

THE Children's Act **EXPLAINED**

Booklet 3: The courts and the protection of children



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA

unicef 
unite for children

Table of contents



How to use this booklet	1
Child protection	3
Introduction	3
Child protection system	4
Child protection register	10
Child in need of care and protection	14
Child abduction	21
Child labour and exploitation of children	23
Child trafficking	25
Children and the courts	28
Jurisdiction	28
Enforcement of rights	36
Glossary	38
Useful contact numbers	40

How to use this booklet

In this booklet (Booklet 3) we try to explain, as simply as possible, how children are protected and how the different courts work. There are another two booklets in this series. Booklet 1 talks about the rights and responsibilities of children and their parents, and Booklet 2 looks at prevention, early interventions that can help children and also the different care that is available to children. All three booklets are important and sometimes one booklet will tell you to also look at one or both of the other two booklets in order to find more information on a specific topic.

The information in this booklet has been written for children between the ages of 11 and 15 years. However older children and grown-ups can also benefit by reading it.

The Children's Act has many chapters and sections; a chapter gives the main headings in the Act and under each heading there are lots of sections, each of them numbered. You will notice that these booklets are also divided into chapters and sections for easy reference to the Act. Only the chapters and sections that are important for all children (and also parents and other adults) to know are discussed in this booklet which is why the numbers will not necessarily be in order and will "jump" around a bit.

At the back of the booklet we have a glossary to help you understand some of the technical, legal terms that are used in the Act, and also a list of useful contact numbers of people that can help you in a serious situation or sometimes when you need more information.

To allow you, the reader, to understand the information more easily, we have used different symbols in this booklet to help you recognise when there are different things that are explained.

These are some of the symbols:

When you see a note with a paperclip you will know this is an important point to remember.



A picture showing a pile of books will tell you this is a story about someone and it will give you an example of a situation relating to the information on those specific pages.



When you see a hand it means that this is something that is not allowed.



Child protection (Chapter 7)

Introduction



"Hi, I'm Vusi and this is Mirasha. We are here to walk with you on your journey through the Children's Act and give you some advice on what to do in times of trouble."

Vusi says: "The law says that children need to be protected from different types of neglect or harm. In this country the law protecting children had to change and become modern."

"It had to change because the Constitution introduced new rights for the children and because South Africa signed an international covenant that speaks specifically about protecting children."



Did you know?

The United Nations Convention on the Rights of the Child (1989) is a very important document for children. It has as its guiding spirit the best interests of the child.

CHILD PROTECTION SYSTEM (CHAPTER 7, SECTION 105)



"Hello everyone. I am here with Vusi and Mirasha and like them, I will be helping to explain some difficult legal words and actions as we explore the Children's Act together."

Ms Pandori says:

"This section of the Children's Act says the Government must set up child protection services that are able to protect and safeguard all children in South Africa. The Act says that the different government bodies, at national and provincial level, should all work together in making sure children are properly protected and that there are many different ways in which a child can be protected."

South Africa must make sure that it is able to protect its children in the same way as many other countries in the world.

Did you know?

Children need to learn about these different services so that they know when they need protection and where they should go for that protection.

The different government departments include: Education, Finance, Health, Social Development and Justice and Constitutional Development as well as the South African Police Service.

Mirasha asks: "Imagine that you are in government and you have been told to set up a child protection service, whom would you invite to the talks and what would you all talk about?"



Before you decide, think about these two things:

- The kind of harm children may face in their home environment and
- the kind of help those children would need.

Now ask yourself what would you do in this case, do you have any suggestions?

Now let's look at what the law says!

A child protection service may be provided by three different groups:

- The National Department of Social Development,
- Social development in the provinces, and
- Non-government organisations such as Child Welfare or private social workers.

The provincial offices are the ones that offer the services and are able to help you.



Vusi says: "At the back of the booklet you will find a list of organisations that are there to help protect children. There are some organisations that support the decisions of a court (see later section in this booklet for the discussion on the courts). There are also organisations that help children in need and can intervene and help with changing a situation that could get out of control."

Did you know?

The law does not want to break up a family. The family is seen as a very important group in South African society and families should be able to stay together. We call this family preservation.

Mirasha says: "Problems are a natural part of life but sometimes too many problems can cause people to disagree and argue. These disagreements can be about emotional, cultural or even financial issues. The concern is that arguments can get out of hand and may break up a family unit and make it difficult for a child to live a normal life. At times like this a family may need guidance and advice from someone outside the home. That is why the Act has introduced many different ways to help in these circumstances."



The Act speaks of many things, but in this booklet we are going to look at how the court is able to provide protection for children in need. We are also going to look at child protection programmes like prevention and early intervention, reuniting and alternative care, and other forms of care like adoption and the drawing up of permanency plans.



Mirasha suggests: "Let's look at some of these services in more detail, starting with an explanation of what a prevention and early intervention programme is."

Prevention and early intervention is the stopping of something harmful from happening by making sure that there is some action or learning put in place to avoid it.

Prevention and early intervention programmes

A child may be in a situation where things are very challenging in the home. A parent may have passed away or may be very ill and home is not the same anymore. To make sure that the child is not neglected or harmed, the law suggests that the family should stay together and they should be provided with information and skills to deal with problems that are happening.

Reunification programmes

This means that there may be times when a child needs to be taken out of the home, for his or her own protection. But when things change for the better at home the child can come back again to live with the family. Reunification will only happen if it is in the 'best interests of the child.' There are also things like integration, alternative care, adoption, assessment of the situation and temporary safe care. You are going to read all about this later on in this booklet.

