

**REPUBLIC OF KENYA**  
**TWELFTH PARLIAMENT – (SIXTH SESSION)**  
**THE NATIONAL ASSEMBLY**  
**ORDERS OF THE DAY**  
**THURSDAY, MAY 12, 2022 AT 2.30 P.M.**  
**ORDER OF BUSINESS**

**PRAYERS**

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Questions and Statements

**8\*. MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE NATIONAL DISASTER RISK MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 28 OF 2021)**

(The Leader of the Majority Party)

**THAT**, this House do agree with the Report of the Committee of the whole House on its consideration of the National Disaster Risk Management Bill (National Assembly Bill No. 28 of 2021).

*(Report, Question to be put and Third Reading)*

**9\*. MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE CHILDREN BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2021)**

(The Chairperson, Departmental Committee on Health)

**THAT**, this House do agree with the Report of the Committee of the whole House on its consideration of the Children Bill (National Assembly Bill No. 38 of 2021) and *seek leave to sit again*.

*(Progress report and Question to be put)*

**10\*. COMMITTEE OF THE WHOLE HOUSE**

- (i) The Children Bill (National Assembly Bill No.38 of 2021)  
 (The Leader of the Majority Party)

*(To resume from Clause 35)*

- (ii) The National Government Constituencies Development Fund (Amendment) Bill, (National Assembly Bill No. 4 of 2021)  
(The Chairperson, Select Committee on National Government Constituencies Development Fund)

**11\*. THE PROMPT PAYMENT BILL (SENATE BILL NO. 16 OF 2021)**  
(The Chairperson, Departmental Committee on Finance and National Planning)

Second Reading

**12\*. THE STARTUP BILL (SENATE BILL NO. 1 OF 2021)**  
(The Chairperson, Departmental Committee on Communication, Information and Innovation)

Second Reading

**13\*. THE MUNG BEANS BILL (SENATE BILL NO. 9 OF 2020)**  
(The Chairperson, Departmental Committee on Agriculture and Livestock)

Second Reading

**14\*. THE COUNTY BOUNDARIES BILL (SENATE BILL NO. 20 OF 2021)**  
(The Chairperson, Departmental Committee Justice and Legal Affairs)

Second Reading

**15\*. MOTION - ESTABLISHMENT OF A PARLIAMENTARY HEALTH SERVICES UNIT**  
(The Chairperson, Committee on Members’ Services and Facilities)

**THAT**, this House adopts the Report of the Select Committee on Members’ Services and Facilities on Establishment of a Parliamentary Health Services Unit laid on the Table of the House on Wednesday, August 11, 2021.

**16\*. MOTION - STUDY VISIT TO THE LEGISLATIVE ASSEMBLY OF ALBERTA, CANADA**  
(The Chairperson, Committee on Members’ Services and Facilities)

**THAT**, this House adopts the Report of the Committee on Members’ Services and Facilities on a Study Visit to the Legislative Assembly of Alberta, Canada undertaken from 14th to 18th October 2019, laid on the Table of the House on Tuesday, December 1, 2020.

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**\*Denotes Orders of the Day\***

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# **N O T I C E**

## **THE CHILDREN BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2021)**

- 1) Notice is given that the Chairperson of the Departmental Committee on Labour and Social Welfare intends to move the following amendments to the Children Bill (National Assembly Bill No. 38 of 2021) at the Committee Stage—

### LONG TITLE

**THAT**, the Bill be amended by deleting the long title and substituting therefor the following-

“**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 “

### CLAUSE 2

**THAT** clause 2 of the Bill be amended—

- (a) in the proposed definition of the term “abandoned” by deleting the word “of” appearing immediately after the word “period” in paragraph (b);
- (b) in the proposed definition of the term “child abuse” by deleting the words “failing to adequately supervise or protect the child” in paragraph (a) and substituting therefore the words “acts intended to cause harm or negligent acts or omissions that cause harm”;
- (c) by deleting the definition of the term “approved officer”;
- (d) in the proposed definition of the term “children’s rescue center” by inserting the word “by the Cabinet Secretary” immediately after the word “established”;
- (e) in the proposed definition of the term “children’s remand home” by deleting the word “are” appearing immediately after the word “law” and substituting therefor the words “maybe”;
- (f) by deleting the definition of the term “Director”;
- (g) by deleting the definition of the term “National Adoption Committee” ;
- (h) in the proposed definition of the term “nursery” by deleting the words “for reward” and substituting therefor the words “at a fee”;

- (i) in the proposed definition of the term “place of safety” by deleting the words “fit person” and substituting therefor the words “school, feeding centre, hospital”;
- (j) by deleting the definition of the term “intersex” and substituting therefor the following definition—

“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”;

- (k) in the proposed definition of the term “residence order” by inserting the following new paragraph immediately after paragraph (b) —

“(c) where the child is to live”

- (l) in the proposed definition of the term “restorative justice” by deleting the word “the” appearing immediately after the words “as well as”;
- (m) in the proposed definition of the term “step parent” by inserting the word “a” immediately after the word “means”;
- (n) by inserting the following new definitions in proper alphabetical sequence—

“existing Charitable Children’s Institution” means a charitable children institution registered, approved or licenced by the Council prior to the commencement of this Act;

“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;

“Ministry” means the Ministry responsible for matters relating to children  
“Principal Registrar” has the meaning assigned to it under the Births and Deaths Registration Act ;

“Secretary” means the Secretary of Children's Services appointed under section 35A;

### **NEW CLAUSE 3A**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 3 —

Conflict of laws. 3A. (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.

### **CLAUSE 5**

**THAT** clause 5 of the Bill be amended in sub clause (1) by inserting the words “protection” immediately after the word “wellbeing”.

### **CLAUSE 6**

**THAT**, clause 6 of the Bill be amended —

(a) in sub-clause (2) by deleting the words “his or her”; and

(b) by inserting the following new sub clause immediately after sub clause (2)—

“(2A) The Principal Registrar shall take measures to ensure correct documentation and registration of intersex children at birth.

### **CLAUSE 7**

**THAT**, clause 7 of the Bill be amended in sub clause (3) by deleting the words “his or her” and substituting therefor the word “their”

### **CLAUSE 10**

**THAT** clause 10 of the Bill be amended—

(a) in sub clause (3) by deleting the word “Director” and substituting therefor the word “Secretary”; and

(b) in sub clause (7) by deleting the word “Director” and substituting therefor the word “Secretary”.

**CLAUSE 11**

**THAT** clause 11 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “support him or her” and substituting therefor the words “maintain the child”;
- (b) in sub clause (4) by—
  - (i) deleting the word “and” appearing immediately after the word “poverty” and substituting therefor the words “disability or” in paragraph (c);
  - (ii) deleting the words “caregiver or providers religious, political, economic or any other personal goals” in paragraph (g) and substituting therefor the words “religious, political, economic or any other personal goals of the caregiver”;
- (c) in sub clause (6)-
  - (i) by deleting the word “Director” and substituting therefor the word “Secretary” appearing in paragraph (a);
- (d) in sub clause (7) by deleting the word “State” and substituting therefor the words “Cabinet Secretary responsible for matters relating to finance.

**CLAUSE 15**

**THAT**, clause 15 of the Bill be amended in sub clause (4)—

- (a) by inserting the words “age appropriate” immediately after the words “access to” in paragraph (a);
- (b) by deleting the words “his or her” in paragraph (b) and substituting therefor the word “their”; and
- (c) by inserting the words “age appropriate” immediately after the words “access to” in paragraph (e).

**CLAUSE 17**

**THAT**, clause 17 of the Bill be amended—

- (a) by deleting sub clause (4) and substituting therefor the following new sub clause—

“(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.”

**CLAUSE 19**

**THAT** clause 19 of the Bill be amended in sub clause (1) by deleting the words “or at a reduced cost”

**NEW CLAUSE 19A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 19—

Rights of intersex children.

**19A.** 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.

**CLAUSE 21**

**THAT** clause 21 of the Bill be amended in sub clause (1) by-

- (a) inserting the following new paragraph immediately after paragraph (e) —  
“f) intersex genital mutilation; or”
- (b) deleting the last paragraph and substituting therefor the following new paragraph-  
“(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.”

**CLAUSE 24**

**THAT** clause 24 of the Bill be amended in sub clause (3) by deleting the words “children with a disorder of sex development” and substituting therefor the words “intersex children”

**CLAUSE 25**

**THAT** clause 25 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2) —

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

**CLAUSE 26**

**THAT** clause 26 of the Bill be amended—

- (a) in the marginal note by deleting the word “picket”;
- (b) in sub clause (1) by inserting the word “and unarmed, to” immediately after the word “peaceably”;

- (c) in sub clause (2) by deleting the word “and reputation” ;
- (d) in sub clause (3) by deleting the words “his or her” and substituting therefor the word “their”;
- (e) by deleting sub clause (4) and substituting therefor the following new sub clause—
  - “(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.
- (f) by deleting the proposed sub clause (5).

**CLAUSE 28**

**THAT**, clause 28 of the Bill be amended in the marginal note by deleting the word “rights” and substituting therefor the word “duties”.

**CLAUSE 33**

**THAT**, clause 33 of the Bill be amended in sub clause (3)(c) by deleting the word “Director” and substituting therefor the word “Secretary”

**CLAUSE 35**

**THAT** Clause 35 of the Bill be deleted and substituted therefor by the following new clause —

Functions  
of the  
Cabinet  
Secretary.

**35.** (1) The Ministry responsible for matters relating to children shall—

- (a) ensure that every child achieves the full realization of their rights as set out in the Constitution and this Act;
- (b) ensure the welfare and protection of children in matters relating to rights of children under Article 53 of the Constitution, parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children, and regulation and administration of children’s institutions;
- (c) ensure the development and implementation of relevant policies, programmes, plans and actions that ensure children’s rights are realized including adoption, tracing and repatriation;



- (d) ensure formulation of relevant policies on the planning, financing and co-ordination of child welfare programmes and activities;
- (e) ensure the full implementation of Kenya's international and regional obligations relating to children and support the formulation of policies, programs, plans and actions for the promotion and protection of the rights of the child;
- (f) ensure affirmative action on matters relating to children;
- (g) make regulations for the effective discharge of functions under this Act; and
- (h) enter into agreements with any person, agency, organization, association, institution for any purpose related to this Act.

(2) The Cabinet Secretary shall be responsible for policy formulation and guidance of the functions including establishment of national government service delivery co-ordination units under subsection (1).

(3) The Cabinet Secretary for the time being responsible for matters relating to children's affairs shall, in consultation with the Council, make regulations on any matter—

- (a) to implement any provision of this Act; and
- (b) to implement within Kenya measures agreed upon within the framework of any treaty, international convention or regional intergovernmental agreement to which Kenya is a party.

(4) The Cabinet Secretary shall delegate the performance of functions in the manner provided for under subsections (5) (9) and sections 35B, 35E and 35F.

(5) The Principal Secretary shall be responsible for administration of the State department including establishing and administering the organizational structure of the state department comprising of technical directorates.

(6) A function that is not assigned under sections 35B, 35E and 35F is a function or power of the Secretary.

### NEW CLAUSES

Office of  
the  
Secretary.

**35A.** (1) There is established the Office of the Secretary for 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.

Functions  
of the  
Secretary

**35B.** 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 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.

Powers of  
the  
Secretary.

**35C.** 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.

Appointm  
ent of  
chief  
officers,  
children  
officers  
and such  
other  
officers.

**35D.** 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.

Functions  
of the  
Council.

**35E.** 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) formulate, approve, evaluate and monitor implementation of programmes to the create public awareness in all matters relating to the rights and welfare of children;
- (m) formulate, approve, evaluate and monitor implementation of programmes for the alleviation of the plight of children with special needs or requiring special attention;
- (n) promote , carry out and disseminate research relating to welfare and protection of children matters;
- (o) establish panels of persons from whom guardians *ad litem* appointed by the court in matters relating to children including adoption regulated under this Act;
- (p) to maintain and update a register of guardians ad litem;

- (q) establish, regulate and manage the activities of County Children Advisory Committees to advise on matters relating to the rights, welfare and protection of children;
- (r) promote linkages and exchange programmes with organisations in and outside Kenya;
- (s) establish, maintain and update a database of children in Kenya.
- (t) advise the Cabinet Secretary on matters relating to the formulation of national policy on domestic and inter-country adoptions;
- (u) accredit and license duly registered adoption and child protection agencies in order to facilitate domestic and inter-country adoptions;
- (v) establish, update and maintain a database for domestic and inter-country adoptions;
- (w) advise the Cabinet Secretary on matters relating to adoption practice and procedure;
- (x) 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;
- (y) 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;
- (z) consult with Charitable Children Institutions and adoption societies on matters relating to adoption;
- (aa) establish, maintain and update a register of children free for adoption and prospective adoptive parents;
- (bb) certify and declare a child free for adoption;
- (cc) establish, maintain and update a database of adopted children in consultation with the Registrar;
- (dd) 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;
- (ee) review and make recommendations to the Cabinet Secretary for approval of fees chargeable by adoption societies for the processing of applications for adoption;
- (ff) make recommendations to the Cabinet Secretary on matters relating to the fees chargeable for registration and licensing of adoption societies;
- (gg) monitor, prepare and submit to the Cabinet Secretary annual reports on matters relating to adoption; and
- (hh) any other functions as maybe conferred on this Act.

Functions  
of the  
Society

**35F.** The Child Welfare Society of Kenya shall implement the following functions where there is no available capacity in places of safety established by the national government —

- (a) acting as the organization to provide national emergency response and rescue for children in care and protection;
- (b) providing programmes to support the welfare of children and vulnerable young persons;
- (c) acting as the primary adopting society to facilitate local and international adoptions;
- (d) strengthening families and providing families for separated children, children at risk of separation and children without appropriate care by facilitating: family empowerment and rehabilitation; local and international tracing and reunification; guardianship; foster care; custody, including providing professional social work assessment; adoption; and any other suitable means that the Society considers necessary;
- (e) developing and reviewing standards and guidelines that regulate any service provided by the Child Welfare Society relating to welfare and protection of a child;
- (f) managing places of safety including a child care facility, a group home, a foster care home, a child rescue centre, a child protection centre and a child protection unit;
- (g) receiving lost or abandoned children and children where there is available capacity in places of safety established by the national government;
- (h) rescuing, receiving and providing care to lost or abandoned children, children given up by their parents or committed by courts or the Secretary and undertake
- (i) family tracing, mediation and reunification where there is available capacity in places of safety established by the national government;
- (j) providing rapid response services by initiating urgent action in response to children in distress and rescue of children in distress including the provision of psychosocial support where there is available capacity in places of safety established by the national government;
- (k) providing advice to the public on adopting, fostering or guardianship in coordination with the Secretary and the Council; and
- (l) providing education, vocational training and skills to children within the care and protection of children by the Child Welfare Society.

**CLAUSE 37**

**THAT**, clause 37 of the Bill be deleted

**CLAUSE 39**

**THAT**, clause 39 of the Bill be deleted

**CLAUSE 40**

**THAT**, clause 40 of the Bill be amended by deleting the word “Director” and substituting therefor the word “Secretary”

**CLAUSE 41**

**THAT**, clause 41 of the Bill be amended in the marginal note by deleting the word “appointment” and substituting therefor the word “office”

**CLAUSE 43**

**THAT**, clause 43 of the Bill be deleted and substituted therefor with the following new clause—

Remuneration of members of the council. **43.** The Council shall pay its members such remuneration or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine.

**CLAUSE 44**

**THAT**, clause 44 of the Bill be amended in sub clause (2) by deleting paragraph (a).

**CLAUSE 45**

**THAT**, clause 45 of the Bill be amended by deleting sub clause (1) and substituting therefor the following new sub clause—

**“45.** (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 advise of the Salaries and Remuneration Commission.

**CLAUSE 51**

**THAT** clause 51 of the Bill be amended in sub clause (2) —

- (a) by inserting the following new paragraphs immediately after paragraph (a) —
  - (aa) the County Commissioner or a representative;
  - (ab) the County Director for Education or a representative;
- (b) by inserting the following new paragraphs immediately after paragraph (j) —
  - (k) the registrar in charge of the area or a representative;
  - (l) the Labour Officer in-charge of the area or a representative;
  - (o) a representative of the Council who shall be the Secretary to the Committee.
- (c) in sub clause (4) by-
  - (i) by deleting the words “the welfare of children” appearing under paragraph (b) and substituting therefor the words “children matters”;

- (ii) by deleting the words “the welfare of” appearing under paragraph (c)
- c) by deleting the words “the welfare of” appearing under paragraph (d).

**CLAUSE 52**

**THAT** clause 52 of the Bill be amended by deleting sub clause (3) and substituting therefor the following new sub clause —

(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.

**PART V**

**THAT**, the Title to Part of the Bill be amended by inserting the words “OF THE COUNCIL” immediately after the word “PROVISIONS”

**CLAUSE 58**

**THAT**, clause 58 of the Bill be deleted.

**CLAUSE 59**

**THAT**, clause 59 of the Bill be deleted.

**CLAUSE 60**

**THAT**, clause 60 of the Bill be deleted.

**CLAUSE 61**

**THAT**, clause 61 of the Bill be deleted.

**CLAUSE 62**

**THAT**, clause 62 of the Bill be deleted.

**CLAUSE 63**

**THAT**, clause 63 of the Bill be deleted.

**NEW PART VA**

**THAT** the following new Part be inserted immediately after PART V of the Bill.

“



The Role of County governments.

