



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**THE CHILDREN ACT**

CHAPTER 141

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**CHAPTER 141**

**CHILDREN ACT**

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

*Section*

1. Short title
2. Interpretation
3. Objects of the Act
4. Conflict of laws

PART II – SAFEGUARDS FOR THE RIGHTS  
AND BEST INTERESTS OF THE CHILD

5. Realization of the rights of the child
6. Survival and development of the child
7. Name and nationality
8. Best interests of the child
9. Non-discrimination
10. Differential treatment not discriminatory
11. Right to parental care
12. Right to social security
13. Right to basic education
14. Right to leisure, recreation and play
15. Religion and religious education
16. Right to healthcare
17. Right to inheritance
18. Protection from child labour
19. Protection from armed conflicts
20. Rights of children with disabilities
21. Rights of intersex children
22. Protection from abuse, etc.
23. Protection from harmful cultural practices, etc.
24. Protection from drugs and substance abuse
25. Right to freedom from torture etc.
26. Detention of children in conflict with the law
27. Privacy
28. Right to assemble, demonstrate, petition and participate in public life
29. Enforcement of rights under this Part

PART III – PARENTAL RESPONSIBILITY

30. Duties and responsibilities of a child
31. Equal parental responsibility
32. Equal parental responsibility
33. Parental responsibility agreement
34. Transmission of parental responsibility

35. Extension of responsibility beyond eighteenth birthday
36. Regulations and guidelines

PART IV – ADMINISTRATION OF CHILDREN’S SERVICES

37. Office of the Secretary of Children Services
38. Functions of the Secretary
39. Powers of the Secretary
40. Appointment of chief officers, children officers and such other officers
41. Establishment of National Council for Children’s Services
42. Functions of the Council
43. Composition of the Council
44. Term of Office.
45. Vacancy of office of chairperson and members
46. Remuneration of members of the council
47. Committees of the Council
48. Staff of the Council
49. The common seal of the Council
50. Protection from personal liability
51. Proceedings against the Council
52. Powers of the Council
53. Regulations by the Council
54. County Children Advisory Committees
55. Sub-County Children Advisory Committees

PART V – FINANCIAL PROVISIONS OF THE COUNCIL

56. Funds of the Council
57. Annual estimates
58. Financial year of the Council
59. Accounts and Audit
60. Annual Reports of the Council

PART VI – ROLE OF COUNTY GOVERNMENTS

61. The Role of County governments
62. County government welfare schemes

PART VII – CHILDREN’S INSTITUTIONS

63. Establishment of children rescue centres
64. Establishment of child protection units
65. Charitable Children’s Institutions
66. Manager and Staff of Charitable Children’s Institution
67. Overriding objectives of charitable children’s institutions
68. Certain institutions not deemed to be Charitable Children’s Institutions
69. Change of user of institutions
70. Criteria for approval of programmes
71. Placement of children in a charitable children’s institution
72. Secretary to monitor the well- being of children
73. Inspection of charitable children’s institutions

74. Duty to notify the Council
75. Review of child welfare programmes
76. Deregistration of Child welfare programme
77. Establishment of children's remand homes
78. Establishment of rehabilitation schools
79. Rehabilitation schools to establish separate sections
80. Managers to admit children into rehabilitation school
81. Leave of absence from school
82. Revocation of children's committal order
83. Transfers and supervision on release
84. Absconding children and children of difficult character
85. Removal to health institution
86. Authority to confine a child
87. Supervision of institutions
88. Inspection committees
89. Regulations

#### PART VIII – CHILDREN'S COURTS

90. Designation of the Children's Court
91. Jurisdiction of the Children's Court
92. Friendly environment of Children's Court
93. Sitting of Children's Court
94. Power to make orders relating to privacy in proceedings
95. General principles with regard to proceedings in Children's Court
96. Provision of Legal aid in certain cases
97. Power of Court to order production of reports
98. Appointment of guardian *ad litem*
99. Appeals
100. Rules

#### PART IX – CUSTODY AND MAINTENANCE

101. Custody, care and control
102. Custody order
103. Principles to be applied in making custody order
104. Restriction on removal of a child where applicant has provided home for three years
105. Return of child removed in breach of section 104
106. Conflict of interest of joint custodians
107. Revocation of custody order
108. Interim custody orders
109. Custody agreement not to be invalid in certain circumstances
110. Joint maintenance of children
111. Power to make maintenance order
112. Maintenance during matrimonial proceedings.
113. Financial provision for child
114. Financial provisions by step-parents and presumptive guardian

- 115. Power to order maintenance monies to be paid to person other than the applicant
- 116. Duration of financial provisions
- 117. Interim orders of maintenance
- 118. Other maintenance provisions
- 119. Power to impose conditions or to vary order
- 120. Power to vary maintenance agreements
- 121. Enforcement of orders for maintenance or contribution

PART X – GUARDIANSHIP

- 122. Appointment of guardian
- 123. Rights of surviving parent as to guardianship and power of Court
- 124. Appointment of testamentary guardian
- 125. Appointment of guardian by the Court
- 126. Customary guardianship
- 127. Extension of appointment of guardian beyond child's eighteenth birthday
- 128. Revocation or disclaimer of appointment
- 129. Dispute between guardians
- 130. Powers of guardian
- 131. Neglect or misapplication of assets by guardian of a child's estate
- 132. Offence by guardians of a child's estate
- 133. Power of Chief Justice to make Rules

PART XI – JUDICIAL INTERVENTION FOR  
THE CARE AND PROTECTION OF CHILDREN

- 134. Power of Court to make orders in certain proceedings
- 135. Orders which Court may make
- 136. Supervision order
- 137. Power to make interim supervision order
- 138. Discharge of supervision order
- 139. Power of arrest
- 140. Penalty
- 141. Review, etc., of order

PART XII – CHILDREN IN NEED OF CARE AND PROTECTION

- 142. Interpretation
- 143. Jurisdiction of the Court
- 144. When a child is in need of care and protection
- 145. Proceedings in respect of children in need of care and protection
- 146. Healthcare
- 147. Determination as to child's home, etc.
- 148. Parent or guardian to be heard in any application
- 149. Power of Secretary to take over application
- 150. Power of Court in respect of children in need of care and protection
- 151. Application of trusts for maintenance of children
- 152. Penalty for cruelty to and neglect of children
- 153. Care order and grounds thereof

- 154. Access to children in care
- 155. Power to make interim care order
- 156. Discharge of care order
- 157. Care on committal to a rehabilitation school, etc.
- 158. Transmission of committal order
- 159. Escort of a child to a rehabilitation school
- 160. Harboursing or concealing a child
- 161. Escape from institutions, etc.
- 162. Duty of Charitable children's institutions and County Public Entities
- 163. Escape from children's remand home or rehabilitation school
- 164. Aiding escape, etc.
- 165. Production of escaped child
- 166. Presumption and determination of age
- 167. Contribution order not to be made in certain cases
- 168. Inter-country reciprocity.
- 169. Bonds

#### PART XIII – FOSTER CARE PLACEMENT

- 170. Objectives of foster care placement
- 171. Restrictions on periods of foster care
- 172. Conditions for foster care placement
- 173. Application for foster care
- 174. Persons qualified to foster children
- 175. Conditions for foster care
- 176. Limitation on the number of children placed under foster care in a household
- 177. Records of foster care placements
- 178. Agreement for maintenance of foster child
- 179. Termination of foster care
- 180. Penalty for contravening provisions of this Part
- 181. Regulations
- 182. Rules

#### PART XIV – ADOPTION

- 183. Power to make adoption orders
- 184. Pre-requisites for Adoption
- 185. Children who may be adopted
- 186. Who may apply to adopt a child
- 187. Power to dispense with consent
- 188. Appointment of guardian *ad litem* for purposes of adoption
- 189. Interim orders
- 190. Review of adoption
- 191. Inter-country adoptions
- 192. Adoption by non-resident Kenyans
- 193. Kinship Adoption
- 194. Powers of the Court in adoption proceedings
- 195. Power of the Court to appoint guardian

- 196. Adoption order in respect of children previously adopted
- 197. Parental responsibility when adoption is denied
- 198. Appeals
- 199. Variation of orders
- 200. Adopted Children Register
- 201. Registration of adoption orders
- 202. Rights and duties of parents and capacity to marry
- 203. Application of Work Injury Benefits Act
- 204. Orders and agreements in respect of child born outside marriage
- 205. Intestacies and testamentary instruments
- 206. Provisions supplementary to section 196
- 207. Effect of inter-country adoptions
- 208. Restriction on adoption arrangements
- 209. Certain offences relating to adoption
- 210. Functions of adoption societies
- 211. Adoption proceedings to be confidential
- 212. Prohibition of certain payments
- 213. Restriction on advertisement
- 214. Offences under this Part
- 215. Regulations
- 216. Rules of Court

PART XV – CHILDREN IN CONFLICT WITH THE LAW

- 217. Application of Criminal Procedure Code
- 218. Assessment of a child on arrest
- 219. Power to remit cases to Children's Court
- 220. Rights of a child offender
- 221. Criminal liability of a child
- 222. Right of a child to be heard in proceedings
- 223. Detention of children
- 224. Procedure in cases of children in conflict with the law
- 225. Consideration of welfare
- 226. Objects of diversion
- 227. When to consider diversion
- 228. Preliminary inquiry
- 229. Determination of a child's age
- 230. Levels of diversion
- 231. Power of Court in diversion
- 232. Family Group Conference
- 233. Assistance to child offender in court
- 234. Rules
- 235. Guarantees to a child accused of an offence
- 236. Duty to provide for the welfare of a child
- 237. Words "conviction" and "sentence" not to be used of child
- 238. Restriction on punishment



*Children*

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- 239. Methods of dealing with children in conflict with the law
- 240. Mental treatment
- 241. Power to order parent to pay fines, etc.
- 242. Special police unit
- 243. Proceedings in respect of offences committed by a child

PART XVI – MISCELLANEOUS

- 244. Appeals to the Cabinet Secretary
- 245. Code of conduct
- 246. General penalty
- 247. General power to make regulations
- 248. Grants and expenses of the Cabinet Secretary
- 249. Repeals
- 250. *[Spent]*

SCHEDULES

BEST INTEREST CONSIDERATIONS

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

OFFENCES DISQUALIFYING APPLICANTS FROM ADOPTION

OFFENCES REQUIRING RECORD AND PRESERVATION OF INFORMATION WITH REGARD TO THE CONDITION OF THE CHILD

PART A- ASSESSMENT OF A CHILD WHO IS IN CONFLICT WITH THE LAW

*SPENT*

TRANSITIONAL PROVISIONS

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**CHAPTER 141**

**CHILDREN ACT**

[Date of assent: 6th July, 2022.]

[Date of commencement: 26th July, 2022.]

**An Act of Parliament to give effect to Article 53 of the Constitution; to make provision for children rights, parental responsibility, alternative care of children including guardianship, foster care placement and adoption; to make provision for care and protection of children and children in conflict with the law; to make provision for, and regulate the administration of children services; to establish the National Council for Children's Services and for connected purposes**

[Act No. 29 of 2022.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Children Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

"abandoned" in relation to a child, means a child—

- (a) who has been deserted by the parent, guardian or caregiver; or
- (b) whose parent, guardian or care giver has wilfully failed to make contact with the child for a period of more than six months;

"actual custody" means the physical possession, care and control over a child, whether or not such custody is exercised independently or jointly with another person;

"adoption" means the process through which a child is permanently placed with a legal parent or parents in accordance with Part XIV;

"adoption order" means an adoption order made under section 183 vesting the parental rights and responsibilities relating to a child in the adopter;

"adopter" means a person in whose favour an adoption order is made;

"aftercare" means the services offered to children who leave alternative care as they transit to independent living;

"age" means the actual chronological age of the child from conception or the child's apparent age as determined by a Medical Officer in any case where the actual age of the child is unascertainable;

"alternative care" means the arrangement whereby a child is looked after outside the parental home under the provisions of this Act;

"authorised officer" includes a police officer, a chief, a children's officer, a probation officer, prison officer, a registered medical practitioner, a labour officer, a teacher, or any other officer authorized by the Secretary or under any other written law for the purposes of this Act;

"basic education" has the meaning assigned to it under section 2 of the Basic Education Act (Cap. 211);

"best interest of the child" means the principles that prime the child's right to survival, protection, participation and development above other considerations and includes the rights contemplated under Article 53(1) of the Constitution and section 8 of this Act;

"borstal institution" means a borstal institution established under section 3 of the Borstal Institutions Act (Cap. 92);

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to children's affairs;

"care and control" with respect to a child, means all rights and duties which relate to the making of the day-to-day decisions concerning the child, and includes actual custody of a child;

"Chief Executive Officer" means the Chief Executive Officer of the Council appointed under section 48;

"child" means an individual who has not attained the age of eighteen years;

"child abuse" includes—

- (a) the infliction of physical harm by any person on a child;
- (b) the infliction or inducement of physical harm by any person on a child by acts intended to cause harm or negligent acts or omissions that cause harm;
- (c) the failure by any person to protect a child from physical harm or to report a case of child abuse;
- (d) act or omissions that affects a child's healthy social and emotional development and functioning including—
  - (i) rejection;
  - (ii) isolation, including depriving the child of normal social interaction with others;
  - (iii) deprivation of affection or cognitive stimulation; or
  - (iv) inappropriate criticism or comparison with other children, discrimination, humiliation, threats, or malicious accusations, directed at a child;
- (e) the exposure of a child to emotionally, traumatic and age-inappropriate content, information and photos of any kind;
- (f) engaging a child in child sex tourism and child trafficking;
- (g) the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;
- (h) the use or exposure of a child in, electronic or online, platforms for purposes of prostitution, pornography or any other unlawful sexual practice;
- (i) the use of a child's images for purposes of pornography or sexual gratification;

*Children*

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- (j) dissemination to a child of any material, information, education or health services that promotes, induces, condones, or normalizes sexual activity or behaviour among children or with children; or
- (k) any other similar acts calculated to cause physical, emotional, economic or psychological injury to the child;

"childcare facility" means a child care facility established by a county government pursuant to paragraph 9 of Part 2 of the Fourth Schedule to the Constitution and such other facility as the Cabinet Secretary may, in consultation with a county government, approve or license as a childcare facility;

'Children's Court' means a Court designated as a Children Court under Part VIII;

"charitable children's institution" means a children's home or institution established by any person, either alone or in association with others, or by a civil society organisation and which has been duly registered with the Council for the purpose of managing programmes for the care, protection, rehabilitation and re-integration or control of children;

"Children's institutions" means institutions established under Part VII;

"child in conflict with the law" means a person who is above the age of twelve years, but below the age of eighteen years, who has been dealt with or punished in accordance with Part XV of this Act or any other written law for contravention of the law;

"child labour" means work done by a child which—

- (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and
- (b) places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development;

"child marriage" means marriage or cohabitation with a child or any arrangement made for such marriage or cohabitation;

"child protection unit" means a facility located at designated police stations and established to provide, on a temporary basis, a safe and non-threatening environment for children;

"children rescue centre" includes any institution established by the Cabinet Secretary under this Act that is suitable for temporary care of children in need of care and protection, but does not include a remand home or police station.

"children's remand home" means a place of safety where children in conflict with the law may be committed under an order of the Court until their matters are finalized;

"child trafficking" means the recruitment, transporting, transfer, harbouring or receipt of a child for the purpose of exploitation by means of—

- (a) threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) abuse of power or of position of vulnerability;
- (f) giving payment or benefit to achieve the consent of the victim; or

- (g) giving or receiving payments or benefits to obtain the consent of a person having control over the child:

Provided that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered as "child trafficking" even if it does not involve any of the means set out in paragraphs (a) to (g);

"child welfare programme" means a child welfare programme approved by the Council in accordance with Regulations made under this Act;

"competent authority" has the meaning assigned to it under section 2 of the Persons Deprived of Liberty Act (Cap. 90A);

"corporal punishment" means the use of physical force applied on a child by the use of any means, including a cane or other object, with the intention of inflicting pain or discomfort for the purpose of corrective discipline or punishment;

"Council" means the National Council for Children's Services established under section 41;

"County Children Advisory Committee" means the Advisory Committee established under section 54;

"County Executive Committee Member" means the County Executive Committee Member for the time being responsible for matters relating to children;

"County Government entity" includes sub-county, ward, village, city or urban area within a county;

"Court" means the Children's Court designated under section 90 of this Act;

"custody" means lawful custody, whether by operation of law, written agreement or order of a Court of competent jurisdiction;

"disability" has the meaning assigned to it under Article 260 of the Constitution;

"detention" includes means confinement of a child in conflict with the law in a police cell, place of safety, rehabilitation school, child protection unit, child rescue center, children remand home or other residential facility in which the child is deprived of liberty;

"differential treatment" is preferential treatment accorded to a child who is vulnerable or who is in a precarious social-economic situation and includes affirmative action measures to protect the rights of the child;

"diversion" means the intervention and programmes designed to divert children from the criminal justice system with the aim of—

- (a) reducing stigmatization of children in conflict with the law;
- (b) identifying children at risk and connecting them with appropriate support services in an attempt to reduce the likelihood of the children engaging in antisocial behaviour; and
- (c) providing programmes and support to children who have engaged in offending conduct, prevent them progressing further into the system; and
- (d) reducing recidivism by children in conflict with the law;

"domestic servitude" means the exploitation of labour for domestic purposes;

"education" means the giving of intellectual, moral, spiritual instruction or other training to a child;

"economic exploitation" means unfairly taking advantage of another person because of their vulnerability, by grossly underpaying them for their work in comparison to average market rates payable for similar work;

"existing Charitable Children's Institution" means a charitable children institution registered, approved or licensed by the Council prior to the commencement of this Act;

"family time order" means an order requiring a child to spend a specified number of hours with their family;

"family group conference" means a meeting convened for purposes of section 232;

"female genital mutilation" has the meaning assigned to it under section 2 of the Prohibition of Female Genital Mutilation Act (Cap. 62B);

"fit person" means a person in respect of whom it is shown to the satisfaction of the Court to be of high moral character and integrity, and who is capable of exercising proper care and guardianship of a child;

"forced male circumcision" comprises all procedures involving partial or total removal of the male genitalia or other injury to the male genital organs, or any harmful procedure to the male genitalia, for non-medical reasons, that is performed with or without any undue influence, inducement, enticement, coercion, or intimidation on a male child—

- (a) without consent of the child's parents or guardian;
- (b) belonging to a community that does not practice male circumcision and without the consent of the child's parents or guardian;
- (c) with the intention to cause grievous harm or injury to a child;
- (d) in a manner that infringes on a child's right to privacy or subjects a child to ridicule, embarrassment, humiliation or otherwise harms a child;

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;

"foster care placement" means temporary placement of a child or children in the care of a person who is not the parent, relative or guardian of the child;

"foster parent" means a person with whom a child is placed in accordance with section 174;

"grooming" means establishing a relationship of trust or emotional connection with a child, either personally or through electronic means, with the aim to manipulate the child or adult care giver and which relationship may facilitate sexual contact or other child abuse that promotes, induces or normalizes sexual activity or behaviour among or with children;

"guardian" means an individual who is appointed under Part X, to exercise care and control of a child;

"*guardian ad litem*" means an adult appointed by the court to represent the best interests of the child;

"home", in relation to a child, means the place where the child's parent, guardian, relative or foster parent permanently resides or, if there is no parent, guardian or relative living, and the child has no foster parent, the child's parent's or guardian's or relative's last permanent residence;

Provided that—

- (a) in the case of a parent, guardian or relative having or having had more than one permanent place of residence, the parent, guardian or relative shall be presumed to be or to have been permanently resident at the place of such person's principal permanent residence; and
- (b) where the Court is unable to determine the home of any such child, the child shall be deemed, for the purposes of this Act, to have his home in the local jurisdiction of the area he or she is found;

"Inspector General" means the Inspector General of Police appointed under Article 245(2)(a) of the Constitution;

"intersex child" means a child with a congenital condition in which the biological sex characteristics cannot be exclusively categorised in the common binary of female or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood;

"*kafaalah*" means the taking in of a child who is deprived of parental and family care and protection by a person professing the Islamic faith who is capable of looking after a child in accordance with this Act;

"kinship adoption" means the adoption of a child by a person who is a relative of the child;

"legal aid" has the meaning assigned to it under section 2 of the Legal Aid Act (Cap. 16A);

"legal custody" means the conferment, to a person, of parental rights and responsibilities of a person having lawful custody over a child for a defined period of time under an order of a Court of competent jurisdiction;

"maintenance order" means an order issued by a court directing a specified person to make such periodic or lump sum payment for the maintenance of the child on such terms as the Court may consider appropriate;

"medical practitioner" has the meaning assigned to it under section 2 of the Medical Practitioners and Dentists Act (Cap. 253);

"Ministry" means the Ministry responsible for matters relating to children;

"nursery" means any institution or place at which for the time being, five or more children under the age of seven years are received and cared for regularly at a fee;

"obscene material" includes any book, magazine, film, video or audio tape or print or electronic or social media or other medium which is of a kind targeted at or is likely to fall into the hands of children and which consists wholly or mainly of stories in pictures with or without addition of written matter or video films and cassette tapes which contains pictures or stories which portray harmful morally repugnant or sexually explicit information, such as—

- (a) the commission of crime;
- (b) acts of violence; or



- (c) incidents of repulsive or indecent representation or immoral characters;

"orphan" means a child who has lost one or both of his or her parents in death;

"parent" means the mother or father or any person who is conferred parental rights by law;

"place of safety" includes any institution, school, feeding centre, hospital or other place that is suitable for temporary care of children, but does not include a children's remand home, rehabilitation school, police station or child protection unit;

"Principal Registrar" has the meaning assigned to it under the Births and Deaths Registration Act (Cap. 149);

"private sector" means the non-public sector of the economy;

"psychological abuse" means the regular and deliberate use of a range of words and non-physical actions used with the purpose to manipulate, hurt, weaken or frighten a person mentally and emotionally; and/or distort, confuse or influence a person's thoughts and actions within their everyday lives, changing their sense of self and harming their wellbeing;

"Public Benefit Organizations" has the meaning assigned to it under section 5 of the Public Benefits Organisations Act (No. 18 of 2013);

"radicalization" means a process by which a person comes to adopt extreme political, social, or religious ideals and aspirations that are aimed at inciting the person to violence or into any behavior and belief that is harmful to the child;

"rehabilitation institution" means any institution which provides the reception, maintenance, training and rehabilitation of children pursuant to an order of a Court;

"rehabilitation school" means a rehabilitation school established under section 78;

"relative" means—

- (a) in relation to a child, any person related to the child, whether of the full blood, half blood or by affinity and, where an adoption order has been made in respect of the child or any other person under this Act, any person who would be a relative of the child within the meaning of this definition if the adopted person was the child of the adopter born inside marriage; and
- (b) for the purpose of adoption, a mother, father, brother or half brother, sister or half-sister, maternal or paternal uncle or aunt or grandparent or step-parent of a child;

"reporting order" means an order requiring a child to report to a specified person at a time specified in such order so as to enable such person to monitor the child's behaviour;

"residence order" is an order of the Court made with respect to a child's living arrangements if the arrangements regulated by the order consist of, or include, arrangements which relate to either or more of the following—

- (a) with whom the child is to live;
- (b) when the child is to live with any person; and
- (c) where the child is to live;

"resident" means a person who resides in Kenya;

"residential facility" means any residential facility established and designated to receive sentenced children;

"restorative justice" means an approach to justice that focuses on the needs of the victims and the offenders, as well as involving the community;

"Secretary" means the Secretary of Children's Services appointed under section 37;

"spouse" means—

- (a) husband or a wife; or
- (b) in relation to a wife of a polygamous marriage, the wife applying for an adoption order either as the sole applicant or jointly with the husband, or the wife into whose care a husband applying for an adoption order proposes to give the child;

"state" has the meaning assigned to it under Article 260 of the Constitution;

"step parent" means a parent married to a child's biological mother or father;

"supervision and guidance order" means an order placing a child under the supervision and guidance of a mentor or peer in order to monitor and guide the child's behavior;

"symbolic restitution" means the giving of an object owned, made or bought by a child, or the giving of service by the child to a person, a group of persons or an institution, as symbolic compensation for the harm caused by an offending child;

"torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act which the person or a third person has committed or is suspected of having committed, or intimidating or coercing the person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; and

"vulnerable child" means a child whose safety, wellbeing or development is threatened, infringed or violated, and includes a child who is emotionally deprived or traumatized.

"welfare report" means a document prepared by a Children Officer to help a Court reach a decision about the upbringing of a child.

### **3. Objects of the Act**

The objectives of this Act are to—

- (a) give effect to the provisions of Articles 27, 47, 48, 49, 50, 51 and 53 of the Constitution on matters relating to children; and
- (b) give effect to the State's obligations concerning the wellbeing of children in accordance with the general rules of international law, treaties and conventions ratified by Kenya.

### **4. Conflict of laws**

(1) This Act shall prevail in the case of any inconsistency between this Act and any other legislation on children matters.

(2) Despite subsection (1), a provision in another legislation on children matters may prevail if it offers a greater benefit in law to a child.

(3) A judicial or administrative institution or any person making an interpretation as to conflict of any provision or laws shall have regard to the best interests of a child.

## PART II – SAFEGUARDS FOR THE RIGHTS AND BEST INTERESTS OF THE CHILD

### **5. Realization of the rights of the child**

(1) The State shall take measures to progressively achieve the full realization of the rights of the child set out in this Part.

(2) The Cabinet Secretary shall ensure development, review and implementation of relevant policies, laws and programs to give effect to subsection (1).

### **6. Survival and development of the child**

(1) Every child shall have the right to life, survival, wellbeing, protection and development.

(2) For the purposes of subsection (1), no court shall pass a death sentence for any offence committed by a child.

### **7. Name and nationality**

(1) Every child shall have a right to a name and nationality and, as far as possible, the right to know and be cared for by their parents.

(2) Every child has the right to be registered in the Register of Births immediately after birth in accordance with the Births and Deaths Registration Act (Cap. 149).

(3) The Principal Registrar shall take measures to ensure correct documentation and registration of intersex children at birth.

(4) A child found in Kenya who is or appears to be less than eight years of age, and whose nationality and parents are not known, shall be presumed to be a citizen by birth.

### **8. Best interests of the child**

(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

- (a) the best interests of the child shall be the primary consideration;
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

(2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

- (a) safeguard and promote the rights and welfare of the child;
- (b) conserve and promote the welfare of the child; and
- (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.

(3) In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.

(4) The Cabinet Secretary shall issue guidelines to give effect to this section.

#### **9. Non-discrimination**

(1) No person shall discriminate against a child on the grounds of age, origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, health status, pregnancy, social, political, economic or other status, race, disability, tribe, residence or local connection or any other status.

(2) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred thousand shillings or to both.

#### **10. Differential treatment not discriminatory**

(1) Notwithstanding sections 8 and 9, differential treatment of a child which is intended to protect the best interest of the child shall not be deemed to be discrimination against the child.

(2) No differential treatment shall limit any rights of the child under this Act or under the Constitution.

#### **11. Right to parental care**

(1) Every child has the right to parental care and protection.

(2) Except as is otherwise provided under this Act, every child has the right to live with his or her parents.

(3) Despite subsection (2), a child may be separated from his or her parents where the Court or the Secretary determines that the separation is in the best interest of the child.

(4) Where a child is separated from his or her parents under subsection (3), the child shall be provided with the best alternative care available, in accordance with this Act or any other written law, giving priority to family based alternative care.

(5) Where an order made under subsection (3) applies to two or more siblings, the order shall provide that the siblings be placed under care and protection together and that they may not be separated, except for such compelling reasons as the Court shall record.

(6) Subject to subsection (3), every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with the parent or parents on a regular basis, unless it is shown to the satisfaction of the Court that such contact is not in the best interest of the child.

(7) Where a child is separated from his or her parent or parents otherwise than under an order of the Court, and without the consent of the parent or parents, the Secretary shall, on request by the parent or parents, facilitate the tracing and reunification of the child with the parent or parents.

#### **12. Right to social security**

(1) Every child whose parent or guardian is unable to maintain the child has the right to social security as guaranteed by Article 43(3) of the Constitution.

(2) Without prejudice to the generality of subsection (1), "social security" includes alternative care services provided under this Act, and in particular—

- (a) kinship care;
- (b) guardianship;
- (c) foster care;
- (d) adoption;
- (e) *kafaalah*;
- (f) care in emergency situations;
- (g) temporary shelter;
- (h) supported independent living;
- (i) supported child-headed households;
- (j) institutional care; and
- (k) aftercare.

(3) The objectives of alternative care under subsection (2) are to—

- (a) facilitate the provision of parental care and protection of a child in accordance with the best interest and wellbeing of the child;
- (b) place the child as close as possible to his or her usual place of residence;
- (c) provide a stable, loving and protective home for the child with permanency as the long-term goal; and
- (d) safeguard the child from abuse, violence or exploitation.

(4) The following principles shall be considered when placing a child in alternative care—

- (a) the family is the fundamental group in society that provides the care and protection for a child;
- (b) the process of providing alternative care to a child shall be participatory, and in the best interest of the child;
- (c) poverty, disability or provision of education shall not be the driving factor for removing a child from his or her family and placing him or her in alternative care;
- (d) the removal of a child from his or her family for the purpose of placement in alternative care shall be temporary and a last resort, and shall be carefully monitored in accordance with this Act;
- (e) siblings shall be kept together during removal and placement in alternative care, unless it is unsafe to do so, or not in the best interest of the siblings;
- (f) the placement of a child in alternative care shall be appropriate to the child's individual needs;
- (g) the provision of alternative care shall not be carried out for the primary purpose of advancing the religious, political, economic or any other personal goals of the caregiver; and
- (h) the use of institutional care shall be limited and provided under strict standards and regulations, and children under three years of age shall be placed in family-based care settings.

(5) A child under the age of three years shall not be placed in alternative care in an institution, except in compelling circumstances and, in any event, for a period not exceeding three months.

(6) A child may be placed in alternative care away from the parental home under a formal or informal arrangement pursuant to either—

- (a) a decision of the Court or of the Secretary; or
- (b) the initiative of the child, his or her parents or primary caregivers, or independently by a care provider in the absence of the child's biological parents.