The 'best interests of the child' means a child's needs come first.



Vusi says: "What is meant by reunification of children who are in alternative care, with their families?"



If there are any relatives who want the child and can provide a safe home for that child, then the child may be placed in their home. This means that the child knows the people he or she is placed with and the placement is not going to be too disruptive for the child. Again when things change for the better at home, the child can also be reunited with his or her parents.

The child must always be placed in a safe environment.

Adoption

This is permanent alternative care.

Adoption is a legal process where an adult person or a couple can become the legal parents of a child even if they are not the biological parents of that child. Adoption will allow the child to be raised permanently by a new family.

Thenjiswa's parents passed away when she was only 10 years old. Thenjiswa's mother had a married sister, Tumi, who loved Thenjiswa very much. Tumi decided that she wanted Thenjiswa to become her daughter and so she and her husband decided to apply to the court for permission to adopt Thenjiswa.



Read about adoption in more detail in Booklet 1.

Application to terminate parental responsibilities & rights (Chapter 7, Section 135)

In Booklet 1 we spoke about how parents have different parental rights and responsibilities. Now this section of the Act deals with the times when parents may lose their parental rights and responsibilities. Some parents, for whatever reason, are unable to take care of their child or children. When this happens, the Act says that a parent can lose his or her rights of parenthood. If parents do not take care of their children, the courts will intervene. You will read about this again when you come to the section on the court and the court processes.



Vusi says: “Remember that we offer all these different services so that we can make sure that children are kept safe from harm. One of the most important reasons for providing a protection service is so that children who face the threat of abuse or neglect, can be protected and taken care of properly.”

Reporting an abused or neglected child (Chapter 7, Section 110)

Mirasha says: “I remember reading an article that said child abuse or neglect is not often reported because the child does not know where to go or who to trust. So how can the law protect children if they are too scared to speak out? Who is there to help the children?”



Vusi says: “Well, what about school? Schools are places where children get to know and speak to each other every day. The same thing with teachers, they see the same children every day, so they can watch for changes.”

A dentist, a homeopath, a teacher, a social worker, a lawyer, a minister of religion, a nurse, a traditional leader and other professionals must report abuse.

According to the Act, some people *must* report a possible case of child abuse. This is because of the type of work that they do. These are people known as professionals. The Act also says if anyone else thinks that a child is being abused, they *may* report the abuse to a police official or a social worker or to a place like Child Welfare.

Categories of abuse:

Physical abuse: *Could be bruises, scars, fractures, burns, bites, etc.*

Sexual abuse: *Sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted; encouraging, inducing or forcing a child to be used for sexual gratification of another person; participating or assisting in the commercial sexual exploitation of a child.*

Emotional abuse: *It may take the form of failure to meet a child's need for affection, attention, stimulation, or constant verbal abuse, rejection, threats of violence or attempts to frighten the child.*

Deliberate neglect: *Continuous failure to protect a child from exposure to any danger, cold, starvation, substance abuse, not carry out important aspects of care, etc.*

These are the steps a person must follow in the case of abuse or neglect:

If a report of abuse has been made to a police official, then the police official must make sure the child is safe and then tell the Department of Social Development or an organisation, like Child Welfare, within 24 hours. After the report has been made, a social worker must make sure the child is safe and make sure that the information in the report is truthful.

Did you know?

Don't deliberately make a report that is not truthful because your story will be checked.

If the report is truthful, then steps have to be taken to make sure the child is made safe or make sure that the child's life at home improves and there is a chance to get guidance and help.

Did you know?

When reporting a case, children are not always removed from the family. This is only done when the child's life is in danger. The principle of keeping a child within his or her family as long as possible is valued. In any decision, ensuring the best interests of the child would be paramount. Families and children are part of any decision-making in their situation.

CHILD PROTECTION REGISTER (CHAPTER 7)

Keeping a National Child Protection Register – Part A (Chapter 7, Section 113 & 114)



Ms Pandori says: "To help protect children from any threat of harm or abuse, the Act speaks about keeping a National Child Protection Register. This register will record all situations where there is child abuse or neglect. If a child has been abused or neglected, his or her name can be recorded in the register so that the child is known about and not forgotten. The information kept in the register cannot be shared with other people."

*Monitor means
to keep an eye on something
– to make sure things are being done
properly.*

In this way social workers can monitor what is happening to these children. The register makes it possible for social

workers to see if the children are being cared for and the abuse does not happen again. The information can also be shared with other people who are involved with the care of children.

Did you know?

Access to information from the register is protected. You need permission to get this information

Did you know?

Parental rights are not affected by the Child Protection Register. Registration in itself does not affect a parent's or caregiver's legal responsibility to the child. It is only affected if legal action has to be taken (for example, removal of the child), or when the Children's Court deems it proper to issue an order to assist the family and the child.

The National Child Protection Register records the following:

General information	Personal information of abuse and neglect of individual children	Extra information about a conviction and/or court orders
a) All reports of abuse and neglect of a child.	The child's full names, surname, physical address and identity number. If the child has a disability or chronic illness, the nature of the disability or chronic illness should be reported.	Child's personal information (see column 2).
b) All convictions of abuse and neglect.	The child's age and gender.	The reason for a conviction and where the abuse or neglect happened.
c) All decisions made by the Children's Court about a child needing care and protection.	The child's health record and if there is a physical disability or chronic illness.	The relationship that the convicted person has with the child.
	The story of the incident or case of abuse.	An explanation about the court's findings and the court's decision.
	The name and address of parents or caregivers	Information about services offered to a child in need of care.