**63A.** (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).

County government welfare schemes.

**63B.** 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.”

**CLAUSE 64**

**THAT** clause 64 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “foster care, adoption” and inserting the words “placement in alternative care”;
- (b) in sub clause (2) by deleting the words “one year” and substituting therefor the words “six months”;
- (c) by deleting sub clause (3);
- (d) by deleting sub clause (4);
- (e) by deleting sub clause (5) and substituting therefor the following—  
 “(5) The Cabinet Secretary may collaborate with a county government for purposes of establishing a children rescue centre under subsection (1).”
- (f) by inserting the following new sub clause immediately after sub clause (5) —  
 (6) 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.
- (7) 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.

**CLAUSE 66**

**THAT** the Bill be amended by deleting clause 66 and substituting therefor the following new clause—

Charitable Children’s Institutions

**66.**(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 (4), 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.

(2) 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.

#### **CLAUSE 67**

**THAT**, the Bill be amended by deleting clause 67.

#### **CLAUSE 68**

**THAT**, clause 68 of the Bill be amended in sub clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

- (a) 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 Fourth Schedule;

#### **CLAUSE 70**

**THAT** clause 70 of the Bill be amended in sub clause (1) by inserting the following words immediately after paragraph —

- “(aa) a children's rescue centre established by the Cabinet Secretary under clause 64;”

**CLAUSE 71**

**THAT**, clause 71 of the Bill be amended by deleting the words “Chief Executive Officer” wherever they appear and substituting therefor the word “Council”

**CLAUSE 73**

**THAT**, clause 73 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub clause (2)—

“(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 152 of this Act within seven days of the admission. “

**CLAUSE 75**

**THAT**, the Bill be amended by deleting clause 75

**CLAUSE 76**

**THAT**, clause 76 of the Bill be amended by deleting the word “Director” and substituting therefor the word “Secretary”

**CLAUSE 77**

**THAT**, clause 77 of the Bill be amended by deleting the words “Chief Executive Officer” wherever they appear and substituting therefor the word “Council”

**CLAUSE 78**

**THAT**, clause 78 of the Bill be amended —

- (a) by deleting the words “Chief Executive Officer” wherever they appear and substituting therefor the word “Council”;
- (b) in sub-clause (5) by deleting the word “Director” and substituting therefor the word “Secretary”

**CLAUSE 80**

**THAT**, clause 80 of the Bill be amended by inserting the following new sub clause after sub clause (1)-

“(1A) 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”

**CLAUSE 81**

**THAT** clause 81 of the Bill be amended—

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in subclause (1) by inserting the word “rehabilitation,” immediately after the words “to provide”.

**CLAUSE 82**

**THAT**, clause 82 of the Bill be amended in sub clause (2) by deleting sub clause (d) and substituting therefor the following new paragraphs —

- “(d) separate sections for various risk categories;
- (e) a counsellor or psychologist;”

**CLAUSE 83**

**THAT**, clause 83 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

**CLAUSE 84**

**THAT**, clause 84 of the Bill be amended by deleting the word “Director” and substituting therefor the word “Secretary”

**CLAUSE 85**

**THAT**, clause 85 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

**CLAUSE 86**

**THAT**, clause 86 of the Bill be amended in subclause (1) by deleting the word “Director” and substituting therefor the word “Secretary”

**CLAUSE 87**

**THAT**, clause 87 of the Bill be amended in subclause (1) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

**CLAUSE 88**

**THAT**, clause 88 of the Bill be amended —

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in sub clause (1) by inserting the word “psychologist” immediately after the words “advice of a”.

**CLAUSE 89**

**THAT**, clause 89 of the Bill be amended in sub clause (1) by deleting the word “tenor” and substituting therefor the word “tenure”

**CLAUSE 90**

**THAT**, clause 90 of the Bill be amended —

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in sub clause (4) by deleting the words "foster care or adoption" and substituting therefor the words "appropriate alternative family care"

**CLAUSE 91**

**THAT**, clause 91 of the Bill be amended —

- (a) in subclause (1) by inserting the words “borstal institution” immediately after the word “school”;

(b) in subclause (4) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;

(c) by inserting the following new sub clause immediately after sub clause (5):

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

**CLAUSE 94**

**THAT**, clause 94 of the Bill be amended in sub clause (7) by deleting the words “and substitute for the sentence an order under section 148 (2)”

**CLAUSE 96**

**THAT**, clause 96 of the Bill be amended in sub clause (4)(b) by deleting the word “Director” and substituting therefor the word “Secretary”;

**CLAUSE 98**

**THAT**, clause 98 of the Bill be amended in sub clause (2) by inserting the words “or chronic illness” after the word “disability” in paragraph (b).

**CLAUSE 99**

**THAT** clause 99 of the Bill be amended in sub-clause (4) by deleting the words “in any case where the child is charged with any of the offences under the Seventh Schedule”

**CLAUSE 100**

**THAT**, clause 100 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2) —

“(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 .”

**CLAUSE 101**

**THAT** the bill be amended by deleting clause 101 and substituting therefor the following new clause —

Appointment  
guardian ad litem. of

101. A court before which a child is brought ought, 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.”

**CLAUSE 105**

**THAT**, clause 105 of the Bill be amended in sub clause (4) by deleting the word “Director” and substituting therefor the word “Secretary”;

**CLAUSE 125**

**THAT**, clause 125 of the Bill be amended in sub clause (9) (c) (ii) by deleting the word “Director” and substituting therefor the word “Secretary”;

**CLAUSE 128**

**THAT**, clause 128 of the Bill be amended by inserting the following new clause immediately after —

Customary guardianship.

**128A.** (1). In addition to the powers of the Court to appoint a guardian under section 125, 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 124 applies.

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

### **CLAUSE 129**

**THAT**, clause 129 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “be determined” and substituting therefore the word “expire”;
- (b) in sub clause (3) by deleting the word “Director” in paragraph (d) and substituting therefor the word “Secretary”

### **CLAUSE 131**

**THAT** clause 131 of the Bill be amended in sub clause (2) by deleting the word “Director” and substituting therefor the word “Secretary”

### **CLAUSE 132**

**THAT** clause 132 of the Bill be amended by inserting the following words “and 129B” immediately after the words “section 126”

### **CLAUSE 136**

**THAT** clause 136 of the Bill be amended by deleting the word “Director” and substituting therefor the word “Secretary”

### **CLAUSE 137**

**THAT** clause 137 of the Bill be amended by inserting the expression “(1)” immediately after the number “137”.

### **CLAUSE 146**

**THAT** clause 146 of the Bill be amended—

- (a) in paragraph (k) by inserting the words “intersex genital mutilation” immediately after the words “female genital mutilation”;
- (b) in paragraph (r) by inserting the words “mentally ill” immediately after the words “guardian is”;
- (c) in paragraph (u) by deleting the words “non-violent”.

**CLAUSE 147**

**THAT** clause 147 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

**CLAUSE 152**

**THAT** clause 152 of the Bill be amended –

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
  
- (b) in sub-clause (7) by deleting the expression “(5)” appearing immediately after the word “subsection” and substituting therefor the expression “(6)”.

**CLAUSE 155**

**THAT** clause 155 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

**CLAUSE 156**

**THAT** clause 156 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

**CLAUSE 158**

**THAT** clause 158 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

**CLAUSE 172**

**THAT** clause 172 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

**CLAUSE 174**

**THAT** clause 174 of the Bill be amended by–

- (a) deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
  
- (b) deleting sub clause (2);
  
- (c) deleting sub clause (7).

**CLAUSE 175**

**THAT** clause 175 of the Bill be amended–

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
  
- (b) by deleting sub clause (2) and substituting therefor the following new sub clause–
  - (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.

- (c) in sub-clause (4) by inserting the words “for a period not exceeding three months” immediately after the words “temporary foster care over the child”;
- (d) in sub-clause (5) by deleting the words “Officer Commanding Station in the local limits of the jurisdiction in which the child is accommodated” and substituting therefore the word “Secretary” .

**CLAUSE 176**

**THAT** clause 176 of the Bill be amended by inserting the following new subclauses immediately after sub clause (2)–

“(2A) A person who is convicted by a Court of competent jurisdiction for any of the offences in the Fourth Schedule or similar offences shall not be appointed to be a foster parent.”

“(2B) Subsection (2) shall not apply to a person who applies be a foster parent to an intersex child.”

**CLAUSE 177**

**THAT** clause 177 of the Bill be amended–

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”
- (b) by deleting the word “unless” and substituting therefor the word “if”.

**CLAUSE 178**

**THAT** clause 178 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary

**CLAUSE 179**

**THAT** clause 179 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

**CLAUSE 180**

**THAT** clause 180 of the Bill be amended by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”

**CLAUSE 181**

**THAT** clause 181 of the Bill be amended–

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in subclause (2) by –
  - (i) deleting the word "permanently" in paragraph (c)(ii);
  - (ii) inserting the word “family” immediately after the word “alternative” in paragraph c(iii)



**CLAUSE 186**

**THAT** clause 186 of the Bill be deleted.

**CLAUSE 187**

**THAT** clause 187 of the Bill be amended —

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in sub clause (1), by deleting the words “National Adoption Committee” appearing immediately before the words “, in accordance” under paragraph (a) and substituting therefor the word “Council”;
- (c) by deleting the sub clause (3) and substituting therefor the following new sub clause—
  - “**(3)** An applicant shall not preselect a prospective adoptive childexcept—

- (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.”

**CLAUSE 189**

**THAT** clause 189 of the Bill be amended—

- (a) in subclause (2) by deleting the word “one” in subsection (b) and substituting therefor the word “both”;
- (b) in subclause (5) by-
  - (i) deleting paragraph (a);
  - (ii) deleting paragraph (c);
- (c) in subclause (6) by-
  - (i) deleting the words “charged or” in paragraph (c);
  - (ii) deleting the word “sole” in paragraph (f)

**CLAUSE 190**

**THAT** clause 190 of the Bill be amended in subclause (2)(a) by deleting the words “six months; and” and substituting therefor the words “one year”

**CLAUSE 192**

**THAT** Clause 192 of the Bill be amended —

- (a) in sub clause (2) by deleting the words, “or without” appearing immediately after the words, “security bond with” ;
- (b) in subclause (4) by inserting the word “the Secretary” immediately after the words “the infant”;

**NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 192—

Review of adoption.

**192A.** (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 no 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.

**CLAUSE 196**

**THAT** clause 196 of the Bill be amended in sub clause (1), by deleting the words “National Adoption Committee” appearing in paragraph (h) and substituting therefor the word “Council”

**CLAUSE 202**

**THAT** Clause 202 of the Bill be deleted and substituted therefor by inserting the following new clause—

Adopted  
Children  
Register.

**202.** (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.

(3) 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.

(4) 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.

#### **CLAUSE 206**

**THAT** Clause 206 of the Bill be amended—

- (a) in subclause (4) by deleting the words “contribution order” and substituting therefor the words “maintenance order”.

#### **CLAUSE 210**

**THAT** clause 210 of the Bill be amended—

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”
- (b) in subclause (3) by deleting the words “National Adoption Committee” appearing in the opening statement and substituting therefor the word “Council”
- (c) in subclause (5)
  - (i) by deleting the words “National Adoption Committee”
  - (ii) by deleting the words “the Committee shall recommend to”
- (d) in subclause (7) by deleting the words “National Adoption Committee” and substituting therefor the word “Council”

#### **CLAUSE 211**

**THAT** Clause 211 of the Bill be amended in sub clause (1) by deleting the words “or otherwise authorized under this Act or other written law”

#### **CLAUSE 212**

**THAT** clause 212 of the Bill be amended—

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”;
- (b) in sub clause (1) by inserting the word “adoption” immediately after the words “under the” in paragraph (h);
- (c) in sub clause (2) by deleting the words “National Adoption Committee” appearing in paragraph (d) and substituting therefor the word “Council”.

**CLAUSE 213**

**THAT** clause 213 of the Bill be amended in sub clause (2) by deleting the words “National Adoption Committee” appearing in paragraph (a) and substituting therefor the word “Council”

**CLAUSE 217**

**THAT** clause 217 of the Bill be amended in paragraph (b) by deleting the word “*Kafaalab*” and substituting therefor the word “adoption”.

**CLAUSE 220**

**THAT** clause 220 of the Bill be amended—

Assessment of a  
child on arrest.

**220.** (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 Sixth Schedule.

**CLAUSE 232**

**THAT** clause 232 of the Bill be amended in sub clause (2) by deleting the words “for a not” and replacing therefor with “for a period not” paragraph (b)(ii)

**CLAUSE 234**

**THAT** clause 234 of the Bill be amended in sub-clause (3) by inserting the following new paragraph immediately after paragraph (c)—

“(d) a counsellor or psychologist.”

**CLAUSE 237**

**THAT** clause 237 of the Bill be amended in paragraph (b) by deleting the words “if he or she is charged with an offence under the Seventh Schedule”

**CLAUSE 241**

**THAT** clause 241 of the Bill be amended in sub clause (1) by inserting the words “or psychologist” immediately after the word “counsellor” in paragraph (h).

**CLAUSE 250**

**THAT** clause 250 of the Bill be amended —

- (a) by deleting the word “Director” wherever it appears and substituting therefor the word “Secretary”.

**NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 251—

Consequential  
Amendments.

**251A.** The Acts specified in the Seventh Schedule are amended in the manner specified in that Schedule.

**THIRD SCHEDULE**

**THAT**, the Third Schedule of the Bill be amended be deleted.

**FOURTH SCHEDULE**

**THAT**, the Fourth Schedule of the Bill be amended by—

- (a) deleting paragraph 1 and substituting therefor the following new paragraph—

1. Any sexual related offence.”

- (b) deleting paragraph 2 and substituting therefor the following new paragraph—

2. Any offence related to robbery.”

- (c) deleting paragraph 5 and substituting therefor the following new paragraph—

“5. Any offence related to drug trafficking. “

- (d) inserting the following new paragraph immediately after paragraph 7—

“8. Any offence relating to trafficking in persons.”

**FIFTH SCHEDULE**

**THAT**, the Fifth Schedule of the Bill be amended by inserting the following words immediately below the words ‘harm.’—

‘Offences under the Sexual Offences Act, 2006’

**SIXTH SCHEDULE**

**THAT** Sixth Schedule of the Bill be amended by deleting the words ‘the eleventh’ and substituting therefor the words ‘Part B of this’.

**SEVENTH SCHEDULE**

**THAT**, Bill be amended by deleting the Seventh Schedule and substituting therefor the following new Schedule—

Amendments of section 7  
of Cap.149.

1. Section 7 of the Births and Deaths Registration Act is amended by inserting the following new subsection immediately after subsection (1)—

“(2) The Register under subsection (1) shall include details of an intersex child and intersex person.”

Amendments of section 29  
of Cap. 149.

2. Section 29 of the Births and Deaths Registration Act is amended in paragraph (d) by inserting the following words immediately after the word “documents”—

“ that shall include details of an intersex child or an intersex person as”

**EIGHTH SCHEDULE**

**THAT**, Eighth Schedule of the Bill be amended by inserting the following new paragraphs immediately after paragraph 11 —

“12. (1) A Charitable Children’s Institution that is registered under section 60 of the Children Act, 2001 shall not undertake any activity after ten years from the date of the commencement with section 1 of this Act.

(2) The Cabinet Secretary shall, in consultation with Council, make regulations for carrying out of the provisions of sub-paragraph (1).

(3) Without prejudice to the generality of sub-paragraph (1) of 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 institution established by the government under section 64 of this Act.

Adoption

13. (1) The terms of the Moratorium on inter-country adoptions issued on 26<sup>th</sup> November 2014 shall apply to matters relating to inter country adoption under this Act.

(2) The Cabinet Secretary shall make regulations for outlining the terms of the moratorium under sub-paragraph (1).

(3) Without prejudice to the generality of sub-paragraph (1) of the regulations shall provide for—

- (a) conduct a comprehensive audit of policy and legal framework, processes, procedures and players involved in the practice of adoption in Kenya on resident and intercountry adoptions;
- (b) establishment and regulation of a national adoption entity that monitors and coordinates the processing of inter country adoptions whose administration is independent of the Directorate of Children Services;
- (c) regulation and registration of an entity or entities that are accredited by the National Council for Children Services to process an inter country adoption;
- (d) regulation and registration of a child protection entity accredited by the National Council for Children Services that works together with an accredited entity under (b) to ensure tracing of a child during each step of processing of an inter country adoption;
- (e) the national adoption entity to maintain a register where the entity certifies in writing that it is satisfied that an intercountry adoption has only been considered because no parents have been found to locally adopt the child.
- (f) the national adoption entity to maintain a register of written court proceedings and an order of adoption (that are certified by the Court) and issue a certificate to confirm that the adoption conforms with Article 23 of the Hague Convention on inter country adoption;
- (g) a child protection entity accredited by the National Council for Children Services shall liaise with the Ministry responsible for internal affairs to process the changing of names and issue of a new birth certificate to the adoptive parents and liaise with the department responsible for immigration that issues a certificate clear the adopted child to receive a passport from the country of the adoptive parents.”

