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## ACT NO. 1 OF 2011

## Anti-Trafficking in Persons Act, 2011

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## ACT NO. 1 OF 2011

**Anti-Trafficking in Persons Act, 2011**

An Act to provide for the prohibition, prevention, prosecution and punishment of perpetrators of the offence of trafficking in persons and other related offences; measures for protection, rehabilitation and reintegration of victims of trafficking in persons; and for related matters.

Enacted by the Parliament of Lesotho.

**PART 1 – PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Anti-Trafficking in Persons Act, 2011, and shall come into operation on the date of publication in the Gazette.

**Interpretation**

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

“child” means a person who is under the age of 18 years;

“coercion” means use of force or threat, and some forms of non-violent or psychological use of force or threat, including -

- (a) threats of harm or physical restraint of a person;
- (b) a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm or to physical restraint against any person;
- (c) abuse or threat linked to the legal status of a person; or
- (d) psychological pressure.

“debt bondage” means the pledging by a person of his personal services or labour, or those of a person under his control as security or payment



for a debt owed or claimed to be owed, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is manifestly excessive and is not applied towards the debt;

"exploitation" includes, at the minimum, induced prostitution and other forms of sexual exploitation, forced marriage, forced or bonded services, or practices similar to slavery, servitude or the removal of human organs;

"forced labour" means labour or services obtained or maintained through threats, use of force, intimidation and other forms of coercion, or physical restraint;

"Minister" means the Minister responsible for home affairs and public safety;

"ministry" has a corresponding meaning to "Minister";

"person" includes a juristic person and partnership;

"prescribe" means prescribe by regulations;

"probation officer" means a person who holds a qualification recognised by the Minister responsible for justice, human rights and the Correctional Service, and includes an auxiliary probation officer;

"public official" means -

- (a) a person holding a legislative or executive office, whether appointed or elected, administrative or judicial office, whether permanent or temporary, paid or unpaid irrespective of the seniority of that person;
- (b) any other person who performs a public function, or provides a public service;

"servitude" means a condition in which the labour or services of a person are provided or obtained through threats of harm to that person or another, or through any scheme, plan or pattern intended to cause the

person to believe that, if the person does not perform the labour or services, that person or another will suffer harm;

"slavery" means the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised;

"smuggling" means the procurement to obtain, directly or indirectly, the financial or other material benefit of the illegal entry of a person into a state of which the person is not a national or a permanent resident;

"social worker" means a person who is qualified as a social worker and includes an auxiliary social worker .

"trafficker" means a person who is charged with the offence of trafficking;

"trafficking" means the recruitment, transportation, transfer, harbouring, legal or illegal adoption, sale, supply or receipt of persons within and across the borders of Lesotho -

(a) by means of the use of threat, force or other means of coercion, abduction, kidnapping, fraud or deception, the abuse of power, law or legal process or a position of vulnerability or debt bondage; or

(b) the giving or receiving of payments or benefits to obtain the consent of a person having control over another person,

for the purpose of exploitation;

"victim of trafficking" means a person who is a victim of the offence of trafficking.

### **Scope of application of Act**

3. This Act applies regardless of whether the conduct constituting the offence of trafficking took place inside or outside Lesotho in the following circumstances, if-

- (a) Lesotho is a receiving country or the exploitation occurs in Lesotho;
- (b) the receiving country is a foreign country but the trafficking or smuggling starts in Lesotho; or
- (c) Lesotho is a country of transit, or the trafficked person actually resides in Lesotho at the time of the commission of the offence.

#### Extra-territorial jurisdiction

4. An offence under this Act committed outside Lesotho by a person who, while being a citizen of or permanently residing in Lesotho, shall be dealt with as if it has been committed in Lesotho.

### PART II – OFFENCES AND PENALTIES

#### Offence of trafficking

5. (1) A person who trafficks another person commits an offence of trafficking and is liable, on conviction, to a fine of M1,000,000.00 or imprisonment for a period of 25 years.

(2) Where the victim is a child, the offender shall be liable to a fine of M2,000,000.00 or life imprisonment.

(3) The following acts are acts of trafficking for purposes of subsection (1), to -

- (a) recruit, transport, transfer, harbour, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, drug trafficking, slavery, involuntary servitude or debt bondage;
- (b) introduce or match for money, profit or material, economic or other consideration, any person to a foreign national, for marriage, for the purpose of acquiring,



buying, offering, selling or trading a person to engage in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;

- (c) offer or control marriage, real or simulated, for the purpose of acquiring, buying, offering, selling or trading a person to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage;
  - (d) undertake or organise tours and travel plans consisting of tourism packages or activities for the purpose of utilising and offering a person for prostitution, pornography or sexual exploitation;
  - (e) maintain or hire a person to engage in prostitution or pornography;
  - (f) adopt or facilitate the adoption of a person for the purpose of prostitution, pornography, sexual exploitation, forced-labour, slavery, involuntary servitude or debt bondage;
  - (g) recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of the said person.
- (4) A person who -
- (a) performs an act which is directly or indirectly aimed at committing;
  - (b) organises, facilitates, incites, instigates, commands, directs, aids, advises, recruits, encourages or procures another person to commit;
  - (c) attempts or conspires with another to commit,

an offence of trafficking commits an offence and is liable on conviction, to the same punishment to which a person who is convicted of the actual commission of the offence of trafficking would be liable.

(5) The consent of an adult victim of trafficking, or in the case of a child, a person having control or authority over the child to an intended exploitation shall be irrelevant.

(6) A victim shall not be liable for crimes committed in connection with his own trafficking.

(7) The past sexual behaviour of a victim of trafficking is irrelevant and inadmissible for purpose of proving that the victim was engaged in other sexual behaviour or to prove sexual predisposition of the victim.

