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THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – SIXTH SESSION (2022)
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON
THE CONSIDERATION OF THE CHILDREN BILL, 2021
(National Assembly Bill No. 38 of 2021)

VOLUME I

APRIL, 2022

Directorate of Committee Services,
National Assembly,
Parliament Buildings,
NAIROBI.

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DSM



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ABBREVIATIONS AND ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
BCCRN	Bungoma County Children Rights Network
CCI	Charitable Children's Institutions
CIC	Constitution Implementation Committee
CPU	Child Protection Unit
CRC	Children Rescue Centers
CSO	Civil Society Organisations
CWSK	Children Welfare Society of Kenya
DSC	Department of Children's Services
IDLO	International Development Law Organization
IGM	Intersex Genital Mutilation
IPSK	Intersex Persons Society of Kenya
KNCHR	Kenya National Commission on Human Rights
NCAJ	National Council on the Administration of Justice
NCCS	National Council for Children Services
PBO	Public Benefit Organisation
SO	Standing Orders
SCI	Statutory Children's Institutions
UNCRC	United Nations High Commission for Refugees
UNICEF	United Nations International Children Emergency Fund

CHAIRPERSON'S FOREWORD

The promulgation of the Constitution of Kenya 2010 on 27th August 2010 set a fast pace for far-reaching reforms in policy, legislation and institutional frameworks. These reforms were designed to meet the renewed aspirations and heightened expectations of the people of Kenya in the context of a robust Bill of Rights.

The Children Act, 2001 fell far short of the constitutional standards for promoting and protecting children's rights, thereby posing practical challenges in their full realisation. Accordingly, the pressing need for the review of the 2001 Act to accord with the Constitution and the international standards for the promotion and protection of children's rights cannot be overemphasised. In addition, the need to facilitate the realisation of the emergent regime of human and children's rights, it became necessary to reform the legislative and administrative frameworks to implement the rights of the child.

To facilitate the desired reforms, the Kenya Law Reform Commission, the Steering Committee of the Special Taskforce, the National Council for Children Services, relevant State and non-state agencies, including civil society organisations that actively advocate for children's rights, joined hands with the technical support of IDLO and UNICEF to guide and facilitate the law reform process to draft the proposed Children Bill, 2021.

The Bill was published on 20th August 2021 as the Children Bill, 2021 (*National Assembly Bill No. 38 of 2021*) and read a First Time in the National Assembly on 13th October 2021. The Bill was subsequently committed to the Departmental Committee on Labour and Social Welfare for review and reporting to the House pursuant to Standing Order 127(1).

The Bill seeks to repeal the Children Act, 2001, to provide for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of Children's institutions; to give effect to the provisions of the Constitution and for the connected purposes.

The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3), invited submissions on the Bill from the public via advertisements in the national daily newspapers on 18th October 2021. The Committee received oral and written submissions from several stakeholders, which informed the proposed amendments.

The Report incorporates valuable recommendations gathered from several Committee sittings and stakeholders' submissions, including children and intersex people whose contributions informed the content of the proposed amendments. Among the major issues of concern from the stakeholders were; foreign adoptions, the rights of intersex persons, the matter of institutionalisation of children, and the administration of children services.

The Committee resolved to recommend that the House passes the Bill with amendments contained herein.

I take this opportunity to commend the Committee Members and secretariat for their devotion and commitment to duty during consideration of this Bill. I also wish to express sincere gratitude to the Offices of the Speaker and Clerk of the National Assembly for providing technical and logistical support during the process of considering this Bill.

I also want to thank the Leader of the Majority Party for finding time in his busy schedule to attend some of the Committee's meetings during the consideration of the Bill.

Finally, the Committee would like to acknowledge the participation of all the stakeholders who took the time to present their views to the Committee and to sincerely thank the National Council for Administration of Justice Special Taskforce on Children Matters; the National Council for Children's Services (NCCS), the Directorate of Children Services and development partners such as UNICEF and the United States Department of Justice for their support in assisting the Committee to undertake the onerous task of considering this important Bill.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 127 and 199 (6), it is my pleasant privilege and duty to present to the House this Report on the Consideration of the Children Bill (*National Assembly Bill No. 38 of 2021*).

Hon. Josephat Kabinga Wachira, OGW, M.P.

Chairperson, Departmental Committee on Labour and Social Welfare

PREFACE

Establishment of the Committee

The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate, as provided for in Standing Order 216(5), is to *inter-alia*:-

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii. *To study and review all legislation referred to it;*
- iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- vii. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

Mandate of the Committee

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider the following subjects: Labour; Labour Relations; Manpower or Human Resource Planning; Gender; Youth, Social Welfare and Security; Children's Welfare; and Persons with Disability.

The Committee oversees the following State Departments and Commission:

- i. The State Department for Labour;
- ii. **The State Department for Social Protection, Senior Citizens Affairs and Special Programmes;**
- iii. The State Department for Gender;
- iv. The State Department for Youth;
- v. The State Department for Arid and Semi-Arid Lands; and
- vi. The National Gender and Equality Commission

Committee Membership

The Committee comprises the following Members-

The Hon. Josephat Kabinga Wachira, M.P (Chairperson)
Mwea Constituency
Jubilee Party

The Hon. Gideon Koske Kimutai, M.P (Vice-Chairperson)
Chepalungu Constituency
Chama Cha Mashinani (CCM)

The Hon. James Onyango Koyoo, M.P.
Muhoroni Constituency
Orange Democratic Movement (ODM)

The Hon. Nelson Koech, M.P.
Belgut Constituency
Jubilee Party

The Hon. Moses Malulu Injendi, M.P.
Malava Constituency
Jubilee Party

The Hon. Rose Museo, M.P.
Makueni County
Wiper Democratic Movement (WDM)

The Hon. Omboko Milemba, M.P.
Emuhaya Constituency
Amani National Congress Party (ANC)

The Hon. Fabian Kyule Muli, M.P.
Kangundo Constituency
Muungano Party

The Hon. Titus Mukhwana Khamala, M.P.
Lurambi Constituency
Amani National Congress Party (ANC)

The Hon. Ole Sankok David, M.P.
Nominated
Jubilee Party

The Hon. Gideon Keter, M.P.
Nominated
Jubilee Party

The Hon. Janet Marania Teyiaa, M.P.
Kajiado County
Jubilee Party

The Hon. Ronald Kiprotich Tonui, M.P.
Bomet Central
Jubilee Party

The Hon. Tom Odege, M.P.
Nyatike Constituency
Orange Democratic Movement (ODM)

The Hon. Caleb Amisi, M.P.
Saboti Constituency
Orange Democratic Movement (ODM)

The Hon. Charles Kanyi Njagua, M.P.
Starehe Constituency
Jubilee Party

The Hon. Abdi Mude Ibrahim, M.P.
Lafey Constituency
Economic Freedom Party (EFP)

The Hon. Safia Sheikh Adan, M.P.
Marsabit County
Jubilee Party

The Hon. Wilson Sossion, M.P.

Nominated

Orange Democratic Movement (ODM)

Committee Secretariat

The Committee's secretariat comprises the following officers-

Ms. Susan Maritim

Principal Clerk Assistant II/Head of the Secretariat

Mr. John Mugoma
Clerk Assistant II

Ms. Doreen Karani
Legal Counsel I

Mr. Sidney Lugaga
Legal Counsel II

Mr. James Muguna
Research Officer II

Mr. Adan Ahmed Abdi
Fiscal Analyst II

Ms. Sheila Jebotibin
Senior Serjeant-at-Arms

Mr. Nickson Mutai
Audio Officer

CHAPTER ONE

1.0 INTRODUCTION

1. The process of amending the Children Act, 2001 was necessitated by the need to align it to the 2010 Constitution, the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of Children, and other relevant international instruments relating to children. There was also a need to address emerging issues affecting children in Kenya and gaps identified during implementation.¹
2. The promulgation of the Constitution of Kenya 2010 on 27th August 2010 set a fast pace for far-reaching reforms in policy, legislation and institutional frameworks. These reforms were designed to meet the renewed aspirations and heightened expectations of the people of Kenya in the context of a robust Bill of Rights.
3. The Children Act, 2001 fell far short of the constitutional standards for the promotion and protection of children's rights, thereby posing practical challenges in their full realisation. Accordingly, the pressing need for the review of the 2001 Act to accord with the Constitution and the international standards for the promotion and protection of children's rights cannot be overemphasised. In addition, the need to facilitate the realisation of the emergent regime of human and children's rights, it became necessary to reform the legislative and administrative frameworks for the implementation of the rights of the child.
4. To address these legislative and institutional inadequacies, the Hon. Chief Justice appointed the Special Taskforce on Children's Matters vide Gazette Notice No. 369 of 29th January 2016. The Taskforce, which was chaired by Hon. Lady Justice Martha Koome (now Chief Justice of the Republic of Kenya) was mandated to, among other things, address the emerging gaps and challenges relating to the administration of both civil and criminal justice with regard to children.
5. The Ministry of Labour and Social Protection facilitated the Special Taskforce on children matters, the National Council for Children's Services (NCCS), relevant state and non-state agencies, including civil society organisations that actively advocate for children's rights, joined hands with the technical support of IDLO and UNICEF to guide and facilitate the law reform process, and draft the proposed Children Bill.
6. The NCAJ submitted its final report, including the draft Bill, on 18th April 2018.
7. The Bill is a product of the consolidation of materials and provisions drawn from –
 - i. the Constitution of Kenya, 2010;
 - ii. the Children Act, 2001;
 - iii. legislative proposals of the defunct CIC in 2015;

¹ Final Report on the Technical Assistance on Legislative Proposals for the Development of the Children Bill, 2017 and the Formulation of a Cabinet Memorandum on the Legislative Proposals (2018)

- iv. legislative proposals (dubbed the Sawela Draft) presented to NCCS in 2016;
- v. various international and regional treaties and instruments binding on Kenya under and by virtue of Article 2(5) and (6) of the Constitution relating to the promotion and protection of children's rights, including the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Hague Convention on Inter-Country Adoption;
- vi. various reports and documents supplied by the NCCS to NCAJ;
- vii. reports and recommendations of stakeholder forums convened by the Taskforce; and
- viii. a diverse range of relevant statutory provisions for the time being in force in comparable jurisdictions, such as Uganda, South Africa, Malawi, the United Kingdom, Canada, Australia and Malaysia.

CHAPTER TWO

2.0 OVERVIEW OF THE BILL

2.1 Objects and Reasons for the Bill

8. The Children Bill, 2021 (National Assembly Bill No 38 of 2021), sponsored by the Leader of the Majority Party, underwent First Reading on 13th October 2021 and subsequently referred to the Departmental Committee on Labour and Social Welfare for review and reporting to the House in line with the provisions of Standing Order 127.
9. The Bill seeks to mainly give effect to Article 53 of the Constitution that sets out children's rights; it provides for obligations and matters of parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children and regulation of children institutions among others.
10. It seeks to repeal and overhaul the law relating to children, the Children Act, No 8 of 2001, which is not attuned to the significant legislative and policy changes and strides that have been made since its enactment. In addition, the Bill intends to tighten the weak points in policy, seal gaps that pose enforcement challenges, and address lacunas in the current law to strengthen the legislative framework relating to children.

2.2 Provisions of the Bill

11. **PART I** deals with **PRELIMINARY PROVISIONS**, i.e., Short Title, Interpretation and Objectives of the Act.
12. **PART II** (Clauses 4-27) provides the **SAFEGUARDS FOR THE RIGHTS AND WELFARE OF THE CHILD AND THE ENFORCEMENT OF THESE RIGHTS**. The State is required to take measures to ensure the progressive full realisation of the rights set out in the Bill. Kenya is a signatory of global and regional treaties and conventions that seek to promote children's rights,

particularly the Convention on the Rights of the Child (1989), where many of the rights set out in the Bill originate.

13. These rights in the Bill are-

- (i) right to life (including protection from the death penalty);
- (ii) a name and nationality;
- (iii) the best interests of a child (which are first and paramount considerations to be considered by judicial and administrative institutions);
- (iv) non-discrimination of children on certain specified grounds, including age, origin, sex, creed, colour, custom, language etc. or other status;
- (v) right to parental care and protection, including the right to live with one's parents and only make a separation if in the best interests of the child, taking caution to ensure siblings are not separated;
- (vi) right to social security, including alternative care services such as kinship care, adoption, foster care, kafaalah, guardianship, aftercare services etc. to benefit otherwise homeless, abandoned, orphaned or vulnerable children;
- (vii) right to free and compulsory basic education;
- (viii) entitled to leisure, play and non-harmful cultural and artistic activities (parents' responsibility to facilitate and county governments required to designate play and recreational areas);
- (ix) right to freedom of conscience, religion, religious education subject to parental guidance;
- (x) right to the highest attainable standard of health care services per Article 43;
- (xi) right to inheritance in accordance with the Law of Succession Act, Cap 160;
- (xii) protection from child labour, slavery, debt bondage, forced labour, domestic servitude, economic exploitation, or employment or work that interferes with education or is harmful to a child's health or development (be it moral, social, mental or physical);
- (xiii) protection from armed conflicts (hostilities, social strife, recruitment in armed conflict);
- (xiv) rights of children with disabilities (in addition to the constitutional rights and privileges in the Persons with Disabilities Act) to be treated with dignity and accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost;
- (xv) protection from abuse (psychological abuse, emotional or mental distress and acts that may result in physical or psychological distress), including protection from being lured into sexual activity, receiving or accessing vile or obscene material and online abuse/harassment and bullying generally;
- (xvi) protection from harmful cultural practices such as FGM, virginity testing, child marriage girl child beading etc.;

- (xvii) protection from use and abuse of drugs and psychotropic substances as well as being subjected to involvement in production, trafficking, storage, sale or distribution of the same;
 - (xviii) right to freedom from torture and cruel and inhuman treatment or punishment under Article 25;
 - (xix) rights of children in conflict with the law, including detention as a last resort; custodial detention separately from adults, including transportation facilities; contact with family, among others;
 - (xx) right to privacy and attack upon a child's honour or reputation (parents may exercise reasonable supervision over the conduct of their children); and
 - (xxi) right to picket, demonstrate and participate in public life.
14. Any person may institute proceedings claiming that a right or fundamental freedom of the child protected under Part 2 of the Bill has been violated, denied or infringed or threatened. The next friend may be a parent, guardian acting in the child's interest or a representative of the parent or guardian who cannot act in the child's interest or a registered association or person acting in the public interest;
15. **PART III** (Clauses 28-34) contains **PROVISIONS RELATING THE DUTIES AND RESPONSIBILITIES OF A CHILD** and those pertaining to **PARENTAL RESPONSIBILITY** (duties, rights, authority, powers and responsibility which by law a parent has in relation to a child and the child's property). Parental responsibility is on an equal basis where a child is born in wedlock, and neither mother nor father has superior right or claim. The same case applies to those born out of wedlock and parents who later wed. For those born out of wedlock and parents who do not wed, the parents have equal responsibility in the first instance, and if they wed other persons, the person with legal custody shall be entitled to exercise parental responsibility either alone or jointly with the spouse. It also deals with parental responsibility agreements which may be entered into by unmarried parents for the child's well-being and transmission of parental responsibility, whether on the death of a mother or father to a surviving parent or any other person and transmission of parental responsibility to a parent's spouse. The Bill proposes the extension of responsibility beyond the eighteenth birthday by order of a court of law.
16. **PART IV** (Clauses 35-52) provides for the **ADMINISTRATION OF CHILDREN'S SERVICES** and contains general provisions relating to the **NATIONAL COUNCIL FOR CHILDREN'S SERVICES** (establishment, governance and administrative structures, financial provisions, powers and functions) and the **role of County Governments** in the administration of children services (including child advisory committees at the **COUNTY AND SUB COUNTY LEVELS**).
17. **PART V (CLAUSES 53-63) CONTAINS FINANCIAL** provisions, which include the funds of the Council, the financial year of the Council and the obligation for accounts and audit. It also provides for the appointment of the Director and officers of the Directorate of Children's Services.
18. **PART VI** (Clauses 64-92) contains general provisions relating to **CHILDREN INSTITUTIONS**, including their establishment, governance structure and administration.

- (i) **Clause 64** empowers the Cabinet Secretary to establish or designate certain areas as children rescue centres for the temporary care of children in need of care and protection pending placement in foster care, adoption or other interventions in the Act. These must not be remand homes, police stations or rehabilitation schools. A county government may also establish child rescue centres.
- (ii) **Clause 65** empowers the Inspector General of Police to establish child protection units in police stations, providing a temporary environment for children in conflict with the law.
- (iii) **Clause 66** provides that a person, including a PBO may apply to the Council for approval to establish a charitable children's institution. There are special considerations set out where the applicant is a foreign national (including a certificate of good conduct from the country of origin and providing at least three referees. Further, the Council is required to keep/maintain a register of the approved CCIs.
- (iv) **Clause 69** states that the main objective of the establishment of a charitable children's institution (CCI) shall be to provide family-based care for all children in accordance with the national policy for the promotion and protection of the rights of the child. Placement in a CCI shall be the last resort if there is no immediate access to parental care or relative or guardian or if no alternative family-based placement is available for the child.
- (v) **Clause 70** defines institutions that are not CCIs;
- (vi) **Clause 73** deals with the placement of children in CCIs that is, only if-
 - a) in an emergency situation, the child is referred to the institution by way of an interim care order or a care order; or
 - b) the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection.

Upon placement, the CCI must institute care proceedings as per the Bill (Clause 152) within seven days, and the Director is required to monitor the well-being of the children in a CCI.
- (vii) **Clause 75** deals with the appointment of approved officers to further the purposes of the institution for the care, protection and control of children.
- (viii) **Clause 76** relates to the inspection of CCIs by the Director's authorised officers.
- (ix) **Clause 77** provides for the duty of a PBO to notify the Council if it intends to implement a child welfare program.
- (x) **Clause 78** provides for review of child welfare programs by the County Children Advisory Committee.
- (xi) **Clause 79** deals with de-registration or termination of a child welfare program
- (xii) **Clause 80** empowers the Cabinet Secretary to establish children remand homes which shall have separate sections for children of different sexes, age categories, needs and risks

- (xiii) **Clause 81** empowers the Cabinet Secretary to establish children's rehabilitation schools and also approve the establishment of a private rehabilitation institution
- (xiv) **Clause 82** sets out the requirements of having separate rehabilitation schools for children in conflict with the law with the needs and risks of different sexes and age categories
- (xv) **Clause 83** deals with the admission of children into rehabilitation schools.
- (xvi) **Clause 84** sets out the requirement for granting of leave of absence to a child.
- (xvii) **Clause 85** relates to the revocation of a committal order where the Director is satisfied that the child should not remain in the school.
- (xviii) **Clause 86** provides for the transfer of children from one rehab to another.
- (xix) **Clause 87** relates to the manner of dealing with persistently absconders and children with a difficult character not exhibiting signs of reform.
- (xx) **Clause 88** speaks to dealing with sick children in need of medical care at an appropriate health facility.
- (xxi) **Clause 89** speaks on the authority to confine a child (it may be issued by a court).
- (xxii) **Clause 90** grants responsibility for supervision of all rescue centres, child protection centres, charitable children's institutions, remand homes and rehabilitation schools to the Director.
- (xxiii) **Clause 91** deals with the appointment of inspection committees.
- (xxiv) **Clause 92** provides for the delegation of legislative powers to the CS for purposes of Part 6.

19. PART VII (Clauses 93-103) provides for the **JURISDICTION AND ESTABLISHMENT OF THE CHILDREN'S COURT**. These are designation, by the Chief Justice, of children courts in the Counties and Sub Counties(93); jurisdiction of children's courts (94); Friendly environment of Children's Court (95); sitting of Children's Court (96); Power to make orders relating to privacy in proceedings (97); General principles with regard to proceedings in Children's Court (98); Provision of legal aid in certain cases(99) Power of Court to order production of reports (100); Appointment of *guardian ad litem* for children above the age of twelve but has not attained age of sixteen (101) appeals (102) and rules (103).

20. PART VIII relates to **CUSTODY AND MAINTENANCE** and contains clauses 104 to 124 that regulate matters relating to custody, care and control (104); custody orders (105); principles to be applied in making custody order(106); restriction on removal of a child where applicant has provided home for three years(107); return of child removed in breach of section 106(108; conflicts of interest of joint custodians (109); revocation of custody order (110), interim custody orders (111); custody agreement not to be invalid in certain circumstances(112); joint maintenance of children (113); power to make maintenance order(114);maintenance during matrimonial proceedings (115); financial provision for child (116); financial provisions by step-parents and father of child born out of wedlock (117); power to order maintenance monies to be paid to person other than the applicant

(118); duration of financial provision orders (119); interim orders of maintenance (120); other maintenance provisions (121); power to impose conditions or to vary order (122); power to vary maintenance agreements (123); and enforcement orders for maintenance or contribution (124);

21. PART IX of the Bill relates to **GUARDIANSHIP** and contains clauses 125 to 134 that regulate matters relating to Appointment of guardian(125); Rights of surviving parent as to guardianship and power of Court(126); appointment of a testamentary guardian (127); appointment of a guardian by the Court(128); extension of appointment of guardian beyond child's eighteenth birthday(129); revocation or disclaimer of appointment(130); disputes between guardians(131); powers of guardian(132); neglect or misapplication of assets by the guardian of a child's estate (133); offences by the guardian of a child's estate(134); and power of Chief Justice to make Rules (135).

22. PART X relates to **JUDICIAL INTERVENTION FOR THE CARE AND PROTECTION OF CHILDREN** and contains clauses 136 to 143 that regulate matters relating to the power of the Court to make orders in certain proceedings (136); orders which the Court may make (137); supervision order (138); power to make interim supervision order (139); discharge of supervision order (140); power of arrest (141); penalty (142); and review, etc., of order (143).

23. PART XI relates to **CHILDREN IN NEED OF CARE AND PROTECTION** and contains clauses 146 to 171 that regulate matters relating to: Interpretation(144); Jurisdiction of the Court(145); when a child is in need of care and protection(146); proceedings in respect of children in need of care and protection(147); healthcare(148); determination as to child's home, etc (149); parent or guardian to be heard in any application(150); power of Director to take over application (151); power of Court in respect of children in need of care and protection(152); Application of trusts for maintenance of children(153); penalty for cruelty to, and neglect of, children (154); Care order and grounds thereof (155); Access to children in care(156); Power to make interim care order (157); Discharge of care order (158); Care on committal to a rehabilitation school, etc(159); Transmission of committal order (160); Escort of a child to a rehabilitation school (161); harbouring or concealing a child (162); Escape from institutions, etc. (163); duty of charitable children's institutions and County Public Entities (164); Escape from children's remand home or rehabilitation school (165); Aiding escape, etc (166-); Production of escaped child (167); Presumption and determination of age (168) ; Contribution order not to be made in certain cases (169); Inter-country reciprocity (170); and Bonds (171).

24. PART XII relates to **FOSTER CARE PLACEMENT** and contains clauses 172 to 184 that regulate matters relating to objectives of foster care placement (172); restrictions on periods of foster care(173); conditions for foster care placement (174); application for foster care (175); persons qualified to foster children (176); conditions for foster care (177); limitation on the number of children placed under foster care in a household (178); records of foster care placements (179); agreement for maintenance of the foster child (180); termination of foster care (181); penalty for contravening provisions of this part (182); regulations (183); and rules(184).

25. PART XIII relates to **ADOPTION** and contains clauses 185 to 124 that regulate matters relating to: Power to make adoption orders (185) ; Establishment of National Adoption Committee (186); Pre-requisites for Adoption (187); Children who may be adopted (188) ; Who may apply to adopt a

child (189); Power to dispense with consent (190); Appointment of guardian ad litem (191); Interim orders (192); Inter-country adoptions (193); Adoption by non-resident Kenyans (194); Kinship Adoption (195); Powers of the Court in adoption proceedings (196); Power of the Court to appoint guardian (197); Adoption order in respect of children previously adopted (198); Parental responsibility when adoption is denied (199); Appeals (200); Variation of orders (201); Adopted children register (202); Registration of adoption orders (203); Rights and duties of parents and capacity to marry (204); Application of Work Injury Benefits Act (205); Orders and agreements in respect of child born outside marriage (206); Intestacies and testamentary instruments (207); Provisions supplementary to section 198 (208); Effect of inter-country adoptions (209); Restriction on adoption arrangements (210); Certain offences relating to adoption (211); Functions of adoption societies (212); Adoption proceedings to be confidential (213); Prohibition of certain payments (214); Restriction on the advertisement (215); Offences under this Part (216); Regulations (217); and Rules of Court (218).

26. PART XIV of the Bill relates to **CHILDREN IN CONFLICT WITH THE LAW** and contains clauses 220 to 245 that regulate matters relating to: Application of Criminal Procedure Code (219); Assessment of a child on arrest (220); Power to remit cases to Children's Court (221); Rights of a child offender (222); Criminal liability of a child (223); Right of a child to be heard in proceedings (224); Detention of children (225); Procedure in cases of children in conflict with the law, Objects of diversion (226); Consideration of welfare (227); Objects of diversion (228); When to consider diversion (229); Preliminary inquiry (230); Determination of a child's age (231); Levels of diversion (232); Power of Court in diversion (233); Family Group Conference (234); Assistance to child offender in court (235); Rules (236); Guarantees to a child accused of an offence (237); Duty to provide for the welfare of a child (238); Words "conviction" and "sentence" not to be used of child (239); Restriction on punishment (240); Methods of dealing with children in conflict with the law (241); Mental treatment (242); Power to order parent to pay fines, etc (243); Special police unit (244); and Proceedings in respect of offences committed by a child (245).

27. PART XV Bill relates to **MISCELLANEOUS** and contains clauses 246 to 251 that regulate matters relating to appeals to the Cabinet Secretary (246); code of conduct (247); general penalty (248); general power to make regulations (249); grants and expenses of the Cabinet Secretary (250); and Repeals (251).

28. Schedules: The Bill has eight (8) Schedules.

- (i) **FIRST SCHEDULE** contains provisions relating to the **BEST INTEREST CONSIDERATIONS** pursuant to section 7(1) regulating the best interests of the child.
- (ii) **SECOND SCHEDULE** contains provisions relating to the **CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL** pursuant to section 38(4) regulating the conduct of business and affairs of the National Council for Children's Services.
- (iii) **THIRD SCHEDULE** contains provisions relating to the **WELFARE SCHEMES** pursuant to section 63 regulating County government welfare schemes.

- (iv) **FOURTH SCHEDULE** contains provisions relating to **OFFENCES DISQUALIFYING AN APPLICANT FROM ADOPTION** pursuant to section 146(z) and section 189 regulating when a child needs care and protection.
- (v) **FIFTH SCHEDULE** contains provisions relating to **OFFENCES REQUIRING RECORD AND PRESERVATION OF INFORMATION WITH REGARD TO THE CONDITION OF THE CHILD** pursuant to section 148(3) regulating healthcare for a child.
- (vi) **SIXTH SCHEDULE** contains provisions relating to the **ASSESSMENT OF A CHILD WHO IS IN CONFLICT WITH THE LAW** pursuant to section 220(5) regulating the assessment of a child on arrest.
- (vii) **SEVENTH SCHEDULE** contains provisions relating to the **OFFENCES ENTITLING A CHILD TO LEGAL REPRESENTATION** pursuant to section 99(4) regulating the provision of Legal aid in certain cases.
- (viii) **EIGHTH SCHEDULE** contains provisions relating to the **TRANSITIONAL PROVISIONS** pursuant to section 251, repealing section 251 of the Children Act, 2001.

CHAPTER THREE:

3.0 PUBLIC PARTICIPATION IN THE PROCESSING OF THE BILL

3.1 Call for Public Participation

29. Through an advertisement in the daily newspapers of 18th October 2021 (**Annexure 4**), the Departmental Committee on Labour and Social Welfare invited the public to submit views or make representations regarding the Bill as required by the provisions of Article 118 of the Constitution and Standing Order 127(3).

3.2 Receipt of Submissions and Public Hearings on the Children Bill 2021

30. Following the call for public participation, the Committee received written and oral submissions from forty-eight (48) organisations and individuals drawn from individuals, organisations, faith-based organisations, government institutions, CSOs, PBOs, children, and university students, among others.
31. The stakeholders who submitted their memoranda, both orally and written, are listed below:-
 - i) *Children's Voices (Adongo Primary School (Homa Bay West Constituency); AIC Kwamutula Secondary School (Mwala Constituency); Angelina Jolie Girls Primary School (Turkana County); Bar Union Secondary School (Kisumu North Sub County); Benyoka Primary School (Rabai Constituency); Bowa Primary School (Matuga Constituency); Dago Shabbir Primary School, (Kisumu East Constituency); Dungicha Primary School (Ganze Constituency); Eliyes Primary School (Turkana County); Empukani Primary School (Kajiado Central Constituency); Gambela Primary School (Kakuma 2 Camp); Guu Mixed Secondary School (Nyakach Constituency); I-Afrika Children's Home and Street Children; Kadugli Primary School (Kakuma 1 Refugee*

Camp); Kakuma Girls Primary School (Turkana County); Kalawa Primary School (Mbooni East Constituency); Kalemchuch Primary School (Turkana West Constituency); Kanthi Primary School, (Mutomo Constituency); Merrylane Centre School (Turbo Constituency); Kathathene Primary School (Igembe Central Constituency); Khadija Primary School (Nyali Constituency); Kieganguru Primary School (Maara Constituency); Kondele Primary School, Lang Oromo Secondary School (Homa Bay Town Constituency); Magare Primary School (Homa Bay Town Constituency); Majengo Primary School (Kinango Constituency); Marura and MOHI-Korogocho-Nyayo (Kasarani Constituency); Mavallo Primary School (Kitui West Constituency) and Mazeras Primary School (Kinango Constituency).

- ii) ***Adoption Societies in Kenya Secretariat*** (Buckner Kenya, Change Trust, Kenya Children's Home Adoption Society, Kenyans to Kenya Peace Initiative and Little Angels Network);
- iii) ***Bungoma County Children Rights Network;***
- iv) ***Catholic Doctors' Association;***
- v) ***Catholic University of Eastern African School of Law Students*** (Group 1 CLS 330 on the Rights of the Child);
- vi) ***Centre for Community Development and Human Rights;***
- vii) ***Children Agenda Forum;***
- viii) ***Citizengo;***
- ix) ***Faith-Based Organisations Joint Submission*** (Nairobi Chapel, Mavuno, Deliverance Church, All Saints Cathedral, Overcomers, Hope Ministry, CLEAR, New Dawn, Karura Community Chapel, Parklands Baptist Church, Methodist Church, Nairobi Baptist Church, Hatua, Real Stars, CITAM and AVSI Foundation)
- x) ***Garden of Hope Foundation;***
- xi) ***Gifted Community Centre;***
- xii) ***Kisii University Law Students;***
- xiii) ***Joining Forces for All Children in Kenya Secretariat*** (Child Fund Alliance, Plan International, Save the Children, SOS Children's Villages International, Terre des Hommes International Federation and Word Vision Kenya)
- xiv) ***Legal Sister;***
- xv) ***Mahali Pa Maisha;***
- xvi) ***Mr. Ahmed Hassan, former Director of Children Services;***
- xvii) ***Mr. Clement Oketch, OGW;***
- xviii) ***Mr. Don Abonyo;***
- xix) ***Ms. Grace Atebe;***
- xx) ***Mr. Joseph Kiseli;***
- xxi) ***Mr. Oscar Okwero, Cyber Security Policy Consultant;***

- xxii) *Ms. Anne Mbugua;*
- xxiii) *Ms. Atieno Odenyo (Child Protection specialist) in collaboration with Maestral International;*
- xxiv) *Ms. Mercy Ndirangu, Child Protection Specialist;*
- xxv) *Ms. Mona K. Doshi, Partner, Anjarwalla & Khanna LLP;*
- xxvi) *Mtoto News;*
- xxvii) *Office of the Director of Public Prosecutions;*
- xxviii) *Play Therapy Kenya;*
- xxix) *The African Institute of Children Studies;*
- xxx) *The Association of Alternative Family Care of Children;*
- xxxi) *The Change Trust*
- xxxii) *The Child Welfare Society of Kenya;*
- xxxiii) *The Children Technical Advisory Group;*
- xxxiv) *The Cradle (The Children Foundation);*
- xxxv) *The Evangelical Alliance of Kenya;*
- xxxvi) *The Kenya Alliance for Advancement of Children;*
- xxxvii) *The Kenya Christian Professionals Forum;*
- xxxviii) *The Kenya Sign Language Interpreters' Association;*
- xxxix) *The Intersex Persons Society of Kenya*
- xl) *The Kenya National Commission on Human Rights;*
- xli) *The Law Society of Kenya (Nairobi Branch);*
- xlvi) *The National Council of Churches of Kenya;*
- xlvi) *The National Council on Administration of Justice;*
- xliv) *The Social Work Society of Kenya;*
- xlvi) *The State Department of Social Protection, Senior Citizens Affairs and Special Programmes (National Council for Children Services and Directorate of Children Services);*
- xlvi) *The Turning Point Trust;*
- xlvi) *The World Youth Alliance ;*
- xlvi) *Tree of Life (FADV)*
- xlvi) *Uhuru Community Development Project;*
- l) *UNICEF Kenya; and*
- li) *Wakili.sha Initiative.*

32. The Committee further invited interested stakeholders and members of the public to appear before it on various dates as follows:—

- i) **11 and 12th February 2022:** Meeting with the State Department for Social Protection, Senior Citizens Affairs and Special Programmes; the National Council for Administration of Justice Special Taskforce on Children Matters; the National Council for Children's Services (NCCS), UNICEF; Mtoto News; SOS International; Office of the Director of Public Prosecutions; the African Institute of Children Studies; Adoption Societies of Kenya and the Association of Alternative Family Care of Children.
- ii) **14th & 15th February 2022:** meeting with the Child Welfare Society of Kenya;
- iii) **24th February 2022 (9 am to 4 pm):** public hearing where all persons who made written submissions to the Committee were invited to make oral submissions.

33. Details of the stakeholder submissions are annexed to this Report as **Annexure 5**.

34. A matrix containing a summary of all the submissions received by the Committee on each provision of the Bill and on general matters relating to the Bill is also attached as **Annexure 6**.

3.3 Key Issues Arising from Public Participation

35. The following key issues arose during public participation –

- i) Inter-country adoptions;
- ii) Charitable Children's Institutions; and
- iii) Rights of intersex children.

CHAPTER FOUR

4.0 EMERGING ISSUES CONSIDERED BY THE COMMITTEE

4.1 Inter-Country Adoptions

36. One of the major issues the Bill seeks to address is the issue of **adoption**, which is provided for in **PART XIII of the Bill**. As earlier indicated, this Part contains clauses 185 to 218 that regulate matters relating to: power to make adoption orders (185); establishment of a National Adoption Committee (186); pre-requisites for adoption (187); children who may be adopted (188); who may apply to adopt a child (189); power to dispense with consent (190); appointment of guardian ad litem (191); interim orders (192); inter-country adoptions (193); adoption by non-resident Kenyans (194); kinship adoption (195); powers of the court in adoption proceedings (196); power of the court to appoint guardian (197); adoption order in respect of children previously adopted (198); parental responsibility when adoption is denied (199); appeals (200); variation of orders (201); adopted children register (202); registration of adoption orders (203); rights and duties of parents and capacity to marry (204); application of Work Injury Benefits Act (205); orders and agreements in respect of child born outside marriage (206); intestacies and testamentary instruments (207); provisions supplementary to section 198(208); effect of inter-country adoptions (209); restriction on

adoption arrangements. (210); certain offences relating to adoption (211); functions of adoption societies (212); adoption proceedings to be confidential (213); prohibition of certain payments (214; restriction on the advertisement (215); offences under this part (216); regulations (217); and rules of court (218).

37. To understand the history and implications of these provisions in the Bill, the Committee undertook an in-depth analysis of the matter of child adoption in Kenya and in other jurisdictions contained in this sub-section.
38. The Committee received comprehensive submissions from various stakeholders who submitted proposals on this Part. These include the State Department of Social Protection, Senior Citizens Affairs and Special Programmes; World Vision Kenya; Adoption Societies in Kenya Secretariat; Children Agenda Forum; Nairobi Chapel; Mahali Pa Maisha; Ms. Atieno Odenyo (Child Protection specialist) in collaboration with Maestral International; Ms. Mercy Ndirangu, Child Protection Specialist; the African Institute of Children Studies; the Association of Alternative Family Care of Children; the Child Welfare Society of Kenya; the Children Technical Advisory Group; the Cradle (The Children Foundation) (Ms. Juliana Wamaitha, Executive Director); the Law Society of Kenya (Nairobi Branch) (Mr. Eric Theuri, Chairman); the National Council on Administration of Justice; the Social Work Society of Kenya and UNICEF.

(i) Background Information

39. Currently, the adoption of children in Kenya is governed by the Children Act, 2001 Act (No 8 of 2001) and Adoption Regulations of 2005. Prior to the enactment of the Children Act, the adoption process was governed by the Adoption Act Cap 143 Laws of Kenya. The Children Act, 2001 resulted in the repealing of the Adoption Act 143, the Guardianship of Infants Act Cap 144 and the Young Person's Act Cap 141.
40. Apart from repealing the three Acts, the Children Act 2001 domesticated most of the provisions of the United Nations Convention on Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), which have been ratified by the Government.
41. In the year 2007, the Government of Kenya signed the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, which obliges Kenya to take measures to ensure that Kenyan children remain in their family of origin or Kenya and inter-country adoption is considered as a last resort where a suitable family cannot be found within Kenya.

(ii) Types of Adoption

42. There are four (4) types of adoption in Kenya, namely: kinship adoption, local/domestic adoption, resident adoption, and inter-country adoption as follows: -
 - a) **Kinship Adoption** refers to adoption by adopters who are kin or relatives within the extended family of the child. The application process of kinship adoption is similar to local /domestic adoption. It also applies to adoption by Kenyans living abroad. A bonding period is necessary when the child has not been living with a prospective adopter.

- b) **Local/Domestic Adoption** refers to adoption by adopters who are Kenyan citizens and where the child they are adopting is a resident in Kenya. It also applies to adoption by Kenyans living abroad.
- c) **Resident Adoption** refers to adoption by adopters who are not Kenyan citizens but have lived in Kenya for more than three years and want to adopt a child who is a resident in Kenya.
- d) **Inter-Country Adoption** refers to the adoption of a Kenyan child by adopters who are not Kenyan and live outside Kenya.

(iii) History of Inter-Country Adoptions in Kenya²

- 43. In the year 2007, the Convention on the Rights of the Child (CRC) Committee expressed its concern over reports in Kenya indicating that irregular inter-country adoptions and possible trafficking of children for that purpose still existed.³
- 44. The technical assessment of the legal provisions and practices of guardianship, foster care and adoption of children in Kenya (2008) conducted by the Government of Kenya, jointly with UNICEF, indicates that there is weakness in the legal framework and practice, which impacts negatively on the adoption process.
- 45. It was further observed that foreign adoption attracts as much as approximately Kenya shillings seven hundred thousand (700,000) or thirty thousand Euros (30000) per child as legal fees for lawyers in addition to charges paid by applicants in accordance with Guidelines issued by lawyers which are way above the stipulated minimum of Kenya shillings eleven thousand eight hundred (Kshs. 11,800) set in the Advocates Remuneration Order of 2014.
- 46. A global alarm was issued in June 2014 by the Experts Group of Hague Convention On Inter-Country Adoption, calling on State parties to act against profit-driven inter-country and child trafficking. The Global Reports on Trafficking in Persons 2014 (UNODC) cites Kenya as among countries that are in denial even neglect when it comes to reporting or prosecuting cases of human trafficking. Kenya was then listed as a source, transit and destination country in human trafficking. The country was also ranked at Tier 2 Watch List for non-compliance with minimum standards for the elimination of human trafficking, according to June 2014 US State Department Report on Trafficking in Persons.
- 47. On inter-country adoptions, Kenya was listed among countries that lack severe penalties to deter persons who target children for purposes of abduction, trafficking and other sale or other forms of exploitation.
- 48. Indeed, anecdotal information reveals that children are stolen from hospitals, homes, schools, and other places and remain untraced, while others are alleged to have been abandoned. Most police reports indicate that children in their custody have been abandoned and that their parents or guardians cannot be traced.

² Progress Report on the Implementation of the Moratorium on Inter-Country and Resident Adoptions (2017)

³ CRC/C/KEN/CO/-JUNE 2007

49. According to the 2007 CRC Report above, it was not possible to tell whether children placed in inter-country adoption were sold or procured or lost ones reported missing while the parents were still searching for them. According to the records from the Adoption Committee at the time, statistics of children adopted from Kenya, more than 496 children were taken out of Kenya between 2005 and 2014 under circumstances that raised constitutional, legal, policy and ethical questions under local and international legal instruments.

(iv) Moratorium on Adoption (November 2014)

50. The Government issued a Moratorium on inter-country adoptions on 26th November 2014. The main objective of the Moratorium was to enable the government to intervene and 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.
51. The main objective of the Moratorium was to enable the government to intervene and conduct a comprehensive audit of policy and legal framework, processes, procedures and players involved in the practice of adoption in Kenya
52. In addition, the Moratorium was intended to allow the government to scale up deinstitutionalisation, ensure robust family tracing and reunification, enhance local alternative family care and put in place laws and policies to protect children, including eliminating child trafficking through adoption, among other child protection interventions.
53. The Moratorium was imposed following numerous credible reports by the media, government agencies and partners in the child care and protection sector, which indicated that adoption and other forms of alternative family care for children in Kenya had been used by some unscrupulous agencies, officials and individuals to traffic Kenyan children.
54. The Cabinet directed the then Cabinet Secretary for East African Community, Labour and Social Security to develop a Sessional Paper with a detailed policy, institutional and legal framework to regulate and manage child adoption, including safeguards for the adoption of children in Kenya.
55. To protect children from trafficking by unscrupulous agencies, officials and individuals, the Government directed as follows-
- (a) that the Cabinet Secretary reviews the adoption policy and legal framework to ensure that Kenyan children are not placed or adopted by foreigners;
 - (b) that the relevant Government agencies in charge of adoption should ensure that Kenyan children are placed with Kenyan parents;
 - (c) that the Cabinet Secretary cancels all the intercountry adoption licenses by the adoption societies to protect children from child trafficking in the guise of adoption; and
 - (d) that the Cabinet Secretary ensures that children are adopted locally to preserve their cultural background, identity, right to citizenship.
56. In making the directive, the Cabinet took note of the data available of prospective adoptive Kenyan parents, which was at a ratio of one (1) child to six (6) prospective adoptive Kenyan parents. Also,

other countries which were experiencing problems in child trafficking, e.g., Ethiopia, changed their laws to remove the component of inter-country adoption.

57. The Cabinet Secretary appointed an Expert Committee on Child Adoptions in Kenya to 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 adoption and review the adoption policy and legal framework to ensure that Kenyan children are not placed or adopted by foreigners. **The Committee recommended the abolishment of inter-country adoption and a review of the Act to repeal provisions on inter-country adoption.** The Government further, in 2019, enforced the ban on Inter-Country adoption through a Cabinet directive and an Executive Order on the same by the H.E. the President, and the ban is still in force.

(v) Comparative Analysis of Inter-Country Adoptions

Rwanda

58. In Rwanda, the Government closed down children's homes and as few as 78 children were in institutions by the end of 2017. The closure was a result of the demand from the children during a Children's Summit held on 4th January 2012 that their fellow children should not be raised in institutions. Following the Children's Summit, the Government of Rwanda established a National Commission for Children services, and one of its major roles is to remove children from institutions.
59. In 2010, the Government of Rwanda issued a Moratorium on inter-country adoptions, and despite pressure from some interested parties for the Moratorium to be lifted, the Rwandan Government maintains that it has no children for adoption. The Government has stood firm that it shall not lift the Moratorium since Rwandese children are a very important resource that the country needs and regards this as a very serious matter.

South Africa

60. All adoptions in South Africa are regulated through the South African Central Authority. The South African adoption practice has recently been broadened to include the option of inter-country adoption. There exist Practice Guidelines on Intercountry Adoption in South Africa which adhere to internationally recognised standards. These guidelines were issued by the Ministry of Social Development in South Africa. The adoption process is anchored on the Hague Convention, where South Africa is the country of origin, and the adoption is processed with another foreign country that is a signatory of the Hague Convention.
61. The following is the legal framework of national legislation governing issues of children in South Africa:
- i) The Constitution of the Republic of South Africa Act, 1996;
 - ii) Child Care Act, 1983;
 - iii) Children's Act, 2005 and the Children's Amendment Act of 2007;
 - iv) Criminal Procedure Act, 1951;
 - v) Social Services Profession Act, 1978; and

vi) Births and Deaths Registration Act, 1997.

62. Inter-country adoptions only take place where a working agreement between South Africa and the other Hague country is established and the working agreement approved by the central authorities of the two countries; unless **the child is being adopted by a blood-related family member.**

Procedure for Inter-Country Adoption in South Africa

63. The procedure for inter-country adoption is as follows—

- (a) Prospective adoptive parents in the foreign countries interested in adopting a South African child will contact the Central Authority in the receiving country, which will then refer them to the organisations accredited to do inter-country adoption in South Africa and has a working agreement in place with an accredited child protection organisation in South Africa.
- (b) The reason why the collaboration is being done by the accredited organisations of both countries is so as to be able to trace the whereabouts of the child when the need arises.
- (c) In South Africa, an intercountry adoption can only be considered if local adoptive parents cannot be found, and this is captured in writing and must be acknowledged and agreed to by the South African Central Authority.
- (d) Once the local accredited organisations agree on screening the prospective adoptive parents and match the details of the child, the Central Authority, if in agreement, complete a letter to support the matching.
- (e) Thereafter, the local accredited child protection organisation will arrange for a court date and for the couple to visit South Africa. Bonding should then take place between the child and the couple for a minimum of at least two weeks and accompany them to the Children's Court.
- (f) The Children's Court will then issue an adoptive order and the minutes of the court proceedings as well as other necessary documents, which will be forwarded to the Central Authority for it to ensure the registration of the adoption.
- (g) The Central Authority will then issue a Certificate of Conformity in terms of section 23 of the Convention within five working days, ensuring that the adoption will be recognised in the foreign country.
- (h) The accredited child protection organisation will ensure that the Department of Home Affairs receives a copy of the adoption order and that the changing of names is done, and a new birth certificate is issued and forwarded to the adoptive parents.
- (i) Lastly, the Embassy will then come in to issue visas and entry clearance that will enable the child to be accepted in another country.

Hague Convention Adoptions where South Africa is the Receiving Country

64. This kind of adoption is not encouraged in South Africa, however adoptive parents from South Africa can adopt a child of a race of their choice in case they are available in other countries. Inter-country adoption can only be done where a working agreement between South Africa and other Hague countries has been established and approved by the Central Authorities of the two countries.
65. The procedure is almost similar to that where South Africa is the Country of Origin, except that it might be inverse to it.

Non-Hague Adoptions

66. This kind of adoption can only be done in South Africa by child protection organisations accredited to do inter-country adoptions where there are working agreements between the two countries.

Family or Blood-Related Adoptions

67. This is where South Africa is the country of origin, and the adoption is done in another country (Hague or Non-Hague), and the child is blood-related to the prospective adoptive parents. This kind of adoption can be done without a working agreement in place and not necessarily by a designated child protection organisation accredited to do intercountry adoptions.

Structure of Administration of Children Services in South Africa

68. The South African Central Authority is the main body responsible for facilitating and approving intercountry adoptions in South Africa. Other players include the Accredited Child Protection Organisations and Competent Central Authorities from the receiving States.

4.2 Rights of Intersex Children

69. Another issue of concern arising from public participation is the issue of the place of intersex children in the Bill.
70. The Committee received submissions from the Intersex Persons Society of Kenya represented by Mr. James Karanja, an intersex person who made an oral presentation on 24th February 2022 and a written submission dated 28th February 2022.
71. Mr. Karanja (born Ms. Mary Waithira) informed the Committee about his predicament since birth which included the delay in getting a name until his grandmother intervened, and expensive medication because of the expensive treatment that includes hormonal supplements. He also informed the Committee about the failure of the University of Nairobi to process his graduation since 2019 because of the conflict of names (James vs Mary).
72. The Committee also received submissions on intersex children from the Kenya National Commission on Human Rights (KNCHR) and the Intersex Persons Society of Kenya (IPSK), who lauded the efforts to review the Children Act, 2001 in order to align it to the current constitutional dispensation and ensure the protection of the intersex children as a special category.
73. The Commission and IPSK noted that the Bill recognises intersex children following the 2019 National Housing and Population Census that recorded 1,524 intersex persons in the country. It noted the need to accord intersex children 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.

74. Further, there is a need to include intersex genital mutilation as one of the harmful cultural practices that are performed on intersex children. The Intersex Taskforce noted that intersex genital mutilation is one of the harmful medical treatments that intersex children undergo in a bid to “correct” their ambiguous genitalia. This practice has negative long-term effects on a child’s mental and physical health. The concern regarding intersex genital mutilation (IGM) has been raised by various treaty body mechanisms, including the Committee on the Rights of the Child (CRC), which has repeatedly recognised Intersex Genital Mutilation (IGM) as a harmful practice.

75. KNCHR and IPSK made the following proposals to the Committee –

- i. Amend Clause 2 to read, *“A child/person who is conceived or born with a biological sex characteristic that cannot be exclusively categorised in the common binary of female or male due to their inherent and mixed anatomical, hormonal, gonadal (ovaries and testes) or chromosomal (X and Y) patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood”*.
- ii. The Ministry of Health, in consultation with the Medical Practitioners and Dentists Board, to formulate a harmonised and comprehensive treatment guideline focusing on a child-centred and human rights-based approach for the medical care and protection of intersex children.
- iii. The Ministry of Education to mainstream intersex issues, allow intersex children registration using special registration numbers (NEMIS) and ensure their retention within the education system.
- iv. Intersex children within the criminal justice system should be treated with equality, respect and protection of their dignity and should be kept absolutely separate from male and female confinement in the borstal institutions.
- v. Where an intersex child has been placed under the supervision of the probation officer, the probation officer shall be of a sex acceptable to the intersex child.
- vi. Include a clause reading, *“the Registrar of Births and Deaths shall take appropriate measures to ensure that a proper record of children born intersex is captured at birth and enhance their access to proper registration documents.”*

(Rationale: This will give the Registrar powers to amend the birth notification and the birth certificate forms to cater for intersex children and support the Government in collecting real-time data on intersex children from Birth. This will also ensure parents are sensitised about the uniqueness of their children and avoid killing these children at an early age and unnecessary medical surgeries at a tender age or even denial of vaccinations for fear of taking them to the hospital due to ridicule.)