(7) The Cabinet Secretary responsible for matters relating to finance shall establish a fund under the Public Finance Management Act (Cap. 412A) to be known as the Child Welfare Fund to facilitate the realisation of the right guaranteed by Article 43(3) of the Constitution in respect of all reasonable expenses incurred in relation to alternative care and other social security programmes designed to facilitate the realisation of the welfare of the child.

### **13. Right to basic education**

(1) Every child has the right to free and compulsory basic education in accordance with Article 53(1)(b) of the Constitution.

(2) It shall be the responsibility of every parent or guardian to present for admission or cause to be admitted his or her child, as the case may be, to a basic education institution.

(3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary for the time being responsible for education develop and implement policies for the realization by every child of the constitutional right to basic education.

### **14. Right to leisure, recreation and play**

(1) In addition to the right to basic education guaranteed under section 13, every child shall be entitled to leisure, play and participation in non-harmful cultural and artistic activities.

(2) It shall be the responsibility of the government and of every parent or guardian to permit and facilitate the enjoyment by his or her child of the right to leisure and play at any public recreational facility.

(3) Every county government shall appoint and designate specific areas in estates and villages as public child play and recreational facilities, which shall be accessible to all children, including children with disabilities.

### **15. Religion and religious education**

(1) Every child shall have the right to freedom of thought, conscience, religion and religious education subject to appropriate parental guidance, and in the best interest of the child.

(2) The religious guidance and education provided to a child under this section shall not in any way limit or hinder the child's access to and enjoyment of any of the basic rights and fundamental freedoms guaranteed by the Constitution, this Act or any other law.

### **16. Right to healthcare**

(1) Every child shall have the right to the highest attainable standard of healthcare services in accordance with Article 43 of the Constitution:

Provided that the provisions of reproductive health services to children shall be subject to the express consent of the parent or guardian.

(2) Without prejudice to the generality of subsection (1), every child has the right to enjoy the best attainable state of physical, mental and psychological health.

(3) In pursuance of the right to healthcare services under this section, every child has the right to privacy and a child-friendly environment.

(4) Every child has the right to—

- (a) access to age-appropriate information on health promotion and the prevention and treatment of ill-health and disease, mental health and reproductive health;
- (b) access to information regarding their health status;
- (c) access to information regarding the causes and treatment of his or her sickness; and
- (d) confidentiality regarding his or her health status and the health status of a parent, care-giver or family member, except when maintaining such confidentiality is not in the best interests of the child;
- (e) access to age-appropriate information that affirms human dignity in human relationships and promotes sexual risk avoidance.

(5) The information provided to a child pursuant to this section shall be in a format accessible to the child, having regard to the special needs of children with disabilities.

(6) It shall be the responsibility of every parent or guardian to present his or her child who is in need of health care to a suitable health care facility and to ensure that the child receives appropriate health care services.

(7) Any parent or guardian who willfully neglects, fails or refuses to present his or her child in need of health care to a health care facility for purposes of treatment commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or, in default, to imprisonment for a term not exceeding thirty days.

(8) No charge preferred under subsection (7) shall operate as a bar to any relevant charges under the Penal Code (Cap. 63).

(9) Nothing in this section shall be presumed to abrogate parental obligation to education of their children.

### **17. Right to inheritance**

(1) Every child shall have the right to inherit property in accordance with the Law of Succession Act (Cap. 160).

(2) Subject to the Law of Succession Act (Cap. 160)—

- (a) every child shall be entitled to equal treatment and protection, and to the benefit of the law; and
- (b) no person shall disinherit or cause a child to be disinherited on any grounds, including age, origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, health status, pregnancy, social, political, economic or other status, race, disability, tribe, residence or local connection.

(3) A person who contravenes subsection (2) or otherwise deprives a child of any property or benefit accruing to the child under or by virtue of the law relating to inheritance commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five million shillings, or to both.

(4) In addition to the penal sanctions prescribed in subsection (3), the child shall be entitled to full restitution or the property of benefit accruing to the child.

(5) The provisions of subsections (3) and (4) shall apply without prejudice to the provisions of section 45 of the Law of Succession Act (Cap. 160).

(6) The action contemplated in subsection (4) may be brought by a duly constituted next friend or by any other person in accordance with Article 22 of the Constitution.

### **18. Protection from child labour**

(1) No person shall subject a child to child labour, domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child's education or is likely to be harmful to the child's health or physical, mental, moral or social development.

(2) For the purposes of subsection (1)—

- (a) "employment" has the meaning assigned to it under section 52 of the Employment Act (Cap. 226);
- (b) the provisions of Part VII of the Employment Act (Cap. 226) shall apply with necessary modifications in addition to, and not in substitution for, the provisions of this Act relating to the employment of children or subjection of children to child labour.

(3) No person shall use, procure or offer a child for slavery or practices similar to slavery, including begging, debt bondage, servitude, or forced or compulsory labour or provision of personal services, whether or not for gain.

(4) The Cabinet Secretary responsible for matters relating to labour shall, within one year of the commencement of this Act, in consultation with the Cabinet Secretaries responsible for matters relating to children affairs and education, make Regulations prescribing the terms and conditions of work and the kind of work that may be engaged in by children in the following age categories—

- (a) children who have attained the age of thirteen but have not attained the age of sixteen years; and
- (b) children who have attained the age of sixteen but have not attained the age of eighteen years.

Provided that the regulations shall take account of the best interest of the child.

### **19. Protection from armed conflicts**

(1) No person shall subject a child to hostilities, social strife or recruitment in armed conflict, whether internal or cross border.

(2) In situations of armed conflict, the state shall establish mechanisms for the protection, care and respect of the rights of the child recognized under the Constitution, this Act or any other written law.

(3) The State shall establish mechanisms to facilitate the protection, rehabilitation, care, recovery and re- integration into normal social life, of any child who may be a recruit or victim of armed conflict, social strife or natural disaster.

(4) No person shall subject a child to armed conflict, hostilities or recruit a child in armed conflicts, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law.



**20. Rights of children with disabilities**

(1) A child with disability shall, in addition to the rights guaranteed under the Constitution, have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education and training free of charge.

(2) In addition to the right under subsection (1), a child with disability shall have the rights and privileges provided under the Persons with Disabilities Act (Cap. 133).

(3) The State shall establish such institutions or facilities including child care facilities, health facilities and educational institutions as may be necessary to ensure the progressive realization of the right under this section.

**21. Rights of intersex children**

An intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services.

**22. Protection from abuse, etc.**

(1) No person shall subject a child to—

- (a) psychological abuse; or
- (b) child abuse.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding two million shillings, or to both.

(3) Without prejudice to the generality of subsection (1), any person who, through any electronic system, network, or other communication technology—

- (a) proposes or solicits to meet a child for the purpose of engaging in sexual activities contrary to the provisions of the Sexual Offences Act (Cap. 63A);
- (b) transmits or causes to be transmitted any obscene material, or otherwise makes such material accessible to children; or
- (c) in any other way, subjects a child to online abuse, harassment or exploitation, whether through social networks, playing online games or by use of mobile phones or other electronic devices,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding two million shillings, or to both.

(4) The reference in subsection (3)(c) to online abuse includes cyber bullying, grooming and solicitation, cyber enticement, cyber harassment and cyber stalking.

(5) A person who intentionally transmits or causes the transmission of any communication through a computer system or network to bully a child, and such communication places the child in fear of death, violence or bodily harm, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding two million shillings, or to both.

(6) In this section "bullying" includes cyber bullying or the use of information communication technology calculated to harm a victim or victims in deliberate, repeated and hostile ways contrary to the Computer Misuse and Cybercrimes Act (Cap. 79C).

**23. Protection from harmful cultural practices, etc.**

- (1) No person shall subject a child to—
- (a) in the case of a male child, forced circumcision;
  - (b) female genital mutilation;
  - (c) child marriage;
  - (d) virginity testing;
  - (e) girl child beading;
  - (f) except with the advice of a medical geneticist, organ change or removal in case of an intersex child; or
  - (g) any other cultural or religious rite, custom or practice that is likely to negatively affect the child's life, health, social wellbeing, dignity, physical, emotional or psychological development.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term of not less than three years or to a fine of not less than five hundred thousand shillings, or to both.

(3) A person who causes death to a child, whether directly or indirectly, in consequence of other related procedure in contravention of subsection (1) (a) commits an offence, and shall, on conviction, be liable to imprisonment for life.

**24. Protection from drugs and substance abuse**

- (1) No person shall subject a child to—
- (a) the use of hallucinogens, narcotics, alcohol, tobacco products, glue, psychotropic drugs or any other drugs that may be declared harmful by the Cabinet Secretary responsible for matters relating to health; or
  - (b) involvement in the production, trafficking, sale, storage or distribution of the any of the drugs or substances referred to in paragraph (a).

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not less than five hundred thousand shillings, or to both.

**25. Right to freedom from torture etc.**

(1) Every child has the right to freedom from torture and cruel, inhuman or degrading treatment or punishment as provided under Article 25 (a) of the Constitution.

(2) The assignment of any task or infliction of punishment by way of penalty for any offence committed by a child under any law shall not be construed as a contravention of the right specified in subsection (1)

Provided that any such punishment shall be humane and preserve the child's dignity, and be commensurate with the evolving capacity of the child.

- (3) Any person who—
- (a) unlawfully deprives a child of his or her liberty;
  - (b) subjects the child to—
  - (c) torture or other cruel and inhuman or degrading treatment, including corporal punishment,
  - (d) any cultural or religious practice which dehumanizes or is injurious to the physical, mental and emotional wellbeing of the child,

commits an offence and shall, on conviction, be liable to the offence under the Prevention of Torture Act (Cap. 88).

## **26. Detention of children in conflict with the law**

(1) A child shall not be deprived of his or her liberty or otherwise treated in a manner contrary to Articles 29 (f) and 51 of the Constitution, except in accordance with the Persons Deprived of Liberty Act (Cap. 90A).

(2) Children deprived of liberty, detained or held in custody or committed to an institution shall be held separate from adults in facilities, including transportation facilities, appropriate to their special needs and age.

(3) Male, female and intersex children deprived of liberty shall be accommodated in separate facilities.

(4) Where children with disabilities are deprived of liberty under any legal process, they shall be treated on an equal basis with others and shall be entitled to such guarantees as are in accordance with the Constitution, this Act and the Persons with Disabilities Act (Cap. 133).

(5) Children with disabilities deprived of liberty or accommodated in child protection units shall be accommodated in facilities that adequately meet their personal needs, taking into account the condition and nature of the disability.

(6) The competent authorities shall take appropriate measures to facilitate humane treatment and respect for the privacy, legal capacity and inherent human dignity of children deprived of liberty, including children with disabilities.

(7) The detention of a child under this Act or any other written law shall be a matter of last resort and in conformity with Article 53 (f) of the Constitution.

(8) A child who is apprehended and detained shall be accorded legal and other assistance by the State as well as contact with his or her family.

## **27. Privacy**

(1) No person shall subject a child to arbitrary or unlawful interference with his or her privacy, family or private affairs, or correspondence, or to attacks upon his or her honour or reputation.

(2) Without prejudice to the generality of subsection (1), parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children.

(3) The personal data concerning a child shall be processed only in accordance with the provisions of the Data Protection Act (Cap. 411C).

## **28. Right to assemble, demonstrate, petition and participate in public life**

(1) Every child has the right, peaceably and unarmed, to assemble, demonstrate or present petitions to public authorities, and to freely participate in matters affecting children through lawfully established forums, associations, and assemblies at the national and county levels.

(2) The right of a child to assemble, demonstrate, and to present petitions, shall be subject to the rights of others.

(3) In addition to the rights guaranteed under subsections (1) and (2), every child shall have the right to express their views in all matters affecting them, and have those views heard and given due weight in accordance with the child's age and maturity.

(4) The right guaranteed under subsection (3) shall be exercised—

- (a) in accordance with the national values and principles of governance prescribed in Article 10 (2) of the Constitution.
- (b) voluntarily by a child and without any undue influence, coercion, inducement or enticement by any person.

(5) The Cabinet Secretary may issue guidelines to give effect to this section.

### **29. Enforcement of rights under this Part**

(1) Any person may institute court proceedings claiming that any right or fundamental freedom of the child protected under this Part has been denied, violated or infringed, or is threatened.

(2) Without prejudice to the generality of subsection (1), court proceedings may be instituted by—

- (a) a parent or guardian acting in the interest of their child;
- (b) a person acting on behalf of a parent or guardian who cannot act on behalf of their child or children;
- (c) a person acting as a member of, or in the interest of, a group or class of children;
- (d) a person acting in the public interest; or
- (e) a duly registered association acting in the interest of one or more of its members, whose primary object is the promotion and protection of children's rights.

(3) The High Court shall hear and determine an application under subsection (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Part.

(4) Any court cost under this section shall be kept at a minimum.

(5) The Chief Justice may make—

- (a) rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it or under this section, including rules with respect to the time within which applications may be brought, and references shall be made to the High Court;
- (b) rules for the enforcement of human rights and fundamental freedoms of the child; and
- (c) practice guidelines for the Children's Court.

(6) The Cabinet Secretary may make regulations for the better carrying into effect the provisions of this Part, including regulations for the effective implementation of alternative care arrangements.

## PART III – PARENTAL RESPONSIBILITY

### **30. Duties and responsibilities of a child**

In the applications of the provisions of this Act and in any matter before a court of law concerning a child, due regard shall be had to the duties and responsibilities of a child to—

- (a) work for the cohesion of the family;

- (b) respect his parents, superiors and elders at all times and assist them in case of need provided that the child's best interest shall remain paramount;
- (c) serve his national community by placing his physical and intellectual abilities at its service;
- (d) preserve and strengthen social and national solidarity;
- (e) preserve and strengthen the positive cultural values of his community in his relations with other members of that community;
- (f) attend school unless prevented by factors beyond their ability;
- (g) not discriminate against other children on account of ethnicity, race, disability, gender, social status or other grounds;
- (h) protect the environment;
- (i) not abuse or harm other children; and
- (j) not destroy any property.

### **31. Equal parental responsibility**

(1) In this Act, "parental responsibility" means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.

(2) The duties referred to in subsection (1) include, but are not limited to—

- (a) the duty to maintain the child and, in particular, to provide the child with—
  - (i) basic nutrition;
  - (ii) shelter;
  - (iii) water and sanitation facilities;
  - (iv) clothing;
  - (v) medical care, including immunization;
  - (vi) basic education; and
  - (vii) general guidance, social conduct and moral values;
- (b) the duty to protect the child from neglect, abuse, discrimination or other differential treatment;
- (c) the duty to—
  - (i) provide parental guidance in religious, moral, social, cultural and other values that are not harmful to the child;
  - (ii) determine the name of the child;
  - (iii) procure registration of the birth of his or her child;
  - (iv) appoint a legal guardian in respect of the child;
  - (v) receive, recover and otherwise deal with the property of the child for the benefit, and in the best interests, of the child;
  - (vi) facilitate or restrict the migration of the child from or within Kenya;
  - (vii) upon the death of the child, to arrange for the burial, cremation of the child or any other acceptable method of interment; and

- (d) the duty to ensure that, during the temporary absence of the parent or guardian, the child shall be committed to the care of a fit person.

(3) Whether or not a person has parental responsibility over a child shall not affect—

- (a) any obligation which such person may have in relation to the child, such as a statutory duty to maintain the child; or
- (b) any rights which, in the event of the child's death, such person may have in relation to the administration of the child's estate in accordance with the Law of Succession Act (Cap. 160).

(4) A person who does not have parental responsibility over a particular child, but has care and control over the child, may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

(5) The Cabinet Secretary may make regulations to give effect to the provisions of this section.

### **32. Equal parental responsibility**

(1) Subject to the provisions of this Act, the parents of a child shall have parental responsibility over the child on an equal basis, and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility whether or not the child is born within or outside wedlock.

(2) A person who has parental responsibility over a child shall at all times have the duties, powers and responsibilities as are prescribed in this Act or any other written law.

(3) A person with parental responsibility over a child shall not act in any way that contravenes any order of a court of competent jurisdiction made with respect to the child under this Act or any other written law.

(4) A person who has parental responsibility over a child may not relinquish or assign such responsibilities to another person.

(5) Nothing in subsection (4) prevents a person from making temporary arrangements, during his or her absence, to allow a fit person to exercise his or her parental responsibilities over a child for and on his or her behalf.

(6) The making of the temporary arrangements referred to in subsection (4) by a person shall not affect or limit that person's liability arising from his or her failure to exercise his or her responsibility under this section.

### **33. Parental responsibility agreement**

(1) Parents of a child and who are not married to each other may enter into a parental responsibility agreement, in the prescribed form, whereby both, in the best interests of the child, designate and agree on clear individual responsibilities towards the child.

(2) An agreement under subsection (1) may be in the nature of a parenting plan in which the parents specify—

- (a) how the child or children shall spend time with each parent;
- (b) how the parents shall make joint decisions on matters relating to their respective parenting responsibilities, including religious upbringing;
- (c) contact information;
- (d) visitation schedule;

- (e) holiday and school break schedule;
- (f) transport and travel within and outside Kenya;
- (g) responsibility for health insurance and healthcare services;
- (h) the need for notification of parental movement in cases where either or both parents relocate or change residence;
- (i) the manner in which decisions relating to the education of the child shall be made; and
- (j) the joint and several responsibilities expenses for extra-curricular activities of the child.

(3) A parental responsibility agreement may only be revoked or terminated by an order of the Court made on application by—

- (a) a person who has parental responsibility over the child; or
- (b) a child, with the leave of the Court.

(4) The Court may only grant leave under subsection (3)(b) if it is satisfied that the child sufficiently understands the nature and effect of the application made to the Court.

(5) A person who, in breach of a parental responsibility agreement or any order of the Court—

- (a) hinders another person who has access to a child, or who has parental responsibility in respect of that child in accordance with such order or agreement, from exercising such access or responsibilities; or
- (b) abducts the child or otherwise prevents that other person from exercising such access or responsibilities in respect of the child,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five hundred thousand shillings, or to both.

(6) A person who, having care or custody of a child in respect of whom another person has access or parental responsibility pursuant to a parental responsibility agreement or to an order of the court, fails to notify that other person in writing of the change in his or her residential address at which the child resides, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding two hundred thousand shillings, or to both.

#### **34. Transmission of parental responsibility**

(1) On the death of the mother of the child, the father of the child, if still living, shall have parental responsibility for the child either alone or with the testamentary guardian (if any) appointed by the mother.

(2) On the death of the father of a child, the mother of the child, if living, shall exercise parental responsibility in respect of the child either alone or with the testamentary guardian (if any) appointed by the father.

(3) The surviving parent of the child shall be entitled to object to any testamentary guardian appointed by either of them acting, and may apply to the court for the revocation of the appointment of the testamentary guardian.

(4) Where both the mother and the father of the child are deceased, any of the following persons may exercise parental responsibility over the child—

- (a) a testamentary guardian appointed by either of the parents;

- (b) a guardian appointed by the court on application in the prescribed form;
- (c) the person in whose power a residence order was made prior to the death of the child's father and mother, and which is for the time being in force;
- (d) a fit person appointed by the Court on application in the prescribed form;
- (e) in the absence of the persons specified in paragraphs (a), (b) (c) and (d), a relative of the child; or
- (f) failing arrangement under paragraph (e), by any other fit person on placement of the child in alternative family-based care.

(5) The relatives of the deceased parent of the child, may, if they consider the surviving parent of the child to be unfit to exercise parental responsibility for the child, apply to the court to make such appropriate orders as may be necessary in the circumstances of the case to safeguard the best interests of the child.

(6) Where the parent of a child marries, the parent's spouse shall exercise parental responsibility under the provisions of this Act, whether or not that spouse has legally adopted the child.

### **35. Extension of responsibility beyond eighteenth birthday**

(1) Parental responsibility in respect of a child may be extended by an order of the Court after the date on which the child attains the age of eighteen years if the Court is satisfied, either of its own motion or on application by any person, that special circumstances exist with regard to the welfare of the child that would necessitate the making of such extension.

(2) The special circumstances referred to in subsection (1) include cases where the child is in need of extended parental responsibility by reason of special needs arising from severe disability or developmental disorder.

(3) An application under this section may be made either before or after the child has attained the age of eighteen years by—

- (a) the parent;
- (b) any person who has parental responsibility over the child or by a relative of a child;
- (c) the Secretary; or
- (d) the child.

### **36. Regulations and guidelines**

The Cabinet Secretary shall prescribe regulations to give effect to this Part and, in particular, to guide the formulation and implementation of programmes and actions to promote the preservation and strengthening of families.

## **PART IV – ADMINISTRATION OF CHILDREN'S SERVICES**

### **37. Office of the Secretary of Children Services**

(1) There is established the Office of the Secretary of Children Services which shall be an office in the public service.

(2) The Secretary shall be recruited through a competitive process and appointed by the Public Service Commission.



(3) A person may be appointed as the Secretary of Children Services if the person—

- (a) is a citizen of Kenya;
- (b) holds a relevant bachelors and masters' degree in social sciences from a university recognized in Kenya;
- (c) has at least ten years' experience in social work, education, administration and management, public administration, human resource or finance management; and
- (d) meets the requirements of Chapter Six of the Constitution.

### **38. Functions of the Secretary**

The Secretary shall—

- (a) regulate, coordinate, manage, and supervise children's officers in delivery of the welfare and administration of children services;
- (b) be responsible for establishing, administering and maintaining child protection centres, rehabilitation schools and a remand homes in every county;
- (c) maintain up-to-date records and data on management of children services including access to welfare amenities for children;
- (d) investigate, monitor and report cases of children facing hardship;
- (e) identify, formulate and develop programmes to mitigate children facing hardship for the consideration of the Council;
- (f) assist children in hardship, including children with disabilities, children living in the street, orphaned and destitute children, children who abuse drugs, children who are sexually abused and children who are affected by domestic violence;
- (g) inquire, investigate, assess and prepare reports in accordance with this Act or any other written law in accordance with any direction of a court;
- (h) implement any direction of court including providing social or administrative support;
- (i) safeguard the welfare of a child placed under care by virtue of a care order or interim order;
- (j) procure accommodation for a child who is abandoned, in need of refuge, safety or appropriate custody;
- (k) provide services to trace, reintegrate or restore a lost or an abandoned child with parent or a guardian;
- (l) intervene and secure the removal of a child in need of care and protection to a place of safety;
- (m) promote family reconciliation and mediate in disputes involving children, parents, guardians or persons who have parental responsibility in the manner provided under this Act;
- (n) provide services to assess a child placed under care and support services to counsel, and guide children and families;
- (o) facilitate medical treatment for a child in police custody or in a children's remand home;

- (p) provide guidance and assistance for a child during a proceeding in court;
- (q) supervise administration of children institutions including children's rehabilitation centres, charitable children's institutions and remand homes in order to safeguard and promote the welfare of a children;
- (r) provide quarterly reports relating to management of children's rehabilitation centres, charitable children's institutions and remand homes;
- (s) safeguard the welfare of children in foster care; and
- (t) perform any other function as may be prescribed under this Act.

### **39. Powers of the Secretary**

(1) The Secretary shall have the power to do all such acts as the Secretary may deem to be necessary to carry out the functions of the Secretary and may appoint, assign or delegate a function to an officer or a person to carry out a function assigned under this Act.

(2) Without prejudice to the powers of the Director of Public Prosecution, the Secretary shall have the power to institute proceeding in respect of any contravention relating to child maintenance, child neglect and abuse.

### **40. Appointment of chief officers, children officers and such other officers**

The Public Service Commission shall competitively recruit and appoint chief officers, children officers and such other officers as may be necessary to assist the Secretary in the performance of their duties under this Act.

### **41. Establishment of National Council for Children's Services**

(1) There is established a Council to be known as the National Council for Children's Services, which shall be a body corporate with perpetual succession and a common seal.

(2) The Council shall be capable, in its corporate name, of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) entering into contracts;
- (d) receiving grants and gifts in support of projects, programmes and actions designed to promote and protect the rights of the child; and doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

### **42. Functions of the Council**

The National Council for Children Services shall—

- (a) be the central authority for the purposes of the Hague Convention on Inter-Country Adoptions;
- (b) advise the Cabinet Secretary on matters relating to child protection;
- (c) collaborate with relevant state departments, state and non-state agencies to monitor and evaluate the efficiency and effectiveness of all social programmes established in the interests of children;

- (d) facilitate, monitor and evaluate the enforcement of the principles of international law and treaty instruments binding on Kenya in respect of matters relating to children;
- (e) develop policy, codes of conduct regulating good practice relating to child protection and child welfare;
- (f) monitor and evaluate implementation of public education programs on the rights and welfare of children;
- (g) advice on technical and support services to state and non-state agencies participating in child welfare programmes;
- (h) prescribe training needs and requirements for authorized officers;
- (i) formulate, approve, evaluate and monitor implementation of programmes to facilitate the full implementation of Kenya's international and regional obligations relating to children and support the formulation of appropriate reports under such obligations;
- (j) formulate, approve, evaluate and monitor implementation of policies to regulate family empowerment and social security that are designed to alleviate the hardships which impair the social welfare of children;
- (k) regulate, register, approve, evaluate and monitor implementation of child welfare programmes proposed by charitable children's institutions in accordance with this Act;
- (l) advice the Cabinet Secretary on establishment of children rescue centers or designation of children's institutions to operate as children rescue centers;
- (m) formulate, approve, evaluate and monitor implementation of programmes to create public awareness in all matters relating to the rights and welfare of children;
- (n) formulate, approve, evaluate and monitor implementation of programmes for the alleviation of the plight of children with special needs or requiring special attention;
- (o) promote, carry out and disseminate research relating to welfare and protection of children matters;
- (p) establish panels of persons from whom guardians *ad litem* appointed by the court in matters relating to children including adoption regulated under this Act;
- (q) maintain and update a register of guardians *ad litem*;
- (r) establish, regulate and manage the activities of County Children Advisory Committees to advise on matters relating to the rights, welfare and protection of children;
- (s) promote linkages and exchange programmes with organisations in and outside Kenya;
- (t) establish, maintain and update a database of children in Kenya;
- (u) advise the Cabinet Secretary on matters relating to the formulation of national policy on domestic and inter-country adoptions;
- (v) accredit and license duly registered adoption and child protection agencies in order to facilitate domestic and inter-country adoptions;
- (w) establish, update and maintain a database for domestic and inter-country adoptions;

- (x) advise the Cabinet Secretary on matters relating to adoption practice and procedure;
- (y) provide professional and technical advice and support services to licensed adoption agencies on matters relating to adoption and to individuals who intend to undertake domestic and inter- country adoption;
- (z) receive, record and report from Charitable Children Institutions, adoption societies, parents and guardians, authorised officers and other relevant persons particulars of children available for adoption;
- (aa) consult with Charitable Children Institutions and adoption societies on matters relating to adoption;
- (bb) establish, maintain and update a register of children free for adoption and prospective adoptive parents;
- (cc) certify and declare a child free for adoption;
- (dd) establish, maintain and update a database of adopted children in consultation with the Registrar;
- (ee) promote co-operation between state agencies, local and non-state agencies concerned with matters relating to adoption with central adoption authorities in other countries including tracing and repatriation of children in need of care and protection;
- (ff) review and make recommendations to the Cabinet Secretary for approval of fees chargeable by adoption societies for the processing of applications for adoption;
- (gg) make recommendations to the Cabinet Secretary on matters relating to the fees chargeable for registration and licensing of adoption societies;
- (hh) monitor, prepare and submit to the Cabinet Secretary annual reports on matters relating to adoption; and
- (ii) any other functions as maybe conferred on this Act.

#### **43. Composition of the Council**

(1) The Council shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to children services or a representative;
- (c) the Principal Secretary for the time being responsible for matters relating to finance or a representative;
- (d) the Attorney-General or a representative;
- (e) one person representing the Council of Governors;
- (f) the following three persons, not being public officers, appointed by the Cabinet Secretary—
  - (i) one person representing Public Benefits Organisations concerned in matters related to children activities;
  - (ii) one person representing faith based organisations;
  - (iii) one person representing the private sector;
- (g) the Secretary of children's services; and

- (h) the Chief Executive Officer of the Council, who shall be the secretary to the Council.
- (2) In constituting the Council, the appointing authorities shall ensure that—
  - (a) not more than two thirds of the Council shall be comprised of one gender;
  - (b) persons with disabilities, vulnerable and marginalised groups shall be accorded equal opportunity; and
  - (c) the appointments reflect the ethnic and regional diversity of the country.
- (3) A person shall be qualified for appointment to the office of Chairperson of the Council if the person—
  - (a) is a citizen of Kenya;
  - (b) holds a relevant post graduate degree in social sciences from a university recognized in Kenya;
  - (c) has at least fifteen years' experience in corporate governance, administration and management, public administration, human resource or finance management;
  - (d) is knowledgeable in or has actively contributed to the promotion of the rights and welfare of children; and
  - (e) meets the requirements of Chapter Six of the Constitution.
- (4) The conduct of business and affairs of the Council shall be as set out in the Second Schedule to this Act.

**44. Term of Office.**

(1) The Members of the Council appointed under section 43 (1) (a), (e) and (f) shall hold office for term of three years, and shall be eligible for reappointment for one further term of three years.

(2) The Members, other than the Chief Executive Office, shall serve on a part-time basis.

**45. Vacancy of office of chairperson and members**

(1) The office of the Chairperson or member of the Council shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the respective appointing Authority specified in section 41; or
- (c) is removed from office under any of the circumstances specified in Chapter Six of the Constitution.

(2) Where a vacancy occurs in the office of Chairperson or member of the Council, the appointing authority shall fill the vacancy within sixty days next following the notification of vacancy referred to in subsection (1).

(3) A member appointed under subsection (2) to fill a vacancy shall serve for the respective term specified in section 44.

**46. Remuneration of members of the council**

The Council shall pay its members such remuneration or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine.

**47. Committees of the Council**

(1) The Council may, from time to time, establish committees for the better carrying out of its functions.

(2) The Council may engage such experts or consultants as the Council may consider necessary for the effective discharge of its functions under this Act or any other written law.