#### **Acts that promote or facilitate trafficking**

6. A person who -

- (a) knowingly leases or subleases, uses or allows to be used any house, premises, building or establishment for the purpose of promotion of trafficking;
- (b) knowingly transports a victim or is in charge of a conveyance which facilitates an offence under this Act;
- (c) produces, prints and issues or distributes un-issued, tampered with or falsified documents of any government agency which issues such documents as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking;
- (d) advertises, publishes, prints, broadcasts, or distributes, or causes the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer or any propaganda material that promotes trafficking,

commits an offence and is, on conviction, liable to the same penalties as if the person has been convicted of the offence of trafficking.

**Aggravated forms of trafficking**

7. (1) The following are, among others, considered as aggravated forms of trafficking, when -

- (a) an adoption is effected under any law of Lesotho and the adoption is undertaken for the sole purpose of prostitution, pornography, sexual exploitation, labour exploitation, forced-labour, slavery, involuntary servitude or debt bondage;
- (b) the crime is committed by a syndicate or in large scale;
- (c) the trafficker is a parent, sibling, guardian or relative of the trafficked person or a person who exercises authority and control over the trafficked person;
- (d) the offence is committed by a public figure or officer;
- (e) the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies; and
- (f) by reason or on occasion of the act of trafficking, the trafficked person dies, becomes physically or mentally disabled, suffers mutilation or is afflicted with sexually transmitted infection (STI), Human Immune Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS) or any other chronic disease.

(2) A person who commits the offence of aggravated form of trafficking is liable, on conviction, to a fine of M2,000,000.00 or life imprisonment.

(3) Trafficking is deemed to be committed by -

- (a) a syndicate, if carried out by a group of 3 or more persons conspiring or confederating with one another;



- (b) large scale, if committed against 3 or more persons, individually or as a group.

#### **Engaging the services of a victim of trafficking**

8. (1) A person who knowingly and unlawfully buys, engages or otherwise benefits or has reason to believe that the person is buying, engaging or otherwise benefitting from or encourages another to engage the services of a victim of trafficking commits an offence and is liable, on conviction, to a fine of M1,000,000.00 or imprisonment for a period of 25 years.

(2) A person who, for purposes of subsection (1), facilitates by unlawful means, the continued stay or presence of a victim of trafficking in a transit or receiving country commits an offence and is liable, on conviction, to a fine of 100,000.00 Maloti or imprisonment for a period of 10 years or both.

#### **Debt bondage**

9. A person who intentionally and unlawfully engages in a conduct that causes another to enter into a situation of debt bondage commits an offence and is liable, on conviction, to imprisonment for a period of 15 years.

#### **Destruction, confiscation, concealment of documents**

10. A person who intentionally and unlawfully destroys, confiscates, possesses, conceals or tampers with any actual or purported identification document, passport or other travel document of a victim of trafficking in furtherance of the offence of trafficking commits an offence and is liable, on conviction, to imprisonment for a period of 15 years.

#### **Fraudulent travel or identity document**

11. A person who makes, obtains, gives, sells or possesses a fraudulent travel or identity document for purposes of facilitating an offence of trafficking or smuggling and is liable, on conviction, to a fine of M1,000,000.00 or imprisonment for a period of 25 years or both.

#### **Smuggling of persons**

12. (1) A person who arranges or assists in an illegal entry into or



departure from Lesotho of another person in order to obtain a financial or other material benefit commits an offence of smuggling and is liable, on conviction, to imprisonment for a period of 15 years.

(2) A person who engages in the offence of smuggling under one or more of the following circumstances -

- (a) the smuggled person is subjected to torture or any other cruel, degrading or inhumane treatment;
- (b) the life or safety of the smuggled person is, or is likely to be, endangered;
- (c) the smuggled person is a child;
- (d) the smuggled person is intended to be subject to exploitation,

regardless of whether the smuggled person arrives in the receiving country or not, commits an offence of aggravated smuggling and is liable, on conviction, to imprisonment for a period of 20 years.

(3) In a prosecution for an offence under this Part, it shall not be a defence that the smuggled person consented, at any time, to the act of smuggling or initially consented to the exploitation.

### **Compensation**

13. (1) A person convicted of the offence of trafficking shall, in addition to any other punishment, be ordered by a court to pay compensation to a victim of trafficking.

(2) A person who, in pursuit of trafficking, causes injury to another shall be ordered by a court to pay compensation to the injured person.

(3) Where the court makes an order for compensation to be paid in terms of this section, it shall also determine the time within which payment is to be made and the method of payment, including whether it is to be paid in instalments or not and if it is to be paid in instalments, the intervals between the payment of instalments.

### PART III - ENFORCEMENT

#### Port and border control

14. (1) Notwithstanding any power or right conferred by the Aliens Control Act, 1966 or any other law, the following officers are examining officers for the purposes of this Act and may examine persons arriving in and leaving Lesotho and for related purposes -

- (a) a police officer;
- (b) an officer from the National Security Service;
- (c) an officer from the Directorate on Anti-Corruption;
- (d) an immigration officer;
- (e) a customs officer who is designated for the purposes of this Act by the Commissioner of Customs and Exercise.

(2) An examining officer may question a person who enters into or departs from Lesotho at any port of entry for the purpose of determining -

- (a) whether there is reasonable cause to suspect that the person is a trafficker or is involved in trafficking; or
- (b) whether the person is subject to a deportation order.

(3) A person who is questioned under subsection (2) shall -

- (a) give the examining officer any information in the possession of the person which the officer requests;
- (b) produce to the examining officer, on request -
  - (i) a valid passport which includes a photograph or any other document which establishes the person's identity and citizenship;
  - (ii) any document which the person has and which

is of a kind specified by the examining officer;  
and

- (c) declare whether the person has any document of a kind specified by the examining officer.

#### **Power to stop persons or vehicles**

15. (1) For the purposes of exercising power under section 14(2), an examining officer may -

- (a) stop a person or vehicle;  
(b) detain a person, and for this purpose authorise the removal of the person from an aircraft or vehicle.