Keeping a National Child Protection Register – Part B (Chapter 7, Section 118 & 128)



Ms Pandori explains: “The next part of the register is called Part B and it has information about people who are not allowed to work with children. This information is there so that children can be protected from people who the law says are ‘unsuitable to work with children’.”

An unsuitable person is someone who:

- has been convicted of a crime like murder, rape or indecent assault against a child, or;
- has been accused of these crimes but was not convicted because she or he is mentally ill, or;
- is not guilty of a crime but a court or an official forum made a decision saying that a person is not suitable.

A forum is a gathering of people who come together to discuss a common issue, like if a teacher has misbehaved, a school can call for a disciplinary forum. This forum will then decide if the teacher should be dismissed.

Protective measures relating to the health of children (Chapter 7, Section 129 to 136)



Vusi says: “The Children’s Act is also concerned about a child’s right to care for his or her own body because the Act respects and protects the rights of a child to participate, where he or she is able, in decisions relating to his or her health. There are important changes to the law in this area. The Termination of Pregnancy Act must still be followed despite the change in the law.”

Did you know?

A child over 12 years can consent to medical treatment and HIV testing, as long as he or she has the maturity and capacity to understand what he or she is doing.

A child under 12 years still needs his or her parent's permission for all medical procedures unless the child can prove he or she is mature enough to make such a decision alone.

Did you know?

A child has a right to disclose his or her HIV status and ask for contraceptives.

Did you know?

A child between 12 and 18 can consent to surgery without the permission of the parent/s or guardian.

Sometimes a parent is not able to give his or her permission. If this happens, there are various people who will be able to give their permission for different medical and surgical treatments:

- Hospital superintendant (if surgery is urgent)
- Minister of Social Development
- High Court

CHILD IN NEED OF CARE AND PROTECTION (CHAPTER 9)

Maria is a teacher in a school in Cape Town. In her class there is a young boy called Tumi who has become very withdrawn and refuses to speak to anyone in the class. Tumi often misses school and when he comes to school he sometimes has bruises on his arm. Maria is very worried about Tumi and is not quite sure what she should do.



She regularly asks Tumi how his home life is and has also asked him if his parents could please come to see her. Tumi told Maria that his father is no longer with them and that his mother has a new boyfriend and he does not like him.



Mirasha says: “What do you think Maria can do to help Tumi?”

Let us look at the Children’s Act and see if this question can be answered.

The Act says that children need care and protection if they are living away from home, are in unsafe or dangerous conditions or are being physically or emotionally neglected.

How to identify children in need of care and protection (Chapter 9, Sections 150 to 154):

Physical or emotional neglect or abuse:	Living away from home:
Live in a home where they are not safe and could be harmed if they stay there.	Have been abandoned or orphaned with no visible means of support.
Are being mentally, physically or emotionally neglected or abused by a parent or caregiver.	Live in a home where there is exploitation or where they may be at risk.
Live or work on the street or are begging on the street.	Unsafe or dangerous conditions:
Displays behaviour that the parents cannot cope with or control.	Drink too much or take drugs and there is no support or help.

Mirasha says: “Earlier on we asked what the teacher Maria could do for Tumi. If Maria suspects that there is any abuse, like in the box above, then she should report this to a social worker or policeman so that the situation can be investigated to see if there is any abuse or neglect. If Tumi is not in danger, an early intervention programme may be suggested and Tumi’s mother could go for parental guidance and counselling. If Tumi is in danger then the court may order his immediate removal. If Tumi’s mother is not interested in Tumi then she may lose her rights of parenthood. Keep reading on to see what may happen in this situation.”



Like in Tumi’s story, a social worker may need to be called in to look at a child’s home life if the child is working, like an adult, or if the child is taking care of his or her brothers and sisters, without help from an adult, in a child-headed household. In these situations a social worker has to make sure that the child is not in need of care or protection.

If the child does not need care and protection then the social worker still has to make sure that the child has someone to talk to or someone who will help with any problems the child may encounter – this can become the child’s support system.

The Act says that certain things need to be put in place to make sure the children are supported:

- Counselling and mediation (see Booklet 2 for more information)
- Prevention and early intervention
- Family reconstruction and rehabilitation



Yusi says: “I’ve just remembered another story about Bongi who was at school with me. After her granny died she had to take care of her brothers and sisters and also study for her exams and everything.”

Mary was the grandmother of four grandchildren, of which three were under the age of 12 years. After Mary passed away her grandchildren were left to care for themselves. Bonggi, the eldest child, was 16 years old. She promised her granny she would look after the other children and they would stay in their family home. Bonggi was not alone because there was a caregiver, in the community, that checked on the children every day. Bonggi was worried that her little brothers would be taken away if the principal at school knew about her granny's death so she kept her granny's death a secret from the school. A year after her granny's death, a neighbour called the social worker, who came to visit the family at their home.



Bonggi is living in a child-headed household. Do you think that she and her brothers will be able to carry on living in her granny's house? The answer lies in the law that is set down below (For more information on child-headed households, see Booklet 2).

A child-headed household is one where there is a child of 16 years and older who is taking care of the household because:

- no adult is in the household because the parent or parents or guardian have died, or
- the parents are terminally ill, or
- the child or children have been abandoned.

