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SWAZILAND GOVERNMENT GAZETTE

VOL. XLX]

MBABANE, Friday, NOVEMBER 16th 2012

[No. 121

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NOTICE

Notice is hereby given that I, **Nduduzo Sibusiso Dlamini** of **Shiselweni Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Moletsane** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the newspapers circulating in the region, where I reside and designated for this purpose by the Regional Secretary for the **Shiselweni Region** and in the Government Gazette.

The reason I want to assume the surname **Moletsane** is because it is my natural surname.

Any person or persons likely to object to my assuming the surname **Moletsane** should lodge their objections in writing to me at the address given below and with the Regional Secretary for **Shiselweni Region**.

P. O. Box 8
Nhlangano

N1318 4x23-11-2012

NOTICE

Notice is hereby given that I, **Futhi Precious Nhleko** of **Mvutshini - Hhohho Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Ginindza** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the newspapers circulating in the region, where I reside and designated for this purpose by the Regional Secretary for the **Hhohho Region** and in the Government Gazette.

The reason I want to assume the surname **Ginindza** is because it is my natural surname.

Any person or persons likely to object to my assuming the surname **Ginindza** should lodge their objections in writing to me at the address given below and with the Regional Secretary for **Hhohho Region**.

P. O. Box 535
Ezulwini

N1305 4x16-11-2012

NOTICE

ESTATE LATE: ELIZABETH MADZANDZANE VILAKATI
ESTATE NO. EL65/2012

Debtors and Creditors in the above-mentioned estate are hereby required to lodge their claims and pay their debts with the undersigned within **thirty (30) days** from date of publication of this notice.

MATHOKOZA VILAKATI
P. O. Box 197
Siphofaneni

N1363 16-11-2012

**SUPPLEMENT TO
THE
SWAZILAND GOVERNMENT
GAZETTE**

VOL. XLX]

MBABANE, Friday, NOVEMBER 16th 2012

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PART B

SI

CHILDREN'S PROTECTION AND WELFARE ACT, 2012

(Act No. 6 of 2012)



I ASSENT

King Mswati III
of Swaziland

20th August, 2012

AN ACT Entitled

AN ACT to extend the provisions of section 29 of the Constitution and other international instruments, protocols, standards and rules on the protection and welfare of children, the care, protection and maintenance of children; and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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AN ACT to extend the provisions of section 29 of the Constitution and other international instruments, protocols, standards and rules on the protection and welfare of children, the care, protection and maintenance of children; and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland

**PART I
PRELIMINARY**

Short Title and Commencement.

1. This Act may be cited as Children's Protection and Welfare Act, 2012 and shall come into force on such date as the Minister may fix by notice in the Gazette and the Minister may fix different dates for coming into force of different Parts or sections of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires-

"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 or harm on a child;
- (b) sexually abusing a child;
- (c) committing an exploitative labour practice in relation to a child;
- (d) exposing or subjecting a child to behaviour that may socially, emotionally, physically or psychologically harm the child;
- (e) exposing a child to physical or mental neglect; and
- (f) abandoning or leaving a child without visible means of support;

"a child with disability" means a child who is affected by any disability of a physical, intellectual, sensory, or mental nature or other disability irrespective of its cause, whether temporary or permanent, to the extent that a child is unable to engage in activities in a normal way and is as a result hampered in his normal functions in certain areas of social life;

"appropriate adult" means any suitable or proper person who is in charge or control of a child and is in a position to offer counsel, and ensure that the child offender is receiving the care he/she is entitled to.

"approved school" means a school designated as such under section 186 of this Act.

"approved school order" means an order made by a Children's Court requiring a child to be sent to an approved school;

"assessment" means a process of the evaluation of a child by a social worker, on the child's development and competencies, the child's family or home circumstances, the nature and circumstances surrounding the socio-economic circumstances of the child or the alleged commission of an offence and its impact upon the victim, the intention of the child to acknowledge responsibility for the alleged offence, and any other relevant circumstances or factors;

"authorised person" means an official or other person authorised expressly or impliedly to perform the act in question;

"auxiliary social worker" means a designated person who assists social workers with their tasks;

"Bill of Rights" means the rights and freedoms of individuals contained in Chapter 3 of the Constitution;

"care" means to have duties and responsibilities towards a child including custody and day-to-day control of the activities of a child.

"chief" has the meaning assigned to it in the Constitution;

"child" means -

- (a) a person under the age of eighteen years;
- (b) in relation to criminal proceedings, is a person who has attained the age of criminal responsibility as referred to under section 83.

"child care provider" 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; the person at the head of a shelter; a child care worker who cares for a child who is without appropriate family care in the community; and the child at the head of a child headed household.

"Children's Court" has the meaning assigned to it under section 132;

"community service" means compulsory work for a community organisation or other compulsory work of value to a community, performed by a child with his consent and without remuneration;

"Constitution" means the Constitution of the Kingdom of Swaziland Act, 2005;

"contribution order" means an order made by the Children's Court for a parent of a child who is sent to an institution to contribute financially for the welfare of the child;

"decent name" means a socially acceptable name that is not derogatory.

"detention" means the deprivation of liberty of a child including confinement in a police cell, lock-up, prison, approved school, probation hostel;

"diversion" means the referral of cases of children alleged to have committed offences away from the criminal justice system with or without conditions;

"diversion programme" means a programme which is intended to promote a child's accountability and reintegration into society;

"early intervention services" means social development services which are 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;

"emoluments" includes any salary, wages, allowances or any other form of remuneration, whether expressed in money or not;

"family group conference" means a meeting involving the child, his parents and family members, the victim of the offence, his parents if the victim is another child, and any other relevant party to find ways to restore the harm and broken relationships caused by the child's offending;

"family time order" means an order directing a child to spend time with family or in a family environment.