(2) A person detained under this section shall, unless detained under any other power, be released not later than the end of a period of 6 hours from the time the examination started.

(3) An examining officer may search an aircraft or vehicle which the officer has reasonable grounds to believe is carrying or harbouring a trafficker or trafficked person or thing likely to be used for such purpose or is derived from the commission of an offence of trafficking.

#### **Search of persons and aircraft**

16. An examining officer who questions a person under section 14(2) may, for the purpose of determining whether the person is a trafficker, search the person or anything that the person has or which belongs to the person and is on the aircraft, and which the examining officer reasonably believes has been, or is about to be, on an aircraft.

#### **Examination of goods**

17. (1) In this section "goods" includes -

- (a) property of any description; and  
(b) containers.



(2) This section applies to goods which have entered into or are about to depart from Lesotho on an aircraft or in a vehicle.

(3) An examining officer may examine goods to which this Part applies for purposes of determining whether the goods have been used in the commission, preparation or instigation of acts of trafficking.

(4) An examining officer may board an aircraft or enter a vehicle for purposes of exercising the officer's powers under this section.

#### **Detention of property**

18. An examining officer may detain any goods or document -

- (a) given to the officer under section 14(3);
- (b) searched or found in the search;
- (c) examined under section 17(3),

or purposes of -

- (i) examination, for a period not exceeding 3 days from the date on which the goods are detained;
- (ii) which may be used for criminal proceedings;
- (iii) which may be required in connection with the decision to make a deportation order or not.

#### **Designation of control area facilities**

19. The Minister may, by notice in writing, to the Director of Immigration -

- (a) designate control areas in the port;
- (b) require the Director of Immigration to take all reasonable steps to ensure that specified conditions are met and restrictions are complied with.



**Arrest by a police officer**

20. (1) A police officer may arrest a person for an offence under this Act with or without a warrant issued under this Act.

(2) A police officer may arrest a person for an offence under this Act without a warrant where, the -

- (a) offence is committed in the presence of the police officer;
- (b) police officer is obstructed by the person in the execution of police duties;
- (c) person has escaped or attempts to escape from lawful custody; or
- (d) police officer believes that the person is -
  - (i) attempting to commit an offence under this Act;
  - (ii) about to commit an offence under this Act; or
  - (iii) wilfully obstructing the police officer in the execution of police duties.

**Arrest by private person**

21. (1) A private person may arrest a person if the person commits an offence under this Act in the presence of the private person.

(2) A private person may arrest a person where the private person has reasonable suspicion that the person has committed an offence under this Act.

(3) A private person who effects an arrest shall immediately hand over the person to the police.

#### PART IV – IDENTIFICATION, CARE AND PROTECTION OF VICTIMS

##### Guiding principles in determining a victim

22. The following circumstances shall be taken into account in deciding whether a person is a victim of trafficking in a particular case -

- (a) whether the person is in an exploitative situation through one or more of the following means -
  - (i) violence, intimidation, force, coercion or threats;
  - (ii) threats of violence against the person's family, guardian, or friends;
  - (iii) threats of witchcraft to prevent the person from escaping or to keep control over that person;
  - (iv) forcing the person to use drugs or causing the person to be addicted to drugs as a means of controlling that person or to make the person dependant on the traffickers;
  - (v) photographing or video-taping the person while participating in sexual activities for the purpose of threatening that person with exposure to friends, guardian family members or the authorities if the person fails to submit to the demands of the traffickers;
  - (vi) forcing the person to witness the beating, rape or murder of another person as a demonstration of what will happen to that person if that person fails to obey the traffickers; or
  - (vii) threatening the person with arrest by the police for being illegally in the country or for offences committed as a direct result of the person's situation as a victim;
- (b) whether the movement of the person is restricted through one or more of the following means -

- (i) keeping the person under surveillance when taken to a doctor, hospital or clinic for treatment;
  - (ii) not allowing a person working at a brothel or similar establishment in Lesotho or elsewhere to leave the premises unless accompanied by the trafficker or the trafficker's associates;
  - (iii) transporting the person between that person's place of employment and living quarters under the surveillance of a guard; or
  - (iv) destruction or possession by another person of the passport, identity document or other travel document;
  - (v) the person is in possession of a fraudulent passport, identity document or other travel document;
  - (iv) keeping the person behind closed doors, under guard or electronic surveillance;
- (c) whether the person suffers from one or more of the following health conditions -
- (i) signs of rape or other forms of sexual exploitation;
  - (ii) emotional distress or psychological manifestations of trauma such as depression, anxiety, post traumatic stress and self inflicted injuries;
  - (iii) bruises, burns, broken bones or other signs of physical abuse;
  - (iv) forced abortion;
  - (v) untreated illness or infection; or
  - (vi) malnutrition and poor personal hygiene;
- (d) whether evidence exists that the person has been forced to lie



to the person's family, guardian or friends about the person's safety, well being and whereabouts;

- (e) whether the person has been subjected to debt bondage;
- (f) whether the person has been forced to work but earns little money or any other form of remuneration, if any; and
- (g) whether the person has been required to do work that is different from than originally promised to that person.

### **Reporting and referral of victim**

23. (1) An immigration officer, labour officer, social worker, probation officer, social service professional, medical practitioner, nurse, teacher, traditional health practitioner or traditional healer or any other person who has reasonable grounds to believe that a person is a victim of trafficking shall report that suspicion to a police officer for investigation.

(2) A police officer who has reasonable grounds to believe that a person is a victim or to whom a report has been made in terms of subsection (1) -

- (a) shall within 24 hours -
  - (i) make an initial assessment of the report;
  - (ii) unless the report is frivolous or materially unfounded, without delay, investigate the truthfulness of the report or cause it to be investigated; and
  - (iii) if the report is substantiated by an investigation conducted under subparagraph (ii), without delay, ensure the safety of the victim if the victim's safety is at risk; and
- (b) shall, upon substantiation of the report, refer the victim -



- (i) if the victim is a child, to a designated social worker for investigation; or
  - (ii) if the victim is an adult, to a designated protection centre for victims.
- (3) The identity of a person who makes a report in terms of subsection (1) or (2) shall be kept confidential, unless the interests of justice require otherwise.