4.3 Institutionalisation of Children

76. On 1st November 2017, the Cabinet Secretary for the Ministry of East African Community, Labour and Social Protection suspended the registration of new Charitable Children's Institutions (CCIs). The reason given was that many children were inappropriately placed in CCIs when they could be placed in alternative family-based care, and it was therefore not in their best interests, and they were being denied the opportunity to be raised within families. It also stated that some CCIs were involved in "unscrupulous practices which may include child trafficking".
77. The Cabinet Secretary called for a ban on further registration of new CCIs until the current situation was streamlined to ensure proper care and protection of vulnerable children.
78. In May 2019, the Government committed to scaling up deinstitutionalization and promoting family-based care.
79. Data from around the world indicates that an estimated 5.4 million children continue to live in orphanages and other harmful institutions due to poverty, discrimination, and insufficient access to basic services, amongst other factors. Once separated from their families and communities, children in institutions are deprived of the love, attention and opportunities they need to develop and flourish.
80. The situation in Kenya fits this global scenario where an estimated number of 45,000 children live in more than 845 Charitable Children's Institutions (CCIs) which are privately-run residential institutions overseen by the Department of Children's Services (DCS). In addition, there are an estimated 1,000 - 1,200 children living in 28 government-run institutions, including rehabilitation, remand, reception, and rescue centres.
81. To fully align with globally accepted standards of care, the Government, in collaboration with other like-minded players in the children's sector, adopted a unified and holistic approach toward reforming the childcare system by developing the **National Care Reform Strategy for Children in Kenya**.⁴ The strategy, developed with the support of UNICEF and a multisectoral care reform core team, under the leadership of the National Council for Children's Services (NCCS), seeks to guide national steps towards prevention of separation and family strengthening, robust alternative family care, and tracing, reintegration and transitioning from institutional care to family and community-based care for all children in need of care and protection.
82. The Children Bill 2021 is, therefore, an opportunity to reform existing national legislation, regulations and policies to make them supportive of family and community-based services for all children in Kenya, including children with disabilities.
83. However, stakeholders noted that **Clause 66** provides for NCCS to determine whether CCIs are needed, their best location, to determine the most qualified people to run them and to ensure they have financial resources. **This provision contradicts the Government's efforts toward departure from institution to family-based care and especially the 2017 Moratorium on the registration of new CCIs.**

⁴ The National Care Reform Strategy for Children in Kenya

84. **Clause 69** states that the main objective for the establishment of CCIs shall be “to provide family-based care for all children in accordance with the national policy for promotion and protection of the rights of children”. However, **CCI is by definition a form of institutional care and not family-based care.**
85. **Section 69** goes on to specify that children cannot be placed in a CCI for more than three years, which is inconsistent with Clause 64, which is not more than one year.
86. Following further consultations with various stakeholders, including the NCCS, Department of Children Services, the Alternative Family Care of Children, UNICEF and Child Fund International, it was resolved that clauses 66 and 81 (2),(3)(4)(5)(6)(7)(8) be deleted in order to support the government’s reforms towards child care and protection by doing away with CCIs. Existing CCIs will be regulated and supervised during the transition period.
87. It was further proposed that a new clause named Alternative Care be introduced to include forms of care included in the Guidelines for Alternative Family Care of Children in Kenya, 2014. These include:
- (i) kinship care;
 - (ii) guardianship;
 - (iii) foster care;
 - (iv) adoption;
 - (v) kafaalah;
 - (vi) care in emergency situations;
 - (vii) temporary shelter;
 - (viii) support independent living; and
 - (ix) supported child-headed households.

Case Study of Rwanda

88. There is a widespread global practice that children should grow up safe and protected in families rather than in harmful institutional care. In 2012, the government of Rwanda established a programme of care reform and family strengthening which is rooted in Rwandan cultural values and legislative reforms which emphasizes family care.
89. Many charitable children’s institutions in Rwanda had been established by faith-based organizations and many were run by national organizations as opposed to international ones. The institutions experienced a lot of challenges, notably an overwhelming number of children against a very small number of staff.
90. Progressively, the number of children in institutional-based care reduced significantly owing to other placements such as: extended families, biological parents, long-term foster care, adoption and supervised and supported independent living for young adults only

91. As a result, therefore, many institutions closed and others have been transformed into schools or centers for family support.

92. The elements of successful childcare reform in Rwanda can be attributed to the following factors –

a) Government Commitment

93. The Rwandese Government heeded to children's demand for an end to institutional care after receiving feedback from children in the annual National Children's Summit. The Summit brings together elected representatives of children from all villages in Rwanda.

94. There is also a strong belief in the value of the family in Rwanda and institutional care is perceived as alien to the Rwandese culture.

95. Children under institutional care lived in unbearable conditions and there was, therefore, a need to demonstrate that a transition to family-based care was possible.

b) Legislative Reforms

96. The Rwandese government generated the following policies strategically focused on children's care–

(i) The Constitution of Rwanda 2003 enshrines the rights of children including the right to be raised and protected in a family-based environment.

(ii) The National Integrated Child Rights Policy and accompanying Strategic Plan 2011 contains several themes, one of them being alternative care. It states that care by extended family members will always be explored as the first option and that children should only be placed in institutional care as a last resort. The strategic plan for policy implementation outlines necessary actions for closing institutions and strengthening families.

c) Cabinet Brief – Strategy for Child Care Reform (2012)

97. The Strategy for Care Reform provides a detailed action plan for de-institutionalization including building social workers' capacity, developing foster care and the re-integration process including family tracing, assessment, preparation and follow up.

d) The Tubarerere Mu Muryango Programme and developing partnerships for reform

98. This Programme was developed by the Government of Rwanda and UNICEF in consultation with the United States Agency for International Development to implement the cabinet brief strategy on alternative care.

99. The programme ran in phases and focused on building the social workforce, closing or transforming institutions and establishing a programme of family reintegration and support. It aimed to prevent new entries into institutional care through improved entry requirements, case management and development of emergency foster care.

e) Strengthening the capacity of government agencies to manage and coordinate reforms

100. Grants issued have supported the home-grown government initiative of alternative care through coordination of the government agencies regarding child protection.

Transitional Mechanism

- 101.** The transition from institutional care has been undertaken majorly through supporting reintegration and vulnerable families. This has been carried out in the following manner –
- (i) Engaging care-home managers and gaining their commitment to the reintegration process;
 - (ii) Performing an initial assessment of children and care-home records;
 - (iii) Developing a care plan to address any issues that may inhibit reintegration;
 - (iv) Carrying out family tracing and identifying relatives who could care for the child;
 - (v) Assessing the families and their willingness to care for the child;
 - (vi) If reintegration is not possible, seek a suitable foster or adoptive family for the child;
 - (vii) Providing a reintegration package which may include material support; and
 - (viii) Preventing further separation.

Conclusion

- 102.** From the foregoing, it is apparent that Rwandese laws and policies largely provide for transitional and reintegration mechanisms from institutional care as opposed to completely outlawing the establishment of charitable children institutions.

CHAPTER FIVE

5.0 VISIT TO CHARITABLE CHILDREN'S INSTITUTIONS: 31ST MARCH 2022

- 103.** The put into context the matter of institutionalisation of children, the Committee conducted a fact-finding visit to some children's homes in Nairobi. The Committee sampled them according to their establishment and sponsorship. The visits took place on Thursday, 31st March 2022.

5.1 Visit to Mogra Children's Rescue Centre

- 104.** The Committee visited Mogra Rescue Centre located along Kiambu Road. The Centre is a Charitable Children's Institution catering to orphans, abandoned, homeless, vulnerable and poverty-stricken children.
- 105.** The delegation was received by Rev. Hannah Wairimu and her husband, Mr. David Wambia. They informed the Committee that –
- (i) The Centre was established in 1998 by Rev. Hannah Wairimu.
 - (ii) It is currently home to more than 565 children, out of which twelve (12) have various types of disability.
 - (iii) The Centre also works with Mogra Star Academy in Mathare to provide free education to the children in Mogra Rescue Centre. The Academy has a student population of 1,200.

- (iv) The Centre also provides education to children from kindergarten to Grade 3 within the facility. Grade 4 up to Form 4 students are transported to and from Mathare for schooling.
- (v) Their primary source of income is well-wishers, especially from the Indian community, who mostly donate clothes, food items, and employee salaries. The home has 106 employees.
- (vi) The centre also received support to construct a new baby unit which was officially opened by Hon. Justice Martha Koome, EGH, Chief Justice and President of the Supreme Court of Kenya on 9th February 2022.
- (vii) Since its establishment, the home has processed international adoption of 4 children and local adoption of 70 children.
- (viii) The Directors informed the delegation that tracking children adopted internationally is a big challenge.
- (ix) Most of the children are brought in by the police because of abandonment or trafficking. Some of the children are Tanzanian and Ugandan citizens brought by the police.
- (x) Most of the children are from Nairobi and Murang'a Counties.
- (xi) The home proposed a ten-year transition regarding the transition period from CCIs to alternative family care.
- (xii) The delegation also toured the facility to ascertain the living conditions of the children and observed that the younger school-going children were in class and that the dormitories were clean and tidy, albeit congested.
- (xiii) The Committee was informed that the older children were out doing chores on the farm.

5.2 Visit to Kabete Remand Home

106. The Committee also visited the Kabete Remand Home, a statutory children's institution located in the Kabete area. The delegation was received by Mr. Geoffrey Odhiambo Gudah, Senior Chaplain/Deputy Director.

107. He informed the Committee that –

- (i) The institution is one of the 14 statutory children's institutions. The other remand homes are in Kisumu, Kakamega, Manga, Machakos, Nakuru, Malindi, Kericho, Eldoret, Meru, Kiambu, Murang'a, Nyeri and Likoni.
- (ii) The institution is home to children in conflict with the law and those in need of care and protection aged between 7 and 13 years old. The home is a transit centre as the children await the conclusion of their matters in court and are not meant to be there for more than three months.
- (iii) The Committee noted the need for remand homes in each county.
- (iv) The Committee established that some of the children had been there for more than two months. Three (3) of the children were foreigners from Tanzania.

- (v) During the visit, the home had 29 children, both boys and girls. The maximum capacity for the home is 80 children.
- (vi) The home offers various rehabilitation services to the children, e.g., counselling, fellowship etc..
- (xiv) The delegation thereafter toured the facility and interacted with the children and observed that the facility was clean and tidy.
- (xv) The Committee was concerned that there is no segregation of children based on the severity of their offences and gender considerations.

5.3 Visit to Kabete Children Rescue Centre

108. The Committee was received by Mrs. Margret Kagwiria, Senior Children Officer in charge of Kabete Rescue Centre.

109. She informed the Committee that –

- (i) Kabete Rescue Centre is a statutory children's institution. It is the only government children's rescue centre in Kenya that caters to new-borns and children who are six years and below.
- (ii) The children are brought by the police and through a court order due to abandonment, child trafficking, jailed mothers, witness protection etc.
- (iii) The home partners with Kenya National Hospital and Mbagathi Hospital for paediatric medical care. The Committee was informed that the facility does not have a medic on-call or on-site.
- (iv) It also partners with well-wishers for medical care and provision of other critical goods and services, e.g., formula milk owing to limited financial and human resources, e.g. children officers.
- (v) At the time of the visit, the home had 39 children.
- (vi) The facility sits on three acres and has 14 staff.
- (vii) The delegation toured the facility and noted that the home is in urgent need of repairs and that some of the equipment is very old and requires overhauling. For instance, the old washing machines consume a lot of electricity and are unsustainable. The monthly electricity bill is approximately Kshs. 300,000 per month.
- (viii) The cookers donated by well-wishers are also unused because of the exorbitant electricity costs. It was recommended that the home be facilitated with alternative energy sources, e.g., solar power.

5.4 Visit to the Child Welfare Society of Kenya Children Homes

110. The Committee also visited the Child Welfare Society of Kenya's Children Homes in Waithaka and Mama Ngina Children's Home in South C, Nairobi.

a) Waithaka Children Home

111. The Committee was received by Dr. Felistas Mwikali and Mr. Boniface Kituna (Occupational Therapist).

112. She informed the Committee that –

- (i) The home caters for children in need of care and protection and those with special needs.
- (ii) At the time of the visit, the home had thirty-four (34) children, out of which 11 were children with disability.
- (iii) The home has an in-house nurse and occupational therapist for children with disabilities.

b) Mama Ngina Children's Home in South C

113. The delegation was received by Ms. Miriam Mwangi, in charge of the home, and other CWSK officials.

114. The Committee was informed that –

- (i) The home is a temporary place of safety for children in need of care and protection in three categories: girls, boys and babies.
- (ii) The institution has various cadres of staff, including clinical officers, nurses, counsellors etc.
- (iii) More than 400 parents are willing to adopt children, but there are currently not enough children to be adopted owing to the rigorous adoption process.
- (iv) CWSK conducts DNA testing to establish blood relations for relatives/guardians seeking to reunite with their children.
- (v) The Society conducts a rigorous tracing process, including the use of the media to look for relatives of abandoned children.
- (vi) The primary source of funds for CWSK is the government of Kenya.
- (vii) The Committee toured the facility and observed that the facility was clean and tidy and the children seemed well taken care of. The home had 170 children of various ages during the visit, including new-borns.
- (viii) The Committee also visited the CWSK stores where relief food and other supplies are kept for response to children in emergency situations.

Committee General Observation

115. The Committee observed with concern that authorised officers prefer to commit children to private children's homes after rescuing them instead of government-affiliated homes.

CHAPTER SIX

6.0 COMMITTEE FINDINGS AND OBSERVATIONS

116. The Committee made the following observations from stakeholder submissions and its own views during consideration of the Bill –

- (i) **Article 53 of the Constitution - Rights of the Child:** The Bill incorporates the rights of the child as envisioned under Article 53 of the Constitution. The provisions of the Bill emphasize that a child's best interests are of paramount importance in every matter concerning the child.
- (ii) **The Rights of Inter-Sex Children:** The Committee acknowledged the need to provide for the care and protection of intersex children with respect to: the definition, recognition and document; the criminal justice sector; in health facilities including facilitating access to the highest attainable standard of health, protocols on surgical and hormonal interventions that constitute medical emergencies; protection against involuntary medical intervention; formulating a harmonised and comprehensive treatment guideline focusing on a child- and human rights-based approach for the medical care and protection of intersex children; establishment of a fund to cater for all medical-related interventions for intersex persons due to the high cost implications of specialised intersex medical care or a free/ subsidised medical insurance health cover under the NHIF or any other scheme for intersex persons; promotion of awareness and sensitisation initiatives to the general public and all stakeholders to combat stigma and promote societal acceptance.
- (iii) **Abolishment of Charitable Children Institutions:** The Bill emphasizes that where the Court or the Director determines that the separation is in the best interest of the child, the Court or the Director shall provide **family-based alternative care** as the priority.

The Committee observed that the government has put a lot of effort into alternative family care instead of institutionalising children in need of care and protection, including pilot training of foster families. One of these interventions includes the 2017 Moratorium on the Registration of new CCIs. To support this initiative, the Committee deleted Clause 66, which provided the establishment/registration of new CCIs. The Committee recommends a ten-year transition to full alternative family care for children.
- (iv) **Administration of Children's Services:** The Committee further observed the poor working relationship between the National Council for Children Services, the Directorate of Children Services and the Child Welfare Society of Kenya. The Committee, therefore, resolved to provide clarity with respect to the administration of children's services.
- (v) **Adoptions:** The Committee acknowledged the existence of a moratorium against intercountry adoptions which was approved by the Cabinet in 2014. The Committee, therefore, resolved that the moratorium stays in place and that the process regulating inter-country adoption should contain the following elements—

- i. The presence of a national adoption entity that monitors and coordinates the processing of intercountry adoptions whose administration is independent of the Directorate of Children Services;
- ii. The presence of an entity or entities that are accredited by the National Council for Children Services to process an intercountry adoption;
- iii. The presence of a child protection entity accredited by the National Council for Children Services that works together with an accredited entity under (b) to ensure the tracing of a child during each step of processing of intercountry adoption;
- iv. The national adoption entity must maintain a register certifying in writing that it is satisfied that intercountry adoption has only been considered because no parents have been found to locally adopt the child.
- v. The national adoption entity must 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 Protection of Children and Co-operation in Respect of Intercountry Adoption** which provides that –

“An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

- vi. A child protection entity accredited by the National Council for Children Services shall ensure that the Ministry responsible for internal affairs processes the changing of names and issue of a new birth certificate to the adoptive parents and the department responsible for immigration will then issue a certificate to clear the adopted child to receive a passport from the country of the adoptive parents.

(vi) **Customary Guardianship:** The Committee also observed the need to include provisions to provide for and regulate customary guardianship in addition to those provided in the Bill. Customary guardianship is defined as the parental responsibility of a Kenyan child by a Kenyan citizen in accordance with the customs, culture or tradition of his/her respective people.

This new provision will facilitate the appointment of a relative or relatives of a child as guardians through customary practice to ensure that customary guardianship currently practised by local communities is recognized and formalized.

The provision will also make it easy for relatives to be appointed as guardians for children who are currently under the informal guardianship and ensure that a child grows in their culture, customs and traditions.

CHAPTER SEVEN

7.0 CLAUSE TO CLAUSE CONSIDERATION OF THE BILL

117. This Part deals with the clause-by-clause consideration of the Bill by the Committee after considering the views of all stakeholders

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Long Title	Mercy Ndirangu, Ahmed Hassan	Add alternative care, Kinship care, Supported Independent Living, and Child-headed Household, delete fostering and guardianship	Article 53 does not single out foster care, adoption and Guardianship; Further, United Nations General Assembly Resolution 2019 and UN Guidelines for Alternative Family Care requires the government to provide legal framework and policies for all forms of alternative and community-based care.	The Committee noted the Proposal and the justification and proposed that the Long title be redrafted to capture the intention of the Bill which is to make provisions for administration of children services as the State moves away from institutional care to alternative family-based care.
	Association for Alternative Family Care for Children	Add Kinship care, Supported independent Living, and Child-headed Household	Article 53 does not single out foster care, adoption and Guardianship. Further, UNGA Resolution 2019 and the UN Guidelines for Alternative Family Care requires the government to provide legal framework and policies for all	further the clause be amended by adding the words "rights of children" before words "parental responsibility"

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	National Council on Administration of Justice (NCAJ) ⁵	add "rights of children" before words "parental responsibility"	A.53 covers the Bill of rights for children. The Preamble should mention that.	The Committee noted the Proposal and the justification and proposed that the Long title be redrafted
	Child Welfare Society of Kenya ⁶ (CWSK)	That the long title of the Bill is amended by inserting the words appearing immediately after the word "Constitution" and inserting the words "to make provision for children services to ensure child survival, development, protection and participation"	The amendment is to provide a holistic approach to ensure the wellbeing of children.	to capture the intention of the Bill which is to regulate and make provisions for children services as the State moves away from institutional care to alternative family-based care, further the clause be amended by adding the words "rights of children" before words "parental responsibility"

⁵ National Council on Administrative Justice

⁶ Child Welfare Society of Kenya

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				The Committee observed that CWSK dropped the proposal
Clause 1- Short title	Mr. Don Bosco and The Children Agenda Forum	Consider having the Title as "Child Protection and Child Justice Act".	The provisions in the Children Bill 2021 as drafted are largely on child protection and child justice systems. There are other legislation that provide for other children services such as the Basic Education Act 2013 and the Health Act 2017.	Committee noted the proposal and justification but it did not concur with proposed change in nomenclature. The title "Children Act" is comprehensive.
Clause 1- Short title	African Institute for Children Studies	Instead This Act may be cited as the "Child Protection and Welfare Act, 2021"		Committee did not concur with proposed change in nomenclature, no justification was offered by the Stakeholder.
Clause 2- definition of "abandoned"	State Department of Social Protection	Amend the definition of "abandoned" by deleting the word "of" appearing in paragraph (b)	To correct grammatical error	Committee concurred with the proposed amendment in order to correct the grammatical error

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Mercy Ndirangu, and Ahmed Hassan	b) has not been in contact with the parent, guardian or caregiver for a period of exceeding six months	Reduce period to six months To be in consistency with Part XIII 190 (2)(a) & (b)	The Committee rejected the Proposal and did not agree with the justification and observed that a period of twelve months is in the best interest of a child particularly to give a chance to parents and official to exhaust all avenues of investigation.
	CRADLE	Delete definition of abandoned in subclause (b)	The clause does not place into consideration children who are lost.	The Committee rejected the Proposal and did not agree with the justification and observed that a child who is lost, ought not be considered as being abandoned. A parent may be actively searching for the child and need to retain a right to claim custody over the child once the child is found.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2 - definition of "actual custody"	Child Welfare Society of Kenya (CWSK)	Amend by inserting the words "except where the child is placed in an institution" at the end of the definition of "actual custody";	The term "actual custody" does not apply to children placed in institutions	The Committee observed that CWSK dropped the proposal
Clause definition "adoption"	State Department of Social Protection, Senior Citizens Affairs and Special Programmes	Amend to refer to section 186	For correct referencing	To be corrected during the Vellum processing
Clause 2 - New definition "adoption committee"	CWSK	"adoption committee" means the committee established	The term has been introduced in the Bill to replace the term "national Adoption Committee"	The Committee rejected the Proposal and did not agree with the justification and observed that there was need to do away with the existing committee and redistribute its functions within the office of the Director and the National Council for Children Services or establish a National Adoption Identity
Clause 2 - definition of "adoption order"	CWSK	Clause 2 of the Bill is amended - by deleting the expression "181" appearing in the definition of "adoption order" and substituting therefore with the expression "185"	To correct mis-referencing	Erroneous cross-referencing To be corrected during Vellum processing.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2 - definition of "aftercare"	Mr. Clement Oketch	Amend the definition to read, "the post institutional or alternative care accorded to a child for purposes of assisting the child to settle and live in the community."	The current definition is limiting and unconventional.	Committee did not concur and observed that the definition in the Bill is in line with the one adopted in the National Care Reform Strategy for Children in Kenya.
Clause 2 - definition of "authorised officer"	CWSK	That clause 2 is amended by inserting the words "an officer of the Society" immediately after the words "a teacher" appearing in the definition of "authorized officer";	An officer of the Society is an authorized officer, due to the nature of work by the Society	The Committee rejected the Proposal and did not agree with the justification and observed that the persons listed as authorized officers are all persons employed within the formal government structure
	Faith Based Organizations	Add "religious leaders" as Authorized officers	Religious leaders are on many occasions the first point of contact for children and carry an important role in offering religious guidance, care, education, counselling and psychosocial support to children.	The Committee rejected the Proposal and did not agree with the justification and observed that the Director of Children Services may stipulate the qualifications for appointment as "authorised officer" in guidelines or regulations rather than the definition. Discretion is to be exercised on a case-to-case basis.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		from any infringement of their rights.		
Clause 2- definition of "approved officer"	State Department of Social Protection, Senior Citizens Affairs and Special Programmes	Delete	Conflict of powers with "Authorized officer" who has the same function and is not addressing any gap	The Committee agreed the Proposal and the justification- Definition to be deleted in order to remove ambiguity. Furthermore the definition refers to a person appointed under section 75 but the term " approved officer" is not used elsewhere in the Bill other than in clause 75.
definition of "Best interests of the child"	Children Agenda Forum	The following should be added. "and excludes all such practices as are inimical to the constitution, statutes and rules including any archaic cultural practices such as		The Committee rejected the proposal and did not agree with the justification and observed that the definition in the Bill is preferable as it is less restrictive.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		FGM, child soldier, child labour, child marriage, child maid, etc"		
Definition of Cabinet Secretary	Children Agenda Forum and Mr. Don Brown	Cabinet Secretary" means the Cabinet Secretary for the time being responsible for coordination of implementation of the rights of children	Use of the phrase children's affairs in the definition is ambiguous	The Committee rejected the proposal and did not agree with the justification as the definition is broader and more comprehensive.
Definition of "care and control"	Law Society of Kenya- Nairobi Branch	Define Legal Custody and Physical Custody and delete definition of general custody Care and control ' and 'Legal Custody' is different from that in court and needs to be clarified - In court the former means someone who has care and control of the child	Definition of custody and legal custody and is vague and there exist separation between physical custody and legal custody raising clash and conflict in terms	The Committee rejected the proposal and did not agree with the justification that the term is unclear. In the definition in the Bill "legal custody" refers to lawful custody granted by a court of law while "actual custody"

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		while this draft means legal decision making while Legal custody means legal decisions for the child but the draft means something different		refers to physical custody and control of the child
Clause 2- Definition "Charitable Children's Institution"	Association for Alternative Family Care for Children	Add "in a residential set up" It is expressly outlined in the bill that many institutions are not currently registered but will be required to do so with the relevant department in the future.	It is important to specify that Charitable Children Institutions actually mean care institutions that are residential in nature. There are estimated to be hundreds of unregistered CCIs in Kenya, there is a risk that 'Part I' implies an assumption that all CCIs are already duly registered with the council.	The Committee noted the proposal and the justification and observed the need to amend the definition in order to make reference to the relevant section under which CCI's are referred/ registered.
	UNICEF ⁷ , Lumos Foundation, Hopes and Homes for Children	delete "children's home or" inserting the words "child welfare" immediately before "programmes" to read charitable children's institution" means an institution established by		The Committee rejected the proposal and did not agree with the justification and observed that there was need for a transitional provision to regulate the closing of charitable children institutions.

⁷ United Nations Children's Emergency Fund

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		any person, either alone or in association with others, or by a civil society organisation and which has been duly registered with the Council for the purpose of managing child welfare programmes for the care and protection of children within families and communities.		
Clause 2- Definition of "Chief Executive Officer"	CWSK	That Clause 2 is amended by deleting the term "Chief Executive Officer" and inserting the term "Director General"	Replaced with the term "Director General" in the Bill	The Committee observed that CWSK dropped the proposal
Clause 2- interpretation- Definition of "Child"	World Vision, Children Agenda Forum, Kenya Catholic Doctors Association, & National Council of Churches in Kenya (NCCK)	Amend definition of "Child" to child" means a person who has not attained the age of eighteen years;	To align to the constitution	The Committee rejected the proposal since the definition in the Bill is aligned to the definition in the Constitution.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2- Definition "Child abuse"	United Nations Children's Emergency Fund- Kenya (UNICEF- Kenya)	Paragraph (a) in the definition to read;- (a) the inflicting or inducement of physical harm by any person acts of violence such as slapping, pushing, hitting, kicking, whipping including with the purpose of disciplining a child,	The definition (a) only refers to infliction of physical harm by failing to adequately supervise or protect the child where physical violence against children mostly occurs not by omission but rather intentionally including for the purpose of disciplining them. Emotional harm is also a form of child abuse and should be reflected.	The committee observed the proposal and justification and proposed a redraft of paragraph (a) due to limitation that may be likely by inclusion of the words "by failing to adequately supervise or protect the child"
	CRADLE	Delete definition of child abuse in clause (e) which reads: 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	The action does not amount to child abuse.	The Committee rejected the proposal and did not agree with the justification and observed that the proposal was drafted with the best interest of the child in matters relating to child abuse.
Clause 2 - definition "child trafficking"	CWSK	That clause 2 of the Bill is amended in the definition of "child trafficking" by adding the new paragraph-	The definition has been broadened to cover trafficking of children through Adoption, Foster care, guardianship, justice process, and other forms of trafficking .	The Committee observed that CWSK dropped the proposal

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(h) guardianship, foster care or adoption through fraud;		
	UNICEF	Delete references to 'means' in the definition from (a)-(g)	The definition of child trafficking in s. 2 is confusing, in that it outlines the required "means" (use of threats, force, deception, etc) but then in subsequent para states that these means are not required to prove trafficking in children. As per the Palermo Protocol, any recruitment, transporting, transfer etc. of a child for the purposes of exploitation constitutes trafficking, regardless of the means used.	The Committee rejected the proposal since the definition is adopted from the Counter-Trafficking in Persons Act and modified to apply to children.
Clause 2- Definition of "Children's remand home"	Mr. Clement	Amend to replace the word 'are' with 'can'.	The reason is to make it a possible course of action by the court and not a definite procedure. This will make it possible for courts and the justice system to consider other options outside the remand home when dealing with a child in conflict with the law.	The committee observed the proposal and justification and proposed to delete the word "are" appearing immediately after the words "with the law" and substitute therefor the words "maybe"

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause Definition "Children rescue centre"	2- of rescue centre	Association for Alternative Family Care for Children	It is imperative to specify whose mandate it is to establish rescue centers in relation to the roles of both the National and County levels of government. There is a danger in leaving it to all state agencies or non- state, at a time when all efforts are being made by the State ensuring progressive elimination of institutional care of children. elimination of institutional care of children.	The committee observed the proposal and justification and agreed to the proposal with amendments.
Definition "corporal punishment"	of National council of churches in Kenya (NCCCK) Kenya Catholic Doctors Association	Amend to add the words "excessive" before "physical force"	Disciplining a child is an important key responsibility of a parent. The law recognizes the value of punishment and use of reasonable force where indiscipline is an issue. Spanking using the hand, light cane or pinching would not permanently maim a child but the pain inflicted would be sufficient to deter bad behaviour. The bill under section 154 recognizes this responsibly and states under	The committee noted the proposal and justification and did not concur since corporal punishment is prohibited under Article 29(e) of the Constitution.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			subsection (6).How can corporal punishment be defined so as to exclude spanking or pinching?	
	Ms. Anne Mbugua	The definition of "corporal punishment" should be amended by inserting the word "excessive" immediately before the phrase "physical force".	To cure the inconsistencies that arise in the definition of the term "corporal punishment" when it is read alongside subsections 23 (b) (i) and 154 (6) of the Bill. Subsection 23 (b) (i) of the Bill purports to outlaw any use of physical force when disciplining a child, whereas subsection 154 (6) attempts to protect the right of parents to administer appropriate punishment in the course of reasonable disciplinary action. The current definition of corporal punishment provided in the Bill curtails the use of <u>any</u> physical force by parents during disciplinary processes, even where the pain and discomfort occasioned on the	The committee noted the proposal and justification and did not concur since corporal punishment is prohibited under Article 29(c) of the Constitution.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			child does not cause any bodily harm and is merely sufficient for corrective action.	
Clause 2- Definition "council"	Association for Alternative Family Care for Children	Rework to read National Council for Children's Services'	National Children Council would create ambiguity and could be understood to mean a council for children.	The Committee rejected the proposal since the definition is clear.
Clause 2-"County Government Entities"	State Department of Social Protection, Senior Citizens Affairs and Special Programmes	county government entity" means any department or agency of a county government, and any authority, body or other entity declared to be a county government entity	to clarify what a county govt entity is	The Committee rejected the proposal and did not agree with the justification and observed that the term 'County Government entity' is used eleven times in the Bill and appears to create a duty for county government administrators to report to the Director relating to proceedings in respect of children in need of care and protection under clause 147, determination as to a child's home under clause 149 and the power of court in cases of children in need of care and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				protection under clause 152 of the Bill and therefore the proposed amendment may interfere with the operationalisation of the aforementioned clauses.
	Association for Alternative Family Care for Children	Rework to read 'Administrative Units of County Government'	There should be a clear distinction between the same units. For instance, a sub-county is both an administrative unit of both	The Committee rejected the proposal since the term used throughout the Bill is "county government entities"
Clause 2 -New definition "Director General"	CWSK	"Director-General" means the Director-General appointed under Section 45(1);	The term has been introduced in the Bill	The Committee observed that CWSK dropped the proposal
Clause 2- definition of "Director"	State Department of Social Protection	Delete the definition of "Director"	Children's Services is now a Directorate headed by the Secretary and not director	The committee agreed with the proposed amendment. To align with nomenclature changes in the schemes of service

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2- definition of "Director"	Mercy Ndirangu	"Director"- replace with Permanent Secretary Children Services or Director General, or "any of the designated directors of children services"	The Department of Children Services changed to the Directorate with nine directors.	The Committee rejected the proposal since the nomenclature is clarified in amendments proposed above
Definition of "Fit Person"	World Vision	The Bill needs to put in place guidelines for determining who is a "fit person" and have these guidelines mainstreamed in the National Parental Guidelines that are currently being developed.	Urges the state to clarify what is the criteria for determining that a person is of high moral character and integrity and exercising proper care and guardianship and passes the test of being a fit person to be a parent.	The Committee rejected the proposal since the definition is clear. The aspect of "fitness" of the person will be determined contextually by a Court of law considering the circumstances of each case.
	Joining forces for all children	The Bill needs to put in place guidelines for determining who is a fit person and have these guidelines mainstreamed in the National Parental Guidelines that are currently being developed. The CS to ensure that Guidelines in this regard	The criteria for determining that a person is of high moral character and integrity and exercising proper care and guardianship and passes the test of being a fit person to be a parent should be well define.	Assessment and determination on whether someone is a "fit person" shall be only when the moral character or fitness of the person is questioned.
Definition of intersex person	Kenya National Commission on Human Rights	A person who is conceived or born with a biological sex characteristic that cannot be exclusively categorised in the common binary of female or male due to their inherent	This definition is broader as it encompasses the full aspects of being intersex as opposed to the physical characteristics. This definition is in line with that	The Committee noted proposal and justification and did concur to adopt the definition proposed by KNCHR as contained in the

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		and mixed anatomical, hormonal, gonadal (ovaries and testes) or chromosomal (X and Y) patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood".	adopted by the government taskforce to examine the legal, policy, institutional and administrative challenges facing intersex children and adults	Report by the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Intersex persons. The Committee also agreed with the proposal to add substantive provisions on intersex children in the body of the Bill.
	Intersex Persons Society of Kenya	A child/person who is conceived or born with a biological sex characteristic that cannot be exclusively categorised in the common binary of female or male due to their inherent and mixed anatomical, hormonal, gonadal (ovaries and testes) or chromosomal (X and Y) patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood".		The Committee noted proposal and justification and did concur to adopt the definition proposed by KNCHR as contained in the Report by the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Intersex persons.
	Ms. Ann Mbugua	Amended as "Means a child with a congenital disorder of sex development in which development of the chromosomal, gonadal or anatomic sex is atypical leading to ambiguous genitalia making it difficult to	The definition of an "intersex child" under Section 2 of the Bill is inaccurate. There is also no other mention of intersex children in the Act. The legislative intent appears to be to make provision for the	

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		<p>identify their sex at birth and before development of secondary sexual characteristics at puberty.”</p>	<p>intersex child, but this intent is not carried out to completion in the rest of Bill.</p> <p>Should the Bill be amended to include provisions relating to the intersex child, the definition should be amended to enhance clarity? An intersex child is not one who has both male and female sexual characteristics, rather, they are a child with underdeveloped male or female reproductive organs leading to ambiguous external genitalia that makes is difficult to determine if the child is male or female at birth. Though the physical disability does not resolve, the question of the sex of the intersex person resolves at puberty when the secondary sexual characteristic develop and the definitive sex becomes apparent.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Definition of intersex person	World Vision	Proposes that the definition of intersex children is completely deleted	The Bible acknowledges that Children are born as either male or female. It is within the mandate of hospital to determine sex of a child	The Committee noted the proposal and did not concur with the justification and observed that Intersex children are vulnerable children who are recognised by the government of Kenya as a group that faces challenges. In this regard, they were also counted in the 2019 census. A total of 1524 persons in this data were intersex persons including intersex children.
	Kenya Catholic Doctors Association	Proposed a new definition of "intersex children"	The definition of intersex does not have both male and female sexual characteristics but rather underdeveloped male or female reproductive organs leading to ambiguous external genitalia that makes it difficult to determine if the child is male or female at birth. Though the physical disability does not resolve, the question of the sex of the intersex person resolves at puberty when the secondary sexual characteristic develop and the definitive sex becomes apparent. There is an acceptable scientific definition for the intersex person.	

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Definition of "Intersex child"	Association for Alternative Family Care for Children	Add 'or has had either of the two organs excised in the past'	Some intersex children have had either organs removed, while dealing with this status	<p>The Committee noted proposal and justification and did concur to adopt the definition proposed by KNCHR as contained in the Report by the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Intersex persons.</p> <p>The Committee also agreed with the proposal to add substantive provisions on intersex children in the body of the Bill.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	The National Council of Churches of Kenya (NCCCK)	Delete	There is no reference to an Intersex child in the body of the Bill so there is no need to provide a definition.	The Committee noted the concerns but rejected the proposal to delete the definition as it will include substantive provisions on intersex children in the body of the Bill.
Clause 2- definition of "Kafalah"	Mr. Clement Oketch	Delete and include their role in the charitable children institutions		The Committee rejected the proposal and observed that <i>Kafalah</i> is a form of alternative family care hence cannot be included in the provisions concerning Charitable children institutions
Clause 2- definition of "Kafalah"	Nairobi Baptist Church and Nairobi Chapel	Why is the word Kafalah for the Muslim child?	What can be added for the Christian child that will be distinct to them in the book of Christian faith?	The Committee noted the proposal and observed that <i>Kafalah</i> is a form of alternative family care practiced by persons of Islamic faith. No proposal for a similar form of alternative care for Christians was provided.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause definition "Kinship Adoption"	2- of Law Society of Kenya, Nairobi Branch	Add 'by a spouse of the parent of the child, parent or step-parent,'	As part of kin in addition to relatives	The Committee rejected the proposal and justification and observed that the provision includes the term "relative" and therefore covers the concerns of the submission.
Clause 2 Definition "legal custody"	- of LSK, Nairobi Branch ⁸	Redefine "Legal Custody"	Legal custody means legal decisions for the child but the draft definition means something different as parents have inherent rights and not parental right except in exceptional circumstances under the order of court.	The Committee rejected the proposal and justification and observed that the proposal expands the meaning of the term in manner that contradicts its usage under the Bill especially as envisioned under Part III
Clause 2 Definition "legal custody"	- of CWSK	That clause 2 of the Bill is amended in the definition of "legal custody" by deleting the word "parental";	Legal custody does not confer parental rights. Some of the rights are limited depending on the care arrangement like foster care and guardianship. It is only in adoption where parental rights are transferred to the adoptive parent.	The Committee rejected the proposal and justification and observed that the proposal expands the meaning of the term in manner that contradicts its usage under the Bill especially as envisioned under Part III. It is possible for legal custody to be granted to a parent of a child (in cases of divorce or separation or

⁸ Law Society of Kenya, Nairobi Branch

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				unmarried parents) this parent still retains parental rights which thus defeats the argument.
Clause 2 - definition of "National Adoption Committee"	CWSK	That Clause 2 of the Bill is amended by deleting the definition "National Adoption Committee"	To be replaced by the "adoption committee"	The Committee resolved to delete the term and distribute the functions to the existing bodies.
New definition- "National Adoption Society"	CWSK	"national adoption Society" means the Society;		The Committee observed that CWSK dropped the proposal
Definition of "nursery"	State Department for Social Protection	Delete the words "for reward" and replace with the words "at a fee"	for clarity.	The Committee agreed to the proposal and justification
Definition of "Obscene material"	CWSK	That Clause 2 of the Bill is amended in the definition of "obscene material" by deleting the words "wholly or mainly";	To ensure that all obscene materials are prohibited	The Committee observed that CWSK dropped the proposal

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Definition of "place of safety"	State Department for Social Protection	Delete the words "fit person" and replace with the following words "school, feeding centre, hospital"	To expand and clarify the definition of a place of safety	The Committee resolved to delete the term to amend as proposed
	Mr. Clement Oketch	Include 'a probation hostel established. under Cap 64 as one of the places not to be considered as a place of safety.	The reason is that the place admits only offenders placed on probation order (sec 5. Of Probation of offenders' Act)	The Committee rejected the proposal and justification and observed that the proposal expands the meaning of the term in manner that contradicts its usage in the body of the Bill especially in respect of children who need care and protection
	UNICEF	Include kinship carer and foster carer as places of safety		The Committee rejected the proposal and justification as inclusion of the words proposed is limiting
	Association for Alternative Family Care for Children	Delete 'or any other place' and Add 'within this Act'	This clause opens up an avenue for many other institutions or scaling up institutions.	The Committee rejected the proposal as it does not take into account the child protection measures contained in the Bill plus best interest considerations

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
definition of "rehabilitation institution"	State Department, Social Protection	Delete the definition of rehabilitation institution	The roles of rehabilitation institutions are assigned to rehabilitation institutions	The Committee rejected the proposal and justification and observed that the proposal did not take into account that there may be privately established rehabilitation institutions to help reform children ravaged by illicit drug use, truants etc are envisaged
definition of "rehabilitation institution"	Mr. Clement Oketch	remove the word "any" appearing after the word 'means' and replace with the word "an".	The reason is that there are institutions established under different mandates and meant for a particular category of child offenders and so may not admit any category of the child. Such institutions e.g., probation hostel have a primary mandate of providing temporary accommodation to offender placed on probation order only. As such it cannot fit in the broad category of 'rehabilitation institutions' even is there are some rehabilitation programmes undertaken therein.	The Committee rejected the proposal and justification and observed that the proposal was subjective and did not appear to resolve a mischief.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Definition of "reporting order"	Association for Alternative Family Care for Children	Add "person"or office'	Orders sometimes specify the office	The Committee rejected the proposal and justification and observed that the term "person" includes an incorporated person under the Interpretation and General Provisions Act Cap 2, Laws of Kenya
Definition of "residence order"	State Department of Social Protection	Add the following new paragraph after paragraph (c): (c) where the child is to live	To include missing the arrangement on where the child is to live	The Committee agreed to the proposal and justification as it enhances clarity
Definition of "restorative justice"	Clement Oketch	remove the words " as well as" appearing after the word offenders	The reason is that in restorative justice it is not obligatory that the community must participate. There are different strands and some could just involve the victim and the offender in a victim-offender-mediation process.	The Committee rejected the proposal and justification and observed that the proposal was subjective and did not appear to resolve a mischief.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New Definitions	NCAJ ⁹	<p>Clause 2 definitions to be corrected to read as follows;</p> <p>“abandoned”</p> <p>(b)has not been in contact with the parent , guardian or caregiver for a period exceeding twelve months;</p> <p>“adoption” means the process through which a child is permanently placed with a legal parent or parents in accordance with Part XIII;</p> <p>“adoption order” means an adoption order made under section 185 vesting the parental rights and responsibilities relating to a child in the adopter;</p> <p>“restorative justice” means an approach to justice that focuses on the needs of the victims and the offenders, as well as involving the community;</p> <p>“step parent “ means a parent married to a child’s biological mother or father;</p>		The Committee agreed to the proposals and justifications

⁹ National Council on Administrative Justice

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2- New definition “Alternative and family community base care” and “Care reform”	UNICEF	<p>“Alternative family and community base care” includes kinship care, kafaalah, foster care, guardianship, adoption, supported independent living and supported child headed households.</p> <p>“Care reform” is a change process within the systems and mechanisms that provide care for children separated from their families or at risk of separation. It is about safely and sustainably moving away from institutional care for children to family and community-based care of children.</p>	<p>This is to ensure the spirit and intention of the government of transitioning from institutional based care into family and community-based care is well captured in the Children Act.</p> <p>This intention of the government is now captured in the just finalized Care Reform strategy.</p>	<p>The Committee rejected the proposal and justification and observed that the terms are not used in the body of the Bill</p>
New Definition “Child Parent”	CRADLE	<p>Insert new definition of Child parent to read:</p> <p>“Child parent means a person who is eighteen years of age or below and who is a parent to a child;</p>	<p>The Bill does not define the meaning of child parent</p>	<p>The Committee rejected the proposal and justification and observed that the term is not used in the body of the Bill</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2 -New Definition "Child Headed Household"	CRADLE	Insert new definition of child-headed household to read -"Child-headed households means a household wherein the head child is younger than 18 years old and the household consists only of children.	The Bill does not define the meaning of child-headed household.	The Committee rejected the proposal and justification and observed that the term is used once in a manner to be defined in regulations under clause 11 of the body of the Bill
Clause 2-New Definition "craftsman"	CRADLE	Insert new definition of craftsman to read: Craftsman means a person who trains and instructs an apprentice in a trade;	The Bill does not define the meaning of craftsman	The Committee rejected the proposal and justification and observed that the term is not used in the body of the Bill
Clause 2-New Definition of "Creche"	CRADLE	Insert new definition of crèche to read: Crèche" means an early childhood establishment registered for purposes of providing child care for children below the age of two years for the day or a substantial part of the day, with or without fees;	The Bill does not define the meaning of creche	The Committee rejected the proposal and justification and observed that the term is not used in the body of the Bill

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New Definition of “Day-care Centre”	CRADLE	Insert new definition of day care centre to read: “day-care centre” means an early childhood development establishment registered for purposes of receiving and providing child care for children of the age of not less than two years but below the age of five years for the day or a substantial part of the day with or without fees;	The Bill does not define the meaning of day-care.	The Committee rejected the proposal and justification and observed that the term is used once in a manner to be defined in regulations under clause 71 of the body of the Bill
New Definition of “Disclosure”	CRADLE	Insert new definition to read: Disclosure Disclosure means, with respect to personal information— (a) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does	The Bill does not define the meaning of disclosure.	The Committee rejected the proposal and justification and observed that the term is used twice to give context to the clause it is mentioned the body of the Bill 1. to give discretion to court proceedings under clause 98(6) 2. in the conduct of proceedings and hence need not be assigned a special or secondary meaning

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2-New Definition “intended parent”	CRADLE	<p>not disclose or use that information for any other purpose; and</p> <p>(b) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—</p> <p>(i) a home page of a website;</p> <p>(ii) a pen pal service;</p> <p>(iii) an electronic mail service;</p> <p>(iv) a message board; or</p> <p>(v) a chat room.</p>	<p>The Bill does not define the meaning of intended parent.</p>	<p>The Committee rejected the proposal and justification and observed that the term is not used in the body of the Bill</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2 -New Definition “Internet”	CRADLE	Insert new definition of internet to read: Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.	The Bill does not define the meaning of internet.	The Committee rejected the proposal and justification and observed that the term is not used in the body of the Bill
Clause 2 -New Definition “Internet Information Location Tool”	CRADLE	Insert new definition to read: Internet Information Location Tool Internet Information Location Tool means a service that refers or links users to an online location on the World Wide Web.	The Bill does not define the meaning of internet information location tool.	The Committee rejected the proposal and justification and observed that the term is not used in the body of the Bill.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New Definition	Nairobi Baptist and Nairobi Chapel	Amend to provide for the equivalent of <i>Kafalah</i> to a Christian child as per their book		The Committee rejected the proposal and justification and observed that the terms to be provided for in the regulations. They are not used in any way in the body of the Bill.
New Definition "Secretary"	State Department of Social Protection	Secretary" means the Secretary of Children's Services appointed under section 58(1);	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and justification
New Definition Kafil, Makfool, and Mafoolah	Mercy Ndirangu, Tangaza College	After definition of <i>Kafalah</i> add definition for <i>Kafil</i> , <i>Makfool</i> , and <i>Mafoolah</i>	Kafil: Refers to a person or family who voluntarily sponsor and care for an orphaned or abandoned child. The individual or family sponsors the child to meet his/her basic needs for health, education, protection and maintenance . Normally, the kafil is a Muslim (Guidelines 2014) Makfool: Refers to a male child who is being placed with a Kafil Makfoolah: Refers to a female child being placed with a Kafil	The Committee rejected the proposal and justification and observed that the terms to be provided for in the regulations. They are not used in the body of the Bill.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New Definition of "Parent"	Legal Sister	Parent" means a biological or adoptive mother or father, or any person who is liable by law to maintain a child or is entitled to his or her custody.	Insert: Realities of surrogacy principle of equality petition no. 78 of 2014	The Committee rejected the proposal and justification and observed that the definition is sufficient
New definition of "Force"	World Vision	term "force" to be defined (what is excessive or minimal force)	To clarify what is excessive or minimal force. Parents could choose various options to punish their children some of which may include minor ways such as pinching but which could attract harsh penalties by the Bill's provisions.	The Committee rejected the proposal and justification and observed that Article 29 (e) of the constitution prohibits corporal punishment. Through Article.2 (d) international conventions apply to Kenya as we have ratified prohibition on use of any kind of force UNCRC - paragraph 24 of the UN General comment 13 of UNCRC defines this as "any physical force".
New Definition- "Religious leader"	Faith Based Organizations	Add "Religious leader" means an individual who is associated with	Religious leaders are on many occasions first points of contact	The Committee rejected the proposal and justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		and is an authorized representative of a religious organization or association including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam or a spiritual advisor. These persons and their religion must operate within the confines of the law and uphold, defend and protect the rights and well-being of children.	for children and carry an important role in offering religious guidance, care, education, counselling and psychosocial support to children.	observed that the term is not used in the Bill.
New Definition of "Society"	CWSK	"Society" means the Child Welfare Society of Kenya established under the Societies Act and its own irrevocable Trust Deed of 1955;		The Committee observed that the proposal was dropped by CWSK
New definition	CWSK	Temporary places of safety	their places of safety shall be qualified as the "Society places of safety"	The Committee observed that the proposal was dropped by CWSK
New definitions	Anne Mbugua	"Sex" means either male or female; "Sex of upbringing" means the temporary sex assigned to an intersex person at birth or at the	Should the Bill be amended to make provisions for the intersex child, the following medically-supported definitions should also be included to provide clarity on	The Committee rejected the proposal and justification and observed that the term is not used in the Bill. The Committee rejected the proposal and justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New definitions	Anne Mbugua and Kenya Catholic Doctors Association	earliest opportunity following birth for purposes of naming and upbringing and before the onset of the secondary sexual characteristics and establishment of the definitive sex;	the children that these provisions relate to	observed that the term is not used in the Bill.
		Male intersex" means the temporary male sex assigned to an intersex person for the purpose of naming and upbringing before puberty and establishment of the definitive sex on development of the secondary sexual characteristics;		The Committee rejected the proposal and justification and observed that the term is not used in the Bill.
		sex of upbringing" means the temporally sex assigned to an intersex person at birth or at the earliest opportunity following birth for purposes of naming and upbringing and before the onset of the secondary sexual characteristics and establishment of the definitive sex;	Should the Bill be amended to make provisions for the intersex child, the following medically-supported definitions should also be included to provide clarity on the children that these provisions relate to	The Committee rejected the proposal and justification and observed that the term is not used in the Bill.
		"Female intersex" means the temporary female sex assigned to an intersex person for the purpose of naming and upbringing before		The Committee rejected the proposal and justification and observed that the term is not used in the Bill.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		puberty and establishment of the definitive sex on development of the secondary sexual characteristic;		
New Definitions	Kenya Doctors Association Catholic	<p>premature termination" means abortion.</p> <p>"Life" means the duration from conception till death.</p> <p>"Conception" means the fusing of a sperm and an ova to form a person, whether it occurs inside or outside the body of the mother;</p> <p>"Crisis pregnancy" means an unplanned pregnancy or a planned pregnancy that has become a serious problem to the pregnant woman because of desertion by the birth father, lack of support from her parents, financial problems, or related situations.</p> <p>"Mother" means a woman whose ovum has led to the conception of a person;</p> <p>"Father" means a man whose ovum has led to the conception of a person;</p>	<p>The constitution is a medically lay document and the term abortion therein must be read to mean it's plain English meaning and not as a medical term. Abort means bring to a premature end due to a problem or a fault. Abortion therefore means bringing to a premature end because of a problem or a fault. In reference to pregnancy and medical care, bringing a pregnancy to a premature end is referred to as therapeutic termination of pregnancy. It is primarily aimed at saving both the mother and baby.</p> <p>Delivering a baby before term by induction of labour or caesarean section due to a mother's high blood pressure in pregnancy is an example of therapeutic termination of pregnancy. Terminating a</p>	<p>proposals to define "premature termination" not used in the Bill</p> <p>"Life" - not adopted</p> <p>Conception: has only been used under the term 'age' and has not been used anywhere else in the Bill</p> <p>Crisis pregnancy: the term has not been used anywhere in the Bill</p> <p>Mother: has only been used 3 times under clause 2 under the term parent, step parent and relative. proposed definition is subjective</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>“medical opinion” means the diagnosis reached after taking the history of presenting illness, performing a physical examination and where necessary, performing investigations which is the basis upon which medical care for the illness or injury is prescribed.</p> <p>“unborn child” means a person during the period from conception to the point before birth;</p> <p>“medical practitioner” means a medical practitioner registered under section 6 of the Medical Practitioners and Dentist Act;</p>	<p>pregnancy at a time when the baby cannot survive outside the mother or using methods that deliberately kill the unborn child is also an example of termination of pregnancy. In giving exception to abortion in article 26(4), the writers of the constitution could not have been aiming at giving trained health professionals a license to deliberately kill the unborn child based on a personal opinion but rather to prohibit such killing and to guide the therapeutic termination of pregnancy that aim to save the life of both the mother and unborn</p> <p>Crisis pregnancy, referred to in some quarters “unwanted”, “unplanned”, and “miss timed” pregnancy” is a major driver for non-therapeutic termination of pregnancy referred in some quarters as “safe” or “unsafe” abortion”. It has been used to justify nontherapeutic termination of pregnancy</p>	<p>Father: has only been used 3 times under clause 2 under the term parent, step parent and relative. proposal is subjective.</p> <p>medical opinion: has not been used in the Bill</p> <p>“medical practitioner” has the meaning assigned to it under section 2 of the Medical Practitioners and Dentists Act;</p> <p>The proposals cannot be adopted because they are not being used in a manner that is contemplated by the stakeholder in the Bill either to give rights or define relationships.</p> <p>Bill does not deal with matters relating to conception, abortion. the</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>especially in cases of rape or incest. Such cases are unfortunate and should not happen, however, half of the genetic material of the child is from the mother and the unborn person remains innocent of the father's crime.</p> <p>The term trained health professional use in the constitution includes a wide range of health professionals from nurse, clinical officers to doctors.</p> <p>In keeping with providing the highest level of health care in as far as therapeutic termination of pregnancy is concerned, only a medical practitioner (doctor) should make such a decision and in their physical absence, any other carder must take instructions from a medical practitioner or refer the patient to an appropriate centre.</p>	<p>amendments would be subject to S. O 133(5)</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New definition	Kisii University Law Students	Define "surrogacy" and other related provisions e.g. surrogate agreements etc.	There is need to cater for the rise of the practice of surrogacy in Kenya	The Committee rejected the Proposal as the term is not used in the Bill
Clause 3- Objectives of the Act	Catholic Doctors	Delete and replace with The objectives of this Act are to- a) give effect to the provisions of Articles 26, 27, 47, 48, 49, 50, 51 and 53 of the Constitution on matters relating to children; and	Article 26 on the right to the life of the child has not been addressed in this bill, neither has the right of the unborn child to the highest attainable standard of health care.	The Committee rejected the Proposal and did not agree with the justification and observed that the provision points to the crucial provisions of the Constitution as concerning children specifically.
	The Children Agenda Forum	The objectives of this Act are to (a) give effect to the provisions of Articles 21, 26, 27, 28, 43, 47, 48, 49, 50, 51, 53, 54 and 56, of the Constitution on matters relating to children;	Amend so as to include all provisions in the bill of rights in the Constitution that should be given effect through legislation in respect to Children In addition to guaranteeing no death sentence for a child, there is need to guarantee no life imprisonment or a child	The Committee rejected the Proposal and did not agree with the justification and observed that the provision points to the crucial provisions of the Constitution as concerning children specifically.
	Mr. Don Brown		The objectives of this Act should be amended to read so as to give effect to Articles 21, 26, 27, 28, 43, 47, 48, 49, 50, 51, 53, 54 and 56, of the Constitution	The Committee rejected the Proposal and did not agree with the justification and observed that the provision points to the crucial provisions of the Constitution