**2) Notice is given that the Member for Kitui West (Hon. Edith Nyenze) intends to move the following amendments to the Children Bill, 2021 at the Committee Stage—**

**CLAUSE 2**

**THAT**, clause 2 of the Bill be amended by inserting the following new definition in proper alphabetical sequence—

“child with severe disability” means a child with a severe chronic disability attributable to mental or physical impairment, or a combination of mental or physical impairments, that-

- (a) is likely to continue indefinitely;
- (b) results in substantial limitation of one or more functional capacities including mobility, communication, self-care, self-direction, interpersonal skills or limit functional capability to engage in some major life activities;
- (c) renders the child incapable of maintaining himself or managing his own affairs without the assistance of a guardian

**CLAUSE 11**

**THAT**, clause 11 of the Bill be amended—

- (1) in sub-clause (1) by inserting the words “with severe disability or” immediately after the word “every child”
- (2) in sub-clause (7) by inserting the words “including a child with severe disability” immediately after the words “welfare of the child”

**CLAUSE 19**

**THAT**, clause 19 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

- (3) A child with severe disability shall have the right to receive social assistance and to be accorded specialized medical treatment, special care, special education and training free of charge by the State where possible or at a reduced cost.
- (4) 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.

**CLAUSE 63**

**THAT**, clause 63 of the Bill be amended by—

- (a) renumbering the existing provision as sub-clause (1)
- (b) inserting the following new sub-clause
  - (3) In designing and establishing the child welfare schemes under this section, a county government shall—
    - (a) have regard to the needs of children with disabilities including children with severe disabilities;
    - (b) ensure that the facilities where child welfare services are to be rendered are—
      - (i) accessible by children with disabilities;
      - (ii) well equipped to provide special care including medical care as may be required;
    - (c) ensure that persons employed to render child welfare services to children are qualified and trained to provide special care including medical care as may be required for the wellbeing of the children including children with disabilities.
  - (4) A child with disability shall have the right to access the child welfare schemes established by a county government and receive special care free of charge.

**3) NOTICE is given that the Hon. Milly Odhiambo, M.P., intends to move the following amendments to the Children Bill, (National Assembly Bill No. 38 of 2021) at the Committee Stage—**

**LONG TITLE**

**THAT**, the Bill be amended in the long title by deleting the expression “Article 53” and substituting therefor the expression “Articles 2(6),2(7) and 53”.



**CLAUSE 2**

THAT the Bill be amended in clause 2 –

- (a) by deleting the definition of the term “abandoned” and substituting therefor the following new definition-

“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 willfully failed to make contact with the child for a period of more than six months;
- (b) in the definition of the term “alternative care” by deleting the words “at least overnight”;
- (c) by deleting the definition of the term “approved officer”;
- (d) in the definition of the term “authorized officer” by inserting the words “a counselor lawyer” immediately after the words “a teacher”;
- (e) by deleting the definition of the expression “best interest of the child” and substituting therefor the following new definition-
- “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;
- (f) by deleting the definition of the term “ child abuse” and substituting therefor the following new definition-
- “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 failing to adequately supervise or protect the child;
  - (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;
- (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;
- (g) by deleting the definition of the term "detention" and substituting therefor the following new definition-

"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;
- (h) by deleting the definition of the term "diversion" and substituting therefor the following new definition-

"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;
- (i) by deleting the definition of the term "grooming" and substituting therefor the following definition-

"grooming" means establishing a relationship of trust or emotional connection with a child or an adult child care giver, 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;
- (j) by deleting the definition of the term "legal custody" and substituting therefor the following definition-

"legal custody" means the temporary 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;
- (k) in the definition of the term "obscene material" by inserting the words "morally repugnant or sexually explicit" immediately after the words "portray harmful";

- (l) in the definition of the term “parent” by deleting the words “who is liable by law to maintain a child or is entitled to his custody”;
- (m) in the definition of the term “place of safety” by inserting the words “place offered by” immediately after the word “institution”;
- (n) in the definition of the term “relative” by deleting paragraph (b);
- (o) by inserting the following definitions in the proper alphabetical sequence-
  - “an appropriate adult” means any member of a child’s family or a custodian or guardian of a child but does not include a parent or a primary care-giver as defined in the Children Act;
  - “children court” means a court defined as such under Part V;
  - “child labour” means any form of work involving children that is physically, socially and morally harmful and exploitative, that deprives the child of their childhood and interferes with their ability to attend regular school;
  - “child voluntarily acknowledges responsibility” means an admission of responsibility for an offence by a child without formal admission of guilt;
  - “community service” means work for a community organization or other work of value to the community performed by a child without payment;
  - “cyber bullying” means the repeated use of the internet or mobile technology by a child either individually or in concert with others, for the furtherance of unwanted, demeaning, aggressive and annoying behavior towards another child and which act is likely to cause mental harm and public odium to the child;
  - “cyber enticement” means communicating with a child through the internet with the intention of committing a sexual offense or abduction of the child;
  - “cyber-harassment” means the persistent use of the internet or mobile technology by a person individually or in concert with others to threaten, intimidate, irritate or torment a child;
  - “cyber stalking” means the use of the internet, email, or other electronic communication to persistently follow, snoop or spy on a child with the intent to cause emotional, physical or sexual harm to the child;
  - “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;
  - “domestic servitude” means the exploitation of labour for domestic purposes;
  - “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;
  - “*guardian ad litem*” means an adult appointed by the court to represent the best interests of the child;

“independent observer” means a representative from a community or organization, or community police forum, who is not in the full-time employ of the State and, who is accredited in terms of this Act;

“inquiry magistrate” means the officer presiding at a preliminary inquiry;

“preliminary inquiry” means an inquiry contemplated in Part VI of this Act;

“prescribed” means prescribed by regulation made under this Act;

“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;

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

“residential requirement” means compulsory residence in a residential facility or a place other than the home of the child;

“rehabilitation” means efforts aimed at restoring a child to health or normal life through guidance, training and psychosocial support;

“welfare officer” means an officer appointed under section 75;

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

### **CLAUSE 9**

**THAT**, the Bill be amended in clause 9 by –

(a) renumbering the existing provision as subsection (1); and

(b) inserting the following new subsection immediately after subsection (1)-

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

### **CLAUSE 13**

**THAT**, clause 13 of the Bill be amended-

(a) in subsection (1) by deleting the words “In addition to the right to basic education guaranteed under section 12,”;

(b) in subsection (2) by inserting the words “the government and” immediately after the words “responsibility of”;

(c) in subsection (3) by inserting the words “in estates and villages” immediately after the words “specific areas”.

**CLAUSE 16**

**THAT**, clause 16 of the Bill be amended in subsection (3) by deleting the words “five hundred” and substituting therefor the words “five million shillings”.

**CLAUSE 17**

**THAT**, the clause 17 of the Bill be amended -

- (a) in subsection (3) by inserting the word “begging” immediately after the word “including”;
- (b) by deleting subsection (4).

**HEADING**

**THAT**, the Bill be amended by deleting the heading “Duties and responsibilities of a child” appearing immediately after clause 17.

**CLAUSE 20**

**THAT**, the clause 20 of the Bill be amended by deleting subsection (1) and substituting therefor the following subsection-

- (1) No person shall subject a child to –
  - (a) psychological abuse; or
  - (b) child abuse.

**CLAUSE 21**

**THAT**, clause 21 of the Bill be amended -

- (a) in subsection (1) by inserting the following new paragraph immediately after paragraph (g)-
  - (h) except with the advice of a geneticist, organ change or removal in case of an intersex child.
- (b) in subsection (2) by deleting the word “two” and substituting therefor the word “five” immediately before the word “hundred”.

**CLAUSE 22**

**THAT**, the clause 22 of the Bill be amended in subsection (2) by deleting the words “not exceeding” and substituting therefor the words “not less than” wherever they occur.

**CLAUSE 23**

**THAT**, clause 23 of the Bill be amended in subsection (2) by inserting the following proviso-

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

**CLAUSE 24**

**THAT**, clause 24 of the Bill be amended in subsection (3) by deleting the words “children with a disorder of sex development” and substituting therefor the words “intersex children”.

**CLAUSE 27**

**THAT**, clause 27 of the Bill be amended by inserting the following new subsection immediately after subsection (3)-

(3a) Any court cost under this section shall be kept at a minimum.

**CLAUSE 28**

**THAT**, clause 28 of the Bill be amended –

- (a) by inserting the word “any” immediately before the words “matter before court”;
- (b) in paragraph (b) by inserting the words “provided that the child’s best interest shall remain paramount” immediately after the word “need”;
- (c) by inserting the following paragraphs immediately after paragraph (e)-
  - (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 to abuse or harm other children;
  - (j) not to destroy any property.

**CLAUSE 29**

**THAT**, clause 29 of the Bill be amended in subsection (2) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) the duty to protect the child from neglect, abuse and discrimination;

**CLAUSE 30**

**THAT**, the Bill be amended by deleting clause 30 and substituting therefor the following new clause-

Equal  
parental  
responsibility.

30. (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) Without prejudice to the generality of subsection (1), two or more persons may have and exercise concurrent parental responsibility over the same child.

(3) The court may, in the best interest of the child, give orders that confer parental responsibility on only one parent.

**CLAUSE 31**

**THAT**, clause 31 of the Bill be amended in subsection (1) by deleting the words “agree and are entitled to have the right to parental responsibility for the wellbeing of the child.” and substituting therefor the words “, in the best interests of the child, designate and agree on clear individual responsibilities towards the child.”

**CLAUSE 38**

**THAT**, clause 38 of the Bill be amended in subsection (2) by inserting the following paragraph immediately after paragraph (b)-

(c) the appointments reflect ethnic and regional diversity of the country.

**CLAUSE 44**

**THAT**, clause 44 of the Bill be amended in subsection (2) by deleting paragraph (a).

**CLAUSE 45**

**THAT**, clause 45 of the Bill be amended in subsection (8) by inserting the words “represent the ethnic, gender and social diversity of the country and ” immediately after the word “shall”.

**CLAUSE 51**

**THAT**, clause 51 of the Bill be amended by deleting subsection (3).

**CLAUSE 52**

**THAT**, clause 52 of the Bill be amended-

- (a) by deleting subsection (9);
- (b) by deleting subsection(10).

**CLAUSE 58**

**THAT**, clause 58 of the Bill be amended by inserting the following new subsection immediately after subsection (1)-

(1A) The officers appointed under subsection (1) shall ensure gender, ethnic and social diversity of the country.

**CLAUSE 61**

**THAT**, clause 61 of the Bill be amended by deleting the words “not exceeding” and substituting therefor the words “of not less than”.

**CLAUSE 62**

**THAT**, clause 62 of the Bill be amended by inserting the following new subsection immediately after subsection (2)-

(3) In providing for or facilitating the provision of pre-primary education and child care facilities under subsection (1), the county government shall ensure that the said services and facilities are equally and equitably distributed in the county.

**CLAUSE 64**

**THAT**, clause 64 of the Bill be amended in subsection (1) by inserting the following words “in every county” immediately after the words “child rescue centers”.

**CLAUSE 65**

**THAT**, clause 65 of the Bill be amended by inserting the following new subsection immediately after subsection (2)-

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

**CLAUSE 66**

**THAT**, clause 66 of the Bill be amended in subsection (1)-

- (a) by deleting paragraph (b) and substituting therefor the following new paragraph-
- (b) specify whether the institution is intended for the accommodation of male, female or intersex children or for all.
- (b) by inserting the following new paragraph immediately after paragraph (b)-
- (c) specify the objectives of the Charitable Children’s Institution.
- (c) by inserting the words “or any other law that deals with public nonprofit organisations.” at the end of the proviso to subsection (6);
- (d) by inserting the words , “in partnership with a person of good standing in Kenya,” immediately after the words “A foreign national”;
- (e) by deleting paragraph (e) in subsection (7) ;
- (f) by inserting the following new subsection immediately after subsection (7)-
  - (7a) The applicant shall provide particulars of at least one Kenyan national or local agency with whom the applicant intends to work or collaborate in the establishment of the proposed charitable children’s institution.



**CLAUSE 67**

**THAT**, the Bill be amended in clause 67 –

- (a) in subsection (1) by deleting the words “unincorporated associations” and substituting therefor the words “any other relevant law”;
- (b) in subsection (2) by inserting the words “at least five and not more than seven” immediately before the words “duly registered trustees”;
- (c) by inserting the following new subsections immediately after subsection (2) –
  - (2a) The trustees appointed in subsection (2) shall have equitable gender and regional representation with regard being given to young persons and persons with disability.

(2b) The trustees appointed in subsection (2) shall have at least a post-secondary level education and must conform with chapter six of the constitution on leadership and integrity.

**CLAUSE 69**

**THAT**, clause 69 of the Bill be amended in subsection (2) by inserting the following new paragraph immediately after paragraph (a)-

- (aa) the usual place of abode or home is not conducive to the well-being of the child;

**CLAUSE 70**

**THAT**, clause 70 of the Bill be amended in sub section (1) by deleting the word “may” and substituting therefor the word “shall”.

**CLAUSE 75**

**THAT**, clause 75 of the Bill be amended –

- (a) in subsection (1) by deleting the word “approved” immediately before the words “child welfare”;
- (b) in subsection (2) by deleting the word “approved” and substituting therefor the words “child welfare”;
- (c) in subsection (3) by deleting the word “approved” and substituting therefor the words “child welfare”;
- (d) in subsection (4) by deleting the word “approved”.

**CLAUSE 76**

**THAT**, clause 76 of the Bill be amended in subsection (6) by deleting the words “five hundred thousand” and substituting therefor the words “one million”;

**CLAUSE 77**

**THAT**, clause 77 of the Bill be amended-

- (a) in subsection (2) by deleting the words “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.”;
- (b) by deleting subsection (3) and substituting therefor the following new subsection-  
(3) No person shall run a child well fare programme that is not in the best interest of the child.
- (c) by deleting subsection (4) and substituting therefor the following new subsection-  
(4) The council shall develop regulations on permissible programs to be run by child welfare institutions.
- (d) by inserting the following new subsections immediately after subsection (4)-
  - (5) Any person or institution who runs a program except as provided under subsection (4) may in the first instance be warn and for subsequent violations, the institution may be deregistered.
  - (6) No action shall be taken against an individual or institution under subsection (5) unless they have been given an opportunity to respond to the allegations against them.
  - (7) Any person aggrieved by the action taken by the Council to deregister an organisation under subsection (5), may appeal to the High Court within a period of thirty days from the date of the deregistration.

### **CLAUSE 81**

**THAT**, clause 81 of the Bill be amended by inserting the following new subsection immediately after subsection (7)-

(7A) 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

### **CLAUSE 92**

**THAT**, clause 92 of the Bill be amended by inserting the following paragraph immediately after paragraph (d)—

(da) academic qualifications for persons to be employed in children’s institutions;

### **CLAUSE 97**

**THAT**, clause 97 of the Bill be amended be deleting the words “or any conduct contrary to decency or morality” and substituting therefor the words “of a sexual nature”.

### **CLAUSE 98**

**THAT**, clause 98 of the Bill be amended—

(a) in subsection (2) by—

- (i) inserting the words “or where the child is intersex” immediately after the words “has a disability” appearing in paragraph (b);
  - (ii) deleting paragraph (g) and substituting therefor the following new paragraph—
    - (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;
- (b) in subsection (8) by deleting the word “one” and substituting therefor the word “five”.

**CLAUSE 99**

**THAT**, clause 99 of the Bill be amended by deleting sub clause (1).

**CLAUSE 106**

**THAT**, clause 106 of the Bill be amended—

- (a) in sub clause (1) by inserting the words “taking into account the child’s evolving capacity” immediately after the word “child” appearing in paragraph (c);
- (b) by deleting sub clause (2) and substituting therefor the following new subclause—
  - “(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 a person who is given custody of the child

**CLAUSE 107**

**THAT**, clause 107 of the Bill be amended in sub clause (2) by deleting the words “not exceeding” appearing immediately after the words “fine” and substituting therefor the words “of not less than”

**CLAUSE 113**

**THAT**, clause 113 of the Bill be amended by —

- (a) deleting paragraph (a) and substituting therefor following new paragraph—
  - “(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) numbering the paragraph appearing immediately after paragraph (d) as paragraph (e).

**CLAUSE 117**

**THAT**, 117 of the Bill be amended—

(a) in the marginal note by deleting the words “father of child born out of wedlock” and substituting therefor the words “presumptive guardians”

(b) in sub clause (2)—

(i) by deleting paragraph (g)

(ii) in paragraph (h) by deleting the words “or knowing that the was not legally married to the mother of the child”

**CLAUSE 125**

**THAT** clause 125 of the Bill be amended—

(a) by deleting sub clause (1) and substituting therefor the following new sub clause—

(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, or the father of the child born out of wedlock in accordance with the provisions of this Act;

“presumptive guardian” means a person or persons who are not parents or legal guardians of the child, but who ordinarily exercises care and control over the child singly or jointly with the spouse or one or both parents of the child

(b) in sub clause (9) by inserting the following new paragraph immediately after paragraph (a)

“(aa) the power to create a Trust Fund for the child in respect to any estate of the child.”