(4) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine of 2,000.00 Maloti or imprisonment for a period of 2 years or both.

#### **Filing of complaints with police officer**

24. (1) A victim or any person with information concerning the commission of an offence under this Act may file a complaint with a police officer at the police post in the area where, *the* -

- (a) perpetrator resides;
- (b) victim resides;
- (c) offence occurred or is occurring; or
- (d) victim is residing temporarily, if the victim has left the victim's normal place of abode.

(2) A child may be assisted by a friend or any other person to file a complaint concerning the commission of an offence under this Act.

(3) Where a victim is for any reason unable to file a complaint personally, a member of the victim's family or any person with knowledge of the offence may file a complaint on behalf of the victim.

(4) Where a person who could have been a complainant under this Act has died, the complaint may be made by any person with knowledge of the offence.

**Police assistance**

25. (1) A police officer shall respond to a request by any person for assistance from an offence under this Act and shall offer protection to the person whether the person reporting is a victim or not.

(2) A police officer who fails to respond to a request for assistance shall be subject to the police service disciplinary action.

**Receipt of complaint by police officer**

26. Where a police officer receives a complaint, the police officer shall -

- (a) interview the parties and witnesses to the offence including children;
- (b) record the complaint in detail and provide a copy of the written report to the victim;
- (c) assist the victim to obtain medical treatment where necessary;
- (d) assist the victim to a place of safety if the victim expresses concern about safety; and
- (e) inform the victim of their rights and any basic support which may be available to assist the victim.

**Child victim found in Lesotho**

27. (1) A child who is a victim may be placed in temporary safe care or place of safety, pending an investigation.

(2) If, after an investigation referred to in subsection (1), an illegal foreign child is brought before a children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act 1983<sup>1</sup>.

(3) A finding that an illegal foreign child who is a victim is a child in need of care and protection shall serve as authorisation for allowing the child to remain in Lesotho for the duration of the children's court's order.

### **Prohibition of Summary deportation**

28. A summary deportation of a victim is prohibited.

### **Suspension of deportation**

29. (1) Notwithstanding the provisions of the Aliens Control Act, 1966<sup>2</sup>, the Director of Immigration may, in the prescribed manner and subject to prescribed conditions, allow a foreign victim, irrespective of the status of victim, to remain in Lesotho for a non-renewable period not exceeding sixty days:

Provided that, if the victim is -

- (a) an adult, the victim is placed in the care of a centre for adult victims or any other person, organisation or institution so authorised; or
- (b) a child, the victim is referred to a designated social worker for investigation or placed in the care of any other person, organisation or institution so authorised.

- (2) The non-renewable period referred to in subsection (1) shall not depend upon the willingness of a victim to co-operate with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking.

- (3) An immigration officer, police officer, labour officer, social worker, medical practitioner or nurse who has identified a person as a victim shall inform the victim of the right to apply for non-renewable period referred to in subsection (1).

### **Temporary residence**

30. (1) Notwithstanding the provisions of the Aliens Control Act, 1966, a temporary permit may, subject to the prescribed conditions, be issued to a victim who -

- (a) is present in Lesotho;



- (b) has agreed to co-operate with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons;
- (c) is an adult and is placed in the care of a centre for adult victims, or any other person, organisation or institution so authorised;
- (d) is a child and has been referred to a designated social worker for investigation or placed in the care of any other person, organisation or institution so authorised.

(2) A temporary permit referred to in subsection (1) may be issued to a victim irrespective of -

- (a) the victim's status; or
- (b) whether a non-renewable period referred to in section 29(1) was granted or has expired.

#### **Permanent residence**

31. A victim may apply for a permanent residence under the Aliens Control Act, 1966 after five years continuous residence in Lesotho from the date on which the victim was granted a temporary permit referred to in section 30: Provided that the victim proves to the satisfaction of the Minister that the victim may be harmed, killed or trafficked again if returned to the victim's country of origin or the country from where the victim has been trafficked.

#### **Repatriation of victim from Lesotho**

32. (1) The ministry responsible for social welfare shall not recommend, to the ministry, the return of a foreign child who is a victim to the child's country of origin or the country from where the child had been trafficked without giving due consideration to the -

- (a) safety of the child during the repatriation process;
- (b) availability and suitability of care arrangements in the country to which the child is to be returned;



- (c) safety of the child in the country to which the child is to be returned; and
  - (d) possibility that the child might be harmed, killed or trafficked again.
- (2) The Minister -
  - (a) shall not return a person who is an adult victim to the person's country of origin or the country from where the person has been trafficked without giving due consideration to, the -
    - (i) safety of the person during the repatriation process;
    - (ii) safety of the person in the country to which the person is to be returned; and
    - (iii) possibility that the person might be harmed, killed or trafficked again; and
  - (b) shall -
    - (i) before returning a person who is an adult victim to the person's country of origin or the country from where that person has been trafficked, request the ministry responsible for social welfare to take the reasonable steps referred to in paragraph 2(a)(i), (ii) and (iii) and;
    - (ii) inform the person in the prescribed manner, of any arrangements that have been made for that person's reception in the country to which the person is to be returned.

(3) This section does not prohibit the return of a person who is an adult victim to the person's country of origin or the country from where the person has been trafficked who freely elects to do so.

**Assistance to foreign victim**

33. The ministry responsible for social welfare shall -
- (a) take reasonable steps to find an institution or organisation that renders assistance to victims of trafficking in the country to which a person referred to in section 32(1) or (2) is to be returned and that is willing to provide assistance to such a person;
  - (b) without undue delay, provide the ministry with information in respect of a request in terms of section 32(2)(b)(i).