The law will make sure that it is 'in the best interests' of a child before letting him or her become the head of a household.

The child needs to be supported by an adult who may be appointed by:

- The Children's Court
- A government body, or;
- An NGO (non-governmental organisation)

The adult who supports the child has responsibilities. The adult:

- Must be a fit and proper person
- Must supervise the household
- Must make decisions together with the eldest child of the household
- Can collect a grant for the home, as long as he or she has the permission to do this.



Vusi asks: "Can an adult supervisor make decisions on his or her own about the child-headed home?"

Mirasha answers: "No, the child, like Bongi, must always be consulted about decisions that may affect the home."



Mirasha then asks: "What if the adult is not listening to a child and is not doing what he or she is supposed to do to support the household?"



Vusi explains: "The child can report the adult to a social worker."

Vusi asks: "Can the government refuse a child in Bongi's situation a social grant?"

Mirasha answers "No, if all other requirements are met, a grant cannot be refused."



Removal of child to temporary safe care with or without a court order (Chapter 9, Section 151 & 152)

Mirasha asks: "What if the teacher in Tumi's story went to the court because she believed that Tumi was being abused? What would happen to Tumi? I know that there are different steps that the court follows depending on if the child is in danger or not. Can you explain the different steps that will happen in these two situations?" Let's have a look at the following diagram.



Removal of a child to temporary safe care by a court (Chapter 9, Section 151)

If anyone is concerned about a child and believes that the child needs care and protection, he or she can go to the Children's Court and show the magistrate the child needs protection.

Removal of a child to temporary safe care without a court order (Chapter 9, Section 152)

A social worker or police official may believe a child is in urgent need of care and protection and any delay will endanger the child. The child may be removed without a court order and placed in temporary safe care.

or

The court may order that the child needs to be moved from the home

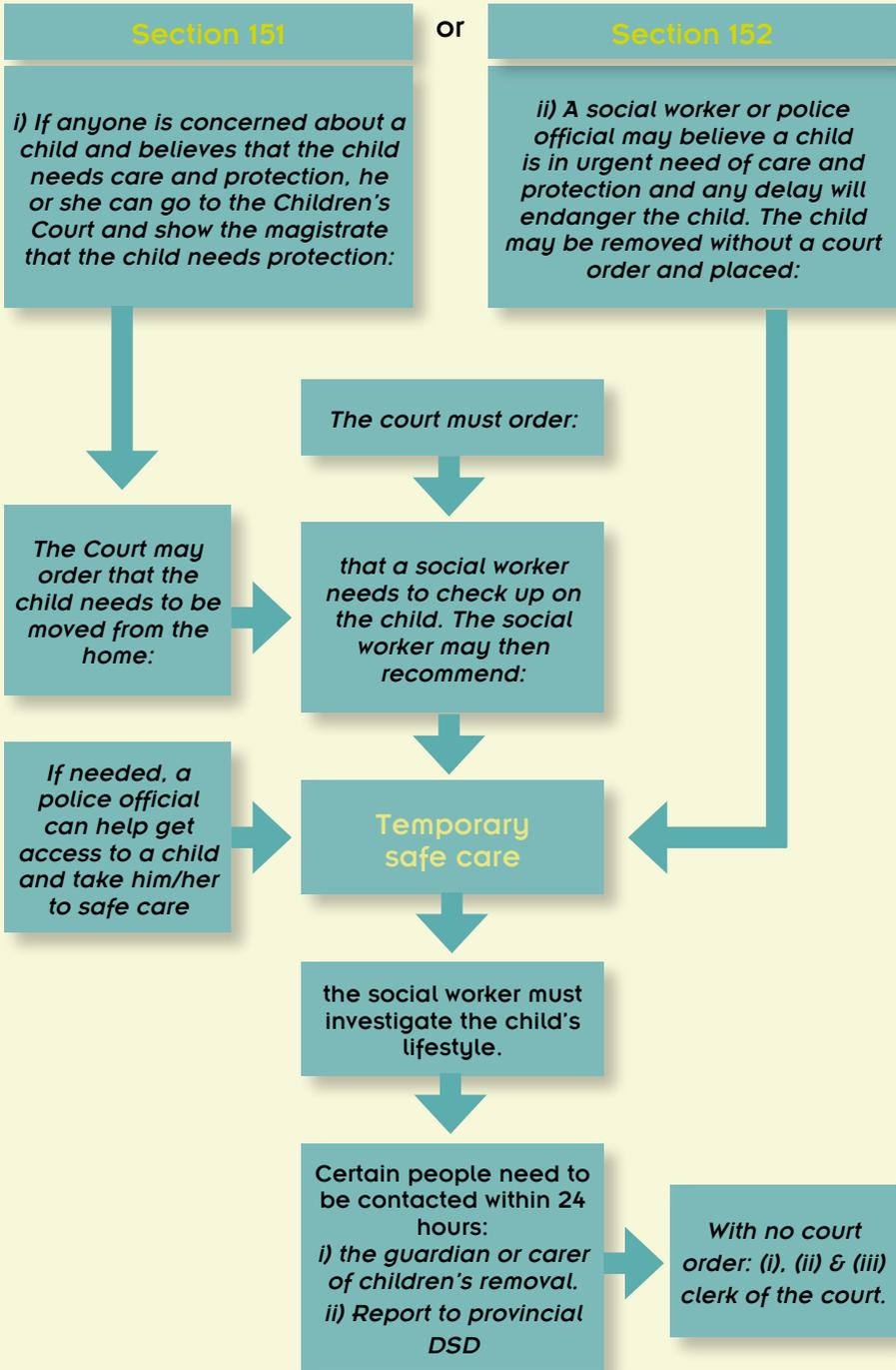
The court must order that a social worker needs to check up on the child

If needed, a police official can help get access to a child and take him or her to safe care

The social worker may then recommend temporary safe care for the child

Temporary safe care

The person who has been ordered to remove the child must inform (i) the parent, guardian or caregiver of the child, (ii) a social worker so they can investigate, and (iii) the Provincial Department of Social Development (DSD) within 24 hours. In a case where the child has been removed without a court order, the clerk of the court must also be informed.