**CLAUSE 127**

**THAT**, clause 127 of the Bill be amended in sub clause (5) by deleting the word “regarding” appearing in paragraph (d) (i)

**CLAUSE 129**

**THAT**, clause 129 of the Bill be amended in sub clause (3) by deleting the words “prior to the child’s eighteenth birthday” appearing in the opening statement.

**CLAUSE 130**

**THAT** Clause 130 of the Bill be amended in sub clause (6) by inserting the following new paragraph immediately after paragraph (c)—

“(d) an interested person

**CLAUSE 131**

**THAT** Clause 131 of the Bill be amended in sub clause (2) by inserting the words “an interested person” immediately after the word “Director”.

**CLAUSE 134**

**THAT** Clause 134 of the Bill be amended in sub clause (1)—

- (a) by deleting the word “and” appearing immediately after the word “receive” in paragraph (a) and substituting therefor the word “or”;
- (b) by inserting the words “or misleading” immediately after the word “false” in paragraph (c)
- (c) by deleting the word “exceeding” appearing immediately after the word “fine not” and substituting therefor the words “of not less than”

**CLAUSE 136**

**THAT** Clause 136 of the Bill be amended in sub clause (2) by inserting the following new paragraph immediately after paragraph (e)—

“(f) an interested person”

**CLAUSE 140**

**THAT** Clause 140 of the Bill be amended in sub clause (1) by inserting the following new paragraph immediately after paragraph (d)—

“(e) an interested person”

**CLAUSE 142**

**THAT** Clause 142 of the Bill be amended by deleting the word “exceeding” appearing immediately after the word “fine not” and substituting therefor the words “of not less than”

**CLAUSE 144**

**THAT** clause 144 of the Bill be amended in the definition of the term “street child” by deleting the term “street child” and substituting therefor the term “a child living on or off the streets”.

**CLAUSE 146**

**THAT** Clause 146 of the Bill be amended —

(a) by deleting paragraph (a) and substituting therefor the following new paragraphs —

(a) Who is an orphan and has no guardian ;

(aa) who has been abandoned by their parents or guardians;

(b) deleting paragraph (u) and substituting therefor the following new paragraph—

(u) Who engages in sexual conduct of any kind

(c) by deleting paragraph (u) and substituting therefor the following new paragraph—

“(y) who is intersex and is subjected to or likely to be subjected to discriminatory treatment or abuse,”

(d) in paragraph (ff) by deleting the word “differential” and substituting therefor the word “discriminatory”;

(e) by inserting the following new paragraphs immediately after paragraph (gg)—

“(hh) who is suffering from a terminal, debilitating or chronic illness and whose parents are unable to exercise proper care of the child; or

(ii) who is in need of medical treatment but denied access thereto by the parents or guardians on religious grounds”

### **NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 148—

County governments to establish facilities.	148A. Each county shall establish a child a facility for children in need of care and protection
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### **CLAUSE 151**

**THAT** Clause 151 of the Bill be amended by deleting the term “Attorney-General or” wherever it appears .

### **CLAUSE 152**

**THAT** Clause 152 of the Bill be amended in sub clause (2) —

(a) by inserting the words “or fathers’ immediately after the word “mothers’ appearing in paragraph (j) (ii);

(b) by deleting the word “four” appearing in paragraph (j)(iii) and substituting therefor the word “two”

**CLAUSE 153**

**THAT** Clause 152 of the Bill be amended in sub clause (3) by deleting the words “exceeding” immediately after the word “fine not” and substituting therefor the words “less than”

**CLAUSE 154**

**THAT**, clause 154 of the Bill be amended by deleting sub clause (6)

**CLAUSE 155**

**THAT** , clause 155 be amended by inserting the following new subclause after sub clause 6—

(6A) A person who is aggrieved by a care order may appeal to the Court

**CLAUSE 158**

**THAT** clause 158 be amended

(a) by deleting sub clause (1) and substituting therefor the following new sub clause

—

“(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 XIV;

(c) by the making of a residence order in respect of the child.”

(b) in subclause (2) by inserting the following new paragraph immediately after paragraph (d)—

“(e) an interested person”

**CLAUSE 163**

**THAT** Clause 163 be amended by inserting the following new subclause immediately after subclause (4)—

“(5) The court shall consider the views of the child before making an order under this section”

**CLAUSE 164**

**THAT**, clause 164 of the Bill be amended —

(1) in sub clause (1) by deleting the words “one month” in subclause (b) and substituting therefor the words “fourteen days”

- (2) in sub clause (2) by deleting the words “not exceeding” appearing immediately after the words “fine” and substituting therefor the words “of not less than”

**CLAUSE 168**

**THAT** clause 168 of the Bill be amended —

(a) by deleting sub clause (2);

(b) by deleting sub clause (3) and substituting therefor the following

- (3) 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.

**CLAUSE 172**

**THAT** clause 172 of the Bill be amended by in sub clause (1) by—

(a) inserting the words “in need of care and protection” immediately after the word “children” in paragraph (a);

(b) deleting sub clause (2) and substituting therefor the following sub clauses—

(ba) to promote long term parental care, with the goal of family reunification in the first instance; or

(bb) accommodating children in alternative, safe and nurturing family relationships for long periods of time;

(bc) 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.

**CLAUSE 185**

**THAT** clause 185 of the Bill be amended by in sub clause (4) (c) by inserting the following new subparagraphs immediately after subparagraph (ii) —

(iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child;

(iv) 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

**CLAUSE 186**

**THAT** clause 186 of the Bill be amended—

- (a) in sub clause (1) by inserting the words “through an open and competitive process” immediately after the words “Cabinet Secretary”;



(b) in sub clause (2) by deleting the words “elected by the members of the committee from among their number” in paragraph (a) and substituting therefor the words “appointed by the Cabinet Secretary”;

(c) in sub clause (6) by inserting the following proviso after the words “written law”—  
“Provided that such co-opted member shall have no voting rights”

#### **CLAUSE 187**

**THAT** clause 187 of the Bill be amended by deleting the sub clause (3).

#### **CLAUSE 188**

**THAT** clause 188 of the Bill be amended in sub clause (4) by deleting the word “and” at the end of paragraph (b)

#### **CLAUSE 189**

**THAT** clause 189 of the Bill be amended—

(a) in subclause (5) by deleting paragraph (c);

(b) in subclause (6)—

(i) by inserting the words except “where the applicant is a biological relative of the child” in paragraph (e);

(ii) by inserting the words except “where the applicant is a biological relative of the child” in paragraph (f);

#### **CLAUSE 190**

**THAT** clause 190 of the Bill be amended in sub clause (2) –

(a) by deleting the words “six months” and” and substituting therefor the words “one year” in paragraph (a);

(b) by deleting the words “six months” and” and substituting therefor the words “one year” in paragraph (b).

#### **CLAUSE 192**

**THAT** clause 192 of the Bill be amended in sub clause (4) by deleting the words “not exceeding” appearing immediately after the word “fine” and substituting therefor the words “of not less than”;

#### **CLAUSE 194**

**THAT** clause 194 of the Bill be amended in by inserting the following new paragraph immediately after paragraph (b)—

“(c) persons who were citizens of Kenya by birth but have lost the same status by operation of the law.”

#### **CLAUSE 204**

**THAT** Clause 204 of the Bill be amended in sub clause (1) by deleting the word “parents” appearing immediately after the words “obligations and liabilities of the” and substituting therefor the words “biological parents in case of a first adoption or adoptive parents in case of subsequent adoption”

#### **CLAUSE 206**

**THAT** Clause 206 of the Bill be amended—

- (a) by deleting sub clause (1) ;
- (b) by deleting sub clause (2)

#### **CLAUSE 207**

**THAT** Clause 207 of the Bill be amended in sub clause (3) by—

- (a) deleting the words “unless the contrary intention appears” in paragraph (a);
- (b) deleting the words “unless the contrary intention appears” in paragraph (a)

#### **CLAUSE 208**

**THAT** Clause 208 of the Bill be amended by deleting sub clause (2) and substituting therefor the following new sub-clause—

“(2) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order shall not be treated, for the purposes of section 207, as having been made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.”

#### **PART XIV**

**THAT** the Bill be amended by deleting part XIV and substituting therefor the following new Part—

#### **PART XIV—CHILDREN IN CONFLICT WITH THE LAW**

**219A.** The objects of this Part are to—

- (a) enhance the protection of the rights of a child accused of or charged with a criminal offence by providing a legal framework for realization of Article 53 of the Constitution of Kenya and international Conventions ratified by Kenya and, in particular, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child; and

Object and  
purpose of this  
Part.

- (b) promote and protect the duties and responsibilities of the child in the child justice system by—
  - (i) fostering the sense of dignity and worth of a child;
  - (ii) reinforcing a child's respect for the human rights and fundamental freedoms of other persons through holding the child accountable for their actions and safe-guarding the interests of the victim and the community;
  - (iii) promoting reconciliation through restorative justice; and
  - (iv) involving the victim, parents, family members, and members of the community in the child justice processes to promote the reintegration of child back to the community; and
- (c) promote co-operation between government departments and other organizations and agencies involved in implementing an effective child justice system.

**219B.** (1) A person performing any function under this Act shall be guided by the following principles—

General principles.

- (a) the best interests of the child shall be taken into account as a primary consideration in every action in court involving a child;
- (b) a court shall not discriminate against any child on the basis of race, colour, ethnicity, creed, sex, social origin, political affiliations, culture or any other grounds;
- (c) detention and institutionalization of a child shall be applied as a means of last resort;
- (d) a child shall be accorded the opportunity to be heard and respond before any decision affecting them is taken;
- (e) the dignity of the child shall be preserved at all stages of the trial from pre-arrest to post trial period;
- (f) every child shall be addressed in a manner appropriate to their age and intellectual development, and shall be spoken to and be allowed to speak in their language of choice, through an interpreter where necessary;
- (g) every child shall be treated in a manner which takes into account cultural values and beliefs;
- (h) all procedures required under this Act shall be conducted and completed speedily;
- (i) every child has the right to maintain contact with their family and have access to legal and social services;
- (j) parents and families have the right to assist their child in proceedings under this Act and, wherever possible, to participate in decisions affecting them;

- (k) all consequences arising from the commission of an offence by a child shall be proportionate to the circumstances of the child, the nature of the offence and the interests of society, and a child shall not be treated more severely than an adult would have been in the same circumstances;
- (l) a child lacking in family support, or educational or employment opportunities must have equal access to available services and every effort must be made to ensure that children receive equal treatment when having committed similar offences.

(2) A police officer, the Director of Public Prosecutions, any prosecutor designated thereto by the Director, a magistrate or any officer presiding in a Child Justice Court shall consider the following principles when making a decision which involves release of a child from detention—

- (a) preference shall be given to the release of a child into the care of the parent or an appropriate adult and may impose conditions for the release;
- (b) release of the child on bail where release of the child into the care the parent or an appropriate adult is not feasible;
- (c) detention shall be used as a measure of last resort and recourse shall be heard to the least restrictive form of detention appropriate to the child and the offence;

(3) A child detained in police custody shall—

(a) be detained—

- (i) held in separate confinement from adults and boys shall be held separate confinement from girls; and
- (ii) under conditions that reduce the risk of harm to the child, including the risk of harm caused by other children;

(b) have the right to—

- (i) adequate food and water;
- (ii) medical treatment;
- (iii) reasonable visits by parents, guardians, legal representatives, registered social workers, children officers, health workers and religious counsellors;
- (iv) access to reading material;
- (v) access to education and life skills as appropriate if detained for a long period;
- (vi) adequate exercise; and
- (vii) adequate clothing and sufficient blankets and bedding.

**219C.** (1) Subject to subsections (2) and (3), this Act applies to—

- (a) any person in Kenya, irrespective of their nationality, country of origin or immigration status alleged to have committed an offence and who, at the time of commission of the alleged was under the age of eighteen years; and
- (b) a person contemplated in paragraph (a) who attains the age of eighteen years before proceedings instituted against him or her in terms of this Act have been concluded.

(2) The Criminal Procedure Act applies to any person contemplated in subsection (1), except in so far as this Act provides different procedures in respect of such person.

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(3) The Director of Public Prosecutions or a prosecutor designated by the Director may, under exceptional circumstances, direct that this Act applies to a person who is alleged to have committed an offence and who, at the time of commission of the alleged offence, was above the age of eighteen years and not above the age of twenty-one years.

(4) The circumstance contemplated in subsection (3) include—

- (a) an instance where there are several co-accused and majority of them are under the age of eighteen years; or
- (b) where a person commits a further offence while serving a residential sentence imposed in terms of this Act and after attaining the age of eighteen years.

**219D.** (1) No prosecution shall not be commenced under this Act for an offence committed by a child who is below the age of eight years.

Criminal culpability.

(2) A child who commits an offence while under the age of twelve years shall be presumed not to have had the capacity to appreciate the difference between right and wrong, unless the prosecution proves criminal capacity on the part of the child.

(3) Where the Director of Public Prosecutions intends to charge a child contemplated in subsection (2) with an offence, the Director of Public Prosecution shall issue a certificate confirming intention to prosecute the child.

(4) Where the certificate contemplated in subsection (3) is not issued within fourteen days after the preliminary inquiry, the Director of Public Prosecutions shall be deemed to declined to institute prosecution.

(4) In issuing the certificate contemplated in subsection (3), the Director of Public Prosecutions may consider any relevant information including—

- (a) the appropriateness of diversion;
- (b) educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child;

- (c) the nature and gravity of the alleged offence;
- (d) the impact of the alleged offence on the victim; and
- (e) the children officer's assessment report.

**219E** (1) Any of the following methods may be used to secure the attendance of a child at a preliminary inquiry—

Methods of securing attendance.

- (a) written notice;
- (b) summons; or
- (c) arrest.

(2) Before a police officer uses any method contemplated in subsection (1), the police officer may request the Director of Public Prosecutions to determine whether the matter should be set down for conduct of a preliminary inquiry.

**219F.** (1) Unless there are compelling reasons justifying arrest, a child may not be arrested for an offence contemplated in the First Schedule.

Arrest.

(2) A warrant of arrest issued in respect of a child shall direct that the child be produced to appear at a preliminary inquiry.

(3) Where a warrant of arrest is executed outside normal court hours, the police officer concerned shall take into account the principles set out in section 219B.

(3) The police officer responsible for arresting a shall—

- (a) inform the child of the nature of the allegation against them;
- (b) inform the child in prescribed manner of their rights in relation to the arrest;
- (c) explain to the child the immediate procedures relating to the arrest in terms of this Act; and
- (d) notify the child's parent, the children's officer or an appropriate adult of the arrest.

(4) The arresting officer shall, not later than twenty-four hours after the arrest, inform the relevant children's officer of such arrest in the prescribed manner.

(5) A police officer who arrests a child shall whether assessment of the child has been conducted or not, produce the child to appear at a preliminary inquiry within twenty-four hours of the arrest or, if twenty four hours expire outside court hours or on a day which is not a court day, no later than the end of the first court day after the expiry of the twenty four hours.

(6) Where a police officer is unable to inform a children's officer of the arrest, the police officer shall submit a written report to the inquiry magistrate at the preliminary inquiry furnishing reasons for the non-compliance.

(7) Where a child accused of an offence is not released from detention before appearing at a preliminary inquiry, the investigating police officer shall provide the inquiry magistrate with a written report in the prescribed manner citing reasons for the non-release.

(8) A police officer may not arrest a child under the age of twelve years alleged to have committed an offence, but—

- (a) shall inform the relevant children's officer of such particulars regarding the child as may be prescribed; and
- (b) may remove the child to a place of safety, if the police officer has reason to believe that the child is a child in need of care and protection under the Children Act.

**219G.** (1) A summons issued in respect of a child shall specify the place, date and time for conduct of the preliminary inquiry.

Summons.

(2) A copy of the summons served on a child shall be served on the parent of the child or an appropriate adult.

(3) A police officer shall—

- (a) not later than twenty-four hours after service of the summons, inform the relevant children's officer of the service of such summons in the prescribed manner; and
- (b) as soon as practicable but before commencement of the preliminary inquiry, explain the rights contemplated in section 219F to the child.

**219H** (1) A police officer may notify a child to appear at a preliminary inquiry at a specified time on a specified date and remain in attendance at the proceedings.

Notice to appear at preliminary inquiry.

(2) An officer under subsection (1) shall inform the parent of the child or an appropriate adult to produce the child or cause the child to be produced at the preliminary inquiry and, have the child remain in attendance at the proceedings.

(3) A police officer who notifies a child under subsection (1) shall complete and hand to the child and to the parent of the child or an appropriate adult, as the case may be, a written notice which shall indicate the alleged offence, the date, the time and place at which the child shall appear.

(4) The police officer shall—

- (a) upon delivery of the notice, inform the child, the parent of the child or the appropriate adult, as the case may be of the rights contemplated in 219F (3) of this Act; and
- (b) not later than twenty-four hours after serving the summons inform the relevant children's officer in the prescribed manner.

Age of child.

**219I** (1) Where the age of a person alleged to have committed an offence cannot be ascertained through a birth certificate, but there exists grounds to determine that the age of the person would render the person subject to this Act, the police officer shall consider the person to be a child for purposes of this Act, subject to estimation of the age of the person at the preliminary inquiry.

(2) In making the estimation, the officer shall consider the available information in the following order—

- (a) any statements made by the parent, the legal guardian or any other person likely to have direct knowledge of the age of the child;
- (b) any statement made by the child;
- (c) baptismal certificate, school registration form or school report, or other information of a similar nature; or
- (d) any estimation of age made by a medical practitioner.