**Repatriation of victim to Lesotho**

34. (1) With due regard to the safety of a person and without delay -
- (a) the ministry responsible for foreign affairs shall -
    - (i) in co-operation with the ministry responsible for social welfare, assess the risk to the safety and life of a person who is a citizen or permanent resident of Lesotho and is a victim, if returned to Lesotho;
    - (ii) facilitate the return to a person referred to in subparagraph (i); and
    - (iii) advise the minister on measures to be taken for the secure reception of a person referred to in subparagraph (i) at a Lesotho port of entry;
  - (b) the Minister shall -
    - (i) facilitate and accept the return of a person referred to in paragraph (a);
    - (ii) where necessary, take measures to secure the reception of a person referred to in paragraph (a) at a Lesotho port of entry;

- (iii) issue such travel documents or other authorisations as may be necessary to enable such a person to travel to and enter Lesotho;
- (iv) at the request of another State that is a party to a protocol or to an agreement relating to trafficking, verify that a person who is a victim is a citizen or permanent resident of Lesotho;
- (v) upon entry into Lesotho of a child who is a victim, refer the child to a designated social worker for investigation; or
- (vi) upon entry into Lesotho of a person who is an adult victim, refer the person to a centre for adult victims for an assessment.

#### **Escorting child victim**

<sup>35</sup>35. (1) If it is considered to be in the best interests of a child who has been trafficked, the Minister responsible for social welfare shall authorise an adult, at State expense, to escort the child from the place where the child was found to the place of residence of the child's parents or guardian.

(2) The Minister responsible for social welfare shall not act in terms of subsection (1), unless the Minister is satisfied that the parent, guardian or other person who has parental responsibilities and rights in respect of a child does not have the financial means to travel to the place where the child is, in order to escort the child back.

### **PART V – CENTRES FOR VICTIMS**

#### **Establishment of centres for victims**

36. The Minister responsible for social welfare shall -

- (a) establish and operate centres for victims of trafficking from the moneys appropriated by Parliament for such purpose;
- (b) ensure that such centres are spread throughout Lesotho;



- (c) prescribe a system for accreditation of existing centres or organisations that provide services for victims of trafficking at the coming into operation of this Act, and circumstances in which accredited centres or organisations qualify for financial assistance within available resources; and
- (d) prescribe programmes offered by centres to ensure that they comply with minimum norms and standards.

#### **Minimum norms and standards**

37. A centre for victims of trafficking shall -
- (a) comply with norms and standards prescribed by the Minister responsible for social welfare after consultation with the Minister;
  - (b) secure physical safety of victims of trafficking, especially those at risk of harm;
  - (c) provide access to adequate health care;
  - (d) provide separate facilities for male and female victims of trafficking and hygienic and adequate sanitary facilities.

#### **Programmes offered by centres**

38. (1) A centre for victims of trafficking -
- (a) shall offer a programme aimed at -
    - (i) provision of temporary basic material support for the care and development of a child victim;
    - (ii) provision of accommodation;
    - (iii) provision of counselling and rehabilitation services;
    - (iv) reintegration of adult victims into their families

and communities;

- (b) may, in cooperation with the ministries responsible for education and labour, offer a programme aimed at the provision of education and skills development training for adult victims of trafficking.

(2) A centre for victims that provides accommodation to an adult victim who has a child in her care shall offer a programme aimed at the reception, care and development of such a child.

(3) Subject to subsection (4), a child referred to in subsection (2) may be cared for at any other premises only with the explicit consent of the adult victim.

(4) A child referred to in subsection (2) shall be referred to a designated social worker for investigation to determine whether the child is in need of care and protection.

#### **Assessment of victim**

39. Upon admission of a victim to a centre for victims, an assessment shall be made by a social worker to determine, the -

- (a) risks to the safety and life of the victim;
- (b) immediate needs of the victim; and
- (c) long term needs of the victim.

#### **Tracing of family of trafficked person**

40. (1) A social welfare officer shall be assisted by the police or any other person to trace the family of a trafficked person.

(2) Any person who has information which may assist with the tracing of the family of a trafficked person shall provide the information to a welfare officer, the police or a non-governmental organisation which deals with issues on trafficking.

**Rehabilitation of victim**

41. (1) The ministry responsible for social welfare shall provide mechanisms and programs for the rehabilitation of trafficked persons.

(2) A trafficked person may receive financial assistance from the Fund under this Act.

(3) The best interest of the child shall be paramount in any assistance given to rescue a child who is a victim.

**Provision of health and service**

42. A victim is entitled to the same public health care services as those to which the citizens of Lesotho have access.

**PART VI – PREVENTION OF TRAFFICKING****Public awareness campaigns**

43. (1) The Minister shall, where appropriate and after consultation with relevant non-governmental organisations, establish public awareness programmes or other measures for the prevention of trafficking designed to -

- (a) inform and educate members of the public, especially those who are vulnerable or at risk of becoming victims of trafficking on issues relating to trafficking in persons including -
  - (i) their duties and responsibilities under the Act;
  - (ii) common recruitment techniques used by traffickers;
  - (iii) tactics used to keep victims in exploitative situations;
  - (iv) the forms of abuse to which victims of trafficking may be subjected;



- (v) organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
  - (b) inform and educate victims of trafficking on -
    - (i) their rights as victims;
    - (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and
    - (iii) organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
  - (c) discourage the demand for and the supply of victims of trafficking that fosters the exploitation of those victims, especially women and children.
- (1) shall -
- (2) The programmes or other measures referred to in subsection
- (a) include appropriate measures aimed at reaching rural communities;
  - (b) be, where possible, provided in a language understood by the persons at whom they are directed; and
  - (c) be reviewed biannually in order to determine their effectiveness.
- (3) The Principal Secretary responsible for the ministry shall take all reasonable steps within available resources, to ensure that the programmes or other measures referred to in subsection (1) are implemented across the country.