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			on matters relating to child protection and child justice	as concerning children specifically.
	UNICEF	<p>(a) add Articles 21 and 45(1) under sub clause (a)</p> <p>(b) insert the words "protection and" immediately before "wellbeing" in subclause (b)</p> <p>(c) insert subclause (c) to read;</p> <p>(c) give legal basis for progressive care reform for children without parental care or at risk of separation; moving from institutional based care and protection of children to family and community-based care of children.</p>	<p>Article 21 of Constitution is about the duty of the state to fulfil the fundamental rights, Article 45 (1) of Constitution recognizes family as the fundamental unit of community and basis of social order and shall therefore enjoy recognition and protection of the state.</p> <p>On adding 'protection': One of the key entities the Bill covers is the function of the Director Children services whose primary function is child protection. Therefore it should be reflected in the 'objective' of the Bill.</p> <p>On the added objective, the government has pronounced itself and committed to the global movement of moving</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the provision points to the crucial provisions of the Constitution as concerning children specifically.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>away from institutional care due to the vast evidence generated through research that shows the damage and harm to children who are placed in institutional care.</p> <p>There has been a call to use the new Children Act as the legal instrument to promote family-based care. Therefore one of major objective of the new Act is to remove the anomaly in the current children Act 2001 of over-emphasizing the use institutional care and change the emphasize to care reform which will now promote family and community-based support of children</p>	
Clause 3	Association for Alternative Family Care of Children	Add article 21 and 45	The two articles of the Constitution provide guarantees and safeguards that require to be synthesized in the repealed Children's Act. Article 21 specifies vulnerable	The Committee rejected the Proposal and did not agree with the justification and observed that the provision points to the crucial provisions of the Constitution

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>Add a new objective;</p> <p>(c) give legal basis for progressive care reform for children without parental care or at risk of separation; moving from institutional based care and protection of children to family and community-based care of children .</p>	<p>segments of society, to whom children belong and guarantees, provision of assistance by the government. Article 45 prescribes the basic unit of the society, the family and provides for protection of this unit. The policy direction in the country is preservation for the family and utilizing family-based care options (Kinship, foster) for the family.</p> <p>Article 21 of the Constitution is about the duty of the state to fulfil the fundamental rights.</p> <p>Article 45 (1) of Constitution recognizes family as the fundamental unit of community and basis of social order and shall therefore enjoy recognition and protection of the state. On adding 'protection': One of the key entities the Bill covers is the function of the Director</p>	<p>as concerning children specifically.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>Children services whose primary function is child protection . Therefore it should be reflected in the 'objective' of the Bill.</p> <p>In addition, the government has pronounced itself and committed to the global movement of moving away from institutional care due to the vast evidence generated through research that show the damage and harm to children who are placed in institutional care.</p> <p>There has been a call to use the new Children Act as the legal instrument to promote family-based care. Therefore one of the major objectives of the new Act is to remove the anomaly in the current children Act 2001 of over-emphasizing the use of institutional care and change the emphasis to care reform which will now promote family</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			and community-based support of children.	
New Clause 3A	State Department of Social Protection	Add the following new clause immediately after clause: 3A. This Act shall prevail in the case of any inconsistency between this Act and any other legislation on children matters	To cure inconsistencies between the Bill and other laws e.g. the Employment Act on the minimum age of employment.	The Committee noted the Proposal and the justification and observed that the amendment should be included to the extent that an interpretation will prevail where it is in the best interest of the child.
		Amend PART II by deleting the title "RESPONSIBILITIES OF INSTITUTIONS ESTABLISHED BY COUNTY GOVERNMENTS" and substituting with a new title as follows, "TREATMENT OF CHILDREN IN CARE OF COUNTY GOVERNMENT"		The Committee noted the Proposal and the justification and observed that the proposal is not clear/misplaced.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 4- Realisation of rights of the Child	Joining Forces for All Children ¹⁰	Delete the words "to progressively achieve"	The notion of progressive realization of rights should not apply to child rights. A closer look at the Constitution reveals that child rights under article 53 are to be realized immediately. The rights that are to be progressively realized are clearly spelt out. Children's rights are not among these.	The Committee rejected the Proposal and did not agree with the justification and observed that some rights are to be realized immediately and objectively
	Legal Sister	The Bill should include the statement "take steps to realize the rights of children progressively and to the extent of the available resources".	The bill is reluctant on the realization of the rights of children in that it only provides for progressive realization but leaves out the notion of "to the extent of its available resources" so that even if there are financial constraints, they should ensure that there is wide enjoyment of the rights. This would help holding the government accountable with regards to revenue allocations made towards realization of the right.	

¹⁰ Joining Forces for All Children is an alliance of six child focused agencies, ChildFund, Plan International, Save the Children, SOS Children's Villages, Terre des Hommes and World Vision.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 5- Survival and development of a child	World Vision, Uhuru Community Development Project, Legal Sister and Joining forces for all children and The Children Agenda Forum	5 (2) (1) add a clause that no child will face life imprisonment	This will ensure that we guarantee that no child is subjected to a death sentence or life imprisonment	The Committee rejected the Proposal and did not agree with the justification and observed that Clause 240 addresses the issue
Clause 5- Survival and development of a child	UNICEF	Add the words "and protection" immediately after the word development in clause 5(1)	Along with the child right to survival and development, protection is one of the key pillars of child rights enshrined in the UN CRC and the African Charter both to which Kenya is a state party.	The Committee agreed to the proposal and the justification.
Clause 5	BCCRN	Include "protection" under sub clause 1		The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New provisions	Kenya Catholic Doctors	<p>New clause 5A "right to life"</p> <p>The medical opinion to terminate a pregnancy shall only be offered by—</p> <p>(a) a medical practitioner; or</p> <p>(b) in the physical absences of a medical practitioner, a trained health professional shall consult a medical practitioner and clearly document their opinion before executing it on their behalf.</p> <p>(2) Termination of pregnancy is not permitted unless in the opinion of a medical practitioner — (a) there is need for emergency treatment;</p> <p>(b) the life of the mother is in danger;</p> <p>(c) the life of the unborn person is in danger; or</p> <p>(d) the health of the mother is in danger.</p> <p>(e) provided that the method used, the facilities at the location where the termination is performed and gestation of the pregnancy are</p>	<p>Taking the simple English definition of the term abort to understand the term "abortion" in the constitution to mean terminating a pregnancy, there is need to deal with the exceptions in article 26(4) of the constitution to avoid misreading that they provide for legal justify or license for health professionals to the deliberate killing of the unborn person.</p> <p>Medical practitioners need to be held solely responsible for every pregnancy they terminate and not the mother who is pregnant. A mother who develops complications after termination of pregnancy or latter finds out that the termination was not supported by the correct diagnosis should be able to sue.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the matters addressed in the proposal should be addressed on legislation regulating health matters. New proposals expands subject matter unreasonably contrary to Standing orders</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>considered and aim to offer the unborn person the best possible chance of survival.</p> <p>3. (1) A person shall not terminate a pregnancy or cause a pregnancy to be terminated except subject to the conditions specified in subsection (1).</p> <p>3. The opinion given by a health professional for the purposes of terminating a pregnancy shall be subject to the conditions specified in subsection</p> <p>3. Terminating a pregnancy by deliberately killing the unborn person is prohibited.</p> <p>3. Terminating a pregnancy on the request of a mother is prohibited.</p> <p>4. The medical practitioner shall ensure that the unborn person is given the best possible chance of survival, before giving the opinion referred to in 3(2) above.</p> <p>5. The Cabinet Secretary shall make regulations for the support of mothers in respect to instances of crisis pregnancy including those due</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>to rape, incest or the preborn person has disabilities; and if the mother so wishes, to exempt her from parental responsibility and allow and facilitate her to give up the children for adoption or foster care.</p> <p>6. A person who causes death to an unborn child, whether directly or indirectly, in consequence of other related procedure in contravention of subsection 3. commits an offence, and shall, on conviction, be liable to imprisonment for life.</p> <p>7. A mother whose pregnancy is terminated based on the opinion of medical practitioner is not guilty of an offence.</p>		
Clause 6- Name and Nationality	Kenya National Commission on Human Rights	<p>clause 6 (2) be amended to read, "Every child has the right to be registered in the Register of Births immediately after birth in accordance with the Births and Deaths Registration Act."</p>	Delete "his or her phrases" - to avoid creating a situation where intersex new-borns are discriminated against in this provision that guarantees universal right to registration for all children. Constitution Art.53, UNCRC and ACRWC	The Committee agreed to the proposal and the justification. Redraft the clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			provision on Universal right to registration.	
	Kenya National Commission on Human Rights	Add Clause 6 (2)(a) Which will read, "The Registrar of Births and Deaths shall take appropriate measures to ensure that a proper record of children born intersex is captured at birth and enhance their access to proper registration documentation."	This will give the Registrar powers to amend the birth notification and the birth certificate forms to cater for intersex children and support Government in collecting real time data on intersex children from Birth. This will also ensure parents are sensitized about the uniqueness of their children and avoid killing of these children at early age and unnecessary medical surgeries at a tender age or even denial of vaccinations for fear of taking them to hospital due to ridicule parents face.) Reference Intersex taskforce report recommendations.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
Clause 6- Name and Nationality	Kenya National Commission on Human Rights	Amend clause 6 (3) to read: Subject to the Constitution and section 9 Kenya Citizenship and Immigration Act, a child found in Kenya who is or appears to be less than 8 years of age and whose	To align the section with the Kenya Citizenship and Immigration Act which extensively provides for citizenship of foundlings.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposals are regulated under Section 9

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		nationality and parents are not known, is presumed to be a citizen by birth.		of the Kenya Citizenship and Immigration Act
	The Children Agenda Forum	A child must automatically assume the nationality of the country they are born	Should be informed by the country a child is born	The Committee rejected the Proposal and did not agree with the justification and observed that the proposals are regulated under Section 9 of the Kenya Citizenship and Immigration Act
	Evangelical Alliance of Kenya	Any child born in Kenya whose origins are unknown shall be presumed to be a Kenyan by birth.	one of the reasons the church voted no in the 2010 referendum was because of this provision. These children should be granted temporary status as their origins are traced and dealt with. With our country being a host nation of many refugee communities, as well as the threat of homegrown terrorism, we feel such a provision can open our society up to danger. Lessons learned from countries like the USA who now have parents dumping their children at the	The Committee rejected the Proposal and did not agree with the justification and observed that the proposals are regulated under Section 9 of the Kenya Citizenship and Immigration Act

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			border unaccompanied so that they must be taken by the USA and processed for asylum, should serve as a lesson to us. They cannot and should not be presumed to be citizens by birth. That finding must be after a process and a determination, never by presumption.	
Clause 7- Best interests of the child	Kenya National Commission on Human Rights	Amend by replacing the words a "primary consideration" with the words of "paramount importance". Amend Clause 7 (1) (b) and instead of having the Best interest consideration in the schedule, bring them in the body of the Bill. Delete the reference to the schedule here.	To align the clause with article 53 (2) Constitution of Kenya. To maintain flow of the Bill and ease of referencing.	The Committee rejected the Proposal and did not agree with the justification and observed that the Bill is guided by the Article 53(2)
	Legal Sister	Amend 7(3) In any matters affecting the child, the child shall be accorded an opportunity to express his or her opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age, degree of maturity, and disabilities if any	Disability does not mean you cannot participate in decisions that affect you	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is discriminative

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Mtoto News	Add a provision on right to be heard For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.	Article 12, paragraph 2 of the UNCRC specifies that opportunities to be heard have to be provided in particular “in any judicial and administrative proceedings affecting the child”. The UN Committee in General Comment No. 12 emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes among others. Typical administrative proceedings include, e.g., decisions about children’s education, health, environment, living conditions, or protection. The right to be heard applies both to proceedings which are	The Committee rejected the Proposal and did not agree with the justification and observed that clause is sufficient as addressed under clause 7(3)

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			initiated by the child, such as complaints against ill-treatment as well as to those initiated by others which affect the child, such as parental separation or adoption. States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.	
Clause 7 Best interests of the child	Clement Oketch	propose that it include in the schedule "must be legally correct, just and conforms to Human Right standards" and that it should not be the interest of the parties responsible for the child		Rejected. Discretion is determined by court which will decide whether the issue is legally and correct just
Clause 7 Best interest of the child	Kisii University Law Students	Clause 7(3) Delete phrase "having regard to child's age and degree of maturity" at the end of the clause	Provision is limiting and discriminatory because research shows that the wishes of a child, regardless of their age, can be determined. For example, an infant's restlessness and incessant cries can correctly be interpreted	The Committee rejected the Proposal and did not agree with the justification and observed that the provision caters for the best interest of the child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			that they are uncomfortable about something.	
	KNCHR	delete "his or her"	to cater for intersex	The Committee agreed to the proposal and the justification and there is a need to redraft the clause to address the proposal.
Clause 8- Non-Discrimination	LSK, Nairobi Branch	8 (2) Delete	<p>1. The punishment for discrimination should be left to the discretion of the court depending on extent and effect of discrimination on the child.</p> <p>2. Alternatively, provide the minimum punishment as the maximum punishment provided is too low for most cases and not deterrent enough.</p>	The Committee rejected the Proposal and did not agree with the justification and observed that the proposed amendment limits discretion of the court. Proposed fine is commensurate.
	Legal Sister	8 (2) A person who contravenes subsection (1) commits an offense and shall on conviction, be liable to imprisonment for a term not exceeding twelve months or to a fine	The two hundred thousand shillings is an affordable amount and offenders may take advantage and commit the offense	The Committee rejected the Proposal and did not agree with the justification and observed that proposal limits discretion of the court

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		not less than two hundred thousand shillings or both.		
clause 10-Right to parental care	State Department of Social Protection, Senior Citizens Affairs and Special Programmes	Replace the word "Director" in subclause 3 with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
clause 10-Right to parental care	LSK, Nairobi Branch	10 (5) include 'in as far as possible' after providing	It is not always possible for siblings to be placed together and thus the court can only provide that siblings be placed under care and protection in as far as possible.	The Committee rejected the Proposal and did not agree with the justification and observed that the discretion of court will be exercised where there are compelling reasons
clause 10-Right to parental care	UNICEF	10(7) Delete "on the request by the parent or parents"	In cases of lost child or abandoned child, it is the responsibility of the state to trace the parents of the child. Such children have the	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			constitutional right (Article 53 (e)). The article as it reads leaves the child at the mercy of parents who might not be able to reach the Director to put through this request for tracing.	not implementable in the best interest of a child
Clause 10-Right to parental care	Association for Alternative Family Care for Children	This section commendable provides for family based alternative care. However, this is not defined under section 2. There is a need to 1) Define the concept of family based alternative care and 2) Have a provision under this clause stating that the CS shall make guidelines to give effect to this section.	To fully align with globally accepted standards of care, the Government has embraced care reforms with a vision to see children and young people in Kenya live safely, happily and sustainably in family and community-based care where their best interests are served has adopted a unified holistic approach towards reforming the childcare system by developing the National Care Reform Strategy for Children and The concept of family based alternative care is central to the realization of this vision. Such a concept should therefore be defined, and regulations developed to guide implementation.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal are addressed under clause 34

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 11-Right to social security	State Department of Social Protection, Senior Citizens Affairs and Special Programmes	Replace the word "Director" with the word "Secretary	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 11-Right to social security	Legal Sister	11 (4) (c) add disability, after poverty 11(4)h and 5 recommending four and not three	There are children who are removed from their homes because of disability The CBC curriculum requires a child to enter the first entry into pre-primary at age 4. This is then assumed the learner is old enough to come from a family-based environment full-time to a school-based environment. The same analogy should be applied when transferring children from family-based care to institutional care	The Committee agreed to the proposal and the justification research supporting three years as submitted to the committee negated the proposal
			A child who is 4 years old is allowed by CBC to join pre-primary. This then means only a child who is 4 should be the acceptable age for a child to	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 11-Right to social security	LSK Nairobi Branch	11 (1) Delete 'whose parent or guardian is unable to support him or her,' 11 (4) (g) Caregivers 'religious beliefs' should be expounded 11 (4) (h) Add 'in as far as possible' 11 (6) (b) provide for a minimum age (13 years) where a child can emancipate themselves or request to be placed in alternative care.	join alternative care in an institution Every child should have a right to social security as provided for in the constitution that every person has this right. Placing children in a family-based care settings is not always possible; this can only be done as far as possible. Alternatively, the child should go through a caregiver or secondary caregiver subject to the age and maturity of the child.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is sufficient.
	Mr. Ahmed Hassan	11(2)(e) to be expounded and also provided for after clauses on adoption		The Committee rejected the Proposal and did not agree with the justification and observed that the Proposal

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				will be addressed in regulations.
	Evangelical Alliance of Kenya	Religious instruction by parents and caregivers Recommendation- delete this 11(4)(g)	<p>We feel this section should be made, as a matter of right, specifically for Orphans and Vulnerable Children, not for any children from poor backgrounds.</p> <p>The reason is social security must be for the weakest in our society, there is no replacing the value of hard work. It is not a crime to be poor, and the State should not substitute the place of Parents and Guardians to provide for their children. They should remain the primary duty bearers.</p> <p>Any assistance to parents to raise their children should be subjective, temporary and purely gratuitous, not as a matter of right.</p> <p>Religious instruction by caregivers is part of the rehabilitation and care process. The best interest of the child are</p>	The Committee agreed to the proposal and the justification that the provision protects children it is not in the best interest of the child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			not fettered by receiving religious instruction.	
Clause 11(5)	UNICEF	Amend to read; A child under the age of three years shall not be placed in alternative care in an institution.	Research has shown that there is potential for damage to the brain for children under 3 years old when they are placed in residential care. For this reason, children below 3 years should not be placed in institutional care rather, the government need to put in place foster care mechanisms for this reason.	Rejected. Retain original provision since the exception is necessary to safeguard the best interest of the child
Clause 11(6)	UNICEF	Split the clause into paragraphs to read; 11 (6) (a) The process of giving consideration for a child to be placed in an alternative care may be initiated by the child, his or her parents or primary caregivers, or independently by a care provider, or any person who has reasonable cause to believe that the child is in need of care and protection. (b) Such a reasonable cause referred in (a) above shall be reported to any	The proposed change here is to help manage voluntary relinquishment of children or to prohibit recruitment and solicitation of children for placement in residential care. The decision for where a child is placed with the Director and the court to ensure the best interest of the child are considered in decision taken	The Committee rejected the Proposal and did not agree with the justification and observed that there is no mischief that the redraft will address.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		authorized officer as described in this Act, who will take the matter for professional assessment to inform the decision on placing the child in alternative care or not.		
Clause 11(7)	UNICEF	Split to read; 11 (7) (a) The decision to place a child in an alternative care away from parental home under a formal or informal arrangement is vested on the Court or the Director (b) Without prejudice to the generality of subsection (a) above, the relatives of the child may make decision to retain the child within kinship or Kafalah arrangement	Clause 11 (7) (b) ensures that the natural and cultural (and religious practice for Muslims) practice to care for children within extended family members is retained, protected and upheld. Global practice recommend that kinship care is not formalized or subjected to restrictions that will hinder taking in of children by members of extended family	The Committee rejected the Proposal and did not agree with the justification and observed that there is no mischief that the redraft will address. this is provided under 11 (4)
Clause 11	Association for Alternative Family Care for Children	Proposed addition Define social security as has been defined by the ILO and UN documents to include social assistance, health insurance, disability benefits, provision of housing & sanitation, adequate food etc.	Right to Social security as is guaranteed in the constitution has to do with vulnerable households, and the children therein may or may not have parents who are not able to meet basic minimum needs and require to be cushioned through safety nets, insurance, cash	The Committee rejected the Proposal and did not agree with the justification and observed that the word is used in context to define the concept under 11(2)

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>The provision for the family as the fundamental group in society that provides the care and protection for children is commendable. The bill has however not articulated measures to strengthen and support families as provided for under both the UNCRC and the ACRWC.</p> <p>Add subsection (1) Every vulnerable child has a right to social assistance.</p> <p>Remove subsection (2) on alternative care and place it under section 10 as sub-section (8). Ensure that kinship care which is listed is explained as an important form of family-based care when it comes to ensuring family support and preservation.</p> <p>Retain the whole of subsection (7) under section 10 on social security, rename it Subsection (2).</p> <p>In this new subsection, delete 'Alternative care' and rework to read...incurred in relation to all social security programs</p> <p>Add: The BILL to articulate measures to strengthen and support</p>	<p>transfers etc. Refer ILO and UN resolutions on social security.</p> <p>Globally, effective right to parental care is premised on the strength of families. Both the UNCRC and the ACRWC, both of which Kenya has ratified, view the family as the basis of society and, by extension, childcare. The Constitution of Kenya aligns to this thinking. The proposed bill has not provided for measures of strengthening and supporting families to effectively undertake family-based care for children</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		families as provided for under both the UNCRC and the ACRWC		
	Association for Alternative Family Care for Children	<p>Subsection (2) will be on alternative care</p> <p>It should be named 'children without parental care'</p> <p>It should read: 'Every child without parental care may be provided with his/her most appropriate alternative care option based on the principle of necessity and suitability'.</p>	<p>Currently this Section of the Bill provides for Alternative care of children as a right. The danger in this, is that State and nonstate parties may employ all efforts to have children in alternative care, while they should be investing in all manner to prevent the need for Alternative Care. Progressively care and protection of children may shift from natural and organic family care to all other options provided, just because the Bill grants alternative care as a guarantee. Besides, alternative care is not synonymous with social security as it has been placed. Prevention measures should be emphasized.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the word is used in context to define the concept under 11(2)</p>
Clause 11	Association for Alternative Family Care for Children	New clauses to read; 11 (6) (a) The process of giving consideration for a child to be placed	All childcare placements adhere to strict child protection legislation and that the best interests of the child are always	The Committee rejected the Proposal and did not agree with the justification and observed that the word is used

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>in an alternative care may be initiated by the child, his or her parents or primary caregivers, or independently by a care Provider, or any person who has reasonable cause to believe that the child is in need of care and protection.</p> <p>(b) Such a reasonable cause referred in (a) above shall be reported to any authorized officer as described in this Act, who will take the matter for professional assessment to inform the decision on placing the child in alternative care or not.</p> <p>New additions: (2) For the purposes of this Part, a child may be formally placed in kinship care, foster care or residential care either on the direct intervention of the Director or pursuant to an order of the Court.</p> <p>(3) Prior to a decision being made about the placement of a child under subsection (2), a Children's Officer or other authorised officer shall conduct an assessment of the child and produce a report to inform a best interest determination.</p>	<p>prioritised. A structured preparation and transition process should be put into place to minimise the disruption and distress to the child and to sufficiently prepare the care providers. Thorough assessments of prospective care providers should be conducted by relevant experts and approved via legal authority prior to any child placement, to minimise any potential risks to the child. In addition, all children placed into informal care arrangements should be monitored and supported, to ensure that they are safe and receiving the best possible standards of care.</p> <p>There is a risk that children could be placed into informal care arrangements without adequate monitoring, assessment and support, potentially placing them at risk of harm and abuse.</p>	<p>in context to define the concept under 11(2)</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(4) In any case where a child is in need of care and protection, either with the intervention of the Director or under an order of the Court, the child shall, in the first instance, be placed in family based alternative care.</p> <p>11 (7) The decision to place a child in an alternative care in an institution, under a formal or informal arrangement is vested on the Court or the Director</p> <p>There is a risk that children could be placed into informal care arrangements without adequate monitoring, assessment and support, potentially placing them at risk of harm and abuse. Placements are less likely to be effectively monitored if not part of.</p>	<p>Placements are less likely to be effectively monitored if not part of the formal childcare and protection system. Second, prioritising Family and community-based care is paramount at times during interventions</p>	
Clause 12- Right to basic education	LSK Branch Nairobi	12 (2) The section does not put into consideration parents who home-school their kids. (delete)	12 (2) The section does not put into consideration parents who home-school their kids. It is undeniable that home schooling became a trend during COVID.	The Committee rejected the Proposal and did not agree with the justification and observed that the Provisions already covered under section 30 and 31 of the Basic Education Act

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Oscar Okwero	12(3) add an explicit provision to state that the basic education should include exposure to the digital sphere	so as to guarantee every child in Kenya at least grows knowing the basics of digital technology so as to be competitive in the digital world	The Committee rejected the Proposal and did not agree with the justification and observed that the provisions are sufficient. Bill ought to not micromanage the contents of the curriculum, whose development is mandated to a government body.
	Evangelical Alliance of Kenya	12(2) add "or in the alternative, whether at home or in an informal setting, cause to be offered to the child age appropriate and structured training to enable them attain basic education to examinable proficiency."	here must be recognition that basic education is not only being offered in institutions and protect the right to offer basic education in the home or other informal way. As long as the child is being educated in a manner that is timeous and effective.	The Committee rejected the Proposal and did not agree with the justification and observed that proposals are already covered under section 30 and 31 of the Basic Education Act
	Children Agenda Forum	ISSUE 1 - Children in detention that are serving time. ISSUE 2 - Cultural practices hindering a child realizing their right to education. PROPOSAL - Amend Section 12(a) to: Every child has the right to free and compulsory basic education in	It is an alienable right of every child to access quality education	Rejected. The clause is sufficient and provisions of Basic Education Act are comprehensive

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		accordance with Article 53 (1) (b) of the Constitution regardless of their: gender, disability, cultural practices, religion, being in detention or being refugees.		
Clause 12	Association for Alternative Family Care for Children	Insert a subsection on the need for education to be available, accessible, relevant and of the highest possible quality. Provisions on school safety and security of children in school should also be included. Clause 12(4) should be specific on the overall content of the regulations to be developed by the CS, for example, regarding availability, accessibility and quality of education.	The bill commendably provides for free and compulsory basic education for every child in the country as but it is silent on the availability, accessibility, quality and relevance of the education offered. These are principle pillars of education as provided for under article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Kenya has ratified.	The Committee rejected the Proposal and did not agree with the justification and observed that The clause is sufficient and provisions of Basic Education Act are comprehensive
Clause 14- Religion and Religious Education	World Vision	Right freedom of thought, conscience, religion and religious education, subject to appropriate parental guidance, and in the best interest of the child. This provision should be amended to include guidelines outlining to what extent	This right could be misused or abused by children and that children could choose not to take instruction from parents/guardians and instead rebel against parent's choice of religion. This also exposes parents to penalties by law for	The Committee rejected the Proposal and did not agree with the justification and observed that no offence is created in the law and the concern of penalties does not arise.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		can children exercise this right without over powering parents	failure to comply to this provision.	
		- Introduce Section 14 (d) (1) The ministry of education shall take necessary steps to ensure that the right to religious education is realized in both primary and secondary level of education. Section 14 (d) (2) No public education institution shall impose upon a child to study a religion they do not ascribe to, nor refrain them from putting on a scarf or hijab according to their religious belief.	Everybody belongs and must be exposed to such spiritual content but with the right to choose ISSUE - forcing students of different religions to ascribe to a certain religion while in school e.g. imposing Christian religious education on Muslim students, not allowing female students to wear hijabs while in school.	The Committee rejected the Proposal and did not agree with the justification and observed that the matters are addressed under the basic education act.
	Ms. Ann Mbugua	Section 14 (2) should be deleted in its entirety	It is sufficient that the Bill provides for parental guidance that is appropriate and in the best interest of the child. Subsection 14 (2) purports to curtail the religious guidance that parents can give to their children. This section envisages occasions where the child's choice to enjoy certain "rights and freedoms" can	The Committee rejected the Proposal and did not agree with the justification and observed that Parental responsibility is addressed under Part III. This clause offers safeguards from extreme religious practices

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>overturn the parent's guidance. This subsection should be deleted for threatening family cohesion and undermining parental authority.</p>	
	Evangelical Alliance of Kenya	<p>remove the reference to freedom of thought and opinion and conscience. Leave the section to refer to freedom of religion and religious instruction.</p>	<p>since this is already protected for all persons under the Constitution, there is little need to restate it in the bill. Indeed, children should have the freedom to religion and religious education. However, when it comes to freedom of conscience and thought, given how impressionable children are in their formative years, there is a risk for indoctrination.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that Parental responsibility is addressed under Part III</p>
	Kenya Catholic Doctors Association	<p>Insert the words Subject to parental guidance, and in the best interest of the child at the beginning of subclause 1</p> <p>Delete subclause 2</p>	<p>A parent by definition have the best interest of the child, way beyond what the law can prescribe. Parents must therefore be free to choose the religion and religious education a child should get and not the state.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that Parental responsibility is addressed under Part III. "Appropriate" guidance is the key word that</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>Though the child has freedom of thought, they are by nature and definition not competent to make a choice on their religion. In any case, after the age of 18 and when independent from their parents, they are free to make different choices. But while in their parents' home and foster care they need to respect the choices of the parents.</p> <p>The framing of this section would lead to breaking of family by pitting the child against its parents. In any case, if the thought, conscience and religious education of a child is not determined by the parents, which is this other entity envisaged by the law that would be guiding the child</p>	safeguards the best interests of the child
	NCCK ¹¹	Amend 14(1) by deleting the word "appropriate" immediately before "parental guidance"	Without the amendment, the provision will curtail the capacity of parents to provide	The Committee rejected the Proposal and did not agree with the justification and

¹¹ National Council of Churches in Kenya

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Delete 14(2) in entirety	religious guidance to children by enabling children to overrun parental guidance by declaring it "inappropriate" This provision will curtail religious guidance that parents can give to their children. Empowering children to overrun parental guidance threatens family cohesion and undermines parental authority.	observed that Parental responsibility is addressed under Part III
	Faith Based Organizations	ADD: Subclause (3) Every child shall have the right to choose a religion and spiritual nourishment.	Article 14 UNCRC 'shall respect the right of the child to freedom of thought, conscience and religion. Article 32 of the Constitution of Kenya – every person has the right to freedom of conscience, religion, belief and opinion. The choice of religion should be upheld for children based on the religious foundation (guidance and training) that the parents or guardians will have offered. The choice ultimately belongs to the children.	The Committee rejected the Proposal and did not agree with the justification and observed that Parental responsibility is addressed under Part III

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			There are 5 domains of Child Development, and these include Spiritual Development, physical health and well-being, emotional well-being, social competence and cognitive	
Clause 15- Right to Healthcare	World Vision	15(4)(e) We propose that the law puts a limit to what extent should a child have access to health information, especially when it comes to sexual and reproductive health.	That there should be guidelines for age-appropriate information on sexual reproductive health issues for children both at home and in the school environment	The Committee agreed to the proposal and the justification. Agreeable- insert a new sub clause on giving due consideration to age of the child
	Faith Based Organisations ¹²	Healthcare should include counselling and art and craft therapy		The Committee rejected the Proposal and did not agree with the justification and observed that The proposal can be addressed in regulations
	Catholic Doctors Association	5. (1) Every child shall have the right to the highest attainable standard of healthcare services in accordance with Article 43 of the Constitution.	Provision of health care is the business of the government. However, the choice of which health care services a child should access is the business of the parents. Parental rights to	The Committee rejected the Proposal and did not agree with the justification and observed that children cannot consent to reproductive health services in Kenya

¹² Faith Based Organisations submitted a joint Memoranda and include Nairobi Chapel, Mavuno, Deliverance Church, All Saints Cathedral, Overcomers, Hope Ministry, CLEAR, New Dawn, Karura Community Chapel, Parklands Baptist Church, Methodist Church, Nairobi Baptist Church, Hatua, Real Stars, CITAM and AVSI Foundation.

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 15- Right to Healthcare		The phrase "reproductive health services" should be deleted and replaced with health care.	choose what health services their children should access includes but is not limited to reproductive health services.	(2) is in best interest of the child
		Provided that the provisions of reproductive health services to children shall be subject to the express consent of the parent or guardian.	Reproductive health care services (or in short health services) has been used as a euphemism and defined variously in some international documents to include access to contraceptives and 'safe abortion'. Its use in the children's bill can be read to mean that children have a right to such 'services' without parental consent.	(4) is addressed under parental responsibility
		Delete 15(2)	Healthcare includes healthcare services as indicated in our constitution. The suggested amendment to 15. (1) above renders this section repetitive and therefore redundant.	(5) the proposal is not necessary clause is sufficient as it talks of consideration of the special needs of the child
		15. (3) In pursuance of the right to healthcare services under this section, every child under the supervision of a parental or guardian chaperone has the right to privacy and a child-friendly environment.	every child has a right to parental care. Where a parent is not available, a guardian or a person appointed by the state in	
		(4) (c) access to information that affirms human dignity in human relationships and promotes natural male female relationships and sexual risk avoidance.		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		15(5) add the words but shall not in any way abrogate parental responsibility after "disabilities"	<p>the absence of a parent or guardian.</p> <p>No child should be interviewed, examined, given information or treatment by any carer of healthcare worker in the absence of a parent, guardian or children's officer.</p> <p>Further, any education given to a child in school or medical facility in the absences of a parent or guardian should be public and approved by KICD after parental approval. Health by definition covers mental and reproductive health privacy and confidentiality of a child or their medical status should be about third parties e.g. press and not parents or guardians or healthcare personnel.</p> <p>The wording of this subsection can be abused to introduce Comprehensive Sexuality</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Education through the ministry of health. As in subsection (3) above, parental rights must not be abrogated.	
	KNHCR	delete "his or her"	Rationale: elected his or her phrases will avoid creating a situation where intersex newborns are discriminated against in this provision that guarantees universal right to registration for all children Ref: Constitution Art.53, UNCRC and ACRWC provision on Universal right to registration.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
	Evangelical Alliance of Kenya	Remove the proviso on reproductive health services.	the proviso making any and all the references to reproductive health services should be removed. The children by law cannot consent to sexual activities, and as such any	The Committee rejected the Proposal and did not agree with the justification and observed that all provisions have been drafted with

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		15(3) should be deleted.	provision of reproductive health services is like the provision of abortion and contraception cannot be allowed as of right to children. When it comes to children, privacy is deemed to be secrecy, and this is a problem. This needs to be looked at through the lens of parenting. Children cannot be encouraged to be private or secretive about the kind of information listed in this section.	protection of the best interest of the child. Constitution 43(a) guarantees healthcare including reproductive health care as read with Section 6 of the Health Act has comprehensively definition on reproductive health care and parents have the final say (by requiring express consent) for children of reproductive age.
	Evangelical Alliance of Kenya	15(5) 15(7) remove criminal and penal sanctions	This subsection paves way for comprehensive sexuality education which is currently a hot topic. We feel that the way it is being couched makes it possible to carry out informal CSE. the law should provide for any other person to intervene to get the child medical attention. The right to conscience and belief under article 32 of the	Reproductive health care is a whole different topic from what is being suggested by the stakeholder. Further, the definition of reproductive health care under the National Adolescents Sexual and Reproductive Health policy is comprehensive. Finally, the penalty/sanctions in the Bill 15(7) protects a child to attain health care, the

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>constitution means you cannot punish or criminalise someone for refusing medical attention due to their faith. In like manner for their child, since they are conscientious objectors. However, a doctor or teacher or social worker should be protected from prosecution if they intervene to interfere where the subject is a minor . the penal provisions hurt the family and matters of faith are very subjective. Intervention should preserve the family rather than send parents to jail and leave the rest of the siblings destitute, causing them to be in need of protection and care. Give authority for someone to override parental authority and get the child help. Fines and imprisonment are archaic ways of dealing with the issue at hand, and the faith of the parents will not be altered in jail. Neither are they a danger to society necessitating their locking up.</p>	<p>penalty is a maximum penalty and offers the judge discretion to impose a low penalty depending on the circumstances of the case.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Children Agenda Forum	51(1) Amend where Article 43 is mentioned to read Article 43(a).	Reason being the specific detailed part that talks of Highest attainable Standard of Healthcare Services	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal does not appear to address a specific mischief.
Clause 15	Anne Mbugua	Subsections 15 (1) and 15 (3) should be amended by deleting the word "services" which appears immediately after the word "healthcare" The proviso to section 15 (1) should be deleted Subsection 15 (2) should be deleted Subsection 15 (3) should be amended by inserting the phrase	to enhance the clarity of these provisions. Whereas the government is mandated to provide healthcare, the choice of specific healthcare services of whatever nature is the mandate of a child's parents. for being repetitive. Physical, mental and psychological health are included in Subsection 15 (1) in the term "healthcare". Children should in ordinary circumstances not seek healthcare services without parent's participation.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal does not appear to address a specific mischief and issues of reproductive healthcare is under 15(1)

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>"under the supervision of a parent or guardian" immediately after the phrase "every child"</p> <p>Subsection 15 (4) should be amended by inserting the phrase "With parental consent and supervision" immediately before the phrase "every child".</p> <p>Subsection 15 (4) (a) should be amended by deleting the phrase "mental health and reproductive health"</p>	<p>These subsections not only overrule parental authority, but they also curtail the freedom of parents to exercise parental responsibility and care over their children.</p> <p>These phrases are redundant as mental health and reproductive health are included in the term "health promotion".</p> <p>A child has no capacity to deal with the intricacies and complexities of reproductive health and availing reproductive health services in my view does not promote the best interest of a child for the following reasons.</p> <ol style="list-style-type: none"> 1. The bodies are not fully formed 2. They are not able to bear the emotional burden that come with sexual relationships 	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>3. They can easily be taken advantage of by the adults</p> <p>4. The consequences of sexuality are likely to hinder their education and general wellbeing</p> <p>5. By parents and government availing the services, moral boundaries are removed thus eroding the moral authority of those entrusted with children.</p> <p>6. Contraceptives have side effects and long use of the same would be injurious to their health.</p> <p>7. Abstinence should be encouraged. The season of childhood is for learning and sexual indulgence should not be approved and facilitated.</p>	
Clause 15	Child Voice Kenya	The provision should define the scope of the right to access to information on health promotion and the prevention and treatment of ill-health and disease, mental health, and reproductive health among adolescents by qualifying the right	<p>The provision enables the legal use of contraceptives and birth control measures by children which is counterproductive for the following reasons;</p> <p>The Age of sexual consent in Kenya is 18 which means no</p>	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal does not appear to address a specific mischief in the clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		to be subject to the provisions of other Kenyan laws like the Penal Code.	<p>persons below the age of 18 to whom the legal provision on reproductive health is to apply are not allowed to legally engage in Coitus.</p> <p>The proven side effects of contraceptives are detrimental to the health of children. According to the National Centre for Biotechnology Information, the US National Library of Medicine, the proven disadvantages and side effects associated with the use of oral contraceptives among adolescents include; No protection against sexually transmitted diseases; Need to take pill daily; Irregular menstrual pattern (missed menses, scanty bleeding, spotting, breakthrough bleeding); Headaches (new onset or worsening headaches); Depression; Decreased libido; Increased risk of cervical ectopy and chlamydial cervicitis; Breast tenderness; Nausea and vomiting;</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Gallbladder disease may progress in susceptible women; Hypertension; Hepatocellular adenoma; Growth of leiomyomas; Leukorrhea; Skin changes (chloasma, telangiectasias); Hair loss	
Clause 15	NCCK	Amend by deleting all references to "reproductive health" Delete 15(4)(e)	We are opposed to opening up reproductive health rights to children. Such will promote sexual activity in children, thereby negating protection of children from molestation. These provisions are similar to the Reproductive Health Bill that was rejected We are uncomfortable with this provision and recommend its deletion because: (i) Children are a vulnerable group and need guidance. Access to such information would have a counter effect by arousing their sexual appetites (ii) The generality of the provision would require children are allowed to access	The Committee rejected the Proposal and did not agree with the justification and observed that the provision is an extension of the provisions in the Constitution Health care includes reproductive health

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>information that promotes sexual deviant behaviours leading to conflicts in the family</p> <p>(iii) The Bill does not define the objective or purpose of children accessing such information</p> <p>(iv) The Bill does not define the scope of information referred to, its compatibility with cultural and religious practices and beliefs (Constitution of Kenya 2010 Article 11), or its age appropriateness</p> <p>(v) Scientific evidence shows that long-term use of family planning methods has negative effects on the reproductive health of humans, and early promotion of the same to children will have negative impacts on them</p>	
Clause 16	Anjarwalla & Khanna Advocates	Propose the following amendment: 16. Every child shall have the right to inherit property in accordance with the Law of Succession Act.	<p>It is not possible for every child to be treated equally and receive equal inheritance as every child will be from different financial, economic and social backgrounds. For</p>	The Committee rejected the Proposal and did not agree with the justification and observed that the provision is subject to the provisions of

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>clause 16(2): we propose that section 16(2) be deleted.</p> <p>clause 16(2)(b): should be deleted as in our proposed section 16</p>	<p>example, a child born into a family with substantial financial resources would have different expectations to a child born into a less well-off family. In addition, a disabled or mentally challenged child is likely to require more financial resources as compared to his or her siblings. A parent might for good reason decide to leave a larger inheritance to such a challenged child. Furthermore, a child who is 2 years old would have different needs than a child of 17 years and hence they cannot be treated equally.</p> <p>it is clear that a child has a right to inherit property. Furthermore it is already set out in section 8(1) of the Bill that there shall be no discrimination of a child on any of the grounds listed therein and thus it is not necessary to repeat this provision again in section 16(2)(b). This will cause confusion and in fact negatively impact rights as</p>	the Law of Succession Act, Cap 160.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Sections 16(3), (4) and (5): we propose deletion of these sub-sections	<p>attempts could be made to confuse the legal position. In addition the Law of Succession Act (Cap. 160) has adequate provisions where a child can make a claim for inheritance should the child not have been provided for. These are under the "dependency" provisions of the Law of Succession Act (Cap. 160).</p> <p>one would only find out if a child has been deprived of inheritance when the parent dies and he has not provided for the child in his Will. One could not bring any action under this subsection against a deceased parent. On an intestacy (that is if there is no written will) the child is entitled by law to inherit. These rights are under the "dependency" provisions of the Law of Succession Act (Cap. 160).</p> <p>If any other person seeks to deprive a child of a child's</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			inheritance then the Law of Succession Act would provide remedies to the child acting through the child's guardian. The fact of the matter is the Law of Succession Act (Cap. 160) contains many well drafted and now well recognised legal rights which have the same legal and economic effect as that considered in this Bill. Our significant concern is that confusions and interpretational difficulties will arise if there are inconsistent and differing rights under separate laws. This will in fact result in more litigation and confusion which will negatively impact the children who it is sought to protect.	
Clause 17- Protection from child labour	World Vision	Amend this provision to give mandate to Cabinet Secretary to ensure that children are not engaged in child labour. We propose that age 13-16 years is replaced with anyone	It is our opinion that the definition of a child as stipulated in the bill needs to apply even in the prescription of work for children, that this provision does not protect children from child labour if	Rejected. Provisions are subject to the Part IV of the Employment Act

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 17- Protection from child labour	Evangelical Alliance of Kenya	Rework the section to be clear about prohibition of child labour that is harmful, exploitative and denies children the opportunity to get an education.	anything it propels children to be engaged in child labour. child Labour as defined in this section takes away the right of a child to be able to work for pay prior to their eighteenth birthday. It also waters down parental right to allow parents to put their children to work as part of upbringing, life skills and vocational training. Children should be allowed to work for money and to enjoy the fruits of their work while under their parents' supervision in order to learn how to do so as adults. Child actors, entertainers, YouTube content creators need to be protected as they	Make regulations for 17-year-olds (see section 10(4)) Redraft to mandate regulations to be tabled within one year. regulations to be made by Labour cabinet secretary Employment Act permits light work for certain categories of children (that is those above 13 years) subject ILO conventions which stipulate that children may not be exposed to hazardous work conditions and worst forms of child labour or exploitation. Also ensuring that work done does not interfere with or supersede their education. Redraft and give a timeline for 56(3) and 53

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 17	NCCK	Amend to replace the word "may" with "shall" Amend to replace the word "sixteen" with "eighteen"	The provision should require the Cabinet Secretary to make the regulations, and not leave it to their discretion. This will ensure that children who are engaged in any labour are adequately protected. The age at which one ceases to be a child is eighteen years, so it is not clear why this provision is pegged at sixteen years. The children aged seventeen years should also be covered by the Regulations.	The Committee rejected the Proposal and did not agree with the justification and observed that Provisions are subject to the Part IV of the Employment Act. The Committee noted the Proposal and the justification and observed that Redraft provision to table regulations for children and young persons within a year
clause 18- Protection from armed conflict.	State Department of Social Protection, Senior Citizen's Affairs and Special Programmes	Delete the sub-heading appearing immediately before clause 18	The sub-heading is misplaced as it is not in conformity with the provisions of clause 18	The Committee agreed to the proposal and the justification.
Clause 18- Protection from armed conflict.	Mr. Oscar Okwero	1) include digital platforms because the digital sphere 4) No person or actor shall subject a child to armed conflict either digitally or otherwise and in	Include digital platforms because the digital sphere has also become an active conflict realm. This should guarantee their safety and privacy and not be exposed to Information	The Committee rejected the Proposal and did not agree with the justification and observed that the provision under consideration regulates physical armed conflict as opposed to digital warfare

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		such cases shall take precaution to protect the child's well-being.	operations, otherwise called Information arsenals.	
Clause 19-rights of children with disabilities	NCKK	Amend by deleting "or at reduced cost"	Training for children with disabilities should be free just like basic education	The Committee agreed to the proposal and the justification.
	Joining forces for all children	delete the words "or at a reduced cost"	The words at a reduced cost, introduce ambiguity in the clause. The clause should provide clarity on how children with disabilities ought to be afforded education.	The Committee agreed to the proposal and the justification.
Proposed new clause 19A	Kenya National Commission on Human Rights	Clause 19 A be inserted to with marginal notes- rights of intersex children, to read, '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.'	Agreeable as amended 'An intersex Child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, facilities, education, training and consideration as a special need category in social protection services.'	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause Protection abuse etc	20- from	Mr. Oscar Okwero	<p>20. 1) Add section c, No person shall take advantage of a child through digital media manipulation like spreading untrue information, impersonation through technologies like deep fakes and voice manipulation technologies.</p> <p>3)1) Add a section to read; Any person who uses a child's image or any digital representation for commercial purposes without express permission of the guardian of the child that should include agreeing to a minimum percentage of the proceeds for the benefit of the child shall be liable to prosecution and a fine.</p> <p>4) Add digital crime called doxing: - Which is the publishing of personally identifying information of a child, and Flaming: - which involves using of angry words through a</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that Clause 20 is comprehensive and captures a wide spectrum of offences to protect a child.</p> <p>The crimes identified in the memorandum; - doxing and flaming are not provided for under the Bill. The definition of doxing and flaming provided by the stakeholder can be interpreted as cyber harassment and hence adequately catered for in the Bill.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>communication channel that may cause distress to a child.</p> <p>5) Add psychological harm through transmission of and exposure to harmful digital media</p> <p>which has been a cause of many child suicide cases and brainwashing as done by terrorist groups in the recruitment of child fighters through highly doctored multimedia.</p>		
Clause 20	Legal Sister	<p>Insert new 20(5)(A)</p> <p>Any adult person who lies about his/her age to that of a child or and uses a child's profile picture for purposes of communicating with a child online shall be guilty of an offense of attempted grooming, which shall be punishable by imprisonment for a term not exceeding 5 years or, a fine not exceeding 10 million shillings or both.</p> <p>Insert new 20(5)(B)</p> <p>Peer-to-peer online bullying shall be discouraged both at home and at</p>	<p>Many predators online pose as children so that they can chat with children online unsuspected to be adults. The predators use this to get more information from their victims or groom their victims for purposes of fraud, or sexual exploitation respectfully.</p> <p>Cyberbullying is more rampant among peers than it is from an adult to a child. Measures should be put in place to help</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the computer misuse and cybercrimes Act, Data Protection Act address matters relating to on online sexual exploitation comprehensively</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		school. Parties involved shall be taken through close psycho-social counselling and guidance programs at school.	parents and teachers handle peer-to-peer online bullying.	
Clause 20	NCCK	<p>Amend by adding the words “television, radio, social media, social networks” immediately before the words “or other”</p> <p>At 20 (3)(c) expressly mention betting as a mobile phone vice.</p> <p>At 20 (3)(c) Amend by adding the word “or betting” immediately after the word “games”</p> <p>Add a new clause that reads “(d) broadcasts or causes to be broadcast on terrestrial, cable or internet-based television or radio channel, obscene or adult-rated material during the watershed hours when children programmes are normally viewing or listening to those channels”</p>	<p>Television, radio and social media are big influencers on children and are being used to harm and abuse and indoctrinate children. They should be expressly mentioned for avoidance of doubt.</p> <p>Betting is a major and addictive vice among the youth and children. It should be illegal for any person to recruit children to bet</p> <p>This is to protect children from exposure to sexual, violent, obscene or other destructive content</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the computer misuse and cybercrimes Act, Data Protection Act address matters relating to on online sexual exploitation comprehensively</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 21 – Protection from harmful cultural practices etc.	Kenya National Commission on Human Rights (KNCHR)	be amended to include intersex genital mutilation as one of the harmful cultural practices that are performed on intersex children.	The intersex taskforce noted that intersex genital mutilation is one of the harmful medical treatments that intersex children undergo in a bid to “correct” their ambiguous genitalia. This practice has negative long-term effects on a child’s mental and physical health. The concern regarding intersex genital mutilation (IGM) has been raised by various treaty body mechanisms including the Committee on the Rights of the Child (CRC) which has repeatedly recognised Intersex Genital Mutilation (IGM) as a harmful practice.	The Committee agreed to the proposal and the justification
Clause 21 – Protection from harmful cultural practices etc	NCCK	21(1)(a) - Delete provision in entirety	We recommend that the provision be removed due to the following considerations: (i) The Bill does not define forced male circumcision, thereby exposing parents, guardians, medical workers and other caregivers	1. Redraft to address ambiguity 2. Define forced male circumcision