**48. Staff of the Council**

(1) There shall be a Chief Executive Officer of the Council who shall be competitively recruited and appointed by the Council and whose terms and conditions of service shall be determined by the Council on advice of the Salaries and Remuneration Commission.

(2) A person shall be qualified for appointment as Chief Executive Officer if he or she—

- (a) is a citizen of Kenya;
- (b) holds a relevant post graduate degree from a university recognized in Kenya;
- (c) has at least ten years' experience in social work, administration and management, public administration, human resource or finance management; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of five years renewable for one further term of five years.

(4) The Chief Executive Officer shall, in the performance of the functions and duties of his or her office, be responsible to the Council.

(5) The Chief Executive Officer shall be—

- (a) the secretary to the Council;
- (b) the head of the secretariat of the Council;
- (c) the accounting officer of the Council;
- (d) the custodian of all records of the Council; and
- (e) responsible for—
  - (i) executing decisions of the Council;
  - (ii) assigning duties to and supervising the staff of the Council, and for co-ordinating and regulating their work in the execution of the functions of the Council;
  - (iii) facilitating, co-ordinating and ensuring the effective discharge of the function of the Council; and
  - (iv) the performance of such other duties as may be assigned by the Council under this Act or any other written law.

(6) The Chief Executive Officer may be removed from office Council in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of his or her office;
- (b) gross misconduct or misbehavior;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under his or her terms and conditions of service.

(7) The removal of the Chief Executive Officer from his or her office shall be in accordance with the principles of fair administrative action prescribed in Article 47 of the Constitution and the law relating to fair administrative action.

(8) The staff appointed under subsection (1) shall represent the ethnic, gender and social diversity of the country and serve on such terms and conditions as the Council may, in consultation with the Salaries and Remuneration Commission, determine.

(9) The national government may, upon request by the Council, second to the Council such number of public officers as the Council may require.

(10) A public officer seconded to the Council shall, during the period of secondment, be deemed to be an officer of the Council, and shall be subject only to the direction and control of the Council.

(11) In the appointment of its staff, the Council shall ensure that not more than two thirds of the staff of the Council shall be of the same gender, taking account of—

- (a) persons with disabilities; and
- (b) regional and ethnic diversity of the people of Kenya.

#### **49. The common seal of the Council**

(1) The seal of the Council shall be such device as may be determined by the Council and shall be kept in the custody of the Chief Executive Officer, and shall not be used except on the order of the Council.

(2) The affixing of the seal shall be authenticated by the chairperson and the Chief Executive Officer or any other person authorized in that behalf by a written resolution of the Council.

(3) The common seal of the Council, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorization of the Council under this section shall be presumed to have been duly given.

#### **50. Protection from personal liability**

(1) A matter or thing done by a member of the Council or any officer, staff or agent of the Council shall not render such member, officer, staff or agent personally liable for any action, claim or demand whatsoever if the matter or thing is done in good faith for executing the functions, powers or duties of the Council.

(2) The provisions of subsection (1) shall not relieve the Council from liability to pay compensation or damages to any person for any injury suffered by them, their property or any of their interests and arising directly or indirectly from the exercise of any power conferred under this Act or any other written law.

#### **51. Proceedings against the Council**

(1) Any proceedings against the Council shall be deemed to be proceedings against the national government, and shall be subject to the Government Proceedings Act (Cap. 40) and the Public Authorities Limitations Act (Cap. 39).

(2) Any notice or other processes in respect of legal proceedings contemplated in subsection (1) shall be served upon the Chief Executive Officer.

#### **52. Powers of the Council**

The Council shall, for the purpose of carrying out its functions, have power to do all such acts and things as appear to it to be requisite, advantageous or

convenient for or in connection with the carrying out of its functions or incidental to their proper discharge, and may carry out any activities in that behalf either alone or in association with other persons or bodies.

### **53. Regulations by the Council**

The Council may, with the approval of the Cabinet Secretary, make regulations for the effective discharge of its functions.

### **54. County Children Advisory Committees**

(1) The Council may, for the better performance of its functions, establish such County Children Advisory Committees as it may deem necessary for the proper discharge of its functions at the County level in accordance with this Act.

(2) The County Children Advisory Committees shall be comprised of the following persons—

- (a) a children officer in charge of the area;
- (b) the County Commissioner or a representative;
- (c) the County Director for Education or a representative;
- (d) the county executive member for the time being responsible for matters relating to children, or a representative;
- (e) the County Executive Committee member for the time being responsible for matters relating to education, or a representative;
- (f) the County Executive Committee member for the time being responsible for matters relating to health, or a representative;
- (g) a representative of the Director of Public Prosecutions attached to the area within the local jurisdiction of the committee;
- (h) a probation officer in charge of the area within the local limits of the committee's jurisdiction;
- (i) a police officer attached to the area within the local jurisdiction of the committee;
- (j) a representative nominated by Public Benefits Organisations engaged in children's welfare County activities within the local limits of the committee's jurisdiction;
- (k) a representative nominated by public benefits organisations knowledgeable in matters relating to the rights of persons with disabilities;
- (l) a representative of faith-based organisations within the jurisdiction of the committee;
- (m) the registrar in charge of the area or a representative;
- (n) the Labour Officer in-charge of the area or a representative; and
- (o) a representative of the Council who shall be the Secretary to the Committee.

(3) The County Children Advisory Committee shall perform the following functions—

- (a) assist and collaborate with the Council in the performance of its functions within its local jurisdiction;
- (b) provide a platform for collaboration between the national government and the county government on children matters within its jurisdiction;



- (c) make recommendations to the Council on any matters relating to children within its jurisdiction;
- (d) provide information that may be required by the Council on any matter concerning children within the local limits of its jurisdiction; and
- (e) perform such other functions as the Council may delegate.

**55. Sub-County Children Advisory Committees**

(1) The Council shall establish, in relation to every sub-county, sub-county children advisory committees, whose functions shall be to advise the County Children Advisory Committees on, and make recommendations for, the implementation of such child welfare programmes as may be necessary for the promotion and protection of the rights of the child in the respective sub-counties.

(2) Without prejudice to the generality of subsection (1), the Council may establish advisory committees in other decentralized units of service delivery to aid and advise the Council in the discharge of its functions under this Act or any other written law.

(3) Without prejudice to the generality of subsections (1) and (2), the sub-county and other decentralized Children Committees shall—

- (a) facilitate information sharing and networking among key stakeholders in each sub-county and other decentralized units;
- (b) coordinate children matters and activities at the area of jurisdiction;
- (c) inspect, monitor and evaluate children facilities to ensure compliance with standards set by the Council;
- (d) make recommendations to the County Children Advisory Committee on any matters relating to children within the sub-county or area of jurisdiction;
- (e) provide information that may be required by the County Children Advisory Committee on any matters relating to children within the area of jurisdiction;
- (f) submit annual reports to the County Children Advisory Committee on matters relating to children within the area of jurisdiction;
- (g) promote awareness on children matters within the area of jurisdiction; and
- (h) mobilize resources to support the Council's mandate at the sub-county level and area of jurisdiction.

(4) Pursuant to subsection (1), the sub-county children advisory committees shall submit to the respective County Children Advisory Committees particulars of the recommended child welfare programmes in relation to the respective sub counties.

(5) The County Children Advisory Committees shall consider the recommendations of the sub county children advisory committees and submit a report to the Chief Executive Officer.

(6) Upon receipt of the any report submitted under this section, the Chief Executive Officer shall make recommendations to the Council, and the Council may approve or withhold its approval for the implementation of any of the proposed programs to which the report relates.

(7) If the Council approves any of the recommended child welfare programmes, the Chief Executive Officer shall notify the relevant county welfare committee in writing of such approval

(8) If the Council declines to approve the implementation of any proposed child welfare program recommended under this section, the Chief Executive Officer shall notify the relevant county children advisory committee, giving reasons for the decision of the Council.

## PART V – FINANCIAL PROVISIONS OF THE COUNCIL

### **56. Funds of the Council**

(1) The funds of the Council shall consist of—

- (a) monies appropriated by Parliament for purposes of the Council;
- (b) grants, gifts, donations or other endowments given to the Council; and
- (c) such funds as may vest in or accrue to the Council in the performance of its functions under this Act or any other written law.

(2) The receipts, earnings or accruals of the Council and the balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for purposes of the Council under this Act.

### **57. Annual estimates**

(1) Before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that year.

(2) The annual estimates of the Council shall make provision for all the estimated expenditure of the Council for the financial year concerned.

(3) The annual estimates shall be approved by the Council before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Council shall not increase annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Council except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.

### **58. Financial year of the Council**

The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

### **59. Accounts and Audit**

(1) The Council shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Council.

(2) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor-General the accounts of the Council in respect of that year together with a—

- (a) statement of the income and expenditure of the Council during that year; and
- (b) statement of the assets and liabilities of the Council on the last day of that financial year.

(3) The annual accounts of the Council shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act (Cap. 412B).

**60. Annual Reports of the Council**

(1) The Council shall, in each financial year, prepare and submit to the Cabinet Secretary its annual report containing—

- (a) the financial statements of the Council;
- (b) a description of the activities of the Council;
- (c) recommendations on specific actions to be taken in, furtherance of the mandate of the Council;
- (d) recommendations on policy, legislative and administrative measures required to enhance the effective discharge of the functions of the council; and
- (e) any other relevant information relating to the functions and activities of the Council.

(2) Without prejudice to subsection (1), the Council may prepare, publicise and submit to the Cabinet Secretary other periodic status reports on the institutions programmes and actions designed for the promotion and protection of the rights and welfare of the child.

**PART VI – ROLE OF COUNTY GOVERNMENTS****61. The Role of County governments**

(1) In the discharge of the functions specified in Part II of the Fourth Schedule to the Constitution, every county government shall—

- (a) provide or facilitate the provision of pre- primary education; and
- (b) provide or facilitate the provision of childcare facilities.

(2) Every county government shall, in consultation with the Cabinet Secretary, develop policies and guidelines for the better carrying out of the functions specified in subsection (1).

**62. County government welfare schemes**

A county government may, either by itself or jointly with other county governments, and in consultation with the Council, establish welfare schemes to provide or facilitate the provision of childcare facilities and programmes for children including children with disabilities.

**PART VII – CHILDREN'S INSTITUTIONS****63. Establishment of children rescue centres**

(1) The Cabinet Secretary shall, in consultation with the Council and by notice in the *Gazette*, establish children rescue centres in every county for the temporary care of children in need of care and protection pending placement in alternative care or other interventions under the Act.

(2) A child shall be accommodated in a children rescue centre for a period not exceeding six months pending any of the interventions specified in subsection (1).

(3) Without prejudice to the generality of subsection (1), the Cabinet Secretary may, in consultation with the Council, by notice in the *Gazette* designate such children's institutions to operate as children rescue centres as the Cabinet Secretary may consider appropriate.

(4) The children's institutions referred to in subsection (3) shall not include police stations, remand homes or rehabilitation schools.

(5) The Cabinet Secretary shall make regulations to provide for the procedure and minimum standards to be adhered to before the approval of an application for designation as a children rescue centre under this section.

(6) The Cabinet Secretary may collaborate with a county government for purposes of establishing a children rescue centre under subsection (1).

(7) The placement of a child in a children rescue centre shall only be done in cases where no alternative care placement is for the time being available to the child.

(8) A children rescue centre may admit a child to its care—

- (a) in an emergency situation and the child is referred to the centre by way of an interim care order or a care order; or
- (b) if the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection.

#### **64. Establishment of child protection units**

(1) The Inspector-General shall establish child protection units in every police station for the purposes of providing, on a temporary basis, a safe and non-threatening environment for children in conflict with the law.

(2) The Secretary may inspect children protection units established under subsection (1) to ascertain their compliance with the general standards prescribed for children's institutions under this Act or any other written law.

(3) The child protection units established under subsection (1) shall be desegregated by gender with clear sections for boys, girls and intersex children.

#### **65. Charitable Children's Institutions**

(1) No person shall register or operate a Charitable Children's Institution except as provided in law.

(2) The Council shall—

- (a) keep and maintain a register of all Charitable Children's Institutions registered or approved by the Council prior to the commencement of this Act;
- (b) prescribe the minimum standards and conditions for operation of existing Charitable Children's Institutions

(3) An existing Charitable Children's Institution shall ensure that every employee of the institution holds a valid certificate ascertaining that they have no pending criminal investigations;

(4) Without prejudice to the generality of subsection (2), the Council—

- (a) shall inspect and assess whether the facilities and operations of existing Charitable Children's Institution conform to the minimum standards and conditions set out in this Act and the regulations;
- (b) may deregister a non-compliant existing Charitable Children's Institution.

(5) Any person who—

- (a) operates an existing Charitable Children's Institution contrary to the provisions of this Act;

- (b) admits a child to the care of an existing Charitable Children's Institution which is not approved by the Council; or
- (c) implements or attempts to implement a children's welfare programme, or to operate a Charitable Children's Institution in the name of a Public Benefits Organisation, religious organisation or other association, whether incorporated or unincorporated, or otherwise in contravention of this subsection,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five million shillings, or to both.

#### **66. Manager and Staff of Charitable Children's Institution**

(1) A person operating a Charitable Children's Institution shall appoint or designate—

- (a) a duly qualified person as the manager of the institution; and
- (b) a sufficient number of staff or other appropriate personnel to assist in the administration of the institution.

(2) A person is qualified for appointment or designation as manager of a Charitable Children's Institution if the person has—

- (a) a Bachelor's degree or Diploma in Social Sciences from a university or other training institution recognized in Kenya;
- (b) a valid certificate issued by the relevant body certifying that there are no pending criminal investigations against the person or convictions for the offences under the Third Schedule; and
- (c) at least three years working experience in an institution involved in the field of social services.

#### **67. Overriding objectives of charitable children's institutions**

(1) The main objective for the establishment of charitable children's institution shall be to provide family-based care for all children in accordance with the national policy for the promotion and protection of the rights of the child.

(2) The placement of a child in a Charitable Children's Institution shall be done as a last resort in cases where—

- (a) the child has no immediate access to parental care by the child's parent, guardian or relative, if any;
- (b) no alternative family based placement, is for the time being available to the child; or
- (c) the usual place of abode or home is not conducive to the well-being of the child.

(3) Unless there are compelling circumstances, a child shall not be placed in a charitable children's institution for a period exceeding three years.

(4) Without prejudice to the generality of subsection (3), a child below the age of three years shall not be placed in alternative care in an institution, except in compelling circumstances and, in any event, for a period not exceeding three months.

#### **68. Certain institutions not deemed to be Charitable Children's Institutions**

(1) For the purposes of this Act, a "Charitable Children Institution" does not include—

- (a) a rehabilitation school established by the Cabinet Secretary under section 78;
- (b) a children's rescue centre established by the Cabinet Secretary under section 63;
- (c) a school within the meaning of the Basic Education Act (Cap. 211);
- (d) a borstal institution;
- (e) any healthcare institution; or
- (f) a children's day care centre, nursery or other similar establishment.

(2) Without prejudice to the generality of subsection (1), a charitable children's institution shall, with the written approval of the Council, provide medical care, education or training for the children accommodated in the institution.

#### **69. Change of user of institutions**

(1) Any registered Charitable Children's Institution may change user of the institution by making an application to the Council for approval of the proposed change at least six months prior to the date the proposed change is to take effect.

(2) On receipt of an application under subsection (1), the Council shall take appropriate steps to—

- (a) reintegrate the children placed in the institution with alternative families or guardians; or
- (b) transfer the children to another institution; and
- (c) investigate and ascertain the propriety of the proposed change of user and whether the application is made in good faith.

(3) The Council shall not grant the application for change of user of a charitable children's institution before taking the appropriate steps under subsection (2).

(4) In taking the action specified in subsections (2) and (3), the Council shall be guided by the principle of the best interests of the child.

#### **70. Criteria for approval of programmes**

(1) A Charitable Children's Institution shall not administer any child welfare programme under this Act without the prior written approval of the Council.

(2) The Council shall make regulations setting out the criteria for approval of child welfare programmes administered by charitable children's institutions.

(3) The Council shall keep and maintain a register of approved child welfare programs containing such information as the council may determine.

#### **71. Placement of children in a charitable children's institution**

(1) A Charitable Children's Institution may admit a child to its care only if—

- (a) in an emergency situation, the child is referred to the institution by way of an interim care order or a care order; or
- (b) the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection.

(2) Where a child is admitted to a Charitable Children's Institution in accordance with subsection (1), the Charitable Children's Institution shall—

- (a) within twenty-four hours, inform the Secretary that it has admitted a child; and

- (b) institute care proceedings under section 153 of this Act within seven days of the admission.

(3) A Charitable Children's Institution that receives a child into its care shall institute the Court proceedings referred to in subsection (2) and produce the child before the Court without delay unless—

- (a) the parent or guardian of the child applies to the Secretary for the release to them of the child;
- (b) the child is held in accordance with section 145; or
- (c) it is not in the best interest of the child to be placed with the Charitable Children's Institution.

(4) A Charitable Children's Institution shall not admit a child into its care without a Court committal order specifying, among other things, the maximum period for which the child shall be accommodated in the institution.

(5) In determining whether or not to issue a committal order under subsection (4), the Court shall admit and consider any report made by a children's officer in respect of the child.

(6) A person shall not remove or transfer a child from a Charitable Children's Institution to another institution without leave of the Court.

## **72. Secretary to monitor the well-being of children**

(1) The Secretary shall establish appropriate mechanisms to facilitate the effective periodic monitoring of the wellbeing of every child admitted into a charitable children's institution, until—

- (a) the child is discharged therefrom; or
- (b) the expiry of a care order made in respect of the child.

(2) The Secretary shall facilitate periodic visits to Charitable Children's Institutions by officers duly authorized by the Secretary for the purpose of interviewing and ascertaining the wellbeing of every child admitted into such institutions.

(3) Without prejudice to the generality of subsection (2), the authorised officers shall, in particular, ascertain the steps taken by the Charitable Children's Institution to place the children accommodated therein in family-based alternative care within the period of three years prescribed in section 67(3).

## **73. Inspection of charitable children's institutions**

(1) The Secretary shall authorise an authorised officer to inspect a charitable children's institution or any other premises which he or she has cause to believe are being used to accommodate children who are in need of care and protection.

(2) Any authorised officer acting pursuant to subsection (1) may at all reasonable times enter a charitable children's institution, after producing, if requested to do so, a duly authenticated document showing that he or she is so authorised to do so and shall, in particular—

- (a) interview any child in the institution or premises, and, in so doing, ensure confidentiality;
- (b) require the production of an annual report and any other records required to be kept in accordance with the regulations made under section 89;

- (c) inspect the conditions and facilities provided by the institution or managers of the premises; and
- (d) prepare and submit a report outlining his or her findings and recommendations.

(3) The obstruction or refusal by any person to allow any authorised officer referred to in subsection (2) to enter a charitable children's institution or the premises referred to in subsection (1) for the purpose of inspecting such institution or premises, or interviewing any person in respect of such institution or premises, shall be sufficient ground to suspect that a child or children accommodated in the institution or premises is or are being neglected or abused, and that such children are in need of alternative care and protection.

(4) Upon receipt of an inspection report, the Secretary may, in addition to taking such other remedial measures as may be prescribed by the Cabinet Secretary, require a charitable children's institution to appoint a new management and institute appropriate remedial measures:

Provided that the Secretary may, in consultation with the relevant County Children Advisory Committee, appoint a manager to manage the institution for a period not exceeding two months in order to institute appropriate remedial measures.

(5) The functions and powers of the authorised officer appointed under this section shall be supplemental to, and not in derogation from the functions and powers conferred on an inspection committee appointed under section 88.

(6) Any person who, without lawful justification, refuses to allow an authorised officer referred to in subsection (2) to enter a charitable children's institution or such premises as are mentioned in subsection (1), or who interferes in any way with the work of such officer, or fails to produce any report or records, or conceals any facility within such institution or premises, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.

#### **74. Duty to notify the Council**

(1) A duly registered public benefit organisation or charitable children's institution which intends to implement a child welfare programme shall notify the Council and provide full information on—

- (a) the mode of operation of the proposed programme; and
- (b) the specific objects of the programme.

(2) The Chief Executive Officer shall prepare and submit to the Council a report containing the information relating to the proposed child welfare programme referred to in subsection (1), and the Council may approve or withhold its approval of such programme or part of it as the Council may determine, taking into account the best interests of children.

(3) Where the Council withholds approval of a proposed child welfare programme or any part of it, any person who implements the whole or any unauthorized part of the proposed programme commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred thousand shillings, or to both.

(4) If after conviction under subsection (3), the person continues to implement the proposed program without the approval of the Council, the person shall, in addition to the penalty prescribed in subsection (3), be liable, on conviction, to a



fine not exceeding ten thousand shillings for each day during which the offending implementation continues.

#### **75. Review of child welfare programmes**

(1) The County Children Advisory Committee shall, at the end of twelve months from the date of approval of a Child Welfare Programme, and thereafter annually, review the programme and advise the Council on whether the programme is operating according to the standards prescribed by the Council.

(2) If, on receipt of the report of the County Children Advisory Committee given pursuant to subsection (1), the Council forms the view that the programme under review does not meet all or any of the standards prescribed by the Council, the Council shall either—

- (a) direct that the relevant institution by which the program is implemented takes such steps as the Chief Executive Officer may specify in writing to facilitate compliance with the standards prescribed by the Council under this Act; or
- (b) recommend that the Child Welfare Program in question be deregistered and terminated on such conditions as the Council may determine.

(3) Subject to subsection (2)(b), the Council may direct that—

- (a) the programme be terminated with immediate effect; and
- (b) all children admitted to the relevant institution be transferred to, and placed under alternative care of, any fit person or institution.

(4) If the Council directs that a child welfare program be deregistered, the certificate of approval issued under this Act in respect of the programme under review shall stand revoked.

(5) Any person who continues to implement a deregistered child welfare program in respect of which the Council has directed to be terminated under this section commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred thousand shillings, or to both.

#### **76. Deregistration of Child welfare programme**

(1) Without prejudice to the generality of section 73, the Council may, on the recommendation of the County Children Advisory Committee, deregister and direct the termination of a Child Welfare Programme in the respective county on the grounds that—

- (a) the programme is unfit for the care, protection and control of children;
- (b) the children in respect of whom the program is administered are likely to suffer prejudice, or that the program is likely to occasion harm to such children; or
- (c) the institution by which the program is administered has contravened any of the regulations made under this Act or any other written law.

(2) The Council shall not deregister any child welfare program unless and until it accords the institution by which the program is administered fair opportunity to be heard in the matter in accordance with the principals of fair administrative action prescribed in Article 47 of the Constitution:

Provided that the Council shall give written notice of the proposed deregistration and invite the programme to make its response within thirty days from the date of such notice.

(3) Any person aggrieved by the decision of the Council made under this section may appeal to the Cabinet Secretary with a further appeal to the High Court.

(4) If a child welfare program is deregistered, the Secretary shall, subject to any directions of the Cabinet Secretary, take such remedial measures as may be necessary to protect the children accommodated in the programme.

(5) Upon the deregistration of a child welfare program in accordance with this Act, the Secretary shall take such steps as may be necessary to—

- (a) reintegrate the children with their respective families or guardians;
- (b) transfer the children to another registered institution; or
- (c) remove any child or children from the institution;
- (d) ensure the immediate closure of the institution;
- (e) take such necessary steps, including prosecution, to secure appropriate penal sanctions against the manager in accordance with section 75(5); or
- (f) take such other action as may be necessary for the protection of the children.

(6) Nothing in this section shall be construed as limiting an institution's right to apply for change of user in accordance with section 69.

(7) The Cabinet Secretary shall make regulations to provide for the procedure for reintegration and transfer of Children under this Part.

#### **77. Establishment of children's remand homes**

(1) The Cabinet Secretary may, by notice in the *Gazette*, establish such children's remand homes as the Cabinet Secretary considers necessary for the accommodation, care and protection of children in conflict with the law, and the Cabinet Secretary shall facilitate the provision in such homes suitable facilities for children with special needs.

(2) The purpose of remand homes is to hold children in conflict with the law as a matter of last resort for their care and protection during trial before a verdict or placement.

(3) A remand home shall have separate sections for children of different sexes, age categories, needs and risks.

(4) The manager of any public institution, other than a prison, may enter into an agreement for the use of that institution or any part thereof as a children's remand home on such terms as may be agreed between the manager and the Secretary.

#### **78. Establishment of rehabilitation schools**

(1) The Cabinet Secretary may, by notice in the *Gazette*, establish such number of rehabilitation schools as the Cabinet Secretary may consider necessary to provide rehabilitation, accommodation, education, training and facilities for the care and protection of children.

(2) Subject to subsection (3), any person may, with the approval of the Cabinet Secretary, establish and manage a private institution suitable for—

- (a) the reception, education and vocational training of children; and

(b) the rehabilitation, care and protection of children.

(3) Without prejudice to the generality of subsections (1) and (2), every rehabilitation school shall be suitably designed and equipped to implement such educational and vocational training programmes as may be approved by the Cabinet Secretary for the time being responsible for matters relating to basic education and vocational training.

(4) The manager of any institution which is suitable for the reception, maintenance, training and rehabilitation of children ordered to be sent to a rehabilitation school under this Act may apply to the Cabinet Secretary to approve the institution for that purpose, and the Cabinet Secretary may, by notice in the *Gazette*, declare the institution to be a rehabilitation school and issue a certificate of approval to the manager.

(5) Where the Secretary is dissatisfied with the condition or management of a rehabilitation school, the Secretary may—

- (a) take such disciplinary action against the manager as the Cabinet Secretary may determine; or
- (b) direct the manager by notice in writing to show cause why the certificate of approval issued in accordance with subsection (3) should not be withdrawn.

(6) If the manager fails to comply with the conditions in the notice referred to in subsection (5)(b) within the period specified in the notice—

- (a) the notice shall take immediate effect, and the certificate of approval issued under this section shall stand withdrawn;
- (b) the Secretary may, by notice in writing to the manager, prohibit further admission of children to the school for such period as may be specified in the notice.

(7) If the Secretary is satisfied on evidence that the continuation of a rehabilitation school is unnecessary—

- (a) the Secretary may give to the manager not less than six months' notice in writing of his or her intention to withdraw the certificate of approval; and
- (b) on the expiration of the notice, the certificate of approval shall stand withdrawn, and the school shall cease to be a rehabilitation school within the meaning of this Act.

(8) Any person aggrieved by the decision to deregister a rehabilitation school under subsection (6) and (7) may appeal to the High Court within thirty days

(9) The manager of a rehabilitation school may, after giving not less than six months' notice in writing to the Secretary of his intention so to do, surrender the certificate of approval of the school, and, on the expiration of the notice, unless the notice is previously withdrawn, the certificate of approval shall be deemed to have been surrendered and the rehabilitation school shall cease to be approved.

(10) A child shall not be received into a rehabilitation school under this Act after notice has been given of intention to withdraw or surrender the certificate of approval:

Provided that the obligations of the manager with respect to children under his care at the date of the notice shall continue until the withdrawal or surrender of the certificate of approval takes effect.

(11) The Cabinet Secretary may, on the advice of the Secretary, by notice in the *Gazette*, publicize the withdrawal or surrender of any certificate of approval issued under this section.

#### **79. Rehabilitation schools to establish separate sections**

(1) There shall be separate rehabilitation school classified for children in conflict with the law in accordance with the needs and risks of different sexes and age categories.

(2) Every rehabilitation school shall have—

- (a) separate sections for children of different sex;
- (b) separate sections for children of different age categories;
- (c) separate sections for children in conflict with the law;
- (d) separate sections for various risk categories; and
- (e) a counsellor or psychologist;

(3) Without prejudice to the generality of subsection (2)(c), regard shall be had to the specific needs and risks involved in relation to the different categories of children in conflict with the law.

#### **80. Managers to admit children into rehabilitation school**

The manager of a rehabilitation school shall admit into the school every child who is duly placed or transferred to the school or otherwise committed to the manager's care, unless—

- (a) the school is an institution for persons of a different sex and age from that of the child whom it is proposed to place or transfer;
- (b) the manager shows to the satisfaction of the Secretary that it is not in the best interest of the children to admit any more children into the school, having regard to the condition of the school;
- (c) the manager shows to the satisfaction of the Secretary that it is not in the best interest of the child that the child be committed to the manager's care.

#### **81. Leave of absence from school**

The manager of a rehabilitation school may, with the authority of the Secretary, grant leave of absence to any child accommodated in that rehabilitation school for such period and on such conditions as the manager may consider fit, and may at any time terminate such leave and direct the child to return to the school.

#### **82. Revocation of children's committal order**

(1) If at any time during the period of a child's placement at a rehabilitation school the Secretary is satisfied that such child should not remain in the school under a committal order for the time being in force, the Secretary may apply to the Children's Court for revocation of the Committal Order.

(2) Without prejudice to the generality of subsection (1), the Court may at any time or on the application of any person, revoke an order committing a child to a rehabilitation school, having regard to the matters contained in the relevant records of the Court which made the order together with all relevant records of any court which may have previously considered any application made under this section.

(3) Notwithstanding anything in this Act, an order of the Court committing a child to a rehabilitation school shall not remain in force for a period exceeding three

years and in any case not beyond the date on which the child attains the age of eighteen years.

(4) Unless the Court otherwise orders on application for an order under subsections (2) or (3), the manager of the rehabilitation school at which the child is placed shall facilitate the production of the child before the Court.

### **83. Transfers and supervision on release**

(1) The Secretary may through a court order, at any time cause a child to be transferred from one rehabilitation school to another, but the period of his or her rehabilitative care shall not be increased by reason of such transfer.

(2) A child committed to a rehabilitation school shall, after the expiration of the prescribed period of his or her stay, be under the supervision of a probation officer, as ordered by the court for a period of two years.

### **84. Absconding children and children of difficult character**

(1) Where the Secretary observes that a child committed to a rehabilitation school persistently absconds, is of difficult character, or is exercising inappropriate influence on the other children in the school, the Secretary may apply to the Court having geographical jurisdiction over the school for an order—

- (a) in the case of a child below the age of sixteen years, directing that the period of committal be extended by a period not exceeding six months;
- (b) in the case of a child above the age of sixteen years, directing that the child be transferred to a borstal institution; or
- (c) directing that the child be provided with appropriate medical treatment or professional counselling services, in any of the following cases—
  - (i) cases where the child's conduct is attributable to drug abuse;
  - (ii) cases where the child is of unsound mind; or
  - (iii) cases where the child is suffering from a mental illness.