**219J** (1) A police officer shall release a child accused of an offence from police custody into the care their parent or an appropriate adult before the child appears at the preliminary inquiry, unless—

Release of a child.

- (a) there exists exceptional circumstances as prescribed in this Act which warrant detention ;
- (b) the parent of the child or an appropriate adult is not available, and all reasonable efforts have been made to locate the parent or appropriate adult; or
- (c) there is substantial risk that the child may be a danger to themselves or any other person.

(2) A police officer may, in consultation with the Director of Public Prosecutions or a designated prosecutor, release a child who—

- (a) is in detention in police custody and who is accused of an offence; or
- (b) is accused of an offence but has not been released in terms of subsection (1), into the care of the parent of the child or an appropriate adult on any one or more of the conditions referred to in subsection (3).

(3) A child may be released in terms of subsection (2) on condition that the child—

- (a) appears at a specified place and time for assessment;
- (b) does not interfere with a witness, tamper with evidence or associate with a person or group of persons; and
- (c) resides at a particular address.

**219L.**The Director of Public Prosecutions may, notwithstanding the decision of a police officer to the contrary, authorize the release of a child contemplated in section 219J (2) from detention in police custody into the care of the parent of the child or an appropriate adult and, where the release is authorized, the written notice shall be handed to the child and the person into whose care the child is released.

Authority to release child by Director of Public Prosecutions.

**219M.**A police officer who releases any child from detention in accordance with section 219J or 219L and places such child in the care of a parent or an appropriate adult, shall—

Duty of police officer and person into whose care a child is released.



- (a) at the time of release of the child, complete and hand to the child and the person to whose care the child is released, a written notice in the prescribed form on which alleged offence shall be entered, any conditions relating to the release of the child and the place, date and time for conduct of the preliminary inquiry;
- (b) inform the parent or appropriate adult to produce the child or cause the child to be produced to appear at the preliminary inquiry at a specified place, date and time and remain in attendance;
- (c) where conditions are imposed, ensure that the child complies with such conditions; and
- (d) inform the child to appear at the preliminary inquiry at a specified place, date and time and remain in attendance and, if any conditions have been imposed, comply with such conditions.

**219N** (1) Notwithstanding the provisions of the Criminal Procedure Act, the Director of Public Prosecutions or a prosecutor may, in consultation with the police officer in charge of the investigation, authorize the release of a child accused of an offence on bail prior to the appearance of that child at a preliminary inquiry, subject to reasonable conditions where release of the child into the care of the parent or an appropriate adult is not appropriate.

Authority to release on bail to be in writing.

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(2) The Director of Public Prosecutions may, after consultation with the Cabinet Secretary for the time being responsible for justice, issue directives regarding amounts that may be set for bail in terms of subsection (1).

**219O.** Subject to section 219P, a police officer shall not release a child accused of an offence referred to in the Third Schedule from detention in police custody.

Non-releasable offences.

**219P.** Where a child cannot for any reason be released into the care of a parent or an appropriate adult or cannot be released on bail, the child shall, be placed in a place of safety where such a place is available within a reasonable distance from the place where the child has to appear for a preliminary inquiry.

Detention in place of safety in lieu of detention in police custody.

**219Q** (1) Where a child in detention in police custody complains of any injury sustained during arrest or detention, the police officer to whom such complaint is made shall report the complaint to the Officer Commanding Station who shall delegate a police officer to take the child to a medical practitioner for examination as soon as practicable.

Injuries during arrest or detention.

(2) The report by the medical practitioner under subsection (1) shall be included in the appropriate police docket.

(3) The police officer responsible for a case shall ensure that the child concerned is assessed before the commencement of the preliminary inquiry and may use police transport for that purpose.

**219R.**(1) The Officer Commanding station for each police station shall keep a register in which the prescribed details of all children detained in the station shall be recorded distinctively.

Register of children detained in police cells.

(2) The register may be examined by such persons as may be prescribed.

**219S.** Upon receipt of a notification that a child has been arrested, served with a summons or issued with a written notice, the children's officer shall make immediate arrangements for assessment of the child appearance of the child at the preliminary inquiry.

Assessment of a child before preliminary inquiry.

**219T.**(1) The assessment of a child may take place in any suitable place identified by the children officer, and such a place may include a room at the magistrate's court or at the offices of the Department of Children's Services.

Place of assessment.

(2) The place identified in terms of subsection (1) shall be conducive to the privacy of the child.

**219U.** (1) A child shall be present at the assessment in terms of this Act.

Persons to attend assessment.

(2) Subject to section 219V (3), a child's parent or an appropriate adult shall attend the assessment of the child.

(3) The following persons may attend the assessment of a child—

- (a) the Director of Public Prosecutions or a prosecutor duly designated by the Director;
- (b) the legal representative of the child;
- (c) any police officer;
- (d) any person whose presence is necessary or desirable for the assessment; and
- (e) any other person whose attendance is deemed necessary, including a social worker, child psychologist or researcher.

(4) A children's officer may exclude any person referred to in subsection (2) and (3), except the legal representative of the child, from attending the assessment where presence of such a person is likely to obstruct the completion of the assessment.

**219V.** (1) A children officer may, at any time before the assessment of a child, issue a notice in the prescribed manner to a parent of the child or an appropriate adult to appear at the assessment or, where the interests of justice so require, orally inform the parent or appropriate adult to appear at the assessment.

Notice to attend assessment.

(2) A notice contemplated in subsection (1) shall be delivered by a police officer upon the request of the children officer in the prescribed manner.

(3) A person who has been notified in terms of subsection (1) may apply to the children officer not to attend the assessment, and the children officer may in writing, exempt the person attending assessment.

(4) Where a person who is notified in terms of subsection (1) and is not exempted in terms of subsection (3) fails to attend the assessment, the person commits an offence and, upon conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months, or to both.

(5) A children officer may request a police officer, in the prescribed manner, to—

- (a) obtain any documentation required for the completion of assessment of a child;
- (b) locate a child's parent or an appropriate adult; or
- (c) provide transport in order to secure the attendance at the assessment of a child, the parent of the child or an appropriate adult.

(6) The children officer shall make every effort to locate a parent or an appropriate adult for the purposes of concluding the assessment of a child.

(7) If all reasonable efforts to locate the parent or an appropriate adult have failed, the children officer may conclude the assessment in the absence of such person.

**219W**(1) A children officer shall—

- (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; and
- (d) inquire from the child whether or not he or she intends to acknowledge responsibility for the alleged offence.

(2) The children officer may, at any stage during the assessment of a child, consult with—

- (a) the Director of Public Prosecutions or a prosecutor designated in writing by the Director of Public Prosecutions;
- (b) the police officer who arrested the child, served the summons, issued the written warning or is responsible for investigation of the matter; or
- (c) any person who may provide information necessary for the assessment.

(4) The children officer may consult any person who is not present at the assessment and who has any information relating to the assessment, and where additional information is obtained, the child shall be informed of such information.

(5) Where a child is accused with another child, the children officer may conduct the assessment of both children simultaneously.

(6) The children officer shall encourage the participation of the child during the assessment process.

Duties of a children officer during assessment.

(7) The children officer shall complete an assessment report in the prescribed manner with recommendations on—

- (a) the prospects of diversion;
- (b) the possible release of the child into the care of a parent or an appropriate adult, if the child is in detention;
- (c) the placement, where applicable, of a child in a particular place of safety, remand; or
- (d) the transfer of the matter to a children’s court, stating reasons for such recommendation.

(8) If it appears to the children officer that the child does not intend to acknowledge responsibility for the alleged offence, the children officer shall indicate this accordingly in the assessment report.

(9) The report referred to in subsection (7) must be submitted to the Director of Public Prosecutions or a prosecutor duly designated by the Director before the commencement of the preliminary inquiry.

**219X.** (1) If the age of a child who is to be assessed is uncertain, the children officer shall make an estimation of the child’s age in accordance with section 219 I (2) and shall complete the prescribed form.

Estimation of age.

(2) The children officer shall submit the estimation on the prescribed form together with any relevant documentation to the inquiry magistrate before the child's appearance at a preliminary inquiry.

**219Y.** (1) A preliminary inquiry shall be held in respect of every child prior to plea.

Objectives of preliminary inquiry.

(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 Act.

- (3) The objectives of a preliminary inquiry are to—
- (a) establish whether the matter can be diverted before plea;
  - (b) identify a suitable diversion option, where applicable;
  - (c) establish whether the matter should be transferred to a children’s court under the Children Act;
  - (d) provide an opportunity for the Director of Public Prosecutions, or a prosecutor duly designated by the Director, to assess whether there are sufficient grounds for the matter to proceed to trial;
  - (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;

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- (g) encourage the participation of the child and his or her parent or an appropriate adult 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) transfer of the matter to the children’s court.

(4) A preliminary inquiry may be held in a court or any other suitable place.

(5) The inquiry magistrate shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the inquiry and eliciting any other relevant information.

**219Z.** The registrar shall designate a magistrate as the inquiry magistrate for each sub-county unless there exists a One-Stop Child Justice Centre in the respective sub-county.

Designation of inquiry magistrate.

**219AA.** (1) The following persons shall attend the preliminary inquiry—

Persons to attend preliminary inquiry.

- (a) the child;
- (b) the parent of the child or an appropriate adult;
- (c) the children officer; and
- (d) any person contemplated in section 219AC (1) (a).

(2) The inquiry magistrate may exclude the child’s parent or an appropriate adult from attending the preliminary inquiry if the presence of the parent or adult at the preliminary inquiry is contrary to the best interest of the child.

(3) A preliminary inquiry may only proceed in the absence of the child’s parent, an appropriate adult or the children officer in exceptional circumstances as may be prescribed.

(4) If a preliminary inquiry proceeds in absence of a children officer, the children officer’s assessment report shall be available at the preliminary inquiry unless assessment has been dispensed with in terms of this Act.

(5) The following persons may attend the preliminary inquiry—

- (a) the child’s legal representative;
- (b) police official in charge of investigations;
- (c) any social worker, child psychologist, counselor or researcher, with the approval of the inquiry magistrate; and
- (d) any person contemplated in section 219AC (1) (b).

**219AB.** (1) At the start of the preliminary inquiry—

Procedure during preliminary inquiry.

- (a) the inquiry magistrate shall determine the age of a child in accordance with section 219I, if necessary;
- (b) the inquiry magistrate shall, in the prescribed manner—

- (i) explain the purposes of the preliminary inquiry to the child;
  - (ii) inform the child of the nature of the allegation against him or her;
  - (iii) inform the child of his or her rights; and
  - (iv) explain to the child the immediate procedures to be followed in terms of this Act.
- (c) the prosecutor shall ensure that the inquiry magistrate has a copy of the children officer's assessment report, if available, or the form and documentation contemplated in section 219X(2);
- (d) information regarding a previous diversion or previous conviction of the child concerned may be submitted produced by any person attending the inquiry.

(3) A child, the child's legal representative, the child's parent, an appropriate adult and the prosecutor shall be given an opportunity to question the children officer or any other person giving evidence at the preliminary inquiry.

(4) If the child, in respect of whom the holding of a preliminary inquiry is contemplated, is co-accused together with one or more other children, a joint preliminary inquiry may be held.

(5) Where a joint preliminary inquiry is held, different decisions may be made in respect of each child.

(6) If a child does not acknowledge responsibility for the offence with which he or she is being charged, no further questions regarding such offence may be put to the child and the prosecutor may set the matter down for plea and trial in a court.

(7) No information furnished at a preliminary inquiry may, in any subsequent court proceedings, be used against the person who furnished it.

(8) The inquiry magistrate must keep a record of the proceedings of the preliminary inquiry.

**219AC** (1) The presiding magistrate may—

- (a) cause to be summoned any person whose presence is necessary for the conclusion of the preliminary inquiry;
- (b) permit the attendance of any other person who may be able to contribute to the proceedings;
- (c) request any further documentation or information which may be relevant or necessary to the proceedings;
- (d) after consideration of the information contained in the assessment report, elicit any information from any person attending the inquiry to supplement or clarify the information in the assessment report;
- (e) take such steps as may be necessary to establish the truth of any statement or the correctness of any submission; and

Powers and duties of preliminary magistrate.

- (f) where the conduct of the proceedings of the preliminary inquiry or any aspect concerning the proceedings is in dispute, rule on the conduct of the proceedings in a manner consistent with the provisions of this Act.

(2) If the child has not yet been assessed, the inquiry magistrate may dispense with assessment if it is in the best interests of the child to do so.

(3) The inquiry magistrate shall ensure that the child, the child's legal representative, the child's parent or an appropriate adult are informed of —

- (a) the recommendations in the children officer's assessment report; and
- (b) any diversion option available in the sub-county and the aim and content of such option.

(4) If the children officer is present at the preliminary inquiry, the inquiry magistrate may request the children officer to explain any recommendation or statement made in the assessment report, or provide additional information.

(5) The inquiry magistrate shall consider the reports regarding the arrest of the child and detention in police custody provided by the arresting police official.

**219AD.** Despite provisions to the contrary in any law, a fingerprints of a child may not be taken before conclusion of the preliminary inquiry in respect of the child, unless the fingerprints are—

Fingerprints.

- (a) essential for investigations relating to the alleged offence;
- (b) required to establish the age of the person concerned; or
- (c) necessary to establish the previous convictions of a child for purposes of making a decision on diversion, release from detention in police custody or placement in a place of safety, or remand.

**219AE.** (1) If the age of the child is uncertain, the inquiry magistrate shall determine the age of the child after considering the form and any documentation submitted by the children officer in terms of this Act.

Age determination.

- (2) For the purposes of a determination—
  - (a) an inquiry magistrate may require any relevant documentation, information or statement from any person;
  - (b) an inquiry magistrate may summon any person to produce the documentation, information or statements contemplated in paragraph (a); and
  - (c) section 219 I (2) applies with necessary modifications.

(3) The inquiry magistrate shall enter the age determined in terms of subsection (1) in the record as the age of the child and, the age so entered shall be regarded as the correct age of the child until the contrary is proved on a balance of probabilities.

(4) Where the inquiry magistrate determines that the person was above the age of eighteen years at the time of commission of the alleged of the offence, the magistrate shall close the preliminary inquiry and, defer the proceedings.

(5) If the inquiry magistrate makes a determination of age that is not supported by a valid birth certificate, identity document or passport, a copy of the record of the determination shall be forwarded to the Ministry in charge of issuance of identification documents for the Ministry to issue an identification document to the person.

**219AF.** (1) A child or his or her parent, or an appropriate adult, who has been informed to appear at a preliminary inquiry by a police officer in terms of section 219H and who fails to appear at such inquiry, commits an offence and shall

Failure to appear at preliminary inquiry.

be liable on conviction to the punishment prescribed in subsection (2) or (3).

(2) The inquiry magistrate may—

- (a) if satisfied that the person into whose care the child was released, was notified in terms of section 219H (1) and that the person has failed to comply with the warning or condition imposed, issue a warrant for the arrest of that person;
- (b) when the person is brought before the inquiry magistrate, in a summary manner, enquire into his or her failure to appear at the preliminary inquiry or failure to comply with the condition; and
- (c) unless the person satisfies the magistrate that there is a reasonable possibility that the failure contemplated in paragraph (b) was not due to fault on his or her part, sentence him or her to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding three months, or both.

(3) Subsection (2) applies with the changes required by the context, and subject to sections 219BS and 219BU, to a child who has been released into the care of his or her parent or an appropriate adult and who fails to comply with the directions contained in the written notice referred to in section 219H(1)(a) or with any condition imposed in terms of section 219J(2).

**219AG.** (1) The inquiry magistrate shall release a child who is in detention into the care of a parent or an appropriate adult if—

Conditions for release of child.

- (a) the case is not disposed of at the first appearance at the preliminary inquiry; and
- (b) it is in the interests of justice to so release the child.

(2) In considering whether or not it would be in the interests of justice to release a child into the care of a parent or an appropriate adult, the inquiry magistrate shall have regard to the recommendation of the children officer and all other relevant factors, including—



- (a) the best interests of the child;
- (b) whether the child has any previous convictions;
- (c) the availability of the child's parent or an appropriate adult;
- (d) the likelihood of the child returning to the preliminary inquiry for a further appearance;
- (e) the period for which the child has already been in detention since arrest;
- (f) the probable period of detention of the child until conclusion of the preliminary inquiry;
- (g) the risk that the child may be a danger to himself or herself or to any other person;
- (h) the state of health of the child;
- (i) the reason for any delay in the disposal or conclusion of the preliminary inquiry and whether such delay was due to any fault on the part of the State or on the part of the child or his or her legal representative;
- (j) whether detention would prejudice the child in the preparation of the defence case;
- (k) the likelihood that, if the child is convicted of the offence, a sentence of substantial imprisonment will be imposed;
- (l) the fact that the child is between eight and twelve years of age and presumed to lack criminal capacity; and
- (m) the receipt of a written confirmation by the Director of Public Prosecutions of intent to charge the child with an offence.