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>(ii) Scientific research promotes male circumcision and therefore it is not clear what the rationale for this provision is</p> <p>(iii) Male circumcision often happens before a child is eighteen years old, so this provision will expose parents to being jailed for actions meant to protect the health of their children</p> <p>(iv) Male circumcision has been shown to have health benefits, and therefore should not be categorized as a harmful cultural practice</p>	
Clause 21 – Protection from harmful cultural practices etc	Evangelical Alliance of Kenya	Delete “male circumcision”	<p>Male circumcision is done during childhood in most communities, and not usually been a consensual process. It is a rite of passage important both culturally and religiously. The same has been developed to an extent it does not harm the child. Categorising it here is a mistake and an attempt of eroding our culture and faith.</p>	<p>1. Redraft to address ambiguity</p> <p>2. Define forced male circumcision. male circumcision is wrong if performed forcefully on a person who does not consent to it</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Make rules and guidelines to ensure male circumcision is done safely for the child. Male circumcision is not a harmful cultural or religious practise and has been demonstrated to have some marginal health benefits.	
Clause 21	Catholic Doctors Association	Delete 1(a) 21(1)(c) delete "cultural religious rite, custom" or	Male circumcision is a cultural practice by specific groups, is culturally acceptable and even medically beneficial. Each child is born into a specific culture and has the right to know and participate in cultural practices that are not harmful. Male circumcision has never been a problem and should not be made a problem. The law must be seen to target harmful practices rather than targeting religious or cultural practice.	1. Redraft to address ambiguity 2. Define forced male circumcision
Clause 22- Protection from drugs and substance abuse		22(1)(b) involvement in the production , trafficking , sale , storage or distribution of any of the	Proposes to enhance the scope by prohibiting the involvement of a child in the production, trafficking, sale, storage or distribution of any drugs or	The Committee rejected the Proposal and did not agree with the justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		drugs or substances referred to in paragraph (a).	toxic substances as a violation of the child's rights. It further creates offences for violation of this right.	observed that proposal does not address a mischief
Clause 22(2)	BCCRN	We should not give leeway to this to be in conflict or contradiction with other laws like the sexual offences act that fixes specific terms for imprisonment of offenders		Rejected. proposal does not address a mischief and no proposal was presented.
New Clause	CWSK	<p>The Bill is amended by inserting a new clause 22A as follows;</p> <p>22(A) Prohibition of buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or Prostitution.</p> <p>1) No person shall buy, sell, hire, let on hire, dispose of or obtain possession of or otherwise deal in a child.</p> <p>(2) A child shall not be used- (a) for the purpose of begging for</p>	<p>Children are at risk of abuse & exploitation owing to their vulnerability and in particular, circumstances they and their families find themselves in due to increased poverty, single parenthood, economic depressions, effects of Covid-19 and HIV/AIDS, Conflicts, violence etc. These situations expose children to trafficking, child labour, prostitution, hawking, begging for alms etc</p> <p>The proposed amendment is</p>	<p>The Committee noted that CWSK dropped the proposal since the provisions under clause 17 are sufficient to cover economic exploitation of any kind including hawking or borrowing</p>

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		<p>alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose; or</p> <p>(b) as a slave or for practices similar to slavery such as sale or trafficking of the child, debt bondage or serfdom and forced or compulsory labour;</p> <p>(c) for hawking of goods or services on main city streets, brothels or highways;</p> <p>(d) for any purpose that deprives the child of the opportunity to attend and remain in school as provided for under the Basic Education Act;</p> <p>(e) procured or offered for prostitution or for the production of pornography or for any pornographic performance; and</p> <p>(f) procured or offered for any activity in the production or trafficking of illegal drugs and any other activity relating to illicit drugs as specified in the Narcotic Drugs and Psychotropic Substances Act.</p> <p>(3) A person who contravenes the provisions of subsection (1) of this section commits an offence and is</p>	<p>meant to protect children from exploitation and conform to the United Nations Convention on the Rights of the Child (CRC 1989)</p>	

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		<p>liable on conviction to imprisonment for a term not exceeding ten years or a fine not exceeding Kenya Shillings two million or to both.</p> <p>22 (B) Prohibition of tattoos on children</p> <p>(1) No person shall tattoo or cause any tattoo to be made on a child.</p> <p>(2) A person who tattoos a child commits an offence under this Act and is liable on conviction to a fine not exceeding Kenya shillings five Hundred thousand or imprisonment for a term not exceeding one year or to both such fine and imprisonment.</p>	<p>Tattoo leaves a permanent mark on a child yet it is a legal principle that a child cannot consent to anything. Some of the art works may be around inappropriate parts of a child's body, offensive or inappropriate in general.</p> <p>The proposed new clause will therefore protect a child from abuse and having permanent scars without the child's approval. This practice is not in the best interest of the child</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				The Committee noted that CWSK dropped the proposal. the provisions might prove difficult in prosecution of the offender... tattooing is a cultural practice in some communities. it has not proven to be a systemic menace or vice in the community
Clause 23(3)(b)(i)	National Council of Churches in Kenya	Amend by inserting the word "excessive" immediately before the phrase "physical force"	The provision curtails the use of any physical force by parents during disciplinary processes, even where the pain and discomfort occasioned on the child does not cause any bodily harm and is merely sufficient for corrective action as recognized on Section 154(6).	The Committee rejected the Proposal and did not agree with the justification and observed that the constitution outlaws use of physical violence on a child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Without the amendment, the Subsection will be inconsistent with the parental responsibility to enforce discipline that is provided for in Subsection 154 (6) of the Bill.	
Clause 24- Detention of children in conflict with the law	Faith Based Organisations	Legal Aid should be made available		The Committee rejected the Proposal and did not agree with the justification and observed that Clause 24(8) already provides for legal Aid for a child in detention
	Children Agenda Forum	24(3) disorder of sex development" is derogatory and infringes upon the right to dignity of intersex children. T	acceptable language must be adopted to preserve the inherent human dignity of children with variations in sex characteristics. the language "disorder of sex development" encourages the pathologizing of variations in gender. The pathologizing of intersex individuals results in gross human rights violations and abuse of bodily integrity and personal dignity. The use of such derogatory and dehumanizing terms in legislation can normalize or	The Committee agreed to the proposed amendment and the justification. Agreed to- use the terminology "intersex children" which is defined under clause 2

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			even encourage harmful practices that would seek to "correct the disorder," thereby harming the child.	
	Mr. Oscar Okwero	Include the right to digital privacy that includes images, representative data that may be used to identify the child like Meta data. This should also include Biometric data including fingerprints, thumb prints, voice, and genome sequences.		The Committee rejected the Proposal and did not agree with the justification and observed that clause 20 contains comprehensive provisions for online protection of children
Clause 25- privacy	NCKK	Amend by deleting the word "reasonable"	The right to privacy is very wide, and this should be balanced with a right to parents and guardians to supervise their children. Without the amendment, other actors would have the freedom to expose children to harmful materials or practices by accusing parents of being "unreasonable" when they seek to deal with the issue. The unamended provision will hinder effective parenting.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child. Allowing reasonable supervision gives the parent discretion to make judgment on how to handle the matters of privacy of their children.

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Clause 25- privacy	Catholic Doctors Association	Delete subclause 1 Amend by deleting the word "reasonable" in subclause 2	A child is under the care of parents or guardians where the issue of privacy does not arise. Further, children are members of a family and they don't themselves have a family. For a child under 18yrs there is no privacy Children have no privacy when they are under parental care; when under educational institutions the leader of the institutions has the right of their conduct.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child in conflict with the law
Clause 25	Faith Based Organizations	ADD: Personal data relating to a child shall not be processed unless consent is given by the parent and guardian and the processing is in such a manner that protects and advances the rights and best interests of the child. All rights and obligations relating to data protection shall apply according to the Data Protection Act of 2019.	ART 10 ACRWC ART 16 (1) UNCRC ART 40 (2) (7) UNCRC	1. s.33 of the Data Protection Act 2. insert sub clause 3 making reference to DPA
Clause 26-Right to assemble, demonstrate,	State Department of Social Protection, Senior Citizen's	Delete clause 26	picketing, demonstration, petitioning and participation in public life shall expose children	The Committee agreed to the proposal and the justification and there is a need to draft a

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picket, petition and participate in public life	Affairs and Special Programmes and World vision		to social vices that inform these kind of activities	clause to address the proposal. Article 37 of CoK grants right to peaceful demonstration. Adopt the wording in the constitution by ensuring the demonstrations are "unarmed" per constitution. Amend (2) delete (5) of the Bill
Clause 26-Right to assemble, demonstrate, picket, petition and participate in public life	Mtoto News	ADD: Subsection (3) Paragraph (ii) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.		The Committee observed that freedom of expression is covered under 7(3)

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	Ann Mbugua	Subsection 26 (3) should be amended by inserting a proviso immediately after the term "maturity" as follows: "Provided that the rights guaranteed under subsections (1), (2) and (3) shall be exercised voluntarily by every child, free from undue influence, coercion, inducement or enticement by any person."	To protect children	The Committee agreed to the proposal and the justification. Also to delete "picketing" from the marginal note as this is a terminology that refers to demonstrations taking place in the work environment/ against the employer which isn't the spirit of the provision.
Clause 26-Right to assemble, demonstrate, picket, petition and participate in public life	Evangelical Alliance of Kenya	delete (1) (2) and start from (3)	children should be allowed to be brave and to speak up when faced with challenges. However, with the current trend of burning schools, children self-harming up to and including suicide, we cannot encourage protests and picketing for children. There should be a better way of training our children to stand up for themselves. This provision may encourage belligerence.	African charter-Article 8 promotes peaceful assembly by children. Government has developed the parameters for this under the child participation guidelines

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	NCCK	Amend 26(1) by introducing two new subclauses to read: (a) The exercise of this right will be age-appropriate (b) The children intending to exercise this right will inform the Inspector General of Police prior to the demonstration (c) The Inspector General will ensure that adequate security is provided to children exercising this right	The addition of the two sub clauses will ensure that the demonstration is age appropriate, that safeguards for the security of the children is assured, and that they must get consent of the Inspector General just like adults to picket so that there are controls.	The Committee rejected the Proposal and did not agree with the justification and observed that the provisions on how to demonstrate to be covered under the regulations and child participation guidelines
		Amend 26(3) by deleting the word "all" appearing immediately before "matters" Add a new subsection to read: "The rights guaranteed under subsections (1), (2) and (3) shall be exercised voluntarily by each participating child, free from undue influence, coercion, inducement or enticement by any person."	The unamended provision will make parenting very difficult since children will be questioning every decision of the parent or guardian. Parental responsibility, which includes assertion of authority and supervision, should be protected. Insertion of the new subsection is necessary to ensure voluntary participation	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		26(6) Amend by substituting the word "may" with "shall"	The provision should require the Cabinet Secretary to make the regulations, and not leave it to their discretion. This will ensure that children who participate in demonstrations or picketing are adequately protected.	
Clause 26-Right to assemble, demonstrate, picket, petition and participate in public life	Kenya Catholic Doctors Association	Delete in entirety	Children are not mature mentally to take on such responsibility; it is the parents who petition for such needs of their children! The fact that association as mentioned means the section will open a door for NGO's to train children and send them on the streets purporting to speak for themselves. Comprehensive Sexuality Education curriculums teach children that they are free to have a different opinion from their parents creating a rift between children and their parents making discipline,	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child in conflict with the law

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 26-Right to assemble, demonstrate, picket, petition and participate in public life	Don Bonyo	26. (1) (a) Every child has the right to freely participate in matters affecting Children, including law and policy making, public planning and budgeting, through lawfully established forums, associations and assemblies at the national and county levels. 26. (1) (b) Every child has the right to freely and peaceably assemble, demonstrate or present petitions to public authorities 26 (6) The Cabinet Secretary Shall make regulations to give effect to the provisions of this section.	moral guidance and mentoring difficult. The fact that the guidelines to effect this section is given to the Cabinet secretary means parental rights have been withdrawn from parents and given to the state through the back door!	The Committee noted the Proposal and the justification and observed that the provisions as drafted were in the best interest of the child.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Faith Based Organizations	AMEND: Subclause 3 In addition to the rights guaranteed under sub clause (1) and (2), every child shall have the right to express their views in all matters including speaking up in cases of abuse/neglect or any injustice, court proceedings affecting them, suggestions into the annual budget, and have those views heard and given due weight in accordance with the child's age and maturity.	Article 12 of the UNCRC as well as the General Comment No. 14, establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity.	The Committee noted the Proposal and the justification and observed that the provisions would be redrafted
Clause 27- enforcement of rights under this part	Joining forces for children	Delete the Word High Court and insert the words Children's Court	The High Court should not have exclusive jurisdiction to entertain matters on child rights. All gazetted children courts including magistrates' courts should be allowed to entertain such cases to promote access to justice.	The Committee rejected the Proposal and did not agree with the justification and observed that the Proposal is unconstitutional
Clause 27(4)	BCCRN	substitute the word "may" with "shall"		The Committee agreed to the proposal and the justification.
Clause 28- Rights and responsibilities of a child	Faith Based Organisations	More duties and responsibilities of a child- • Listening to instruction • Communicate any needs • Share/report wrong doing • Attend		The Committee agreed to the proposal and the justification.

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		<ul style="list-style-type: none"> class • Do what they learn in church and school • To eat well• Responsible in speaking up in cases of abuse/neglect etc. • Uphold their culture• Clean and care for the environment • Keep themselves clean. • Honour their parents • Take care of their bodies and sleep sufficiently. • Engage in church • Grow in their areas of faith• Seek to become outstanding citizens 		Amend the marginal note to duties instead of rights.
	Evangelical Alliance of Kenya	<p>I. parental Classes and Training should be offered by the ministry for the time being in charge of social services to the following categories on first instance: Children having Children (Teen Parents), First time parents, newly Single Parents (recently separated, divorced or widowed), Co-Parents (parents who are not cohabiting and are in other familial arrangements) cohabiting co- parents who</p>	<p>PART III PARENTAL RESPONSIBILITY</p> <p>This entire section must be reworked to have the parents front and centre. It cannot still be about children. It is about PARENTS. Parents bring the children into this world and for most part, care the most about them. The cursory nature of how Parental rights and responsibilities are handled here, shows a lackadaisical</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the law is drafted in best interest of the child</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>have difficulty in raising their children.</p> <p>2. Partners should be accredited to be able to offer this training as well, especially institutions of higher learning, religious institutions, Children's department as well as the Probation department for supervision.</p> <p>3. The Social workers should be increased and equipped to offer some follow up support in the next few weeks after completion of the parenting classes.</p> <p>4. The ministry to avail documents and tools online to be accessible to any parents who need information and are ineligible, unable or unavailable for in person parenting classes</p> <p>As far as practically possible, parental consent must always be sought AND expressly obtained prior to any procedure, process or service is availed to a child. In the event of medical procedures, parental presence or the presence of</p>	<p>approach that is less than satisfactory.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		a person appointed by the parent, should be allowed as far as such presence does not impair the ability of the doctor or clinician to do the procedure or offer the service to the child.		
Clause 28- Rights and responsibilities of a child	CWSK	Amend by moving clause 28 of the Bill to Part 2	Clause 28 provides for duties and responsibilities, which go together with rights of the children	The Committee rejected the Proposal and did not agree with the justification and observed that the law is drafted in best interest of the child. The provisions are properly placed as they clarify the duties of a child so that all other duties relating to a child cannot be said to belong to the child but to the parent. the proposal is not substantive and was dropped by the proposer
Clause 28- Rights and responsibilities of a child	state Department of Social Protection, Senior Citizen's Affairs and Special Programmes	Amend by adding the following new paragraph:(f) take responsibility of their personal well-being according to their age and capacity.	The responsibility of the child should take into cognizance the age, maturity, stage of development, gender, background and any other	The Committee rejected the Proposal and did not agree with the justification and observed that the Responsibility is the parent

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			relevant characteristics of the child.	
	CWSK	The Bill is amended by- (a) moving clause 28 of the Bill from Part III to Part II (b) deleting the word "right" in the side note and substituting with "duties"	Clause 28 provides for duties and responsibilities, which go together with rights of the children	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child in conflict with the law
Clause 28(b)	UNICEF	Delete "at all times" and insert "without compromising his or her rights" To read; (b) respect his parents, superiors and elders and assist them in case of need without compromising his or her rights	Child abuse and other forms of violation of child rights can take place at the hands of parents, superiors and elders. It is therefore important not to say 'at all times'. Similarly, assistance to them in case of need should be given without compromising child rights as it can be used as excuses for child labour, child marriage and other forms of negative coping mechanisms families rely in case of need.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child in conflict with the law
Clause 29- Parental Responsibility	Association of Play Therapy Kenya	29 (2) V – we recommend that it reads "medical care including mental health care and immunization"		The Committee rejected the Proposal and did not agree with the justification and observed that It is included as a right to a child under clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				15(4) of the Bill. Medical care includes mental health care
	CWSK	Amend by deleting subsection 29 (2) (d)	This provision is subject to abuse since it alienates a child from his or her kin. Efforts should be made to ensure that existing child's relations are maintained	The Committee noted that CWSK dropped the proposal.
		Amend by deleting subsection 29 (4)		
Clause 29	Faith Based Organizations	AMEND: Subclause (2) (c) (i) Provide parental guidance in religious, moral, social, cultural and other values that are not harmful to the child. This may include but is not limited to incorporating disciplinary measures that are not cruel, inhuman or degrading but aim to restore, modify, amend and adjust behaviour.	ART 23 Children Bill ART 25 (a) the Constitution of Kenya ART 20 (1) (c) ACRWC Discipline is not corporal punishment, but instead training the child. A parent's responsibility is to train a child in the correct way. Spare the rod, spoil the child... Heb. 12:22 – No discipline seems pleasant at the time, but painful. Later on, however, it produces righteousness... Prov. 13:24 – Spare the rod	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal contradicts clause 23

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Amend by deleting Sub-clause (10).	responsible and have an explanation or definition or expound the definition of fit to include a responsible person without having to prove it in court.	
		Amend by deleting Sub-clause (11).	Explanation under Sub-clause (9) applies. Explanation under Sub-clause (9) applies.	
Clause 30-who has parental responsibility	CWSK	Amend Sub clause 30 (5) by deleting the expression, "duties, powers and responsibilities"	The amendment will ensure that only the biological parents/guardians exercise parental rights as opposed to institutions.	The Committee rejected the Proposal and did not agree with the justification and observed that the law is self-regulating it provides the extent of enjoyment of rights of guardians, parents, foster parents and other persons caring for children.
		Amend Sub-clause 30 (9) by substituting the words "fit person" with the words "responsible person".	The word "fit" would mean that it has to be proved in court, we recommended that the drafters consider using the word responsible and have an explanation or definition or	The Committee rejected the Proposal and did not agree with the justification and observed that the provision is ok as it is defined and used

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			expound the definition of fit to include a responsible person without having to prove it in court.	widely and consistently in the Bill
		Amend by deleting Sub-clause (10).	Explanation under Sub-clause (9) applies.	The Committee noted that CWSK dropped the proposal.
		Amend by deleting Sub-clause (11).	Explanation under Sub-clause (9) applies.	The Committee noted that CWSK dropped the proposal.
clause 30—who has parental responsibility	State Department	Amend by deleting paragraph (b)	It offends Article 53(1)(e) of the Constitution which provides, in part, that every child has a right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;	The Committee rejected the Proposal and did not agree with the justification and observed that as the provision protects the biological parent's right if he/she gets married
		30(10) Amend by deleting the words "fit person" and replace with the words "responsible person"	To apply the language within the context of Part III	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
clause 31-Parental responsibility agreement	Legal Sister	Reduce jail term from one year to two months	It is not in the best interest of a child who is not living with both his parents to again have to witness one of the parents be imprisoned for a year. This is bound to cause traumatic development experiences.	The Committee rejected the Proposal and did not agree with the justification and observed that the penalty provided is the maximum penalty hence leaving the sentencing discretion to the court to give a lower penalty.
clause 31-Parental responsibility agreement	State Department	Insert proviso in clause 31(1) Amend by inserting the following proviso: “Provided that the said parental agreement is drawn and witnessed by the Secretary.”	Agreements must be witnessed by the Secretary for validity	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal was introducing a New level of bureaucracy
		Insert new paragraph in clause 31(2) Amend by adding the following new paragraph immediately after paragraph (i):		The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(k) Any other relevant issue"	This is meant to include any other vital information that may not have been specified in the law	
	Catholic University Students Group 1 CLS330	Amend 30 "Where a child's father and mother were not married at the time of the child's birth the father and mother may by agreement ("a parental responsibility agreement") provide for the parental responsibility of the Child". Mandatory adoption of parental plan as provided for in the South African Child Act is proposed.	The amendment seeks to make it mandatory for the father and mother of a child born to have parental responsibility of the child whether the parents were married at the time the child was being born or did not subsequently get married. The provision is expected to align to the statutory provisions to Article 53(1)(e) of the CoK, 2010 which provides that all parents have joint legal custody of the child. Under the Children's Act 2005 of South Africa parenting plan is a legally constituted document provided for in the law. It covers various aspects related to the care and contact of minor children born out of a	The Committee rejected the Proposal and did not agree with the justification and observed that the provisions of clauses 29 and 30 are sufficient to address the proposals

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			marriage or any other relationship. The parenting plan also makes provision for both rights and responsibilities of biological fathers in cases where the parents were not married.	
	Catholic University Students Group 1 CLS330	Clause 32(2) of the Children's Bill provides for transmission of parental responsibility. However, it only limits the transmission to only upon death of the parents. However high numbers of underage pregnancies currently faces Kenya as well as circumstance of a single parent with mental challenges.	The acquisition of parental responsibilities and rights is not limited to the parents of a child as it is also possible for third parties to acquire and lose parental responsibilities and rights. It is of utmost importance that parental responsibilities and rights are exercised in order to promote the best interests of the child. varied circumstances such as the ones mentioned be catered for, taking into consideration that biological parents being minors or with mental challenges may not have the capacity to take on parental responsibility	The Committee rejected the Proposal and did not agree with the justification and observed that The clause is limited to transmission of parental responsibility upon death of a parent. There are other adequate provisions on transfer of parental obligations in other scenarios or circumstances
Clause 32- Transmission of	Faith Based Organisations	Amend by inserting the following proviso:	Agreements must be witnessed by the Secretary for validity	There were no remarks submitted on this clause Too

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
parental responsibility		"Provided that the said parental agreement is drawn and witnessed by the Secretary."		restrictive- unclear on mischief sought to be cured- Resolved above
Clause 32	Association for Alternative Family Care for Children	Proposed additions Father's and mother's extended family members and Child's involvement will be sort in the process of revocation, where the evolving capacity' of the child is limited at the time of seeking the revocation, the revocation will wait until such a time the child can meaningfully participate in the revocation process.	Testamentary guardians may be the child's father or mother's immediate family members, if ties are cut it will have a negative impact on the child long term. The motive of revocation may be wrong also.	The Committee noted the Proposal and the justification and observed that these persons fall under the category of "relatives"
New provisions	Faith Based Organisations	Free and Compulsory Parenting classes available to parents		The Committee rejected the Proposal and did not agree with the justification and observed that this is a children bill to provide for children rights and their care and protection
Clause 33	State Department	Replace the word "Director" with the word "Secretary	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Provision overriding principle on				The Committee noted the Proposal and the justification and observed that the part address administration of children services by technocrats
	Association for Alternative Family Care for Children	It should include children living with chronic illness	There is a large segment of children living with chronic illnesses e.g. cancer, lupus, diabetes, and other autoimmune conditions that lay a heavy burden to the caregiver and require support beyond 18th Birthday, but don't qualify to be termed as disability. This group of children are excluded from most legal documents by virtue of not being with disability and at the same time not being well enough to live normal lives. In a case where a parent may contest child's support, these children may require support beyond that the age of 18 due to delay in education occasioned by absenteeism or financial	The Committee noted the Proposal and the justification and observed that the part address administration of children services by the Government institutions. It is observed that the definition of disability under the Constitution includes persons suffering from such an illness

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			burden to one spouse or caregiver	
Clause 35- Functions of the Cabinet Secretary	World Vision	Amend responsibilities of the Cabinet Secretary to include; ensure formulation of policies on planning, financing and coordination of child rights and welfare programmes and activities	To provide more clarity on that the focus is broadly on child rights and welfare programmes	The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).
Clause 35- Functions of the Cabinet Secretary				

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 35- Functions of the Cabinet Secretary				
	State Department	amend the clause- (a) in the opening statement, by inserting the words "National Council for Children Services in consultation with" immediately after the words "duty of the"; and (b) in paragraph (g), by deleting the words "Cabinet Secretary" and	Administration of children services is a function of a National Council for Children Services	The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		replacing the words "National Council for Children Services"		
	Don Bonyo	35 (c) ensure formulation of relevant policies on the planning, financing and co-ordination of child care, child protection and child justice programmes and activities; 35 (d) ensure the full implementation of Kenya's international and regional obligations relating to children and support the formulation of policies, programs, plans, budgets and actions for the promotion and protection of the rights of the child.		The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).
	NCCK	Amend by inserting a new sub section (h) after (g) that reads: "Provided that the powers conferred on the Cabinet Secretary under this section shall be exercised while having regard to the right of parents and guardians to exercise parental responsibility over their children."	This will account for the overriding responsibilities of parents as set out in the Bill.	The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).
	Clement Oketch	In para (d) add, after ---the words "in that regard"	This will connect the intended policies, programmes and actions to be made in line with	The Committee rejected the Proposal and did not agree with the justification and

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			the regional and international standards and obligations.	observed that is already provided for under clause 35(c).
	Joining forces for all children	Amend responsibilities of the Cabinet Secretary to include; ensure formulation of policies on planning, financing and coordination of add the words "child rights" and welfare programmes and activities	To provide more clarity on that the focus is broadly on child rights and welfare programmes	The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).
	NCAJ	35.(g)enter into agreements with any person ,agency , organization, association , institution or body inside or outside Kenya for any purpose related to the exercise of any of the powers or the carrying out of any of the duties or functions assigned to the Cabinet Secretary by or pursuant to this Act.	Proposes to set out the duties and powers of the Cabinet Secretary as assigned under the legislation. Moreover , it establishes the office of the Director of Children Services	The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).
	African Institute for Children Studies	We recommend that: (1) The law expressly states that the scope of the provisions of this law are limited to child protection and welfare. (2) That the Ministry responsible this law shall have mandate to coordinate the child protection and welfare services provided by other	clause 35 (a) assumes that the Cabinet Secretary responsible for implementation of this law shall have ability to supervise all rights of children. Contrary, the objectives and provisions in this law are largely limited to protection rights and welfare services. Moreover,	The Committee rejected the Proposal and did not agree with the justification and observed that is already provided for under clause 35(c).

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		ministries, departments and agencies (MDAs). This shall be the Cabinet Secretary responsible for internal security and	historically, the State Directorate for Children Services has been limited to promoting access to social services and protection of children. The Directorate has also often changed the parent Ministry, from that of home affairs, labour & social services and most recently to Ministry of Public services, Gender and youth affairs – to the detriment of these very vulnerable children. None of these Ministries has control over what happens in other ministries important in realization of children right to health, justice and education. There is however an understanding that the child protection and welfare services are inter-linked to other sectors and government ministries, departments and agencies (MDAs). Therefore the Ministry responsible for child protection and child welfare	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 35- Functions of the Cabinet Secretary	Ann Mbugua	"Provided that the powers conferred on the Cabinet Secretary under this section shall be exercised while having regard to the right of parents and guardians to exercise parental responsibility over their children."	should have a mandate to coordinate other services.	The Committee rejected the Proposal and did not agree with the justification and observed that Clause 7 guides that all persons exercising administrative powers under the Act must treat the interest of the child as paramount
Clause 35- Functions of the Cabinet Secretary	Kenya Doctors Catholic	Insert the words with parental involvement, after the words duty of the Cabinet Secretary 35(b) insert while respecting parental rights and the best interest of the child at the end 35(d)insert the words" that are ratified by parliament after "children" and "while respecting parental authority over their children;" at the end Delete (e)	This section seeks to give sweeping powers to the Cabinet secretary to implement international and regional obligations that may be ratified by the CS but not by parliament as well as to partner with anyone literally to effect this act. Given the section on child autonomy and reproductive health that we have removed or sanitized, these powers would have been used to allow for external influence over our children totally disregarding	The Committee rejected the Proposal and did not agree with the justification and observed that Clause 7 guides that all persons exercising administrative powers under the Act must treat the interest of the child as the paramount consideration

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>35(g) insert provided such action will respect parental authority over their children.</p> <p>Insert new functions-</p> <p>h) prescribe the manner in which disorder of sex development boards in hospitals will be formed with the responsibility of developing the criteria of identifying an intersex person, assigning the sex of upbringing and determining the definitive sex upon development of the secondary sexual characteristics with the intention of preserving the fertility of the intersex person. The disorder of sex development board must as a minimum have a paediatrician, endocrinologist, gynaecologist, psychologist and sociologist. an intersex person is identified at birth and assigned sex of upbringing</p> <p>(i) prescribe the manner in which the sex of upbringing will be changed to the definitive sex in the identification documents of the intersex person upon determination by the disorder of sex development</p>	<p>parental authority over their children.</p> <p>This section seeks to take what belong to the parents and give it to the state thought the back door. Parental authority over their children needs to be guarded.</p> <p>What would "affirmative action on children issues mean"? It may mean pushing for autonomy of children to access 'RH services' without parental consent. Unless this is clear, this statement should be deleted.</p> <p>Just as we have cancer boards in major hospitals, it's important to establish the disorder of sex development boards in each major hospital that would deal with the very unique and sensitive matter of the intersex child with the primary aim being to preserve their fertility where possible</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 35- Functions of the Cabinet Secretary	Kenya Doctors Catholic	board. (i) Prescribe the manner in which disputes will be resolved where an intersex person disagrees with the definitive sex determined by the disorder of sex development board.	(get the sex as accurately as is possible). It is also important the opinion of the intersex person be taken into account when the definitive sex is determined because they are now older but more importantly, the brain sex is determined by the presence of absence of testosterone.	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Nairobi Baptist Church and Nairobi Chapel	1. On page 44 35 (g) the word person is spelt "person"	to correct a typographical error	The Committee agreed to the proposal and the justification.
Clause 36- Establishment of the National Council for Children's Services	World Vision	Amend to establish the National Council of Children's Services and instead have in place a National Council for Child Protection and that the objectives of the Council shall be to advise, regulate and ensure quality of all child protection services in the country.	The justification for this is that the Bill either includes more functions in view of all provisions on the constitution on the rights of children and retain the name as National Council for Children Services or retain the functions as they are and rename it to National Council for Child Protection	The Committee rejected the Proposal and did not agree with the justification and observed that the Nomenclature is ok. no proper justification. The establishment of a council in an Act dealing with the main subject matter accords with our drafting rules and indeed is common throughout the statute book. Particularly, since the establishment is for the regulation and coordination of children matters. The current act provides for the establishment of the council as well. the provisions are necessary to distinguish the regulatory role of NCCS from the executive role of the Director(now Secretary)

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	African Institute for Children Studies	Expunge the establishment of the National Council for Children's Services (NCCS) from this law and instead establish on its own law that would provide its mandate to oversee children services in all sectors including health, education, justice, social services, security and protection.	The council is established to be responsible for realization of all rights of children. However, the MDA responsible for delivery of holistic rights of children are diverse beyond the parent Ministry that would be responsible for this law as currently presented. While an NCCS with ability to coordinate and regulate child protection and welfare services delivered through multiple sectors is required, it needs to be established as a body corporate linked that is whose mandate is not drawn from one piece of legislation whose objectives are limited to only one sector of child protection and welfare.	
	National Centre for Competence Research in North	There needs to be more clarity regarding the roles of these two institutions in order to avoid conflict or a duplication of roles between them. It is also not clear whether the	Duplication of the Roles between the National Council for children's services and the Director and Directorate of	The Committee agreed to the proposal and the justification and there is a need to draft a

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		NCCS will be responsible for approval and monitoring of child welfare programs.	children services under clause 58	clause to address the proposal.
	CWSK	That Clause 36(2) of the Bill is amended by deleting the following words- “receiving grants and gifts in support of projects, programmes and actions designed to promote and protect the rights of the child; and”	To conform with the standard provision of establishing State Corporations and State Corporations Act. Receiving grants and gifts by an institution falls within financial provisions of an institution.	The Committee rejected the Proposal and did not agree with the justification and observed that No mischief addressed
Clause 35 and 36	World Alliance Youth	WYA recommends that the words “with respect to parental rights and in accordance with the best interest of the child” be added to at least one of the subparagraphs of Art. 35	gives broad competences to the Cabinet Secretary and Section 36 and the subsequent articles provide legal grounds for establishing the National Council for Children’s Services. Article 35 doesn’t mention the role of the parents and their authority in any way People with intersex traits require individualized responses from medical professionals and their parents.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is covered under clause 7

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 37- Objective of the Council	African Institute for Children Studies		who therefore require access to the most up-to-date scientific knowledge available. It would be beneficial to develop appropriate provisions and instructions at the level of immediate care givers addressing persons with intersex traits to address the realities faced by intersex people. Medical associations or hospitals could create technical guides for dealing with these cases	The Committee noted the Proposal and the justification and observed that there is need to amend marginal note to -functions and harmonize functions to avoid duplication of roles.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Secretary on matters relating to child protection. This contradicts the objective of council as stated in section 37 (1) which is broader at "Children's Sector", these includes health, education, justice, social services, security and protection.	
	Don Bonyo	37. (1) The objective of the Council shall be to advise, regulate and ensure quality of all child care, child protection and child justice services in the country Include 37(2p) Prepare, publish and popularize quarterly and annual progress reports on the Status of children rights in Kenya		The Committee rejected the Proposal and did not agree with the justification and observed that proposed paragraph (1) enhances the Bill on proposed paragraph 2- Safeguarding children rights is a function of the Cabinet Secretary under clause 4 and 27(5) that may be performed by the Director under clause 58
	Ann Mbugua	Subsection 37 (2) (f) should be amended by inserting the phrase "that are ratified by parliament" immediately after the term "children".		The Committee noted the Proposal and the justification and observed that The Treaty Making and Ratification Act contains comprehensive provisions on the ratification

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				process which involves approval by the National Assembly, Cabinet before the State can be bound by the international instrument.
				Subsequent to the enactment of the Constitution, Article 2(6) automatically incorporates the treaties and conventions ratified by Kenya as part of Kenyan Law under the Monist approach.
	NCAJ	37.(2)(a)advise the Cabinet Secretary on matters relating to child protection;	It proposes to change the marginal note from "Functions of the Council" to "Objective of the Council". It clarifies the main objective of the Council in regulating the children's sector.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
	Association for Alternative Family Care for Children	Amend Clause 37(2)(h) to read; (h) regulate child welfare programs and Charitable Children Institutions in accordance with section 69	This section reads as it is in the Children's Act 2001. It provided for only Charitable Children Institutions to implement Child Welfare programmes. This means that	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Child welfare has been institutionalized. The government is working towards care reform by shifting away from institutionalization of children. Then it should allow for child welfare initiatives to be implemented by other organizations, or persons not necessarily running Charitable Children Institutions. The National Council then should regulate both child welfare programs and Charitable Children Institutions	
Clause 37-Objective of the Council	Legal Sister	insert new paragraph (p) (p) To create, maintain, and manage at least one safe house in each county	In the whole country, there's only one government safe house. The safe houses should help girls and boys who want to seek emergency protection and refuge for a limited period of time.	The Committee rejected the Proposal and did not agree with the justification and observed that This is not a function, it is an activity/program. The law is moving from institutionalization of children towards family-based care. Further, clause 64 provides for the establishment of

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 37- Objective of the Council				rescue centers by the Cabinet Secretary.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 37- Objective of the Council	State Department	Delete paragraph (a) and replace with the following new paragraph: (a) "advise government on all matters relating to children"	To widen the scope of advice to include all government functionaries	The Committee noted the Proposal and the justification and observed that there is need to for a further

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Addition of a new paragraph in clause 37(2) Add a new paragraph immediately after paragraph (o)- (p) "to coordinate actors in children sector for effective service provision"	To include the coordination aspect in respect of actors for effective provision of services	amendment to read; "advice the CS not Government." NCCS should know the status of children in all ministries to appropriately advise the CS
	World Vision	delete "Regulate, advice and ensure quality in the children's sector."	Regulate, advice and ensure quality in the children's sector. This again presumes that the agency shall have power to regulate children services across all the sectors including health, education, justice, social services, security and protection 37 (2) (c) oversee public education programs on the rights and welfare of children;	The Committee noted the Proposal and the justification and observed that the proposal is not clear.
	Kenya Catholic Doctors	37(2)(f) Insert the words "that are ratified by the national parliament of Kenya" after relating to children	international treaties and obligations are sometimes signed by the CS and are implemented without ratification of parliament. This abuse of article 2(6) of the constitution needs to be stopped in its tracks.	The Committee rejected the Proposal and did not agree with the justification and observed that There is a process under the Treaty Making and Ratification Act. The Act has comprehensive procedures for dealing with

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				<p>treaties including laid out parliamentary procedures.</p> <p>The Committee rejected the Proposal and did not agree with the justification and observed that the proposals are Provided for under the Access to Information Act</p>
	Joining forces for children	amend to read the objective of the Council shall include; to prepare, publish and popularize annual progress reports on the Status of children rights in Kenya, coordinate the development of periodic state party reports	The role of the Council besides advisory shall also include documenting the status of children's rights in Kenya and coordinate the development of periodic state party reports.	
	CWSK	<p>That Clause 37 of the Bill is amended</p> <p>a) by deleting the expression (1)</p> <p>b) by deleting sub-clause (2)</p> <p>c) by inserting a new Clause 37A as follows-</p> <p>37A. Functions of the Council-</p> <p>The functions of the Council shall be to –</p> <p>(a) advise the Cabinet Secretary on matters relating to children including formulation and development of policies;</p> <p>(b) develop standards and ensure quality on child protection;</p> <p>(c) develop and enforce codes of</p>	<p>NCCS is a regulatory body, thus its functions should reflect its mandate.</p> <p>The functions of NCCs as they appear under clause 37 of the Bill is a mix of regulation and implementation. The functions overlap those of the Cabinet Secretary, the Director, the NCCs and other players in the sector.</p> <p>The proposed amendments therefore address the problem of overlap and ensure that the mandate of NCCs is well stipulated as a regulator in regard to providing standards</p>	<p>The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	CWSK	<p>practice, guidelines and regulations relating to children matters in accordance with the policy determined under this Act for management and maintenance of standards and quality.</p> <p>(d) prescribe training needs and requirements on child protection for authorized officers;</p> <p>(e) advise the Cabinet Secretary on issues arising from Kenya's international and regional obligations relating to children, and support the formulation of appropriate reports under such obligations;</p> <p>(f) promote increased awareness, knowledge and information on matters relating to child protection;</p> <p>(g) provide linkage between Government and stakeholders on matters relating to child protection;</p> <p>(h) establish county and sub-county advisory committees on child protection for standards, quality and regulatory purposes;</p> <p>(i) Collect, collate, store and disseminate tangible and intangible data on child protection;</p>	<p>and quality in the children sector, advising the Cabinet Secretary in the development of relevant policies, regulation of children institutions, undertaking of inspection, monitoring and evaluation of children facilities, research on children matters, development of standards for training on children matters, regulation of child welfare programmes by CCIs, receiving complaints from CCIs, developing and enforcement of code of practice in the children's sector.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	CWSK	<p>(j) promote, carry out and disseminate research on children matters;</p> <p>(k) at any time, undertake or cause to be undertaken inspection, monitoring and evaluation of children facilities to ensure compliance with set standards;</p> <p>(l) Annually review the progress of child protection in the country and submit report findings and recommendations to the Cabinet Secretary;</p> <p>(m) regulate child welfare programmes proposed by charitable children's institutions and supervise Non-Governmental children organizations to safeguard and promote the welfare of children;</p> <p>(n) establish panels of persons from whom guardian ad litem appointed by the court may be selected by the court;</p> <p>(o) register, license, accredit, inspect and monitor private adoption societies.</p> <p>(p) deregister, or cause deregistration of organizations exposing children to danger or</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>children to be in need of care and protection;</p> <p>(q) cancel licenses of children institutions that do not comply with the provisions of this Act;</p> <p>(r) submit an annual report to the Cabinet Secretary containing among others the status of child protection in the country and data on the number of children in Charitable Children's Institutions;</p> <p>(s) provide standards and guidelines to promote community programmes which keep children within families and community; and</p> <p>(t) perform any other function under this Act or any other written law</p>		
	CWSK			

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 37	UNICEF	Amend subclause (1) to read; (1) The objectives of the Council shall be to regulate, advice, coordinate and ensure quality of service in the children's sector	Role of NCCS also includes 'coordination of stakeholders' in children sector	The Committee agreed to the proposal and the justification and there is a need to correct the drafting error in subclause (1)
		Amend subclause 2(a) by deleting "child protection" and substituting therefor "child rights and welfare";	DCS primary function is child protection (i.e. protection of vulnerable children, protection against abuse) whereas NCCS has a broader function on child rights and welfare	
		Amend subclause (2)(b) by inserting the words "and monitor implementation of national action plans on violence against children" before the words "develop code of good practice"	NCCS has provided multisectoral coordination and facilitation of development and monitored implementation of action plans aligned with the mandate, which also fits well with the function to be responsible for reporting to periodic reports on child rights to CRC and other treat bodies.	
Clause 38 - Composition of the Council	CWSK	The Bill is amended under Clause 38(1) by inserting a new paragraph	The Director and the Society are the main Government actors in the administration of	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(h) as follows; (i) The Chief Executive Officer of the Society.	children's services and some of their functions are shared; hence the proposed amendment to include the Chief Executive Officer of the Society as a Member of the Council.	
	State Department	Replace the word "Director" with the word "Secretary	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
			In essence, there is currently no such minister responsible for matters relating to 'children services' because children services are scattered across several ministries, departments and agencies.	The Committee rejected the Proposal and did not agree with the justification and observed that the appointing authority (President) usually assigns the functions and duties to a Cabinet Secretary (not ministry) and accordingly designates the one responsible for matters concerning children generally.
Clause 38 Composition of the Council	CWSK	The Bill is amended under Clause 38(1) by inserting a new paragraph (h) as follows; (a) The Chief Executive Officer of the Society.	The Director and the Society are the main Government actors in the administration of children's services and some of their functions are shared; hence the proposed amendment to include the Chief Executive	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 38 Composition of the Council	LSK Nairobi Branch	Revision of the functions	Officer of the Society as a Member of the Council. The duties mentioned duplicate the duties of the Director for Children's Services, the DPP, the Judiciary and the Probation offices. There needs to be a balance.	The Committee agreed to the proposal and the justification and there is a need to harmonise the clause.
Clause 38	BCCRN	Include in composition ODPP officer of the director of public prosecutions; N.P.A National Chair of Parents Association		The Committee rejected the Proposal and did not agree with the justification and observed that the composition is sufficient as it is. there is no mischief the amendment seeks to cure. The composition has 9 members as other state corporations
	Evangelical Alliance of Kenya	The composition of the National Council for Children's Services should be rethought.	Government officials are such a huge proportion of the Council, that surely there is no need for a council. There should just be an inter-ministerial committee to coordinate children's affairs. One slot to all persons of faith, is an under representation. 7 members from or appointed by	The Committee rejected the Proposal and did not agree with the justification and observed that the provision in the Bill follows the requirement on composition in the State Corporations Act

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			the government versus only three persons from the general public is quite unbalanced.	
Clause 39- Functions of the Director	World Vision		To be consistent with the interpretation as proposed to be amended under Part I above	The Committee agreed to the proposal and the justification.
	African Institute for Children Studies		The reference to "children services" is misleading as already indicated above.	The Committee rejected the Proposal and did not agree with the justification and observed that children services is the comprehensive term
	State department for social protection	Replace "director" with secretary"	New name is Secretary of Children Affairs (this shall change everywhere Director appears)	The Committee agreed to the proposal and the justification.
	Clement Oketch	Sec 39 and 58. Both sections speak to the same subject (functions of the office of the director) but seem different. These need to be reconciled. I would suggest that section 39 be deleted.		The Committee agreed to the proposal and the justification and there is a need to harmonise the two clauses.
	CWSK	That Clause 39 of the Bill is deleted	The functions appearing under Clause 39 of the Bill are exactly the same as those	The Committee agreed to the proposal and the justification

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			appearing under Clause 58 of the Bill; hence proposal to delete Clause 39	and there is a need to harmonise the two clauses.
	UNICEF	Remove duplication. Clause 58 to replace clause 39 as it is more comprehensive or the 2 clauses to be merged	There is a clear duplication between these two sections. Functions of the Directorate are better placed in this section on Administration of Children Services than in the Section on Financial Provisions (Part V)	The Committee agreed to the proposal and the justification and there is a need to harmonise the two clauses.
Clause 40- Powers of the Director	African Institute for Children Studies	Re-arrange the section number and mover Sections 39 and 40 to come after section 58 of the Bill.	The functions and powers of the Director are slotted within the sections providing for composition and powers of the Council (NCCS) thus likely to create confusion.	The Committee agreed to the proposal and the justification and there is a need to amend for neatness and logical flow of similar ideas/provisions
	State department for social protection	Replace "director" with secretary"	New name is Secretary of Children Affairs (this shall change everywhere Director appears)	The Committee agreed to the proposal and the justification.
	Office of the Director of Public Prosecutions	To delete	The powers of the Director of Public Prosecution are clearly provided in the Constitution of Kenya under Article 157 which is to Institute and undertake criminal prosecution. Section 40 of the Children Bill	The Committee agreed to the proposal and the justification and there is a need to amend by excluding the words "without prejudice to the powers of the DPP."