## PART VII – VICTIMS OF TRAFFICKING TRUST FUND

### **Confiscation and forfeiture of proceeds of trafficking**

44. (1) In addition to a penalty for the violation of this Act, a court shall order the confiscation and forfeiture of all the proceeds and properties derived from the commission of an offence of trafficking.

(2) Proceeds and properties derived from the commission of an offence of trafficking shall be deposited with the Victims of Trafficking Trust Fund established by section 45:

Provided, however, that all awards for damages shall be taken from the personal and separate properties of the offender; and

Provided further, that if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

(3) Where the proceeds, properties and instruments of the offence have been destroyed, diminished in value or otherwise rendered worthless by an act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offence.

### **Establishment of Fund**

45. There is established the Victims of Trafficking Trust Fund (in this Act referred to as “the Fund”).

### **Sources of moneys for the Fund**

46. The moneys for the Fund shall include -

- (a) voluntary contributions to the Fund from individuals, organisations and the private sector;
- (b) the amount of money that Parliament may approve for payment out of the Consolidated Fund into the Fund;

- (c) grants from bilateral and multilateral sources;
- (d) proceeds from the confiscation of property connected with trafficking, and
- (e) money from any other source approved by the Minister responsible for finance.

#### **Objectives of the Fund**

47. The moneys of the Fund shall be applied as follows -
- (a) towards the basic material support of victims of trafficking;
  - (b) for the skills training of victims of trafficking;
  - (c) for tracing the families of victims of trafficking;
  - (d) for any matter connected with the rescue, rehabilitation and reintegration of victims of trafficking in their best interest;
  - (e) towards the construction of reception shelters for trafficked persons in the districts; and
  - (f) for training and capacity building to persons connected with rescue, rehabilitation and reintegration.

#### **Management of the Fund**

48. (1) The Fund shall be managed by the ministry.
- (2) Moneys for the Fund shall be paid into a bank account opened for the purpose by the ministry with the approval of the Minister responsible for finance.

#### **Payment from the Fund**

49. Money issued from the Fund shall be authorised by the Principal Secretary responsible for the ministry.



### **Accounts and audit**

50. (1) The Ministry shall keep books of accounts of the Fund and proper records in relation to them, in the form approved by the Auditor-General.

(2) The Ministry shall submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

### **Financial year**

51. The financial year for the Fund shall be the same as the financial year of the Government.

### **Annual report**

52. (1) The Minister shall, within one month after the receipt of the audit report, submit an annual report covering the activities and the operations of the Fund for the year to which the report relates.

(2) The annual report shall include -

(a) the audited accounts of the Fund and the Auditor-General's report on the accounts of the Fund; and

(b) other information that the Minister may consider necessary.

(3) The Minister shall, within one month of completion of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

## PART VIII – MISCELLANEOUS

**Trafficking of a child by parent, guardian or other person who has parental responsibility**

53. (1) Where 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 the parental responsibilities and rights of that parent, guardian or other person;
- (b) place that child in temporary safe care or place of safety, pending an inquiry by a children's court.

(2) An action taken by a children's court in terms of subsection (1) does not exclude a person from liability for committing the offence of trafficking.

**Other powers of Court**

54. Notwithstanding any penalty imposed by or under this Act, a court may, where circumstances warrant, impose a penalty less or greater than that stipulated by or under this Act.

**Extradition**

55. The Fugitive Offenders Act, 1967<sup>3</sup> shall apply in relation to the extradition of a person -

- (a) who has committed an offence under this Act;
- (b) for an act or omission which, if it has been committed in Lesotho, would constitute an offence under this Act;
- (c) who has committed an offence against any law in force in a foreign state relating to anti-trafficking;
- (d) who has committed an offence against any convention or pro-

protocol relating to anti-trafficking,

whether committed or alleged to have been committed before or after the commencement of this Act, or who is wanted by a State for carrying out a sentence imposed pursuant to a conviction for any offence referred to in paragraphs (a) to (d).

### Regulations

56. (1) The Minister may make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed in order to achieve and promote the objects of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may provide for -

- (a) the manner in which victims may be identified, interviewed and treated;
- (b) standards and norms for the operation of referral centres;
- (c) guidelines for tracing families of victims of trafficking;
- (d) guidelines for the management of the Fund;
- (e) the manner in which reporting trafficking cases are to be dealt with and investigated;
- (f) the collection of data and exchange of information on trafficking;
- (g) guidelines for determining trafficked and smuggled persons;
- (h) guidelines for data capturing on deportees, suspects and victims of trafficking;
- (i) the guidelines for disbursements from the Fund;



- (j) the issuance of certificate to be issued to a person who is certified to be a victim of trafficking and conditions of visitor's permit;
- (k) circumstances in which an accredited centre may qualify for financial assistance;
- (l) procedure to be followed in payment of compensation to a victim of trafficking;
- (m) preventive measures to be undertaken by District Administrators against trafficking;
- (n) establishment of such advisory bodies as the Minister may determine.