(3) The inquiry magistrate may, in releasing a child into the care of the child's parent or an appropriate adult, impose one or more of the following conditions, namely that the child shall—

- (a) appear at a specified place and time;
- (b) report periodically to a specified person or place;
- (c) attend a particular school;
- (d) reside at a particular address;
- (e) be placed under the supervision of a specified person; or
- (f) not interfere with any witness, tamper with any evidence or associate with any person or group of specified people.

(4) If the inquiry magistrate releases the child into the care of a parent or an appropriate adult, the inquiry magistrate shall inform the parent or adult, as the case may be, to bring the child to appear, or ensure that the child appears, at a specified place and time and, if a condition has been imposed in terms of this section, to see to it that the child complies with such condition.

(5) Any person in whose care a child is placed and who fails to comply with subsection (4) commits an offence and shall be liable upon conviction to a fine not exceeding fifty shillings or to imprisonment for a period not exceeding three months, or both.

(6) Subject to sections 219BT and 219BV a child who has been released into the care of a parent or an appropriate adult and who fails to comply with any condition imposed in terms of subsection (3) commits an offence and shall be liable upon conviction to a fine not exceeding fifty shillings or to imprisonment for a period not exceeding three months, or both.

**219AG.** (1) An inquiry magistrate may release a child on the own recognizance of the child and after consideration of the factors contemplated in section 219AG (2), with or without conditions as set out in section 219AG(3), and shall order the child to appear at a preliminary inquiry at a specified place and time.

Release on own  
recognizance.

(2) Subject to sections 219BT and 219BV, a child who has been released on his or her own recognizance and who fails to appear at the preliminary inquiry at the place and time contemplated in subsection (1), or to comply with any condition imposed in terms of subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding fifty shillings or to imprisonment for a period not exceeding three months, or both.

**219AH.** (1) An inquiry magistrate may, if the release of a child on his or her own recognizance or into the care of a parent or an appropriate adult is for any reason not possible, after consideration of the factors contemplated in section 219AG(2), release the child on bail subject to any one or more of the conditions contemplated in section 219AG(3).

Bail.

(2) If bail has been granted previously for a child appearing at a preliminary inquiry by a police officer in terms of section 15(1) or by the Director of Public Prosecutions or a prosecutor designated thereto by the Director, the inquiry magistrate may extend the bail on the same conditions, amended conditions or additional conditions and may increase or reduce the amount of bail.

**219AI.** (1) An inquiry magistrate may order the further detention of a child in a place of safety or remand home if such place or facility is available within a reasonable distance from the place where the preliminary inquiry is held, if—

Further  
detention.

- (a) the proceedings of a preliminary inquiry are postponed in terms of section 219AJ or 219AJ; and
- (b) the release of a child on his or her own recognizance, into the care of a parent or an appropriate adult or on bail is for any reason not possible.

(2) If a place of safety or remand is not available or if there is no vacancy, the child may be detained in a police station as long as the detention facilities at the police station—

- (a) are suitable for the detention of children; and
- (b) provide for children to be detained separately from adults.

(3) An inquiry magistrate may order the further detention of a child in a place of safety or, subject to subsection (5), a remand home, if—

- (a) the child is to appear for plea and trial as contemplated in section 219AN(1); and
- (b) the release of a child on his or her own recognizance, into the care of a parent or an appropriate adult or on bail is for any reason not possible.

(4) The inquiry magistrate shall have regard to the recommendations of the children officer when deciding on the placement of the child as contemplated in subsection (1) or (3).

(5) A child of eighteen years or older charged with an offence may be detained in a borstal institution if there is—

- (a) no place of safety or remand home within a reasonable distance of the preliminary inquiry at which the child is appearing;
- (b) no vacancy in the place of safety or remand; or
- (c) a substantial risk that the child will cause harm to other children in the place of safety or in the remand.

and an inquiry magistrate who makes an order that a child be detained in a borstal institution shall record the reasons for making such an order.

(6) If an inquiry magistrate orders the further detention of a child in terms of subsections (2), the child shall appear before the magistrate at least every fourteen days.

(7) When a child appears before the inquiry magistrate, the magistrate shall—

- (a) determine whether or not the detention remains necessary;
- (b) if ordering further detention of the child, record the reasons for the detention;
- (c) consider a reduction of the amount of bail, if applicable;
- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) if not satisfied that the child is being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and may make an appropriate remedial order.

**219AJ.** (1) The inquiry magistrate may adjourn the proceedings of a preliminary inquiry for a period not exceeding forty-eight hours for the purposes of—

- (a) securing the attendance of a person necessary for the conclusion of the inquiry;
- (b) obtaining information necessary for the conclusion of the inquiry;
- (c) establishing the attitude of the victim regarding diversion;
- (d) planning of a diversion option;

Postponement  
of proceedings.

- (e) finding alternatives to pre-trial residential detention; or
- (f) assessing the child, where no assessment has previously been undertaken and it is found that assessment may not be dispensed with.

(2) If the proceedings of a preliminary inquiry are postponed for the purpose of noting a confession, an admission or a pointing-out, or the holding of an identity parade, the inquiry magistrate shall inform the child of the right to have a parent, an appropriate adult or legal representative present during such proceedings.

(3) The proceedings of a preliminary inquiry may be adjourned for a further period not exceeding forty-eight hours if the adjournment is likely to increase the prospects of diversion, after which the preliminary inquiry, if it has not been concluded and subject to section 39, shall be closed and the prosecutor shall set the matter down for plea and trial in a court.

**219AJ.** (1) Any person may request the inquiry magistrate to adjourn the proceedings of a preliminary inquiry for the purposes of obtaining a detailed assessment of a child.

Adjournment for purposes of obtaining a detailed assessment.

(2) The inquiry magistrate may adjourn the proceedings of the preliminary inquiry for a period not exceeding fourteen days if there are exceptional circumstances warranting a further assessment of the child and if such circumstances relate to—

- (a) the possibility that the child may be a danger to others or to himself or herself;
- (b) the fact that the child has a history of repeatedly committing offences or absconding;
- (c) the social welfare history of the child;
- (d) the possible admission of the child to a sexual offenders' programme, substance abuse programme or other intensive treatment programme; or
- (e) the possibility that the child may be a victim of sexual or other abuse.

(3) Any detailed assessment shall be conducted in the home of the child, unless assessment in the home is not in the best interests of the child or impossible, in which case assessment may be conducted at any residential facility.

**219AK.** (1) The inquiry magistrate shall ascertain from the prosecutor whether the matter can be diverted after consideration of—

Decision on diversion.

- (a) the assessment report, unless assessment has been dispensed with in section 219 AK (2);
- (b) the views of all the persons present at the preliminary inquiry and any information provided by any such person;
- (c) any information requested in terms of section 219AK (1)(c); and

(d) the willingness of the child to acknowledge responsibility for the offence.

(2) If the prosecutor indicates that the matter may be diverted, the inquiry magistrate shall make an order for diversion in respect of the child concerned.

(3) In addition to the diversion options set out in section 48, the inquiry magistrate may, after consultation with the persons present at the preliminary inquiry, develop an individual diversion option which meets the purposes of and standards applicable to diversion set out in sections 219AQ and 219AR.

**219AL.** (1) If a child fails to comply with any order relating to diversion, the inquiry magistrate may, upon being notified of such failure in the prescribed manner, issue a warrant for the arrest of the child or a written notice to the child to appear before the magistrate.

Failure to  
comply with  
diversion order.

(2) When a child appears before an inquiry magistrate pursuant to a warrant of arrest or written notice, the inquiry magistrate shall inquire into the reasons for the child's failure to comply with the diversion order.

(3) Unless the prosecutor decides to proceed with the prosecution of the child concerned, the inquiry magistrate may, after consideration of the views of any person present at the inquiry, decide to—

- (a) apply the same option with altered conditions;
- (b) apply any other diversion option; or
- (c) make an appropriate order which will assist the child and his or her family to comply with the diversion option initially applied.

(4) If the prosecutor decides to proceed with prosecution, the matter shall be set down for plea and trial in a court, in which case section 219AN applies with the changes required by the context.

**219AM.** (1) If it appears during proceedings at a preliminary inquiry that a child before the court is a child in need of care and protection within the meaning of the Children Act, the matter shall be placed before a children's court and dealt with under the Children Act.

Referral to the  
children's court.

(2) Referral of a matter to the children's court as a case of a child in need of care and protection shall be considered by an inquiry magistrate if a child—

- (a) has previously been assessed on more than one occasion with regard to minor offences committed to meet the child's basic need for food and warmth, and in the preliminary inquiry in question it is again alleged that the child has committed such an offence;
- (b) is the subject of a current order of the children's court;
- (c) is allegedly abusing dependence-producing substances;  
or

- (d) does not live at his or her family home or in appropriate substitute care, and is alleged to have committed a minor offence the purpose of which was to meet the child's basic need for food and warmth

**219AN.** (1) If no diversion has taken place and the child has not been transferred to a children's court as a case of a child in need of care and protection upon the conclusion of the preliminary inquiry, the prosecutor shall inform the inquiry magistrate of the place, date and time when the child shall appear for plea and trial in a children's court or a Child Justice Court at a One-Stop Child Justice Centre.

Procedure upon referral of matter to court.

- (2) The inquiry magistrate shall, if the child—
- (a) is not legally represented, explain to the child and the parent or an appropriate adult, as the case may be, the provisions of Part X regarding legal representation; and
- (b) indicates an intention to apply for legal representation at State expense in terms of section 219BU, assist the child, as far as is reasonably possible, to make such application.
- (3) If the child is—
- (a) in detention, the inquiry magistrate shall inform the child of the place, date and time of the next appearance in court and shall warn the child's parent or an appropriate adult to attend such proceedings at the specified place and time; or
- (b) not in detention, the inquiry magistrate—
- (i) may alter or extend any condition imposed in terms of section 219J(2) or section 219AG(3); and
- (ii) shall warn the child and his or her parent or an appropriate adult, as the case may be, to appear in court at a specified place, date and time.

(4) Where an inquiry magistrate has presided over a preliminary inquiry and has heard any information prejudicial to the impartial determination of the matter, such magistrate may not preside over any subsequent trial emanating from that inquiry.

**219AO.** The purpose of diversion is to—

Purpose of diversion.

- (a) encourage the child to be accountable for the harm caused;
- (b) meet the particular needs of the individual child;
- (c) promote the re-integration of the child into the family and community;
- (d) provide an opportunity to those affected by the harm to express their views on its impact on them;
- (e) encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm;

- (f) promote reconciliation between the child and the person or community affected by the harm caused by the child;
- (g) prevent stigmatizing the child and prevent adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

**219AP.** A child shall be considered for diversion if—

Conditions for diversion.

- (a) the child voluntarily acknowledges responsibility for the offence;
- (b) the child understands his or her right to remain silent and has not been unduly influenced to acknowledge responsibility;
- (c) there is sufficient evidence to prosecute; and
- (d) the child and the parent, or a guardian, consent to the diversion.

**219AQ.** (1) A child may not be excluded from a diversion programme due to an inability to pay any fee required for such programmed.

Standards applicable to diversion.

(2) A child may be required to perform community service as an element of diversion, with due consideration to the child's age and development.

(3) Diversion options—

- (a) shall promote the dignity and well-being of a child, and the development of his or her sense of self-worth and ability to contribute to society;
- (b) may not be exploitative, harmful or hazardous to a child's physical or mental health;
- (c) shall be appropriate to the age and maturity of a child; and
- (d) may not interfere with a child's schooling.

(4) Diversion options shall, where reasonably possible—

- (a) impart useful skills;
- (b) include a restorative justice element which aims at healing relationships, including the relationship with the victim;
- (c) include an element which seeks to ensure that the child understands the impact of his or her behavior on others, including the victims of the offence, and may include compensation or restitution; and
- (d) be presented in a location reasonably accessible to the child, and a child who cannot afford transport in order to attend a selected diversion programmed should, as far as is reasonably possible, be provided with the means to do so.

(5) Any diversion option presented by a government department or a non-governmental organization, which has a predetermined content and duration and which involves a service to groups of children or offers a service to individual children on a regular basis, shall be registered as prescribed.

**219AR.**(1) The Cabinet Secretary shall—

Responsibility of  
the Cabinet  
Secretary.

- (a) develop suitable diversion options as contemplated in this Part; and
- (b) maintain a register or cause a register to be maintained of children who have been subject to diversion in terms of this Act.

(2) Subsection (1)(a) shall not preclude any government department or non-governmental organization from developing suitable diversion options for children who are alleged to have committed offences.

**219AS.**(1) For the purposes of this section—

Levels of  
diversion  
options.

- (a) diversion options are set out in three levels with level one comprising the least onerous and level three the most onerous options as follows—
  - (2) Level one diversion options include—
    - (a) an oral or written apology to a specified person or persons or institution;
    - (b) a formal caution in the prescribed manner with or without conditions;
    - (c) placement under a supervision and guidance order in the prescribed manner for a period not exceeding three months;
    - (d) placement under a reporting order in the prescribed manner;
    - (e) the issue of a compulsory school attendance order in the prescribed manner for a period not exceeding three months;
    - (f) the issue of a family time order in the prescribed manner for a period not exceeding three months;
    - (g) the issue of a positive peer association order in the prescribed manner in respect of a specified person or persons or a specified place for a period not exceeding three months;
    - (h) the issue of a good behaviour order in the prescribed manner;
    - (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed manner;
    - (j) referral to counseling or therapy for a period not exceeding three months;
    - (k) compulsory attendance at a specified centre or place for a specified vocational or educational purpose and for a



period not exceeding five hours each week, for a maximum of three months;

- (l) symbolic restitution to a specified person, persons, group or institution; and
  - (m) restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored.
- (3) Level two diversion options include—
- (a) the options referred to in subsection (3) but the maximum periods contemplated in that subsection shall, for the purposes of this subsection, be construed as six months;
  - (b) 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 maximum of six months;
  - (c) performance without remuneration of some service for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by the children officer effecting the assessment for a maximum period of fifty hours, and to be completed within a maximum period of six months;
  - (d) provision of some service or benefit to a specified victim or victims in an amount which the child or the family can afford;
  - (e) payment of compensation to a maximum of five thousand shillings to a specified person, persons, group or institution where the child or his or her family is able to afford this;
  - (f) where there is no identifiable person or persons to whom restitution or compensation could be made, provision of some service or benefit or payment of compensation to a community organisation, charity or welfare organisation;
  - (g) referral to appear at a family group conference or a victim-offender mediation at a specified place and time; and
  - (h) any two of the options listed above used in combination.

(3) Level three diversion options shall apply to children over the age of fourteen years where a court, upon conviction of the child for the offence in question, is likely to impose a sentence of imprisonment for a period not exceeding six months, and include—

- (a) referral to a programme which 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;

- (b) performance without remuneration of some service for the benefit of the community under the supervision and control of an organisation or institution, or a specified person or group, identified by the children officer and for a period not exceeding two hundred and fifty hours which shall be completed within twelve months of the commencement of the service;
- (c) where a child is over the age of compulsory school attendance as contemplated in the Children Act and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding six months and no more than thirty-five hours per week; and
- (d) referral to counseling or therapeutic intervention in conjunction with any of the options listed in this subsection.

(6) Upon the selection of a diversion option, the inquiry magistrate or court shall identify a children officer or other suitable person to monitor the child's compliance of the selected diversion option.

(7) In the event of a child failing to comply with any condition of the selected diversion option, the officer or person identified in terms of subsection (6) shall notify the inquiry magistrate in writing of such failure.

(8) For purposes of this Section—

“a compulsory school attendance order” means an order requiring a child to attend school every day for a specified period of time, which attendance is to be monitored by a specified person;

“a family time order” means an order requiring a child to spend a specified number of hours with his or her family;

“a good behavior order” means an order requiring a child to abide by an agreement made between the child and his or her family to comply with certain standards of behavior;

“a positive peer association order” means an order requiring a child to associate with persons who can contribute to the child's positive behavior;

“a reporting order” means an order requiring a child to report to a specified person at a time or at times specified in such order so as to enable such person to monitor the child's behavior; and

“a 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.

(2) In selecting a specific diversion option for a particular child at a preliminary inquiry, consideration shall be given to—

- (a) the selection of a diversion option from an appropriate level in terms of this section;
- (b) a child's cultural, religious and linguistic background;

- (c) the child's educational level, cognitive ability, domestic and environmental circumstances;
- (d) the proportionality of the option recommended or selected to the circumstances of the child, the nature of the offence and the interests of society; and
- (e) the child's age and developmental needs.

**219AT** (1) Where a child has been referred to appear at a family group conference, a children officer appointed by the inquiry magistrate shall, within fourteen days, but not later than twenty-one days, after such referral convene the conference by—

Family group  
conference

- (a) setting the time and place of the conference and
- (b) taking steps to ensure that all persons who may attend the conference are notified expeditiously of the time and place of the conference.

(2) The following persons may attend a family group conference—

- (a) the child and his or her parent or an appropriate adult;
- (b) any person requested by the child;
- (c) the children officer;
- (d) the prosecutor;
- (e) any police officer;
- (f) the victim of the alleged offence and, if such victim is under the age of eighteen years, his or her parent or an appropriate adult;
- (g) the legal representative of the child;
- (h) a member of the community in which the child normally resides; and
- (i) any person authorized by the children officer to attend the conference.

(3) If a family group conference fails to take place at the time and place set for the conference, the children officer shall convene another conference as contemplated in this section.