Points that guide the Children's Court in making a decision:

Mirasha says: "The child's own care and protection is very important!"



Vusi says: "Sometimes it may be 'in the best interests of the child' that the person who is a threat to the child needs to be taken away from the child's home."



Mirasha says: "Whenever there is a decision to take a child into temporary safe care the first thing to think about is what is in 'the best interests of the child'?"



Vusi says: "If a policeman or woman takes this person from the home of the child then a written notice is needed."



A written notice looks like this:

- the name, the address and the type of work the offender does,
- it will have an order in it telling the offender to leave the home,
- the notice also tells the offender to get to court and when.

An
offender is someone who has
done something wrong; he or she has
committed an offence.

CHILD ABDUCTION (CHAPTER 17, SECTION 275)

Wendy's father and mother were divorced when she was only three years old. Wendy remembers being told that she would be living with her mother and that her father was not going to be seeing her and her little sister very much.



One day as Wendy was waiting for her mother to pick her up after school, she noticed her father standing by the gate. Wendy was only seven years old and even though she remembered that her father was not supposed to be there, Wendy was very happy to see him and ran to give him a hug.

Wendy's father told her that her mother had been delayed at work and that he had come specially to take care of her for a while before taking her home. Wendy was not very sure that this was true but her dad was very convincing and he promised that he had a special present for her if she was good. Wendy could not see her mother anywhere so she got into the car with him. Wendy's father disappeared with her.

It took Wendy's mother nearly a year to eventually find her ex-husband and her missing daughter.



Ms Pandori says: "The kidnapping of a child by a parent, a caregiver or anyone else is called child abduction and is seen as a serious problem all over the world. South Africa has agreed to follow the international law on child abduction and the Children's Act has specially introduced steps on how to deal with the problem."

The Hague Convention strives to protect children internationally from the harmful effects of their wrongful removal or retention, and to put procedural steps in place to ensure that they are returned back to their homes quickly.

The Hague Convention is an international law that guides the law in South Africa and hopes to sort out the problem of child abduction all over the world. South Africa signed this international law along with several other countries.

Central authority (Chapter 17, Section 276)

The main person who is in charge of overseeing child abductions is the family advocate. The family advocate is appointed by the Minister for Justice and Constitutional Development.

Appointed means that someone is officially asked to do a certain type of work.

Powers of the court (Chapter 17, Section 278)

The Act gives the court certain powers to deal with child-abductions. When a child is abducted the Act says the High Court can make an order demanding the return of the child. The High Court will first ask the family advocate for a report on the home life of the child before the child was abducted. The High Court may also ask the child what happened when he or she was abducted and what the child wants the court to do. The High Court will then make an order for the child to be returned to its original home depending on what information the court finds out.



Vusi says: "Remember we said, in Booklet 1, that the child's right to participate and to be heard is very important. A child has a right to be heard. It is in the 'best interests of the child' that he or she is given the chance to speak of his or her wishes and feelings."

Did you know?

The law says that a child must have a lawyer helping the child to make sure that the child is heard!



CHILD LABOUR AND EXPLOITATION OF CHILDREN (CHAPTER ?, SECTION ?)

Children are innocent and trusting and may easily be hurt because of this.

Mirasha says: "What does the law say about child labour?"



The law says that children are vulnerable and therefore need to be protected, even in situations where the child decides to work for a living. Children often have to go to work because they need to raise money for themselves and even their families. When children have to work it puts their own education, social development and well-being (emotionally, physically, mentally, morally or spiritually) at risk. Adults often take advantage of these children and, because of this, special laws have been made to deal with the protection of children who work.



Child labour is not allowed!



Mirasha asks: "What is child labour?"

Child labour is where a child is taken advantage of or is in danger when doing a job. A child may also be too young or undeveloped for a certain type of work.

The Act says that no one may use a child for slavery, sex, trafficking or a crime.





Ms Pandori says: “These different terms are explained in the Act. For example, slavery refers to a situation where a child is forced to do work against his or her will. This does not include normal household chores. Sex means that a child cannot be used to perform any sexual activities like prostitution or pornography and trafficking refers to the selling or transporting of children by force in order to make money. We all know what the word crime means and in the Act it says that a child cannot be used to help commit a crime. It is even wrong for a person to try to get a child to commit a crime.”

Reporting a case of child labour or any other forms of exploitation or abuse:

When a person sees a child being used in the workplace, they must immediately report the child’s circumstances to a social worker or social services professional. The Department of Labour will then investigate the case.

A
social service professional is a probation officer, child and youth care worker, social auxiliary worker, or a social security worker.

Did you know?

There are laws that deal with the protection of people at work and this law also says that a child under the age of 15 years may not be forced to be employed and may not do any work that is dangerous.