#### NOTE

1. Act No. 18 of 1983
2. Act No. 16 of 1966
3. Act No. 38 of 1967

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GOVERNMENT NOTICE NO. 1 OF 2011

**Statement of Objects and Reasons of the  
Anti-Trafficking in Persons Act, 2011**

**(Circulated by the Authority of the Minister of Home Affairs, Public  
Safety and Parliamentary Affairs)**

1. The purpose of the Bill is to domesticate the United Nations Convention Against Transnational Crime 2000 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
2. The Bill provides for the prohibition, prevention, prosecution and punishment of perpetrators of the offence of trafficking in persons and other related offences; measure for protection, rehabilitation and reintegration of victims of trafficking in persons, and for related matters.
3. The Bill provides for aggravated forms trafficking and provides a higher penalty to that of simple trafficking. It also increases punishment where the victim is a child.
4. The Bill provides for extra-territorial jurisdiction. This caters for acts of trafficking that are transnational and the fact that Lesotho has been identified as a source, transit or receiving country for men, women and children who are trafficked. The Bill asserts jurisdiction over citizens or permanent residents who commit acts while outside Lesotho.
5. The Bill provides for the establishment of public awareness campaigns and other measures.
6. The Bill provides for confiscation and forfeiture of proceeds of trafficking. These proceeds go into a fund established especially for the trafficking of victims. The purpose of the fund is to assist victims and to take care of costs related to the prevention and combating of trafficking in persons.
7. The Bill provides for repatriation of a victim of trafficking who is a Lesotho citizen or permanent resident. The Minister responsible for

social welfare is empowered to establish centres for victims throughout the country and a system of accreditation for existing centres or organisations responsible for that.

8. The Bill provides for the establishment, in line with Lesotho's obligation under the Protocol, comprehensive and coordinate policies on trafficking.
9. The Bill makes provision for the Minister to make regulations for or with respect to any matter which this Act prescribes or permitted to be prescribed or necessary for or expedient to be prescribed in order to achieve the objects of this Act.





## ACT NO. 7 OF 2011

**Children's Protection and Welfare Act, 2011**

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## ACT NO. 7 OF 201

**Children's Protection and Welfare Act, 2011**

An Act to consolidate and reform the laws relating to the protection and welfare of children and to provide for incidental matters.

Enacted by the Parliament of Lesotho.

## PART I – PRELIMINARY

**Short title and commencement**

1. This Act may be cited as Children's Protection and Welfare Act, 2011 and shall come into operation on the date of its publication in the Gazette.

**Objects**

2. (1) The objects of this Act are to extend, promote and protect the rights of children as defined in the 1989 United Nations Convention on the Rights of the Child, the 1990 African Charter on the Rights and Welfare of the Child and other international instruments, protocols, standards and rules on the protection and welfare of children to which Lesotho is a signatory.

(2) This Act shall be administered and enforced so as to enhance the promotion, protection and realisation of the rights and welfare of children.

(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.

**Interpretation**

3. 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;
- (f) abandoning or leaving a child without visible means of support; and
- (g) subjecting a child to harmful substances such as alcohol and drugs.

"adoption agencies" means non-governmental organisations authorised by their governments to carry out mandates of adoption processes under supervision of departments responsible for children's welfare and protection;

"approved school" means a school designated as such under section 188;

"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 evaluation of a child by a probation officer or 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 an alleged commission of an offence and its impact upon the victim, intention of the child to acknowledge responsibility for the alleged offence, and any other relevant circumstances or factors;

"Bureau of Statistics" means a unit within a Ministry responsible for statistics;

table to the adopted child in relation to property devolving on the intestacy in accordance with the law.

### **Testamentary disposition**

63. (1) In a testamentary disposition of property, whether in writing or not, made after the date of an adoption order -

- (a) any reference, whether expressed or implied, to a child of an adoptive parent shall, unless the contrary intention appears, be construed as a reference to the adopted child;
- (b) where a disposition made by an adoptive parent prior to adoption order makes no provision for an adopted child, the adopted child may apply to the High Court to vary the disposition to provide for the adopted child from the estate of the adoptive parent;
- (c) a reference to a child in a will made by natural parents of the adopted child shall not be construed as a reference to the adopted child unless the contrary intention appears;
- (d) any reference to a person related to an adoptive parent shall, unless the contrary intention appears, be construed as a reference to a person as if he were the relative of the adopted child.

### **Register of adopted children**

64. (1) The Director of Social Welfare shall maintain a register of adopted children, whether adopted inside or outside Lesotho, in which shall be recorded particulars of adoption orders or interim orders as the High Court may direct to be made under this Part.

(2) Every adoption order or interim order made by the High Court shall be served on the Director of Social Welfare by the Registrar of the High Court within seven days of the making of the order.

### **Procedure in adoption proceedings**

65. (1) Where the High Court hears an adoption application, it shall -
- (a) proceed in camera unless open proceedings will be in the best interests of a child;
  - (b) admit documentary evidence relating to the consent required for the order;
  - (c) require the Department of Social Welfare to represent the interests of a child in the proceedings relating to an adoption order or an interim order;
  - (d) require the Department of Social Welfare to prepare a social inquiry report to assist the court to determine whether the adoption order is in the best interests of the child or not; or
  - (e) request any other information that the High Court may need.

## **PART IX - TRAFFICKING AND ABDUCTION OF CHILDREN**

### **Unlawful transfer of possession, custody or control of child**

66. (1) A person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration, commits an offence and is liable on conviction to a fine not exceeding twenty thousand maloti or to imprisonment for a period not exceeding five years or both.

(2) A person who without lawful authority or excuse harbours or has in his possession, custody or control a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any person within or outside Lesotho, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand maloti or to imprisonment for a period not exceeding five years.

(3) For the purposes of subsection (2), if any person harbours or has in his possession, custody or control a child without lawful authority or excuse, the child shall, until the contrary is proved, be presumed to be the child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration.

### **Trafficking of child by false pretences**

67. (1) A person who -

- (a) by or under any false pretences or representation made; or
- (b) by fraudulent or deceitful means,

either within or outside Lesotho, brings into or takes out of or assists in bringing into or taking out of Lesotho, a child who is not in his lawful custody, guardianship or parentage commits an offence and is liable on conviction to a fine not exceeding One Million Maloti and life imprisonment.

(2) A child's consent to his trafficking shall not be a defence.

### **Examination of child and person in charge**

68. The Department of Social Welfare or any person authorised in writing by the Department of Social Welfare may require -

- (a) a child who has entered or been brought into Lesotho; and
- (b) any person who may appear to have custody or control of such child, to appear with the child before the Department of Social Welfare, at any reasonable time and at any convenient place to be examined.