(2) In any proceedings under this section, the parents, guardian or any other person who has parental responsibility over the child, shall be notified of, and be heard in, the proceedings, unless the Court is satisfied that such persons cannot be found, or cannot reasonably be expected to attend at the proceedings.

(3) The expenses incurred in committing a child under this section shall be borne by the State.

(4) In any case where the period of committal is extended, or where the child is committed to a borstal institution, the child shall be provided with appropriate professional assistance, including legal services in accordance with the law relating to legal aid.

### **85. Removal to health institution**

(1) Where a child detained in a remand home or rehabilitation school is seriously ill and in need of medical care, the manager shall facilitate the removal of the child to an appropriate health facility on the advice of a psychologist, medical officer or medical practitioner.

(2) If the medical officer in charge of a health institution is of the considered view that the health of a child removed to a hospital under the provisions of this section no longer requires treatment, the medical officer shall notify the manager

of the remand home or rehabilitation school from which the child was referred, and the manager shall thereupon facilitate the return of the child to the home or school.

(3) The medical officer in charge of the health institution at which the child is hospitalized shall take such reasonable precautions as may be necessary to prevent the child from escaping:

Provided that nothing shall be done under the authority of this section which in the opinion of the medical officer in charge of the health institution is likely to be prejudicial to the health or wellbeing of the child concerned.

#### **86. Authority to confine a child**

(1) The order committing a child to custody in a children's remand home or ordering him to be sent to a rehabilitation school shall be sufficient authority for his confinement in that place in accordance with the tenure thereof, or in a health institution in accordance with section 85.

(2) A child shall be deemed to be in lawful custody where the child is confined to or is being conveyed to or from a children's remand home or a rehabilitation school to or from a health institution, as the case may be.

#### **87. Supervision of institutions**

(1) The Secretary shall be responsible for the supervision of all rescue centres, child protection centres, charitable children's institutions, remand homes and rehabilitation schools.

(2) In the discharge of the Secretary's supervisory responsibilities under this section, the Secretary shall inspect or cause to be inspected the schools, homes and centres referred to in subsection (1) for the purpose of ascertaining the conditions of the centres and the wellbeing of the children placed in such centres.

(3) Upon inspection of the facilities referred to in subsections (1) and (2), the Secretary shall take appropriate steps to facilitate the improvement of—

- (a) the conditions of the institutions to which this section relates; and
- (b) the wellbeing of the children therein placed.

(4) For the purposes of this section, the Secretary shall facilitate placement of a child under the custody of a rescue centre to appropriate alternative family care at the earliest opportunity:

Provided that no child shall be placed in a child rescue centre for a period exceeding six months.

#### **88. Inspection committees**

(1) The Cabinet Secretary shall appoint an inspection committee to inspect any rescue centre, child protection centre, charitable children's institution, remand home or rehabilitation school or a borstal institution.

(2) The committee appointed under subsection (1) shall be comprised of not more than five persons, and shall exercise and perform, subject to any directions given by the Cabinet Secretary.

(3) The functions of the inspection committee shall be to—

- (a) inspect rehabilitation schools, children's remand homes, charitable children's institutions, child rescue centres, child protection centres and other child care facilities;
- (b) interview any child in the premises or institution, and, in so doing, ensure confidentiality;

- (c) interview the manager and other members of staff in the institution;
- (d) inspect the conditions and facilities provided by the institution or manager of the premises; and
- (e) make recommendations on necessary improvements, remedial measures or closure of the institution or premises, or relocation of children housed in the institution or premises.

(4) Subject to subsection (3), the Secretary shall, within three months of the receipt from the Cabinet Secretary of any directions relating to the recommendations made under this section, report to the Cabinet Secretary specifying the steps taken by the Secretary to implement the recommendations of the inspection committee.

(5) The recommendations referred to in this section may include closure, deregistration and revocation of a certificate of approval.

(6) The Cabinet Secretary shall prescribe regulations for composition and conduct of an inspection committee.

### **89. Regulations**

The Cabinet Secretary may, on the recommendation of the Council, make regulations for the better carrying out of the provisions of this Part and, in particular, such regulations shall make provision for—

- (a) the establishment, administration and supervision of children institutions;
- (b) the requirements and procedure for approval of children's welfare programmes;
- (c) the management of remand homes, rehabilitation schools, child rescue centres, child protection centres, and charitable children's institutions;
- (d) requirements as to the accommodation, staff and equipment to be provided in the institutions referred to in paragraph (a);
- (e) academic qualifications for persons to be employed in children's institutions;
- (f) the training and remuneration of persons employed in children's remand homes, rehabilitation schools, child rescue centres, and child protection centres;
- (g) the criteria to be applied to limit the number of children who may be accommodated in the institutions referred to in paragraph (a);
- (h) the education and training of children in the institutions referred to in paragraph (a);
- (i) religious instruction to children in the institutions referred to in paragraph (a);
- (j) the access to health care by children in the institutions referred to in paragraph (a);
- (k) special care for children with disabilities, chronic ailments or other special needs in the institutions referred to in paragraph (a);
- (l) requirements as to the keeping of records and giving of notices in respect of children received in the institutions referred to in paragraph (a);

- (m) the conduct of reviews under section 78;
- (n) the conduct of inspections of the institutions referred to in paragraph (a);
- (o) corrective measures which may be imposed by the Secretary after inspection of the institutions referred to in paragraph (a), and penalties for non-compliance therewith;
- (p) appeals against decisions made under this Part;
- (q) foster care applications under section 173;
- (r) the minimum standards to be adhered to before the approval of an application to establish a charitable children's institution under section 65; and
- (s) the conduct of diversion under Part XV.

#### PART VIII – CHILDREN'S COURTS

##### **90. Designation of the Children's Court**

(1) The Chief Justice may, by notice in the *Gazette*, designate children's courts in such counties and sub counties as the Chief Justice may determine.

(2) The Chief Justice may, by notice in the gazette, appoint a magistrate to preside over cases involving children in respect of any area of the country.

(3) There shall be a Registrar and such number of Deputy Registrars of the Court as may be appointed in accordance with the Judicial Service Act (Cap. 8A).

(4) Without prejudice to the generality of subsection (1), the children's Court shall have civil and criminal jurisdiction.

(5) Nothing in this section shall preclude the High Court from entertaining an appeal or other reference relating to the diversion or trial of a child in conflict with the law:

Provided that in exercise of its jurisdiction under this Act, the Court shall comply with the provisions of this Act.

##### **91. Jurisdiction of the Children's Court**

(1) Without prejudice to the generality of section 90(1), the children's Court shall have jurisdiction to—

- (a) conduct civil proceedings on matters set out under Parts III, VII, VIII, IX, X, XI, XIII, XIV and XV of this Act;
- (b) hear any charge against a child, other than a charge of murder;
- (c) hear a charge against any person accused of an offence under this Act;
- (d) hear a charge in any case in which a person is accused of an offence against a child or in which a child is the victim or complainant; and
- (e) exercise any other jurisdiction conferred by this Act or any other written law.

(2) Subject to any rules or directions made or issued by the Chief Justice, where under any other written law any matter involving a child is required to be heard by a Court other than a Children's Court, that other Court shall, for the purposes of that matter, be deemed to be a Children's Court, and shall be bound by the provisions of this Act.



(3) Any reference to a subordinate court of any class in the First Schedule to the Criminal Procedure Code (Cap. 75) shall include a Children's Court.

(4) The Magistrate in charge of the Courts station or his or her representative shall preside over all cases involving children in respect of the Court's jurisdiction.

(5) Where, in the course of any proceedings in a children's Court, it appears to the Court that the person charged, or to whom the proceedings relate, is above the age of eighteen years, the Court shall transfer the proceedings to a Court other than a children's Court to conduct the proceedings under any other relevant law.

(6) Where, in the course of any proceedings in any Court other than a Children's Court, it appears to the Court that the person charged or to whom the proceedings relate, is under the age of eighteen years, the Court shall transfer the proceedings to a Children's Court to conduct the proceedings under this Act:

Provided that no transfer shall be necessary in any case where the magistrate concerned is duly appointed in accordance with section 90 to preside over matters relating to children.

(7) Where any conviction or sentence made or passed by a Court other than a Children's Court is appealed against, or is brought before the High Court for confirmation or revision, and it appears that the person convicted was at the time of commission of the offence under the age of eighteen years, the High Court shall have power to substitute for the conviction a finding of guilt in accordance with section 221.

(8) A Children's Court may, either on its own motion or on the application by any person, visit any children's institution and assess its condition and the circumstances under which the children are admitted, and on assessment, make any order as the Court may determine in the best interest of the children.

## **92. Friendly environment of Children's Court**

A Children's Court shall have a setting that is friendly to the children who are before it.

## **93. Sitting of Children's Court**

(1) A Children's Court shall sit at such times and in such locations as the Chief Justice may, by notice in the *Gazette*, determine.

(2) Without prejudice to the generality of subsection (1), a children's Court shall not sit at the same time, or in the same Courtroom at which the sittings of the Court, other than the sittings of the children's Court, are held:

Provided that any Magistrates court may be converted into a Children court for the purpose of conducting proceedings under this Act.

(3) The Courtroom or premises at which the sittings of the children's Court are held shall be suitably designated and reasonably equipped to facilitate—

- (a) the provision of the individual needs of children, having regard to their state of health, age and gender;
- (b) the provision of such services as may be required to meet the special needs of children in need of care, including children with disabilities; and
- (c) the highest attainable standards of hygiene, sanitation and comfort.

(4) No person other than the following may attend any proceedings or be present at any sitting of a Children's Court—

- (a) the judicial officer, members and other officers of the Court;
- (b) a children's officer duly appointed by the Secretary to assist the children's Court in its proceedings;
- (c) parents or guardians of the child involved in the proceedings;
- (d) any person directly or indirectly involved in the matter before the Court, including complainants, witnesses and any professional required to submit any report on a child to whom the proceedings relate;
- (e) a duly accredited journalist or duly registered media professional; or
- (f) such other persons as the Court may authorize to be present.

(5) Nothing in this section shall prevent the Court from holding its sittings in camera to the exclusion of any person mentioned in paragraphs (c), (d) and (e).

#### **94. Power to make orders relating to privacy in proceedings**

Where in any proceedings relating to an offence against or by a child, of a sexual nature, a person who, in the opinion of the Court, is under the age of eighteen years is called as a witness, the Court shall direct that such witness be protected by one or more of the following measures—

- (a) allowing such witness to give evidence under the protective cover of a witness protection box;
- (b) directing that the witness shall give evidence through an intermediary pursuant to Article 50(7) of the Constitution;
- (c) directing that the proceedings do not take place in open Court;
- (d) prohibiting the publication of the identity of the complainant or of the complainant's family, including publication of any information that may lead to the identification of the complainant or the complainant's family;
- (e) any other measure which the Court deems just and appropriate; or
- (f) any other safeguards provided under the Witness Protection Act (Cap. 79) or any other written law.

#### **95. General principles with regard to proceedings in Children's Court**

(1) Subject to subsection (4), where the Court is considering whether or not to make an order under this Act with respect to a child, the Court shall not make any order unless it considers that doing so is in the best interest of the child.

(2) Where the Court is considering whether or not to make an order under subsection (1), it shall have particular regard to—

- (a) the ascertainable feelings and wishes of the child concerned having regard to the child's age and understanding;
- (b) the child's physical, emotional and educational needs and, in particular, where the child has a disability or chronic illness or where the child is intersex, the ability of any person or institution to provide any special care or medical attention which may be required for the wellbeing of the child;
- (c) the likely effect on the child of any change in circumstances;
- (d) the child's age, sex, religious persuasion and cultural background;
- (e) any harm the child may have suffered or is at the risk of suffering;

- (f) the ability of the parent, or any other person in relation to whom the Court considers the question to be relevant, to provide for and care for the child;
- (g) the customs and practices of the community to which the child belongs and the need to ensure that the child easily integrates while not subjected to harmful cultural practices;
- (h) the child's exposure to, or use of, drugs or other psychotropic substances and, in particular, whether the child is addicted to the same, and the ability of any person or institution to provide any special care or medical attention which may be required for the child; and
- (i) the powers which the Court has under this Act or any other written law.

(3) In any proceedings in which an issue arises as to the upbringing of a child, the Court shall have regard to the general principle that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(4) The Court may, if it considers it necessary for the proper determination of any matter in issue before it, either of its own motion or on application by any person, summon any expert witness whom it considers appropriate to provide assistance to the Court, and the expenses of any such witness, shall be assessed by the Court and such expenses shall be a charge on the Judiciary Fund.

(5) In relation to any proceedings concerning a child, whether instituted under this Act or under any other written law, a person shall not publish or reveal in any publication or report, including any law report, any of the following matters—

- (a) a child's name, identity, home or last place of residence or school;
- (b) the particulars of the child's parents or relatives; or
- (c) any photograph, depiction or caricature of the child.

(6) The Registrar of the Children's Court shall cause to be marked all records of the Court concerning a child so as to indicate that such records relate to matters involving a child, and such records shall only be available to any person without disclosure of any of the particulars specified in subsection (5).

(7) For the avoidance of doubt, the name or other particulars of the child shall be marked to indicate that they concern a child, and access may be restricted and available only without particulars as specified in subsection (5).

(8) Any person who contravenes the provisions of subsections (5) and (6) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding twelve months, or to both, and, in the case of a body corporate, a fine of not less than one million shillings.

#### **96. Provision of Legal aid in certain cases**

(1) Where a child who has not attained the age of sixteen is a complainant or is otherwise brought before a children's Court in proceedings under this Act or any other written law, the Court shall, where the child is unrepresented, order that the child be granted legal representation in accordance with the Legal Aid Act (Cap. 16A).

(2) Any reasonable fees and expenses incurred in relation to the legal representation of a child under subsections (1) or (2) shall be a charge on the Legal Aid Fund.

(3) Without prejudice to the generality of subsection (1), a child in conflict with the law shall be entitled to legal representation at the State's expense.

#### **97. Power of Court to order production of reports**

(1) When considering any question with respect to a child under this Act, the Court may summon and direct any person to prepare and present to it a report or statement containing such information in respect of a child as the Court may direct.

(2) Without prejudice to the provisions in this Act or any other written law, the Court may take into account—

- (a) any statement contained in the report referred to in subsection (1); or
- (b) any evidence given in respect of the matters referred to in the report and in so far as the statement or evidence is, in the opinion of the Court, relevant to any matter in issue before the Court.

(3) Where the Court orders or summons an expert pursuant to subsection (1), a party to the proceedings shall be given an opportunity to submit their views before the court makes an order.

#### **98. Appointment of guardian *ad litem***

A court before which a child is brought, and especially where that child is not represented by an advocate, may appoint guardian *ad litem* for the purposes of the proceedings in question and to safeguard the interests of the child.

#### **99. Appeals**

Unless otherwise provided under this Act, in any civil or criminal proceedings in a Children's Court, an appeal shall lie—

- (a) in the first instance, to the High Court on points of fact and law; and
- (b) in the second instance, to the Court of Appeal on points of law only.

#### **100. Rules**

The Chief Justice shall make Rules to give effect to this Part.

### **PART IX – CUSTODY AND MAINTENANCE**

#### **101. Custody, care and control**

(1) Where a person who does not have the legal custody of a child is entrusted with the care and control of the child, the person is under a duty to safeguard the interests and welfare of the child.

(2) Where a person, not having legal custody of a child, has actual custody of the child, the person shall be deemed to be charged with the care of the child, and shall take all reasonable steps to safeguard the interests and welfare of the child.

(3) In this Act, unless the context otherwise requires, reference to the person under whom a child has his home refers to the person who has care and control of that child and does not include a hospital, hostel or boarding school, at which the child is temporarily accommodated.

#### **102. Custody order**

(1) A Court may, on the application of one or more persons qualified under subsection (3), make an order vesting the legal custody of a child in the applicant or applicants.

(2) An order under subsection (1) may be referred to as a custody order, and the person to whom legal custody of the child is awarded is referred to as the custodian of the child.

(3) Any of the following persons may be granted custody of a child—

- (a) a parent;
- (b) a guardian;
- (c) any person who applies with the consent of a parent or guardian of a child and has had actual custody of the child for a period of three years preceding the making of the application, unless the Court is satisfied on evidence that a shorter period is sufficient to justify an order made in determination of the application; or
- (d) any person who, while not falling within paragraphs (a), (b) or (c), can show cause, having regard to section 101, why an order should be made awarding the person custody of the child.

(4) Nothing in this section may be construed as limiting the power of the Court to make an order, on the application of the Secretary, directing the removal of a child from an abusive home or institution and placement on temporary alternative care on such terms as the Court may think fit.

### **103. Principles to be applied in making custody order**

(1) In determining whether or not a custody order should be made in favour of an applicant, the Court shall have regard to—

- (a) the conduct and wishes of the parent or guardian of the child;
- (b) the ascertainable wishes of the relatives of the child;
- (c) the ascertainable wishes of the child taking into account the child's evolving capacity;
- (d) whether the child has suffered any harm or is likely to suffer any harm if the order is not made;
- (e) the customs of the community to which the child belongs;
- (f) the religious persuasion of the child;
- (g) whether a care order, supervision order, personal protection order or an exclusion order has been made in relation to the child concerned, and whether those orders remain in force;
- (h) the circumstances of any sibling of the child concerned, and of any other children of the home, if any;
- (i) any of the matters specified in section 95(2) where the court considers such matters to be relevant in the making of an order under this section; and
- (j) the best interest of the child.

(2) Where a custody order is made giving custody of a child to one parent, or in the case of joint guardians, to one guardian, the Court may order that the person not awarded custody shall nevertheless have all or any rights and duties in relation to a child, other than the right to actual possession, jointly with the person who is given custody of the child.

(3) The rights specified in subsection (2) include the right of access to the child on such terms as the Court may direct.

(4) In any case where a decree for judicial separation or a decree for divorce is pronounced, and the Court pronouncing the divorce decree determines that the parent by reason of whose misconduct the decree is made to be unfit to have the legal custody of the child or children of the marriage, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled to legal custody of the child without leave of the Court.

#### **104. Restriction on removal of a child where applicant has provided home for three years**

(1) Where an application for a custody order in respect of a child made by the person with whom the child has, at the time the application is made, had his home for a period, whether continuous or not, of three years, no person shall be entitled, against the will of the applicant, to remove the child from the applicant's custody without leave of the Court.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three months or to a fine of not less than one hundred thousand shillings, or to both.

#### **105. Return of child removed in breach of section 104**

(1) A Court may, on the application of a person from whom a child has been removed in breach of section 104, order the person who has so removed the child to return the child to the applicant, and where the child has been removed from the jurisdiction of the Court or the Republic of Kenya, make a wardship order or a production order on such conditions as the Court may think fit.

(2) A Court may, on the application of a person who has reasonable grounds for believing that another person intends to remove a child from the applicant's custody in breach of section 107, by order prohibit the removal by the person of the child from the applicant.

(3) Where a Court is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in the premises specified in the information, the Court may issue a search warrant authorising a police officer to search the premises; and if the police officer, acting in pursuance of a warrant under this section, finds the child, he or she shall return the child to the person on whose application the order under subsection (1) was made.

(4) Where a Court makes a custody order with respect to a child, the Court shall, in addition, give such directions as to any rights of access to the child on such terms as the Court may direct.

#### **106. Conflict of interest of joint custodians**

If two persons have parental rights or duty vested in them jointly under a custody order, but cannot agree on its exercise or performance, either person may apply to the Court, and the Court may make such orders regarding the exercise of the right or performance of the duty on such terms as the Court thinks fit.

#### **107. Revocation of custody order**

(1) A Court may, on application in the prescribed form, revoke a custody order:

Provided that, before doing so, the court shall make an order as to who is thereafter to have custody of the child, or give an appropriate order pursuant to section 135.

(2) The Court shall not proceed to hear an application made for the revocation of a custody order where a prior application made in that regard by the same applicant

has been refused by that Court or any other Court of competent jurisdiction, unless

- (a) in refusing the previous application, the Court directed that this subsection shall not apply; or
- (b) it appears to the Court that, by reason of a change in the circumstances, or for any other good reason, it is proper to proceed with the application.

(3) The custodian of a child may apply to the Court for the revocation of any order made with regard to access to the child or with respect to the access and maintenance of the child.

(4) Any other person on whose application an order in respect of access or maintenance of a child was made, or who was required under such an order to contribute towards the maintenance of the child, may apply to a Court for the revocation or variation of that order.

(5) Any order in relation to access or maintenance in respect of a child who is subject of a custody order shall not cease to have effect on the revocation of a custody order unless the Court otherwise directs.

(6) A custody order made in respect of a child, and any order in respect of access or maintenance of a child who is the subject of a custody order, shall cease to have effect when the child attains the age of eighteen years:

Provided that the Court has power, on application made, to extend a custody, access or maintenance order beyond the child's eighteenth birthday on such terms as the Court may deem fit.

#### **108. Interim custody orders**

(1) The Court shall have power to make interim custody orders and may from time to time review, suspend or vary such orders.

(2) The Court shall not make an interim custody order under sub-section (1) for a period exceeding twelve months.

#### **109. Custody agreement not to be invalid in certain circumstances**

An agreement made between the parents of a child shall not be invalid by reason only that it provides that the father shall give legal or actual custody of the child to the mother or vice versa:

Provided that the Court shall not enforce any such agreement if the Court is of the opinion that it is not in the best interest of the child to do so.

#### **110. Joint maintenance of children**

Unless the Court otherwise directs, and subject to any financial contribution ordered by the Court to be made by any other person, the following presumptions shall apply with regard to the maintenance of a child—

- (a) it shall be the joint duty and responsibility of both parents to maintain the child whether or not the parents are married to each other;
- (b) where two or more guardians of a child have been appointed, it shall be the duty of all the guardians to maintain the child whether jointly with the parents of the child or not;

- (c) where two or more custodians have been appointed in respect of a child, it shall be the joint responsibility of all custodians to maintain the child;
- (d) where a residence order is made in favour of more than one person, it shall be the duty of those persons to jointly maintain the child; or
- (e) where the mother and father of a child were not married to each other at the time of birth of the child, and have not subsequently married and where the father or mother of the child have acquired parental responsibility of the child, it shall be the joint responsibility of the mother and father of the child to maintain that child.

**111. Power to make maintenance order**

(1) A parent, guardian or custodian of a child, or an authorised officer, may apply to the Court to determine any matter relating to the maintenance of the child and to make a maintenance order:

Provided that on the making, varying, or discharging of a residence, guardianship or custody order, the Court may make a maintenance order for a child notwithstanding the fact that no application has been made to the Court in that regard.

(2) A person or the guardian of a person who has attained the age of eighteen years may, with the leave of the Court, apply to the Court for a maintenance order to be made in his favour in any of the following circumstances—

- (a) the person is or will be involved in the education and training which will extend beyond the person's eighteenth birthday;
- (b) the person has a disability and requires specialised care which will extend beyond the person's eighteenth birthday;
- (c) the person is suffering from an illness or ailment and will require medical care which will extend beyond the person's eighteenth birthday; or
- (d) other special circumstances exist that would warrant the making of the order.

**112. Maintenance during matrimonial proceedings.**

The Court may make a maintenance order, whether or not proceedings for nullity, judicial separation, divorce or any other matrimonial proceedings have been filed by a parent of a child, or during proceedings or after a final decree is made in such proceedings:

Provided that, once the proceedings for the maintenance of a child have commenced under this or any other Act, no subsequent or other proceedings with respect to such maintenance may be commenced under any other Act without leave of the Court.

**113. Financial provision for child**

The Court may order the person against whom a maintenance order is made to make a financial provision for the child by—

- (a) periodic payments; or
- (b) such lump sum payment, as the Court shall deem fit,



to the person in whose favour the order is made, or to any other person appointed by the Court.

#### **114. Financial provisions by step-parents and presumptive guardian**

(1) The Court may make a maintenance order in respect of a child, including a child of the other parent who has been accepted as a child of the family notwithstanding the absence of an adoption order.

(2) Without prejudice to the generality of subsection (1), the Court shall consider all the circumstances of the case and be guided by the following considerations—

- (a) the income or earning capacity, property and other financial resources which the parties or any other person in whose favour the Court proposes to make an order, have or are likely to have in the immediate future;
- (b) the financial needs, obligations, or responsibilities which each party has or is likely to have in the immediate future;
- (c) the financial needs of the child and the child's current circumstances;
- (d) the income, if any, derived from the property of the child;
- (e) any physical or mental disabilities, illness or medical condition of the child;
- (f) the manner in which the child is being or was expected to be educated or trained;
- (g) whether the respondent has assumed responsibility for the maintenance of the child and, if so, the extent to which, and the basis on which, he or she has assumed that responsibility, and the length of the period during which he has met that responsibility;
- (h) whether the respondent assumed responsibility for the maintenance of the child knowing that the child was not his child;
- (i) the liability of any other person to maintain the child;
- (j) the liability of that person to maintain other children.

#### **115. Power to order maintenance monies to be paid to person other than the applicant**

(1) When a maintenance order is issued pursuant to this Part, the Court may, at the time of making the order, or from time to time thereafter, on being satisfied that the person in whose favour the order is made—

- (a) is not a fit person to receive any maintenance monies specified in the order in respect of a child;
- (b) has left the jurisdiction of the Court for an indefinite period, or is dead, incapacitated, imprisoned or has been declared bankrupt; or
- (c) has misappropriated, misapplied or mismanaged any maintenance monies paid to him for the benefit of the child,

appoint any other person whom it considers fit and proper to receive and administer any maintenance monies required to be paid under a maintenance order, or order the person required to make a payment of the maintenance monies under this section to secure the whole or any part of it by vesting the sums or any other property in trust for the child.

(2) Without prejudice to the generality of subsection (1), the Court may vary a maintenance order, on application in the prescribed form made by any person

interested in the matter, directing that maintenance monies be paid to any other person or institution for the time being exercising custody or control of a child to whom the order relates in any case where—

- (a) the child is transferred from one children institution to another; or
- (b) the court grants custody to another person either alone or jointly with another or others.

#### **116. Duration of financial provisions**

(1) A maintenance order requiring financial provision to be made through periodic payments shall commence on the date of the application, or on such later date as the Court may direct.

(2) An order under subsection (1) shall remain in force until the child's eighteenth birthday subject to the provisions of section 111.

(3) The Court may review the order for periodic payment upon—

- (a) the death of the person liable to make the periodic payment;
- (b) significant change of circumstances of either parent or guardian, provided that the change is not detrimental to the best interest of the child.

#### **117. Interim orders of maintenance**

(1) A Court may make an interim maintenance order, on the *ex-parte* application of any person and in so doing, may dispense with any notice required to be given to any person, if the Court is satisfied that it is in the best interests of the child to do so.

(2) The interim order issued under subsection (1) shall be in force for such period as the Court may specify pending hearing inter-parties of an application in that regard.

#### **118. Other maintenance provisions**

A Court may make an order and give directions regarding any aspect of the maintenance of a child including matters relating to the provision of education, medical care, housing and clothing for the child; and in that behalf, make an order for financial provisions for the child.

#### **119. Power to impose conditions or to vary order**

In relation to an order made under section 116, the Court may—

- (a) impose such conditions as the Court deems fit;
- (b) vary, modify or discharge any order made under section 116 with respect to making of any financial provision, by altering the schedule of payments or by increasing or diminishing the amount payable; or
- (c) temporarily suspend the order as to the whole or any part of the money paid and subsequently revive it wholly or in part as the Court deems fit.

#### **120. Power to vary maintenance agreements**

Where the parents, guardians or custodians of a child enter into an agreement, whether orally or in writing, in respect of the maintenance of the child, the Court may, upon application, vary the terms of the agreement if the Court is satisfied that such variation is reasonable and in the best interest of the child.

**121. Enforcement of orders for maintenance or contribution**

(1) Any person, including a child in whose favour a maintenance order has been made pursuant to section 111, may apply to the Court for the enforcement of the order and recovery of any sums due and payable thereunder if—

- (a) the person against whom the maintenance order was made has failed to comply with any provision contained in the order; or
- (b) the person against whom the order was made has defaulted in any payment specified under the order.

(2) Unless otherwise directed by the Court, the respondent shall be served with the notice of proceedings under this section and may be summoned or arrested on a warrant issued by the Court.

(3) Prior to the making of an order under this section, the Court may hold an enquiry as to the means of the respondent who shall be in attendance, and the Court may direct that—

- (a) enquiries be made as to the respondent's means by such person as the Court may direct;
- (b) the respondent's income, assets and liabilities be searched to establish such information as the Court may require to make an order under this section; or
- (c) a statement of means from the respondent's employer, or auditors or from such other person as the Court may direct, be availed to the Court.

(4) Where the Court is satisfied that the respondent has willfully neglected or failed to make payment of any financial provision under a maintenance or contribution order, the Court may—

- (a) order that any arrears in respect of any maintenance monies or contribution monies as the case may be, be paid forthwith in lumpsum or in instalments within such period as the Court may specify;
- (b) order the remission of the arrears:

Provided that the Court shall not make an order under this section without prior notice to the child, the person or institution, as the case may be, in favour of whom the maintenance or contribution order has been made or without allowing them a reasonable opportunity to make representations in that regard;

- (c) issue a warrant for distress on the respondent's property forthwith, or postpone the issue of the warrant until such time as the Court may direct, or on such conditions as the Court may deem fit, and order the attachment of the respondent's earnings, including any pension payable to the defaulter, if the Court is satisfied that—
  - (i) failure to make payment was due to the willful refusal or neglect of the respondent; and
  - (ii) the respondent is gainfully employed, or is engaged in some profitable business enterprise or undertaking or owns property out of which he derives an income capable of satisfying the order of the Court:

Provided that the Court shall not, unless special circumstances exist, make an order for the attachment of the respondent's earnings in

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an amount which shall exceed more than forty-five per cent of the respondent's annual income in any period of twelve months;

- (d) order the detention, attachment, preservation or inspection of any property of the respondent and, for all or any of the purposes aforesaid, authorize such person, as the Court may deem fit, to enter upon any land or building in which the respondent has an interest whether in the possession or control of the defaulter or not;
- (e) subject to the rights of a *bona fide* purchaser for value without notice, set aside any disposition of any property belonging to the respondent from which any income is receivable, and the Court may, on application made in that regard, make orders for the re-sale of the property to any person and direct that the proceeds of the sale be applied in the settlement of any arrears of maintenance monies and to the payment of future maintenance monies payable under the order; or
- (f) restrain by way of an injunction the disposition, wastage or damage of any property belonging to the respondent.