(4) Participants in a family group conference shall follow the procedure agreed upon by them and may agree to such plan in respect of the child as they deem fit.

(5) A plan contemplated in subsection (3)—

- (a) may include—
  - (i) the application of any option contained in section 4219AS (3) or (4); or
  - (ii) any other plan appropriate to the child, his or her family and local circumstances which is consistent with the principles contained in this Act:

Provided that the plan shall—

- (a) specify the objectives for 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 and for a parent or an appropriate adult;
- (c) specify the persons or organisations to provide such services and assistance;
- (d) state the responsibilities of the child and of the child's parent or an appropriate adult;
- (e) state personal objectives for the child and for the child's parent or an appropriate adult; and
- (f) include such other matters relating to the education, employment, recreation and welfare of the child as are relevant.

(6) 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 and to the officer or person contemplated in section 219AS(6)(a).

(7) In the event of the child failing to comply with any condition of the plan agreed to at the family group conference, the officer or person must notify the inquiry magistrate in writing of such failure, in which case Section 219AL applies.

(8) If the participants in a family group conference cannot agree on a plan, the conference must be closed and the children officer must refer the matter back to the inquiry magistrate for consideration of another diversion option.

(9) The proceedings at a family group conference are confidential and no statement made by any participant in the conference may be used as evidence in any subsequent court proceedings.

**219AU.** (1) If a child has been referred to appear at a victim-offender mediation, section 219AT(1), (5), (6), (7), (8) and (9) shall apply with the necessary modifications.

Victim- offender mediation.

(2) A children officer appointed by the inquiry magistrate shall convene the victim-offender mediation and may regulate the procedure to be followed at the mediation.

**219AV.** (1) For the purposes of this Act, the Children's Courts shall be regarded as Child Justice Courts when dealing with criminal cases against children.

Children court to be known as Child Justice Courts.

(2) The provisions of Part VI shall apply in any matter that is brought before a Children's Court that relates to a child offender.

**219AW.** (1) The Cabinet Secretary for the time being in charge of the administration of justice, in consultation with the Cabinet Secretary for the time being in charge of children affairs, safety and security and correctional services, may establish centralized services for child justice to be known as One-Stop Child Justice Centres in every county.

Establishment and jurisdiction of One-Stop Child Justice Centres.

(2) Every One-Stop Child Justice Centre may be situated at a Children's Court or any other appropriate place, but in any event shall have—

- (a) a children's court;
- (b) offices for use by members of the Kenyan Police Service;
- (c) offices of use by children officers;
- (d) facilities to accommodate children temporarily pending the conclusion of a preliminary inquiry;
- (e) offices for use by a child's legal representative
- (f) offices for use by persons who are able to provide diversion and prevention services;
- (g) offices for use by persons authorized to trace the families of a child;
- (h) offices for use by persons who are able to provide correctional supervision.

(3) The Cabinet Secretary for the time being in charge of justice shall be responsible for the provision of resources required to establish such centres and each Cabinet Secretary referred to in subsection (1) shall be severally responsible for the provision of such services as may be required to enable a One-Stop Child Justice Centre to function effectively.

(4) The jurisdiction of One-Stop Child Justice Centres shall be limited to a County.

(5) The boundaries of a One-Stop Child Justice Centre may not have to correspond with the boundaries of any magisterial districts.

(6) If a One-Stop Child Justice Centre has concurrent jurisdiction with a magistrate's court due to the fact that the geographical area of jurisdiction of the magistrate's court or part thereof falls within the boundaries of geographical jurisdiction of the One-Stop Child Justice Centre, the jurisdiction of the One-Stop Child Justice Centre in relation to the hearing of cases in terms of this Act takes precedence.

**219 AX.** (1) Subject to subsections (2) and (5), a child shall be assisted by a parent or an appropriate adult at proceedings in a Child Justice Court.

Parental  
assistance.

(2) If a parent or an appropriate adult cannot be traced after reasonable efforts and any further delay would be prejudicial to the best interests of the child, the Child Justice Court may dispense with the obligation that the child is to be assisted by a parent or an appropriate adult.

(3) The parent of a child or an appropriate adult who has been warned by an inquiry magistrate to attend proceedings in terms of section 219 AN (3), shall attend such proceedings unless exempted in terms of subsection (5).

(4) If a parent or appropriate adult has not been informed to attend as contemplated in subsection (3), the Child Justice Court may at any stage of the proceedings summon or cause to be issued summons to any parent or appropriate adult to appear at such proceedings.

(5) A parent or an appropriate adult warned to appear as contemplated in subsection (3) or summoned in terms of subsection (4) may apply to the Child Justice Court for exemption from the obligation to attend the proceedings in question, and if the presiding officer of the Child Justice Court exempts a parent or an appropriate adult he or she shall do so in writing.

(6) Where a child is not assisted by a parent or an appropriate adult, and such child requests assistance, the court shall appoint a *guardian ad litem* as provided for under this Act, who shall assist a child in circumstances referred to in subsection (1) of this section.

**219AY** (1) At the start of proceedings in a Child Justice Court, the presiding officer shall, in the prescribed manner—

Proceedings in  
Child Justice  
Court.

- (a) inform the child of the nature of the allegations against him or her;
- (b) inform the child of his or her rights; and
- (c) explain to the child the further procedures to be followed in terms of this Act and the Criminal Procedure Act.

(2) The presiding officer in a Child Justice Court may summon assessors to assist him or her taking into account the circumstances of the case.

(3) The Child Justice Court may participate in eliciting evidence from any person involved in the proceedings if it would be in the best interests of the child.

Cap. 75.

(4) The proceedings of the Child Justice Court must, with due regard to the child's procedural rights, be conducted in an informal manner to encourage maximum participation by the child and his or her parent or an appropriate adult and must include flexible time, adjournments whenever the child shows any signs of fatigue and play targets during breaks depending on the evolving capacity of the child.

(5) The Child Justice Court shall protect a child from hostile cross-examination where the cross-examination is prejudicial to the well-being of the child or the fairness of the proceedings.

**219AZ.** (1) Evidence obtained as a result of a confession, an admission or a pointing out rendered admissible in terms of the Criminal Procedure Act is only admissible as evidence in a court if the child's legal representative was present when the confession or admission was made or the pointing out took place.

Admissibility of  
certain evidence.

Cap. 75

(2) No evidence relating to an identity parade is admissible in a court without the aforementioned representation on behalf of the child.

(3) If a legal representative is not available at the procedures contemplated in subsections (1) and (2), a *guardian ad litem* or a children's officer shall be present at such procedure and assist the child.

(4) The police officer responsible for the case shall request a *guardian ad litem* or children's officer to assist the child if required in terms of subsection (2).

**219BA.** (1) Unless there are exceptional circumstances warranting otherwise, no child may be handcuffed when appearing in any Child Justice Court.

Children in  
detention at  
Child Justice  
Court.

(2) A child held in a cell in or at the Child Justice Court shall be kept separate from adults and be treated in a manner and kept in conditions which take account of his or her age.

(3) Girls shall be kept separate from boys and shall be under the care of an adult woman.

(4) Where a child is transported to or from a Child Justice Court the child shall, if reasonably possible, be transported separate from adults and with persons of the same sex.

(3) The Cabinet Secretary for the time being responsible for justice shall issue regulations on the treatment and conditions of children while in detention at Child Justice Court.

**219BB** (1) The criminal culpability of a child over the age of eight years but under the age of twelve years shall be proved by the State beyond reasonable doubt.

Establishment of  
criminal  
culpability.

(2) The prosecutor or the child's legal representative may request the Child Justice Court to order an assessment of the child by a suitably qualified person to be conducted at the expense of the State.

(3) If an order has been made by the Child Justice Court in terms of subsection (2), the person identified to conduct an assessment of the child shall furnish the Child Justice Court with a written report of the assessment within thirty days of the date of the order.

(4) The evaluation shall include an assessment of the cognitive, emotional, psychological and social development of the child.

(5) The person who conducts the evaluation may be called to attend the Child Justice Court proceedings and give evidence and, if called, shall be remunerated through the Consolidated Fund.

(6) In any proceedings relating to a child where an expert is called, priority shall be given in taking of their evidence by the courts and in a timely manner.

**219BC.**(1) Where a child and a person other than a child are alleged to have committed the same offence, they shall be tried separately unless it is in the interest of justice to join the trials.

Separation and  
joinder of trials  
involving  
children and  
adults.

(2) An application for joinder of trials shall be directed to the Child Justice Court in which the child is to appear after notice to the child, such person and their legal representatives.

(3) If the Child Justice Court grants an application for joinder of trials, the matter shall be transferred to the court in which such person is to appear.

(4) The court to which the matter has been transferred shall afford the child concerned all such benefits conferred upon such child by this Act.

**219BD** (1) A Child Justice Court shall conclude all trials of accused children as speedily as possible and shall ensure that adjournments are limited in number and in duration.

(2) Sections 219AG, 219AH, 219AI and 219AJ shall apply with the necessary modifications to a Child Justice Court where a child appearing in the Child Justice Court for the first time is in detention.

Time limits relating to conclusion of trials.

(3) Where a child remains in detention in a place of safety, remand or correctional facility and the trial of the child is not concluded within a period of six months from the date upon which the child has pleaded to the charge, the child shall be released from detention, unless charged with an offence.

**219BE.**(1) If at any time before the conclusion of the case for the prosecution it comes to the attention of a Child Justice Court that a child acknowledges or intends to acknowledge responsibility for an alleged offence, the Child Justice Court may make an order for diversion in respect of the child if the prosecutor indicates that the matter may be diverted.

Child Justice Court may divert matter.

(2) Part VI shall apply with the necessary modifications if the Child Justice Court makes an order contemplated in subsection (1).

(3) A Child Justice Court that makes a diversion order shall adjourn proceedings pending the child's compliance with the diversion condition in question.

(4) The Child Justice Court shall, upon receipt of a report from the children officer that the child has successfully complied with the diversion conditions, acquit the child on all charges in question.

(5) An acquittal under subsection (4) may be made in the absence of the child.

(6) If a child fails to comply with an order relating to diversion, section 219AL shall apply with the necessary modifications.

**219BF.**(1) At any sitting of a Child Justice Court, a person may not be present unless his or her presence is necessary in connection with the proceedings of the Child Justice Court or unless the presiding officer has granted him or her permission to be present.

Privacy and confidentiality.

(2) A person may not publish any information which reveals or may reveal the identity of a child or of any witness under the age of eighteen years appearing at any proceedings before a Child Justice Court.



(3) Subject to subsection (4), no prohibition under this section precludes—

- (a) access to information pertaining to a child if such access would be in the interests, safety or welfare of any such child or of children in general;
- (b) the publication, in the form of a law report, of—
  - (i) information for the purpose of reporting any question of law relating to the proceedings in question; or
  - (ii) any decision or ruling given by any Child Justice Court on such question;
- (c) the publication, in the form of any report of a professional or technical nature, of research results and statistical data pertaining to a child if such publication would be in the interests, safety or welfare of the child or of children in general.

(4) The reports referred to in subsection (3)(b) or (c) may not mention the name of the person charged or of the person against whom or in connection with whom the offence in question was alleged to have been committed or of any witness at such proceedings, and may not mention the place where the offence in question was alleged to have been committed.

**219BG** (1) A legal representative of a child under this Act shall be an advocate of the High Court of Kenya.

Requirements to be complied with by legal representatives.

- (2) A legal representative representing a child shall—
  - (a) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
  - (b) explain the child's rights and duties in relation to any proceedings under this Act in a manner appropriate to the age and intellectual development of the child;
  - (c) promote diversion where appropriate, but may not unduly influence the child to acknowledge responsibility; and
  - (d) ensure that the trial is concluded without delay.

**219BH** (1) A child has the right to give instructions to a legal representative in the language of his or her choice, with the assistance of an interpreter where necessary.

Access to legal representation.

(2) The parent of a child or an appropriate adult may appoint a legal representative of his or her own choice, in which case the payment of the fees for the legal representation rests with that parent or appropriate adult, as the case may be.

**219BI** (1) A child shall be provided with legal representation at State expense at the conclusion of the preliminary inquiry if no legal representative was appointed by the parent or appropriate adult and if—

State to provide legal representation.

- (a) the child is in detention pending plea and trial in a Child Justice Court; and

- (b) the proceedings are adjourned for plea and trial in a Child Justice Court and it is likely that a sentence involving a residential requirement may be imposed if the child is convicted of the offence in question; or
- (c) the child is under the age of fourteen years of age and a certificate contemplated in section 219D(3) has been issued in respect of such child;
- (d) substantial injustice would occur without legal representation.

(2) The prosecutor shall indicate to the Child Justice Court whether he or she is of the opinion that the matter is a matter contemplated in subsection (1)(b) before the child is asked to plead and if so, no plea may be taken until a legal representative has been appointed.

(3) If a child qualifies for legal representation at State expense, the court shall make an order to that effect.

(4) Such expenses shall be defrayed from the Consolidated Fund, the amount of which shall be set by the Cabinet Secretary for the time being in charge of the administration of justice.

(5) If the parent or guardian of a child who is granted legal representation at State expense under this Act would otherwise have been ineligible to receive legal representation at State expense due to the fact that the parent or guardian is capable of paying for such services, the government may recover the costs of the legal representation from such parent or guardian.

**219BJ.** (1) A child contemplated in section 219 BS (1) may not waive his or her right to legal representation.

Waiver of right  
to legal  
representation.

(2) Where a child provided with legal representation refuses to give instructions to the appointed legal representative, the legal representative shall bring that fact to the attention of the Child Justice Court, whereupon the Child Justice Court shall question the child to ascertain the reasons for the child's refusal and shall note the reasons on the record of the proceedings.

(3) Where the child does not wish to have a legal representative, the Child Justice Court shall instruct a legal representative to assist the child.

(4) A legal representative assisting a child in terms of subsection (3)—

- (a) shall—
  - (i) attend all hearings pertaining to the case;
  - (ii) address the Child Justice Court on the merits of the case;
  - (iii) note an appeal regarding conviction or sentence at the conclusion of the trial, if he or she considers it necessary; and
  - (iv) have access to the affidavits filed and statements made pertaining to the case; and

(b) may—

- (i) cross-examine any State witness with the object of discrediting the evidence of such witness; and
- (ii) raise reasonable doubt about the admissibility of evidence led by the State and raise objections to the introduction of evidence by the State, when appropriate.

**219BK.** A Child Justice Court shall, after convicting a child, impose a sentence in accordance with this Part.

Sentencing  
convicted children.

**219BL.** (1) A Child Justice Court imposing a sentence shall request a pre-sentence report prepared by a children officer or any other suitable person prior to the imposition of sentence.

Pre-sentence  
reports.

(2) The children officer or other person shall complete the report as soon as possible but not later than thirty days following the date upon which such report was requested.

(3) A Child Justice Court that imposes a sentence other than that recommended in the pre-sentence report shall record the reasons for the imposition of a different sentence.

(4) A Child Justice Court may dispense with a pre-sentence report where a child is convicted for an offence referred to in the First Schedule or where requiring such report would cause undue delay in the conclusion of the case to the prejudice of the child, but no Child Justice Court sentencing a child may impose a sentence with a residential requirement unless a pre-sentence report has first been obtained.

(5) For the purposes of subsection (4), “a sentence with a residential requirement” includes a sentence where the residential requirement of the sentence is suspended.

(6) The officer presiding in a Child Justice Court who imposes any sentence involving detention in a residential facility shall certify on the warrant of detention that a pre-sentence report has been placed before the Child Justice Court prior to imposition of sentence.

(7) If the certification contemplated in subsection (6) does not appear on the warrant of detention, the person admitting the child to the residential facility in question shall refer the matter back to the relevant Child Justice Court.

**219BM.** The purposes of sentencing in terms of this Act are to—

Purpose of  
sentencing.

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualized response which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the offence;

- (c) promote the reintegration of the child into the family and community; and
- (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration.

219BN. (1) Sentences which allow a child to remain in the community and which may be imposed in terms of this Act are—

Community-based sentences.

- (a) any of the options referred to in section 219AS (4);
- (b) placement under a supervision and guidance order in the prescribed manner for a period not exceeding three years;
- (c) in cases which warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for such period of time as the Child Justice Court deems fit;
- (d) where a child is over the age of compulsory school attendance as contemplated in the Children Act and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding twelve months and for no more than thirty-five hours per week;
- (e) performance without remuneration of some service for the benefit of the community under the supervision or control of an organisation or an institution, or a specified person or group identified by the Child Justice Court, or by the children officer of the district in which the Child Justice Court is situated, for a maximum period of two hundred and fifty hours and to be completed within twelve months;
- (f) any other sentence, subject to section 219BO, which is appropriate to the circumstances of the child and in keeping with the principles of this Act and which, if it includes a period of time, may not exceed twelve months in duration.

(2) Before a child under the age of fourteen years is sentenced to a sentence contemplated in subsection (1)(e), due consideration shall be given to the child's age and development.

**219BO.** (1) A Child Justice Court that convicts a child of an offence may refer the matter to a family group conference or for victim-offender mediation.

Restorative justice sentences.

(2) Section 219 AT applies where a Child Justice Court has referred a matter to a family group conference, and section 219AU applies where a Child Justice Court has referred a matter for victim-offender mediation.