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			is ambiguous and prone to misinterpretation. Anyone who contravenes in relation to child neglect under section 154 or child abuse under Section 20 commits an offence and is thus liable for prosecution. This applies to other offences stated in the Bill. There will be conflict with regards to the mandates of the Office of the Director of Public Prosecution and the proposed powers of the Director of Children services under section 40 of the Children Bill.	<p>The practice currently is that the Director moves the court on matters such as child neglect and other civil matters.</p> <p>The director does not prosecute on criminal matter. The Director has never had conflict with the DPP in regard to this functions.</p>
	Clement Oketch	Delete the words 'Without prejudice to the powers of the Director of Public Prosecution' so that the section starts with Institute	The prosecution function contemplated for the director should be of civil nature and as such does not in any way interfere with the criminal prosecution function of the Director of public prosecution.	The Committee agreed to the proposal and the justification.
	CWSK	The Bill is amended by deleting Clause 40.	The functions appearing under Clause 40 of the Bill are exactly the same as those appearing under Clause 59 of	The Committee agreed to the proposal and the justification and there is a need to draft a clause to harmonise the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 41-Term of appointment	CWSK	The Bill is amended by deleting the word "appointment" appearing on the marginal note and replacing with the word "office"	The term of appointment relates to terms of service for office bearers while what is referred to under clause 41 is the period of office for members of the Council; hence proposal to change from term of appointment to term of office	The Committee agreed to the proposal and the justification.
Clause 43-Terms and Conditions of Service	CWSK	<p>The Bill is amended by deleting Clause 43 and substituting thereof with the following new clause- 43. Remuneration of the Chairperson and Members of the Council.</p> <p>The Remuneration payable to the Chairperson and the Members of the Council shall be determined by the Salaries and Remuneration Commission</p>	The Chairperson and Members of the Council are not employees of the Council and therefore the terms and conditions of service are not applicable to them. Terms and conditions of services are only applicable to the staff of the Council. what is applicable to Members of the Council is remuneration or sitting allowances and not salaries; hence the proposed amendment to change from terms and conditions of service to remuneration	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal. That is, terms of service to be determined by the CS on advice of the SRC

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 44- Committees of the Council	CWSK	The Bill is amended by deleting Clause 44 (2)	<p>The provisions under sub-clause (2) of the Bill are against the norms of best practice of governance</p> <p>The sub-clause further violates Mwongozo Code which has no provision on co-option hence the proposal for deletion of sub-clause (2)</p>	The Committee agreed to the proposal and the justification to Delete 44(2)(a) on co-opting.
Clause 45 - Staff of the Council	State Department	Amend the opening statement by deleting the word "Council"	This is an editorial issue	The Committee agreed to the proposal and the justification.
Clause 45 - Staff of the Council	CWSK	<p>The Bill is amended by- (1) deleting the marginal note and substituting with the following new marginal note "Director-General of the Council" (2) replacing the words "Chief Executive Officer" with the "Director-General" where applicable (3) deleting Clause 45(1) and substituting with the following new sub-clause (1) as follows-</p>	<p>The proposed amendments under Clause 45 of the Bill conforms with the standard procedure on appointment of Director General and staff of a state corporation as per the State Corporations Act and the Mwongozo Code</p> <p>The term Chief Executive Officer is generic hence the change to Director General</p>	committee did not concur with proposed nomenclature change

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>45. Director- General of the Council</p> <p>(4) There shall be a Director-General to the Council who shall be appointed by the Cabinet Secretary on recommendation of the Council following a competitive recruitment process and who shall serve for a period of three years renewable only once.</p> <p>(5) The Director- General shall be the chief executive officer of the Council and shall, subject to the direction of the Board be responsible for the day to day running of the Council.</p> <p>(d) delete sub-clause (3) of the Bill</p> <p>(e) delete the word "Council" appearing under sub-clause (6) of the Bill</p> <p>(f) The Bill is amended by deleting sub-clauses (8) and insert a new Clause 45A as follows-</p>	<p>The amendment also separates the functions of the Director General and those of staff of the Council.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>45A. Staff of the Council</p> <p>(1) The Council may appoint such other officers and staff as may be necessary for the proper discharge of the functions of the Council under this Act or any other written law upon such terms and conditions of service as the Council may in consultation with Salaries and Remuneration Commission determine.</p> <p>(2) In the appointment of its staff, the Council shall ensure that not more than two thirds of the staff of the Council shall be of the same gender, taking account of —</p> <p>a) persons with disabilities; and</p> <p>b) regional and ethnic diversity of the people of Kenya.</p> <p>(a) The Bill is amended by deleting</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 46 - The common seal of the Council	CWSK	sub-clauses (9) and (10) (h) Re – number the sub-clauses	This is the standard procedure as explained under Clause 45 of the Bill	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.
Clause 48 - Proceedings against the Council	CWSK	The Bill is amended by deleting Clause 48	The Council is a body corporate with powers to sue or be sued. In this regard, the Council is being sued in its capacity as a legal person and not as Government Officers	The Committee agreed to the proposal and the justification.
Clause 50 - Regulations by the Council	CWSK	The Bill is amended by deleting Clause 50	The role of the Council is to advise the Cabinet Secretary on children matters including development of policies and regulations for effective discharge of functions by any Body under this Act.	The Committee rejected the Proposal and did not agree with the justification and observed that Parliament can delegate legislative powers to any person under Article 94(6)
			The Cabinet Secretary being the main administrator of the Act is responsible for making regulations.	The provision is adopted from the 2001 Act which allowed the Council to make regulations for their functions.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			The power for the Cabinet Secretary to make regulations is already provided for under Clause 249 of the Bill; hence proposal for deletion to avoid conflict of power to regulate	
Clause 51- County Children Advisory Committees	Don Bonyo	publish and popularize quarterly and annual progress reports on the Status of children rights in the County		The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is catered for under provisions of the Access to Information Act. Any person can request for information under the Act
Clause 51 - County Children Advisory Committees	CWSK	The Bill is amended under sub-clause (2) by inserting the following new paragraphs- (k) County Commissioner or his representative. (l) County Director for Education or his representative. (m) a representative of the Society (n) The Registrar of Births and Deaths or his representative.	The proposed amendment is meant to include other core members of the Committee who are omitted under the Clause Currently the Chair of the Committee is the County Commissioner of the area or his representative and the Treasurer is the Labour Officer in charge of the area or his representative and yet the Commissioner and the Labour	The Committee agreed to the proposal to include (k),(l), (n),(o) and the proposed (3)

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(o) a Labour Officer in-charge of the area</p> <p>(3) A representative of the Council shall be the Secretary to the Committee.</p>	<p>Officer are not recognized in law</p> <p>The Society, Registrar of Deaths and Births and Director of Education are also core in children matters and should therefore be provided for under Clause 51</p>	
		<p>Amend sub-clause 4 of the Bill as follows-</p> <p>a) by deleting the words "the welfare of" appearing under paragraph (b) and inserting the word "matters" immediately after the word</p>	<p>The Council regulates all matters relating to children and therefore the sub-clause is limiting the mandate of the Council to Welfare hence the proposed amendment to ensure the Council fully undertakes its</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>"children"</p> <p>b) by deleting the words "the welfare of" appearing under paragraph (c)</p> <p>c) by deleting the words "the welfare of" appearing under paragraph (d)</p>	mandate as envisaged in the Act	
Clause 51	BCCRN	Substitute the word "may" with "shall" under clause 51(1)		the committee observed that the proposal is sufficient.
	Association for Alternative Family Care for Children	Replace with National Government officer in charge of Education in the County	Education is a function of the National Government	The Committee agreed to the proposal and the justification.
Clause 52	CWSK	<p>That Clause 52(3) of the Bill is amended by deleting paragraph (b), (c), (d), (e) and (f) and inserting the following new paragraphs-</p> <p>(b) Coordinate children matters and activities at the sub-county level;</p> <p>(c) Inspect, monitor and evaluate children facilities to ensure compliance with standards by the Council</p> <p>(d) Make recommendations to the County Children Advisory</p>	<p>The Council is a regulator. The Sub-County Children Advisory Council is the representative of the Council at the sub-county level, thus performing delegated functions of the Council.</p> <p>The functions as expressed under sub-clause (3) paragraphs (b), (c), (d), (e) and (f) are a mix of functions of the Council, Director, Society and</p>	<p>The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>Committee on any matters relating to children within the sub-county</p> <p>(e) Provide information that may be required by the County Children Advisory Committee on any matters relating to children within the sub-county</p> <p>(f) Submit annual reports to the County Children Advisory Committee on matters relating to children within the sub-county;</p> <p>(g) promote awareness on children matters within the sub-county;</p> <p>(h) mobilize resources to support the Councils mandate at the sub-county level</p> <p>Amend sub-clause by inserting the words "Charitable Children Institutions" immediately after the words "welfare programmes"</p>	<p>Adoption Societies; hence the proposed amendments to align to the functions of the Council.</p>	
			<p>The Council is responsible for approval of child welfare programmes for only Children Charitable Institutions and therefore the law must reflect the same</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director.	The Committee agreed to the proposal and the justification.
	Joining forces for all children	Amend section 52 the Council to include a budget/resources for management of sub county children advisory committees whose functions shall be to advice the County Children Advisory Committees on, and make recommendations for, the implementation of such child welfare.	Child welfare programmes a County level are under resourced and require resources to operationalize their services. Establishment and financing children's institutions by County and National governments provides an opportunity to enhance care and protection for children.	The Committee noted the Proposal and the justification and observed that The CCAC and SCCAC receive support from NCCS
Title to PART V: FINANCIAL PROVISIONS	UNICEF	Delete the title to the Part.	Clauses 36 to 57 are all about the National Council of Children Services (the Council) Of these, clauses 53 to 57 are the Finance provision for the Council and therefore should be a continuation. Putting this Part and Title create confusion that the Part is addressing Financial provisions of the entire Bill, yet this is not	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 57-Annual reports of the Council.	World Vision	Amend to ensure that the Council is mandated to Prepare, publish and popularize quarterly and annual progress reports on the Status of children rights in the County	the case, but only addresses finances for the Council Clause 250 addresses the finances for the entire Bill	The Committee rejected the Proposal and did not agree with the justification and observed that this is provided for under 57(2)
Clause 58 Director and Directorate of Children Services	African Institute of Children Studies	Add to the function of the Director "allocating financial resources to community-based organizations sub-granted duties for early detection and response to children and families in need of child protection and welfare services. The Director shall be responsible for monitoring the activities of the CBOs, regulate their quality assurance and the use of the public funds." This function shall be linked to that of administering the fund created under section 11 (7) of this bill in which the State shall establish a fund under the Public Finance Management	Section 58 (3) lists the functions of the Director which are implemented through the office of 'Children Officers'. However, the State Director of Children Services have never been able to employ adequate number of these officers to meet the minimum ration child welfare officer to the children population. Even in most developed countries, this ratio is rarely attained. In some cases, it makes economic sense to have a special group of workers to meet the needs of such special population. Besides, some of the responses	The Committee rejected the Proposal and did not agree with the justification and observed that the regulation is currently undertaken by the Directorate for social development because it registers the CBOs CBOs receive allocation from donors the proposal is not in best interest of the child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			required in child protection are rare occurrences hence no need for full-time employees. A good practice is to have the Directorate responsible for Child protection and welfare to outsource or provide grants to other private sector or non-profit community-based organizations to provide child protection prevention and response services. This will create jobs for communities, place the responsibility for child protection to community members who are likely to be more available, permanent and transparent in ensuring equitable distribution of welfare funds such as cash transfer funds to the neediest amongst them.	
Clause 58 and Directorate of Children Services	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director. Children's Services is headed by the Secretary and not	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Amend by deleting sub-clause (1) and replacing the following new sub-clause: 58. (1) Subject to the law relating to appointments in the Public Service, there shall be appointed a Secretary of Children's Services, and such other officers as may be necessary to assist the Secretary in the performance of his or her duties under this Act.	director and categorization of other officers is to be done administratively for flexibility purposes	
Clause 58 and Director of Children Services	World Vision	Move to provisions on child protection	The functions are Child protection	The Committee noted the Proposal and the justification and observed that child matters generally regulated here
	Don Bonyo	58. (1) Subject to the law relating to appointments in the Public Service, there shall be appointed a Director General responsible for Child Protection, Child Protection Officers and such other officers as may be necessary to assist the		The Committee noted the Proposal and the justification and observed that child matters generally regulated here

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 58(2)(a)	UNICEF	Split the provisions in subclause (2)(a) to read; (a) Safeguard the rights and welfare of children, promote, coordinate, supervise children services ensuring an effective continuum of care covering prevention, early intervention, statutory intervention and reunification/rehabilitation; b) facilitate the establishment of statutory facilities designed to advance the wellbeing of children; and	The addition of 'continuum of care' is important as it emphasizes the whole spectrum of child protection starting with prevention and early intervention. Traditionally the focus has just been on rescue and response.	The Committee rejected the Proposal and did not agree with the justification and observed that philosophy of the Bill is to provide family-based care which in itself ensures continuum of care.
Clause 58(3)	UNICEF	Amend to read; (a) develop, plan and support the child protection professional and para- professional workforce including supervise children's officers and co-ordinate and regulate their work, establish standards for the provision of children's protection services	The child protection workforce is the primary resource for DCS – in order to strengthen child protection services there is a need to systematically develop, plan and support the workforce and work towards standardization and increased professionalization of children services. It is important that the Bill spells this out. See UNICEF guidelines to	The Committee rejected the Proposal and did not agree with the justification and observed that function is administrative and the Director delegates the functions to the children officers The Committee noted that UNICEF dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Amend (f) to include; Children in humanitarian settings, including refugee and migrant children..	Strengthen to Strengthen Social Service Workforce DCS and children officers are providing support for children affected by drought and floods, and are also engaged with refugee children providing specific services (e.g. custody decisions) and oversight and technical guidance	
Clause 58	Association for Alternative Family Care for Children	This section should be moved to the administration of children services from current positioning.	As implied, currently the head of the Department of Children's Services, is the Secretary of Children's Services, an office within the Public Service. Thus, implementing the provisions of the law regarding child protection is now the responsibility of the Secretary.	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New Clause 58A	CWSK	<p>Replace Director with Secretary of Children's Service</p> <p>Delete sub-clauses (2) and (3) and substituting thereof with a new Clause 58A. Functions of the Director</p> <p>(1) The Director shall-</p> <p>(a) safeguard the welfare of children and shall in particular facilitate the establishment of statutory institutions, provide protection of children in conflict with the law, abused and neglected children, promote and coordinate children services.</p> <p>(b) Supervise children's officers and co-ordinate and regulate their work as per the Act</p> <p>(c) work in collaboration with relevant state departments, state and non-state agencies to ensure the efficiency and effectiveness of all social programmes established in the interests of children;</p> <p>(d) facilitate the enforcement of the principles of international law and treaty instruments binding on Kenya in respect of matters relating</p>	<p>Clause 58 of the Bill provides for the Director and officers of the Directorate of Children's Services and functions of the Director under one clause. The amendment is to separate the provision on appointment of officers of the Director and the functions of the Director. The new clause 58A will therefore stipulate the functions of the Director separately from appointment of officers.</p> <p>The amendment also merges the functions under Clause 39 and 58 leading to deletion of Clause 39 which is a repetition of Clause 58 and appearing in a wrong place.</p>	<p>The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>to children;</p> <p>(e) maintain up-to-date records and data on the management of children's services, indicating the respective degrees of access to welfare amenities applicable to the various categories of children;</p> <p>(f) Develop programmes of children in need of care and protection;</p> <p>(g) provide social inquiry reports for the performance of the functions of the directorate under this Act;</p> <p>(h) provide all necessary assistance to the judicial process, to the intent that court orders in relation to children which require supporting, social and administrative arrangements may be realized;</p> <p>(i) safeguard the welfare of any child or children placed under care by virtue of a care order or interim order;</p> <p>(j) provide assistance and procure accommodation for any child not in proper custody, any child who is abandoned, or any child</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>in need of refuge or safety; (k) provide assistance in tracing the parents or guardians of any lost or abandoned child, or reintegrate a lost or abandoned child with his or her parent or guardian or restore the child to his or her lawful place of residence;</p> <p>(l) intervene on behalf of any child in need of care and protection and in danger of imminent injury or harm, where possible, by securing the removal of such child to a place of safety;</p> <p>(m) provide mediation and reconciliation services for children and families;</p> <p>(n) provide psychosocial support for children in institutions and their families</p> <p>(o) provide care, guidance and other assistance and facilitate medical treatment for children who have been arrested or remanded in police custody or in children's remand homes, and assist children through court proceedings and hearings;</p> <p>(p) supervise the administration</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>of children in rehabilitation centers, charitable children's institutions and remand homes, safeguard and promote the welfare of any children admitted therein;</p> <p>(q) provide quarterly reports on the management of children's rehabilitation centers, charitable children's institutions and remand homes;</p> <p>(r) manage statutory institutions, safeguard and promote the welfare of any children admitted therein;</p> <p>(s) disseminate research development findings on child protection through seminars, workshops, publication, book review and other means of communication;</p> <p>(t) perform such other functions as may be prescribed under this Act, Regulations or any other written law.</p> <p>(2) Children's officers shall perform the functions and exercise the powers conferred on them by this Act and shall, in addition, perform</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		such duties as the Director may from time to time direct.		
Clause 59- Powers of the Director	Clement Oketch	delete this section	Reasons being it is bloated and does not express clear function and its interpretation can be speculative. It is also likely to be abused by an errant Directors who may turn dictatorial.	The Committee rejected the Proposal and did not agree with the justification and observed that Article 259 regulates the exercise of powers or performance of functions in the public service
Clause 60- Qualifications of the Director	CWSK	Insert the following new paragraph (e) as follows (e) has at least 8 years' experience in matters relating to children	Experience in children matters is core in administration of children	The Committee agreed to the proposal and the justification.
	Clement Oketch	The position of the director should first be established as a position in the public Service. Secondly, the proposed clause should indicate that the appointment shall be by the PSC and in accordance with the PSC Act	It should then create the criteria for qualification which should not conflict with the constitutional powers and functions of the public service commission. Note should also be taken that there are currently more than 8 directors. Whom among them is this law speaking to as the overall head of the organization and responsible for this Act?	The Committee noted the Proposal and the justification and observed that there is a proposal to amend director to Secretary and 58 provides that appointment is subject to public service

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	State ~Department	replace the word "Director" with the word "Secretary	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	Nairobi Chapel and Nairobi Baptist	The qualifications should be amended to include PhD holders who have studied issues to do with children in Kenya	As long as they are left out, research becomes very difficult to handle when the highly educated in the area of the rights of children are not part of the team helping parents, caregivers and all who are involved in giving children the best	The Committee rejected the Proposal and did not agree with the justification and observed that the Public Service Scheme of Service provides for a masters as a minimum therefor PHD holders also apply
New Clause 61A- The role of the society	CWSK	Insert the following new clause 61A The role of the Society The Society shall for the purpose of this Act, work for emergency, the care, welfare, control and protection of children including adoption and other forms of alternative care.	The proposed amendment is to provide for the role of the Society in welfare, care, control and protection in the Act. The repealed Children Acts; The prevention of cruelty to and neglect of children ordinance No.12 of 1955, Children and Young Persons Act Cap 141 and Adoption Act Cap 143, expressly provided for the role of the society in care, welfare, control, protection, emergency and rescue of children, adoption and other forms of alternative family care.	The Committee noted the Proposal and the justification and observed that there was need to streamline the sector by defining the roles of each of the stakeholders

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			The Children Act No. 8 of 2001 provides for the Society as the National Adoption Society	
Clause 62	Role of County Governments	review these sections in the light of the functions given to the Council which has overriding mandate on policy and which is also related to the County and subcounty committee		The Committee noted the Proposal and the justification and observed that there is need to align the functions
Clause 62(1)(b)	Association for Alternative Family Care for Children	Add' in accordance with the provisions of this Act' Childcare facilities should be clearly defined.	This Bill should clearly provide direction on the kind of facilities that County governments or other government agencies can establish. The lack of clarity in the definition has created a vacuum, which has been interpreted to mean residential care institutions by the County government. It is evidenced in the number of Bills that have been proposed by lawmakers on establishment of Children homes. Establishment of facilities for children with disability, rescue homes for	The Committee noted the Proposal and the justification and observed that there is need to align the functions

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>child mothers, establishment of Charitable children's institutions Bill. All these Bills are intended to create other residential care facilities for children at a time the country and the world at large is moving away from institutional based care.</p> <p>Some county governments have got the right perspective of the provision in The Constitution on the meaning of Child Care Facilities. For example, the Nairobi City County Government enacted Children Facility Act 2017.</p> <p>Beyond the provision of pre-primary education and childcare facilities, County governments have far-reaching functions that relate to children rights. Such devolved functions as health, water and sanitation</p>	
		<p>Proposed addition</p> <p>Provide for alignment of all county functions under the 4th Schedule of the Constitution to the principle of the best interests of the child.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 63- County government welfare schemes	UNICEF	Add "national government" after "other county government" Replace the word "may" with "shall" The clause to read; A county government shall, either by itself or jointly with other county governments, and in consultation with the Council and the Director, establish welfare schemes for children embracing any or all of the matters specified in the Third Schedule.	It's important to recognize that children are domiciled in the counties and counties have an obligation to provide support, as required by Article 21 of the Constitution. The use of the word Shall is better as it gives power and command while May is for asking or granting permission. This is well captured in the Third Schedule as there is use of the word Shall give power to county governments.	The Committee agreed to the proposal and the justification and there is a need to redraft the clause to address the proposal.
PART VI - CHILDREN'S INSTITUTIONS	UNICEF LUMOS	Delete PART VI	The overriding objective of care and protection of children is promote family-based care and move from institution- based care including closing down private institutions within the next ten years	The Committee noted the Proposal and the justification and observed that there is need to have a 10 years transition period

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 64- establishment of Rescue Centers	World Vision	Amend Charitable Institutions and / including NGOs working for children be included as part of the organizations with the approval of the CS be allowed to establish rescue centers.	This has been long overdue. Children Rescue Centers will be a safe holding place for children in need of care and protection	The Committee noted the Proposal and the justification and observed that establishment of rescue centers shall be the role of the CS
64- establishment of Rescue Centers	LSK Nairobi Branch	Specify who can be rescued e.g. Children from abusive homes, children who have been abandoned.	This is because leaving it open leaves room for interpretation in any way such that a police officer or a person in charge of the centre may refuse to take in a child giving certain reasons	The Committee noted the Proposal and the justification and observed that the proposal will be addressed under clause 146 and regulations
	National Centre for Competence Research in North	Amend provisions on rescue centers from this part and their operation style clarified	There should be included in the provisions for Child protection Units	The Committee rejected the Proposal and did not agree with the justification and observed that there are Child protection Units which are cells for holding children in police stations separately from adults (clause 65)
	UNICEF	Amend clause 64(1) to read; The Cabinet Secretary shall, in consultation with the Council and by notice in the Gazette, establish children rescue centers for the temporary care of children in need	It is important to give the range of family-based care alternatives that exist so that the choice is made clear and wide as provided by this Act and in the spirit of care reform.	The Committee noted the Proposal and the justification and observed that there is need to amend to clause 11

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		of care and protection pending, reintegration with family, or placement into kinship care, or foster care, or guardianship, or kafalah , or adoption or other interventions under the Act, in the best interest of the child.		
	UNICEF	Amend Clause 64(2) by deleting "one year" and substituting with "six months"	This will promote the objectives of care reform of promoting family-based care and use of institutions being measure of last resort and in the shortest time possible.	The Committee agreed to the proposal and the justification.
	UNICEF	Amend Clause 64(5) by inserting the words "and shall accommodate a child for a period not exceeding six months"	Provisions of long placement in rescue centers is not in line with the Bill's stated principles under s. 11.	The Committee agreed to the proposal and the justification.
	CWSK	Amend clause 64(1) by: (a) deleting the words appearing	The Government currently operates rescue centers which	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>immediately after the work "Protection" and inserting the following words "for the following categories of children"</p> <p>(b) inserting the following new paragraphs</p> <p>(a) a child whose parents or guardians find difficult parenting;</p> <p>(b) a child who is destitute;</p> <p>(c) a child who is found begging or receiving alms; or</p> <p>(d) a child who is truant or is falling into bad associations</p> <p>Amend clause 64 (2) by deleting the words appearing immediately after the word "pending" and inserting the words "family reintegration" to read as follows: -</p> <p>(1) A child shall be accommodated in a children rescue centre for a period not exceeding one year pending family reintegration.</p> <p>Amend clause 64(3) by inserting the word "public" before the words "children's institutions"</p> <p>Amend clause 64(4) by inserting the</p>	<p>cater for children who are;-a) destitute b) found begging or receiving alms c) whose parents or guardian find difficulty in parenting d)who is truant or is falling into bad associations</p> <p>The purpose of the amendment is to align with the current functions of rescue centers. Examples of rescue centers are, Thika, Eldoret and Machakos Rescue Centers.</p> <p>Children admitted in rescue centers require family reintegration as an exit strategy rather than foster care and adoption. Foster care and adoption are exit strategies best suited for children who are abandoned or offered for adoption by their birth families.</p> <p>The amendment to clause 64(3)will ensure that the Cabinet Secretary only designates public institutions to operate as rescue centers.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		words "temporary places of safety" immediately after the words "remand homes"		
Clause 64(1)	Association for Alternative Family Care for Children	Add, subject to National policy direction in regard to suspension, ban on residential care in light of Care Reforms, there is need to delimit establishment of various institutions of care whether by State or Non-state agencies	This contradicts the National Care Reform Strategy for Children direction and policy	The Committee rejected the Proposal and did not agree with the justification and observed that the Bill is a product of national policy
Clause 64(3)	UNICEF, Lumos Foundation and Hope Homes	Delete the 64(3)	This clause opens window for charitable children institutions to be designated as rescues centers to accommodate children and this is what the proposed amendment to Bill is trying to cure.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal. this should remain as a function of the Cabinet Secretary.
Clause 64(4)	UNICEF, Lumos Foundation and Hope and Homes for children	Delete the 64(4)	This clause is in relation to sub-clause 3 which is proposed for deletion	The Committee agreed to the proposal and the justification.
New subclause (3)	UNICEF, Lumos Foundation and Hope and Homes for children	64 (3) The placement of a child in a children rescue centre shall be done as a last resort in cases where—	To emphasize the placement of children in institutions to be a matter of last resort.	The Committee agreed to the proposal and the justification but redraft to capture the purpose of the rescue centers. It observed that rescue centers are formed as places of

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(a) the child has no immediate access to parental care by the child's parent, guardian or relative, if any; or (b) no alternative family-based placement, is for the time being available to the child.	These words have been moved from Clause 69(2)(a)(b) as charitable children institutions will no longer provide residential/accommodation services	temporary shelter even where a child has immediate access to parental care by the child's parent or relative as the child may have been rescued from an abusive home etc.
New subclause (4)	UNICEF, Lumos Foundation and Hope and Homes for children	4) A children rescue centre may admit a child to its care only if— (a) in an emergency situation, the child is referred to the centre by way of an interim care order or a care order; or (b) the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection.		The Committee rejected the Proposal and did not agree with the justification and observed that clause 64(1) is clear on admission of children to a children rescue centre
Clause 64(5)	Association for Alternative Family Care for Children	Authority for approval of application should vest in the National Council for Children's Services, not the Cabinet Secretary.	This provision has the potential to open a Pandora's box to build more such institutions contrary to Kenyan policy and its international obligations to decrease institutions in favour	The Committee noted the Proposal and the justification and observed that Subclause (5) to be deleted in view of the amendments that clarify the role of the country

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			of family-based alternatives. It would be important to ensure that rescue centers can only be established upon approval of the National Council for Children's Services rather than the Cabinet Secretary is best placed for such approvals.	governments considering that the Fourth Schedule contemplates that County governments be responsible for child care facilities
New subclause(s)	UNICEF, Lumos Foundation and Hope and Homes for children joint memorandum	<p>5) Where a child is admitted to a children rescue centre in accordance with subsection (4), the rescue centre shall institute care proceedings under section 152 of this Act within seven days of the admission.</p> <p>(7) In determining whether or not to issue a committal order under subsection (5), the Court shall</p> <p>(a) admit and consider any report made by a children's officer in respect of the child</p> <p>(b) consider the best interest of the child with proof of best interest determination processes.</p>	This ensures that proper assessment of the child needs and circumstances is done before the court provide committal order.	The Committee rejected the Proposal and did not agree with the justification and observed that clause VIII of the Bill regulates custody and maintenance

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 65 Establishment of Child protection Units-	National Centre for Competence Research in North	Clarification on the role of Child protection units	There is need for more clarification of the following provisions. Particularly the operation styles of the same.	The Committee noted the Proposal and the justification and observed that CPU are police cells for holding children temporarily
	LSK Branch	65 (1) Make provision for the duration which a child can stay in a Child Protection Unit, whether or not they will act as remand centers and what happens to the child's education in the meantime		The Committee noted the Proposal and the justification and observed that CPU are police cells for holding children temporarily
New proposal- Establishment and Administration of Alternative Care Services	Association for Alternative Family Care for Children	All the alternative care services provided for in section 11 to be outlined below and articulated as opposed to singling out institutional care (a) kinship care; (b) guardianship; (c) foster care; (d) adoption; (e) kafaalah; (f) care in emergency situations; (g) temporary shelter; (h) supported independent living; (i) supported child-headed households; (j) institutional care; and (k) aftercare	The entire section to cover all the alternative care services provided for in (11) 2 as opposed to singling out institutional care (a) kinship care; (b) guardianship; (c) foster care; (d) adoption; (e) kafaalah; (f) care in emergency situations; (g) temporary shelter; (h) supported independent living; (i) supported child-headed households; (j) institutional care; and (k) aftercare	The Committee rejected the Proposal and did not agree with the justification and observed that proposals addressed under clause 11 of the Bill

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 66	Association for Alternative Family Care of Children	Amend the marginal note to read; 'Administration of Charitable Children Institutions' The clause to be aligned with clause 11 objective and principles	This seems to single out Institutional Care out of the other alternative care services/alternative care provided for in section 11(2) and guiding principles provided for in (4) UNGA Resolution 2021: Urges States to adopt and enforce laws, policies, services and programmes, and budget allocations to address the root causes of unnecessary separation and ensure children are cared for effectively by their own families and communities, through child and gender sensitive social protection systems, targeted cash transfers. Current Policy direction and practice around children's institutions is towards reducing the uptake of institutional care of children. The government has led by issuing a suspension on registration of new Charitable Children Institutions. Circular by CS Labour and Social	The Committee rejected the Proposal and did not agree with the justification and observed that proposals addressed under clause 11 of the Bill

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>Protection 1st November 2017.</p> <p>Further in complying with regional and international legal instruments and ratifications, the government has domesticated the UN Guidelines on Alternative Care of Children in the Guidelines for Alternative Family Care of Children in Kenya 2014. The guidelines underscore the need for de-institutionalization of children. Agenda 2040 of the African Charter on the Rights and Welfare of the Child 200 emphasizes the need to protect children in all the aspirations. Global trend as evident in the resolutions of the UNGA 2019 stress the importance of utilizing other family-based care options instead of institutional care. The objective of the proposed change is to give provision to a form of licensing based on the need assessment and also regulating existing Charitable Children institutions as opposed to just</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			establish more institutions. Use of institutional care or placement of children into the institutions should be as a last resort after exploration of all other alternative family care options has been exhausted.	
Clause 66- establishment of charitable children's institutions etc.	World Vision	Amend to include; the person establishing a CCI a clause be included requiring the applicant to produce a certificate of good conduct and that we introduce a requirement requiring all CCI to always have a Child and Adult Safeguarding policy that should be reviewed every 2 years.	This will enhance compliance of Part (II) of the Bill on the Rights and Safeguards for the Best Interest of the Child.	The Committee noted the Proposal and the justification and observed that there is need to draft an offence to establish a CCI DELETE clause 66
	Kenya National Commission on Human Rights	The Commission recommends amendment so that there are facilities that take in intersex children as well.	The Commission recommends amendment so that there are facilities that take in intersex children as well.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
Clause 66(2)	Association for Alternative Family Care for Children	These conditions should be added to Subsection (2)	This subsection appears to contradict the suspension on the establishment of new Charitable Children's	The Committee rejected the Proposal and did not agree with the justification and observed that proposals

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(f) Specify the forms of services intended to be provided by the Charitable Children's Institution.</p> <p>(g) accompanied with a community-based social assessment report highlighting on the needs of children intended to be accommodated in the Charitable Children's Institution (ii) other existing interventions and child welfare programmes within the location where the Charitable Children's Institution is intending to run its institution.</p>	<p>Institutions which was published in November 2017.</p> <p>UNGA resolutions 2019 that was adopted by consensus including Kenya and first ever Resolution on the Rights of the Child urges members ; every effort should be directed to enabling children to remain or swiftly return to the care of their parents or when appropriate close family members, and that where alternative care is necessary, family and community-based care should be prioritized.</p>	<p>addressed under clause 11 of the Bill</p>
Clause 66(3)	UNICEF, Lumos and Hope and Homes for children joint Memorandum	<p>Delete the words...</p> <p>Of exercising proper care of, or guardianship over, a child or children</p> <p>Clause 3 (d) to read</p>	<p>As proposed, residential care of children will be provided by the Government through establishment of Children Rescue Centres as in clause 64. Since the proposal is for non-state actors to provide non-residential support within the</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(d) whether the applicant is an adult of high moral character and integrity, capable of providing <u>professional services</u> for a child, or children and their families; and	spirit of moving from residential care to family and community-based care, the word guardianship is deleted because it connotes the child is under the full care and control of the charitable children institution.	
Clause 66(3)	BCCRN	Include that on receipt of an application, the CEO descendants it to the county children's committee to access and determine with CCC		The Committee rejected the Proposal and did not agree with the justification and observed that the regulatory powers of the Council are exercisable solely by the council but while undertaking its due diligence, the Council may consult relevant persons, stakeholders and institutions including the County Committees
Clause 66(3)	Association for Alternative Family Care for Children	These conditions should be added to Subsection (3) - (e) plans to replace CCI with family and community-oriented services for the children intended to be accommodated by the CCI. c) Whether there are other Charitable Institutions in the proposed locality.	same as above	The Committee rejected the Proposal and did not agree with the justification and observed that the regulatory powers of the Council are exercisable solely by the council but while undertaking its due diligence, the Council

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>d) Whether there are family and community care programmes in the proposed locality;</p> <p>This general provision should be added;</p> <p>The decision to open a CCI should only be of absolute necessity, appropriate and constructive for the children concerned. The use of institutional care shall be limited and provided under strict standards and regulations, and children under three years of age shall be placed in family-based care settings</p>	<p>States to develop and strengthen inclusive and responsive family-oriented policies and programmes for poverty reduction, also designed to promote and strengthen parents' ability to care for their children, and to confront family poverty and social exclusion; promoted over placement in institutions;</p>	<p>may consult relevant persons, stakeholders and institutions including the County Committees</p>
Clause 66(10)	UNICEF, Lumos and Hope and Homes for children joint Memorandum	Delete, 10 (a)	<p>The purpose and objective of establishment of Charitable Children's Institutions is not residential/ accommodation services as explained in the above clauses</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 66	UNICEF	<p>Delete the clause and substitute with; Marginal note: Objectives of charitable children institutions, promotion of care reform</p> <p>66. (1) The objectives of establishment of charitable children institutions is to offer alternative care to a child as a measure of last resort when all efforts to provide other family and community based alternative care prescribed in Section 11 of this Act have failed.</p> <p>(2) Move clause 69(2) to the subclause</p> <p>(3) In order to promote government policy on care reform as defined in this Act, the number of established residential charitable children institutions shall not exceed 10 per county, and where possible shall remain in the lowest number possible.</p>	<p>The Bill needs to be clear that the establishment of the Charitable Children Institutions is within the overall care reform agenda and that it is not a 'stand-alone institution.</p> <p>Moved from clause 69 to give prominence in the objectives and provide logical flow</p> <p>The setting of limitation of numbers of CCI per county to a maximum of 10 per county is to set a control on the numbers of CCI established and help partners in The setting of limitation of numbers of CCI per county to a maximum of 10 per county is to set a control on the numbers of CCI established and help partners in moving towards family and community-based support with the government policy of care reform</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 66(4)	UNICEF	New marginal notes; Transition of licensed charitable children institutions New clause: 66 (4) The Council shall support the existing licensed charitable children institutions to transition their support from residential support to family and community-based Child welfare programmes within the regulations to be developed on child welfare programmes as provided under section 72 (2) of this Act.	This clause acknowledges that there are a number of charitable children's institutions in the country with the intention and resources to support vulnerable children. This clause therefore helps to build order as the country transition to more of family and community-based care , provides ways of re-directing resources for the support of children and families.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs
Clause 66(5)	UNICEF	Amend to read; 66 (5) No person or corporate body shall establish a new Charitable Children Institution, without prior approval of the Council.	This deters mushrooming of charitable children institutions as has been the practice. It is also a control measure in support of government policy on care reform.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs
CLAUSE 66	CWSK	Amend to read: 66. Requirements for registration and licensing (1) No person or body shall operate a Charitable Children's Institution unless such institution is registered and licensed under this Act.	The proposed amendment provides more comprehensive requirements in establishment of a charitable children's institution. The new provision required a person or body interested in establishing a CCI	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(2) Notwithstanding the provisions of subsection (1), any person or body already operating a Charitable Children's Institution at the commencement of this Act, shall within a period of twelve months from the date of such commencement submit an application to the Council for registration and licensing under this Act. (3) Any person who contravenes the provision of this section commits an offence and is liable on conviction to a fine of a sum not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.	to apply to the Council for registration and licensing. The provisions under Clause 66 of the Bill only provide for approval for a person or body interested in establishing a CCI rather than registration and licensing.	
Clause 66(7)	UNICEF, Lunos and Hope and Homes for children joint Memorandum	Delete the words " <i>control of children</i> " <u>New clause to read</u> Clause 67 (2) Any person or association, other than bodies corporate, proposing to establish a charitable institution for provision of family and community-based child welfare programmes and	With the proposed revision, Charitable children's institutions are envisioned to provide non-residential care for children and their families.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		services shall submit to the Chief Executive Officer a list of duly registered trustees.		
Clause 66(7)	Association for Alternative Family Care of Children	<p>Rework it to read, No foreign national is authorized to establish a Charitable Children's Institution, without the approval of the cabinet secretary and without official permission by other relevant authorities. This should also apply to foreign volunteers desiring to work in a CCI.</p> <p>However, he/she may be authorized to fund a child welfare program in an existing Charitable Children Institution within the provisions of this Act.</p> <p>The bullets (a)-(e) should be reworked to speak to (i) qualifications of a foreign national in respect to funding a child welfare programme and criminal background checks (ii) funding child welfare programs criteria Add, a subsection to speak to, both foreign and local volunteers in Charitable Children Institutions.</p>	<p>Recent and past incidents of abuse of children in institutional care by Foreign nationals have overwhelmingly indicated that the country may have no capacity to supervise and regulate activities of foreign nationals when they establish Charitable Children Institutions. Apart from cases of child abuse, there have been many incidences of maltreatment of staff in the institutions and irregularities in the financial and general management of Charitable Children Institutions established by foreign nationals. Even where the foreign nationals are well recommended by their country of origin, it is still difficult to determine the appropriateness of non-citizens in handling vulnerable children. Second, Funding policy should provide</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 66(10)	Association for Alternative Family Care for Children	This could potentially penalize vulnerable families who have placed their children into an institution. Add: (a) National Council for Children Services to publish all duly registered institutions (d) Children Officers to have a list of the duly registered institutions to ensure children are not admitted in unregistered institutions.	guidelines on how to support child welfare programs, the policy should emphasize the importance of investing in family and community-based care programmes as opposed to institutional care. Punishment for the placement of a child into an institution should be targeted towards child traffickers and other individuals working to illegally place children into institutions and that parents, particularly vulnerable parents, should not be punished but rather informed and supported to maintain care of their child/children, in the case of them trying to place a child/child into an institution.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs
New Clause 66B	CWSK	The Bill is amended by inserting a new Clause 66B as follows; - 66 B. Consideration of application (1) On receipt of application made under this Section, the Council shall, within three months assess and	This amendment provides for the considerations/process of registration and licensing of CCIs.	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>determine;</p> <p>(a) whether there is a need for a Charitable Children's Institution in the proposed locality;</p> <p>(b) the suitability of the proposed location of the proposed Charitable Children's Institution;</p> <p>(c) whether the proposed institution conforms to the minimum standards and conditions set out in regulations;</p> <p>(d) whether the applicant is an adult of high moral character and integrity, capable of exercising proper care of, or guardianship over, a child or children; and</p> <p>(e) whether the applicant has the financial capacity to administer the proposed program or services and;</p> <p>(f) examine the documents submitted;</p> <p>(g) inspect and assess the facilities available for use in respect of the proposed institution.</p> <p>(2) Where a person or association, other than bodies corporate, proposing to establish a charitable institution for the care, protection, rehabilitation or control</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>of children shall submit to the Council a list of duly registered trustees.</p> <p>(3) The requirements specified in Sub-section (1) are in addition to and not substitution for, any other requirements specified under this Act.</p>		
New Clause 66C	CWSK	<p>Insert the following new Clause 66C Registration and Licensing of Charitable Children's Institutions</p> <p>(1) Where the Council is satisfied that the applicant meets the conditions for establishment of a Charitable Children's Institution, it shall enter the particulars of the institution in its register and issue the institution with a license in the prescribed form and shall notify the establishment of the Charitable Children Institutions in the gazette.</p> <p>(2) Where the Council is of the opinion that the application does not meet the conditions for the establishment of an institution, it may—</p> <p>(a) reject the application; Or</p>	<p>This amendment provides for the process of registration and licensing of CCIs.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(b) make its comments or recommendations thereon and forward them to the applicant.</p> <p>(3) An institution whose application has been commented upon in accordance with subsection (2)(b) may resubmit a revised application within a period of six months.</p> <p>(4) The Council shall keep and maintain a register of all approved Charitable Children Institutions.</p> <p>(2) Any person who-</p> <p>(a) admits a child to the care of a Charitable Children's Institution which does not have a license issued by the Council; or</p> <p>(b) operates a duly registered Charitable Children's Institution in any manner contrary to the provisions of this Act, 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.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 67- Requirement for registration of certain applicants	CWSK	Delete the clause	The provisions for registration and licensing of CCIs are merged as per Section 66A.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs
Clause 67-	World Vision	Amend requiring that all duly registered trustees of a charitable institution for the care, protection, rehabilitation or control of children MUST be persons of good moral standing, of high level of integrity and MUST produce certificates of good conducts from the government.	This will enhance compliance of Part (II) of the Bill on the Rights and Safeguards for the Best Interest of the Child.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs
Clause 67-	Evangelical Alliance of Kenya	let PBOs, Religious institutions to be registered as separate entities in their own right, not depending on the registration of the sponsor. The Director of Children services to maintain a register of the institutions.	there has been a moratorium on the registration of new churches since 2014. That means that many churches are operating with provisional registration.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs
	NCAJ	term	To correct a typo	The Committee agreed to the proposal and the justification.
Clause 68- Manager and staff	LSK Branch Nairobi	68 (2) (c) The 3 years' experience to head a Charitable Children's	This is an institution that deals with taking care of children in	The Committee rejected the Proposal and did not agree

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
of Charitable Children's Institution		Institution is not sufficient experience.	all facets of their lives. A little more experience would be necessary.	with the justification and observed that there was no merit in the proposal
	World Vision	Amend to include a clause requiring that all personnel assisting in the administration of a Charitable Children's Institution MUST possess a valid certificate of good conduct issued by the Director of Criminal Investigations	This will enhance compliance of Part (II) of the Bill on the Rights and Safeguards for the Best Interest of the Child.	The Committee rejected the Proposal and did not agree with the justification and observed that it was already a requirement under the clause
	CWSK	Delete the clause	These provisions are already provided for under the proposed clause 66A	The Committee rejected the Proposal and did not agree with the justification and observed that it was already a requirement under the clause
	Mr. Clement Oketch	2) (b). delete and recraft h section	First, there is no document known as 'certificate of good conduct' issued by the police. Police issue a clearance certificate. Secondly, this is a blanket clause that may not suffice here. The replacing clause should only indicate the requirement that an applicant must not have been convicted	The Committee rejected the Proposal and did not agree with the justification and observed that it was already a requirement under the clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 68- Manager and staff of Charitable Children's Institution	Evangelical Alliance of Kenya	68(2) (a) and(b) should be deleted. Instead, Any training even for ECD or other child related social service should suffice.	or committed any offence other than a traffic offence, that is punishable by a custodial sentence. The academic qualifications imposed on a person qualified to be a manager of a charitable children's institution is not practical. Anyone dealing with children needs to have, above all, a love for children and a willingness to be a stand in parent, selfless and giving.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child
Clause 68 Manager and staff of Charitable Children's Institution	Joining forces for all children	Amend to include a clause requiring that ALL personnel assisting in the administration of a Charitable Children's Institution MUST possess a valid certificate of good conduct issued by the Director of Criminal Investigations	This will enhance compliance of Part (II) of the Bill on the Rights and Safeguards for the Best Interest of the Child.	The Committee rejected the Proposal and did not agree with the justification and observed that it was already a requirement under the clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 69- Overriding objectives of charitable children's institutions	CWSK	Amend clause 69(1) by deleting the words appearing after the word "provide" and inserting the words, "temporary care and shelter" Clause 69 is amended by inserting a new sub clause (5) to read as follows; (5) The Charitable Children's Institution in consultation with the Director shall within a period of one year upon commencement of this Act, the provisions of Subsection (4) are adhered to.	The amendment is to provide time for compliance by the Charitable Children's Institution.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCI's
Clause 69 Overriding objectives of charitable children's institutions	LSK Branch Nairobi	(i) 69 (2) (b) Expound on the family-based placement (ii) Provide for reintegration back into the community (iii) Provide for measures to ensure continuity of the education of children under Charitable Children's Institution		The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child
	Evangelical Alliance of Kenya	Time limit is set at three years	However, another section should be added to set out under which circumstances an extension of this time may be considered on a case-by-case	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			basis. If it is impossible, impracticable for a child to leave an institution, rather than fall foul of the law, there should be exceptions created to act as a safety release valve for the institutions.	drafted in the best interest a child
Clause 69	Association for Alternative Family Care for Children	Clause 69(1) should read; The clause should read; The main objective is to provide temporary care for vulnerable children as a last resort, while facilitating family-based interventions through tracing, reintegration, foster care, adoption and family strengthening for children in contact with the institution Efforts and resources should be allocated specifically to building the capacity of family and community-based systems of care, as opposed to investing resources into attempting to improve the institutional system of care.	This objective is inconsistent with the main activities and purposes of an institution. It should reflect the object of its existence while putting into perspective the desired goal. An institution then should provide residential care, when appropriate for a child, but endeavour to have the child placed in a family environment promptly. The Institution can undertake preventative interventions by strengthening vulnerable families or curative interventions by providing temporary care. That temporal care can never be referred to as family-based care. Childcare is either institutional or family	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>based. Guidelines for the Alternative Family Care of Children in Kenya 2014 prescribes the role of Institutions in facilitating Family based care. UNGA resolutions 2019 ;every effort should be directed to enabling children to remain or swiftly return to the care of their parents or when appropriate close family members, and that where alternative care is necessary, family and community-based care should be promoted over placement in institutions; Institutionalization should not be the norm. In seeking to promote deinstitutionalization, CCIs should be required to develop reunification programs. Efforts and resources should be specifically directed towards building the capacity of family and community-based systems of care, as opposed to investing resources into attempting to</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 69(1)	UNICEF, Lumos Foundation and Hope and Homes for children joint memorandum	Add words ... community based 69. (1) The main objective for the establishment of charitable children's institution shall be to provide family-based and <u>community-based</u> care for all children in accordance with the national policy for the promotion and protection of the rights of the child to family-based and <u>community-based</u> care. To delete 69 (2) a, b,(3) and 4	improve the institutional system of care. The government policy and international recommendation is promotion of both family-based and community-based care of children NB. This objective can be 'picked and moved' to introduce clause 66. i.e. the entire objective of establishment of charitable children institutions	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child
Clause 69	UNICEF	Delete subclauses (1) and (2) Replace 'three years' with 'one year'	As explained above, children shall not be placed in charitable children institutions. These clauses have been moved to the start of clause 66 and therefore no need to repeat.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>69 (1)(a) A child shall not be placed in a charitable children's institution for a period exceeding one year</p> <p>Insert new paragraphs;</p> <p>(b) Depending on the compelling circumstances, the period of a child staying in a charitable children's institution may be renewed to a maximum period of 2 years, during which time a family based or community-based solutions will be sort.</p> <p>c) Should it be absolutely not possible for the child to be returned to the family and community arrangement, the child, if in a charitable children institution, shall be placed under the government supported institutional care, such as a rescue centre</p>	<p>International standards recommend 'shortest time possible' UN General Assembly -2019 resolution <i>Reaffirms that every effort should be directed to enabling children to remain or swiftly return to the care of their parents or when appropriate close family members, and that where alternative care is necessary, family and community-based care should be promoted over placement in institutions.</i></p> <p>It also compels the mandated agencies to action urgently on returning child to family within the shortest time possible.</p> <p>Moving children who cannot be returned to family into a government financed institution promotes the role of State and deters the transfer of government responsibility to non-state actors while at the same time addressing the</p>	<p>drafted in the best interest a child</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 69(3)	Association for Alternative Family Based Care for Children	Amend to read: Children placed in institutions of care shall swiftly return to the care of their parents or when appropriate close family members or alternative family care	How are “compelling circumstances” defined? How was the three-year time-frame selected and how can it be enforced? Placing a time period on a placement, without adequate alternative services in place may risk children being arbitrarily moved, placing them in a worse situation. The three-year time-frame is a long time and potentially detrimental to the health, well-being and development of younger children in particular. UNGA RESOLUTIONS 2019: Calls on States to develop and strengthen inclusive and responsive family-oriented policies and programmes for poverty reduction, also designed to promote and strengthen parents’ ability to care for their children, and to confront family poverty and social exclusion; Reaffirms that	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			every effort should be directed to enabling children to remain or swiftly return to the care of their parents or when appropriate close family members, and that where alternative care is necessary, family and community-based care should be promoted over placement in institutions.	
Clause 69	UNICEF, Lumos Foundation and Hope and Homes for children joint memorandum	<p>add a new sub-clause</p> <p>69 (2) The enrolment of a child in a Charitable Children's Institution's Child welfare programme and services shall be based on the child's need where—</p> <p>(a) the child has no immediate access to services needed: or</p> <p>(b) no State services to the child's parent, relative or guardian is not adequate to cover their needs.</p>		The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child
Clause 69(4)	UNICEF	Change numbering as 69 (2) Change clause to read as below:	Research has shown that there is potential for damage to the	The Committee rejected the Proposal and did not agree

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		A child below the age of three years shall not be placed in alternative care in an institution	<p>brain for children under 3 years when they are placed in residential care.</p> <p>For this reason, children below 3 years should not be placed in institutional care; rather, the government needs to put in place foster care mechanisms for this reason.</p>	with the justification and observed that the clause is drafted in the best interest a child
Clause 70- Certain institutions not to be deemed to be Charitable Children's Institutions	CWSK	Insert paragraph (f) as follows- (f) Temporary places of safety established by the Society	Temporary places of safety established by the Society are public in nature and are used by the Government to rescue children and young persons in need of care and protection including children with disability who are usually avoided by other institutions.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child and national policy on Places of Safety
Clause 70	UNICEF, Lumos and Hope and	Add a new clause and to appear first sequentially in subclause (1)	<p>Temporary Places of Safety are already exempted under Section 59 of the Children Act. The amendment is to align with the Act and Best Practices.</p> <p>This is to ensure that children rescue centers are not run by</p>	The Committee rejected the Proposal and did not agree

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Homes for children joint memorandum	<p>a) rescue centers established by the Cabinet Secretary under clause 64;</p> <p>Delete the word ‘<u>accommodated</u>’ and add sub-clause (a) , (b) (c) (d) (e) and (f) to sub-clause (2) as below</p> <p>(2) Without prejudice to the generality of sub section (1), a charitable children’s institution may, with the written approval of the Council, provide child welfare programme and family and community programmes designed to-</p> <p>(a) promote and strengthen parent’s ability to care for their children;</p> <p>(b) mitigate the effect of family poverty, and to prevent social exclusion, prevention of separation</p> <p>(c) provide parents with a non-residential safe place for care and protection of children whilst they attend to other family needs and this may include children’s day care centre,</p>	<p>non-state actors but by government. It is for purpose of being clear.</p> <p>Charitable children institutions will not provide accommodation/residential care</p>	<p>with the justification and observed that rescue centers will only be established by the CS</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(d) provide short-term relieve for parents and guardians caring for children with disabilities such as community based non-residential respite centers (e) to provide specialized services for children with disabilities such as therapeutic services (f) to provide community-based health care service (g) to provide community-based education services within the provision of Basic Education Act.		
Clause 71-change of user of institutions	CWSK	Amend Clause 71 by deleting the words "Chief Executive Officer" and substituting with the words "Council" whenever it appears	The Council is the governing body of NCCS and therefore all applications should be made to the Council	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
Clause 71	Association for Alternative Family Care for Children	Amend to read; Any Charitable Children's Institution may change user of institution by making an application to the Chief Executive Officer for approval of the proposed change at least six months prior to the date proposed change is to take effect,	When implementing Care reforms, available funds and resources that are meant for children should not be done away with but rather be redirected towards family and community-based interventions. So, when the Bill	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCTs

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		provided that the proposed change is towards a community-based child or family welfare program and not to another institution-based program. Subsequent proposed changes to the section With a change in sub-section (1) then following subsections will need to be well aligned 2(a),2(b) 71, and Sub section 3.	makes a provision for CCI to arbitrarily change user, it means the government and partners will have to seek for alternative funds and resources to finance family based and community services. However, these available funds and resources can be ring-fenced, by ensuring that they are redirected to appropriate family and community-based initiatives. It would be a contradiction of sorts if a CCI is allowed to divert resources to a business or another institutional based program.	
Clause 70	UNICEF, Lumos and Hope and Homes for children joint memorandum	Delete 2(a) Amend 2(b) and add the words underlined below to read (b) transfer the children enrolled in the <u>child welfare programme and services</u> to another institution; and	CCIs will not be accommodating children so this clause does not apply here. CCIs will be offering non-residential child welfare programmes and services	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCIs

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 71	LSK Branch Nairobi	Provide for and expound on reason that can lead to the transfer of a child from one Charitable Children's Institution to another		The Committee noted the Proposal and the justification and observed that the discretion should be addressed in regulations
Clause 72- Criteria for approval of programmes	Association for Alternative Family Care for Children	The clause should read; A Charitable Children Institution, other organization or person shall not administer any child welfare program under this Act without prior written approval of the Council	In the efforts to align policies to be supportive to family and community-based care of children and implementing care reforms, it is important to empower other actors in providing family based or community interventions that the country aspires to. This clause only allows Charitable Children Institutions to implement Child Welfare programs. In order to provide an array of services and allow communities to take part then other actors who provide non-residential interventions should also receive approval from the council. Some of the services would include foster care focused service, family strengthening and support services. This change would	The Committee noted the Proposal and the justification and observed that is already accommodated in the clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			facilitate the Council in its role of coordinating and regulating all child welfare programs that are administered by other organisations and not necessarily Charitable Children Institutions only.	
Clause 73	LSK Branch Nairobi	73 (1) (a) Specify who can give the interim order. Whether a police officer, children officer or court. If it's only courts provide for what happens if a child is rescued at night, over the weekend or on a public holiday		The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child
	UNICEF, Lumos and Hope and Homes for children	Delete the entire clause	Charitable children institutions will not admit children as proposed in these amendments. This clause is now placed under 64 for Children Rescue Centres	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs
Clause 73	UNICEF	Amend the clause to read; 73(2) (a) Where a child is admitted to a Charitable Children's Institution in accordance with subsection (1), the Charitable Children's Institution shall inform the Children officer	The recommended change removes the responsibility of instituting a court proceeding from a charitable children institution to the Director who has the statutory responsibility of care and protection of	The Committee noted the Proposal and the justification and observed that all reporting times will be reduced to 24 hours.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>within 72 years of admission of the child in their institution.</p> <p>(b) Upon receiving this information, the Children Officer shall conduct a professional assessment and investigation to determine if the child needs to be returned to parents or placed in alternative care</p> <p>(c) should the Director determine the child need to remain in the charitable children institution to provide time for further social inquiry, the officer will institute a care proceedings under section 152 of this Act within seven days of receiving notification from Charitable Children Institution.</p> <p>(d) A Charitable Children's Institution that receives a child into its care shall produce the child before the Court, as may be required, without delay</p> <p>(e) the Court or the Director will make the decision on returning the child to family or placing alternative care within the principals of this Act</p>	<p>children and should therefore be on the lead.</p> <p>Secondly, the new clauses will act as 'gatekeeping' by requiring the Children Officer to conduct professional assessment," . Professional assessment requires that children return to family unless there is harm to the child and in which case , placement in alternative family-based care is prioritized.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 73	Association for Alternative Family Care for Children	<p>Amend to read;</p> <p>73(1). A Charitable Children's Institution may admit Placement of in a child to its care only if—</p> <p>(a) in an emergency situation, a 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; or</p> <p>(b) the child is referred to the institution by way of an interim care order or a care order.</p> <p>(2) Where a child is admitted to a Charitable Children's Institutions in accordance with subsection (1)(a), the Charitable Children's Institution shall immediately notify the Director, and the Director shall institute care and protection proceedings under Part X of this Act within seven days of the admission.</p> <p>(3) A Charitable Children's Institutions shall not admit a child into its care without a Court care order specifying, among other things, the maximum period for</p>	<p>A children's officer should be consulted at all times, on any admissions to the CCI for purposes of regulation and accountability</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to placement of child in a CCI during an emergency.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>which the child shall be accommodated in the home.</p> <p>(4) In determining whether or not to issue a care order under subsection (3), the Court shall admit and consider a report made by a Children's Officer in accordance with section 79.</p> <p>(5) A person shall not remove or transfer a child from a Charitable Children's Institutions to another home without leave of the Court or a direction from the Director exercising his or her authority under Part VI.</p>		
Clause 74- Director to monitor the well- being of children.	Association for Alternative Family Care for Children	The bill should put a provision to ensure that effective monitoring and evaluation systems are put in place to assess the well-being of children during and after their time in an institution, in accordance with the Guidelines for the Alternative Family Care of Children. The well-being of the child should continue to be monitored after the child has left the institution to ensure that the child is adapting well to their new form of care and that there are no	Visits are undertaken as part of a fully developed inspection process carried out at specified regular intervals using pre authorized methodology.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child to enable the Director to monitor the well-being of children.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>child protection or well-being concerns highlighted around their new placement.</p> <p>Recommendation/s: To ensure that effective monitoring and evaluation systems are put in place to assess the well-being of children during and after their time in an institution, in accordance with the Guidelines for the Alternative Family Care of Children.</p>		
Clause 74(4)	Association for Alternative Family Care for Children	Replace the authorized officer, with the children's officer.	<p>There is disconnect between this section and section 66 (3) hence need to relook at the clause. The duration of a child placement in an institution needs to be aligned and shortened to prevent social exclusion or discrimination of children.</p> <p>UNGA RESOLUTIONS: Calls on States to strengthen the regulatory system and put in place rigorous 'gatekeeping' procedures to ensure alternative care is only used</p>	The Committee noted the Proposal and the justification and observed that the Bill shall delete the expression approved officer and replace with authorized officer

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>when clearly necessary and in an appropriate manner, and that registration, licensing and other oversight mechanisms are in place to guarantee the quality of alternative care and that children's placements are regularly reviewed.</p> <p>The Director has the duty to ascertain the steps and even make reports, this cannot be left to every authorized officer. It would mean that no one would be responsible for the task. Section 66 (3) talks about steps to be followed for the approval of a CCI application. Consideration of harms of institutionalization needs to be considered during placement of children in the institutions of care. UNGA Resolutions, 2019: Calls on States to develop and strengthen inclusive and responsive family-oriented policies and programmes for poverty</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			reduction, also designed to promote and strengthen parents' ability to care for their children, and to confront family poverty and social exclusion;	
Clause 75- Appointment and powers of approved officers	State department	Delete the clause	the deletion is to address potential conflict with authorized officer who are mandated with the same function	The Committee noted the Proposal and the justification and observed that the Bill shall delete the expression approved officer and replace with authorized officer
	CWSK	Delete the clause	This is a function of a children officer. Under the Children Act, children officers are mandated to carry the court functions as approved/gazetted officers on behalf of CCLs. By appointing officers of CCLs as approved officers will not be in the best interest of a child for lack of case supervision and control.	The Committee noted the Proposal and the justification and observed that the Bill shall delete the expression approved officer and replace with authorized officer
Clause 75(1)	Association for Alternative Family Care for Children	Amend to read; The Director with the approval of the council and by notice, in the Gazette, appoint one or more	Approved officers, in the CA 2001 Section 66, are Volunteer Children Officers or Child Protection Volunteers as currently referred to. Prior to	The Committee noted the Proposal and the justification and observed that the Bill shall delete the expression

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		persons to be approved officers to further the purposes of the directorate relating to the care , protection and control of children and for the purposes of the Act'	the policy direction and implementation of care reforms, CCI had power to appoint these officers to assist the institution. In the interest of care reforms and prioritizing family and community-based programmes, it is paramount to take volunteer services to the community and family-based options. UNGA Resolutions, 2019: Calls on States to develop and strengthen inclusive and responsive family-oriented policies and programmes for poverty reduction, also designed to promote and strengthen parents' ability to care for their children, and to confront family poverty and social exclusion;	approved officer and replace with authorized officer
Clause 75	Association for Alternative Family Care for Children	(2) Replace CCI with ' the Director or Children's Officer (4) Replace authorized officer with children's officer	Approved officers or Child protection volunteers are under the charge of the Director	The Committee noted the Proposal and the justification and observed that the Bill shall delete the expression approved officer and replace with authorized officer

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 76	State Department	Replace the word "Director" wherever it appears with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 77-Duty to notify the Council	CWSK	Delete the words "chief executive officer" wherever it appears and substitute therefor the word "Council"	The Council is the governing body of NCCS and therefore all applications should be made to the Council.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
Clause 78-Review of child welfare programmes	CWSK	Amend Clause 78 (1) by- a) deleting the words "Chief Executive Officer" and substituting with the words "Council" whenever it appears b) inserting the words "by a Charitable Children Institutions immediately after the words 'welfare programmes'"	The Council is the governing body of NCCS and therefore all applications should be made to the Council. The proposed amendment will ensure that only duly registered Public Benefit Organizations or Charitable Children Institutions implements child welfare programs and also to avoid unscrupulous persons masquerading as implementers	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
	Association for Alternative Family Care for Children	Amend the Marginal note to read: Review of Child Welfare Programs and Charitable Children Institutions' Add a definition for 'child welfare programs' in Section 2 of this Act as	This section should speak to both welfare programs and Charitable Children Institutions. In practice, it has been used to litigate matters of Charitable Children	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>'family and Community focused interventions for children that are in charitable institutions, residential situations and may be implemented by any person, corporate, faith-based organisations, not-for-profit organisations or Charitable Children Institution.</p> <p>Add 'Overriding objectives should be; strengthening families by providing psychosocial support, household economic strengthening, tracing and reintegration of children, life-skills, parental training, outreach interventions to children at risk of separation from families and connected purposes.</p> <p><u>Subsequent proposed changes</u></p> <p>If there is concurrence on amending the section numbers, then a separate section for child welfare programs and CCI respectively should be provided for. This will make it precise. However, if the numbering has to remain, then each clause should be reworked to refer to both</p>	<p>Institutions, but child protection practitioners have found it to be most problematic. In seeking to regulate operations of CCI, this section refers to Child welfare programs instead. In dealing with Child welfare programs, it restricts the operation of programs to Charitable Children Institutions. So, it neither serves Charitable Children's Institutions nor Child Welfare Programs. The proposed changes seek to address both the review of welfare programs as well as Charitable Children Institutions.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		entities, Child Welfare Programmes and Charitable Children Institutions.		
Clause 79- Deregistration of Child welfare programme	CWSK	Amend clause 79(1) by inserting the words "by Charitable Children's Institutions" immediately after the words "welfare programmes"	The proposed amendment will ensure that only duly registered body or Charitable Children Institutions implements child welfare programs and also to avoid unscrupulous persons masquerading as implementers	The Committee rejected the Proposal and did not agree with the justification and observed that the programmes will address all children institutions
Clause 79	UNICEF, Lumos and Hope and Homes for children	79(4) Replace the word 'accommodated' with 'enrolled'. new clause to read 79(5) Delete sub-clause (a), (b), (c) and new clause to read- 79 (5) Upon the deregistration of a child welfare program in accordance	A child welfare programme run by Public Benefit Organization or Charitable children institution in accordance with clause 77 (1) will not operate a residential/accommodation service but will enrol children for non-residential family and community-based programmes and services The deletion is because child welfare program will be non-residential and sub-clause (a), (b) and (c) connotes that the children are accommodated.	The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs it is important to take cognizance of existing Charitable Institutions that currently accommodate children

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		with this Act, the Director shall take such steps as may be necessary to— (a) take such necessary steps, including prosecution, to secure appropriate penal sanctions against the manager in accordance with section 78(5); or (b) take such other action as may be necessary for the protection of the children. Amend 79(7) The Cabinet Secretary shall make regulations to provide for procedure of continued support to children enrolled in child welfare programme that become deregistered	The words “reintegration” and “transfer” connote that the children are accommodated as part of child welfare programme	
Clause 79	Association for Alternative Family Care for Children	The title should read: Deregistration of Child Welfare Programmes and Charitable Children Institutions’ Subsequently all the sub-sections should address steps on deregistration of both Child Welfare		The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>Programmes and Charitable Children Institution.</p> <p>Amend Clause 79(6) to read;</p> <p>Nothing in this section shall be construed to as limiting the Director from having access to the institution and rescuing any child or children for further interventions as provided for in this Act, before issue or expiry of the notice</p>	<p>There is a link between the current section and section 71 hence the need to relink at it.</p> <p>Similarly, as in preceding Identified on 'review of Child Welfare Programmes', this section is limited to deregistration of Child Welfare Programmes, when it should also be speaking to Charitable Children's Institutions</p>	
NEW CLAUSE	UNICEF, Lumos Foundation and Hope and Homes for children joint Memorandum	<p>Draft a clause to include the below</p> <p>-the current registered charitable children institutions shall transition to provide non-residential child welfare programme guided by the</p>	<p>This is a recommended administrative solution to dealing with children who are in current charitable children institutions who are estimated to be 45,000 children</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that there will be a transitional provision to regulate closing of CCLs</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>National Child Care Reform strategy (2021-2031)</p> <p>- the Cabinet Secretary shall support the charitable children institutions to trace the families of children in their care and support their reintegration</p> <p>- where a family of a child is not be found, the Cabinet Secretary with support of Director , shall provide alternative family-based options as provided in Section 11 9b) of this Act</p> <p>- the transition period shall be a maximum of 5 years effective from the date of enactment of this Act.</p>		
Clause 80- Establishment of children's remand homes	CWSK	<p>(a) insert a new Sub-clause 3 as follows:</p> <p>(3) The Cabinet Secretary shall ensure that remand homes established under sub-section (1) are of structural sound and the facilities are maintained as per the Public Health Act (Cap. 242);</p>		<p>The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child in respect to establishment of children's remand homes</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(b) by re numbering the current Sub-clause 3		
	Clement Oketch	<p>The Cabinet secretary should only establish such a facility with the recommendation of the County Committee (unless it is intended that the Council concerns itself only with charitable children's institutions) and the concurrence of the National Council on the Administration of Justice (JSC Act Sec 39).</p> <p>Sec 80 (3) the agreement to be entered into by the Director and the manager to provide a section of the institutions to be used as a remand home need to be regulated.</p> <p>80 (5) the powers contemplated for the Director may be in conflict with the function of the Council if the institutional is duly registered by the Council.</p>	<p>Children in conflict with the law when in a remand facility are state guests and should not be held by third parties. Who shall meet Page 5 of 10?</p> <p>the cost of maintenance and how accountable can they be held for escape or such an anomaly or other serious events?</p> <p>In their regard, the actions of the Director should be approved by the Council, again, unless the Council is contemplated to act only with non-state actors. In any event, the powers of the Director, as a person, should be fettered by a committee otherwise it may be misused and abused.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 80	UNICEF	<p>New provision and renumbering: The Cabinet Secretary may, by notice in the gazette, establish such children's remand homes as the Cabinet Secretary considers necessary for the accommodation, care and protection of children in conflict with the law, and the Cabinet Secretary shall facilitate the provision in such homes suitable facilities for children with special needs.</p> <p>New clause: (2) The purpose of remand homes is to hold children in conflict with the law as a matter of last resort for their care and protection during trial before a verdict or placement. (3) A remand home shall have separate sections for children of different sexes, age categories, needs and risks. (4) The manager of any public institution, other than a prison, may enter into an agreement for the use of that institution or any part thereof as a children's remand home on such</p>	<p>It is proposed to include the purpose of remand homes to address the current practice where children in need of care and protection are also placed in remand homes which should not be the case.</p> <p>Children in need of care and protection should be placed in family- based alternatives such as kinship family, foster care or under guardianship arrangement. If there a family is not available to place the child in need of care and protection, then they should be placed in a rescue centre or a charitable children institution</p>	<p>The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		terms as may be agreed between the manager and the Director		
Clause 81- Establishment of Rehabilitation Schools	State department for Social Protection	delete 1(a) and (b) 81(3) Amend by deleting the expression "and (2)" 81(5), 81(6), 81(7), 81(8), 81(9) to be deleted	Rehabilitation programmes' for children has been provided for in statutory rehabilitation schools. The provision relates to sub- clause (1) and not sub-clause (2) The process applies to gazette schools under clause 81 which do not include private schools	The Committee agreed to the proposal and the justification to correct mis referencing and clean up clause 81 the qualification in sub clause 5 means the intention to have rehab facilities for other purposes other than those service following conflict with the law

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	NCAJ	Include the word “and rehabilitation” after the words “care and protection”	This shall ensure that rehabilitation schools include rehabilitation in their programs	The Committee agreed to the proposal and the justification.
	Legal Sister	81 (5a, b) Where the Director is dissatisfied by the condition or management of a rehabilitation school, take such disciplinary action against the manager as the Cabinet Secretary may determine	The Director must not be subject to corruption to limit integrity in the supervision of the rehabilitation School. There should be a section after subsection (b) to tighten the mechanisms to limit corrupt behaviours of service providers in rehabilitation sectors including the oversight bodies like the (office of the Director). This then will guide the integrity and follow-ups with the subsection (6), (7), (8), (9), and (10).	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to the power of the Director to regulate establishment of rehabilitation schools
Clause 81	UNICEF	Delete clause 81(2) to (8)	These clauses give the power for a private person to establish rehabilitation schools. The definition of a rehabilitation school under section 80 is that it is meant for children in conflict with the law who have a verdict of guilt passed.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to the power of the Director to

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Privatization of these institutions is not recommended. The government should be the sole manager of these institutions and should not privatize custodial measures for children due to the vulnerability and care needed for this category of children.	regulate establishment of rehabilitation schools
Clause 81 and 89	UNICEF	Delete clause 81(2) and (3)	The Bill continues to permit children in need of care and protection to be placed in closed "rehabilitation schools" for up to 3 years (s. 81, s.154). Section 89 makes it clear that this is a form of "confinement". This is not an appropriate form of alternative care for children who are not offenders. As punishment for absconding, the child can, at the discretion of the Director, have their placement extended or be transferred to a Borstal operated by the Prisons Department (s.87)	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to the power of the Director to regulate establishment of rehabilitation schools

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Mr. Clement Oketch	Clarity need to be made with regard to section Secs 81 and 82	The disciplinary procedures in 80 would appear to apply in Sec 81 yet if the staff so being disciplined are civil servants, there disciplinary process is as per the PSC HR manual	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to the power of the Director to regulate establishment of rehabilitation schools
Clause 81(2)	Association for Alternative Family Care for Children	Amend to read; Subject to subsection 3 any person may with the approval of the Cabinet Secretary provide support to an already established government and private institution. General remarks All sub sections in this section should be reworked to support care reforms and family and community-based care for all in align with National Care Reform Strategy for children	Calls on States to strengthen the regulatory system and put in place rigorous "gatekeeping" procedures to ensure alternative care is only used when clearly necessary and in an appropriate manner, and that registration, licensing and other oversight mechanisms are in place to guarantee the quality of alternative care and that children's placements are regularly reviewed;	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to the power of the Director to regulate establishment of rehabilitation schools
			This section appears the same way in the Children Act 2001. In the light of Care reforms, allowing any person to establish a rehabilitation school	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			is opening gaps for more institutional care by individuals. The Children's Bill should help leverage on already existing institutions, and not encourage establishment of more institutions.	
Clause 81(4)	Association for Alternative Family Care for Children	Amend to read; The Director shall facilitate placement of a child in the most appropriate alternative care option, after having exhausted the option of reintegrating the child to his or her family	Children in a rescue centre may have relatives and are required to first be assisted for reunification and reintegration or guardianship within their family. UNCRC Placing children in residential institutions so they can access healthcare or education denies them their right to live with their family and to be included and participate in community life. Article 2 emphasizes the rights of all children, irrespective of background or disability, to access all their rights.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest of a child with respect to the power of the Director to regulate establishment of rehabilitation schools

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 82- Rehabilitation Schools to establish separate sections	Association of Play Therapy Kenya	We recommend an addition that every rehabilitation school shall have a resident counsellor/psychologist in subclause (1)	UNGA resolutions 2019; emphasizes the need to put every effort to enable children to remain or swiftly return to the care of their parents or when appropriate close family members, and that where alternative care is necessary, family and community-based care should be promoted over placement in institutions;	The Committee agreed to the proposal and the justification.
	Mr. Clement Oketch	I suggest that this section be amended to have separate rehab school for boys and girls. This section also conflicts with Sec 83 which insinuate that there may be separate schools for boys and girls. Need to harmonize the sections	The children in conflict with the law committed to this school are deemed to have serious discipline problems and beyond parental control. By proposing that they can be in one facility (boys and girls) but separately in section is to court trouble. They are likely to perpetrate the delinquent	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to establishing separate sections in Rehabilitation Schools

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			behaviour if they were to be in the same facility.	
	State Department.	Amend sub-clause (2) by deleting paragraph (d) and replacing with the following new paragraph: (d) separate sections for various risk categories" Delete director wherever it appears and substitute with secretary	To accommodate all other risk categories Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 84- Leave of absence from school	Mr. Clement Oketch	delete	this should not be left to the whims of the manager. There should be a rider to the effect that leave of absence shall not be granted unless a case conference of more than three officers (Manager or deputy manager/case worker and house keeper) has been held. Case conference is a very vital tool in case management and	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to the power of the Director to regulate managers of rehabilitation schools

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			thus should also be defined in the interpretation section.	
	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 85	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 86- transfer and supervision on release	Mr. Clement Oketch	I propose to have the word 'in conflict with the law' come after the word 'Child'.	The reason being that we shall have two sets of rehabilitation schools, one for children in conflict with the law and the other for those in need of care and protection. Probation officers do not handle child welfare matters. So clarity need to be made. Children in need of care and protection who leave institutional care placement need to be supervised by children officers who are basically child welfare officer while those in conflict with the law need to be supervised by probation officers. That distinction is necessary to avoid back-passing, blame game, for	The Committee rejected the Proposal and did not agree with the justification and observed that the expression includes children in need of care and protection which include children in conflict with the law

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			planning and resource distribution/allocation.	
Clause 86& 87	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 88- Removal to Health Institution	Association of Play Therapy Kenya	We recommend that – a psychologist be added to the list of people who can recommend that a child in a rehabilitation school be removed to a health facility.		The Committee agreed to the proposal and the justification.
Clause 89	State Department	Replace the word "Director" with the word "Secretary" Amend sub-clause (1) by deleting the word "tenor" and replace therefor the word "tenure"	Children's Services is now a Directorate headed by the Secretary and not director This is an editorial issue	The Committee agreed to the proposal and the justification.
Clause 90- Supervision of institutions	CWSK	Amend clause 90(4) by deleting the word "foster care or adoption" and inserting the words "appropriate alternative family care"	The provision limits the Directors power to place facilitate placement of children to other forms of alternative family care including	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			reintegration, foster care, guardianship, kinship care, kafaalah and adoption as the last resort.	
	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 91- Inspection Committee	Association of Play Therapy Kenya	add probation hostel and Borsial institution to be among the statutory institutions that should be inspected by the inspection committee		The Committee agreed to the proposal and the justification.
	Legal Sister	91(2) Insert a criteria to appoint the inspection committee	The criteria should be put in place to appoint the inspection committee. The criteria set should consider children rights Professional and Education Backgrounds)	The Committee agreed to the proposal and the justification.
	State Department	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 92	Association for Alternative Family Care for Children	Amend the marginal note to read; The regulation, administration and supervision of children institutions	Current Policy direction and practice around children's institutions is towards reducing the uptake of institutional care of children. The government	The Committee rejected the Proposal and did not agree with the justification and observed that Proposal is not unclear as the clause is on

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			has led by issuing a suspension on registration of new Charitable Children Institutions hence there is need to shift from establishing more institutions to regulating the current number of institutions	regulation making by the Cabinet Secretary
New Clause 92A	CWSK	<p>Insert Clause 92A as follows:-92A. Powers of Cabinet Secretary over charitable children institutions</p> <p>(1) Notwithstanding any other provision of this Part, the Cabinet Secretary may direct the Council to cancel the registration of, or to close down, a charitable children institution where —</p> <p>(a) the lives of children in such institution are in danger or where their continued stay therein is likely to endanger their wellbeing;</p> <p>(b) the institution or a person involved in the management of such institution in unfit to provide care or protection to the children;</p> <p>(c) it has been established that the</p>	<p>The Government is overall in safeguarding the interest of the children as provided for in the Constitution. The Cabinet Secretary being responsible for children matters on behalf of the Government should be able to exercise power of closure/rescue of children in CCIs in case the lives of children in such institutions are in danger.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest a child with respect to temporary closure of a charitable children institution.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>institution does not serve the best interest of the children therein;</p> <p>(d) the institution or a person involved in child trafficking and child abuse;</p> <p>(e) after an assessment by the Council, it is established that the institution no longer serves the original purpose;</p> <p>(f) the institution has engaged in and not limited to malpractice, fraud, and maltreatment of children;</p> <p>(g) after an inspection by the Council, it is established that the environment is not fit for habitation of children; and</p> <p>(h) such institution, is in contravention of the Constitution, the Convention on Rights of the Child, the African Charter on the Rights and Welfare of the Child or any other law or international treaties or conventions to which Kenya is a party.</p> <p>(2) The Cabinet Secretary may pursuant to subsection (1) order the</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		suspension of the registration of new charitable children institutions.		
New Clause 92B	CWSK	That the Bill is amended by inserting a new Clause 92B as follows; - 92B. Caretaker Committee. Where the Cabinet Secretary makes a directive under section 72A (1), the Cabinet Secretary shall appoint a Committee of suitably qualified persons to oversee the process of closure and the relocation of the children in the concerned institution.	The amendment is to provide for the procedure of closure for institutions under Clause 92A	
Clause 93- Designation of the Children Court.	BCCRN	Amend clause (1) to read "The council shall" The following to be involved in the Children's Court 1. P.O dealing with matter 2. deputy director public prosecution 3. Children prosecutor appointed by the director of public prosecution		The Committee rejected the Proposal and did not agree with the justification and observed that This clause relates to designation of children courts by the Chief Justice

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 93	BCCRN	Subclause 4 is missing hence from 3 to 5		The Committee agreed to the proposal and the justification.
Clause 94- Jurisdiction of Children's Court.	State department	Amend sub-clause (7) by deleting the words "and substitute for the sentence an order under section 148 (2)"	words "and substitute for the sentence an order under section 148 (2)" The phrase is not related to the sub-section and therefore misplaced	The Committee agreed to the proposal and the justification.
Clause 96	State department	Amend paragraph by replacing the word "Director" wherever it appears with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	CWSK	The Bill is amended under Clause 96(4)(b) by inserting the words "or an officer of the Society" immediately after the word "officer"	The Society is one of the institutions responsible for care and protection of children under this Act and one of its functions therefore is to represent children in need of care and protection in court; hence the proposed amendment to include an officer of the Society	The Committee rejected the Proposal and did not agree with the justification and observed that Role of society Not equal to the Director

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 98- General principles with regard to proceedings in Children's Court	Association for Alternative Family Care for Children	In sub-clause 2(b) add "or chronic illness" after "disability"	Children with chronic illnesses are excluded from most safeguards.	The Committee agreed to the proposal and the justification.
Clause 99- Provision of legal aid in certain cases	National Centre for Competence Research in North	Amend by deleting sub-clause (1)	There should be a provision for pro-bono lawyers for children in conflict with the law	The Committee rejected the Proposal and did not agree with the justification and observed that there is need to consider amending. The intention was to ensure that a child does receive legal aid but where no legal aid is afforded, then a child over 16 years should not be delayed in the judicial process as they can articulate own issues and should be afforded an opportunity to do so. The clause can be recast to capture the intention
	Office of the DPP	To delete	A child is defined as a person below the age of 18. As such children aged 16 and 17 years should benefit from all rights accruing to a child. Safeguards are put in place to protect	The Committee rejected the Proposal and did not agree with the justification and observed that there is need to consider amending. The intention was to ensure that a

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			children due to their level of development. Legal representation should be a matter of right for all children.	child does receive legal aid but where no legal aid is afforded, then a child over 16 years should not be delayed in the judicial process as they can articulate own issues and should be afforded an opportunity to do so. The clause can be recast to capture the intention
	State Department of Social Protection	delete	Inconsistent with the best interest of the child.	The Committee rejected the Proposal and did not agree with the justification and observed that there is need to consider amending. The intention was to ensure that a child does receive legal aid but where no legal aid is afforded, then a child over 16 years should not be delayed in the judicial process as they can articulate own issues and should be afforded an opportunity to do so. The clause can be recast to capture the intention

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Kenya Doctors	99(1) delete 99 (2) Delete "who has not attained the age of sixteen"	18 years is a compromise in brain development. We should treat children as children base on the definition of child.	The Committee rejected the Proposal and did not agree with the justification and observed that there is need to consider amending. The intention was to ensure that a child does receive legal aid but where no legal aid is afforded, then a child over 16 years should not be delayed in the judicial process as they can articulate own issues and should be afforded an opportunity to do so. The clause can be recast to capture the intention
Clause 99	UNICEF	Revise provision to provide for legal representation to apply to children under 18 years, not sixteen years.	Not in line with the CRC and international standards	The Committee rejected the Proposal and did not agree with the justification and observed that there is need to consider amending. The intention was to ensure that a child does receive legal aid but where no legal aid is afforded, then a child over 16 years should not be delayed in

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				the judicial process as they can articulate own issues and should be afforded an opportunity to do so. The clause can be recast to capture the intention
Clause 100- Power of the court to order production of reports	Legal Sister	100(2)A to read Where the Court orders or summons an expert pursuant to section 100(1) parties/any party to the proceedings shall be given an opportunity to submit their views before the court makes an order	The Court while conducting its proceedings and calls for a report <i>suo moto</i> at times parties are not privy to the contents of the report, this goes against the provisions of a fair hearing/trial	The Committee agreed to the proposal and the justification.
	Clement Okeich	In the current circumstance, courts order for both probation and Children officers report. We would wish that specialization be promoted such that probation officers will only prepare reports for children in conflict with the law while children officers to do those for children in need of care and protection. Other experts may be called to provide reports for any off the two categories	Again, this will remove wastage of resources, over burdening the child and parents and significant others being interviewed over and over by the different people on the same subject. It is not working well now and this need to be addressed.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal can be provided in rules under clause 103

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 101- Appointment of Guardian ad litem	Legal Sister	<p>Delete and retain the provision as it was under the current Act Section 79</p> <p>Appointment of a <i>guardian ad litem</i></p> <p>A court before which a child is brought, and especially where that child is not represented by an advocate, may appoint a guardian <i>ad litem</i> for the purposes of the proceedings in question and to safeguard the interests of the child.</p>	<p>The Article as it is in the bill is likely to create confusion for the end-user. Let all children benefit from this and should the court deem it fit to have one appointed as per the age it will direct so</p>	<p>The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal on fit persons</p>
	State Department of Social Protection	<p>Amend sub-clause (2) by deleting the words "who has not attained the age of sixteen"</p> <p>Amend sub-clause (4) by replacing the word "Director" with the word "Secretary"</p>	<p>Inconsistent with the best interest of the child. To be in line with the age of criminal responsibility</p> <p>Children's Services is now a Directorate headed by the Secretary and not director</p>	<p>The Committee agreed to the proposal and the justification.</p>

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 102- Appeals	Legal Sister	Delete and retain section 80 of the Current Act Appeals Unless otherwise provided under this Act, in any civil or criminal proceedings in a Children's Court, an appeal shall lie to the High Court and a further appeal to the Court of Appeal.	The principles on appeal of the first and second instance are already laid out no need to have it explained	The Committee rejected the Proposal and did not agree with the justification and observed that There is no mischief being addressed
Clause 103-Rules	Mr. Clement Oketch	The rules would include the appointment of magistrates who are deemed suitable to handle children cases.	Not all magistrates are passionate, like or can have the patience to handle children matters.	The Committee rejected the Proposal and did not agree with the justification and observed that The Judicial Service Commission is the independent Constitutional Commission that is responsible for recruitment of Judicial Officers and the qualifications and considerations for appointment are determined pursuant to Article 172 of the Constitution and the

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				provisions of the Judicial Service Act.
PART VIII— CUSTODY AND MAINTENANCE	National Center for Competence Research in North	Mandatory age for separation from parents	There should be included in the act a mandatory age below which a child must not be separated from the parent be it even for purposes of attending a boarding school or a vocational training.	Rejected. The decision should be based on the best interest of the child
Clause 104— Custody, care and control.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend sub-clause (4) by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
			The proposed clause clarifies that persons should make certain that the views of the child are independently given and that the child is not under duress nor being unduly influenced. The clause also speaks to the need to ensure continuity in the care and control of the child.	Rejected. The proposals are subjective and abandon the approach of regulating custody and control in the best interest of the child.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 105-Custody order.		<p>Insert new clause 114 to read:</p> <p>(1) The following persons may apply to a court for a maintenance order for the child-</p> <p>(a) a parent of the child;</p> <p>(b) the guardian of the child</p> <p>(c) the child, by his next friend;</p> <p>(d) a social welfare officer; or</p> <p>(e) a relative of the child.</p> <p>(2) The application for maintenance order may be made against</p> <p>(a) a father or mother including an adopted parent</p> <p>(b) any other person with legal responsibility of the child</p> <p>(3) An application for maintenance order may be made against the alleged biological father to the court in respect of the child-</p> <p>(a) by the expectant mother, at any time before the birth of the child;</p> <p>(b) at any time after the birth of the child</p>	Capacity to sue is by an adult	The proposal is in the best interests of the child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(4) A court shall refuse to grant a maintenance order unless it is satisfied that-</p> <p>(a) there is a reasonable cause to believe that the man alleged to be the father of the child is in truth and in fact the father of that child and that the application for a maintenance order is made in good faith and not for any purpose of intimidation and extortion; and</p> <p>(b) the man alleged to be the father of the child has been requested by or on behalf of the applicant, to make provisions for maintenance of the child and has refused or neglected to provide maintenance or has made inadequate provisions.</p> <p>(5) The application to the court may be made-</p> <p>(a) before the child is born;</p> <p>(b) after the death of the father or mother of a child;</p> <p>or (c) before a child is eighteen years of age or with special leave of the court, after the child has attained eighteen years.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(6) The following shall be considered by a court as evidence of parentage-</p> <p>(a) any marriage performed in accordance with the Marriage Act;</p> <p>(b) the name of the parent entered in the Register of Births kept by the Registrar-General;</p> <p>(c) performance of customary ceremony by the father of the child or</p> <p>(e) DNA results.</p> <p>(7) The court may order the alleged parent to submit to a medical test and shall, on the basis of the evidence before it, make such order as it considers appropriate.</p> <p>(6) Without prejudice to subsection (3), where the evidence of a mother or independent evidence cannot be corroborated by other evidence available to the satisfaction of the court, the court may, upon request or <i>of</i>, order DNA test to be conducted for the purpose of proving the biological father of the child.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(8) The court shall determine and make an order as to the party who shall bear the costs associated with the DNA test.</p> <p>(9) Where the court has made an order on a biological father, such biological father shall assume the responsibility to the child in the same manner as may be in respect of a child born in wedlock and the child shall, subject to religious belief of the biological father, have such other rights devolving from the parent including a right to inheritance.</p> <p>(10) Any person who refuses to comply with the court order issued under this section commits an offence and shall on conviction be liable to a fine of not more than one hundred thousand shillings or to imprisonment for a term of three months or to both.</p>		
Clause 106—Principles to be applied in	CRADLE	Amend clause 106(1) (c) to by deleting the words “the ascertainable wishes of the child” and replacing it with:	The proposed clause clarifies that persons should make certain that the views of the child are independently given	Rejected. The proposals are subjective and abandon the approach of regulating custody and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
making custody order.		106(1)(c) The views of the child, if the views have been independently given. Insert new subclause (k) to read: “The need for continuity in the care and control of The child.”	and that the child is not under duress nor being unduly influenced. The clause also speaks to the need to ensure continuity in the care and control of the child.	control in the best interest of the child.
Clause 117—Financial provisions by step-parents and father of child born out of wedlock.	CRADLE	Insert new subclause 117(2)(b) to read: (b) Any impairment of the earning capacity of the person with a duty to maintain the child; Introduce new clause 117(2)(c) by adding the following subclause (c) immediately after the proposed subclause (b) to read: (a) The age and sex of the child. Amend clause 117(2)(i) by deleting the words “Knowing that he was not legally married to the mother of the child” appearing immediately after the words: Whether the respondent assumed responsibility for the	Considerations for the court while deciding on the amount to be paid for the maintenance of a child should include the persons earning capacity and age and sex of the child.	Rejected. The proposals are covered in detail under sub clause (2).

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>maintenance of the child knowing that the child was not his child" to read:</p> <p>117(2)(i) Whether the respondent assumed responsibility for the maintenance of the child knowing that the child was not his child,</p> <p>Amend clause 117(2) by adding the following subclause (l) to read:</p> <p>(l) The cost of living in the area where the child is resident;</p>		
Clause 125-Appointment of guardian.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (c)(ii) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	CWSK	That Clause 125 (9)(c) of the Bill be amended by inserting the words 'the Society' immediately after the word 'Director.'	Guardianship process involves the Director and the Society and the two complement each other in performance of this function. Therefore, it is important to include the Society as an actor since it is already performing this role.	noted

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 126-Rights of surviving parent as to guardianship and power of Court.			This role is shared between the two actors.	
Clause 127-Appointment of testamentary guardian.	CWSK	That Clause 127 (3) of the Bill be amended by inserting a new paragraph (c) as follows: (c) in the case of appointment made under customary law, the appointment shall not have effect unless signed by a family member or members and registered by the Director or the Society.	This is a new proposed provision as contained under the New Clause 129B on Customary Guardianship. The proposed amendment is meant to recognize customary guardianship currently practised in our communities though not formal. It will also ensure protection of children under customary guardianship and effective monitoring and welfare of children.	The Committee noted that CWSK dropped the proposal.
New Clause	CWSK	That the Bill be amended by inserting a new Clause 127A as follows-	The Bill does not provide for the process for application of	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>127A. Application for Guardianship</p> <p>Application for guardianship of a child-</p> <p>(a) may be made by a Kenyan above the age of eighteen years;</p> <p>(b) shall be made to the Court in a prescribed form.</p> <p>(c) shall be accompanied by a report of a Children Officer or and a Social Worker of the Society.</p>	<p>guardianship by a prospective guardian.</p> <p>This new clause will ensure that a prospective guardian and the court is guided on the process, thus fast-tracking guardianship in the best interest of a child. This is best practice in legislation in other jurisdictions. e.g., Uganda.</p>	
Clause 127-Appointment of testamentary guardian.	CWSK	<p>That Clause 127 (3) of the Bill be amended by inserting a new paragraph (c) as follows:</p> <p>(c) in the case of appointment made under customary law, the appointment shall not have effect unless signed by a family member or</p>	<p>This is a new proposed provision as contained under the New Clause 129B on Customary Guardianship. The proposed amendment is meant to recognize customary guardianship currently practised in our communities though not formal. It will also ensure protection of children</p>	<p>The Committee noted that CWSK dropped the proposal.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		members and registered by the Director or the Society.	under customary guardianship and effective monitoring and welfare of children.	
New Clause 127B	CWSK	<p>That the Bill be amended by inserting a new Clause 127B as follows-</p> <p>127 B Conditions for Guardianship</p> <p>(1) The Court shall before making a guardianship order satisfy itself that-</p> <p>(a) consideration has been given to the wishes of the child having regard to the age and understanding of the child, where in the view of the Court, the child is able to understand the guardianship proceedings;</p> <p>(b) where the child is twelve (12) years of age or above, his or her consent to the guardianship has been obtained, unless it is impossible for the child to express his or her consent;</p>	<p>This new clause will ensure that-</p> <p>(a) The court is guided before issuing guardianship orders.</p> <p>(b) A child above 12 years is able to give his or her opinion before commencement of the guardianship process. The international practice of this nature is 10 years.</p> <p>(c) The court in making the Order on guardianship is guided by a professional report of a social worker. This is for the best interest of the child.</p> <p>(d) The child is able to be brought up in the same cultural practice of its parents.</p> <p>(e) The Child is protected from exploitation including child trafficking.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(c) the child is suffering or likely to suffer significant harm under present custody.</p> <p>(2) The Court shall before making a guardianship order satisfy itself that the applicant-</p> <p>(a) has continuously lived in Kenya for at least three months;</p> <p>(b) does not have a criminal record;</p> <p>(c) has recommendation concerning his or her ability as guardian from a social worker;</p> <p>(d) Where the applicant is not a resident of Kenya a recommendation concerning his or her ability as a guardian from a relevant authority dealing with children matters in applicant's country of residence;</p> <p>(e) is of the same cultural background as the child's parents and is of Kenya origin.</p> <p>(3) The court shall not make an order for guardianship, unless it is satisfied that the applicant has not made, given or agreed to make any payment or other rewards in consideration of the guardianship.</p> <p>(4) A guardian who is not the father or mother of a child shall not remove</p>	<p>(f) The court is guided when issuing orders for the release of a child to travel outside the country.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>the child from Kenya without obtaining a court order or seeking leave of the Court, and such leave shall be granted only in exceptional circumstances including health, family matters, religious and in accordance with subsection (5).</p> <p>(5) Where leave is granted under subsection (4), the Court shall impose such conditions and restrictions as it shall consider appropriate having regard to the best interest of the child.</p> <p>(6) the conditions under subsection (5) shall include and not limited to-</p> <p>(a) the child be produced to court within a specified time; and</p> <p>(b) a social inquiry report from a Social Worker.</p>		
Clause 129-Extension of appointment of guardian beyond	State Department for Social Protection, Senior Citizens Affairs and	Amend sub-clause (1) by deleting the words "be determined" and replacing therefore with the word "expire"	Expiry of guardianship is 18 years unless the court so otherwise determines	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
child's eighteenth birthday.	Special Programmes			
	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend 129(3)(c) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	CWSK	That Clause 129(3) of the Bill be amended by inserting a new paragraph (e) as follows- the Society;	The Guardianship process involves the Director and the Society and the two complement each other in performance of this function. Therefore, it is important to include CWSK as an actor since it is already performing this role. This role is shared between the two actors.	
New Clause 129B	CWSK	That the Bill be amended by inserting a new Clause 129B as follows: 129B. Customary Guardianship	The Bill has no provision for the appointment of a guardian under the customary law.	The Committee resolved that there must be a form of customary guardianship in the Bill.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>129B.(1) Family members may appoint a guardian of a child in accordance with their customs, culture or tradition where-</p> <p>(a) both parents of the child are deceased or cannot be found;</p> <p>(b) the surviving parent is incapacitated; or</p> <p>(c) the child has no guardian or any other person having parental responsibility for him or her.</p> <p>(2) A guardian appointed under subsection (1) shall be a relative and shall act as trustee in respect of the property of that child.</p> <p>(3) A guardian appointed under subsection (1) who misappropriates the property of a child commits an offence and is liable, on conviction, to a term of imprisonment not exceeding five years or to a fine not exceeding <i>Kenya shillings one</i></p>	<p>This new provision will facilitate appointment of a relative or relatives of a child as guardian through customary practice.</p> <p>This will ensure that customary guardianship currently practiced in our communities though not formal is recognized and formalized.</p> <p>The provision will also ensure protection of children under customary guardianship.</p> <p>This will also enhance monitoring of the welfare of children under guardianship</p> <p>This provision will make it easy for relatives to be appointed as guardians for children who are currently under the informal guardianship. Further it will ensure that a child grows in their culture, customs and traditions.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p><i>million or to both such fine and imprisonment.</i></p> <p>(4) For purposes of this section, "customary guardianship" means parental responsibility of a Kenyan child by a Kenyan citizen in accordance with the customs, culture or tradition of the respective people.</p> <p>(5) The appointment of a guardian made under subsection (1) shall be deemed to have the same effect as a guardianship order issued by the court under Section 128.</p> <p>(6) The appointment of a guardian made under subsection (1) shall not have effect unless signed by a family member or members and registered by the Director and the Society.</p> <p>(7) The provisions of Section 128 (4), (5) (6) shall <i>mutatis mutandis</i> apply to a guardian who seek to remove a child out of Kenya.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		The Cabinet Secretary shall make regulation for the better carrying out of the provisions of this section.		
New Clause 129 C	CWSK	That the Bill be amended by inserting a new Clause 129C as follows - 129C Guardianship Register (1) The Chief Registrar of the High Court, Director and the Society shall each keep and maintain a register to be known as the Guardianship Register in which shall be made such entries containing such orders issued by the court or a certificate by the Director or the Society under Section 129B. (2) Every person to whom guardianship order is granted shall within fourteen days after the grant of the order register the order with the Chief Registrar of the High Court, Registrar of Births and Deaths, Director and the Society as the case may be.	The Bill has no provision for keeping and maintenance of record relating to guardianship. The new provision will ensure that the Court, Director and the Society keep and maintains register on guardianship. This will also enhance monitoring of the welfare of children under guardianship and ensure that the government is informed of the status and numbers of children under guardianship to guide in development of policies and resource allocation.	Committee resolved that there must be a form of customary guardianship in the Bill

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
New Clause 127D	CWSK	<p>That the Bill be amended by inserting a new Clause 129D as follows: -</p> <p>129D. Revocation of guardianship order.</p> <p>(1) A Social Worker, the guardian or a relative of a child under guardianship may apply to court to revoke a guardianship order.</p> <p>(2) The court may revoke a guardianship order where—</p> <p>(a) it is satisfied that the guardianship order was obtained by fraud or misrepresentation;</p> <p>(b) the guardian has not complied with the conditions issued by the court in respect of the child or the guardianship;</p>	<p>The Bill has no provision for revocation of guardianship order where guardianship is obtained through fraud, in cases of child abuse, neglect or where the life of the child is in danger or the child's property is mismanaged.</p> <p>This new provision provides for the process of revocation of such an order by the court.</p> <p>The provision protects the best interest of a child. It is important to note that there are several incidents where guardians abuse their powers by depriving vulnerable children of their properties. Also, we have had cases of child trafficking through guardianship as well as child</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(c) the guardian has neglected the duties and responsibility over a child.</p> <p>(d) the child life is in danger, suffering or likely to suffer significant harm; and</p> <p>(e) the child's property is mismanaged.</p>	abuse. The provision therefore will address these issues.	
Clause 130-Revocation or disclaimer of appointment		(3) Where the court revokes a guardianship order, the court shall upon considering submissions by the Cabinet Secretary responsible for children affairs, place the child under alternative care.		
Clause 131-Disputes between guardians.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Replace the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 132-Powers of guardian.	CWSK	That Clause 132 of the Bill be amended by inserting the following words "and 129B" after the words "section 126"	To provide for recognition for a guardianship appointed under customary law.	The Committee resolved that there must be a form of customary guardianship in the Bill
Clause 133-Neglect or misapplication of assets by guardian of a child's estate.				
Clause 134-Offences by guardian of a child's estate.		<p>Amend paragraph (g) by deleting the following words immediately after the words care by 'any person or institution' and insert the following words 'a fit person or a government temporary place of safety'.</p> <p>Amend paragraph (i) by inserting a new paragraph (i) as follows, "a protection order directing care and protection of a child involved in drug abuse or who has been a victim of ideological radicalization, criminal gangs, trafficking, slavery or any other crimes against a child"</p> <p>Amend section 134 by deleting paragraph (j)</p>	<p>Amendment aimed at protecting the child by entrusting the said child with a person vetted by the court or a government institution.</p> <p>This amendment will ensure that children are protected from emerging crimes.</p> <p>The provision is ambiguous and can be subject to abuse</p> <p>The amendment will ensure that rights of the child are safeguarded where it is deemed that the life of the child in an institution is in danger and</p>	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>Amend section 134 (2) by deleting subsection (2) and inserting the following new subsection (2).</p> <p>“Without prejudice to the generality of subsection (1) (h), the Court may make a production order –</p> <p>(i) requiring any children institution at which a child has been accommodated for a period exceeding the time limited by an order of the Court or the provisions of this Act to produce the child before the Court to facilitate the making of such other order as the Court may deem fit on such terms as the Court may direct”;</p> <p>(ii) Where in the opinion of the authorizing officer.</p> <p>(a) the lives of children in such institution are in danger or where their continued stay therein is likely to endanger their wellbeing;</p>	<p>continued stay therein is likely to endanger their wellbeing.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(b) the institution or a person involved in the management of such institution is unfit to provide care or protection to the children;</p> <p>(c) it has been established that the institution does not serve the best interest of the children therein; or</p> <p>(d) Such institution, is in contravention of the Constitution, the Convention on Rights of the Child, the African Charter on the Rights and Welfare of the Child or any other law or international treaties or conventions to which Kenya is a party.</p>		
Clause 135-Power of Chief Justice to make Rules.	CWSK	That Clause 135 of the Bill be amended by deleting the words "regulations to give effect to this Part, including," appearing after the word "make"	<p>This Part provides for different actors in the process of guardianship which are not necessarily court processes. The amendment therefore is meant to limit the Chief Justice to his mandate on court processes and allow the Cabinet Secretary to make regulations on other processes which are not necessarily court processes under this Part.</p> <p>This provision aligns to the powers bestowed upon the Chief Justice under clause 136</p>	The Committee rejected the Proposal and did not agree with the justification and observed that Guardianship is a process that takes place in court

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
PART X—JUDICIAL INTERVENTION FOR THE CARE AND PROTECTION OF CHILDREN				
Clause 136—Power of the Court to make orders in certain proceedings.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (d) by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
136(2)(g)	BCCRN	Section 136 2g Any Kenyan of interest in child can apply to court		The Committee rejected the Proposal and did not agree with the justification and observed that clause 27 of the Bill provides that any Kenyan may institute proceedings in the Court to enforce rights under this Part.
	CWSK	Amend by inserting a new paragraph (e) as follows, “an officer of the Society	To provide for children under the care and protection of the Society.	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 137-Orders which Court may make.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (j) by deleting the word "fit"	The word fit is limiting	The Committee agreed to the proposal and the justification.
Clause 137(1)(a)	UNICEF	Move s. 137 (1)(a) on access orders to Part VII on Custody and Maintenance.	For sake of clarity and streamlining	insert the expression (1) it is in the right place
Clause 138-Supervision order.	CWSK	Amend by inserting "an officer of the Society" after "children's officer"	To provide for children under the care and protection of the Society.	The Committee noted that CWSK dropped the proposal.
NEW PART IX	CRADLE	Insert new PART IX to read: CHILD PARENTS 125(1) The national government shall, to the extent of its constitutional mandate, promote the care and protection of expectant children and child parents. (2) In ensuring that the National Government fulfils its obligations under subsection (1), the Council shall —	According to the United Nations Population Fund Report, Kenya has recorded 378, 397 adolescent and teenage pregnancies for girls aged 10-19 years between July 2016 and June 2017, specifically, 28, 932 girls aged 10-14 and 349,465 girls aged 15-19 became pregnant. Concurrently, over 13,000 teenage girls drop out of school annually because of pregnancy. Recent media reports show that	The Committee rejected the Proposal and did not agree with the justification and observed that Clause 11(2)(i) and (7) of the Bill provides for establishment of a child welfare fund to provide for social welfare support for child headed households