(5) The Court shall not make an order under subsection (4) (c), (d), (e) or (f), unless the Court is satisfied that—

- (a) the respondent has willfully and deliberately concealed or misled the Court or any person appointed or directed to carry out enquiries under subsection (4) of this section as to the true nature and extent of his earnings or income; or
- (b) the respondent, with intent to obstruct or delay the execution of any order that may be passed against him under this section, or with the object of reducing his means to provide maintenance for the child—
  - (i) is about to dispose of most or the whole of his property;
  - (ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court; or
  - (iii) is about to abscond or leave the local limits of the Court's jurisdiction.

(6) The Court may issue a warrant committing the respondent to imprisonment for a term not exceeding thirty days if the Court is satisfied on evidence that—

- (a) the respondent has persistently and willfully refused or neglected to make payment of all or any part of the monies ordered to be paid under a maintenance or contribution order without reasonable cause;
- (b) the respondent is present at the hearing;
- (c) an order for attachment of the respondent's income would not be appropriate; or
- (d) it has enquired into the cause of the default and is satisfied that such default was due to the respondent's willful refusal or neglect.

(7) The issue of a warrant under this section may be postponed on such terms as the Court may think fit but, if postponed, it may not be issued without further notice being given to the defaulter.

(8) The Court shall have power to vary, modify or discharge any order made under this section.

## PART X – GUARDIANSHIP

**122. Appointment of guardian**

(1) In this Part,

"guardian" means a person appointed by will or deed by a parent of a child or by an order of Court to assume parental responsibility over a child on the death of the parent of the child either alone or jointly with the surviving parent of the child in accordance with the provisions of this Act;

(2) A guardian may be appointed on application in the prescribed form in respect of any child who is resident in Kenya whether or not the child was born in Kenya or is a Kenyan Citizen.

(3) A guardian appointed under this Act shall be a Kenyan citizen.

(4) A guardian who is not the father or mother of a child shall not remove the child from the jurisdiction of the Republic of Kenya without obtaining an order of the Court, and such leave shall be granted only in exceptional circumstances and in accordance with subsection (6).

(5) Where leave is granted under this section, the Court shall impose such conditions and restrictions as it shall consider appropriate having regard to the best interests of the child.

(6) Notwithstanding subsections (4) and (5) the guardian shall be required to produce the child to court upon return.

(7) A guardian may be appointed in respect of the person or estate of the child or both.

(8) Where a guardian is appointed only in respect of the estate to which the child is a beneficiary, it shall not be necessary for that purpose for the guardian to have actual custody of the child.

(9) Without prejudice to subsections (6) and (7), the guardian appointed in respect of the estate of a child shall have—

- (a) the power and responsibility to administer the estate of the child and, in particular, to receive, recover and invest, the property of the child in his own name in trust for, and for the benefit of, the child;
- (b) the power to create a Trust Fund for the child in respect to any estate of the child;
- (c) the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;
- (d) the duty to prepare and submit accounts and inventory in respect of the child's estate on every anniversary of the date of his or her appointment as such to—
  - (i) the parent or custodian of the child;
  - (ii) the Secretary;
  - (iii) the Court; and
  - (iv) such other person as the Court may direct; or
- (e) the duty to produce any account or inventory in respect of the child's estate when required to do so by the Court.

**123. Rights of surviving parent as to guardianship and power of Court**

(1) On the death of the father of a child, the mother, if surviving, shall be the guardian of the child either alone or jointly with the guardian appointed by the father if any, but if no guardian has been appointed by the father, or the guardian appointed by the father is dead or refuses to act, the Court may appoint a guardian to act jointly with the mother.

(2) On the death of the mother of a child, the father, if surviving, shall be the guardian of the child either alone or jointly with the guardian, if any, appointed by the mother, or if such guardian is dead or refuses to act, the Court may appoint a guardian to act jointly with the father.

(3) Where a surviving parent is separated from the deceased parent before his or her death, the Court may, on application by any other person, determine whether the surviving parent is fit to act as guardian of the child.

**124. Appointment of testamentary guardian**

(1) Either parent of a child may, by will or deed, appoint any person to be the guardian of the child after that parent's death.

(2) The guardian of a child may, by will or deed, appoint another person to act in his or her place as the guardian of the child in the event of such guardian's death.

(3) Any appointment made under subsection (1) or (2) shall not take effect unless—

- (a) in the case of an appointment by deed, the deed is dated and is signed by the person making the appointment in the presence of two competent witnesses;
- (b) in the case of appointment made by a written will, the will is made, executed and attested in accordance with the law relating to testamentary instruments.

(4) A guardian appointed under this section shall act jointly with the surviving parent of the child during the life time of the parent, unless the parent objects to the guardian's appointment.

(5) If the surviving parent objects to such joint guardianship, or if the guardian appointed considers that the parent is unfit to have legal custody of the child, the guardian or parent of the child may apply to the Court, and the Court may—

- (a) decline to make an order confirming the testamentary appointment of the guardian, in which case the surviving parent shall be the sole guardian;
- (b) make an order directing that the guardian shall act jointly with the surviving parent;
- (c) make an order appointing a relative of the child or other person willing to act as guardian of the child, to act jointly with the parent or guardian, or both such parent and guardian; or
- (d) make an order that the guardian shall be the sole guardian of the child, in which case it shall clarify issues relating to—
  - (i) custody of the child and the rights of access by the parent and relatives, having regard to the welfare of the child as it may think fit; and

- (ii) payment of a financial provision by the parent towards the maintenance of the child having regard to the means of the parent, as the Court may consider reasonable:

Provided that the Court shall not appoint a person to be sole guardian for the child if he is not a relative of the child, unless exceptional circumstances exist to justify such appointment having regard to the welfare and best interest of the child.

(6) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, have joint responsibility towards the child.

(7) If a guardian is appointed to act jointly with the surviving parent in accordance with subsection (5), the guardian shall continue to act as guardian after the death of the parent:

Provided that if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the parent.

(8) Any person, not being a parent of a child, in whose favour an existing custody or residence order in respect of a child has been made, or to whom the care of a child has been entrusted by virtue of being a fit person under this Act, shall act jointly with the surviving parent of a child or with his guardian:

Provided that the surviving parent or guardian shall be entitled to apply to the Court for an order giving effect to a different arrangement, with regard to the child.

### **125. Appointment of guardian by the Court**

(1) In addition to the powers of the Court to appoint a guardian under section 122, the Court may appoint a guardian on application by any person in the prescribed form in any of the following circumstances—

- (a) where the child's parents are deceased or cannot be found, and the child has no guardian or other person having parental responsibility over the child; or
- (b) where the child is one to whom section 121 applies.

(2) The Chief Justice shall make rules to guide the procedures for guardianship.

### **126. Customary guardianship**

(1) In addition to the powers of the Court to appoint a guardian under section 122, the Court may appoint a guardian on application by any person in accordance with the customs, culture or tradition of a specific community in the manner prescribed—

- (a) where the child's parents are deceased or cannot be found, and the child has no guardian or other person having parental responsibility over the child; or
- (b) where the child is one to whom section 121 applies.

(2) The Chief Justice shall make rules to guide the procedures for matters relating to customary guardianship.

### **127. Extension of appointment of guardian beyond child's eighteenth birthday**

(1) The appointment of a guardian shall expire upon the child attaining the age of eighteen years, unless exceptional circumstances exist that would require a court to make an order that appointment be extended.

(2) The exceptional circumstances referred to in subsection (1) are that the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or of managing his own affairs and his property without assistance of a guardian after his eighteenth birthday or such other exceptional circumstances with regard to the child as the court may deem proper to warrant the making of an order under this section.

(3) Where an order is made under subsection (1), it shall be made prior to the child's eighteenth birthday and may be made on an application by—

- (a) the child;
- (b) the parent or guardian of the child;
- (c) a relative of the child; or
- (d) the Secretary:

Provided that no order shall be made without the consent of the child, if he is capable of giving such consent, and of the guardian whose appointment is required to be extended.

(4) A court making an order under this section may attach such conditions as to the duration of the order and containing directions as to how it shall be carried out, imposing such other conditions that must be complied with and with such incidental, supplemental or consequential provisions as the court thinks fit.

(5) A court shall have power to vary, modify or revoke any order made under this section after the child's eighteenth birthday, on the application of any of the persons named in subsection (3), or where the child marries after his eighteenth birthday, his spouse.

#### **128. Revocation or disclaimer of appointment**

(1) The appointment of a guardian under section 122 revokes any earlier appointment including an agreement made in an unrevoked will or codicil made by the same person in respect of the same child, unless it is clear, whether as the result of an express provision in the later appointment or by necessary implication, that the purpose of the latter appointment is to appoint an additional guardian.

(2) The appointment of a guardian under section 122, including one made in an unrevoked will or codicil, may be revoked by the person who made it by a dated instrument duly signed—

- (a) by the person making the appointment; or
- (b) in the presence of the guardians, two witnesses and each of whom shall attest to the signature at the direction of the person making the appointment.

(3) An appointment under section 125 shall stand revoked if the will or codicil under which it is made is revoked.

(4) A person who is appointed a guardian under sections 122 or 123 may disclaim the appointment by instrument in writing made within a reasonable time and signed by the person as soon as it is reasonably practicable after knowing that the appointment has taken effect.

(5) A disclaimer made under this section shall not take effect unless it is made in the prescribed form and delivered in accordance with regulations and, where regulations are made by the Chief Justice prescribing the manner in which such disclaimer shall be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.



(6) The appointment of a guardian may be terminated at any time by an order of the Court on application in the prescribed form made by—

- (a) any parent or guardian of the child;
- (b) the child to whom the appointment relates;
- (c) a relative of the child; or
- (d) a person acting on behalf and in the best interest of a child.

(7) Where a Court revokes an appointment of a guardian, the Court shall specify who shall have guardianship or legal custody of the child.

### **129. Dispute between guardians**

(1) Where two or more persons acting as joint guardians to a child, or where the surviving parent and a guardian acting jointly, fail to agree on any matter concerning the welfare of the child, any of them may apply to the Court for directions in that regard, and the Court may make such orders regarding the matters in difference as the Court may deem proper.

(2) Any relative of the child, the child, the Secretary, a person acting on behalf and in the best interest of a child, a person who has parental responsibility over the child or a person who has been authorized to act jointly with a guardian under sections 122 and 123 may, with leave of the Court, apply to the Court for directions or determination of any matter affecting the welfare of the child arising from or connected with the exercise of the guardian's parental responsibility, and the Court may make such order regarding the matters in contention as it may deem proper.

### **130. Powers of guardian**

A guardian appointed under section 122 and 126 shall have the same powers over the child, or over the estate of a child, as a guardian appointed by deed or will or otherwise under the Law of Succession Act (Cap. 160).

### **131. Neglect or misapplication of assets by guardian of a child's estate**

Where a guardian of the estate of a child, whether or not that guardian is also a guardian of the person of the child—

- (a) neglects to recover or safeguard the estate of a child, or
- (b) misplaces any asset forming part of the estate of the child, or
- (c) subjects the estate to loss or damage,

the guardian shall be liable to make good any loss or damage thereby occasioned, whether or not he is guilty of an offence on that account.

### **132. Offence by guardians of a child's estate**

(1) Any guardian of the estate of a child who—

- (a) willfully or recklessly neglects to receive or safeguard any asset forming part of the estate, misapplies any such asset or subjects any such asset to loss, waste or damage;
- (b) willfully fails to produce to the Court, or the parent or guardian of the child any account or inventory required by the provisions of section 121; or
- (c) willfully or recklessly produces any such inventory or account which is false or misleading in any material particular,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five million shillings, or to both.

(2) In addition to the penal sanctions prescribed in subsection (1), the Court may order such person to restore and surrender the estate to an administrator appointed by the Court for proper administration on behalf of the child.

(3) A guardian who misappropriates or renders the property of a child liable to loss or waste shall be bound to restore the value of such estate to the child or to the administrator, if any, appointed by the Court pursuant to subsection (2).

### **133. Power of Chief Justice to make Rules**

The Chief Justice shall make regulations to give effect to this Part, including rules of procedure directing the manner in which applications may be made under this Part.

## **PART XI – JUDICIAL INTERVENTION FOR THE CARE AND PROTECTION OF CHILDREN**

### **134. Power of Court to make orders in certain proceedings**

(1) The Court may make any order under this Act or any other written law for the protection of a child in any proceedings concerning the welfare and upbringing of the child.

(2) The persons qualified to apply for an order under this Part for the protection of a child include—

- (a) the child;
- (b) the parent, guardian or custodian of the child;
- (c) a relative of the child;
- (d) the Secretary;
- (e) an authorised officer: and
- (f) a person acting on behalf and in the best interest of child;

Provided that a qualified person may apply for more than one order at the same time, but the Court shall not make more than one order in determination of the application—

- (i) if to do so would be detrimental to the interest of the child; or
- (ii) if the desired effect of the orders sought by the applicant may be achieved by making only one order.

(3) The Court may make an order under this Part—

- (a) giving directions on how the order shall be carried out;
- (b) imposing the conditions to be complied with in carrying out the Order;
- (c) specifying the duration for which the order shall remain in force; and
- (d) attaching such supplementary or consequential provisions as the Court may think fit.

(4) An application for an order under this Part may be made either orally or in writing whether separately or as part of any proceedings under this Act.

(5) Except as is otherwise provided under this Act, an order made under this Part shall cease to have effect on the child attaining the age of eighteen years.

(6) Nothing in this section shall limit the power of the Court to make an order in determination of an oral application made under this Part.

**135. Orders which Court may make**

(1) The Court may from time to time where appropriate make any of the following orders—

- (a) an access order, which shall require the person with whom the child is residing to allow the child to visit, or to stay periodically with the person named in the order, or to allow such person to have such other contact with the child as may be directed by the Court:

Provided that an access order made under this section shall not be made in relation to a child in respect of whom a care order has been made under this Part, but access to the child concerned may be obtained upon an application made under section 149;

- (b) a residence order, requiring a child to reside with a person named in the order and determining the arrangements to be made to facilitate the residence of the child with the person named in the order;
- (c) an exclusion order requiring a person who has inflicted or threatened to inflict violence on a child, whether or not that person permanently resides with the child—
- (i) to depart from the home in which the child is residing;
  - (ii) to restrain the person from entering the home or any specified part of the home or from a specified area in which the home is located; or
  - (iii) to restrain any other person from taking the child to the person against whom the child needs protection, for such period as the Court may specify;
- (d) a child assessment order requiring a child or the child's family to be investigated or evaluated by a person appointed by the Court to assist the Court in determining any matter concerning the welfare and upbringing of the child;
- (e) a family assistance order requiring a person appointed by the Court to provide such advice, counselling and guidance to a child, his parents or custodian or guardians, the child's relatives, or any person who has care and control of the child or with whom the child is residing, as the Court may specify;
- (f) a wardship order requiring that a child be placed under the protection and custody of the Court;
- (g) a provisional child care order requiring placement of a child for provisional care by any fit person or institution pending further orders of the court;
- (h) a production order requiring any fit person who is harbouring, concealing or otherwise unlawfully detaining a child, or who intends to remove a child from Kenya or local limits of the jurisdiction of the Court—
- (i) to disclose any information regarding the whereabouts of the child; or
  - (ii) to produce the child before the Court and restraining the person from removing the child from the jurisdiction of the Court for such period as the Court may specify;

- (i) a protection order directing care and protection of a child involved in drug abuse or who has been a victim of ideological radicalization or criminal gangs; or
- (j) a non-interference order preventing any fit person from interfering with the life of a child in relation to any matter, including the education of the child.

(2) Without prejudice to the generality of subsection (1)(h), the Court may make a production order requiring any children institution at which a child has been accommodated for a period exceeding the time limited by an order of the Court or the provisions of this Act to produce the child before the Court to facilitate the making of such other order as the Court may deem fit on such terms as the Court may direct.

### **136. Supervision order**

(1) The Court may, either of its own motion or on application by any person for any order directing the care and protection of a child, make an order, in this Act referred to as a supervision order, placing the child under the supervision of a children's officer or an authorized officer.

(2) The Court may make a supervision order under subsection (1), notwithstanding that the child remains in the care and custody of his or her parent, guardian, custodian or any other person with whom the child is for the time being resident.

(3) Prior to making a supervision order, the Court shall direct that—

- (a) such enquiries or investigations as may be prescribed in the rules made under this Part be undertaken and, in particular, that a welfare report or other report be lodged with the Court; and
- (b) written notice of the proceedings be given to the parent, guardian, custodian or any other person with whom the child for the time being resides.

(4) A supervision order shall not remain in force for a period exceeding twelve months.

(5) Without prejudice to the generality of subsection (3), the Court may, on application of the supervisor, vary, discharge, or extend the order given under subsection (1) for such further period as the Court may deem necessary, having regard to the best interests of the child.

(6) The Court shall not make an order extending a supervision order made under this section unless notice of the relevant application has been given to the parents or guardians of the child, or any other person having parental responsibility in respect of the child, and who may be heard in the proceedings.

### **137. Power to make interim supervision order**

(1) The Court may make an interim supervision order, either of its own motion or on application by any person—

- (a) where the Court has reason to believe that the living conditions of the child concerned require that an interim order be made pending the submission of a welfare report prepared in accordance with section 136(3);
- (b) on adjournment of an application for a supervision order; or

- (c) upon the making of orders for the assessment of the child under section 135.

(2) An interim order made under this section shall not remain in force for a period exceeding two months, unless the Court extends the order for such other period as the Court considers necessary in the best interest of the child.

### **138. Discharge of supervision order**

(1) A Court which has made a supervision order or an interim supervision order may vary or discharge the order on application by—

- (a) the child with the leave of the Court;
- (b) the parents or custodian of the child or any person with parental responsibility in respect of the child;
- (c) the supervisor;
- (d) any person with whom the child for the time being resides; or
- (e) a person acting on behalf and in the best interest of child

(2) Any order made under this section shall be automatically discharged when the child in respect of whom it is made attains the age of eighteen years.

### **139. Power of arrest**

Where a Court makes an order pursuant to section 135(1) (c), (d) or (g), the Court may attach a power of arrest to the order, and the person named in the order shall be liable to arrest if he or she contravenes any stipulation or condition contained in the order while the order remains in force.

### **140. Penalty**

Any person who contravenes an order made under section 135, or who obstructs or unlawfully interferes with a person appointed by the Court in the execution of his duties under an order made under that section, commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two million shillings, or to both.

### **141. Review, etc., of order**

The Court may—

- (a) from time to time review, vary, suspend or discharge any order made under this Part; or
- (b) revive an order after the order has been suspended or discharged.

## **PART XII – CHILDREN IN NEED OF CARE AND PROTECTION**

### **142. Interpretation**

For the purpose of this Part—

"a child in need of care and protection" means a child who lives in difficult circumstances and needs to be protected from all kinds of neglect, abuse or exploitation;

"a child living on or off the streets" means a child who—

- (a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets;

- (b) because of inadequate care, begs or works on the streets but returns home at night.

**143. Jurisdiction of the Court**

A Children's Court shall have jurisdiction to make an order or render judgment under this Part notwithstanding that any act, matter, thing or circumstances giving rise to such order or judgment did not occur or arise within the local limits of the jurisdiction of the Court.

**144. When a child is in need of care and protection**

For the purposes of this Act, a child in need of care and protection includes a child—

- (a) who is an orphan and has no guardian;
- (b) who has been abandoned by their parent or guardian;
- (c) who is found begging, or receiving alms;
- (d) who is lost and found and whose parent or guardian cannot be found;
- (e) whose parent or guardian has been detained, held in custody or imprisoned or is in remand,
- (f) who is in the company of a parent or guardian who is detained, held in custody, in prison or in remand;
- (g) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship of the child;
- (h) whose parents are unable to provide to him or her proper care and attention by reason of being intensely engaged in litigation over custody and maintenance or other related family dispute prejudicial to the wellbeing of the child;
- (i) whose parent or guardian is below eighteen years of age;
- (j) who is truant or is falling into bad associations;
- (k) who is being denied education;
- (l) who has been or is likely to be subjected to female genital mutilation, intersex genital mutilation, child marriage, or to other customs and practices prejudicial to the child's life, education or health;
- (m) who has been subjected to forced male circumcision;
- (n) whose life is in danger or whose security is threatened by a member of the family;
- (o) who is a victim of human trafficking;
- (p) who is kept in any premises which, in the opinion of an authorized officer or a medical officer, are overcrowded, unhygienic or dangerous;
- (q) who is exposed to any form of violence;
- (r) who is pregnant or who is responsible for the pregnancy of another child;
- (s) who is mentally ill, terminally ill, or whose parent or guardian is mentally ill or terminally ill;
- (t) who has a disability or other special needs and is unlawfully confined, concealed or ill-treated;

- (u) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation, including prostitution and pornography;
- (v) who engages in sexual conduct of any kind;
- (w) who is engaged in any work likely to harm his or her health, education, mental or moral development;
- (x) who is displaced as a consequence of war, civil disturbances or natural disasters, or is otherwise a refugee;
- (y) who is exposed to any circumstances likely to interfere with his or her physical, mental, psychological and social development;
- (z) who is intersex and is subjected to or likely to be subjected to discriminatory treatment or abuse;
- (aa) who has had any of the offences mentioned in the Third Schedule to this Act committed against him or her, or if he or she is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child;
- (bb) who is in conflict with the law or is a witness to, or a victim of, a crime;
- (cc) who is engaged in the use of, or trafficking of drugs or any other substances that may be declared harmful by the Cabinet Secretary responsible for matters relating to health;
- (dd) who heads or lives in a child-headed household;
- (ee) who lives and works on the streets;
- (ff) who for any other reason, is, in the opinion of an authorized officer, vulnerable to harm or abuse;
- (gg) who is Human Immunodeficiency Virus (HIV) positive or has Acquired Immunodeficiency Syndrome (AIDS), and is subjected to discriminatory treatment or abuse, and whose parents are unable to exercise proper care of the child;
- (hh) who is recruited or is at risk of being recruited into unlawful gangs, or is exposed to or in imminent danger of being exposed to radicalization or other repugnant teachings
- (ii) who is suffering from a terminal, debilitating or chronic illness and whose parents are unable to exercise proper care of the child; or
- (jj) who is in need of medical treatment but denied access thereto by the parents or guardians on religious grounds.

**145. Proceedings in respect of children in need of care and protection**

(1) Any person who has reasonable cause to believe that a child is in need of care and protection may report the matter to the nearest authorised officer, who shall take such steps as may be necessary for securing a Court order for the care and protection of the child in a place of safety or other alternative care in accordance with this Act.

(2) An authorized officer or any other person who has reasonable cause to believe that a child is in need of care and protection shall take the child into safe custody and, at the earliest opportunity, place the child in a place of safety in facilities other than those in which children in conflict with the law are held, pending presentation to the Court for appropriate orders.

(3) The Secretary shall monitor and ascertain whether the facilities in which the children are committed to in this section are suitably equipped to ensure the highest attainable standards of hygiene, sanitation and comfort, having regard to the special needs of the children.

(4) Any child in need of care and protection may take refuge in a place of safety, and no person shall turn away a child in need of care and protection from any place of safety.

(5) Where an application is made to a children's Court for an order under section 150, and the child is not in a place of safety, the Court may direct the applicant to bring the child before the Court, whereupon the provisions of subsection (3) of that section shall apply so as to enable the Court to make an interim order for the temporary accommodation of the child in a place of safety or for his or her temporary committal to the care of a fit person.

(6) Where a Court makes an order under subsection (5), the Court may make such other orders as it considers necessary for—

- (a) the establishment of contact between the child and his parent, or between the child and any person who has parental responsibility over the child; or
- (b) the enforcement of the order.

(7) Where a child is taken to a place of safety by an authorised officer or other person without reference to the Court, the parent or guardian or any person who has parental responsibility in respect of the child may apply to the Secretary for the release of the child from the place of safety into his or her care:

Provided that if the Secretary refuses an application under this subsection, the Secretary shall notify the applicant in writing of the decision and the reasons for the refusal.

(8) An applicant who is aggrieved by the decision of the Secretary under subsection (7) may apply to the Court for an order discharging the child from the place of safety concerned and placing him or her into the care of the applicant.

(9) Where a child is taken or ordered to be taken to a place of safety in accordance with this Act, the person who takes or brings the child before the Court shall—

- (a) lodge with the Court a statement specifying the grounds on which the child is brought before the Court; and
- (b) give reasonable notice requiring the child's parent or guardian, or such other person who has parental responsibility over the child, to attend at the Court before which the child is to appear.

(10) Where any person intends to make any application under section 151, the person shall forthwith notify the Secretary or his representative of the name and address of the child and the day and hour when, and the nature of the grounds on which, the child is to be brought before the Court.

(11) On receiving the notice under subsection (10), the Secretary shall investigate and present to the Court a report on the child containing particulars as to the home, circumstances, age, state of health, character and general antecedents of the child, or such other information as may be necessary in assisting the Court in making appropriate orders under this Act.

(12) When it appears to an officer of a county government entity or a charitable children's institution that a child in its local jurisdiction is in urgent need of care



and protection, and that its intervention is necessary, the county government entity or charitable children's institution shall receive such child into its care without the need to immediately bring the child before a Court:

Provided that—

- (a) the county government entity or charitable children's institution shall notify the Secretary within seven days of receiving the child into its care;
- (b) the child shall be brought before a Court within seven days;
- (c) the county government entity or charitable children's institution shall submit a monthly report to the Secretary of all children received and accommodated in their respective institutions;
- (d) the Secretary or an authorized officer, county government entity or charitable children's institution investigates all cases involving children who are taken under their care and protection;
- (e) the county government entity or charitable children's institution shall not retain the child in its care if the parent or guardian of the child seeks to assume the care of the child;
- (f) the county government entity or charitable children's institution shall, when it appears to be in the interests of the child, endeavor to secure that the care of the child is assumed by a parent or guardian or a person who has parental responsibility for the child by a relative or friend who shall, if possible, be of the same religion, race, tribe or clan as the child.

(13) The Council shall prescribe guidelines for the carrying out of investigations under subsection (12) (d).

(14) A county government entity or charitable children's institution which receives a child into its care under the provisions of this section shall be entitled to recover the cost of maintenance of such child from his parent, guardian or the person who has responsibility over the child.

#### **146. Healthcare**

(1) If it appears to an authorised officer exercising powers under section 144 that a child is in need of healthcare, the officer shall forthwith take the child to a registered health institution, and the health institution shall provide the appropriate treatment, care and necessary hospital accommodation for the child.

(2) Where a child is accommodated in any health institution for in-patient care, the authorised officer who places the child into healthcare shall forthwith notify—

- (a) the child's parent or guardian;
- (b) any other person who has parental responsibility over the child; or
- (c) the Secretary or his representative.

(3) Where it appears to a medical practitioner or administrator of a health care institution or medical practitioner that any of the offences specified in the Fourth Schedule to this Act have been committed against a child, the medical practitioner or administrator shall forthwith take such measures as may be necessary to record and preserve any information with regard to the condition of the child in the form prescribed in regulations.

(4) The medical practitioner or administrator referred to in subsection (3) shall report any finding of an offence against a child to a children officer or other

authorised officer in the local jurisdiction of the health facility at which the child is attended within forty-eight hours of such finding.

(5) Any expenses incurred in connection with the medical treatment or hospital accommodation of a child under this section shall be defrayed out of public funds.

#### **147. Determination as to child's home, etc.**

(1) If a child in need of care and protection is brought before a Court, and the Court determines that the child has a home in, or has been found in the local limits of, a particular county government entity concerned with matters relating to children, the Courts shall order that the child be accommodated in the facility operated by such entity.

(2) Without prejudice to the generality of subsection (1), the Court may remit the case involving the child for determination by the Court within whose local jurisdiction the child has a home or was found.

#### **148. Parent or guardian to be heard in any application**

(1) If a child in need of care and protection is brought before the Court on an application by any person for orders in that regard, the parent, guardian or other person having parental responsibility over the child, has the right to be heard and may participate in the proceedings.

(2) If the parent or guardian of a child to whom subsection (1) relates cannot be traced, any relative of the child may, with leave of the Court, be heard and participate in the proceedings referred to in subsection (1).

(3) For the purposes of any proceedings under this Part, the Court may summon and direct the attendance of the parent, guardian or relative of a child, or of any other person having parental responsibility over the child.

#### **149. Power of Secretary to take over application**

The Director of Public Prosecutions may authorise the Secretary at any stage in the proceedings under this Act, whether before, during or after the making of any application, to take over and assume the conduct of any application or proceedings in respect of a child:

Provided that the Director of Public Prosecutions shall not terminate any proceedings which he has authorised the Secretary to assume control under this section without leave of the Court.

#### **150. Power of Court in respect of children in need of care and protection**

(1) A Court before which any child in need of care and protection is brought may require an authorised officer or any other person to give a report or professional advice on any aspect of the proceedings relating to the manner in which the child should be dealt with.