CHILD TRAFFICKING (CHAPTER 18, SECTION 281 & 282)

Children are often exploited and abused for various reasons. Child trafficking is therefore a serious problem in the world. The Children's Act looks at stopping child trafficking and also follows the international law on trafficking.



The United Nations has a Protocol to Prevent Trafficking in Persons. This document says the world needs to work together to stop the trafficking of people, especially women and children.

Mirasha asks: "What is child trafficking?"

Remember the story of Wendy and her father mentioned earlier on? What if Wendy's father and mother agreed to sell Wendy to a rich and famous pop star? This pop star could afford to give Wendy the life that her parents could not give her. Wendy's new family were able to spoil her and give her new clothes and toys. Wendy thought that this was the best thing to happen to her and she liked being spoilt and treated like a princess.



Do you think what happened to Wendy is wrong?

Yes, it is wrong. No child can be bought and sold:

- even if the parent agrees
- even if the child agrees, and
- even where there is no exploitation.



Do you think Wendy's parent will be in trouble?

Yes, and they will not be able to explain their decision to the Court because the law says you cannot sell a child!

Child trafficking takes place when a child is:

- Bought or sold
- Kept by force
- Kept by lies.



Absolutely no one is allowed to traffick a child!

The law will punish people who do this. The people the law may punish are:

- An employer, even if someone else, hired by him or her, was actually doing the trafficking for the employer.
- Any person who lets a trafficked child be held in a room in his house or any building he or she owns during transit,
- Anyone who tries to encourage child trafficking through the media like advertisements in papers or magazines or even on the internet.

Did you know?

Every internet service provider working in South Africa is obliged by law to report to the police any website that contains information that goes against these laws on child trafficking.



Mirasha asks "What if a child is taken out of South Africa?"



Wendy's father was very short of money so he decided to take Wendy to another country and sell her to another man who had a clothing business making clothes for a big international company. Wendy is now left in a home with many other children her age and every day she has to work all day long. Wendy is never able to play.

What will the law do for Wendy?

The Director General of Foreign Affairs will refer the child's case to a social worker and order the country to return the child immediately. They will also ask a social worker to investigate the case and write a report.

When the child is returned to the country, the High Court will make an order for the suspension of parental rights and the child will be placed in safe care while Children's Court investigates the child's case

Did you know?

The father will be punished in terms of South African law.



The following people must report child trafficking to a social worker:

- Immigration officer
- Police official
- Social worker
- Social service professional
- Doctor
- Registered nurse

The social worker must then investigate the case and hand in a report to the High Court within 90 days, giving advice about what needs to be done. If it is necessary the child will be placed in temporary safe care.

Victims who have been brought to South Africa from another country are also protected in this country. It is important that these children are kept safe before they are taken back to their home country.

Children and the courts

JURISDICTION OF COURTS IN REGARD TO MATTERS AFFECTING THE WELFARE OF CHILDREN (CHAPTER 4)

What is jurisdiction?

Jurisdiction is about the power that the different courts have. A person knows where to take his or her case depending on the court's jurisdiction. Because South Africa has many different courts they all have different powers and functions and their jurisdiction is used as a measure of where to go with a case.



Vusi says: "Look at the description below to understand the power and function of each of the courts."

The superior courts are:

Constitutional Court

The Constitutional Court is the highest court in South Africa and is situated in Johannesburg. It makes sure that our rights are being respected by everyone in South Africa – including the government.

Supreme Court of Appeal

The Supreme Court of Appeal, which is situated in Bloemfontein, is the highest court of appeal in cases not involving the Constitution. It only hears appeal cases.

High Courts

High Courts are situated in each of the nine provinces, with additional local divisions in KwaZulu-Natal, Gauteng and the Eastern Cape. High Courts can hear cases for the first time and also appeals from the Magistrates Courts.

The inferior courts are:

Magistrates Courts

Magistrates Courts can hear less serious cases than High Courts. Criminal matters are heard in district and regional courts.

Children's Courts

Children's Courts deal specifically with children's matters.

Divorce Courts

Central Divorce Courts sit once per month in the capitals of the nine provinces. They hear divorce cases. The procedure is simpler than that in High Courts.

Small Claims Courts

Small Claims Courts hears civil matters where the value of the dispute is less than R7,000.

Cases that can be heard in the High Court, the Divorce Court or the Children's Court:

Cases heard in High Court or Divorce Court:	Cases that may be heard by a Children's Court:
Upper Guardian of all children	
Assignment of guardianship – Booklet 1	About the protection and well-being of a child – see Booklet 2
Artificial fertilisation or surrogate motherhood– see Booklet 1	About the care and contact of a child
Departure, removal and abduction of a child from South Africa	Finding out who is the biological father of a child – paternity testing
Age of majority or capacity cases – see Booklet 1	Providing early childhood development services for pre- or special schooling
Making a parental responsibility agreement if part of a divorce	Making a parental agreement if not part of a divorce
Changing or ending a parental responsibility agreement	Deciding whether there is neglect, abuse or exploitation of a child – not a criminal case
	Alternative care or temporary safe care for a child including a child and youth care centre
	Adoption



Mirasha says: "If someone wants to find a Children's Court, where would they go?"

Vusi answers: "They should find a Magistrate's Court. There is a Magistrate's Court in most towns throughout South Africa."



Mirasha asks: "Which Magistrate's Court can be used to hear a matter involving a child?"

Vusi replies: "The nearest court to where the child, or his or her family, lives."