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(a) put in place mechanisms that will help establish a comprehensive capacity building programme for child parents to ensure they practice responsible family life;</p> <p>(b) establish, in consultation with the Cabinet Secretary responsible for matters relating to education, non-discriminatory enrolment, back to school or other training programmes and initiate necessary strategies that will identify persons within this group to benefit from the programmes;</p> <p>(c) identify, in consultation with personnel of institutions of basic learning and such other institutions as it may consider appropriate, children who are pregnant and who are in need of interventions to enable them to realise the rights conferred on a child under Article 53 of the Constitution;</p> <p>(d) address any educational and related barriers faced by pregnant and parenting students; and</p> <p>(e) guarantee funding and sustainability of the initiative and other child welfare programmes aimed at benefiting child parents.</p>	<p>449 girls are failing to sit for their final examinations while others write examinations in maternity wards. This is a red flag on the girls' education, health and opportunities not to mention a failure on the society as whole. The case of Narok County is an eye-opener with 40% of the teenagers being pregnant compared to Garissa, Wajir and Lamu at 10%.</p> <p>The society is also slowly deviating from the conservative traditional values and attitudes on safe sex discussion/education. Men and boys should be engaged as advocates against teenage pregnancy too. There is an urgent need to address poverty as one of the root causes of teenage pregnancy, sensitize and create awareness on the School Re-entry Policy and engage teenage girls as stakeholders to develop interventions tailored towards their needs and concerns.</p>	<p>The proposed clause offers protections on teenage girls and</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(3) In performing its functions under subsection (1), the Council shall —</p> <p>(a) collaborate with the relevant public entities in the establishment of mechanisms that ensure that expectant children and child parents have access to community and State based care support systems;</p> <p>(b) collaborate with the county governments and relevant State and private agencies in carrying out activities for the provision of such pre-natal, post-natal and other health services, education and other support services to expectant children and child parents within the respective counties;</p> <p>(c) conduct research, analysis of data and disseminate information on the welfare of expectant children and child parents in the Republic; and</p> <p>(d) collaborate with the county governments in —</p> <p>(i) establishing a mechanism for the care of expectant children and child parents to ensure that the rights conferred on a child under Article 53 of the Constitution are attained with respect to such children; and</p>	<p>their right to re-join school. It also offers measure on their education on reproductive health including maternal health.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(ii) expanding and strengthening the educational framework and the community and family-based care and support systems for the care of expectant children and child parents; and</p> <p>(e) perform such other functions as may be necessary for the implementation of this Act.</p> <p>(4) The Council may, for the purpose of subsection (3), conduct inquiries, including public inquiries, into any matter relating to the welfare, care and protection of expectant children and child parents within a County.</p> <p>Obligations of a county government with respect to the care of neglected children.</p> <p>126. Each county executive committee member shall —</p> <p>(a) put in place management plans and strategies for the delivery of social services and child care support services to expectant children and child parents within the County;</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(b) collaborate with the County Education Board and the county executive committee member responsible for education in establishing –</p> <p>(i) programmes to ensure that expectant children and child parents have access to education services; and</p> <p>(ii) academic support programmes that ensure that students with extended absences for reasons related to pregnancy and parenting are able to enrol back into school or to such other education facility in order to access education services;</p> <p>(c) formulate and implement county specific programmes for the integration of expectant children and child parents into society and institutions of basic education within the respective County;</p> <p>(d) design, in collaboration with the Council and within the policy framework established by the national government, county specific programmes for the prevention of child pregnancies and programmes for the support, mentorship and development of expectant children and child parents;</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(e) put in place and implement in consultation with the relevant public entities, interventions for the care, protection and alleviation of the plight of expectant children and child parents –</p> <p>(i) with special needs or requiring special care and attention within the County; and</p> <p>(ii) living in conditions of acute hardship including street children and children who abuse drugs or who suffer any form of child abuse;</p> <p>(f) establish such child care centers and implement such programmes as may be necessary for the provision of child care services to child parents who intend to enrol back to school and who do not have access to support services for the care of their child; and</p> <p>(g) collaborate with the Council in the provision of such technical assistance, information and facilities as may be necessary to ensure the efficient delivery of social services with respect to expectant children and child parents within the county.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>Role of national and county governments in the prevention of drop out.</p> <p>127 (1) The National and county governments shall –</p> <p>(a) formulate policies for the re-admission and integration of children who have dropped out of school by reason of pregnancy;</p> <p>(b) put in place programmes and interventions–</p> <p>(i) for the identification of factors leading to child pregnancies and the dropping out of institutions of basic education, by children; and (ii) that prevent the dropping out of children from institutions of basic education; and</p> <p>(c) put in place programmes for the assistance and education of vulnerable children and children in areas identified as having a high dropout rate owing to child pregnancy;</p> <p>(d) collaborate with the relevant stakeholders in the establishment of dropout prevention programmes that provide information and education to build upon the children's own</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>knowledge, skills, values and attitudes; and</p> <p>(e) put in place programmes for the capacity building of child parents that aim at imparting skills including entrepreneurial skills to ensure that they practice responsible family life and that they are able to support their family.</p> <p>(2) Prevention programmes established under subsection (1) shall — (a) involve the parents and guardians of the children in the governance of institutions of basic education and in the development of the code of conduct of the institution and strategies to prevent teenage pregnancies;</p> <p>(b) encompass the provision of relevant information and support for the prevention of teenage pregnancies;</p> <p>(c) include the sensitisation of children and their parents on issues that have a negative impact on the school attendance of children; (d) create linkages between institutions of basic education and the communities they serve with the aim of encouraging school attendance.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>sensitization and collaboration on issues affecting school attendance; and</p> <p>(e) promote healthy lifestyles through positive role modelling and encouraging children to participate in activities and advocacy and awareness programmes that have a positive impact and encourage a healthy lifestyle.</p> <p>128 (1) Each institution of basic education shall develop a management plan for the support of any child who falls pregnant while in school.</p> <p>(2) The management board of an institution of basic education shall—</p> <p>(a) put in place programmes with the aim of preventing teenage pregnancies and encouraging positive sexual behaviour amongst children in the institution;</p> <p>(b) treat each case of a child who falls pregnant while in an institution of basic education confidentially and professionally;</p> <p>(c) adopt an inclusive approach that involves the support of the child and parents or guardians of the affected</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>child or children who are at risk of dropping out of school; and</p> <p>(d) in putting in place interventions or responses in situations of child drop out, ensure that the educational interests of the child are upheld. Management plans.</p> <p>129. (1) Every child who —</p> <p>(a) while in an institution of basic education, falls pregnant and as a result, drops out of school; or</p> <p>(b) is of school going age but falls pregnant while out of school, shall have the right to be readmitted or enrolled into an institution of basic education.</p> <p>(2) Every child under subsection (1) shall have the right to —</p> <p>(a) remain in school and to receive the necessary support to continue with their education and participate fully during their pregnancy or as a parent student;</p> <p>(b) fully participate in educational programs and activities of the institutions of basic education; and</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(c) guidance and support to enable the child to return to her regular education programme after delivery and after the baby is weaned. Rights of pregnant and parenting students.</p> <p>130. (1) The National and county governments shall –</p> <p>(a) develop and implement a plan for identifying and re-engaging – (i) children who have dropped out of institutions of basic education owing to teenage pregnancies; and</p> <p>(ii) vulnerable children who have dropped out of, or who are likely to drop out of institutions of basic education owing to factors beyond their control, in order to ensure that they are readmitted and integrated into the education system;</p> <p>(b) establish partnerships with community-based organisations, education providers and other relevant stakeholders in order to – (i) provide a broad range of educational options and services for children who drop out of school under this Part; and</p> <p>(ii) counsel children in schools on adolescent sexuality, responsible</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
PART XI—CHILDREN IN NEED OF CARE AND PROTECTION				
Clause 144- Interpretation		<p>Amend clause 144(1) of the Bill by deleting the words</p> <p>"For the purpose of this Part— "a child in need of care and protection" means a child who lives in difficult circumstances and needs to be protected from all kinds of neglect, abuse or exploitation" and replacing it with:</p> <p>144. For the purposes of this Act, a child is in need of care and protection if that child –</p> <p>(a) is an orphan or is abandoned by his relatives;</p> <p>(b) has been neglected or ill-treated by the person who has the care and custody of the child or by his guardian or parents;</p>	<p>The proposed clause provides intricate details on who constitutes a child in need of care and protection.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that Clause 144 as read clause 146 contains parameters to identify a child in need of care and protection.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(c) has a parent or guardian who does not exercise proper guardianship;</p> <p>(d) is destitute;</p> <p>(e) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child;</p> <p>(f) is wandering and has no home or settled place of abode;</p> <p>(g) is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, or place for the purpose of begging or receiving alms;</p> <p>(h) accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise;</p> <p>(i) is under a care of a destitute parent;</p> <p>(j) frequents the company of any reputed criminal or sex worker;</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(k)is residing in a house or the part of a house used by any sex worker for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of, the child.</p> <p>(l)is a person in relation to whom an offence has been committed or attempted under the Countenancing of Prostitution Act;</p> <p>(m)is found acting in a manner from which it is reasonable to suspect that he or she is, or has been, soliciting or importing for criminal purposes;</p> <p>(n)is below the age of criminal responsibility and is involved in an offence other than a minor criminal matter;</p> <p>(o)is otherwise exposed to physical danger;</p> <p>(p)is under a care of a person with disability and such disability hinders such person from exercising proper care or guardianship; or</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(q) is in any other environment as the Cabinet Secretary may determine.		
Clause 146—When a child is in need of care and protection.	World Kenya Vision	Amend to add word 'she'	The subsection be amended to for gender consideration by add the word 'she'	The Committee rejected the Proposal and did not agree with the justification and observed that there was need for gender neutral language to cater for intersex children.
	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (u) by deleting the words "Non-violent"	To address all forms of sexual contact with a child	The Committee agreed to the proposal and the justification.
	Clement Oketch. M.A, Youth Justice, Probation and Applied Criminology.	Section 146 (aa) be deleted.	Whereas it may be true that child in conflict with the law may also be in need of care and protection, for purposes of procedure. It would be good if they are separated. In any event, PART XIV is set aside for children in conflict with the law and so having children in conflict with the law to appear under children in need of care and protection may mire the direction that the court can give.	The Committee rejected the Proposal and did not agree with the justification and observed that clause 146 is listing all children in need of care and protection including children who are in conflict with the law

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	KNCHR	Further, we recommend amendment of clause 146 to include <u>a child who has been or is likely to be subjected to intersex genital mutilation as one of the children in need of care and protection by the State.</u>		The Committee agreed to the proposal and the justification.
	CWSK	<p>Clause 146 (r) is amended by inserting the words "mentally ill or" appearing before the words "guardian is"</p> <p>Clause 146 (x) is amended by inserting the words "who may be at risk if returned to the custody of the parent, guardian or caregiver of the child and" after the word "who".</p> <p>Clause 147(3) of the Bill is amended by deleting the word "Director" and substituting with the word "Council"</p>	<p>To protect children whose parents, have mental illnesses</p> <p>This is a function of the Council.</p> <p>Notifying the Director on matters of children is in the best interest of the child.</p> <p>The Director sets own guidelines</p>	<p>The Committee agreed to the proposal and the justification under clause 146(r)</p> <p>The Committee rejected the Proposal and did not agree with the justification under clause 146(x)</p> <p>The Committee rejected the Proposal and did not agree with the justification and observed that under Clause 147(3) and (10) the Director is responsible for all matters relating to the welfare and best interest of the child.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>Clause 147 (12) is amended by inserting “the Society,” after the word “entity”</p> <p>Clause 147 (12) (a) of the Bill is amended by redrafting as follows-</p> <p>(a) the county government entity, the Society or charitable children’s institution shall notify the Director within forty-eight hours but where communication is difficult, notification to be made within seven days of receiving the child into its care;</p>	<ul style="list-style-type: none"> Promotes mushrooming of CCIs. Promotes child trafficking Commercializes the process of reintegration and placement of children in alternative family care. Defeats the purpose of de-institutionalization Parents and guardians of the children are already financially constrained. <p>(Proposal is Dropped)</p>	<p>The Committee noted that CWSK dropped the proposal.</p>
		<p>Clause 147 (13) is amended by deleting “Council” and substituting with “Director”</p> <p>Amend Clause 147(14) by deleting</p>	<p>Consult on the reasons for the clause and the mischief that is sought to be addressed.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			Propose deletion. (clause 147(14).	The Committee noted that CWSK dropped the proposal.
Clause 147-Proceedings in respect of children in need of care and protection.	World Kenya	Amend- 'place of safety' should be designated and certified annually and authorized to operate by the government to avoid incidences that have been witnessed.	There should be accountability on Periodical assessments or monitoring	The Committee noted that CWSK dropped the proposal.
	CRADLE	Delete clause 147(1)(2) and (3) and replace with new clause 147 to read: 147. (1) Any person who has information, whether it is confidential or privileged, indicating a child is in need of protective	Unlike adults, children are dependent on their caregivers to obtain justice. When these persons do not intervene on their behalf, they are stuck in a cycle of violence. The reporting or otherwise of abuse falls squarely in the hands of their care givers and whether	The Committee rejected the Proposal and did not agree with the justification and observed that the process should address in regulations

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>services must report immediately to the relevant authorities.</p> <p>(2) No person shall incur liability under this section for reporting to the police suspected incidences of child abuse which are made in good faith.</p> <p>(3) The children protection officer may, upon receiving the report, summon the person against whom the report was made to discuss the matter, and a decision shall be made by that officer in the best interest of the child.</p> <p>(4) Where the person against whom the report was made refuses to comply with the decision made under subsection (2), the children's officer shall refer the matter to the court which shall hear and adjudicate the matter; and may in respect of such proceedings –</p> <p>(a) give any relief or order prayed for as circumstances may require; and</p> <p>(b) in the case of a parent, in addition to the relief or</p>	<p>they feel sympathetic to the plight of their child.</p> <p>Many times, children are abused and no adult acts to intervene on their behalf.</p> <p>Different jurisdictions including Nova Scotia in Canada have made it mandatory for all citizens to report the abuse of a child. In the United States, 29 States have outlawed failing to protect a child from abuse.^[1] Thus parents who ignore or enable the abuse of their children are held accountable as aiders and abettors.^[2] The same approach can be taken in Kenya so as to make the reporting of abuse against a child mandatory.</p> <p>Similarly, teachers owe a duty to their students to report known instances of abuse. There are many instances where teachers sexually exploit children and the school is fully aware of the act but fails to report the case to the police. In some instances, the teacher is simply dismissed from the school. Other times the school retains their position due to</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>orders given, order the parent to execute a bond to exercise proper care and guardianship by signing and undertaking to provide the child with any or all of the requirements.</p> <p>(5) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than fifty thousand shillings or to imprisonment for a term of three months or to both.</p> <p>(6) Where the children's officer has reasonable grounds to suspect a child abuse or a need for care and protection of a child, he or she shall in the company of a police officer and may enter and search the premises where the child is kept in order to investigate.</p> <p>(7) Where, after investigation it is determined that the child has been abused or is in need of immediate care and protection, the children's officer accompanied by the police officer shall remove the child to a place of safety for a period of not more than seven days.</p>	<p>their professional expertise. Failure to report should be considered professional misconduct.</p> <p>Hotels in particular are hotspots for trafficking and child prostitution. The world bank reports that "almost 70 percent of the 1.1 million people in Kilifi, live on less than a dollar a day."^[3] Families use their children to earn a better living by sending them to the beaches to meet tourists and have sex with them in exchange for money.^[4] The tourists are not answerable to any authority as it could mean bad business for the economy.^[5]</p> <p>Hotel management may be fully aware that the sexual exploitation is occurring within their premises and do not act to stop it or at times actively encourage persons to use their facilities to exploit children. The children's act ought to punish not only the direct offenders of the offence but also those who aid persons in exploiting children.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(8) Where a child has been displaced or removed in accordance with subsection (6), the child's officer shall bring the child before a court within fourteen days period for an order to be made.</p> <p>(9) Until the court determines the matter, it may commit the child to a foster home, or children is institutional home or to the care of a children's officer or any fit person.</p>	<p>Any person who has information, whether it is confidential or privileged, indicating a child is in need of protective services should report immediately to the relevant authorities. The clause therefore proposes to criminalize failure to report if the person is in a position of care for the child (<i>in parentis</i>) including juristic persons such as companies, schools and even hotels who are aware that a sexual offence occurred but ignores the plight of the child. Nonetheless, no person ought to incur any liability, whether civil or criminal, for giving the information to the local authorities in good faith. The latter recommendation may help to alleviate any apprehension that persons may have towards reporting which may turn out to be false or may result in acquittal.</p>	
	State Department for Social Protection, Senior Citizens Affairs and	Amend paragraph (a) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Special Programmes			
	Legal Sister	<p>Insert an exception clause</p> <p>Provision to read:</p> <p>The county government entity or charitable children's institution shall not retain the child in its care if the parent or guardian of the child seeks to assume the care of the child; unless/except</p> <p>If in the view of the county government or CCI there are prevailing circumstances that that would otherwise be detrimental to the best interest of the child</p>	<p>The provision gives the county government/CCI the right to reintegrate the child back to the caregiver which might negate the essence in which the child might have come into contact with them</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the best interest of a child is determined by an officer who is authorised under clause 12</p>
	Legal Sister	<p>Introduction to penalize the county government or CCI in regard to reporting mechanisms. The gist behind this is to avoid instances or create avenues of trafficking in persons</p> <p>A county government entity or charitable children's institution that contravenes subsection (12) commits an offense and shall, on conviction, be liable to</p>		<p>The Committee rejected the Proposal and did not agree with the justification and resolved to provide to amend the duration of reporting from seven days to 24 hours.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 147(1)	UNICEF	imprisonment for a term not exceeding five years or to a fine not exceeding two million Kenya shillings or to both. Change of word from shall to may: "may take steps for securing a Court order for the care and protection of the child in a place of safety or other alternative care	Contrary to the principles in s. 11, the language of s.147 makes it mandatory for all children in need of care and protection to be removed, stating that an authorised officer who receives a report of a child in need of protection"	The Committee rejected the Proposal and did not agree with the justification and observed that provision makes the process mandatory and ensure the protection of the child in the best interests of the child
Clause 147(2)	UNICEF	ADD: -with a fit person, foster parent - two clauses as below New clause to read. (2) (a) An authorized officer or any other person who has reasonable cause to believe that a child is in need of care and protection shall take the child into safe custody and, at the earliest opportunity, place the child with a fit person, or foster parent or in a place of safety in facilities other than those in which children in conflict with the law are held, pending	Including 'fit person, and foster parent ensures that family-based placements are given priority ; hence moving away from institutional based solutions. The added clauses ensures that every child remove from their parents and primary caregivers is documented and provided with professional support required to ensure their safety. This also places the responsibility of child's safety on government officer/ Director who has statutory mandate.	The Committee rejected the Proposal and did not agree with the justification and observed that the temporary placement of children should be undertaken by the court or the Director.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>presentation to the Court for appropriate orders.</p> <p>Add: (b) if the action in (a) above by an authorized person other than a children officer, or any other person who took the child to a safe custody, they shall notify the children officer of this action within 72 hours of taking the action (c) the Children officer on receiving this information will conduct a professional assessment and investigation and take appropriate action within the provisions of this Act</p>	<p>The Bill does not make provision for family conferencing or consensus-based decision-making in child protection cases. Instead, it is mandatory under s. 147 that all children suspected of being in need of care and protection be brought before the court for a protection order.</p>	
Clause 147(3)	CWSK	<p>Clause 147(3) of the Bill is amended by deleting the word "Director" and substituting with the word "Council".</p> <p>Clause 147(3) of the Bill is amended by deleting the word "Director" and substituting with the word "Council".</p> <p>Clause 147 (12) (a) of the Bill is amended by redrafting as follows-</p> <p>(a) the county government entity, the Society or charitable children's institution shall notify the Director within forty-eight hours but where communication is difficult, notification to be made within seven</p>	<p>This is a function of the Council.</p>	<p>The Committee noted that CWSK dropped the proposal.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		days of receiving the child into its care; Clause 147 (12) (f) of the Bill is amended by inserting the words “, the Society” after the word “entity”		
Clause 151—Power of Director to take over application.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend by deleting clause 151 and replacing therefore with the following new clause: 151. The Attorney-General or the Director of Public Prosecutions may authorize the Secretary at any stage in the proceedings under this Act, whether before, during or after the making of any application, to take over and assume the conduct of any application or proceedings in respect of a child: Provided that the Attorney General or the Director of Public Prosecutions shall Children’s Services is now a Directorate headed by the Secretary and not director.	Thus, the word “director” has been deleted and replaced with the word “secretary” appearing in bold	The Committee agreed to the proposal and the justification.
		Children in conflict with the law, should not be included in the procedures those in need of care and discipline.	For if they were then how would the court deal with it under section 147 if it finds it necessary to make a correction	The Committee rejected the Proposal and did not agree with the justification and observed that there is no

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			supervision order like probation?	clause procedures those in need of care
Clause 152—Power of Court in respect of children in need of care and protection.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (c) by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	Legal Sister	Amend	Interim orders are contemplated under subsection 6 and not 5 (7) An interim order under subsection (6) shall not remain in force for a period exceeding fourteen days:	The Committee agreed to the proposal and the justification.
	Mercy Ndirangu	Amend: to retain three years for consistency and best interest of the child and right to parental care	It contradicts Part VI (69) (3) Unless there are compelling circumstances, a child Shall not be placed in a charitable children’s institution for a period exceeding three years. (4) Without prejudice to the generality of subsection	The Committee rejected the Proposal and did not agree with the justification and observed that the law consider the circumstances of the best interest of the Child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			(3), a child below the age of three years shall not be placed in alternative care in an	
	Clement Oketch	Children in conflict with the law, should not be included in the procedures those in need of care and discipline.	For if they were then how would the court deal with it under section 147 if it finds it necessary to make a correction supervision order like probation?	The Committee rejected the Proposal and did not agree with the justification and observed that the law consider the circumstances of the best interest of the Child
	NCKK	Amend: to retain three years for consistency and best interest of the child and right to parental care	It contradicts Part VI (69) (3)	The Committee rejected the Proposal and did not agree with the justification and observed that the law consider the circumstances of the best interest of the Child
	CWSK	Clause 152 (8) of the Bill is amended by inserting the words "the Society" after the words ' county government entity'"	To provide for children in the care of the Society.	The Committee noted that CWSK dropped the proposal.
Clause 154-Penalty for cruelty to, and neglect of, children.	CWSK	Insert new clause 154 (b) to read: (b) Fails to report the abuse of their child by their spouse, romantic partner, family member, teacher or any other person to relevant authorities	Same as above	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 155—Care order and grounds thereof.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (a) by replacing the word “Director” with the word “Secretary”	Secretary Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Replace the word “Director” wherever it appears with the word “Secretary”	children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 156—Access to children in care.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (a) of sub clause 1 by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub-clause (5) by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 158—Discharge of care order.	State Department For Social Protection, Senior Citizens Affairs	Amend paragraph (b) by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	And Special Programmes			
	CWSK	Amend Clause 158(2) of the Bill by inserting a new (c) as follows- (a) the Society	To provide for the children in the care of the Society.	The Committee noted that CWSK dropped the proposal.
Clause 163-Escape from institutions, etc.	CWSK	Clause 163(1) of the Bill is amended by inserting "the Society" after the words "fit person"	To provide for children in the care of the Society.	Proposal dropped by CWSK
Clause 164-Duty of charitable children's institutions and County Public Entities.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (b) by deleting the words "one month" and replace therefor with the words "seven days"	This is to enhance protection of the escapee and inform immediate interventions	The Committee rejected the Proposal and did not agree with the justification and observed that the time is ensure that investigation can take place.
	CWSK	Amend the side note by inserting "the Society," after the word "institutions"	The Society undertakes care and protection	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Amend 164(1) of the Bill by inserting the words "the Society," before the word "entity"		
Clause 166–Aiding escape, etc.	CWSK	Amend clause 166 (a) (i) of the Bill by inserting the word "the Society" after "fit person"	To provide for the children in the care of the Society.	The Committee noted that CWSK dropped the proposal.
168–Presumption and determination of age.	CWSK		This subsection may be misused by courts especially in sexual violence cases involving children in border line ages.	The Committee rejected the Proposal and did not agree with the justification and observed that the justification is purposes of enabling court to evaluate the value of testimony offered by a child.
Clause 168 & 231	UNICEF	Combine s. 168 and s. 231 into one consolidated section on age determination, clarifying that certificates from a medical practitioner should be requested only where all other options have been exhausted, and clarifying that the benefit of any doubt should go to the child	In its General Comment No. 24 (2019) on Children's Rights in the Child Justice System. The UN Committee notes that a medical examination conclusively prove a child's age, carries a wide margins of error, and can also be traumatic and lead to unnecessary delays in the legal process. In the absence of a birth certificate, the courts should rely on less invasive forms of evidence to determine a child's age (e.g., any available	The Committee rejected the Proposal and did not agree with the justification and observed that the purpose of presumption of age under 168 is to enable court to evaluate evidence and under 231 is to conduct prosecution of a child.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
PART XII—FOSTER CARE PLACEMENT				
Clause 172—Objectives of foster care placement.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend sub-clause (2) by replacing the word “Director” with the word “Secretary”	documents such as school records, baptismal records or health records; interviews with the child’s parent, relative, community leader or other persons likely to have knowledge of the child’s age, etc.). Medical examinations should be used only if these measures prove unsuccessful, and if it cannot be conclusively established how old the child is, the child should be given the benefit of the doubt. Section 231 outlines a different approach for estimating a child’s age which is more in line with the UN Committee’s recommendations, but only in relation to children in	The Committee agreed to the proposal and the justification.
	Legal Sister	Family based care ought to be defined for clarity purposes and to ensure children are protected by being placed in the care of the right family members.		The Committee rejected the Proposal and did not agree with the justification and observed that 172(2)

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		In any case where a child is in need of care and protection, either with the intervention of the Director or under an order of the Court, the child shall, in the first instance, be placed in family based alternative care whereby the child shall be looked after on a temporary or long-term basis by his/her extended family from either the maternal or paternal side. The family members include grandparents, aunts, uncle, older siblings and first cousins. Such placement shall be conducted as specified by the Rules made under this Act.		emphasizes a preference for alternative family-based care.
Clause 172(1)	UNICEF	New: 172 (1) This provision of foster care as prescribed in this Part is to give effect to section 11 of this Act on promotion of alternative care as social security right and to promote government policy on care reform 172 (2) The overriding objectives of foster care placement are — (a) to protect and nurture children by providing a safe, healthy environment with wholesome support;	The new clause will provide clarity that foster care is being provided within the care reform/alternative care provision and as a Constitutional requirement of social security right.	The Committee rejected the Proposal and did not agree with the justification and observed that 172(2) emphasizes a preference for alternative family-based care.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(b) to promote long term parental care, towards family reunification in the first instance, or by accommodating children in alternative, safe and nurturing family relationships intended to last their lifetime; and</p> <p>(c) to promote family relationships in the context of Kenya's cultural, ethnic and community diversity.</p> <p>New: (d) to promote the shift from reliance on institutional care placement to family-based alternative care placement</p>		
Clause 173—Restrictions on periods of foster care.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub-clause (3) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	Legal Sister	Situations of emergency especially where children have experienced traumatizing conditions ought to be defined in situations of emergency which include:		The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is not clear.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		When the child is a victim of physical sexual or other form of abuse within the family; When the child is orphaned, when the child parents where the child's parents are untraceable or certified to be terminally ill or mentally incapacitated and the child is unable to live with extended family.		
Clause 174-Conditions for foster care placement.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub-clause (1) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	World Kenya Vision	Amend to ensure that there is clarity in the difference between juvenile centre and rehabilitation centre	The two institutions serve different functions.	The Committee rejected the Proposal and did not agree with the justification and observed that there are no provisions creating or regulating juvenile centers or rehabilitation centers
	Legal Sister 174(1)	The child's views ought to be considered in the decision-making process For the purposes of this Act, a child may be placed under foster care either on the direct intervention of the Director or pursuant to an order		The Committee rejected the Proposal and did not agree with the justification and observed that consideration of the child's views in the decision-making process are

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		of the Court, and such placement shall, in the first instance, be home based. The Court and/or the Director shall respect the child's right to be heard and have his/her views taken into account in accordance with his/her age and with full participation of families and legal guardians where available.		accommodated under the clause 26(3) of the Bill.
	Legal Sister 174(3)	Rescue centers have been omitted in this clause despite being included in the previous clause 174 (2)		The Committee rejected the Proposal and did not agree with the justification and observed that a rescue centre is not a charitable children institution.
	174(7)	Rescue centers have been omitted in this clause despite being included in the previous clause 174 (2)		The Committee rejected the Proposal and did not agree with the justification and observed that a rescue centre is not a charitable children institution.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 174 (2)	Mercy Ndirangu	The Director shall take all reasonable steps to ensure foster care is prioritised over placement into charitable Children institutions, rehabilitation school or rescue centre	Amend: remove because from definition of foster care, it refers to individual or spouses and never an institution	The Committee agreed to the proposal and the justification.
Clause 174 (7)		Delete or move to the right section of institutions Part VI on Children's Institutions	Amend: delete or move to Part VI It's misplaced It's describing the roles of managers of institutions in regard to children placed under institutional care and not about foster care. Foster care is not synonymous to institutions. It confuses foster care with institutional care	The Committee rejected the Proposal and did not agree with the justification and observed that the sub clause contains provisions regulating placing of a child with a foster parent by a rehabilitation school or a Charitable Children Institution
Clause 175(5)		Replace with Director/Sub-county Children's Officer	Amend: Replace with Sub-county Children's officer Officer Commanding Station is not defined in the bill, and it's the first, and only time it's mentioned. OCS has no responsibilities in foster care placement	The Committee rejected the Proposal and did not agree with the justification and observed that reference to the Director includes reference to the Sub-county Children's Officer

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 174 (2)	Ahmed Hassan	Amend: remove because from definition of foster care, it refers to individual or spouses and never an institution		The Committee agreed to the proposal and the justification.
Clause 174 (7)		Amend: delete or move. It's misplaced.	It's describing the roles of managers of institutions in regard to children placed under institutional care and not about foster care. Foster care is not synonymous to institutions. It confuses foster care with institutional care	The Committee rejected the Proposal and did not agree with the justification and observed that the sub clause contains provisions regulating placing of a child with a foster parent by a rehabilitation school or a Charitable Children Institution
Clause 174 (5)		Amend: Replace with Sub-county Children's Officer.	Officer Commanding Station is not defined in the bill, and it's the first, and only time it's mentioned. OCS has no responsibilities in foster care placement.	The Committee agreed to the proposal and the justification and observed that the responsibility should be assigned to the Director.
Clause 175-Application for foster care.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Sub clause (1) Amend by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Delete sub-clause (2) and replace with the following new sub-clause Sub-section 2 delete "require specified children's officer" and not director	All children's officers are expected to discharge duties of the Director.	The Committee agreed to the proposal and the justification.
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub clause (3) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub-clause (4) by adding the words "but the temporary period shall not exceed three months" at the end of the sentence	There should be a definite period of temporary foster care	The Committee agreed to the proposal and the justification.
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub-clause (5) by deleting the words "Officer Commanding Station in the local limits of the jurisdiction in which the child is accommodated" and replacing therefore the word "Secretary"	The role falls within the mandate of the Secretary and not police	The Committee agreed to the proposal and the justification.
	Legal Sister	Any person" is too broad An individual or couple willing to foster a child shall make an application to the Director, if they: (a) Are a Kenyan citizen		The Committee rejected the Proposal and did not agree with the justification and observed that Sub clause (2) provides for Rules regulating the person.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(b) Are a foreign resident in the Republic of Kenya who has been a resident for at least 12 months continuously</p> <p>(c) Are at least 25 years old</p> <p>(d) Hold a certificate of good conduct and a recommendation letter from the area Chief and/or religious leader</p> <p>(e) Can demonstrate the ability to meet the child's needs</p> <p>(f) Where necessary, can provide proof of their physical and mental health status</p> <p>(g) In the case of a married person, they can demonstrate that their spouse agrees with and has no objection to the placement.</p> <p>(h) Can demonstrate that they have the knowledge and skills to protect and nurture children in a safe, healthy environment and meet the development needs of the child</p>		
		Delete 175(4)	Can be abused. The placement of a child in emergency foster care should be done with a pre-selected, qualified, vetted and emergency foster parent.	The Committee rejected the Proposal and did not agree with the justification and observed that the Bill anticipates creation of

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
				regulations that will regulate emergency foster care
Clause 176—Persons qualified to foster children.	Ahmed Hassan	176(2)	The singling out of the special circumstance of a single woman or man having a biological child of the opposite sex to qualify is discriminatory	The Committee rejected the Proposal and did not agree with the justification and observed that the qualification is in best interest of the child.
	UNICEF	With regard to fostering children, the bill in clause 176 should be amended to provide on who / the modalities of fostering an intersex child, because they too need parental care and protection. Also, whether intersex adults are allowed to foster or adopt male, female or intersex children.		The Committee agreed to the proposal and the justification and resolved to draft a provision to accommodate intersex children.
Clause 177—Conditions for foster care.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Delete clause 177 and replace with the following new clause: 177. The Secretary shall not authorize foster care placement of a child unless it is shown to the satisfaction of the Secretary that the application is done following the procedure set out in rules made under this Act.	Children's Services is now a Directorate headed by the Secretary and not director and the application has to be done as per the laid down procedures	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	CRADLE	Insert new clause 177 to read: 177. (1) The director shall direct that a criminal record check for any prospective foster parent be conducted before the foster or parent is approved for placement of a child and require the applicant to submit a valid certificate of good conduct issued by the Director of Criminal Investigations; (2) a felony conviction including for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, defilement, sexual assault, homicide, physical assault or battery such final approval shall not be granted.	Foster parents should undergo a criminal background check so as to assess their suitability in caring for a child. Persons with conviction for child abuse should be restricted from fosterage.	Amend clause 175
Clause 178—Limitation on the number of children placed under foster care in a household.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (b) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 179—Records of foster care placements.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Replace the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director in sub clauses (1), (2) & (3)	The Committee agreed to the proposal and the justification.
Clause 180—Agreement for maintenance of foster child.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Replace the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 181—Termination of foster care.		(.Replace the word “Director” wherever it appears with the word “Secretary” Secretary and not director	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
		Amend the opening statement of sub-clause (2) replacing the word “Director” with the word “Secretary”		The Committee agreed to the proposal and the justification.
		Amend paragraph (c)(ii) by deleting the word “permanently”		The Committee agreed to the proposal and the justification.
		Foster care is not a permanent care option Amend paragraph (c)(iii) by inserting the word “family” immediately after the word “alternative.”	Alternative care can also mean institutional care	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
PART XIII— ADOPTION	MPM	No changes are proposed.	Currently orphans who are considered “Special Needs” are rarely adoptable by local persons. Having cared for many special needs children in our CCI and having legally completed many adoptions to Kenyans it is clear that the children who are HIV +, Downs Syndrome, Auto immune deficiency, and more will never be adopted here in Kenya. International Adoptees are willing and anxious to give these children a home.	
Clause 185—Power to make adoption orders.	Mercy Ndirangu Ahmed Hassan	Amend: move 185 (4) (b) under domestic adoption	To promote Kenyans adopting Kenyan children, A Kenyan in diaspora should not be classified as a foreigner. However, an assessment report may be requested from the authority in their residential state	Draft transitional provisions accommodating the terms of the moratorium.
	CWSK	That Clause 185 of the Bill be amended by; (a) deleting the words “foreign adoption” appearing under Sub clause (3). (b) deleting Sub clause (4)(c)	The Government issued a Moratorium on the 26th November 2014. The Moratorium was imposed following numerous credible reports by the Media, Government Agencies and Partners in the Child Care and	The Committee noted the Proposal and the justification and observed that there should be a transitional provision accommodating the terms of moratorium.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>Protection Sector which indicated that adoption and other forms of alternative family care for children in Kenya had been used by some unscrupulous agencies, officials and individuals to traffic Kenyan Children.</p> <p>The main objective of the Moratorium was to enable the government to intervene and 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 adoption.</p> <p>The Cabinet directed the then Cabinet Secretary for East African Community, Labour and Social Security to develop a Sessional Paper with a detailed policy, institutional and legal framework to regulate and manage child adoption including safeguards for adoption of children in Kenya.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>The Government in order to protect children from trafficking by unscrupulous agencies, officials and individuals directed as follows-</p> <p>That the Cabinet Secretary reviews the adoption policy and legal framework to ensure that Kenyan children are not placed or adopted by foreigners.</p> <p>That the relevant Government agencies in charge of adoption should ensure that Kenyan children are placed with Kenyan parents.</p> <p>That the Cabinet Secretary cancels all the intercountry adoption Licenses by the adoption societies to protect children from child trafficking in guise of adoption.</p> <p>That the Cabinet Secretary ensures that children are adopted locally to preserve their cultural background, identity, right to citizenship.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			In making the directive, the Cabinet took note of the data available of prospective adoptive Kenyan parents which was at a ratio of one (1) child to six (6) prospective adoptive Kenyan parents. Also, that other countries which were experiencing problems in child trafficking namely; Ethiopia, changed their laws to remove the component of inter-country adoption.	
Clause 186-Establishment of National Adoption Committee.	World Kenya Vision	Amend to include a representative of recognized faith umbrella organization with significant involvement in Child welfare activities.	The Justification for this is that adoption is a family matter and faith community have significant role to play hence the inclusion.	The Committee agreed to the proposal and the justification.
	National Center for Competence in Research North		What is the Role of the NGO Coordination Board as in regard to Rescue Centers, Child protection units and children's centers	The proposal is not clear.
	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend sub-clause (2)(h) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend sub-clause (2)(h) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (b) by deleting the words "Child protection"	Child protection agencies is ambiguous	The Committee agreed to the proposal and the justification.
	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend by deleting paragraph (k) and paragraph (l)	These are not functions of the National Adoption Committee	The Committee agreed to the proposal and the justification.
	Legal Sister	Insert at clause 186 (7) (m)	The database must include any changes or information of the adopting parents	The Committee agreed to the proposal and the justification.
		'keep and maintain a database of adopted children and Adopting Parents in consultation with the Registrar'		
	CWSK	The Bill is amended by deleting Clause 186	The best practice across the world has shown that the authority is formed from an existing public body that has its functions closely related to the	The Committee noted the Proposal and the justification and observed that it would consult the Ministry for

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>Convention that has technical staff to handle such a function.</p> <p>The Council has the right to establish technical committees to perform its functions. As such, if they require a technical committee in the role of supervising and monitoring adoptions they can do it internally without prescribing it in the Act. In that way they have the leeway of changing its membership and reconstituting it when need arises.</p> <p>The current functions assigned to the Committee as per Sub clause (7) are functions of other institutions as explained below. Thus, we do not require another body created.</p> <p>186A (1) Functions of the Adoption Committee</p> <p>(a) advise the Cabinet Secretary on matters relating to development of adoption policies, procedures and standards; (role of the council)</p> <p>(b) accredit and license of duly registered adoption and child protection agencies in</p>	<p>clarity on roles and functions as proposed..</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>order to facilitate adoptions; (role of the council)</p> <p>(a) Be the "Central Authority" for the purposes of The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993). {This Role is provided for administratively by the Cabinet Secretary}</p> <p>(b) keep and maintain a database for adoptions; (role of the director)</p> <p>(c) provide professional advice and technical support services to licensed adoption agencies on matters relating to adoption; (role of the council)</p> <p>(a) invite applications for, vet and approve, and maintain a register of, persons suitable and qualified to serve as guardians ad litem in matters relating to adoption; (role of the council)</p> <p>(b) establish panels of persons from whom guardian ad litem appointed by the Court</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>may be selected by the Court; (role of the council)</p> <p>(c) keep and maintain a database of adopted children in consultation with the Registrar; (role of the director)</p> <p>(a) promote cooperation between state agencies, local and non-state agencies concerned with matters relating to adoption with central adoption authorities in other countries; (role of the society – the society is a member of International Social Services ISS)</p> <p>(b) review and make recommendations to the Cabinet Secretary for approval of fees chargeable by adoption societies for the processing of applications for adoption; (role of the council)</p> <p>(a) make recommendations to the Cabinet Secretary on matters relating to the fees chargeable for registration and licensing of adoption societies; (role of the council)</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			(b) monitor, prepare and submit to the Cabinet Secretary annual reports on matters relating to adoption (role of the director) and (c) discharge such other functions as may be conferred on the authority by this Act or any other written law.	
Clause 186(2)(f)	BCCRN	Section 186(2)(f) two representatives of organizations engaged in child welfare activities by the National public benefit federation.		The Committee rejected the Proposal and did not agree with the justification and observed that there is need to include a person representing CCIs
New Clause 186A	CWSK	That the Bill is amended by inserting a New clause 186A 186A Central Authority 186A. The Cabinet Secretary shall designate a body to be a Central Authority.	The amendment will conform to the provisions of The Hague Convention.	The Committee noted the Proposal and the justification and observed that there should be clarity on the central authority.
Clause 187-Pre-requisites for Adoption.	State Department for Social Protection, Senior Citizens Affairs and	Amend sub-clause (3) by inserting the words "except in case of kinship adoption and in instances where the child is transiting from foster care to adoption by the applicant"	To accommodate kinship adoption and those children transiting from foster care to adoption under the same caregiver	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Special Programmes	immediately after the words "adoptive child"		
	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub clause (4) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 187(3)	CRADLE	Amend the Bill by Deleting clause 187 (3) "An applicant shall not preselect a prospective adoptive child."	It is important for prospective parents to bond with the child they intend to adopt. As such, parents should be permitted to preselect the child they wish to adopt.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is not practical.
	CWSK	The Bill is amended by deleting Clause 187 and substituting thereof with a new Clause 187 as follows- (1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared available for adoption by the national adoption Society or any other registered adoption society in accordance with the rules prescribed under this Act.	The proposed amendment is to align the adoption process with the best practice where adoption is undertaken by adoption societies Adoption is a technical process and therefore can only be conducted by the institutions with structure and capacity to conduct adoption namely, the National Adoption Society or any other registered adoption society.	The Committee noted the Proposal and the justification and observed that there should be a transitional provision accommodating the terms of moratorium.

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 188—Children	Mercy Ndirangu Ahmed Hassan	<p>(2) It shall not be lawful for any person whether being a parent or guardian of a child or otherwise, or national adoption Society, or for an adoption society by whom arrangements for adoption of a child are made, to place a child into the care and possession or control of a person who proposes to adopt him or her if an adoption order in respect of the child cannot be lawfully made in favour of that person.</p> <p>(3) An applicant shall not preselect a prospective adoptive child.</p> <p>(4) The Director or the Society shall monitor and submit reports to the Courts on the well-being of a child who is subject to adoption proceedings.</p> <p>(5) Any person who contravenes subsections (1) and (2) of this section is guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.</p>	Best interest of the child is to be under parental care at the earlier age.	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
who may be adopted.		or guardian's whereabouts cannot be traced within a period of six months; within which responsible authority should have investigated their abandonment status and whether or not traced their parents or guardian	The Bill should compel the responsible authority to conduct investigations of whereabouts of the child within six months other than punishing the child to lose their six months of childhood without parental care Also refer to 190 (2) (a) and (b) when abandonment is considered	
Clause 188(2)	CWSK	That Clause 188 (2) of the Bill is amended as follows; (a) By inserting a new paragraph (b) as follows- (b) "both the child and the applicant or the applicants, as the case may be, shall be evaluated and assessed by the national adoption Society or any other registered adoption Society in Kenya" after the words "the application and" (c) By renumbering the paragraphs (d) By inserting the words "national adoption Society" under paragraph (b) after the words "made by".	The proposed amendment provides for assessment and evaluation of adoptive parents to ensure children are adopted by the right parents and with the best interest of a child at hand. The amendment also provides for the national adoption society as a Government agency in adoption. The National Adoption Society is already provided for under sections 156, 157 and 177 of the Children Act as a Government Agency responsible for	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Amend by deleting Sub-clause (4)	adoption. The amendment is to provide for the omission. Sub section (1) of Clause 188 provides for any child who is resident of Kenya as eligible for adoption therefore, there is no need of categorizing children who may be adopted. The provisions under Sub clause (4) may be abused by unscrupulous persons who may offer these children for adoption. The Children Act does not have these provisions.	
Clause 188(4)(d) & (e)		188(4)(d) the child's parent or guardian has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected; or (e) the child is in need of a permanent alternative placement	The proposed clause includes further considerations to be made in regard to whether the child is suitable for adoption.	The Committee rejected the Proposal and did not agree with the justification and observed that child in need of care and protection covered adequately

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Clause 189-Who may apply to adopt a child.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes	Amend sub clause 6 (c) by deleting the words "charged or"	As a constitutional principle one is innocent until proven guilty	The Committee agreed to the proposal and the justification.
	Mercy Ndirangu Ahmed Hassan	Amend: to say "both" under 189 (2) (b) that the applicant, or both applicants in a joint application, shall be more than twenty-one years older than the child.	Safeguarding and protection of abuse-if one applicant is not twenty-one year older than the child may threaten child's safety	The Committee agreed to the proposal and the justification.
	Child Welfare Society of Kenya	Clause 189 should be amended to bar homosexuals from adopting a child	The bar for homosexuals to adopt children should be retained. Article 53 of the Constitution refers to mother and father in the natural sense.	The Committee noted the Proposal and the justification and observed that homosexuality is not legal in Kenya.
The Agenda	Children		Section 189(4): This section is discriminatory on the basis of gender which in in contravention of Article 27 of the Constitution. It is based upon the outdated presumption that persons of the male gender are less predisposed to parent children and are inherently brutal, cruel or prone to abuse children. Based on these negative presumptions, it	The Committee noted the Proposal and the justification and observed that the clause is drafted to promote the best interests of the child on matters relating to who may apply to adopt a child

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>unfairly prevents men from enjoying their right to be parents. Section 189(5)(a) and (c): This section is also erroneously based on the presumption that applicants who adopt children of the opposite sex are prone to abuse them, especially sexually. To mitigate this erroneous assumption, the Act bars single persons from adopting children of the opposite gender, with a specific focus on allowing female applicants to adopt male children under special circumstances while failing to make any similar provisions for male applicants. Section 189(6)(c):</p> <p>This section is also in contravention of Article 27 as it is discriminatory on the basis of gender and based on outdated presumptions.</p>	
	CWSK	That Clause (5) of the Bill is amended by —		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(a) Deleting paragraph (a)	The amendment to delete paragraph (a) is to ensure that female applicants are able to adopt children irrespective of the gender. Traditionally male children are more abandoned than female children. On the other hand, women are the main adopters and a majority.	
		(b) deleting paragraph (c).	To align with the moratorium by the Government which outlaws foreign adoption.	
		That Clause 189 (6) of the Bill is Amended by deleting paragraph (f).	To align with the moratorium by the Government which outlaws foreign adoption.	
Clause 189(2)(c) & (d)	CRADLE	Insert new clause 189 (2)(c) and (d) to read: The applicant is fit and proper to be entrusted with full parental	The proposed clause includes further considerations to be made in regard to whether the prospective parent is suitable to adopt a child.	The Committee noted the Proposal and the justification and observed that the sub clause is regulating the limitations in age and not

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
189(6)	Kisii University	(d) the applicant is willing and able to undertake, exercise and maintain those responsibilities and rights. Exclusion of homosexuals as people among the list of applicants who cannot adopt a child.		The Committee rejected the Proposal and did not agree with the justification and observed that homosexuality is not legal in Kenya.
Clause 189	CVC	The Provision of section 158 of the Children's Act on who can adopt a child should not be amended as it expressly protected children from adoption by homosexual couples.	The provision amends section 158 of the Children's Act which provides for the exclusion of homosexual couples as parties who can adopt children. The implication of this is that gay couples are not limited from adopting children under the Bill. The effect of this provision is passed will be that; Some children will be denied the chance to be raised in a traditional home with a mother and father who can be their roles models. A child growing up presuming that his or her parents are two women or two men is not	The Committee rejected the Proposal and did not agree with the justification and observed that homosexuality is not legal in Kenya.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>correctly informed about its origins in both of the sexes. This will have a negative impact on the child's development.</p> <p>Diversity has been proven to be a greater stimulus to development than equality. Research has consistently shown that mothers and fathers each make a distinct and indispensable contribution to the healthy development of the child. A child in a homosexual "family" is therefore at a disadvantage from the very beginning of his/her development.</p> <p>A child has the best conditions for the development of safe, congruent gender identity if it can grow up in the rich environment provided by the complementary genders as provided by a mother and a father. In a homosexual "family" these benefits of proper development are deliberately withheld from the child.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>If either the father or the mother is tragically lacking, such as in single-parent homes, the child has the opportunity to mourn their loss and to deal with this loss constructively. If the child is taught, however, that a homosexual "family" is complete, albeit an alternative type of family, this setting prevents the child from mourning the loss of the real father or mother. The loss remains split off and this will have a destructive impact on the psychosocial development of the child.</p> <p>If it occurs that with full adoption, a child's birth certificate shows the names of two women or of two men, instead of one female and one male name, the child will in essence be and feel deceived by the incongruence between his knowledge of his sexual origin – from the two genders (male and female) and what his birth record states.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 190-Power to dispense with consent.	State Department For Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (a) by deleting the words "six months" and replacing therefor with "twelve months"	To provide for adequate time for investigations and other interventions	The Committee agreed to the proposal and the justification.
	CWSK	That Clause 190 (1) (a) of the Bill is amended by deleting the words "neglected, persistently failed to maintain or persistently ill-treated the child" appearing after the word "abandoned" That Clause 190 (2) (a) of the Bill is amended by deleting the phrase "that institution has lost all contact with a parent or guardian of the child" That the Bill is amended by deleting Clause 190 (2) (b) That Clause 190 (3) (b) of the Bill is amended by deleting the phrase appearing after the words "incapable of giving consents" and substituting with the words "where a spouse is adopting with a different person in a new marriage"	Children who have been neglected or whose parents have failed to maintain them do not qualify to be placed in adoption. Such children should be placed in other forms of alternative family care such as foster care, guardianship and kinship care. Losing of contacts does not qualify children to be placed for adoption. The provision creates a loophole in adoption that will expose children to child trafficking and abuse. Since the child's family is known such children are not available for adoption. Such failure could be as a result of financial challenges among other reasons. This amendment will protect children from losing their rights from biological parents.	The Committee noted the Proposal and the justification and observed that provision regulates consideration for obtaining written consent.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>That Clause 191(1) of the Bill is amended by deleting Sub clause (1) and substituting with following new Sub clause (1) as follows;</p> <p>(1) Where an application is made for an adoption order, the Court shall appoint a fit person to be guardian ad litem of the child to whom the application relates from a panel list submitted by the Council.</p>	<p>Guardian ad litem is a person who protects the interest of a child in a legal process e.g., adoption, guardianship, children in conflict with the law and therefore this is a role of the Council. The Council shall therefore provide a list of qualified persons to serve as guardian ad litem in various cases of children. This is the best practice from other jurisdictions</p>	
Clause 190(2)(d)	CRADLE	<p>Amend clause 190(2)(a) by deleting the words "six months" appearing immediately after the words" for a period" and replacing it with "one year" to read:</p> <p>Abandonment shall be presumed in any case where the child appears to have been abandoned at birth, or if the person or, where the institution having care and possession of the child, that institution has lost all contact with a parent or guardian of</p>	<p>A longer grace period should pass before declaring the child abandoned.</p>	<p>The Committee agreed to the proposal and the justification.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		the child for a period exceeding six months.		
Clause 191 – Appointment of guardian and item.	State Department For Protection, Senior Citizens Affairs And Special Programmes	Amend 192(1) by deleting paragraph (b)(iii) and replacing therefor the following new paragraph: “(iii) A report has been made by the Secretary in relation to the application for the interim order”		The Committee agreed to the proposal and the justification.
NEW CLAUSE 191	CRADLE	Recalling adoption Insert new clause 191 to read: (1) Where a biological parent of a child can demonstrate that the child was in lost and not abandoned, the parent shall demonstrate measures taken to find the child immediately after the child was lost and other subsequent measures taken to find the child. (2) Where a parent has successfully demonstrated that the child was in fact lost and not abandoned then the court may direct that the adoptive parents and parent may enter into joint custody agreement where — (a) The child has been in the custody of the adoptive parents for	There are many instances where children are lost and they are presumed to be abandoned. Where a parent can demonstrate that the child was lost and made efforts to reobtain the child, adoption of the child should be recalled. Special considerations should be placed however to avoid destabilizing the child where the child has had a long-lasting relationship with their adoptive parents. In such case the court may direct that the adoptive and biological parent enter into an agreement for joint custody of the child.	The Committee agreed to the proposal and the justification and proposed a redraft.

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Clause 192-Interim orders.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	more than five years and has grown an attachment to their adoptive parents and (b) the child expresses that he or she would wish to maintain a relationship with the adoptive parents.	The Secretary, being the custodian of this Act, is a key factor in matters relating adoption of a child	The Committee agreed to the proposal and the justification.
	CWSK	Amend subsection (2) by deleting the words, "or without" appearing before the words, "sureties" to read as follows- Where a Court makes an order under this section, the Court shall make a wardship order in respect of the child, and shall cause the applicant to execute a security bond with sureties requiring that the child be returned to Kenya by the applicant within such period as may be specified by the Court, and give such directions as may be necessary to secure the return of the child to Kenya; Amend Clause 192 (4) of the Bill by inserting the words "the national	This amendment is to protect the child and ensure that the child is returned back in Kenya within the period specified by the Court, The society undertakes adoption on behalf of the Government at no cost to the prospective adoptive parents. Adoption should be free from any cost to encourage the	The Committee agreed to the proposal and the justification and resolved that the clause should be redrafted.