(2) If a Court is satisfied that a child brought before it is in need of care and protection, the Court may—

- (a) order that the child be returned to his or her parent or guardian, or to the person having parental responsibility over the child;
- (b) order the parent or guardian of the child, or other person having parental responsibility over the child, to execute a bond with or without surety to exercise proper care and guardianship;

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- (c) if the Court is satisfied that it is in the best interests of the child, commit such child to a rehabilitation school suitable to the needs and interests of the child;
  - (d) without making any other order, or in addition to making an order under this section, make an order for guardianship under Part X;
  - (e) if the child is a victim of armed conflict, civil disturbance or natural disaster, make an order requiring the Secretary to take such steps as may be necessary to ensure that the child is provided with appropriate care and protection;
  - (f) in any other case, make an order directing that the child be reunited with his or her parent or guardian;
  - (g) if the child has a disability or other special needs, make an order directing that the Secretary takes such steps as are necessary to meet the special needs of the child;
  - (h) if the child is subjected to early marriage, make an order declaring that such marriage is a nullity and requiring the child to be placed under the care of a fit person, or that the child be accommodated in a place of safety;
  - (i) where it is shown to the satisfaction of the Court that the child has been engaged in drug abuse, make an order directing that the child be committed to a drug rehabilitation center for treatment, or that the child be accorded professional counselling;
  - (j) in any case where—
    - (i) a child has accompanied the mother who is imprisoned or detained in lawful custody or remand;
    - (ii) a child or children have been left unattended in consequence of their mothers' or fathers' imprisonment or detention in lawful custody; or
    - (iii) the child or children accompanying the mother to prison or other place of detention have attained the age of four years,
 make an order directing that the child or children be placed under the care of a fit person, or that the child or children be accommodated in a place of safety; or
  - (k) make any other order which the Court may think fit, and in the best interest of the child.

(3) In considering the person with whom the child shall be placed, the court shall give priority to a member of the child's immediate family.

(4) A parent or guardian who is ordered to exercise proper care and guardianship of a child under subsection (2)(b) shall, in addition to that order, be required to seek the assistance of a professional counsellor.

(5) The order referred to in subsection (3) shall include a family assistance order made in accordance with section 135(1) (e).

(6) The Court may make interim orders on such terms as the Court may direct, including an order that the child be accommodated in a place of safety, pending final orders for the care and protection of a child.

(7) An interim order under subsection (6) shall not remain in force for a period exceeding fourteen days:

Provided that the Court shall have power to extend such orders from time to time and on such terms as the Court may direct.

(8) Without prejudice to the generality of subsection (5), the Court may order that a child shall remain in the custody of a county government entity, an appointed authorised officer, a charitable children's institution, a place of safety or a fit person, until the age of eighteen years, or such lesser age as the Court may direct.

(9) The Court may from time to time, either of its own motion or on the application of any person, review, vary or revoke any order made under this section.

#### **151. Application of trusts for maintenance of children**

(1) Where a child is, by an order of the Court made under this Part, removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the child's maintenance, the Court may order the whole or any part of the sums payable under the trust to be paid to an authorised officer or to any other person or facility entrusted with the care and control of the child, to be applied for his or her benefit in such manner as the Court may direct.

(2) In making the order referred to in subsection (1), the Court shall have regard to the terms of the trust.

(3) Any person who fails to comply with an order of the Court made under subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two million shillings, or to both.

(4) In addition to the penal sanctions prescribed in subsection (3), the Court may order the seizure and surrender to the Court or to any specified person of all funds or property held in trust for the child, and direct the manner in which such fund or property may be applied for the benefit of the child.

#### **152. Penalty for cruelty to and neglect of children**

(1) Any person who, having parental responsibility, custody, charge or care of any child, and who—

- (a) willfully assaults, ill-treats, abandons, or exposes, in any manner likely to cause the child unnecessary suffering or injury to health, including injury or loss of sight, hearing, limb or organ of the body, or any mental illness; or
- (b) by any act or omission, knowingly or willfully causes that child to become, or contributes to his becoming, in need of care and protection,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding five hundred thousand shillings, or to both.

(2) If the Court is of the opinion that the acts or omissions specified in subsection (1) are of a serious or aggravated nature, the Court may order that the person be charged and dealt with in criminal proceedings under the Penal Code (Cap. 63) or the Prevention of Torture Act (Cap. 88).

(3) For the purposes of this section, a person having parental responsibility, custody, charge or care of a child shall be deemed to have neglected such child in a manner likely to cause injury to his health if the person concerned has failed to provide adequate food, clothing, education, immunisation, shelter or medical care.

(4) The Court before which an application is made for any orders relating to a child in need of care and protection has jurisdiction to entertain criminal proceedings relating to a charge against any person in respect of an offence committed under this section.

(5) It shall not be a defence to a charge under this section that—

- (a) the suffering or actual bodily harm inflicted on a child was substantially contributed to by a person other than the accused; or
- (b) the child died as a result of causes other than the acts of the accused specified in subsection (1).

### **153. Care order and grounds thereof**

(1) In this section "care order" means an order entrusting the care, control and custody of the child to a person other than the parent, guardian or custodian of the child, or an institution appointed by the Court.

(2) A Court may make a care order in respect of a child only if it is satisfied that—

- (a) all possible alternative methods for assisting the child have been unsuccessful, and that it is in the best interests of the child to make the order;
- (b) the child concerned is suffering or is likely to suffer substantial harm, and that the harm, or probability of harm, is attributed to—
  - (i) the care given, or which is likely to be given, to the child if the order were not made, such care not being of the nature that is reasonably expected of a parent; or
  - (ii) the child being beyond the control of his or her parent, guardian or other person who has parental responsibility in respect of the child;
- (c) the danger to which the child is exposed is so severe as to require his immediate removal from the place where he or she is for the time being resident.

(3) Where a Court makes a care order or an interim care order in respect of any child, the Court may include in the order such conditions, restrictions or directions as the Court deems fit relating to—

- (a) the enforcement of the order by any person; or
- (b) the conduct of the child or any person named in the order.

(4) In making the care order, the Court shall, as far as is reasonably practicable, entrust the child to the care of a person who professes, or to an institution founded on, the child's religious faith.

(5) Where a child has a disability, the Court shall, as far as is reasonably practicable, entrust the care of the child to a person or institution that is suitably designed and equipped to cater for the special needs of the child.

(6) Every care order made under this section shall be in writing, and shall disclose the child's age and religious faith, and such order may be made in the child's absence with the consent of the person or institution into whose care the child has been entrusted.

(7) A person who is aggrieved by a care order may appeal to the Court.

(8) The Court by which a care order is given shall direct the applicant to deliver to the person or institution entrusted with the care of the child a record in the

prescribed form containing such information regarding the child concerned as the Court may deem necessary for the effective discharge of the order.

(9) A care order made under this section shall commit the child to whom it relates to the care of the person or institution named in the order, and the order shall remain in force for one year or for such shorter period as the Court may direct.

(10) In making a care order under this section, the Court may—

- (a) make such further orders and give such directions as may require the Secretary or his or her representative to supervise the mode of compliance with the care orders; and
- (b) give such directions to the Secretary, Children Officer or his representative, as the Court may consider necessary, to facilitate the enforcement of the care order.

(11) Where a care order is made under this section, it shall be the duty of the Secretary or the Secretary's representative to—

- (a) monitor and supervise the standard of care provided to the child by the person or institution to whom or to which the child is committed under the care order; and
- (b) periodically assess the conditions under which the child is accommodated pursuant to the care order:

Provided that the period referred to in this subsection shall not exceed twelve months.

#### **154. Access to children in care**

(1) In determining the terms of a care order, the Court may—

- (a) consider any prior arrangements made by the Secretary for allowing any person access to the child during the period within which the care order remains in force;
- (b) grant leave to any person to make submissions in the proceedings to the arrangements referred to in paragraph (a); or
- (c) give such directions as the Court considers appropriate for reasonable access to the child.

(2) Unless the Court otherwise directs, reasonable contact shall be allowed between the child and—

- (a) the child's parent or guardian;
- (b) any person who has parental responsibility in respect of the child;
- (c) the relatives of the child; or
- (d) such other person as the Court may direct.

(3) The Court shall not make an order under this section authorizing any person to have contact with the child if the Court is of the view that such contact is detrimental to, and not in the best interest of, the child.

(4) Where the Court makes an access order under this section, the Court shall determine the frequency and duration of access to the child subject, however, to such conditions as the Court may consider appropriate.

(5) The Court may, on the application of the child, the Secretary or other authorised officer, make an order directing that any person named in the order shall not have access to, or contact with, the child to whom the order relates.

(6) A Court making a contact order under this section has power to vary, suspend or discharge the order, or revive the order after it has been discharged, on such terms as the court shall deem fit.

(7) An access order made under this section shall not remain in force in relation to a child who has attained the age of eighteen years or after the date of discharge of a care order.

#### **155. Power to make interim care order**

(1) A Court may, either of its own motion or on application by any person, make an interim care order on any of the grounds specified in section 153 (2).

(2) Without prejudice to the generality of subsection (1), a Court may make an interim care order where—

- (a) the substantive application for a care order is adjourned; or
- (b) there is in force a Court order for the assessment of the child in proceedings under section 137 pending the final care order.

(3) An interim care order made under subsection (1) shall not remain in force for a period exceeding two months:

Provided that the Court may, for good cause, extend the order once for a further period not exceeding two months.

#### **156. Discharge of care order**

(1) A care order or interim order may be discharged—

- (a) by the making of an adoption order in respect of the child;
- (b) in any case where the care order was not made in respect of the child by reason of the child having been found guilty of a criminal offence under Part XV; or
- (c) by the making of a residence order in respect of the child

(2) Without prejudice to the generality of subsection (1), the Court has power to vary or discharge the care or interim care order on such terms as the Court may direct on the application of—

- (a) the child;
- (b) the Secretary;
- (c) the parents or guardian of the child;
- (d) any other person who has parental responsibility over the child; or
- (e) a person acting on behalf of and in the best interest of child.

(3) An order made under this section may include a supervision order made in substitution of a care order or interim care order.

#### **157. Care on committal to a rehabilitation school, etc.**

(1) Where the Court makes a care order directing that a child be committed to a rehabilitation school on being found guilty of an offence, the committal order shall specify the grounds on which the order is made and shall—

- (a) contain a declaration as to the age and religion of the child;
- (b) specify the rehabilitation school to which the child is to be sent;
- (c) disclose the identity or administrative status of the person by whom the child is proposed to be escorted to the school;

- (d) specify any special needs, health care or other special attention required by the child;
- (e) set out any directions as to access arrangements for the child by his parent, guardian or relative; and
- (f) specify details of any contribution order made against the parent or guardian of the child, and the dates on which accounts shall be supplied to them.

(2) A child committed to a rehabilitation school shall be escorted by a police officer for placement in the school within twenty-four hours of his or her committal.

(3) If the child is not escorted to the rehabilitation school within the period specified in subsection (2), the child shall be held in a child protection unit in accordance with this Act.

(4) Where a child is committed to a rehabilitation school in accordance with this Act, the Secretary shall take all necessary steps to facilitate the escort by a police officer and placement of the child into the school in accordance with the committal warrant issued under this Act.

(5) Upon committal of a child to a rehabilitation school under this section, the school shall prepare and submit to the Court a report confirming the committal within seven days, and the Court shall record the fact of such committal.

#### **158. Transmission of committal order**

The Court making a care order under this Part in relation to a child committed to a rehabilitation school shall direct that the order be delivered to the manager of the rehabilitation school together with a record in the prescribed form of such information regarding the child as the Court may specify.

#### **159. Escort of a child to a rehabilitation school**

(1) Where a person authorised to escort a child to a rehabilitation school is unable to find or obtain custody of the child, the Court may, if satisfied by information on oath that a person named in the information is in a position to produce the child, issue a summon requiring the specified person to attend at the Court on an appointed date and produce the child.

(2) If the person summoned under subsection (1) fails to comply with the directions of the Court, the person commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both.

(3) If the person, without reasonable cause fails to attend court in obedience to an order given under this section, he or she commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding fifty thousand shillings, or to both.

(4) The penal sanctions prescribed in subsection (3) are in addition to, and not in substitution for, any other liability or sanctions to which the person may be subject under this Act or any other written law.

#### **160. Harboursing or concealing a child**

Where a child has been placed under care in a rehabilitation school, any person who harbours or conceals the child after the time fixed for the child to enter the rehabilitation school, commits an offence and is liable on conviction to



imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand shillings, or to both.

**161. Escape from institutions, etc.**

(1) A child who escapes from a fit person, charitable children's institution to whose care the child has been entrusted under this Act, or from any person or institution with whom the child has been placed by a charitable children's institution, or under any regulations made under this Act, may be apprehended without warrant and be brought before a Children's Court having jurisdiction in the place where the child was resident immediately before the child escaped.

(2) If a child is apprehended under the circumstances specified in subsection (1), the Court before which the child is brought may—

- (a) order that the child be returned to where the child escaped from;
- (b) by order, place the child under the care of some other person or charitable children's institution;
- (c) order that the child be sent to a rehabilitation school;
- (d) make any order which a Court may make under section 150; or
- (e) make an order requiring the child to undergo professional counselling.

(3) Before making any order under subsection (2), the Court shall call for and consider any report from a fit person or institution from which the child has escaped, and such report shall disclose—

- (a) the circumstances under which the child escaped; and
- (b) the conditions under which the child was accommodated.

(4) Any order made under subsection (2) shall be required to be made in the best interest of the child.

(5) The court shall consider the views of the child before making an order under this section.

**162. Duty of Charitable children's institutions and County Public Entities**

(1) Where a child escapes from any person or institution with whom or with which the child has been placed by a charitable children's institution or county public entity, the manager, person in charge of the institution or other authorised officer of such institution or authority shall—

- (a) immediately report to the nearest police station within twenty-four hours of such occurrence coming to his or her attention;
- (b) lodge with the Court, a written notice of the child's escape within a period not exceeding one month;

(2) If any manager or person in charge of a children institution or other authorised officer fails to comply with subsection (1), he or she commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings.

**163. Escape from children's remand home or rehabilitation school**

(1) Any child who escapes from a children's remand home or while being escorted thereto or therefrom, may be apprehended without warrant and dealt with in accordance with section 157.

(2) Any child who has been committed to a rehabilitation school and who—

- (a) escapes from such school or from any hospital, home or institution in which the child is receiving medical or other treatment, or while being conveyed to or from any such place; or
- (b) being absent from such school on leave of absence or on licence, runs away from the person in whose charge the child has been placed, or fails to return to the school on the expiration of his or her leave, or on the revocation of his or her licence,

shall be apprehended without warrant and brought before a Court having jurisdiction over the area where the school is situated to be dealt with in accordance with section 157.

(3) Where a child is restored to a rehabilitation school under subsection (2), the period of his or her committal shall be increased, over and above any increase ordered by Court, by a period equal to the period during which he or she was at large and absent from the school.

#### **164. Aiding escape, etc.**

Any person who willfully and knowingly—

- (a) aids or induces a child—
  - (i) to run away from a fit person, a charitable children's institution, children remand home or a rehabilitation institution or authorised person to whose care the child has been committed, or from any person or institution with whom or with which the child has been placed by a charitable children's institution, children remand home or a rehabilitation institution or an approved authorised officer under or by virtue of this Act or any regulations made under the Act;
  - (ii) to do any of the things specified in section 163(2);
- (b) harbours or conceals a child who has escaped under any of the circumstances, or done any of the things, referred to in paragraph (a); or
- (c) prevents such a child from returning, or induces such a child not to return, to the care of the person to whom the child has been committed, or to any place in which the child is placed,

commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months, or to a fine not exceeding two hundred thousand shillings, or to both.

#### **165. Production of escaped child**

(1) If a Children's Court is satisfied by information on oath that there are reasonable grounds for believing that a child has escaped or done any of the things specified in section 163, and that some other person named in the information is in a position to produce the child, the Court may issue summons requiring that other person to attend at the Court and produce the child.

(2) If the person summoned under subsection (1) fails to comply with the directions of the Court given under this section, the person commits an offence, and shall, on conviction, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred thousand shillings, or to both.

(3) The penal sanctions prescribed in subsection (2) shall be in addition to any other penalty or liability to which the person may be subjected under this Act or any other written law.

#### **166. Presumption and determination of age**

(1) Where a person appears before any Court for the purpose of giving evidence, and it appears to the Court that the accused, the victim or complainant to whom the proceeding relates is under eighteen years of age, the Court shall inquire as to the age of the accused, victim or complainant, and shall take such evidence, including medical evidence for the purpose of determining his or her age.

(2) The age presumed or declared by the Court under subsection (1) to be the age of any person appearing before it shall, for purposes of this Act, be deemed to be the person's age unless the contrary proof is adduced before Court.

(3) A certificate duly completed and signed by a medical practitioner as to the age of a person under eighteen years of age shall be produced and admitted in evidence in any proceeding before the Court, unless the Court otherwise directs.

#### **167. Contribution order not to be made in certain cases**

Where a Court makes an order placing a child under the care of a rehabilitation school, the court shall not make a contribution order requiring a parent or guardian of the child to contribute any sums of money towards the maintenance of the child.

#### **168. Inter-country reciprocity.**

(1) The Cabinet Secretary may enter into an agreement with the government of any other country or territory on such terms and conditions as the Cabinet Secretary may think fit, under which a child who has been ordered by a Court under the provisions of this Act to be sent to a rehabilitation school or other institution, or committed to the care of a fit person, may be received into that country or territory and placed in a rehabilitation school or other institution approved under the relevant legislation of that country or territory, or received into the care of a fit person or returned to his parent or guardian.

(2) Any child who has been ordered under the provisions of this Act to be placed in a rehabilitation school or any other institution, or committed to the care of any person, may, while still subject to such order, by warrant signed by the Cabinet Secretary, be removed from the custody of such an institution or person into any other country or territory with which an agreement has been concluded under subsection (1), and placed in a rehabilitation school or other institution or placed in the care of a fit person, or of his parent or guardian, in accordance with the law for the time being in force in the country or territory authorising such placement, until the expiration of the order, or until such child is sooner released according to law.

(3) An order of a Court of a country or territory with which an agreement has been entered into in accordance with the provisions of subsection (2) which could lawfully have been made by a Court in Kenya if the person had been within its jurisdiction, shall upon the person being received in Kenya have the same effect and be enforceable as if the order had been made by a Court in Kenya.

#### **169. Bonds**

The provisions of the Criminal Procedure Code with respect to bonds for good behaviour, including the provisions as to their enforcement, shall apply to bonds entered into under this Part.

## PART XIII – FOSTER CARE PLACEMENT

**170. Objectives of foster care placement**

- (1) The overriding objectives of foster care placement are—
  - (a) to protect and nurture children in need of care and protection by providing a safe, healthy environment with wholesome support;
  - (b) to promote long term parental care, with the goal of family reunification in the first instance;
  - (c) accommodating children in alternative, safe and nurturing family relationships for long periods of time;
  - (d) to provide social and economic stability in the life of a child or children who may be denied or unable to have a stable family support system; and
  - (e) to promote family relationships in the context of Kenya's cultural, ethnic and community diversity.

(2) In any case where a child is in need of care and protection, either with the intervention of the Secretary or under an order of the Court, the child shall, in the first instance, be placed in family based alternative care.

**171. Restrictions on periods of foster care**

- (1) In this Part, "foster care" includes—
  - (a) placement of a child in foster care on short term basis for a period not exceeding three years—
    - (i) in situations of emergency;
    - (ii) where the child is found abandoned; or
    - (iii) where the child is in need of care and protection; or
  - (b) placement of a child in foster care for a period exceeding for alternative care; or
    - (i) it has not been possible to facilitate the adoption of the child or to place the child in family-based alternative care within a period of three years where—
    - (ii) it is shown to the satisfaction of the Court on evidence that circumstances exist to justify extension of time pending adoption or other arrangements years.

(2) Any arrangements for the foster care of a child shall, in the first instance, be on application to the Secretary, and shall be for a period not exceeding twelve months, but liable to extension from time to time for a period not exceeding three years in the aggregate.

(3) Without prejudice to the generality of subsection (1), no child shall be placed under foster care for a period exceeding three years without an order of the court first had and obtained on application in the prescribed form specifying the grounds on which a longer period of foster care is necessary.

(4) In determining an application for extension of foster care beyond the period of three years, the Court shall take into account—

- (a) the need to ensure stability of the child's life; and
- (b) the best interests of the child.

**172. Conditions for foster care placement**

(1) For the purposes of this Part, a child may be placed under foster care either on the direct intervention of the Secretary or pursuant to an order of the Court, and such placement shall, in the first instance, be home based.

(2) Where a child has, by virtue of a care order, been committed to a rehabilitation school or to a charitable children's institution, the Secretary, in consultation with the manager or other authorised officer of the institution, may place the child with a foster parent for such period as the Secretary may from time to time authorise.

(3) Without prejudice to the generality of subsection (2), a child in relation to whom a care order has been made by reason of having been found guilty of a criminal offence, shall not be placed with a foster parent without leave of the Court.

(4) A foster parent in whose care a child is committed shall, while the child remains in his or her care, have the same responsibilities in respect of the child's maintenance as if he or she were the parent of the child.

(5) Where a child has been placed in the care of a foster parent, it shall be the duty of the Secretary—

- (a) to supervise and assess the condition of the child from time to time; and
- (b) to take such steps as shall be necessary to safeguard the welfare of the child.

(6) The provisions of this Part shall cease to have effect in relation to a child—

- (a) on discharge of the care order;
- (b) on expiry of the period specified in the order of the Court;
- (c) on the child attaining the age of eighteen years; or
- (d) on the death of the foster parent.

**173. Application for foster care**

(1) Any person wishing to foster a child shall make an application to the Secretary in the prescribed form.

(2) On receipt of the application referred to in subsection (1), the Secretary shall conduct due diligence, including ascertaining the criminal liability of the prospective foster parent, and prepare a report containing information relating to the matters specified in Rules made under this Act.

(3) The parent or guardian of the child in respect of whom the application is made, and the manager of the charitable children institution at which the child for the time being is accommodated, if that be the case, shall have the right to make representations to the Secretary on any matter contained in the report referred to in subsection (2).

(4) Without prejudice to the generality of subsection (1), any person who voluntarily assumes responsibility for the care and protection of a child in a situation of emergency may exercise temporary foster care over the child for a period not exceeding three months pending reunification of the child with his or her parent or guardian or placement in foster care under this Act.

(5) No person shall exercise temporary foster care under subsection (4) unless such person gives notice in the prescribed form to the Officer Commanding Station in the local limits of the jurisdiction in which the child is accommodated.

(6) The Officer Commanding Station shall notify the Secretary within twenty-four hours of receiving a notice under subsection (5).

(7) A foster parent in whose care a child is committed shall, while the child remains in his or her care, have the same responsibilities in respect of the maintenance of the child as if such foster parent were the parent or guardian of the child.

#### **174. Persons qualified to foster children**

(1) Any of the following persons may apply to be appointed a foster parent or foster parents—

- (a) spouses of a marriage where one or both the spouses are between twenty-five and sixty-five years of age;
- (b) a single woman of between twenty-five and sixty-five years of age; or
- (c) a single man of between twenty-five and sixty-five years of age.

(2) A single man shall not qualify to foster a female child under this Part unless he is a father to a female child, and a single woman shall not qualify to foster a male child under this Part unless she is a mother to a male child.

(3) A person who is convicted by a Court of competent jurisdiction for any of the offences in the Third Schedule or similar offences shall not be appointed to be a foster parent.

(4) Subsection (2) shall not apply to a person who applies to be a foster parent to an intersex child.

(5) No person shall be appointed to be a foster parent unless the person is resident in the Republic of Kenya and has been resident for a period of not less than twelve months.

(6) A foster parent shall not remove a child from Kenya without obtaining the leave of the Court on application in the prescribed form, and such leave shall only be granted in exceptional circumstances at the discretion of the Court, having regard to the best interest of the child.

(7) Where leave is granted under this section, the Court may impose such conditions or restrictions as it considers appropriate, having regard to the best interest of the child.

#### **175. Conditions for foster care**

The Secretary shall not authorize foster care placement of a child if it is shown to the satisfaction of the Secretary that the application has not been done following the procedure set out in rules made under this Act.

#### **176. Limitation on the number of children placed under foster care in a household**

Not more than four children may be placed in foster care with a single person or two persons in the same household, except where—

- (a) the children are siblings or blood relatives; or
- (b) the Secretary is of the view that, in the circumstances of any particular case, such placement is in the best interest of all the children.

**177. Records of foster care placements**

(1) A person shall not, for the purposes of fostering a child, retain in his care and custody a child whose parent, custodian or guardian cannot be readily identified, without first notifying the Secretary.

(2) Every registered Charitable Children Institution undertaking foster care placement in conjunction with the Secretary shall maintain a register containing the particulars prescribed in regulations.

(3) The Secretary shall keep and maintain a register to be known as the Foster Care Register containing the particulars of all foster care placements specified in regulations.

**178. Agreement for maintenance of foster child**

(1) The Secretary may, on the application of a foster parent or the parent or guardian of a child, direct that an agreement be made between the foster parent and the parent or guardian of a child placed in foster care stipulating the maintenance payable by such parent or guardian for the child's care.

(2) Any maintenance agreement made in respect of a child under foster care in accordance with this section shall be legally binding on the parties to the agreement.

**179. Termination of foster care**

(1) Any foster care placement made under this Part may be terminated on the written direction of the Secretary if the termination is, in the Secretary's opinion, in the best interest of the child.

(2) Before directing the termination of any foster care placement of a child, the Secretary shall take into account all relevant factors, including—

- (a) where the biological parent reclaims care of the child, the bond that exists between the child and the child's biological parent;
- (b) the bond that subsists between—
  - (i) the child and the foster parent; and
  - (ii) the child and the family of the foster parent; and
- (c) the prospects of achieving social stability in the child's life by—
  - (i) returning the child to the biological parent;
  - (ii) allowing the child to remain in foster care with the foster parent;
  - (iii) placing the child in any other alternative family care; or
  - (iv) adoption of the child.

(3) Without prejudice to the generality of subsection (2), the decision to reunite a child with his or her biological parents on termination of foster care placement shall be based on the principle of the best interest of the child.

**180. Penalty for contravening provisions of this Part**

A person who, without reasonable cause, contravenes any of the provisions of this Part commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

**181. Regulations**

The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this Part.

**182. Rules**

The Chief Justice may make court rules of procedure and practice in matters relating to foster care placement.

**PART XIV – ADOPTION****183. Power to make adoption orders**

(1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorising an applicant to adopt a child.

(2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.

(3) In this Act, adoption means local, kinship and foreign adoption.

(4) For the purposes of this Part—

- (a) "kinship adoption" has the meaning assigned to it in section 2;
- (b) "local adoption" means an adoption in relation to which—
  - (i) the child is resident in Kenya; and
  - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
- (c) "foreign adoption" means an adoption in relation to which —
  - (i) the adopting parent or parents are Kenyan nationals with dual citizenship;
  - (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya;
  - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
  - (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.

**184. Pre-requisites for Adoption**

(1) A person shall not commence any arrangements for the adoption of a child unless—

- (a) the Council, in accordance with the rules, has declared the child free for adoption; and
- (b) the child has attained the age of six weeks.

(2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.

(3) An applicant shall not preselect a prospective adoptive child except—

- (a) in the case of kinship adoption;
- (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant's care.



(4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.

(5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.

#### **185. Children who may be adopted**

(1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.

(2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—

- (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
- (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.

(3) The report referred to in subsection (2)(b) shall contain the society's findings and recommendations in respect of the child and the applicant or applicants, as the case may be.

(4) The following children shall be eligible for adoption—

- (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child;
- (b) a child who has been abandoned or whose parents' or guardian's whereabouts cannot be traced within a period of one year;
- (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.

#### **186. Who may apply to adopt a child**

(1) The Court may make an adoption order on application by—

- (a) a sole applicant; or
- (b) two spouses jointly.

(2) The Court shall not make an adoption order in any case unless—

- (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
- (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.

(3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.

(4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.

(5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.

(6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—

- (a) is of unsound mind within the meaning of the Mental Health Act (Cap. 248);
- (b) is incapable of exercising proper care and guardianship of a child;
- (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
- (d) in the case of joint applicants, if the applicants are not married to each other;
- (e) is a sole male applicant except where the applicant is a biological relative of the child; or
- (f) is a foreign applicant except where the applicant is a biological relative of the child.

(7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interest of the child to make the order.

(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—

- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) on the application of one of the spouses, the consent of the other spouse; and
- (c) in the case of a child who has attained the age of ten years, the child himself or herself.

(9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.

#### **187. Power to dispense with consent**

(1) The Court may dispense with any consent required under section 186(8) paragraphs (a), (b) and (c) if the Court is satisfied that—

- (a) in the case of the parent or guardian of the child, the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;
- (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that person has persistently neglected or refused to make contribution in accordance with the order; or
- (c) in any other case, except in respect of the consents required under section 186(8)(c) and (9), the person whose consent is required cannot be found or is incapable of giving his or her consent, or that his or her consent has been unreasonably withheld.

(2) Without prejudice to the generality of subsection (1)(a)—

- (a) abandonment shall be presumed in any case where the child appears to have been abandoned at birth, or if the person or, where the institution having care and possession of the child, that institution has lost all contact with a parent or guardian of the child for a period exceeding one year; and
- (b) persistent failure to maintain the child may be presumed where, despite demands made, no parent or guardian has contributed to the maintenance of the child for a cumulative period of one year.

(3) The Court may dispense with the consent of the spouse of the applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving consent, or that the spouses have separated or divorced and are living apart, and that such separation is likely to be permanent.

(4) The consent of any person to the making of an adoption order in pursuance of an application under this Part may be given, either unconditionally or subject to conditions with respect to the religious persuasion in which the child is to be brought up, without knowing the identity of the applicant for the order, and where the consent given by any person is subsequently withdrawn on the grounds only that he or she does not know the identity of the applicant, the consent shall be deemed as being unreasonably withheld.

(5) In considering whether or not to dispense with the consent required under this section, the Court shall regard the interests of the child as paramount and, subject thereto, give priority to the interests of the parents, guardians or relatives of the child over those of the applicants.

(6) Any person by whom consent is given under this Part may withdraw his or her consent either—

- (a) without leave of the Court; or
- (b) with leave of the Court at any time after the filing of the application for an adoption order, but prior to the making of the order.

(7) Any person whose consent to the making of an adoption order is required under section 189 may either—

- (a) attend Court at the adoption proceedings for the purpose of giving oral evidence in relation to his or her consent; or
- (b) deliver to the Court a declaration made on oath and attested by a duly qualified legal practitioner, judicial officer or such other person as may be specified in regulations, confirming the deponents consent in that regard.