(3) Upon receipt of the written recommendations from a family group conference or victim-offender mediation, the Child Justice Court may—

- (a) confirm the recommendations by making them an order of the Child Justice Court; or

- (b) substitute or amend the recommendations and make an appropriate order.

(4) If the Child Justice Court does not agree with the terms of the plan made at a family group conference or victim-offender mediation and imposes a sentence which differs in a material respect from that agreed to or decided upon at the conference or mediation, the Child Justice Court shall note the reasons for deviating from the plan on the record of the proceedings.

(5) If a child has been sentenced in accordance with an order arising from a family group conference or victim-offender mediation, and fails to comply with that order, the children officer shall notify the Child Justice Court of such failure as soon as possible.

(6) The Child Justice Court may issue a warrant of arrest for the child and when the child appears before the Child Justice Court pursuant to such a warrant impose an appropriate sentence on the child.

**219BP.** (1) A Child Justice Court may impose a sentence of correctional supervision for a period not exceeding three years on a child over the age of fourteen years.

Sentences involving correctional supervision.

(2) The whole or any part of a sentence contemplated in subsection (1) may be postponed or suspended, with or without conditions contemplated in section 219BN(3).

**219BQ.** (1) No sentence involving a residential requirement may be imposed upon a child unless the presiding officer is satisfied that such a sentence is justified by—

Sentence with residential requirement.

- (a) the seriousness of the offence, the protection of the community and the severity of the impact of the offence upon the victim; or
- (b) the previous failure of the child to respond to non-residential alternatives.

(2) A presiding officer imposing any sentence involving a residential requirement on a child shall note the reasons for the sentence on the record and explain them to the child in language that he or she can understand.

(3) A sentence involving a residential requirement includes referral to a—

- (a) programme with a periodic residence requirement where the duration of the programme does not exceed twelve months, and no portion of the residence requirement exceeds twenty-one consecutive nights, with a maximum of sixty nights for the duration of the programme;
- (b) residential facility, subject to section 219BL; and
- (c) committal to a borstal institution, subject to section 219BL.

Referral to residential facility.

**219BR** (1) Subject to subsection (2), a sentence involving a residential requirement may not exceed a period of two years.

(2) A sentence involving a residential requirement may be imposed for a period exceeding two years if the child is under the age of fourteen years and the child would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 69(1)(a).

(3) A child contemplated in subsection (2) may not be required to reside in a residential facility beyond the age of eighteen years.

(4) Upon completion of a sentence contemplated in subsection (1) or upon attainment of the age of eighteen years in the case of a child referred to in subsection (2), the child concerned may request permission in the prescribed manner from the head of the residential facility to continue to reside at such residential facility for the purposes of completing his or her education.

**219BS** (1) A sentence of imprisonment may not be imposed unless—

- (a) the child was over the age of twelve years of age at the time of commission of the offence; and
- (b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include conviction of a serious offence or a previous failure to respond to alternative sentences, including sentences with a residential element.

Referral to  
prison.

(2) No sentence of imprisonment may be imposed on a child—

- (a) in respect of an offence; or
- (b) as an alternative to any other sentence contemplated in this Act.

(3) If any child fails to comply with a condition of a sentence imposed on him or her, the child may, in the prescribed manner, be brought before the Child Justice Court which imposed the original sentence for reconsideration of an appropriate sentence which may, subject to subsections (1) and (2), include a sentence of imprisonment.

(4) A Child Justice Court imposing a sentence of imprisonment shall announce the period of imprisonment in an open Child Justice Court and the coming into effect of the term of imprisonment shall be antedated by the number of days that the child has spent in remand prior to the sentence being announced in Child Justice Court.

**219BT.** (1) The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding three years.

Postponement  
of sentence.

(2) The whole or any part of any sentence may be suspended, with or without one or more of the conditions referred to in subsection (3), for a period not exceeding five years.

(3) The conditions contemplated in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which is in keeping with the objects of this Act and which promotes the child's reintegration into society and may include—

- (a) restitution, compensation or symbolic restitution;
- (b) an apology;
- (c) the obligation not to commit a further offence of a similar nature;
- (d) good behaviour;
- (e) regular school attendance for a specified period;
- (f) attendance at a specified time and place of a family group conference or for victim-offender mediation;
- (g) placement under the supervision of a children officer or correctional official;
- (h) a requirement that the child or any other person designated by the Child Justice Court shall appear appear before that Child Justice Court on a date or dates to be determined by such Child Justice Court for a periodic progress report; and
- (i) referral to any diversion option referred to in section 219AS(3)(d), (e), (f), (g), (h), (i), (j) or (k).

(4) A Child Justice Court that has postponed the passing of sentence in terms of subsection (1) on one or more conditions may request the children officer concerned for regular progress reports indicating the child's compliance with the conditions.

(5) The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record if the child has met all the conditions imposed or at the expiration of the period in question, as the case may be.

**219BU.** Notwithstanding any other written law, a Child Justice Court convicting a child of an offence for which a fine or imprisonment is prescribed as penalty may impose any one of the following penalties in place of that fine or imprisonment—

Penalty in lieu of  
fine or  
imprisonment.

- (a) symbolic restitution to a specified person, group of persons or institution;
- (b) payment of compensation not exceeding ten thousand shillings to a specified person, group of persons or institution where the child or his or her family is able to afford this;
- (c) an obligation on the child to provide some service or benefit or to pay compensation to a community charity or welfare organisation identified by the child concerned or by the Child Justice Court if there is no identifiable person to whom restitution or compensation could be made; or
- (d) any other competent sentence prescribed in this Act, but not imprisonment.

Prohibition on  
certain forms of  
punishment.

**219BV.** (1) No sentence of capital punishment, life imprisonment or corporal punishment may be imposed on a child.

(2) A child who has been sentenced to attend a residential facility may not be detained in a remand home or in police custody pending designation of the place where the sentence is to be served.

**219BW.** Any sentence by a magistrate's court, as defined in the Criminal Procedure Act and sitting as a Child Justice Court, involving correctional supervision imposed in terms of section BI and any sentence with a residential requirement imposed in terms of section BJ, whether wholly or partially suspended, are subject to review in terms of the Criminal Procedure Act.

Automatic  
review.

Cap. 75.

**219BX.** The sentence of any child shall be suspended pending review or appeal and a child sentenced to imprisonment or sentenced to a penalty with a residential requirement shall be released on any condition contemplated in section 219AG (3) pending review or appeal.

Suspension of  
execution of  
sentence.

**219BY.** (1) The record of any sentence imposed upon a child convicted of any offence referred to in the Third Schedule may not be expunged.

Expunging  
records

(2) In respect of offences other than those referred to in the Third Schedule, the presiding officer in a Child Justice Court must make an order regarding the expungement of the record of the child's conviction and sentence and must note the reasons for the decision as to whether such record may be expunged or not when he or she imposes the sentence after consideration of any relevant factor, including—

- (a) the nature and circumstances of the offence; and
- (b) the child's personal circumstances.

(3) If a presiding officer decides that a record referred to in subsection (2) may not be expunged, such decision is subject to review or appeal on application by or on behalf of the child.

(4) If an order has been made in terms of subsection (2) that the record of the conviction and sentence of a child may be expunged, the presiding officer must set a date upon which the record of conviction and sentence must be expunged, which date may not exceed five years from the date of the imposition of the sentence.

(5) If a date for expungement of the record of the conviction and sentence has been set in terms of subsection (4), the presiding officer must impose, as a condition of expungement, a requirement that the child concerned must not be convicted of a similar or more serious offence between the date of imposition of the sentence and the date of expungement.



(6) The order contemplated in subsection (2) and the condition referred to in subsection (5) must be noted on the record of the conviction and sentence of the child and must be submitted to the Criminal Bureau as soon as is reasonably practicable, and that Bureau must, upon the date set for expungement, cause such record of conviction and sentence to be expunged unless another conviction of a similar or more serious offence has been recorded before the date set for expungement.

(7) If a presiding officer makes a decision regarding the expungement of the record of a conviction and sentence of a child as contemplated in this Section, he or she must explain the decision and give his or her reasons for the decision, including any conditions relating to expungement of such record, to the child.

**219BZ.** (1) If a person who is charged with an offence in a court at any time before the imposition of sentence alleges that he or she was under the age of eighteen years at the time of the alleged commission of the offence, the presiding officer must refer the person to a children officer in the prescribed manner.

Assessment of age.

(2) The presiding officer of a court contemplated in subsection (1) may at any time before the imposition of sentence of his or her own accord refer a person charged with an offence in that court to a children officer if it appears to the presiding officer that the person is under the age of eighteen years.

(3) The children officer must make an estimation of the age of the person in accordance with Section 11 and submit the prescribed form and any relevant documentation contemplated in that Section to the presiding officer concerned.

(4) The presiding officer must determine the age of the person, and for that purpose Section 219AM applies with the changes required by the context.

(5) If the age of the person is determined to be under the age of 18 years and the trial has—

- (a) not yet commenced, the presiding officer must transfer the matter to an inquiry magistrate having jurisdiction; or
- (b) already commenced, the proceedings must continue before the presiding officer, but the remainder of the proceedings must be conducted in terms of this Act and the court must be regarded as a Child Justice Court.

**219CA.** (1) If patrimonial loss may be recovered from a child on the ground of a delict committed by him or her in the performance of community service, that loss may, subject to subsection (3), be recovered from the State.

Liability for patrimonial loss

(2) Subsection (1) may not be construed as precluding the State from obtaining indemnification against its liability in terms of subsection (1) by means of insurance or otherwise.

(3) The patrimonial loss which may be recovered from the State in terms of subsection (1) must be reduced by the amount from any other source to which the injured person is entitled.

(4) In so far as the State has made a payment by virtue of a right of recovery in terms of subsection (1), all the relevant rights and legal remedies of the injured person against the child concerned must pass to the State.

(5) If any person as a result of the performance of community service has suffered patrimonial loss which cannot be recovered from the State in terms of subsection (1), the Cabinet Secretary for the time being in charge of the administration of justice may, with the concurrence of the Treasury, as an act of grace pay such amount as he or she may deem reasonable to that person.

**219CB.** (1) Any person who—

- (a) hinders or obstructs a police officer or children officer in the performance of his or her functions under this Act;
- (b) fails to—
  - (i) comply with a notice contemplated in Section 219R(1); or
  - (ii) comply with a warning contemplated in Section 219L or 219AN(3); or
- (c) publishes information or reveals the identity of persons in contravention of Section 219BD,

is guilty of an offence.

(2) Any person convicted of an offence referred to in subsection (1) is liable to a fine of not more than one hundred thousand or to imprisonment for a period not exceeding three months.

(3) Any court convicting an adult of inciting, conspiring with or being the accomplice of a child in the commission of a crime or an offence must regard the fact of the child's involvement as an aggravating factor in sentencing the adult concerned.

**219CC.** (1) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for matters relating to the administration of justice, make regulations for the better carrying into effect of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may provide for —

- (a) the appointment of a *guardian ad litem*;
- (b) matters relating to the personnel of a Child Justice Court;
- (c) the establishment of One-Stop Child Justice Centres;
- (d) any other matter required to be prescribed to promote the objects of this Act; or
- (e) anything required to be prescribed under this Act

Offences and penalties

Regulations.

- (3) For the purpose of Article 94 (6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of the Act;
  - (b) the regulations made under this section shall be of such a nature and scope, and within the limits specified in this section; and;
  - (c) the principles and standards applicable to the regulations made under this section shall be those set out in—
    - (i) the Statutory Instruments Act;
    - (ii) the Interpretation and General Provisions Act;
    - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
    - (iv) any Treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

No. 23 of 2013.

Cap. 2.

4) **NOTICE is given that the Leader of the Majority Party, intends to move the following amendments to the Children Bill, (National Assembly Bill No. 38 of 2021) at the Committee Stage—**

**CLAUSE**

**THAT** the Bill be amended by deleting clause 35

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# **N O T I C E S**

## **LIMITATION OF DEBATE**

The House resolved on Wednesday, February 2, 2022 as follows-

### Limitation of Debate on Bills sponsored by Parties or Committees

- I. **THAT**, each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen Minutes (15) each (if the Bill is not sponsored by either of them); and **THAT** priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in **THAT** order.

### Limitation of Debate on Motions

- II. **THAT**, each speech in a debate on any **Motion, including a Special motion** shall be limited in the following manner:- A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and **THAT** ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and **THAT** priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in **THAT** order.

# **NOTICE PAPER**

## **Tentative business for**

**Tuesday, May 17, 2022**

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*(Published pursuant to Standing Order 38(1))*

It is notified that the House Business Committee has approved the following *tentative* business to appear in the Order Paper for Tuesday, May 17, 2022-

**A. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION**

(The Chairperson, Departmental Committee on Justice and Legal Affairs)

*(Subject to tabling of Committee Report and Notice of Motion)*

**B. COMMITTEE OF THE WHOLE HOUSE**

(i) The Huduma Bill (National Assembly Bill No. 57 of 2021)  
(The Leader of the Majority Party)

(ii) The Universities (Amendment) Bill (National Assembly Bill No. 35 of 2021)  
(The Leader of the Majority Party)

*(Subject to harmonization of proposed amendments as under Standing Order 131)*

**C. MOTION - IMPLEMENTATION STATUS OF THE REPORT ON A PETITION ON IRREGULAR RENEWAL OF LEASES OF LAND BY DEL MONTE KENYA LIMITED AND EVICTION OF WORKERS FROM THEIR LAND IN ROYSAMBU BY KDF**

(The Chairperson, Committee on Implementation)

*(If not concluded on Thursday, May 12, 2022)*

**D. THE PROMPT PAYMENT BILL (SENATE BILL NO. 16 OF 2021)**

(The Chairperson, Departmental Committee on Finance and National Planning)

Second Reading

*(If not concluded on Thursday, May 12, 2022)*

**E. MOTION - REPORT ON THE STUDY VISIT TO THE LEGISLATIVE ASSEMBLY OF ALBERTA, CANADA**

(The Chairperson, Committee on Members' Services and Facilities)

*(If not concluded on Thursday, May 12, 2022)*

**F. MOTION - REPORT ON ESTABLISHMENT OF A  
PARLIAMENTARY HEALTH SERVICES UNIT**  
(The Chairperson, Committee on Members' Services and Facilities)

*(If not concluded on Thursday, May 12, 2022)*

**G. THE MUNG BEANS BILL (SENATE BILL NO. 9 OF 2020)**  
(The Chairperson, Departmental Committee on Agriculture and Livestock)

Second Reading

*(If not concluded on Thursday, May 12, 2022)*

**H. THE COUNTY BOUNDARIES BILL (SENATE BILL NO. 20 OF 2021)**  
(The Chairperson, Departmental Committee Justice and Legal Affairs)

Second Reading

*(If not concluded on Thursday, May 12, 2022)*

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# **APPENDIX**

## **NOTICE OF PETITIONS, QUESTIONS & STATEMENTS**

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### **ORDER NO.7 -QUESTIONS**

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It is notified that, pursuant to the provisions of Standing Order 42A (5), the following Members will ask **questions** for reply before the specified Committees-

#### **QUE. NO.**

#### **ORDINARY QUESTIONS**

118/2022

**The Member for Kuresoi North (Hon. Moses Cheboi, MP) to ask the Chairperson, Teachers Service Commission: -**

- (i) Could the Chairperson explain the criteria applied by the Teachers Service Commission during recruitment of teachers?
- (ii) Could the Chairperson explain the Commission's policy, if any, for recruitment of teachers who are approaching or are above 45 years of age?
- (iii) Could the Commission consider recruiting under special considerations, *Mr. Kipngetich Wesley Kurgat of ID. No. 21136330 aged 44 years* who is a holder of a Bachelor of Education Degree (*Chemistry and Maths*) during the forthcoming recruitment exercise by virtue of his age?

*(Question for Written Reply by the Chairperson of the Teachers Service Commission)*

119/2022

**The Member for Kwale (Hon. Zuleikha Hassan, MP) to ask the Cabinet Secretary for Public Service, Gender, Senior Citizens Affairs and Special Programmes: -**

- (i) Could the Cabinet Secretary provide a status report on the utilization of the National Government Affirmative Action

Fund (NGAAF) funds across the country in regard to projects and other developments undertakings, particularly where County Women Members of Parliament are patrons?

- (ii) Could the Cabinet Secretary consider putting in place mechanisms for regular engagements between the Ministry and the Women Members for Counties who are the patrons of the projects under NGAAF for smooth and efficacy during execution and realization of projects including promotion of linkages and public participation?

*(To be replied before the Departmental Committee on Finance and National Planning)*

**120/2022**

**The Member for Marsabit County (Hon. Safia Adan, MP) to ask the Cabinet Secretary for Physical Planning and Lands: -**

What measures has the Ministry put in place to protect grazing lands of pastoral communities across the country from illegal acquisition by private developers?

*(To be replied before the Departmental Committee on Lands)*

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## **ORDER NO.7 - STATEMENTS**

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It is **notified** that, pursuant to the provisions of Standing Order 44(2)(c) the following **Statement** will be requested –

<b>No.</b>	<b>Subject</b>	<b>Member</b>	<b>Relevant Committee</b>
1.	Poor road works at the junctions of link roads, exits roads and diversions.	<i>Hon. George Theuri, MP (Embakasi West)</i>	D.C. on Transport, Public Works and Housing

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