This table lists the persons who attend a Children's Court hearing and what they do. In the picture overleaf you can see where all these people sit or stand in the court room:

Court officials

Magistrate	Controls the court proceedings, asks questions and can cross-examine, and makes sure the court is child friendly.
Clerk of the court	Helps the magistrate in making sure the court is run smoothly and assists the magistrate.
Court recorder	Makes sure everything in court is recorded so it can be checked later.
Court orderly	Assists the magistrate with the smooth running of the court proceedings and swears in witnesses.
Lawyer	Represents the child's interests, if needed.
The child	Participates and is heard. Tells his or her story.
Child's parents or caregivers	Support and assist the child.
Social Worker	Investigates the case for the child.
Witnesses	Give evidence.



Vusi says: "A child has the right to be represented by a lawyer in the Children's Court. There are different types of lawyers and if the child cannot afford to pay for a lawyer, he or she can ask for a legal aid lawyer from a justice centre and they are free of charge."

Mirasha asks: "How can a lawyer help a child?"



Vusi answers: "The lawyer is able to help the child to tell the court the child's story. During cross-examination the child's lawyer can protect a child witness if he or she is being intimidated or if the questions asked are unfair."



Ms Pandori says: "Look at the illustration of the Children's Court over the page. This is a picture of a child friendly court. A child friendly court is one where the child feels very comfortable. Here the child's best interests are important and the child feels safe enough to participate and be heard without fear of intimidation. In a child friendly court a child should always be able to understand everything that is happening and if not there should be someone there to explain and listen."

Mirasha says: "I don't see that many people in the court room and I know it is because a child friendly court is also a closed court. In a closed court only people who are directly involved with the case or the child are allowed to be present. The child is not even in the court and that's because he or she is able to give evidence in a separate room, with the help of another person. This other person is usually a social worker who understands children and has been chosen by the court. We call this person an intermediary."



Did you know?

Video communication is used between the court and the child who is in a separate room.







The right to give evidence, to question or cross-examine any witness and to address the court (Chapter 4, Section 58)

The child, his or her lawyer, parents, caregiver or any other person having parental responsibilities over the child, may do the following in court:

- Give evidence.
- With the permission of the court, ask questions to the court or cross-examine witnesses or the social worker who gave a report.

Did you know?

Cross-examination is to ask questions to someone who testifies in court, and is designed to separate lies from the truth, opinions from facts and conclusions drawn by witnesses that they claim they can remember. It is also aimed at showing the court that the witness is untruthful or has made contradictory statements and is thus unreliable. Cross-examination is normally done by putting a statement to a witness and getting such witness to agree or disagree with it.

The orders a Children's Court makes:

Type of orders:	Explanation:
Placing the child under alternative care	With foster parents, in a child and youth care centre or in temporary safe care.
Order placing a child in a child-headed household	Under the care of the child heading the household and supervised by an adult.
Adoption order	National or international.
Partial care order	Instructing the parent or caregiver to arrange for the care of their child during specific hours.
Shared care order	Instructing different caregivers and youth centres to take responsibility for the care of the child.
Supervision order	Placing child under supervision of social worker.
Order for parents and/or child to participate in programmes	Early intervention services or family preservation programme
Child protection orders	Such as: child remains, is removed or is returned to care of a person; giving consent to medical treatment; instructing an assessment by a social worker; ordering the removal of someone from the child's home if seen as a threat; prohibiting a person from contacting a child or limiting access.

EXERCISE:

Facts:

Jake is an 11 year-old boy living in a small flat in the middle of Johannesburg with his two parents. Jake's father is unemployed. His mother is a cleaner at the hospital, working night shifts from 18:00 until 6:00 in the mornings. Jake's father is angry and frustrated and drinks a lot. Although he mainly stays at home, he doesn't care for Jake. Jake's parents fight very often. Jake often has to do chores at home during the week. He has become increasingly troubled by his parents' constant fights. His school work has started to suffer a lot. When his teacher, Mrs Jones, asked Jake about the dramatic drop in his results, Jake told her everything. His teacher then approached the Department of Social Service. The Department appointed one of its social workers, Mrs Dlamini, to investigate. Mrs Dlamini decided to approach the nearest Children's Court for an order protecting Jake.

INSTRUCTIONS:

Role-play the proceedings in the Children's Court, dividing the class into the following groups:

- The presiding officers
- Mrs Dlamini (social worker; an intermediary)
- Mrs Jones (teacher)
- Jake
- Jake's parents
- Court orderly
- Jake's lawyers

Steps:

- Let the social worker and teacher tell their story
- Let Jake tell his story through the intermediary
- Jake's lawyers to ask Dlamini and Jones questions
- Jake's lawyers to ask Jake's parents questions
- The presiding officers take a short break
- The presiding officers return and give their decision as to what should happen to Jake, giving reasons
- A discussion of the whole group could cover the following:
 - How did they feel about the mock trial?
 - How did they feel about the questions asked by Jake's lawyers?
 - Was the process fair on Jake?
 - How they feel about the decision by the presiding officers? Obtain reasons.
 - Would they have taken different decisions? If so, what?

Appeals against orders of the Children's Court (Chapter 4, Section ?):

Anyone who was involved in a case in the Children's Court may appeal against the court's decision or against the court not making an order. The appeal can be heard by the High Court in the same province where the Children's Court was situated.