(8) In the absence of any evidence to the contrary, a document made in or outside Kenya signifying consent given under this section, shall be admissible in evidence only if—

- (a) the document is duly executed by the person making it; and
- (b) the signature of the maker is duly attested and the document notarized and duly certified as a true copy of the original.

(9) A document signifying the consent of the mother of a child shall not be admissible under this section unless—

- (a) the child was at least six weeks old on the date on which the document was executed; and

- (b) the document is duly attested by any of the persons specified in subsection (7)(b).

**188. Appointment of guardian *ad litem* for purposes of adoption**

(1) Where an application is made for an adoption order, the Court shall, either of its own motion or on application by any party to the proceedings, make an order appointing a fit person to be guardian *ad litem* of the child to whom the application relates.

(2) The guardian *ad litem* shall be under duty to—

- (a) safeguard the interests of the child pending the determination of the adoption proceedings;
- (b) investigate and report to the Court on the facts and circumstances relating to the adoption of the child;
- (c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;
- (d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; and
- (e) undertake such other duties as the Court may from time to time direct, or as may be prescribed by the rules.

(3) Where arrangements for the adoption of any child have been made by an adoption society, neither the society nor any member thereof shall be appointed guardian of the child in relation to the adoption.

(4) The appointment of a guardian *ad litem* shall expire upon the making of a final order by the Court under this Part, unless the Court, having regard to the interests of the child, extends the period of the appointment.

(5) Without prejudice to the generality of subsection (4), where an appeal is lodged against a final order of the Court made under this Part, the Court shall have power to extend the appointment of a guardian *ad litem* until the date of the determination of the appeal.

**189. Interim orders**

(1) Where an application for an adoption order is pending in Court—

- (a) any person who has consented to the adoption shall not be entitled, except with leave of the Court, to remove the child from the care and control of the applicant;
- (b) the applicant who has received a child into his or her care for the purposes of an adoption shall not, without leave of the Court, remove the child from Kenya, and where an application is made for such leave, the Court may only make an order if it is satisfied that—
  - (i) exceptional circumstances exist in relation to the health, welfare and safety of the child;
  - (ii) the written consent of the parents or guardian of the child, if they are living or can be found, to the removal of the child from Kenya has been obtained; and
  - (iii) a welfare report has been made by the parent or guardian of the child, if they are living or can be found.

(2) Where a Court makes an order under this section, the Court shall make a wardship order in respect of the child, and shall cause the applicant to execute

a security bond with sureties requiring that the child be returned to Kenya by the applicant within such period as may be specified by the Court, and give such directions as may be necessary to secure the return of the child to Kenya.

(3) Any person who, without lawful justification, fails to return a child to Kenya within the period specified by an order issued under this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding two million shillings, or to both.

(4) The Court may, either of its own motion or on application by a parent or guardian of the infant, the Secretary, an adoption society or the appointed guardian *ad litem*, make such interim orders as appear just in respect to the legal custody, maintenance, access, education, residence, safety, or welfare of the child generally and parental responsibility in respect of the child, and may direct that such proceedings be taken for placing the child under the protection of the Court.

(5) The requisite consents for the making of an adoption order shall be required for the purposes of making an interim order in the proceedings subject, however, to the power of the Court to dispense with such consent.

(6) The Court shall not make an interim order in any case where the making of an adoption order is unlawful.

(7) For the avoidance of doubt, an interim order shall not be construed as, or have the effect of, an adoption order made under this Act.

#### **190. Review of adoption**

(1) A person who is a biological parent of a child in respect of whom an adoption order has been granted by a Court may apply to the Court for review of the order for adoption on grounds that—

- (a) the child in respect of whom an adoption order has been granted by a Court was lost or abducted;
- (b) the biological parent reported to the Secretary and took all measures to trace, to find and to reunite with the child and were not successful; and
- (c) it is in best interest of child to reunite with the child with their biological parent.

(2) Where the court is satisfied with the grounds under subsection (1), the court may—

- (a) issue an order to revoke the adoption order and give custody of the child to the biological parent; or
- (b) review an existing order to give joint custody to a biological parent and an adoptive parent

(3) A court may give an order for joint custody where—

- (a) the child has been in the custody of the adoptive parents for more than five years; and
- (b) the child expresses that he or she would wish to maintain a relationship with the adoptive parents.

#### **191. Inter-country adoptions**

The Court may make an adoption order in respect of a child on the joint application of two spouses who are not citizens or residents of Kenya, in this Act referred to as an "inter-country adoption", if the applicants—

- (a) have satisfied the Court that—
  - (i) all efforts to trace the child's parents and relatives, and reunify with them have, despite State support, failed; and
  - (ii) all local arrangements for the placement of the child in family based alternative care have been exhausted and failed;
- (b) have obtained the consents specified in section 186(8);
- (c) have satisfied the Court that the country where they ordinarily reside and where they intend to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and grant resident status to the child; and
- (d) have been authorised and recommended as persons who are fit, including being morally fit and financially capable, to adopt a foreign child by a competent government authority or Court of competent jurisdiction in the country where they intend to reside with the child immediately after the making of the adoption order.

**192. Adoption by non-resident Kenyans**

The requirements of section 191 shall apply to adoption by—

- (a) citizens of Kenya who are not ordinarily resident in Kenya;
- (b) citizens of Kenya who have dual citizenship, but who are not ordinarily resident in Kenya; and
- (c) persons who were citizens of Kenya by birth but have lost the same status by operation of the law.

**193. Kinship Adoption**

- (1) A kinship adoption order may only be made in favour of a relative of the child.
- (2) The Cabinet Secretary may make regulations to give effect to this Part.

**194. Powers of the Court in adoption proceedings**

- (1) Before making an adoption order, the Court shall inquire into and be satisfied on evidence before it that—
  - (a) every person whose consent is required under this Part, which consent has not been dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made;
  - (b) in the case of a parent, the parent understands that the effect of the adoption order is to permanently deprive him or her of his or her parental rights;
  - (c) if made, the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;
  - (d) the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;
  - (e) any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

- (f) where the applicant is not a relative of the child, reasonable steps have been taken to inform the relatives of the child of the proposed adoption, and no relative who is capable of exercising care over the child has expressed willingness to do so;
- (g) both the applicant and the child have been assessed and evaluated by a duly registered adoption society in Kenya in accordance with this Act and the society's report delivered to the Court; and
- (h) the Council has certified and declared the child free for adoption.

(2) The Court may make an adoption order under this Part on such terms and conditions as the Court may think fit, including orders—

- (a) requiring the adopter, by bond or otherwise, to make such provision for the child as, in the opinion of the Court, are just and expedient;
- (b) directing that the child shall not be removed from the jurisdiction of the Court without leave of the Court for such period as the Court may specify;
- (c) requiring the adopter to accept supervision by, and advice from, an adoption society specified by the Court for such period as the Court may direct;
- (d) requiring the child to be brought up in accordance with a particular tradition conditional to which the consent was given;
- (e) requiring the adopter to furnish such security by bond or otherwise as the Court may consider fit for the due performance of any condition that the Court may impose; or
- (f) in a case where the adopter is not a resident or citizen of Kenya, requiring the adopter to avail such periodic reports from a Court of competent jurisdiction or state agency responsible for matters relating to adoption in the adopter's country of residence for such period as the Court may specify.

#### **195. Power of the Court to appoint guardian**

(1) At the time of making an adoption order in a domestic or inter-country adoption, the Court may, either of its own motion or on application by the adopter or joint adopters, appoint a guardian of the child in the event that the adopter or, in the case of a joint application by spouses, as the case may be, the adopter or joint adopters die or become incapacitated before the child attains the age of eighteen years.

(2) The Court may, at any time before the child attains the age of eighteen years, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.

#### **196. Adoption order in respect of children previously adopted**

(1) The Court may make an adoption order or an interim adoption order in respect of a child who has previously been the subject of an adoption order under this Act or any other written law in any Commonwealth jurisdiction.

(2) For the purposes of an application under subsection (1), the adopter or adopters under and by virtue of the previous or last adoption order made under this Act shall be deemed to be the parent or parents of the child.

**197. Parental responsibility when adoption is denied**

If the Court declines to make an adoption order, the Court may make such order in respect of parental responsibilities over the child as the Court may consider fit.

**198. Appeals**

Any person aggrieved by an order of the Court relating to an application for an adoption order, or an order relating to parental responsibility over a child made under this Part, may appeal to the Court of Appeal in the same manner as if the application were a suit instituted under the Civil Procedure Act.

**199. Variation of orders**

(1) The Court which makes an adoption order may, on the application of the adopter, vary the order to correct any defect in the particulars contained therein and direct that the varied order be lodged with the Registrar, who shall cause the Adopted Children Register to be rectified accordingly.

(2) Where an adoption order was made before the commencement of this Act, the power of the Court under subsection (1) shall include power to vary the order—

- (a) by the insertion of the country of birth of the adopted person; or
- (b) where the order does not specify a precise date as the date of birth of the adopted person, by the insertion of the date which appears to the Court to be the probable date on which the person was born, and the requirements of subsection (1) will apply with immediate effect.

(3) Where an adoption order is quashed or an appeal against an adoption order is allowed, the Court making the order to quash shall direct the Registrar to cancel any entry in the Register of Births together with any entry in the Adopted Children Register effected in pursuance of the order.

(4) A copy of or an extract from, an entry in any register, being an entry the making of which is cancelled under this section, shall be deemed to be an accurate copy or extract only if both the marking and the cancellation are omitted therefrom.

**200. Adopted Children Register**

(1) The Registrar shall maintain an Adopted Children Register and shall make such entries as the court may direct.

(2) A certified copy of an entry in the Adopted Children Register that is sealed or stamped with the seal of the Registrar shall be admitted as evidence of the adoption to which it relates.

(3) A certified copy of an entry in the Adopted Children Register that contains an entry of a record of the date of the birth or the country of birth of an adopted child, shall be admitted as evidence of the date or country of birth as if the copy were a certified copy of an entry in the Register of Births.

(4) The Court shall direct the Registrar to issue a certified copy of an entry in the Adopted Children Register on payment of such fee as the Registrar may prescribe.

(5) The Registrar shall maintain a record that traces the connection between an entry in the Register of Births and an entry that corresponds in the Adopted Children Register.

**201. Registration of adoption orders**

(1) Every adoption order made by the Court shall contain a direction to the Registrar to make an entry in the Adopted Children Register in the prescribed form.



(2) For the purposes of compliance with the requirements of subsection (1), if the precise date of the child's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of his or her birth, and the date specified in the order shall be deemed to be his or her date of birth.

(3) If on application to the Court for an adoption order in respect of a child not being a child who has previously been the subject of an adoption order made by the Court under this Act, there is proof to the satisfaction of the Court of the identity of the child to whom an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar to cause the entry in the Register of Births to be marked with the word "Adopted".

(4) Where an adoption order is made by the Court in respect of a child who has previously been the subject of an adoption order made by such Court under this Act, the order shall contain a direction to the Registrar to be marked with the word "Re-adopted".

(5) Where an adoption order is made by the Court, the Court shall direct that the order be lodged with the Registrar, and on receipt of the order, the Registrar shall comply with the directions contained in the order with regard to—

- (a) marking an entry in the Register of Births with the word "Adopted"; and
- (b) making the appropriate entry in the Adopted Children Register.

## **202. Rights and duties of parents and capacity to marry**

(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the biological parents in case of a first adoption or adoptive parents in case of subsequent adoption or guardians of the child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian, to inherit property and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by, and enforceable against, the adopter as if the child were a biological child of the adopter and, in respect of the matters aforesaid, the child shall stand in relation to the adopter as a child born of the adopter.

(2) In any case where two spouses are joint adopters, the spouses shall, in respect of the matters set out in subsection (1), and for the purposes of the jurisdiction of any Court to make orders as to the legal custody and maintenance of and right of contact with children, stand to each other and to the child in the same relation as they would have stood if they had been the lawful father and mother of the child and the child shall stand to them in the same relation as to a lawful father and mother respectively.

(3) For the purpose of any written law relating to marriage for the time being in force in Kenya, an adopter and the child whom he or she has been authorised to adopt under an adoption order, shall be deemed to be within the prohibited degrees of consanguinity, and the provisions of this subsection shall continue to have effect notwithstanding that some person other than the adopter is authorised by a subsequent order to adopt the same child.

## **203. Application of Work Injury Benefits Act**

For the purposes of the Work Injury Benefits Act, a child whom a deceased employee had been authorised to adopt under an adoption order shall be deemed to be a member of the family of the employee, and an adopter shall be deemed to be the parent of a deceased child whom he had been authorized to adopt.

**204. Orders and agreements in respect of child born outside marriage**

(1) Where an adoption order is made in respect of a child previously committed to the care of foster parents, a voluntary children's institution, a children's institution, or a rehabilitation school by a care order in force under this Act, the care order shall forthwith cease to have effect.

(2) Without prejudice to the right of any person to recover any arrears of contribution made under an order of the Court, a maintenance order made in respect of a child under this Act shall cease to have effect at the date of the adoption order.

**205. Intestacies and testamentary instruments**

(1) Where at any time after the making of an adoption order the adopter or the adopted child or any other person dies intestate in respect of any movable or immovable property, the property shall devolve in all respects as if the adopted child were a biological child of the adopter.

(2) The provisions of subsection (1) shall not apply to any property which is subject to a settlement or an entailed interest under a disposition made before the date of the adoption order in accordance with the law of succession.

(3) In any disposition of movable or immovable property made, whether by instrument inter vivos or by will, including a codicil, at the date of an adoption order

- (a) any reference, whether express or implied, to the child or children of the adopter shall be construed as, or as including, a reference to the adopted child;
- (b) any reference, whether express or implied, to the child or children of the adopted child's natural parents or either of them shall be construed as not being or as not including, a reference to the adopted child; and
- (c) any reference, whether express or implied, to a person related to the adopted child in any degree shall be construed as a reference to the person who would be related to him or her in that degree if he or she were the child of the adopter.

**206. Provisions supplementary to section 196**

(1) For the purpose of the application of any written law for the time being in force relating to the devolution of any property in accordance with section 205, and for purposes of the construction of any such disposition as is mentioned in that section, an adopted child shall be deemed to be related to any other person being the child or adopted child of the adopter or, in the case of a joint adoption, of either of the adopters—

- (a) where he or she was adopted by two spouses jointly and that the other person is the child or adopted child of both of them, as brother and sister of the whole blood; and
- (b) in any other case, as brother and sister of the half blood.

(2) Notwithstanding anything in section 205, trustees or personal representatives may convey or distribute any movable or immovable property to or among the persons entitled thereto without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution, but nothing in this

subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person other than a purchaser for value without notice, who may have received it.

(3) Where an adoption order is made in respect of a person who has previously been adopted, the previous adoption shall be disregarded, for the purposes of section 205, in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made after that date.

#### **207. Effect of inter-country adoptions**

(1) Where a child has been adopted, whether before or after the commencement of this Act, in any place, and the adoption is one to which this section and other written laws apply, the adoption shall have the same effect as an adoption order validly made under this Act.

(2) Subsection (1) shall apply to an adoption in any place outside Kenya if—

- (a) the adoption order was made by a Court of law in the Commonwealth and any Court of competent jurisdiction in any other country;
- (b) in consequence of the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted child in respect of the custody of the child; and
- (c) in consequence of the adoption, the adopter had, immediately following the adoption, according to the law of that country, a right superior or equal to that of any natural parent in respect of any property of the adopted person which was capable of passing to the parent or any property of the child dying intestate without other next of kin, and domiciled in that place where the adoption was made and a national of the country which had jurisdiction in respect of that place, but not otherwise.

(3) An adoption order made outside Kenya in favour of an adopter who is resident in Kenya shall be lodged in the Court within the period and in the manner specified in the rules made in accordance with this Act.

#### **208. Restriction on adoption arrangements**

(1) No adoption agency, institution, individual or public officer may make or facilitate the making of any arrangements for the adoption of a child under this Act unless the agency or institution is duly registered as an adoption society in accordance with this Act.

(2) An application for registration of an adoption society under this Act shall be made to the Secretary in the manner prescribed in regulations.

(3) Where an application is made, the Secretary shall refer the matter to the Council which may—

- (a) approve the application for registration;
- (b) refuse the application for registration on the ground that—
  - (i) a person taking part in the management or control of the society or a member of the society has been convicted of an offence under this Part, or has been guilty of breach of any regulations made under this Part; or
  - (ii) it would not be in the public interest to approve the application, having regard to the number of duly registered adoption

societies for the time being in active operation in the applicant's local limits.

(4) Where an application for registration is refused, no further application for registration of the adoption society may be made under this section within a period of six months with effect from the date on which the applicant is notified of the refusal.

(5) Where the Council approves the registration of an adoption society, the Council to issue a Certificate of Registration in the prescribed form.

(6) The Certificate of Registration issued under this section shall be valid for a period of twelve months from the date of registration and liable to review by the Council at the end of the term of registration whereupon the Committee shall recommend to the Council that the registration be either renewed for a further term of twelve months or cancelled with immediate effect.

(7) An appeal against the decision of the Council to recommend refusal or cancellation of the registration of an adoption society shall lie to the Cabinet Secretary.

(8) A person aggrieved by the decision of the Cabinet Secretary under subsection (7) may institute legal proceedings in court.

### **209. Certain offences relating to adoption**

(1) A person or association, whether incorporated or unincorporated) shall not willfully and without lawful justification take part in or facilitate the adoption of a child unless the association is registered as an adoption society.

(2) Any person who takes part in the management or control of a society or association, whether incorporated or unincorporated, for the purpose of making arrangements for the adoption of a child or children, but which is not registered for that purpose, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding two million shillings, or to both.

(3) A body corporate which contravenes a section under this Part commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings.

### **210. Functions of adoption societies**

The functions of an adoption society shall be—

- (a) to make such inquiries and investigations, and to cause such reports as shall be prescribed or as the Court may direct, to be obtained for the purpose of ensuring so far as may be possible, the suitability of the proposed adoption of a child;
- (b) to examine and interview any applicant for an adoption order and make such inquiries and investigations, and to cause such reports as may be prescribed in regulations to be obtained and lodged with the Court for the purpose of ensuring, so far as may be reasonably practicable, that the applicant is a fit person to be granted an adoption order;
- (c) to ensure that the parent or guardian of the child to whom the application relates understands the effect in relation to his rights as a parent or guardian, and of the making of an adoption order in respect of the child, and in this regard and whenever possible, to procure any

- consents to the adoption from the persons specified under section 186;
- (d) to prepare and submit records of children available for adoption to the Council;
  - (e) where the child in respect of whom arrangements for adoption are to be made appears to have been abandoned, to ensure that, as far as possible, all necessary steps are taken to trace the parents or relatives of the child;
  - (f) with the authority of the Secretary, but subject to the society's ability, to take care and possession of any child whose parent or guardian is desirous of giving the child up for adoption pending arrangements for adoption;
  - (g) when appointed by the Court to act as guardian *ad litem* in any adoption proceedings, to nominate a member or officer of the society to act as such;
  - (h) to make provision for the care and supervision of children who have been placed by their parents or guardians under the adoption society's care;
  - (i) to maintain a register and records in respect of all or any children in respect of whom arrangements for adoption have been made by the society, and the names and particulars of any applicants for adoption or of the adopters; and
  - (j) to perform such other duties as may be prescribed under this Act or any other written law.

#### **211. Adoption proceedings to be confidential**

(1) A member or officer of an adoption society, and a person having any official duty under or being employed in the administration of this Act, shall regard and deal with all documents and information relating to the adoption or proposed adoption of any child, or to any such child, or to the parent or guardian of such child, or to the proposed adopter of such child, as secret and confidential.

(2) A person in possession or control over any documents or records referred to in subsection (1), and who at any time communicates such information or anything therein contained, or makes any comments to any third person other than—

- (a) the Court, the Council, the Cabinet Secretary, the Registrar or any other member or officer of the society; or
- (b) an advocate representing the applicant or the guardian *ad litem* appointed under this Part, otherwise than for the purposes of this Act,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding two hundred thousand shillings, or to both.

(3) Without prejudice to subsection (2), nothing contained in this section shall apply to the communication of any document or information in good faith in the interest of the child to whom the records relate or of the parent or proposed adopter of the child.

(4) An officer or member of an adoption society, and a person engaged in any official duty as a servant or agent of any agency or institution charged with the administration of this Part, shall not be required to produce before any Court any

documents referred to in this section, or to divulge or communicate to any Court any information relating thereto, except as may be necessary for the purpose of—

- (a) carrying into effect the provisions of this Part; or
- (b) in order to bring or assist in the course of a prosecution of any person for any offence under this Part.

(5) The Cabinet Secretary may, by order in writing, exempt any person by name or office from the provisions of subsection (2).

### **212. Prohibition of certain payments**

(1) Subject to subsection (2)—

- (a) any adopter or any parent or guardian of a child who receives any payment or other reward in consideration of the adoption of a child under this Act; or
- (b) any person who—
  - (i) makes or gives or agrees to give to any adopter or any parent or guardian of the child any payment or other reward in consideration of the adoption of any child under this Act; or
  - (ii) makes arrangement for the adoption of a child and receives or makes or gives any payment or other reward in connection with the making of the arrangements,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.

(2) Subsection (1) shall not apply to—

- (a) any payment the making or receipt of which is sanctioned by the Court to which an application for an adoption order in respect of a child is made;
- (b) any payment made by or on behalf of an adoption society in respect of the maintenance of a child who has been placed at the disposition of the society;
- (c) any payment made to an adoption society by the parent or guardian of a child, or by any other person in respect of the maintenance of the child, so long as the child is not in the care and possession of a person who has adopted or proposes to adopt him or her, whether under an adoption order or any other order;
- (d) any payment made to an advocate representing any party in or in connection with an application for an adoption order, in respect of such application;
- (e) any voluntary contribution made by any person in good faith to, and declared in the books of, an adoption society; or
- (f) any fee prescribed by the Cabinet Secretary as payable to an adoption society in discharge of any of its functions under the Act or any other written law.

### **213. Restriction on advertisement**

(1) A person shall not knowingly publish or cause to be advertised any matter indicating that—

- (a) a parent or guardian of a child wishes to give up the child for adoption;

- (b) a person wishes to adopt a child;
- (c) any person, not being an adoption society, is willing to make arrangements for the adoption of a child; or
- (d) anything that is, considering the totality of the circumstances, demeaning or undermines the personal dignity of a child.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred thousand shillings, or to both.

#### **214. Offences under this Part**

Where any offence under any regulations made under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, member of a committee, secretary or other officer of the body, he or she, as well as the body corporate, shall be deemed to have committed that offence and shall be liable to the respective penal sanctions prescribed under this Act.

#### **215. Regulations**

The Cabinet Secretary shall make regulations for the better carrying into effect the provisions of this Part, and, without prejudice to the generality of this section, for any of the following purposes—

- (a) regulating and maintaining supervision over the activities of adoption societies and persons or associations purporting to assist in making arrangements for the adoption of children;
- (b) regulating and maintaining supervision over the activities of persons or associations purporting to assist in making arrangements for *kafaalah* and the manner in which such arrangements shall be conducted;
- (c) regulating the making of international adoptions and prescribing safeguards therefor;
- (d) prescribing the manner in which arrangements for adoption shall be conducted; or
- (e) prescribing any matter required to be prescribed under this Part.

#### **216. Rules of Court**

The Chief Justice may make rules of Court directing the manner in which applications may be made and judicial proceedings undertaken under this Part.

### **PART XV – CHILDREN IN CONFLICT WITH THE LAW**

#### **217. Application of Criminal Procedure Code**

(1) Notwithstanding the provisions of Part II of the Criminal Procedure Code, a Children's Court may try a child for any offence except the offence of murder.

(2) Reference to Subordinate Courts of any class in the First Schedule to the Criminal Procedure Code includes a Children's Court.

#### **218. Assessment of a child on arrest**

(1) A police officer who arrests, serves a summons or issues with a written notice to child shall notify the parent or guardian of the child and the Secretary or an authorised officer within twenty four hours.

(2) A Children's Officer who receives a notification under subsection (1) shall assess and submit a report to the police officer on—

- (a) a social inquiry on the child to ascertain the social, economic, personal circumstances, and the needs of the child;
- (b) the child's tendency to engage in activities which is in conflict with the law; and
- (c) the surrounding facts and circumstances leading to the child's conduct in conflict with the law.

(3) A Children's Officer shall assess a child under subsection (1) in an environment that is secure and is friendly to a child that may include a room in a police station, the children's Court or the offices of the Secretary.

(4) A Children's Officer shall assess a child in a manner that is conducive to ease and comfort a child and shall have regard to the best interest of a child.

(5) The assessment of a child for purposes of this section shall be carried out in accordance with the Fifth Schedule.

### **219. Power to remit cases to Children's Court**

(1) Subject to any rules or directions made or issued by the Chief Justice, where it appears to a court, other than a Children's Court, at any stage of the proceedings that a child is charged before it with an offence other than murder and is not charged together with a person or persons of or above the age of eighteen years, the court may, and where within the area of a subordinate court's jurisdiction there is established a Children's Court having jurisdiction, the subordinate court shall remit the case to a Children's Court;

Provided that nothing in this subsection shall be construed as preventing a court, if it considers in the circumstances, including the stage reached in the proceedings, that it is proper so to do, from proceeding with hearing and determination of the charge.

(2) Where in accordance with the provisions of subsection (1) of this section, a case is remitted to a children's court after a finding that the child charged is guilty of the offence, the Children's Court to which the case has been remitted may deal with the offender in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(3) No appeal shall lie against an order of remission made under this section, but nothing in this section shall affect any right of appeal against the verdict or finding on which such order under section 194 of this Act, he may appeal against such findings to the Court of Appeal.

(4) A court by which an order remitting a case to a Children's Court is made under this section may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail or bond until he can be brought before the Children's Court, and shall cause to be transmitted to the clerk of the Children's Court a certificate setting out the nature of the offence and stating the stage reached in the case, and that the case has been remitted for the purposes of being dealt with under this section.

(5) Where, pursuant to the provisions of section 182, a court other than a Children's court hears a charge against a child, the court shall apply all the provisions of this Act as relate to the safeguards to be accorded a child offender.



**220. Rights of a child offender**

(1) A child offender has the right to privacy during arrest, the investigation of the offence and at any other stage of the cause of the matter.

(2) A person shall not in the course of arrest, investigation or trial of an offence connected with a child offender, or at any other stage of the course of the matter, release any information for publication that may lead to the identification of the child offender.

(3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding 12 months, or to both.

**221. Criminal liability of a child**

(1) A person under the age of twelve years shall not be criminally responsible for any act or omission.

(2) A child who commits an offence while under the age of fourteen years shall be presumed not to be capable of differentiating between right and wrong, unless the Court is satisfied on evidence to the contrary.

(3) The provisions of this Part shall apply to a person who reaches the age of eighteen years before proceedings instituted against them pursuant to the provisions of this Act have been concluded.

**222. Right of a child to be heard in proceedings**

(1) Every child shall be afforded an opportunity to be heard in proceedings affecting the child, either directly or through a representative.

(2) Pursuant to the provisions of Article 50 of the Constitution, every child is entitled to the right to a fair trial, which shall include the presumption of innocence, the right to be notified of the charges preferred against him or her, the right to legal representation, the right to the presence of a parent or guardian, the right to present and examine witnesses, the right to remain silent, and the right to appeal at all stages of the proceedings.

(3) Parents, guardians and fit persons have the right to assist the child in proceedings under this Act, and whenever possible, to participate in decisions affecting them, unless their participation is not in the best interest of the child.

(4) The State shall put in place mechanisms to facilitate appropriate and effective communication with the child in conflict with the law in order to ensure the child's participation in the judicial proceedings, including the provision of interpreters, intermediaries, augmentative and alternative modes of communication in appropriate cases.

**223. Detention of children**

(1) Institutionalization and detention of children in conflict with the law pending trial shall be used as a means of last resort, and detention pending trial shall, as far as is reasonably practicable, be replaced by alternative measures, such as placement with a family or in an educational setting or home.

(2) A child shall be detained under conditions that take full account of the child's particular needs, status and special needs according to their age, gender and type of offence, as well as mental and physical health or disability, and protect them from harmful influence and situations of risk.

**224. Procedure in cases of children in conflict with the law**

A child in conflict with the law may be subjected to either of the following processes—

- (a) diversion in accordance with this Act; or
- (b) judicial process in accordance with the Criminal Procedure Code, subject to the provisions of this Part.

**225. Consideration of welfare**

(1) Every court in dealing with a child who is brought before it shall have regard to the best interests of the child and shall, in a proper case take steps for removing him or her from undesirable surroundings and for securing that proper provision may be made for his or her maintenance, education and training.

(2) Every child in remand or custodial care who is ill, or who complains of illness, whether physical or mental, shall be examined promptly by a qualified medical practitioner and treated.

**226. Objects of diversion**

The objects of diversion shall be to—

- (a) make use of alternative methods of holding children accountable for their unlawful acts or omissions resulting in harm to other persons;
- (b) promote the rehabilitation of the child, and re- integration of the child into the family and community;
- (c) provide an opportunity to those prejudicially affected by the unlawful conduct of the child to express their views concerning such conduct;
- (d) encourage symbolic restitution by the offending child as compensation for the harm caused to the aggrieved person;
- (e) promote reconciliation between the child and the person or community affected by the harmful conduct of the child; and
- (f) minimize stigmatization of the child, and prevent adverse consequences likely to arise from his or her subjection to the criminal justice system.

**227. When to consider diversion**

(1) Notwithstanding any provision of this Act or any other written law, any authorised officer or judicial officer dealing with any matter in which a child is suspected of, or charged with, the commission of an offence shall, where the child is eligible for diversion under this Act, in the first instance, consider that child for diversion.

(2) A child is eligible for diversion if—

- (a) there is compelling evidence that the child committed the alleged offence;
- (b) the child freely and voluntarily admits responsibility, and no intimidation or pressure has been used to induce that admission;
- (c) the offence which he or she is suspected to have committed or charged with is not a capital offence;
- (d) the child and his or her parent or guardian, or other person exercising parental responsibility over the child, consent to diversion;

- (e) the concerns of the victim or the victim's next of kin have been considered; and
- (f) the child is a first or second offender.