### **Social worker to cause arrest**

69. (1) If a social worker has reasonable cause to believe that a child -

- (a) has been brought into Lesotho either -

- (i) after having been transferred for valuable consideration; or
- (ii) by fraud, misrepresentation or any false pretences;

(b) has been transferred to the custody or control of any person for valuable consideration either within or outside Lesotho; or

(c) is being detained against his will by some person other than his parent or guardian, the Department of Social Welfare,

he shall immediately cause the arrest of the person suspected and assist the police in investigating the matter.

(2) The Department of Social Welfare shall place such a child into a place of safety.

### **Taking a child without appropriate consent**

70. (1) A person, parent or guardian who -

- (a) does not have the lawful custody of a child; and
- (b) takes a child, without appropriate consent, whether within or outside Lesotho;

commits an offence and is liable on conviction to a fine not exceeding ten thousand Maloti or to imprisonment for a period not exceeding ten months or both.

(2) A person has lawful custody of a child under this section if he has been conferred custody of the child by virtue of any written law or by an order of a Children's Court.

(3) It shall be a defence under this section if a person takes or sends a child away without the consent of the person having lawful custody of the child if -



- (a) the person -
  - (i) does it in the believe that the other person consented, or would have consented, if he was aware of all the relevant circumstances; or
  - (ii) has taken all reasonable steps to communicate with the other person but has been unable to communicate with him;
- (b) the person has reasonable grounds to believe that the child has been abused, neglected, abandoned or exposed in a manner likely to cause the child physical, psychological or emotional injury; or
- (c) the other person has unreasonably refused to consent although he was aware of all the relevant circumstances.

**Inquiries and placement of a child brought into or out of Lesotho or acquired under false pretences**

71. (1) If the Department of Social Welfare has reasonable cause to believe that a child -

- (a) has been brought into or is to be sent out of Lesotho and the custody of the child has been acquired either-
  - (i) after having been procured for the purpose of prostitution; or
  - (ii) by fraud, false representation or false pretence for the purpose of prostitution;
- (b) has been procured either within or outside Lesotho for the purpose of being used, trained or disposed of as a prostitute; or
- (c) is being detained against his will for the purposes of -

- (i) prostitution or immoral purposes; or
- (ii) being sent out of Lesotho for the purposes of prostitution or for immoral purposes,

the social worker may order the child to be removed to a place of safety and the child shall be temporarily placed in such a place of safety.

(2) A child who is temporarily placed in a place of safety pursuant to subsection (1) shall be brought before a Children's Court within forty - eight hours exclusive of the time necessary for the journey from the place where the child was so removed to the Children's Court.

(3) If it is not possible to bring a child before a Children's Court within the time specified under subsection (2), the child shall be placed in a place of safety until such time as the child can be brought before the Children's Court.

(4) A Children's Court before whom a child is brought in terms of subsection (3) shall order the child to be detained in a place of safety until -

- (a) an inquiry into the circumstances of the child's case has been completed; and
- (b) a report of the inquiry has been submitted to the Children's Court by the social worker under subsection (6).

(5) An inquiry made pursuant to subsection (4) (a) shall be made by the Department of Social Welfare.

(6) The Department of Social Welfare shall complete the inquiry and submit the report of the inquiry to a Children's Court within a period not exceeding one month from the date of admission of a child into the place of safety.

(7) If after considering the report submitted under subsection (6) a Children's Court is satisfied that a child brought before it is in need of protection and rehabilitation, it may -

- (a) order the child to be kept in a place of safety for such period not exceeding three years from the date of the order as the Children's Court may in the best interests of the child deem fit; or
- (b) make an order placing the child under the supervision of a social worker for a period not exceeding three years from the date of the order as the Children's Court may in the best interests of such child deem fit.

(8) An order made under subsection (7) may have the effect of extending the period of such placement or supervision, as the case may be, until the date on which the child attains the age of eighteen years.

(9) If a Children's Court is not satisfied that a child brought before it is in need of protection and rehabilitation, it may order the child to be returned to the care and custody of the parent or guardian.

### **Recovery order**

72. (1) If it appears to a Children's Court that there is reason to believe that a child had been taken or sent away without the consent of a person who has lawful custody of the child as described in section 70, it may make a recovery order.

(2) A recovery order made pursuant to subsection (1) may be made by a Children's Court on application by or on behalf of any person who has lawful custody of a child.

- (3) For the purposes of this section, a "recovery order" may -
  - (a) direct any person who is in a position to do so to produce a child on request to any authorised person;
  - (b) authorise the removal of a child by any authorised person;
  - (c) require any person who has information as to a child's whereabouts to disclose that information to the authorised person; or

- (d) authorise any police officer to enter into any premises specified in the order and search for a child.

(4) A person who obstructs an authorised person from exercising the powers under subsection (3) commits an offence and is liable on conviction to a fine not exceeding two thousand Maloti or to imprisonment for a period not exceeding two months or both.

## **PART X – CHILD IN NEED OF REHABILITATION AND URGENT PROTECTION**

### **Child in need of rehabilitation**

73. A child is in need of rehabilitation if the child -

- (a) is being induced to perform any sexual act, or is in any physical or social environment which may lead to the performance of such act;
- (b) lives in or frequents any brothel or place of assignation;
- (c) is habitually in the company or under the control of brothel-keepers or procurers or persons employed or directly interested in the business carried on in brothels or in connection with prostitution; or
- (d) is a victim of sexual violence or labour exploitation or is denied access to education; or
- (e) is a habitual substance abuser.

### **Removal of a child in need of rehabilitation to a place of safety**

74. (1) The Department of Social Welfare, a police officer, chief or a member of the community who is satisfied on reasonable grounds that a child is in need of rehabilitation may order the child to be removed to a place of safety and the child shall be temporarily kept in such place of safety.