ENFORCEMENT OF RIGHTS (CHAPTER ?):

Powers of the Children's Court (Chapter ?, Section ?):

The Children's Court can order that somebody must do something and it can also make sure that an order has been followed and if the order is not followed it can set a deadline against which the order must be obeyed. The Children's Court can also grant an interdict. This means that it can forbid someone from doing something specific and if they ignore the order they can be punished in terms of the interdict – they can even be sent to prison for not obeying the interdict. Anyone is able to defend themselves against an interdict but they will have to prove their case to the court.

Reaching agreement outside court in disputes involving children outside court:

To save time, the Children's Court can order people who are in a dispute over a child to meet before going to court. It is better to settle a dispute between themselves rather than waiting for the court. In this way the parties know that they are both in agreement about the solution and there is buy-in by them.

There are three types of dispute resolution and all three need a written report. This report is then sent to the court. The report has proof of the agreement that was reached and any points that were not agreed on. As long as the agreement is in the 'best interests of the child' it can become an order of court.

The court can order that any of the following meetings needs to take place and then ask for a report:

- (1) Pre-hearing conference – This can be ordered if the application to the Children’s Court is opposed by another party in any matter about a child, except alleged abuse or sexual abuse of a child. The court can determine that a mediator be appointed to try and get the parties to settle their differences.
- (2) Family group conference – The court would normally appoint a person or an organisation to facilitate solutions for any problem involving the child.
- (3) Other lay-forum – The court can refer a dispute to a group consisting of non-experts, such as, for instance, a traditional authority, to mediate a dispute about a child.

Glossary

Abduct (abduction)	To take someone away from a place by force.
Adoption	Adoption is a legal way for an adult or adults, who, for example, are unable to give birth to a child or want to bring another child into the family, to become the legal parents of a child. When you adopt a child, the child becomes yours as though born of you.
Auxiliary social worker	A person with limited training who can assist or help the social worker (refer to “social worker” below).
Caregiver	A person who gives help and protection to someone (such as a child, an old person, or someone who is sick).
Child-headed household	A household where a child looks after the home and his or her brothers and sisters because the parents cannot do this and there are no other adults to take over this role.
Child trafficking	Buying or selling of children, especially in another country.
Early childhood development	This is a term used to classify the processes by which children from birth to six years old grow and flourish socially, physically, mentally, emotionally, spiritually and morally.
Foster care	Foster care is the placement of child, who needs to be removed from the parental home, into the custody of a suitable family or persons willing to be foster parents. This is done by order of the Children’s Court. Children can be removed from their parents if they are abused, neglected or abandoned.
Grant	Assistance (sometimes financial) given for a particular purpose; for example, a grant is paid by the government to help poor parents who cannot afford to pay for their children’s upkeep.

Guardian	A person or persons who have been legally appointed to protect and take care of a child or children.
Interdict	To prohibit or forbid (especially an action) by using an interdict.
Intermediary	A person who works with opposing sides in an argument or dispute in order to bring about an agreement.
Intervention	To become involved in something (such as a conflict) in order to have an influence on what happens, for example, the court was asked to intervene.
Jurisdiction	The limits or territory within which an authority, such as the court, may be exercised.
Partial care	This means the type of care offered at a partial care facility; a partial care facility means any place used to protect or temporarily take care of more than six children.
Reunification (reunify)	To make something whole again, for example our goal is to reunify this family by returning the children to their parents.
Social worker	A trained person who is able to help troubled families by providing counselling and advice in order to promote social well-being.
Testify	To make a statement based on personal knowledge or belief.

Acknowledgements

Web-based dictionaries and sources were used as references for the glossary <http://www.wordcentral.com>; <http://kids.yahoo.com/reference/dictionary/english>; <http://www.etu.org.za/toolbox/docs/aids/care.html>; <http://www.education.gov.za/ece/home.htm>; <http://www.capegateway.gov.za/eng/directories/services/11575/17450>

Useful contact numbers

If something unpleasant has happened to you and you need some help or you want to find out more information about a topic mentioned in this booklet try to talk to your parent or parents first. Also try talking to your teacher or a close adult family member. If none of these people can help try to contact the telephone numbers given below:

Childline	080 005 5555
Child Welfare South Africa	011 492 2884
South African Police Service emergency number	10111
Crime Stop	086 001 0111
Human Rights Commission	011 484 8300
Department of Labour (Pretoria Head Office)	012 320 2059
Street Law (National Office)	031 260 1291

Provincial Departments of Social Development:

Gauteng	011 355 7843/7823
KwaZulu-Natal	033 264 2068
Northern Cape	053 874 9100
Western Cape	021 483 4153
North West	018 388 2021
Limpopo	015 293 6000/6331
Mpumalanga	013 766 3156/3120
Free State	051 409 0590
Eastern Cape	040 609 5303/4/5 or 608 5810

Acknowledgements:

Material prepared and written by *Desia Colgan*, Lecturer in Law, University of the Witwatersrand, Johannesburg and Street Law Coordinator.

Contributions by *Jobst Bodenstein*, Professor, Rhodes University Legal Aid Clinic; *Lloyd Lotz*, Lecturer in Law, University of KwaZulu-Natal, Durban and Street Law South Africa Director; *Lorayne Excell*, Coordinator of Early Childhood Development, University of the Witwatersrand, Johannesburg; *Karmini Pillay*, Lecturer in Law, University of the Witwatersrand, Johannesburg; and *Sonia Brooks*, Projects coordinator, Wits Commercial Enterprise.

Design by *Handmade Communications*.

Illustrations by *Tinus de Bruyn*.