**228. Preliminary inquiry**

(1) A preliminary inquiry shall be held in respect of every child prior to plea in accordance with rules made under this section, except where the child is below the age of twelve years, or the matter has been withdrawn.

(2) A child's appearance at a preliminary inquiry shall be regarded as his or her first appearance in a Court as contemplated in the Criminal Procedure Code (Cap. 75).

(3) The objectives of a preliminary inquiry shall be to—

- (a) consider the assessment report of the children's officer, probation officer and the Director of Public Prosecutions, particularly with reference to—
  - (i) the age or estimated age of the child, if the age of the child is unknown;
  - (ii) the criminal responsibility of the child if the child is between the age of twelve years and fourteen years; and
  - (iii) whether a further and more detailed assessment of the child is required;
- (b) establish whether the matter can be diverted before plea;
- (c) where applicable, identify a suitable diversion option;
- (d) establish whether the case should be transferred to a Children's Court;
- (e) ensure that all available information relevant to the child, his or her circumstances, and the offence is considered in order to make a decision on diversion and placement of the child;
- (f) ensure that the views of all person's present are considered before a decision is taken;
- (g) encourage the participation of the child and his or her parent, guardian or fit person in decisions concerning the child; and
- (h) determine the release or placement of the child pending—
  - (i) conclusion of the preliminary inquiry;
  - (ii) appearance of the child in a Court; or
  - (iii) referral of the matter to the children's Court.

(4) The Chief Justice may make Rules of procedure for the conduct of a preliminary inquiry under this Section.

**229. Determination of a child's age**

If the age of a child is uncertain, the magistrate shall estimate the child's age based on—

- (a) a previous determination of age by a magistrate under this Act or any other written law;
- (b) statements made by a parent, guardian or any other person likely to have direct knowledge of the age of the child, or a statement made by the child in that regard;

- (c) a baptismal certificate, school registration form or school report, or other information of a similar nature;
- (d) an estimation of age made by a medical practitioner; or
- (e) a report of a social worker, children officer or other authorised officer in that regard.

**230. Levels of diversion**

(1) The Magistrate conducting the preliminary inquiry contemplated under section 228 may apply any of the diversion options under this section to a child who is eligible for diversion.

(2) There shall be three levels of diversion ranging from the lowest to the highest option as follows—

- (a) level one diversion options which shall include—
  - (i) an oral or written apology to a specified person or persons;
  - (ii) a formal caution in the prescribed manner with conditions;
  - (iii) placement under a supervision and guidance order for a period not exceeding three months;
  - (iv) placement under a reporting order for a period not exceeding three months;
  - (v) placement under a family time order for a period not exceeding three months;
  - (vi) placement under a good-behavior order for a period not exceeding three months;
  - (vii) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place or places;
  - (viii) referral to counseling or psychotherapy for a period not exceeding three months;
  - (ix) compulsory attendance at a specified centre or place for a specified or educational purpose for a period not exceeding five hours each week, for a maximum of three months;
  - (x) symbolic restitution to a specified person, persons, group or institution;
  - (xi) restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored; or
  - (xii) such other diversion options as may be prescribed in Regulations;
- (b) level two diversion options which shall include—
  - (i) the options referred to under paragraph (a) but the maximum periods contemplated in that subsection shall, for the purposes of this subsection, be extended to six months;
  - (ii) compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a period not exceeding six months;
  - (iii) performance of community service in accordance with the provisions of the Community Service Orders Act (Cap. 93);

- (iv) provision of a specified sum or benefit to a specified victim or victims;
  - (v) payment of compensation up to a maximum of five thousand shillings to a specified person, persons, group or institution;
  - (vi) referral to appear at a family group conference; or
  - (vii) a combination of any two or more of the options specified in this subsection;
- (c) level three options which shall include—
- (i) the options referred to in paragraph (b), but the maximum periods contemplated in that subsection shall, for the purposes of this subsection, be extended to twelve months;
  - (ii) referral to a programme that does not exceed six months, and which has a residential element that does not exceed thirty-five days in total, and twenty-one consecutive days during the operation of the programme;
  - (iii) performance of some service without remuneration for the benefit of the community in accordance with the Community Service Orders Act (Cap. 93); or
  - (iv) compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding six months, and for not more than thirty-five hours in any one week.

### **231. Power of Court in diversion**

Upon ordering diversion, the magistrate conducting the inquiry or proceedings shall identify a children's officer, a probation officer, or any other suitable person to monitor the child's compliance with the identified diversion option.

### **232. Family Group Conference**

(1) If a child has been referred to appear at a family group conference, a children officer appointed by the magistrate conducting the inquiry shall, within at least fourteen days, but not more than twenty-one days after such referral, convene the conference by—

- (a) setting the time and place of the conference; and
- (b) taking steps to ensure that all persons who are required to appear at the conference are given adequate notice of the time and place appointed for the conference.

(2) The following persons shall attend a family group conference—

- (a) the child and his or her parent, guardian, or other fit person exercising parental responsibility over the child;
- (b) a children officer;
- (c) a probation officer;
- (d) the Director of Public Prosecution; and
- (e) the victim of the alleged offence.

(3) The following persons may attend a family group conference—

- (a) any person requested by the child;
- (b) the legal representative of the child;

- (c) a member of the community in which the child ordinarily resides; and
- (d) a counsellor or psychologist.

(4) If a family group conference fails to take place at the time and place set for the conference pursuant to subsection (1), the children officer shall, in consultation with the Director of Public Prosecutions, convene another conference within fourteen days.

(5) The primary function of the family group conference shall be to discuss the offence committed by a child in conflict with the law, so that the child may understand the impact of their offence, acknowledge it and obtain support for the reform of his or her behavior.

(6) The participants in a family group conference shall act in accordance with the procedure agreed on by all the parties, who may agree to such a plan in respect of the child as they consider appropriate.

(7) The plan contemplated in subsection (6) may include all or any of the following matters—

- (a) the application of any diversion option contemplated in this Part; or
- (b) any other plan appropriate to the child, his or her family and local circumstances that is consistent with the principles contained in this Act.

(8) A plan contemplated under subsection (7) shall—

- (a) specify the objectives in relation to the child and the period within which they are to be achieved;
- (b) contain details of the services and assistance to be provided for the child, the parent, guardian or other fit person having parental responsibility over the child;
- (c) specify the person or organisations mandated to provide such services and assistance;
- (d) state the responsibilities of the child and of the child's parent or guardian, or fit person having parental responsibility over the child;
- (e) state personal objectives for the child and for the child's parent, guardian or fit person; and
- (f) include such other matters relating to the education, vocational training, recreation and welfare of the child as are relevant.

(9) The children officer shall record the details of, and reasons for, any plan agreed to at the family group conference, and shall furnish a copy of the record to the child, the magistrate conducting the preliminary inquiry and the Director of Public Prosecutions.

(10) In the event of the child's failure to comply with any condition of the plan agreed on at the family group conference, the officer or other person shall notify the magistrate conducting the inquiry and the Director of Public Prosecutions, in writing, of such failure, in which case the matter shall be set down for hearing at the Children's Court.

(11) If the participants in a family group conference do not agree on a plan, the conference shall be closed and the children officer shall remit the matter to the magistrate conducting the inquiry for consideration of an alternative diversion option.

(12) The proceedings at a family group conference shall be confidential, and no statement made by any participant in the conference may be used as evidence in any subsequent Court proceedings.

**233. Assistance to child offender in court**

The Children's Court shall at the commencement of the proceedings in court, inform the child in a language that the child understands of—

- (a) the right to remain silent;
- (b) the right to have a parent, guardian, close relative or probation officer present at the proceedings;
- (c) the right to legal representation; and
- (d) the right to legal aid.

**234. Rules**

The Chief Justice shall make Court rules of practice and procedure in diversion.

**235. Guarantees to a child accused of an offence**

Every child accused of having violated any rule of law shall—

- (a) be promptly and directly informed of the charges against him or her;
- (b) be provided by the state with legal assistance in the preparation and presentation of his or her defence;
- (c) have the matter determined without delay;
- (d) not be compelled to testify or make a confession in respect of the alleged offence;
- (e) have free assistance of an interpreter if the child cannot understand or speak the language in which the proceedings are conducted;
- (f) if found guilty of the offence, have the right to apply for review of decisions and any punitive measures imposed by the trial Court;
- (g) have his or her privacy respected at all stages of the proceedings;
- (h) if the child has a disability, be accorded reasonable accommodation in respect of his or her special needs and respect for his or her personal dignity on an equal basis with others; and
- (i) if the child is not released on bond, he or she shall be placed in a Children Remand Home or Child Protection Unit.

**236. Duty to provide for the welfare of a child**

(1) In dealing with a child brought before it, the Court shall have regard to the best interest of the child, and shall take appropriate steps to remove the child from any undesirable surroundings, and to ensure that proper provision has been made for the child's maintenance, education and training.

(2) If a child held in remand or custodial care becomes ill, or complains of any ailment, the officer under whose charge the child is entrusted shall ensure that the child is examined by a competent medical practitioner and accorded appropriate medical care.

(3) A child with special needs placed in remand or custodial care shall—

- (a) be treated fairly;
- (b) receive no less care, protection, assistance, treatment and training, than other children; and

(c) be given special attention to their personal and special need.

(4) The parents and guardian of a child offender placed in remand or custodial care shall have the right to access the child in the interest and wellbeing of the child.

### **237. Words "conviction" and "sentence" not to be used of child**

(1) The words "conviction" and "sentence" shall not be used in relation to a child being dealt with by the Children's Court.

(2) Without prejudice to the generality of subsection (1), any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order upon such a finding, as the case may be.

### **238. Restriction on punishment**

(1) No court shall order the imprisonment of a child.

(2) Notwithstanding the nature of any offence punishable by death, no court shall impose the death penalty on a child on a finding of guilty for such an offence.

(3) A Children's Court shall not make any order to send a child under the age of twelve years to a rehabilitation school.

(4) The performance of community service under an order of the Court shall be in accordance with the Community Service Orders Act (Cap. 93).

### **239. Methods of dealing with children in conflict with the law**

(1) Where a child is tried for an offence, and the Court is satisfied as to their guilt, the Court may deal with the case in one or more of the following ways—

- (a) discharge the child under section 35(1) of the Penal Code (Cap. 63);
- (b) discharge the child on his or her entering into a recognisance, with or without sureties;
- (c) make a probation order against the offender under the provisions of the Probation of Offenders Act;
- (d) commit the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake the care of the offender;
- (e) if the child is between twelve years and fifteen years of age, order that the child be sent to a rehabilitation institution suitable to the child's needs and circumstances;
- (f) order the child to pay a fine, compensation or costs, or any or all of them, having regard to the means of the child's parents or guardian;
- (g) in the case of a child who has attained the age of sixteen years, deal with the child in accordance with the Borstal Institutions Act;
- (h) place the child under the care of a qualified counsellor or psychologist;
- (i) order that the child be placed in an educational institution or vocational training programme;
- (j) order that the child be placed in a probation hostel under the provisions of the Probation of Offenders Act;
- (k) make a community service order;
- (l) make a restorative justice order;
- (m) make a supervision order;



- (n) make any other orders of diversion provided for in this Part; or
- (o) deal with the child in any other lawful manner as may be provided under any written law.

(2) A child against whom a community service order has been made may, having regard to the child's age and development, be required to perform the service without remuneration, or for the benefit of the community, under the supervision or control of an organisation or institution identified by the probation officer.

(3) In addition, or as an alternative, to the orders prescribed in subsection (2), the Court may impose on a child such other sanctions as the Court may consider just.

(4) Any community service performed by a child shall be for a maximum period of fifty hours, and shall be completed within a period not exceeding six months.

(5) If a child fails to comply with any condition imposed on diversion, the Court shall make such orders as it considers fit, including an order directing that the child to be subjected to an alternative level of diversion.

(6) The orders imposed on a child upon a finding of guilt shall be proportionate to the circumstances of the child, the nature of the offence and the public interest, and a child shall not be treated more severely than an adult would have been treated in the same circumstances.

#### **240. Mental treatment**

If it appears to the Court on the evidence of a medical practitioner or professional counsellor that a child requires, or may benefit from, mental treatment or professional counselling, the Court may, when making a probation order against him, require that the child undergoes mental treatment or professional counselling at the hand or under the direction of a medical practitioner or professional counsellor, subject to review by the Court, and as a condition of the probation order.

#### **241. Power to order parent to pay fines, etc.**

(1) In any case where a child is charged with an offence for which a fine, compensation or costs may be imposed, and the Court is of the considered view that the case would best be met by imposition of a fine, compensation or costs, whether with or without any other punishment, the Court shall order that the fine, compensation or costs imposed or awarded be paid by the child's parent or guardian.

(2) Where a child is charged with an offence, the Court may order his or her parent or guardian to give security for his or her good behaviour.

(3) An order under this section may be made against a parent or guardian who, having been required to attend before the Court, has failed to do so, but the Court shall not make any order in that regard without giving the parent or guardian an opportunity to be heard.

(4) Any sums imposed and ordered to be paid by a parent or guardian under this section, or forfeiture of any security required under this Part, may be recovered from him or her in a like manner as if the order had been made on conviction of the parent or guardian of the child.

(5) A parent or guardian of a child may appeal to the High Court against an order made by a Children's Court under this section.

**242. Special police unit**

A special police unit shall be designated by the Inspector General to—

- (a) deal with children matters;
- (b) prevent and control child offences;
- (c) apprehend child offenders;
- (d) investigate child offences; and
- (e) perform such other functions as may be referred to the unit by this Act or by regulations under this Act or by any other enactment.

**243. Proceedings in respect of offences committed by a child**

The Chief Justice may make rules of court directing the manner in which proceedings in respect of a child accused of having infringed any law shall be conducted.

**PART XVI – MISCELLANEOUS****244. Appeals to the Cabinet Secretary**

(1) A person aggrieved by any act of the Secretary or an authorised officer in exercise of powers conferred by this Act may appeal to the Cabinet Secretary within fourteen days.

(2) An appeal under subsection (1) shall be made in the prescribed form.

(3) The Cabinet Secretary shall make regulations prescribing the procedure of appeal under this section.

**245. Code of conduct**

The Council shall develop a code of conduct for its members and staff.

**246. General penalty**

A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding two hundred thousand shillings, or to both.

**247. General power to make regulations**

Subject to the provisions of this Act, the Cabinet Secretary may make regulations—

- (a) to prescribe anything that may be prescribed under this Act; or
- (b) generally for the better carrying out of the provisions of this Act.

**248. Grants and expenses of the Cabinet Secretary**

(1) There shall be paid out of moneys provided by Parliament and County governments—

- (a) such sums on such conditions as the Cabinet Secretary may prescribe towards—
  - (i) the expenses incurred by rehabilitation schools, child rescue centres, child protection centres and children's remand homes; or
  - (ii) expenses incurred by the Secretary in the administration of services to children in need of care and protection;

- (b) such grants or grants in aid to adoption societies and foster parents or charitable children's institutions as may be authorised by the Cabinet Secretary from time to time; or
- (c) any other expenses incurred by the Cabinet Secretary and the Secretary in the administration of this Act.

(2) A children's institutions that receives public funds under this Act shall keep proper books and records of account of the income, expenditure, assets and liabilities of the institution with respect to public funds in accordance with the Public Finance Management Act (Cap. 412A).

(3) The accounts of the children institutions that receives public funds shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act (Cap. 412B).

#### **249. Repeals**

(1) The Children Act (No. 8 of 2001) is repealed.

(2) Without prejudice to the generality of the application of section 3 of the Interpretation and General Provisions Act (Cap. 2), the transitional provisions set out in the Seventh Schedule shall have effect upon the commencement of this Act.

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#### **250.**

[Spent]

#### **FIRST SCHEDULE**

[s. 8(1)]

#### **BEST INTEREST CONSIDERATIONS**

1. The age, maturity, stage of development, gender, background and any other relevant characteristic of the child.
2. Distinct special needs (if any) arising from chronic ailment or disability.
3. The relationship of the child with the child's parent(s) and/or guardian(s) and any other persons who may significantly affect the child's welfare.
4. The preference of the child, if old enough to express a meaningful preference.
5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
6. The stability of any proposed living arrangements for the child;
7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
8. The child's adjustment to the child's present home, school and community.
9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian(s), including physical access.
10. The capacity of each parent and/or guardian(s) to cooperate or to learn to cooperate in child care.
11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.

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- 12.** The effect on the child if one parent/guardian has sole authority over the child's upbringing.
- 13.** The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
- 14.** The existence of any history of child abuse by a parent and/or guardian(s); or anyone else residing in the same dwelling as the child.
- 15.** Where the child is under one year of age, whether the child is being breast-fed.
- 16.** The existence of a parent's or guardian(s) conviction for a sex offense or a sexually violent offense under the Sexual Offences Act.
- 17.** Where there is a person residing with a parent or guardian, whether that person —
- (a) been convicted of a crime under this Act, the Sexual Offences Act (Cap. 63A), the Penal Code (Cap. 63), or any other legislation.
  - (b) has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
- 18.** Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child.

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## SECOND SCHEDULE

[s. 43(4)]

### CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

- 1.**(1) The Council shall have at least four meetings in each calendar year, and not more than four months shall pass between one meeting of the Council and the next meeting.
- (2) The Chairperson may at any time, and shall within fourteen days of receipt of a written request by at least three of the members of the Council, convene a special meeting of the Council.
- 2.** The Chairperson shall preside at every meeting of the Council at which the Chairperson is present, and in the absence of the Chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
- 3.** The quorum for a meeting of the Council shall be five, three of whom shall be —
- (a) the Chairperson or Secretary to the Council;
  - (b) the Principal Secretary, in the Ministry responsible for Children affairs; and
  - (c) a representative of any of the sectors specified in section 43 (f) or (g).
- 4.** The decisions of the Council shall be carried by a majority of the members present and voting and in the event of an equality of votes the Chairperson shall have a casting vote.
- 5.**(1) If any person is present at a meeting of the Council or any committee at which any matter which is the subject of consideration is a matter in which

that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as reasonably practicable after the commencement of the meeting declare such interest and shall not, unless the Council or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question connected to such matter.

- (2) The disclosure of interest shall be recorded in the minutes of the meeting at which it is made.
6. Subject to paragraph 2, no proceedings of the Council shall be invalid by reason of a vacancy in the Council.
7. All instruments made by, and all decisions of the Council shall be signified under the hand of the Chairperson or secretary.
8. Except as is otherwise provided by this Schedule, the Council may regulate its own proceedings.

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### THIRD SCHEDULE

[s. 66(2), 144 (aa), 174, 186(6)]

#### OFFENCES DISQUALIFYING APPLICANTS FROM ADOPTION

1. Any sexual related offence.
2. Any offence related to robbery.
3. Indecent assault the involving the infliction of grievous bodily harm.
4. Indecent assault on a person under the age of 16 years
5. Any offence related to drug trafficking.
6. Any offence relating to—
  - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;
  - (b) the possession of a firearm, explosives or armament
7. Any offence relating to exchange, control, corruption, extortion, fraud, forgery or uttering—
  - (a) involving amounts of more than KShs. 50,000.00; or
  - (b) any conspiracy or incitement to commit any offence referred to in this Schedule or an attempt to commit any of the offences referred to in this Schedule.
8. Any offence relating to trafficking in persons.

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### FOURTH SCHEDULE

[s. 146(3)]

#### OFFENCES REQUIRING RECORD AND PRESERVATION OF INFORMATION WITH REGARD TO THE CONDITION OF THE CHILD

Offences under the Penal Code (Cap. 63)

Section 146—Defilement of idiots or imbeciles  
Section 151—Detention of females for immoral purposes  
Section 157—Conspiracy to defile  
Section 162—Unnatural offences  
Section 250—Common assault  
Section 251—Assault causing actual bodily harm  
Offences under the Sexual Offences Act (Cap. 63A)

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**FIFTH SCHEDULE**

[s. 218(5)]

**PART A- ASSESSMENT OF A CHILD  
WHO IS IN CONFLICT WITH THE LAW**

- 1.** A child shall be present at the child's assessment, and nothing prevents the children's officer from requiring the presence of the parent, guardian or other fit person at the assessment of the child.
- 2.** A children's officer may, at any time before the assessment of a child, issue a notice in the prescribed manner to a parent or guardian of the child or a fit person to appear at the assessment of the child.
- 3.** A notice contemplated in subparagraph (2) shall be delivered by a police officer upon the request of the children's officer in the prescribed manner.
- 4.** A person who has been notified pursuant to subparagraph (2) may apply to the children's officer not to attend the assessment, and if the children's officer exempts the person from attending the exemption, he or she shall indicate so in writing.
- 5.** A person notified in terms of subparagraph (2) and not exempted in terms of subparagraph (4) who fails to attend the assessment, commits an offence and shall be liable upon conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months, or both.
- 6.** A children's officer may request a police officer, in the prescribed manner, to—
  - (a) obtain any relevant documentation required for the completion of assessment of a child;
  - (b) locate a child's parent or guardian or a fit person.
- 7.** The children's officer shall make every effort to locate a parent or guardian or fit person for the purposes of concluding the assessment of a child.
- 8.** A children's officer shall, in a language that the child understands—
  - (a) explain the purpose of assessment to the child;
  - (b) inform the child of his or her rights in the prescribed manner;
  - (c) explain to the child the immediate procedures to be followed in terms of this Act;
  - (d) ascertain whether the child understands the information provided under (a), (b), (c) and record the child's response;

Children

- (e) estimate the age of the child if it is uncertain to determine the criminal responsibility of the child;
- (f) if the children’s officer is certain that the child is above the age of twelve years, or understands right from wrong if the child is below the age of fourteen, determine if the child was used by an adult to commit the offense;
- (g) gather information relating to any previous convictions, any previous diversions, and any pending charges against the child;
- (h) formulate recommendations on the possible release or detention and placement of the child;
- (i) formulate recommendations on whether the matter should be referred to a children’s Court, together with reasons; and
- (j) any other information that the children’s officer considers important for the promotion of the best interests of the child, or any other objects of this Act.

9. The children’s officer may, at any stage during the assessment of a child, consult with—

- (a) the Director of Public Prosecutions or a prosecutor duly designated by the Secretary;
- (b) the police officer who arrested the child, served the summons, issued the written warning or is responsible for the investigation of the matter; or
- (c) any person who may provide information necessary for the assessment.

10. The children’s officer may contact or consult any person who is not present at the assessment and who has any information relating to the assessment, and if such additional information is obtained, the child shall be informed of such information.

11. The children’s officer shall encourage the participation of the child during the assessment process.

12. The assessment report together with any relevant documentation to the inquiry shall be submitted by the children’s officer to the magistrate conducting the preliminary inquiry before the child's appearance at the preliminary inquiry.

13. The children’s officer shall complete an assessment report in accordance with the Part B of this’ Schedule.

**Part B - ASSESSMENT FORM**

1. Personal details of the Child:

- (1) Name of Child .....
- (2) Gender of Child .....
- (3) Age of child .....
- (4) Means through which age of child is ascertained .....

2. Details on the following—

- (a) Where and with whom the child lives;
- (b) Whether the child has been receiving formal education;

*Children*

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- (c) Whether the child has a disability, and in particular, information regarding a child's mental health;
  - (d) Whether the child has been subjected to physical or sexual abuse abuse;
  - (e) Whether the child has been exposed to domestic violence;
  - (f) Whether the child is engaged in any work likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;
  - (g) Whether the child is displaced as a consequence of war, civil disturbances or natural disasters;
  - (h) Whether any of the offences mentioned in the Fourteenth Schedule have been committed against the child, or if he is a member of the same household as a child against whom such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child;
- (a) whether the child is engaged in the use of, or trafficking of drugs or any other substance that may be declared harmful by the Cabinet Secretary responsible for health;
  - (b) the social circumstances of the child;
  - (c) information relating to any previous convictions, any previous diversions or any pending charges against the child;
  - (d) recommendations on the next steps including:
    - (i) where appropriate, prospects of diversion of the matter;
    - (ii) possible release of the child into the care of a parent or a guardian or a fit person, if the child is in detention;
    - (iii) the transfer of the matter to a children's Court, stating reasons for such a recommendation.

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 SIXTH SCHEDULE

[s. 218(5)]

*SPENT*

## SEVENTH SCHEDULE

[s. 249(2)]

## TRANSITIONAL PROVISIONS

**1. Local Authorities**

The county governments responsible for the areas falling under the local authorities appointed under section 41 of the Children Act 2001 (repealed) shall be the county government entities for purposes of this Act.

**2. Existing Offices**

(1) A person who immediately before the coming into force of this Act held or was acting in an office of emolument under the repealed Act shall, as far as it is consistent with this Act, be deemed to have been appointed as from the coming into force of this Act to hold, or to act in, that office or the equivalent office under this Act.



(2) A person who before coming into force of this Act would have been required under law to vacate office at the expiration of a period of service or on their attainment of an age specified under the applicable law shall, despite paragraph 2, vacate office at the expiration of that period or on the attainment of that age.

(3) This paragraph does not affect any powers conferred by or under this Act or any other law on a person or an authority to make provision for the abolition of an office, for the removal from office on stated and reasonable grounds of persons holding or acting in that office and from requiring persons to retire from office.

### 3. Pending Matters

Where a matter or thing has been commenced before the coming into force of this Act by a person or an authority having power in that behalf under the repealed Act, that matter or thing may be carried on and completed by that person or authority on or after the commencement and it shall not be necessary for that person or authority to commence that matter or thing *de novo*.

### 4. Succession to Property

(1) The property and the assets which immediately before the coming into force of this Act were vested in an authority or a person for the purposes of, or in right of, the Republic or in the government shall, on the coming into force of this Act, without further assurance than this paragraph, vest in the authority or person.

(2) Where immediately before the coming into force of this Act a person or authority held property or assets in trust for a child or an authority for the purposes of, or in right of, the child or Republic that person or authority shall on the coming into force of this Act hold that property or those assets on the like trust for the purposes of, or in the right of, the child or Republic.

### 5. Devolution of Other Rights

(1) Subject to this schedule—

- (a) where, under an existing law, a function, prerogative, privilege or right is vested in a person or in an authority, that function, prerogative, privilege or right shall vest, on the coming into force of this Act, in the appropriate person or authority under this Act, and accordingly that person or authority may do the things necessary for the exercise or the performance; and
- (b) a function, obligation, privilege or right vested in the State shall continue to be vested.

(2) For the purposes of subparagraph (1), "functions" includes powers and duties.

### 6. Legal Proceedings

(1) Subject to this Schedule, legal proceedings pending immediately before the coming into force of this Act before a court of competent jurisdiction, including proceedings against or by the State, shall not be affected by the coming into force of this Act, and may be continued.

(2) Where proceedings for an offence against any person were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, tried and determined in accordance with this Act, and the forfeiture, penalty or punishment in respect of that offence shall, subject to subparagraph (3), be imposed as if this Act had not come into force.

(3) Where under this Act the forfeiture, penalty or punishment is mitigated or reduced in relation to the forfeiture, penalty or punishment that would have been applicable had this Act not come into force, the provisions of this Act relating to forfeiture, penalty or punishment shall apply.

(4) Where proceedings for an offence against any person are commenced after the coming into force of this Act—

- (a) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;
- (b) where the offence was committed before the coming into force of this Act, the forfeiture, penalty, or punishment to be imposed on conviction for that offence shall be the forfeiture, penalty or punishment authorised or required to be imposed by this Act or by the law that would have applied had not this Act come into force, but the lesser of the two forfeiture, penalties or punishments shall be awarded; and
- (c) where the offence is committed after the coming into force of this Act, the forfeiture penalty or punishment to be imposed on conviction for that offence shall be the forfeiture, penalty or punishment authorised or required to be imposed.

**7.** A direction, notice, order, permit or any other document that was granted, issued or made under the repealed Act, and that was valid immediately before the coming into force of this Act, shall be given effect as if granted, issued or made under this Act.

**8.** A children's institution that was receiving public funds for implementing functions under the repealed Act shall, upon the coming into force of this Act, continue to discharge its functions for period not exceeding two years and shall within that period—

- (a) apply to the Cabinet Secretary for designation as a children rescue under this Act;
- (b) apply to the Council for registration and approval of its child welfare programme under this Act.

**9.** In any document, enactment or instrument, a reference to the Council, or to the Adoption Society, under the repealed Act, shall be read and construed as a reference to the Council, or to the Adoption Society, under this Act.

**10.** The Cabinet Secretary may, by statutory instrument, make the consequential, incidental or supplemental provisions which are expedient or necessary for the purpose of giving full effect to the transfer or assignment, by or under this Act, of a function.

**11.** A function transferred under this Act includes the transfer of any liabilities, property or rights incurred, held or enjoyed by an authority or a person in connection with the function transferred.

**12.** The provisions of the Interpretation and General Provisions Act relating to implied powers shall apply to the authority or person to which or to whom a transfer of a function is made under this Act.

**13.** Where a difficulty arises with respect to a transitional provision in this Schedule, the Cabinet Secretary may, by statutory instrument, make the adaptations or modifications as shall—

- (a) prevent an anomaly that has arisen; or
- (b) satisfactorily deal with the difficulty that has arisen.

**14. A transferred officer—**

- (a) shall hold office by the same tenure and any other terms and conditions of service; and
- (b) shall be paid emoluments not less than those that were payable to that officer immediately before the transfer, as if this Act had not been enacted.

**15. In this Schedule, "function" includes powers and duties.****16. Children Institutions**

(1) A Charitable Children's Institution that is registered under section 65 of the Children Act, 2001 shall not undertake any activity after ten years from the date of the commencement of this Act.

(2) The Cabinet Secretary shall, in consultation with Council, make regulations for carrying out the provisions of sub-paragraph (1).

(3) Without prejudice to the generality of sub-paragraph (2), the regulations shall provide for—

- (a) the date that all Charitable Children's Institution shall stop operating; or
- (b) the transfer of a child who is a resident at a charitable children institution to an existing institution managed or supported by the government.

**17. Adoption**

The terms of the Moratorium on inter-country and resident adoptions issued on 26th November 2014 shall apply to matters relating to inter-country adoption under this Act.

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