from Child and Youth Centres (Children’s Home, Places of Safety) are obliged to sign affidavits that they have never been guilty of an offence in terms of the acts involved

*WORD DEFINITIONS IN THE CHILDREN’S ACT

Child

Person under the age of 18 years.

Maltreatment

Maltreatment of children includes, in terms of Sec 1 of the Children’s Act (no 38 of 2005), the following:

- (a) assault of a child, or any other form of injury of a child caused or planned;
- (b) sexual molesting of a child, or allowing it to take place;
- (c) when a child is bullied by another child;
- (d) a labour practice that exploits a child; or
- (e) exposes or subjects a child to any behaviour that can affect the child psychologically or emotionally in a negative manner.

Sexual molesting

Sexual molesting is, according to Section 1 of the Children’s Act (no 38 of 2005) the following:

- (a) sexual molesting or assault of a child, or allowing a child to be sexually molested or assaulted.
- (b) encouraging, exposing or forcing a child to be used for the sake of sexual satisfaction of another person;
- (c) using a child for, or planning to expose a child to sexual activities or pornography; or
- (d) acquiring a child or allowing a child to be acquired for commercial sexual exploitation or in any way participate or render assistance to the sexual exploitation of a child.



3 *Unofficial translation

Neglect

Neglect, regarding a child, is failure in:

- Meeting parental responsibilities; and
- Providing in the basic physical, intellectual, emotional and social needs of a child.

Trade

Trade, with specific reference to a child, includes according to Section 1 of the Children’s Act (no 38 of 2005), the following activities:

The recruitment, sale, provision, transport, moving, accommodation or reception of children, within South Africa or over country borders–

- (i) to obtain permission from a person who has control over a child, in any way, including the use of threats, force, abduction, fraud, misleading, abuse of power, or giving or receiving payments or benefits; or
 - (ii) due to a defenceless position for purposes of exploitation; and
- Included the facilitation or guarantee of an adoption in an illegal manner

ACT DEFINITIONS

Children’s Act (Act 38/2005) and the Children’s Amendment Act (Act 41/2007)

Sections 110 (1) and (2): A number of professions are mentioned here (amongst others ministers of the church) who, if they on reasonable grounds suspect that a child is being neglected or maltreated, have to report it on a Form 22 at a registered child protection organisation, the provincial department of social development or a police official.



Sexual offences Act (Act 32/2007)

Section 54 (1)(a): A person who bears knowledge of a sexual offence against a child must report it to the police immediately.

Sec 54 (2)(a): A person who bears knowledge of, or has reason to believe, or has the suspicion that a sexual offence is taking place against a person who is mentally handicapped, must report it to the police.

Section 54 (2)(b): Not reporting it is an offence and is punishable with a fine, imprisonment (to a maximum of 5 years) or imprisonment and a fine.