"foster parent" means a person, not being a parent of a child who undertakes the responsibility of providing for the care, accommodation and upbringing of the child, with or without financial reward;

"financial institution" has the meaning assigned to it under section 2 of the Financial Institutions (Consolidation) Order No, 23 of 1975;

"guardian" means any person who, in the opinion of the Children's Court having cognizance of any case in relation to the child or in which the child is concerned, is for a time being in charge of or has control over the child;

"household member" means a person who ordinarily resides in the same household as the child;

"industrial undertaking" has the meaning assigned to it under section 234;

"inquiry magistrate" means the officer presiding in a preliminary inquiry;

"indvuna" means the chief's headman.

"medical officer" means any officer who is working in the medical profession and is qualified to do so.

"member of the family" includes a parent or a guardian, or a member of the extended family, who is a household member;

"Minister" means the Minister responsible for children's issues or the Minister for the time being charged with the responsibility for that matter;

"orphan" means a child who has lost one or both parents.

"person" means a natural person or juristic person;

"place of detention" -

(a) means any place of detention established or appointed under section 178; and

(b) includes accommodation in police station, police cell or lock-up, prison, approved school, probation hostel, separate or apart from adult offenders;

"place of safety" means any institution designated for the care and protection of children, foster home or any other suitable place the occupier of which is willing temporarily to receive a child;

"police officer" has the same meaning as in the Police Act No. of 29 of 1957.

"preliminary inquiry" means the compulsory procedure which takes place before charges are instituted in relation to the alleged offence and which is held in all cases involving a child over the minimum age of criminal responsibility, where diversion, conversion to a Children's Court inquiry or a decision to decline to charge the child has not yet been taken in accordance with this Act;

"probationer" means a child for the time being under supervision by virtue of a probation order;

"probation hostel" means a hostel established or appointed as a place of residence for children required to reside there under section 186;

"probation period" means the period in which a probationer is placed under supervision by virtue of a probation order;

"recognisance" means a communication to the child by a police officer or social worker to appear at assessment on a specified date and at a specified place and time, or by a magistrate to appear at a preliminary inquiry or at a Children's Court;

"remand home" means a place designated as a detention home for juvenile offenders.

"restorative justice" means an approach to justice which fosters dialogue between the victim and offender and focuses on the needs of victims, offenders, as well as the involved community, as opposed to satisfying abstract legal principles or punishing the offender.

"sentence involving residential element" means a sentence or a programme referred to under section 161 where part of that sentence or programme involves compulsory residence in a residential facility or a place other than the child's home;

"social worker" used to include 'auxiliary social worker'.

"trafficking" means the recruitment, transportation, transfer, sale, harbouring or receipt of persons, by means of 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 purposes of exploitation;

"social worker" means a person working as a social worker in the department of Social Welfare, including a probation officer.

"vulnerable child" means a child with or without parents who lacks the basic needs for survival and living in circumstances with high risk or whose prospects for health, growth and development are seriously impaired.

PART II
GENERAL PROVISIONS

Principles for administration of Act.

3. (1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount.

(2) Subject to subsection (1), this Act is also to be administered under the following principles -

- (a) every child has a right to protection from harm;
- (b) families have the primary responsibility for the upbringing, protection and development of their children;
- (c) the preferred way of ensuring a child's wellbeing is through the support of the child's family;
- (d) powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures -
 - (i) actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and
 - (ii) the views of the child and the child's family are considered; and
 - (iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;
- (e) if a child does not have a parent able and willing to protect the child, the Government has a responsibility to protect the child, but in protecting the child the Government shall not take action that is unwarranted in the circumstances;
- (f) if a child is removed from the child's family -
 - (i) the aim of authorised persons working with the child and the child's family is to safely return the child to the family if possible; and
 - (ii) the child's need to maintain family and social contacts, and ethnic and cultural identity, shall be taken into account; and
 - (iii) in deciding in whose care the child should be placed, the Director of Social Welfare shall give proper consideration to placing the child, as a first option, with kin;

- (g) a child should be kept informed of matters affecting him in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;
- (h) if a child is able to form and express views about his care, the views shall be given consideration, taking into account the child's, age, capacity and ability to understand;
- (i) if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care.

(3) Nothing in this Act is intended to prevent, discourage or displace the application of informal and traditional regimes that are more promotive or protective of the rights of children except where those regimes are contrary to the best interests of children.

(4) Where there is anything to the contrary or less protective or less promotive in any law, the provisions of this Act shall apply.

PART III
RIGHTS OF THE CHILD AND RESPONSIBILITIES
OF PARENTS AND THE STATE

Non-discrimination.

4. A child shall not be discriminated against on the grounds of gender, race, age, religion, disability, health status, custom, ethnic origin, rural or urban background, birth, socio-economic status, refugee status or other status.

Right to name and nationality.

5. A child has a right from birth to a decent name and to acquire nationality.

Right to birth registration and citizenship.

6. A child has a right to be registered within three months of birth whether a child is born alive or still born.

Right of orphaned and vulnerable children to vital registration.

7. (1) Orphaned and vulnerable children shall have a right to vital registration.

(2) The Department of Statistics shall maintain and administer a systematic and comprehensive disaggregated, quantitative and qualitative data in relation to all groups of orphaned and vulnerable children.

(3) The Department of Statistics shall put in place mechanisms and strategies for the collection, analysis and dissemination of data in respect of orphaned and vulnerable children.

Right to knowledge of and grow with parents and in family environment.

8. A child has a right to know and live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would-

- (a) lead to harm to the child; or
- (b) subject the child to abuse and neglect; or