**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**NATIONAL ASSEMBLY QUESTION FOR WRITTEN REPLY**

**QUESTION NUMBER: 2264**

**DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 10 SEPTEMBER 2021**

**INTERNAL QUESTION PAPER NUMBER: 22 - 2021**

**2264. Ms L L van der Merwe (IFP) to ask the Minister of Social Development:**

What measures has her department put in place to prevent unsafe baby and child abandonment that has been reported to contribute to death, disability and illegal adoptions? NW2572E

**REPLY:**

With regards to child protection of children from exposure to possible death or disability;

Section 150 of the children’s Act 38/2005, makes provision for child in care and protection including a child who may be abandoned as a child in need of care and protection.

Section 151 of the Act also makes provision for the removal of such children to any alternative placement if the current environment is of danger to that particular child.

Alternatively, section 157(3) of the Children’s Act 38 of 2008 Act provides that a very young child who has been abandoned or orphaned, must be made available for adoption in a prescribed manner and within the prescribed period, except when this is not in the best interests of the child; only the Children’s Court can make such a determination.

The following are steps which can be taken by Social Workers

According to Regulation 56, if it appears that the child has been abandoned or orphaned, the designated social worker must:

* Develop an advertisement to be published in at least one local newspaper circulating in the area where the child has been found calling upon any person to claim responsibility of the child.
* A copy of the advertisement must be submitted to the Presiding Officer who must be satisfied that the child has been abandoned or orphaned.
* A period of at least 3 months must lapse since the publication of the advertisement and that no person has claimed responsibility of the child.
* Before the child can be made available for adoption, two affidavits are required:
* By the social worker setting out the steps taken to trace the child’s biological parent/s, guardian/s or care-giver/s; and the effect that the child’s parent/s, guardian/s or care-giver/s cannot be traced, and
* By any other person, if any, who can testify to the fact that the child has had no contact with his or her parent/s, guardian/s or care-givers for a period of at least 3 months.

Advertising of children for the purpose of adoption:

* No person may publish or cause to be published in any form or by any means an advertisement dealing with the placement or adoption of a specific child.
* The child has the right not to be advertised or paraded as being available for adoption through any means including print and electronic media, such as newspaper, magazines, radio, internet, face-book, etc.
* Publication of advertisement for the purpose of recruiting prospective adoptive parents may be done by accredited adoption service providers on print and electronic media. However, such advertisement should not publish or photo list a specific child, but should give a profile of adoptable children available for adoption and express their need to be adopted and have permanent homes. Recruitment may also be done through promotional materials on adoption, presentations and community awareness campaigns at clinics, hospitals, churches, social clubs, and shopping malls and any other public facilities, etc.
* Any illegal advertisement can expose children to the abduction, sale and trafficking in children, which is likely to be done as a systematic organised operation or crime syndicate.

• Any violation to this provision of the Act relating to advertising is regarded as an offence in term of Section 305 of the Act and severe penalties may be imposed by law.

* As far as possible, the child should be placed in adoption as early as possible to enhance bonding with the adoptive family and reduce adjustment problems.

In a case of an abandoned child, the social worker must also:

* Gather all the necessary information and affidavit/s from person/s who found or reported the child as abandoned.
* Report the matter to the police, acquire a police case number and request the police assistance in investigating the child’s biological parent/s or guardian/s’ identity and whereabouts.
* Follow up with the police if child’s parent/s were traced or not and request a copy of the police report if untraceable.
* Place the child legally in a temporary safe care/ child and youth care centres pending further investigations and follow up on every lead and information if there was no person/s who made any contact with the child.
* Children should not be kept in cycc for an indefinite time, the social workers must always have a permanency plan for them and there should be a progressive movement towards their final placement into permanent families.
* According to the alternative care strategy, the social worker need to re-assess those children that have being in child and youth care centres for a long period, to determine if they can be adoptable.
* Provide the child with the name and surname, ensure the age estimation of the child by the Children’s Court and thereafter, register the child’s birth with the Department of Home Affairs.
* Ensure the medical examination and testing of the child is done and receive the child’s medical certificate/ report. The child’s medical report assist the prospective adoptive parent/s to make an informed decision about adopting the child or not.

In case of an orphaned child, the social worker must also:

* Submit a death certificate/s of the child s parent/s, guardian/s or care-giver/s must also be submitted to the Presiding Officer.
* If the death certificate cannot be obtained, an affidavit by a person/s, it can be the extended family member/s, community member/s or friends, who can testify to the death of the child s parent/s, guardian/s or care-giver/s, must be submitted. The full identifying details of the deceased, the date of birth/ identity numbers as well as the date of death are required on the affidavit.
* The adoption of an orphaned child may only be considered if the child has no guardian/s or care-giver/s including extended family member/s that is willing to adopt the child.
* Obtain a statement from the child’s guardian/s or care-giver/s or extended family member/s confirming that they will not be able to take care of the child or adopt him/ her.
* Consent of the child’s guardian/s should be obtained and signed at the Children’s Court in front of the Presiding Officer.
* If one of the child’s parents is still alive and available, his/ her consent should be obtained, if that parent agrees to the adoption of a child.
*  If the other parent of the child is alive, but not available or the whereabouts are unknown, efforts to trace him/ her should be made by the social worker with the assistance of the police, before the child can be adoptable.
* If the surviving parent of a child is a biological father who was not married to the mother of the child, he should be given preference to adopt his own child.
* Ensure the medical examination and testing of the child is done and receive the child’s medical certificate/ report. The child’s medical report assist the prospective adoptive parent/s to make an informed decision about adopting the child or not.

Consent for giving up a child for adoption

The following steps should be taken when biological parent/s or guardian/s has consented to their adoption – this is similar to when a mother does not want to keep the child rather she intends to give up the child for adoption

* An adoption of a child can only takes place after the required consent to the adoption has been obtained from the biological parent/s or guardian/s of the child, provided they are available.
* The child must also sign legal consent him/ herself, provided the child is of 10 years of age, if less than 10 years, maturity and stage of development to understand the implications of signing consent for his/ her adoption should be considered.
* The period of at least 60 days has lapse for withdrawal of the consent by the persons mentioned here and as alluded above.
* Once the required consent is obtained without been withdrawn, then the child can be adoptable.

Children whose biological parent/s or guardian/s’ consent to the adoption is not necessary or required by Court

There are different circumstances where consent for the adoption of a child is not required and the Court may dispense with such consent due to the following:

* Biological parent/s or guardian/s is incompetent to sign consent due to mental illness and this must be supported by a medical report from a qualified psychiatrist.
* Children who have been abandoned and the whereabouts of their biological parent/s or guardian/s cannot be established or their identities are unknown.
* Abused or deliberately neglected children.
* The biological parent/s or guardian/s has consistently failed to fulfil their parental responsibilities towards their children during the last 12 months.
* Guardianship in respect of the child has been terminated by the court; this could free a child for adoption when progress has not being made with efforts to reunite the child with their biological parent/s or guardian/s.
* The biological parent/s or guardian/s has been divested by an order of court of their right to consent to the adoption of their children.
* The biological parent/s or guardian/s has failed to respond to a notice of the proposed adoption within 30 days of serving the notice.
* Orphaned children who have no guardian/s or caregiver/s who are willing to and able to adopt those children; and the court has been provided with certified copies of their parent/s or guardian/s’ death certificate or other documentation as required by court.
* If biological father of the child is not married to the child’s mother, and was not married to her at the time of conception or at any time thereafter, and he has not acknowledged that he is the father of the child by:

(a) Giving a written acknowledgement that he is the biological father of the child either to the mother of the child or the clerk of the children’s court before the child reaches the age of 6 months;

(b) Voluntarily paying maintenance in respect of the child;

(c) Paying damages in terms of customary law; or

(d) By causing his particulars to be entered in the registration of birth of the child in terms of the Birth and Death Registration Act 51 of 1992 of DHA.

* The child was conceived from an incestuous relationship between the biological father and the mother, or
* The court following an allegation by the mother of the child, finds on the balance of probabilities that the child was conceived as a result of rape of the mother.
* If the biological parent/s or guardian/s is unreasonably withholding consent for the adoption of the child.
* In determining that consent is withheld unreasonably, the court must take into account all relevant factors, including the following:

(a) The nature of the relationship during the last 2 years between the child and the person withholding consent and any findings by court in this respect;

(b) The prospects of a sound relationship developing between the child and the person withholding consent in the immediate future.