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		adoption Society" after the word "infant"	prospective adoptive parent to adopt children.	
Clause 193-Inter-country adoptions.	Grace Atebe		<p>These sections unfairly disadvantage single Kenyan citizens and dual citizens of Kenya who are not ordinarily resident in Kenya.</p> <p>There are advantages for children being raised in a home with two parents. However, there are many children who are also successfully raised in single parent homes.</p>	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is drafted in the best interest of the child on matters relating to Inter-country adoptions.
	CWSK	Delete	To align with the moratorium by the Government which outlaws foreign adoption	The Committee noted the Proposal and the justification and observed that there should be a transitional provision.
Clause 194-Adoption by non-resident Kenyans.	State Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend the opening statement in clause 194 by deleting the expression "193" and replacing therefor the expression "189"	For proper referencing	The Committee noted the Proposal and the justification and observed that the clause will be reviewed and redrafted if there is a cross referencing issue.
	CWSK	That Clause 194 be deleted	The Cabinet Secretary to make regulations for non-resident	The Committee rejected the Proposal and did not agree

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 196-Powers of the Court in adoption proceedings.	State Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend 196(1) at paragraph (h) by deleting the expression "186 (7)(1)" and replacing therefor the expression "186 (7)"	Kenya's to adopt as resident locals (Kenya's). Non-resident Kenya's only need to provide extra requirements which are administrative in nature.	with the justification and observed that provision was in the best interest of the child in relation to adoption by non-resident Kenya's
CRADLE		Delete 196 (d) and insert new clause 197 which reads: No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with, (a) the child's adoption or placement for adoption; (b) a consent to the child's adoption; or (c) negotiations or arrangements with a view to the child's adoption,	The proposed clause clarifies that expenses incurred towards legal fees and other incidental costs are not within the parameters of prohibition. It also mandates the adoption committee to conduct the inspections to assess the suitability of a premise where the child shall live as well as whether there is social cohesion in a home. Nonetheless, the clause prohibits the denial of adoption to a prospective parent simply on the grounds of low economic status.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is addressed under clause 114 of the Bill regulating prohibition of certain payments.

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		<p>except for,</p> <p>(d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;</p> <p>(e) proper legal fees and disbursements;</p> <p>Insert new clause 196(h) to read:</p> <p>196(h) There is a social investigation report prepared by the National Adoption Committee including on the conditions of a premise and social stability of a home in which the child shall live, supporting the application for adoption and the court may, require some other persons or a local government authority to make a report in respect of the application.</p> <p>Insert new clause (i) immediately after clause (h) to read:</p> <p>Without prejudice to subclause(h) a person shall not be denied the right to adopt a child by sole reason of their economic status unless the best interest of the child is at risk.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	CWSK	<p>Amend Clause 196 (1) (g) of the Bill by inserting the words “the national adoption society or” before the word “duly”</p> <p>Amend Clause 196 (1) of the Bill by deleting paragraph (h)</p> <p>Amend Clause 196 (2) (c) of the Bill by inserting the words “the national adoption society or” after the words “advice from”</p>	<p>The society undertakes adoption on behalf of the Government at no cost to the prospective adoptive parents. Adoption should be free from any cost to encourage the prospective adoptive parent to adopt children.</p> <p>(h) Declaration of children free for adoption is by the national adoption society or a registered adoption society.</p> <p>The society undertakes adoption on behalf of the Government at no cost to the prospective adoptive parents. Adoption should be free from any cost to encourage the prospective adoptive parent to adopt children.</p>	<p>The Committee noted the Proposal and the justification and observed that there is need for national adoption entity to keep records of all adoptions, ensure proper processes are followed.</p>
Clause 197—Power of the	CWSK	That Clause 197 (1) of the bill be amended by deleting the words “in a domestic or inter-country adoption”	To align with the moratorium by the Government which outlaws foreign adoption	The Committee rejected the Proposal and did not agree with the justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Court to appoint guardian.		appearing before the words "adoption order"		observed that there was need to draft a transitional provision relating to foreign adoptions.
Clause 199-Parental responsibility when adoption is denied.	CRADLE	<p>Insert new subclause 199(2), (3), (4) and (5) to read:</p> <p>Subject to the provisions of this section, the court may postpone the determination of the application and make an interim order giving the custody of the child to the applicant for a period not exceeding two years by way of probation and may attach such terms including provision for the maintenance, education and supervision of the child as it thinks fit.</p> <p>(3) When making an interim order the court shall impose conditions that the child shall-</p> <p>(a) be under the supervision of a social welfare officer; and</p> <p>(b) not be taken out of Kenya without the permission of the court.</p> <p>(4) The consent and the powers to dispense with consent shall be</p>	<p>The proposed clause makes provisions for interim orders on adoption pending any reservations that the court may have.</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		the same for an interim order of adoption as for an adoption order. (5) An interim order shall not be considered to be an adoption order under this Part.		
New Clause 199A	CWSK	Amend the Bill by inserting a new Clause 199A as follows; - 201A Rescission of Adoption Order (1) The Court may, in exceptional circumstances, rescind an adoption order on application by- (a) The adopted child; (b) A parent of the adopted child or other person who was a guardian in respect of the child immediately before the adoption; (c) The adoptive parent of the child; (d) Any person who consented to the adoption; or (e) Any other person with justifiable reason. (2) An adoption order may be rescinded only if- (a) Rescission of the order in the best interest of the child; or	There have been situations where children are adopted without respect for their rights. Such situations arise where an individual or body has directly or indirectly misrepresented information to biological parents, falsify documents about a child origin; engage in child abduction for the purpose of adoption. In other situations, persons involved in adoption have used fraudulent methods to facilitate adoption regardless of the benefits obtained (financial or other). This situation cause for a rescission of adoption order by the Court.	The Committee noted the Proposal and the justification and observed that there was need to redraft amendment to provide for a child acting in the best interest of the child may move the court to cancel or rescind under clause 200

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 201 – Variation of orders.	The Children Agenda Forum	<p>(b) The order was obtained through illicit practices in adoption</p> <p>(3) Where an order is rescinded-</p> <p>(a) The adoption order shall cease to apply in respect of the child concerned; and</p> <p>(b) All responsibilities, rights and other matters which had been previously terminated by the adoption order in respect of the child shall be restored.</p> <p>(4) When rescinding an adoption order, the court may-</p> <p>(a) Make an appropriate placement order in respect of the child concerned;</p> <p>(b) Order that the child be kept in temporary safe custody until an appropriate placement order can be made; or</p> <p>(c) Make an ancillary order where necessary for restoration of the child.</p> <p>201 (3) supposes the conditions for quashing an adoption order have been outlined and this doesn't appear so?</p>		

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		Before allowing an appeal against or quashing an adoption order, the Court will receive a satisfactory explanation why the appellant did not submit a timely appeal of the application for an adoption order, and/ or evidence that counters that which the adopter presented to the Court's satisfaction under 196 [insert before 201(3)]		
Clause 202-Adopted children register.	The Children Agenda Forum		202 (3) seems to conflict with (5) which is clearer on who can access the information in the Register	The Committee noted the Proposal and the justification and observed that there was a need to redraft (3), (4) and (5)
NEW CLAUSE 202(2)	CRADLE	Insert new clause 202(2) to read: (2) The Registrar shall maintain a register, to be known as the Prospective Adopted Children Register, in which shall be made such entries of children who fit the criteria under section 188(4) including their names where they can be ascertained and their pictures. (3) any person who makes a claim that their child is lost, shall, with the approval of the Court, be entitled to search the index referred to in section (2). Such viewing of the registry may be done periodically	The proposed clause shall go into reducing the chances that lost children are adopted on the erroneous belief that the child has been abandoned.	The Committee noted the Proposal and the justification and observed that there was need for a national adoption entity to keep records

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		until such a time that the child is found. (1) No fee shall be charged to access the registry referred to in subclause (3).		
Clause 206—Orders and agreements in respect of child born outside marriage.	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend sub-clause (3) by deleting the words “voluntary children institution” and replacing therefor with “charitable children institution, a rescue centre”	To make it consistent with the provisions of the Bill	The Committee agreed to the proposal and the justification.
		Amend sub-clause (4) by deleting the words “contribution order” and replacing therefor with “maintenance order”	To make it consistent with the provisions of the Bill	The Committee agreed to the proposal and the justification.
Clause 206(3)	CWSK	That Clause 206 (3) of the Bill is amended by inserting the words “a temporary place of safety” after the words “foster parents”	The amendment is to cater for the children placed under the Society through a care order	The Committee rejected the Proposal and did not agree with the justification and observed that the CWSK is a children’s institution and therefore accommodated in the clause.
Clause 207—Intestacies	The Children Agenda Forum	(1) Where an adoption order is made in respect of a child born outside marriage, any prior order, decree or agreement whereby the father of the	Clarify so that in the instance where the family breadwinner is the mother rather than the	The Committee rejected the Proposal and did not agree with the justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
and testamentary instruments.		child or the family's primary breadwinner is required or has undertaken to make payments specifically for the benefit of the child shall cease to have effect, without prejudice to the recovery of any arrears which are due under the decree, order or agreement at the date of the adoption order.	father, the child should still be provided for?	observed that Adopter is no defined as a father.
Clause 207(3)		Amend clause 207(3)(c) by deleting the words "Any reference, whether express or implied, to a person related to the adopted child in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him or her in that degree if he or she were the child of the adopter." and replacing it with: Any reference to a person related to the adoptive parent shall, unless the contrary intention appears, be construed as a reference to the person as if he were the relative of the child who is adopted.	The clause may create confusion in its interpretation. The proposed wording seeks to simplify the clause.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause as drafted is clear.
Clause 208-Provisions	Department For Social Protection, Senior Citizens	Amend 208(1) (a) by deleting the words "whole blood" and replacing therefor with "family"	For clarity	The Committee agreed to the proposal and the justification.

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supplementary to section 198	Affairs And Special Programmes			
	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend 208(1)(b) by deleting the words "half-blood" and replacing therefor with "paternal or maternal relatives"	For clarity	The Committee agreed to the proposal and the justification.
NEW CLAUSE 208(4)	CRADLE	Insert new clause 208(4) immediately after clause 208(3) (4) For the purposes of this section the expression "disposition" means a disposition of any interest in property by any instrument whether inter vivos or by will, including codicil.		The Committee rejected the Proposal and did not agree with the justification and observed that the provision is not necessary as sub clause 3 does not present any confusion.
Clause 209—Effect of inter-country adoptions.	CWSK	Delete section 209	To align with the moratorium by the Government which outlaws foreign adoption	The Committee noted the Proposal and the justification and observed that there is need for a transitional provision of accommodate the terms of the moratorium.
Clause 210—Restriction on adoption arrangements.	Department For Social Protection, Senior Citizens	Amend the opening statement in sub-clause (3) by replacing the word "Director" with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Affairs and Special Programmes			
	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Under 210(5)	It is not the role of the Council to register adoption societies	The Committee noted the Proposal and the justification and observed that there was need to consult the Ministry on the proposal
	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend sub-clause (6) by deleting the words "shall recommend to the council"	It is not the role of the Council to register adoption societies	consult the Ministry on the proposal to increase period of valid certificate to three years
	CWSK	That clause 210 of the Bill be amended by (a) inserting the words "the National Adoption Society" after the words "adoption agency" under Sub clause (1) (b) deleting the word "Director" and replacing with the word "Council" under Sub clause (2) (c) deleting the word "Director" and replacing with the word "Council" and deleting the words "National Adoption Committee" and replacing with the word "Council" under Sub clause (3).	The current Section 210 (2), (3), (4), (5), (6) and (7) of the bill provides for the process of registration of an adoption society. The side notes of the said section reads, "Restrictions on adoption arrangements" the notes do not relate to the content of the section. The proposed amendment provides for restriction on making arrangement for adoption and further provide for a penalty on any person or body who contravenes the section.	The Committee noted the Proposal and the justification and observed that the restriction is blanket.

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		<p>(d) Deleting the words "national adoption committee" and replace with the words "Council" under Sub clause (5)</p> <p>(e) Deleting the word "Committee" under Sub clause (6) wherever it appears and replace with the words "adoption committee"</p> <p>(f) Deleting the words "Adoption Committee" under Sub clause (7) and replace with the words "Council"</p>	<p>To remove the provision for registration of adoption society and provide the same in a separate section in order to bring clarity on the application of the section.</p>	
New Clause 210A	CWSK	<p>The Bill is amended by inserting a new Clause 210A as follows; -</p> <p>210A Illicit practices in adoption</p> <p>In this Part, illicit practices in adoption includes; -</p> <p>(a) payments or gifts to family members or official by prospective adoptive parents;</p>	<p>There have been situations where persons involved in adoption process have engaged in illicit practices including situation where children have been adopted without respect for their rights. Such situations arise where an individual or body has directly or indirectly misrepresented information to biological parents, falsify documents about a child origin; engage in child abduction for the purpose of adoption. In other situations, persons involved in adoption have used</p>	<p>The Committee noted the Proposal and the justification and observed that addressed under clause 214 of the Bill.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(b) inducements to obtain the consent of the biological parents or family;</p> <p>(c) misrepresentation of identity for purpose of obtaining a child for adoption;</p> <p>(d) misrepresentation of information to biological parents for purpose of obtaining a child for adoption;</p> <p>(e) forgery and or falsification of documents;</p> <p>(f) child laundering;</p> <p>(g) pre-selection in adoption;</p> <p>(h) abduction of children for the purpose of adoption; and</p> <p>(i) directing children to adoption without regard to family preservation.</p> <p>(1) Any person or body who engage in illicit practices in adoption shall be guilty of an offence and shall, on conviction be liable to imprisonment for a term not exceeding twenty years or to a fine not exceeding twenty million shillings or to both.</p>	fraudulent methods to facilitate adoption regardless of the benefits obtained (financial or other).	
New Clause 210B	CWSK	The Bill is amended by inserting a new Clause 210B as follows; -	To provide for omission of the current section 183A of the Children Act which provide for	The Committee noted the Proposal and the justification and observed that there was

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 211--Certain offences relating to adoption.	Department For Social Protection, Senior Citizens Affairs and Special Programmes	<p>210B. The powers of Cabinet Secretary over adoption societies</p> <p>The Cabinet Secretary may, cancel the registration of an adoption society where it is established that —</p> <p>(a) the operations of such adoption society are against the best interests of the child;</p> <p>(b) such adoption society is no longer necessary; or</p> <p>(c) the operations of such adoption society are in contravention of the Constitution or any other law or any international treaty or convention to which Kenya is a party.</p> <p>(d) the operations of such adoption societies are against the public interest.</p> <p>Amend sub-clause (1) by deleting the words "or otherwise authorized under this Act or other written law"</p>	<p>the powers of the Cabinet Secretary over adoption societies</p> <p>To provide for the powers of the CS over adoption societies</p> <p>This is to enhance the protection of children by cancelling registration of adoption societies whose operations are against the best interest of children or whose services are no longer needed.</p>	<p>need to include a provision to provide for a caretaker organization for the children if the CCI cannot operate for one reason or the other.</p> <p>The Committee noted the Proposal and the justification and observed that there was a need for a CCI in every county to ensure children remain in touch with the environment that they originate from.</p>
			it is inconsistent with the meaning of an adoption society	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	CWSK	That Clause 211 (1) of the Bill is amended by inserting the words "it is the national adoption Society or the" after the word "unless"	The society undertakes adoption on behalf of the Government at no cost to the prospective adoptive parents. Adoption should be free from any cost to encourage the prospective adoptive parent to adopt children.	The Committee rejected the Proposal and did not agree with the justification and observed that CWSK is an adoption society and therefore accommodated in the clause.
Clause 212-Functions of adoption societies.	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (f) by replacing the word "Director" with the word "Secretary Children's Services is now a Directorate headed by the Secretary and not director Amend paragraph (h) by inserting the word "adoption" immediately before the word "society's"	For clarification purposes	The Committee agreed to the proposal and the justification.
	CWSK	That the Bill is amended by renumbering clause 212 to 212C That clause 212(1)(d) is amended by deleting (d)	For better flow of the Bill	The Committee noted that CWSK dropped the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		That Clause 212 (1)(e) is amended by deleting all the words appearing after the word "made" and inserting the words "to ensure comprehensive family tracing and reintegration is conducted"	Adoption is done by the national adoption society and registered adoption societies	
		Clause 212(1) is amended by deleting Paragraph (g)	The proposed amendment is supposed to protect children from unscrupulous persons who may declare children as abandoned for purposes of trafficking through adoption	
			(g) Appointment of guardian ad litem shall be as per the list submitted to the Court by the Council	
Clause 213-Adoption proceedings to be confidential.	CWSK	The Bill is amended under Clause 213 (2) (a) by deleting the words "Adoption Committee" and inserting the word "Council"	The Council is the regulator	The Committee noted the Proposal and the justification and observed that there is need to national body that is regulates adoption.
		That the Bill is amended under Clause 213 (4) by inserting the words "the national adoption	The national adoption society is the Government Agency responsible for adoption hence inclusion of the proposed amendment	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 214-Prohibition of certain payments.	CRADLE	<p>Society" after the words "adoption Society"</p> <p>Insert new clause 214 to read:</p> <p>214. The court may, in exceptional circumstances, rescind an adoption order on application by—</p> <p>(a) the adopted child;</p> <p>(b) a parent of the adopted child or other person who was a guardian in respect of the child immediately before the adoption;</p> <p>(c) the adoptive parent of the child;</p> <p>(d) any person who consented to the adoption;</p> <p>(e) the Cabinet Secretary in the case of an inter-country adoption; or</p> <p>(f) any other person with justifiable reason.</p> <p>(2) An adoption order may be rescinded only if—</p> <p>(a) rescission of the order is in the best interest of the child; or</p> <p>(b) the order was obtained through fraud or misrepresentation.</p> <p>(3) Where an adoption order is rescinded—</p>	The proposed clause enables the court to rescind an order for adoption.	The Committee noted the Proposal and the justification and observed that there is need for amendment to accommodate the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(a) the adoption order shall cease to apply in respect of the child concerned; and</p> <p>(b) all responsibilities, rights and other matters which had been previously terminated by the adoption order in respect of the child shall be restored.</p> <p>(4) When rescinding an adoption order, the court may—(a) make an appropriate placement order in respect of the child concerned;</p> <p>(b) order that the child be kept in temporary safe custody until an appropriate placement order can be made; or</p> <p>(c) make an ancillary order where necessary for restoration of the child</p>		
	CWSK	<p>The Bill is amended under Clause 214 (1) (b) (ii) by:-</p> <p>(a) deleting the words “three” and inserting the word “twenty”</p> <p>(b) deleting the word “one” and inserting the word “twenty”</p> <p>Amend clause 214 (2) by deleting paragraphs (b), (c), (d), (e) and (f)</p>	<p>The proposed amendment is meant to retain the provision as contained under Section 179(1) (b) (ii).</p> <p>The current section of the Act is more deterrent than the one provided by the Bill</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the punishment is sufficient.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			The proposed amendment is meant to retain the current section 179(2) of the Children Act which implies that adoption should be free with minimal costs	
Clause 217-Regulations.	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (b) by deleting the word " <i>Kafaalah</i> " and replacing therefor with "adoption"	The word " <i>Kafaalah</i> " is misplaced	The Committee agreed to the proposal and the justification.
	CWSK	Amend Clause 217 (a) by inserting the words "the national adoption Society," before the words "adoption societies" Amend by deleting (c)	The national adoption society is the Government Agency responsible for adoption hence inclusion of the proposed amendment To align with the moratorium by the Government which outlaws foreign adoption	The Committee noted the Proposal and the justification and observed that there is need for a national entity responsible for adoption and a transitional provision to accommodate the terms of the moratorium.
	Mercy Ndirangu Clement Oketch Ahmed Hassan	Amend: Separate Kafaalah from adoption and expound it After 217(a) add a standalone section on Kafalah with subsections on:	Adoption and Kafalah are two different processes hence the need to provide for Kafaalah as a separate clause	The Committee noted the Proposal and the justification and resolved to delete the term kafaalah from the clause and permit support from clause 11 of the Bill

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 218—Rules of Court.		<ul style="list-style-type: none"> • Qualification for a Kafila; • Eligibility for a child to be placed under Kafalah; and procedure for placing a child under Kafalah		
	CRADLE	Insert new PART XIII to read: Rights of children born via Assisted Reproductive Technology 185.(1) An intended parent shall acquire all parental duties, rights, obligations and liabilities of the parents of the child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to inherit property and shall be jailed for a term not exceeding ten years for negligence or abandonment of a child born using assisted reproductive technology. (2) No person shall preselect or perform any procedure or provide, prescribe or administer anything that would ensure or increase the probability that an embryo will be a	Assisted Reproduction Technology (ART) includes all fertility treatments in which either eggs or embryos are handled. In general, ART procedures involve surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. The procedure may also include the involvement of a third party who is a surrogate (in the event that her egg is being used) or a gestational carrier (where the resulting baby has no biological connection with the carrier).	The Committee rejected the Proposal and did not agree with the justification and observed that there is need to insert that a child conceived through this technology acquires the rights of the child
		(2) No person shall preselect or perform any procedure or provide, prescribe or administer anything that would ensure or increase the probability that an embryo will be a	The CRADLE concerns also relate to the abandonment and	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>particular sex except to prevent, diagnose or treat a sex-linked disorder or disease;</p> <p>(3) The health and well-being of children born through the application of assisted human reproductive technologies shall be given priority in all decisions respecting their use.</p> <p>(4) 'Where sperm or ovum is donated from a man or woman of a different nationality, the child shall adopt the nationality of the intended parents.'</p> <p>(5) 'Where a surrogate who is not a Kenyan citizen gives birth to a child, the child shall adopt the nationality of the intended parents.'</p>	<p>abuse of children that may occur in cases where the intending parents' divorce, change their minds about the surrogacy agreement, or decide they want a different child due to the sex or disability of the child. Such abandonment or negligence should accrue the same penalties as that which would accrue to parents who conceive through natural means. To reduce the probability of possible abandonment, persons undergoing ART should receive mandatory counselling in order to prepare them for all eventualities once the child is born. E.g., disconnect with a child born through surrogacy or a gestational carrier, children born with disabilities who later become unwanted etc.</p> <p>Another issue affecting children is gender selection in ART. In many societies, the boy child is often preferred which may ultimately lead to sex selective ART that ultimately creates an imbalance in the population.⁽¹⁾ In all instances the health, dignity</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			<p>and well-being of the child should not be compromised. The best interests of the child should therefore be of paramount consideration in all decisions regarding the child.</p> <p>Questions pertaining to the nationality of children born to foreigners through ART may also arise as legislation of ART is likely to attract foreign clients whose countries laws on ART remain unlegislated. A new clause should be introduced which clarifies that where a child is born to persons who are of not of the Kenyan nationality, the child shall adopt the nationality of the intended parents.' The creation of this provisions shall eliminate instances of conflict of laws between different jurisdictions especially among those nations where surrogacy is not recognized.</p>	
PART XIV—CHILDREN IN CONFLICT WITH THE LAW				

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 219-Application of Criminal Procedure Code.	Wakili.sha Initiative	All offences concerning children should be heard and determined by the Children's Court.	The Children's Court is a specialized court established to deal with the special nature of Children's matters. - The underpinning principle for a child-specific/child friendly justice system is based on the rationale that children in conflict with the law differ from adult offenders due to reasons of childhood, evolving capacities and vulnerability.	The Committee rejected the Proposal and did not agree with the justification and observed that the provision regulates procedure and jurisdiction and leaves administration to the Chief Justice through rules.
NEW CLAUSE 219	CRADLE	Insert new clause 219 to read: 219. (1) The following principles apply in this Part: (a) the children criminal justice system is intended to protect the public by (i) holding children accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person, (ii) promoting the rehabilitation and reintegration of children who have committed offences, and (iii) supporting the prevention of crime by referring children to programs or agencies in the community to address the	The proposed clause introduces the principles which must be considered where it concerns children in the justice system.	The Committee rejected the Proposal and did not agree with the justification and observed that Chapter XIV contains a details provisions that amount to the principles regulating children criminal justice system.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>circumstances underlying their offending behaviour;</p> <p>(b) the criminal justice system for children must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:</p> <p>(i) rehabilitation and reintegration,</p> <p>(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,</p> <p>(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,</p> <p>(iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and</p> <p>(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;</p> <p>(c) within the limits of fair and proportionate accountability, the measures taken against young</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>persons who commit offences should</p> <p>(i) reinforce respect for societal values,</p> <p>(ii) encourage the repair of harm done to victims and the community,</p> <p>(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and</p> <p>(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and</p> <p>(d) special considerations apply in respect of proceedings against young persons and, in particular,</p> <p>(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>special guarantees of their rights and freedoms,</p> <p>(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,</p> <p>(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and</p> <p>(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.</p>		
Clause 220-Assessment of a child on arrest.	World Kenya Vision	Amend to provide distinctive roles for children officer and Probation officer	The Children officer should undertake a social enquiry report for accused children and once found guilty, the probation to take over.	The Committee noted the Proposal and the justification and observed that there is need to remove the probation officer from pretrial processes.
		Amend sub-clause (3) by replacing the word "Director" wherever it appears with the word "Secretary"	Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Legal Sister	Insert A police officer must issue a notification to the children's officer that a child has been arrested, served with a summons or a notice to attend at the station.	The reporting mechanism must be followed and processes thereafter are done systematically for accountability purposes. A social inquiry report assists the ODPP to make a decision on diversion before the child is presented to the court	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
Clause 220(2)	Legal Sister	Amend	The Probation officer usually takes instruction from the court via a court order and as such cannot be instructed by the police. A probation officer is involved when the child is already presented before the Court. The Court shall instruct the probation officer to assess and submit a report to the court.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
220(1)	The Children Agenda Forum	the child needs to be assessed in the presence of a parent or guardian: 220. (1) Where a Children's Officer receives a notification from a police officer that a child has been arrested, served with summons or issued with a written notice, the Children's Officer in the		The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		presence of a parent/guardian shall undertake a social inquiry on the child to ascertain the social, economic, personal circumstances, and the needs of the child. Include the need to notify the parent or guardian of the child, that the child has been arrested within twenty-four hours		
Clause 220 (1)	Clement Oketch	On children officers conducting inquiry on socio-economic circumstances and needs of the child, they should first state the purpose of the inquiry and answer the question why the inquiry	E.g.to ascertain whether diversion can be considered at that stage.	
Clause 220 (2)	Clement Oketch	State why it necessary for a probation officer to assess the child and the intended outcome?	There is likelihood that both reports by PO and by CO will both talk about the same think and thus waste of resources.	The Committee agreed to the proposal and the justification and there is a need to draft a clause to address the proposal.
Clause 220 (3) & (4)	Clement Oketch	Insert the word interview just after the word assessment.	The intention of the clause is to secure the place of interview and not the assessment itself since assessment is a process and goes beyond mere interviewing the child.	The Committee rejected the Proposal and did not agree with the justification and observed that operationalization of the clause is under the sixth schedule

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Clement Oketch	<p>This section needs to</p> <p>(1) prescribe the police officer (e.g., responsible for child protection) who can summon the children's officers and make decision on the report prepared by the children officer.</p> <p>(2) The officer could be at least the rank of an inspector of police</p> <p>(3) In deciding the next course of action after the preliminary report has been filed, there should be a case conference at the station comprised over by an inspector of police responsible for children matters, the children officers in the area a social worker from an NGO working in the area and parents/guardian/care giver and any other such person that the members can permit.</p> <p>The import of this is to avoid unilateral action and to find merit in cases proceeding to the next stage.</p> <p>(4) The use of the work assessment in the side note should be changed to preliminary inquiry and all areas</p>		The Committee noted the Proposal and the justification and observed that the proposals could be addressed through administrative arrangements.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
NEW 220 CLAUSE	CRADLE	<p>referring to assessment of change accordingly</p> <p>Role of Children's Officer</p> <p>Insert new Clause 220 to read</p> <p>220. The functions of a children's officer may include the following:</p> <p>(1) in the case of a young person alleged to have committed an offence,</p> <p>(a) giving advice on the appropriate extrajudicial measure to be used in respect of the young person,</p> <p>(b) supporting any victim of the alleged offence by soliciting his or her concerns and facilitating the reconciliation of the victim and the young person,</p> <p>(c) ensuring that community support is available to the child by arranging for the use of services from within the community, and enlisting members of the community to provide short-term mentoring and supervision, and</p> <p>(d) when the child is also being dealt with by a child protection agency or a community group, helping to coordinate the interaction of the</p>	<p>The proposed clause outlines the duty of a children's officer.</p>	<p>The Committee noted the Proposal and the justification and observed that there is need to submit the extensive proposals as areas for review of policy consideration by the Ministry</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>agency or group with the youth criminal justice system;</p> <p>(2) advising the national and county governments on whether the provisions of this Act that grant rights to children, or provide for the protection of young persons, are being complied with;</p> <p>(3) advising the national and county governments on policies and procedures related to the children criminal justice system;</p> <p>(4) providing information to the public in respect of this Act and the children criminal justice system;</p>		
<p>Clause 221—Power to remit cases to Children's Court.</p>	<p>Legal Sister</p>	<p>This part has already been amended from the Act and is not included in S. 219 of this Bill</p> <p>Subject to any rules or directions made or issued by the Chief Justice, where it appears to a court, other than a Children's Court, at any stage of the proceedings that a child is charged before it with an offence other than murder, the court may, and where within the area of a subordinate court's jurisdiction there is established a Children's Court</p>		<p>Rejected. The proposal is not clear.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		having jurisdiction, the subordinate court shall remit the case to a Children's Court;		
Clause 221(2)	Legal Sister	Amend	no longer using the term child offender may deal with the child in conflict with the law	The Committee noted the Proposal and the justification and observed that the term is currently used by the Ministry.
Clause 221(4)	Legal Sister	Amend	no longer using the term child offender child in conflict with the law	The Committee noted the Proposal and the justification and observed that the term is currently used by the Ministry.
Clause 222–Rights of a child offender.	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend by deleting sub-clause (1) and replacing therefor the following new sub-clause: 222. (1) A child offender has the right to- (a) privacy during arrest, the investigation of the offence and at any other stage of the cause of the matter; (b) not to have their finger prints taken or stored in the criminal registry"	This is a measure to protect children	The Committee noted the Proposal and the justification and observed that the Government does not take fingerprints of children

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Legal Sister	Amend	no longer using the term child offender Rights of a child in conflict with the law	The Committee noted the Proposal and the justification and observed that the term is currently used by the Ministry.
	CRADLE	Insert new clause 221 immediately after the proposed clause 220 to read: 221. (1) Where a child is arrested and detained in custody pending their appearance in court, a police officer shall, as soon as possible after the child is detained, give or cause to be given to a parent of the child, orally or in writing, notice of the arrest stating the place of detention and the reason for the arrest. (2) If summons or an appearance notice is issued in respect of a child, the person who issued the summons or appearance notice, or, if a child is released on an undertaking, a police officer, shall, as soon as possible, give or cause to be given to a parent of the child notice in writing of the summons, appearance notice or undertaking. (3) If the whereabouts of the parents of a young person are not known or it appears that no parent is	The Committee noted the Proposal and the justification and observed that The proposed clause mandates the police to inform parents of arrested children of their arrest.	The Committee noted the Proposal and the justification and observed that there is need to draft a provision to ensure that there is notification of the parents.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 223-Criminal liability of a child.	UNICEF	<p>available, a notice under this section may be given to an adult relative of the child who is known to the child and is likely to assist the child or, if no such adult relative is available, to any other adult who is known to the child and is likely to assist the child and who the person giving the notice considers appropriate.</p> <p>(4) Where there has been a failure to give a notice in accordance with this section and none of the persons to whom the notice may be given attends court with the child, a children's court magistrate before whom proceedings are held against the young person may</p> <p>a. adjourn the proceedings and order that the notice be given in the manner and to the persons that the judge or justice directs; or</p> <p>b. dispense with the notice if the judge or justice is of the opinion that, having regard to the circumstances, the notice may be dispensed with.</p> <p>Amend s. 223 to set 14 as the minimum age of criminal liability, and delete the doli incapax rule (s. 23(2)). Add a section to Part XV</p>	In its 2019 General Comment, the UN CRC Committee has stated that 14 years is the minimum acceptable age of criminal responsibility. This	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>(Miscellaneous) amending s. 14 of the Penal Code to align with the Bill.</p> <p>Revise the language in s.2 (definition of children in conflict with the law), s. 223 (age of criminal responsibility) and s. 94 / 221 (jurisdiction of the children's court) to clarify that a child's age, for the purposes of the Act, is determined at the time the alleged offences was committed</p>	<p>change is based on evidence in the fields of adolescent development and neuroscience showing that, because the frontal cortex of their brains is not fully developed, children under the age of 14 have limited maturity and capacity to understand the consequences of their actions. In addition, 14 years is the most common age of criminal liability internationally.</p> <p>The Bill raises the age of criminal responsibility to 12, but this is still below the minimum of 14 years recommended by the UN Committee on the Rights of the Child. It also retains the <i>doli incapax</i> or "two-age" rule (s. 223(2)) for children between the ages of 12 and under 14.</p> <p>The UN Committee has been highly critical of this rule and recommends that countries repeal it, since it allows courts to make subjective determinations of a child's criminal capacity, often</p>	consideration as an area for change of national policy.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			without proper expert advice, and leads to discriminatory practices. UN Committee, make clear that the child's age is determined at the time the alleged offences were committed, not his/her age at the time proceedings were initiated or s/he appears before the court.	
Clause 224–Right of a child to be heard in proceedings	Legal Sister	Delete	no definition of a “fit person” is given A suitable guardian is determined by the Court.	The Committee rejected the Proposal and did not agree with the justification and observed that fit person is defined under clause 2 of the Bill.
Clause 225–Detention of children.	CWSK	That Clause 225 of the Bill is amended by inserting the following new sub-clauses- Insert a new clause to read as follows:- (3) The police shall make arrangements to detain the child in a part of a police station specially designated for children or in a part of a police station which is separate	Amend to protect children	The Committee rejected the Proposal and did not agree with the justification and observed that the bill provides for creation of Child Protection units for holding children in conflict with the law.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>from the area where persons other than children are detained.</p> <p>(4) Subsection (1) applies where the child is not released on recognizance or within forty-eight hours after the child has been arrested.</p> <p>(5) A child shall not be allowed to associate with any person other than a relative, a lawyer or an authorized officer whilst detained at a police station or being transported to a remand home or place of safety.</p> <p>(6) A child shall be under the care of an adult of the same sex when detained in a police station or whilst being transported to a remand home or place of safety.</p> <p>(7) a male child shall be held separately from a female child.</p> <p>(8) a child in detention at a police station has the right to-</p> <p>(a) adequate and nutritious;</p> <p>(b) medical treatment if required;</p> <p>(c) reasonable visits from parents, guardian, lawyer or close relative; and</p> <p>(d) any other conditions reasonably required for the welfare of the child.</p>		

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 229—When to consider diversion.	Legal Sister	Delete	Diversion is done by the Court and the ODP	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.
			Notwithstanding any provision of this Act or any other written law, ODP or judicial officer dealing with any matter in which a child is suspected of, or charged with, the commission of an offence shall, where the child is eligible for diversion under this Act, in the first instance, consider that child for diversion	
Clause 229(f)	Legal Sister	Amend	No longer using the term child offender.	The Committee noted the Proposal and the justification and observed that the term is currently used by the Ministry.
			The child is in conflict with the law for the first or second time	
	NCAJ Taskforce	When to consider diversion	Add Pre-trial Diversion	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.
			It should be noted that the Diversion Procedure is in relation to court diversion. Diversion should ensure that the child does not come into	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			contact with the court system and as such pre charge diversion should be provided for.	
Clause 230-Preliminary inquiry.	Legal Sister	Delete	The diversion Policy to be implemented as it is currently. The ODPP has the mandate to institute criminal cases. Diversion is done by the ODPP in the first instance. There is no requirement for a preliminary inquiry if the child is not going to be presented before court	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.
Clause 230 (3)(a)	The Children Agenda Forum	preliminary inquiry before diversion- add consider the assessment report of a child psychologist		The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.
	Clement Oketch	This clause is spent vide clause in section 223	It has already been provided that no child below the age of 12 is criminally liable for any commission of omission.	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 230(3)(a)	PLAY THERAPY		230 (3a) preliminary inquiry before diversion- add consider the assessment report of a child psychologist	The Committee rejected the Proposal and did not agree with the justification and observed that
Clause 231-Determination of a child's age.	Legal Sister	Delete	Legally binding documents should be considered as evidence before court. word of mouth cannot be used to conclusively ascertain the age of a child Age can be determined by 1. birth certificate 2. Birth notification Age assessment report	The Committee rejected the Proposal and did not agree with the justification and observed that clause provides for procedures to regulate determination of age where there is uncertainty.
Clause 232-Levels of diversion.	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend paragraph (b)(ii) by deleting the words "for a not" and replacing therefor with "for a period not"	Editorial	The Committee agreed to the proposal and the justification.
	Legal Sister	Delete	The diversion policy has not been incorporated in the Bill. This 14 Page	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			sets out new policies that conflict with the already existing policy	consideration as an area for change of national policy.
	Clement Oketch	<p>-These should be left to a regulation or rules.</p> <p>-An open clause should be drafted to take care of all these since they are more procedural and technical by the therapists/social worker handling the case.</p> <p>- In regard to community service orders, consult with the National CSO Committee with regard to any clause touching CSO programme.</p>	<p>-Programme treatment or behavioural therapy session time cannot be regulated by a defined statute.</p> <p>-Three months, for instance, may be too short or too long for a family case conference.</p> <p>- The clause will be in conflict with the parent CSO Act unless the CSO Act is amended to accommodate children being diverted before plea and before a presentence report is made.</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that the clause recognizes that there will be regulations to effect.</p>
Clause 232(2)	UNICEF	Delete reference to 'residential element' in (s.232(2)(c) (ii)) as a form of diversion	<p>Contrary to international standards, which say diversion cannot include any form of deprivation of liberty (i.e., placement of a child in a closed facility that they cannot leave at will).</p> <p>The use of different "levels" of diversion options restricts flexibility and arguably adds an unnecessary level of complexity. Unlike in South</p>	<p>The Committee rejected the Proposal and did not agree with the justification and observed that diversion may require residential element especially for children in conflict with the law.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
233-Power of Court in diversion.	Legal Sister	Delete	Africa, the Bill does not link these different "levels" to the nature and seriousness of the offence, so it is unclear what purpose the differentiation serves and when /why a Level 1 vs Level 3 option would be used.	The Committee noted the Proposal and the justification and observed that there is need to submit the proposal to the State Department for consideration as an area for change of national policy.
Clause 234-Family Group Conference.	The Children Agenda Forum	Under clause 234(3) A counsellor or psychologist should be among the people who may attend a family group conference	Upon ordering diversion, the magistrate conducting the inquiry or proceedings shall use the children's officer from time of arrest to monitor the child's compliance with the identified diversion option.	The Committee agreed to the proposal and the justification.
Clause 234 (2)	Clement Oketch	Should be deleted.	Because it is not in the interest of the child or informed by the tenets, principles and	The Committee rejected the Proposal and did not agree with the justification and

CLAUSe	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			objectives of family Group Conferencing practice.	observed that it is in the interest of the child or informed by the tenets, principles and objectives of family Group Conferencing practice.
Clause 234(3)	Play Therapy		234 (3) A counsellor or psychologist should be among the people who may attend a family group conference	The Committee agreed to the proposal and the justification.
Clause 234 (5)		Report should be sent to the court that referred the matter for FGC and not the ODPP.	The issues therein can then be conversed by all in court.	it is not in the interest of the child or informed by the tenets, principles and objectives of family Group Conferencing practice.
Clause 234	Clement Oketch	Delete all procedural issues.		The Committee noted the Proposal and the justification and observed that there was no justification provided in support of the proposal.
Clause 235-Assistance to child offender in court				There were no remarks submitted on this clause
Clause 240-Restriction on punishment.	World Kenya Vision	Amend to provide an alternative measure that is not ambiguous. If there is no imprisonment clearly	If a Child under 12 years who's found guilty cannot be sent to a rehabilitation school- The Bill	The Committee rejected the Proposal and did not agree with the justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		state that the Child goes to rehabilitation school or corrective centre etc.	should provide what becomes of them.	observed that the Bill provides for rehabilitation schools
	UNICEF	Insert the words "or life imprisonment" between the words "by death" and "no Court" New clause to read: Notwithstanding the nature of any offence punishable by death, no court shall impose the death penalty or life imprisonment on a child on a finding of guilty for such an offence It is also recommended that a maximum custodial term for children who commit murder and/or other offences punishable by death or life imprisonment.	Death Sentences were abolished in Kenya. The clause shall cover offences that attract life imprisonment for clear guidance on how to handle these offences.	The Committee rejected the Proposal and did not agree with the justification and observed that the Bill provides for rehabilitation schools
Clause 241 (h)	Play Therapy		241 (h)- add psychologist – From the association of play therapy	The Committee agreed to the proposal and the justification.
Clause 240(3)	Legal Sister	Delete	It's already been determined that a child under 12 years old	The Committee rejected the Proposal and did not agree with the justification and

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
			can't be charged with an offence in this bill.	observed that the clause is in the best interest a child in conflict with the law
Clause 240 (3)	Clement Oketch	Delete.	It is spent by the fact that no child shall be held criminally liable.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child in conflict with the law in relation to placing restrictions on punishment of a child
Clause 240 (4)	Clement Oketch	Create 241(7) and cushion/address the stigma	CSO has an element of stigmatization since it's done in the open and as such there may be stigma on the child.	The Committee rejected the Proposal and did not agree with the justification and observed that the clause is in the best interest a child in conflict with the law and there is no need to address stigma as a child in conflict with the law is already facing stigma and hence there interaction with the law
Clause 241-Methods of dealing with children in conflict with the law.	Legal Sister	Amend 241(1) d	no definition of a "fit person" is given commit the offender to the care of a suitable person as provided by court, whether a relative or not, or a charitable children's institution willing to	The Committee rejected the Proposal and did not agree with the justification and observed that fit person is defined under clause

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		Amend 241 (1)- add psychologist	undertake the care of the offender;	The Committee agreed to the proposal and the justification.
Clause 243-Power to order parent to pay fines, etc.	Clement Oketch	Insert the words 'probation officer' immediately after the words 'children Officer'. Delete the words 'the Director of Public Prosecution'.	The reason for deleting the latter is that the court is the referring authority and it is the magistrate that should decide if all the information therein should be shared with any other person. As such, the report will only be shared to other officers of the court upon the direction given by the court.	The Committee rejected the Proposal and did not agree with the justification and observed that the proposal is not clear.
Clause 245-Proceedings in respect of offences committed by a child.	CWSK	The Bill is amended by introducing a new PART XV as follows- Trafficking of children 245A. Purpose of the Part. The purposes of Part are — (a) to give effect to the UN Protocol to Prevent Trafficking in Persons;	The Department of State of the United States of America (USA) ranks Kenya at Tier 2 Watch List for non-compliance with minimum standards for the elimination of human trafficking (Trafficking in Persons Report, June 2014 by Department of State, USA). The proposed amendment will give effect to the UN protocol	The Committee rejected the Proposal and did not agree with the justification and observed that the Counter Trafficking in Persons Act contains provisions criminalizing and prosecution of trafficking of children.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		(b) generally, to combat trafficking in children.	and will ensure that our children are protected from trafficking. This is the best practice in other jurisdictions in other countries e.g., South Africa where they provide under their Children Act, a Part on Prevention of Trafficking of Children The proposed amendment will also enhance protection of children who have been victims of child trafficking	
PART XV—MISCELLANEOUS				
Clause 246—Appeals to the Cabinet Secretary.	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
Clause 250—Grants and expenses of the Cabinet Secretary.	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph (a)(ii) by replacing the word “Director” with the word “Secretary” Amend paragraph (c) by replacing the word “Director” with the word “Secretary”	Children’s Services is now a Directorate headed by the Secretary and not director Children’s Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	CWSK	That the Bill is amended under clause 250 (a) by inserting a new paragraph (iii) to read as follows- (iii) Such grant or grants in aid to the Society to defray expenses incurred by the Society in performance of its functions. That the Bill is amended under clause 250 (b) by inserting the words "the national adoption society, " immediately before the word "adoption"	To enable the Society, perform its functions. The national adoption society undertakes adoptions on behalf of the Government. Propose deletion of charitable institutions from clause 250(b)	
	UNICEF	250 (a) (i) Delete 'child protection centres' 250 (b) Delete 'charitable children institutions' Amend (a) (ii) to add underlined words (a) (ii) expenses incurred by the Director in the administration of services to children, in need of care and protection; for effective implementation that ensures continuum of care Add two clauses under (a) (iii) & (iv) as below (iii) expenses for	The Bill does not provide for the establishment of Child Protection Centres. This is because Child Protection Centres will parallel the Structures established for the Directorate of Children services whose structures are spread up to sub-county level. If government funds charitable children institutions, this will be contract to government policy on care reform of moving from institutional	The Committee rejected the Proposal and did not agree with the justification and observed that clause 250 (b) empowers Parliament to make grants to adoption societies and the latter include CWSK.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>putting in place adequate social service workforce at national, county, sub-county for effective promotive, preventive and responsive services</p> <p>(iv) the expenses for supporting children and families during humanitarian emergencies</p> <p>250 (b) Add 'the Council' and 'any other government agency'</p> <p>(b) such grants or pants in aid to adoption societies and foster parents or charitable children's institutions as may be authorized by the Cabinet Secretary from time to time;</p> <p>Or any other expenses incurred by the Cabinet Secretary, the Council and the Director and any other government agency, in the administration of this Act.</p>	<p>based care to family and community-based care. Charitable children's institutions should be funded by non-state actors as per clause 66 (1,6, 7)</p> <p>The addition of expenses for social workforce here is important because this is one of the most important component in delivering services for children. Inadequate workforce means children and their families will not get required services.</p> <p>Inclusion of 'the Council, in this Clause is important as the Council has been given clear mandate in administration of the Act.</p> <p>Inclusion of 'any other government agencies' in this clause is important because of the roles/mandates ascribed to these agencies e.g.,</p>	

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 251 –Repeals.	UNICEF		the Child Protection Units will be established by Inspector General in all Police Stations (section 65) , It is a momentous opportunity for Parliament in the passing of the Children Bill, to review the offensive claw back provisions in other laws that are contrary to the spirit and letter of the proposed law and the Constitution since they still remain in the statute books. The Commission therefore recommends the amendment of Clause 251 of the Children Bill on Repeals by including repeal of section 12 of the Births and Deaths Registration Act and effecting amendments to sections 3(2) and 3(3) of the Law of Succession Act to align with the Constitution and judgments of the High Court as well as Kenya's regional and international human rights obligations	The Committee agreed to the proposal and the justification.
FIRST SCHEDULE- BEST INTEREST CONSIDERATIONS	CRADLE	Amend First Schedule by adding the following considerations to the best interest of the child— 1. The child's physical, mental and emotional needs, and the	The proposed schedule places further considerations in deciding the best interest of the child.	The Committee rejected the Proposal and did not agree with the justification and observed that the 18 grounds address the areas submitted as

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>appropriate care or treatment to meet those needs.</p> <p>2. The child's physical, mental and emotional level of development.</p> <p>3. The child's cultural background.</p> <p>4. The religious faith, if any, in which the child is being raised.</p> <p>5. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.</p> <p>6. The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community.</p> <p>7. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.</p> <p>8. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.</p>		<p>additional proposals adequately.</p>

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
		<p>9. The child's views and wishes if they can be reasonably ascertained.</p> <p>10. The effects on the child of delay in the disposition of the case.</p> <p>11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.</p> <p>12. The degree of risk, if any, that justified the finding that the child is in need of protection.</p> <p>13. Any other relevant circumstance</p>		
THIRD SCHEDULE- WELFARE SCHEMES	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend by deleting paragraph (d) paragraph (d) does not qualify to be among the categories of children envisaged under the law		The Committee agreed to the proposal and the justification.
	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend by deleting Part (III) of the Third Schedule It does not relate to the powers envisaged under clause 63		The Committee agreed to the proposal and the justification.
	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend paragraph 2 by deleting the words "children's officers and" The meaning in this context is in consistent with powers envisaged under clause 63		The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend by deleting paragraph 4 Since Voluntary institution are not recognized.		The Committee agreed to the proposal and the justification.
	Department For Social Protection, Senior Citizens Affairs and Special Programmes	Amend Part V of the Third Schedule by inserting the following new paragraph: 2. Parents of children committed to the care of county governments shall be required to maintain contact with such governments. This is an administrative provision that fits in this Part of the Schedule		The Committee agreed to the proposal and the justification.
FOURTH SCHEDULE-OF FENCES DISQUALIFYIN G AN APPLICANT FROM ADOPTION	Department For Social Protection, Senior Citizens Affairs and Special Programmes	1. Rape and Defilement. 2. Robbery where- (a) there are Aggravating circumstances; or (b) Involving taking of a motor- vehicle.	Amend by deleting the words "rape and defilement" and replacing therefor with "sexual offences" To cover all offences under Sexual Offences Act	The Committee agreed to the proposal and the justification.
	Department For Social Protection, Senior Citizens Affairs And Special Programmes		Amend by deleting paragraph 2 and replacing therefor the following new paragraph: 2. Robbery The provision is restrictive	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
	Department For Social Protection, Senior Citizens Affairs And Special Programmes	5. Any offence related to Drug trafficking, if: (a) the Value -of the dependence producing substance in question is more than Kshs. 100,000.00; or (b) The value of the dependence producing substance in question is more than Kshs. 50,000.00 and the offence was committed by a person, group of persons, syndicate or any other enterprise acting in the execution or furtherance of a common purpose or conspiracy.	Amend by deleting paragraph (5) and replacing therefor the following new paragraph: 5. Any offence related to Drug trafficking The provision is restrictive	The Committee agreed to the proposal and the justification.
	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Addition of new paragraph in the Fourth Schedule	Amend by adding the following new paragraph: “8. Any offence relating to trafficking in persons and smuggling of migrants.”	The Committee agreed to the proposal and the justification.
FIFTH SCHEDULE-OF FENCES REQUIRING RECORD AND PRESERVATION OF INFORMATION WITH REGARD	Department For Social Protection, Senior Citizens Affairs And Special Programmes	Amend by adding the following new paragraph: “offences under the Sexual Offences Act	For inclusivity in terms of listed offences	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
TO THE CONDITION OF THE CHILD				
SIXTH SCHEDULE-AS SESSMENT OF A CHILD WHO IS IN CONFLICT WITH THE LAW	Department For Social Protection, Senior Citizens Affairs And Special Programmes	13. The children's officer shall complete an assessment report in accordance with the eleventh Schedule.	For proper referencing	The Committee agreed to the proposal and the justification.
	Department For Social Protection, Senior Citizens Affairs And Special Programmes	9. The children's officer may, at any stage during the assessment of a child, consult with— (a) the Director of Public Prosecutions or a prosecutor duly designated by the Director;	Amend by replacing the word "Director" appearing after the words "designated by" with the word "Secretary" Children's Services is now a Directorate headed by the Secretary and not director	The Committee agreed to the proposal and the justification.
SEVENTH SCHEDULE-OF FENCES ENTITLING A CHILD TO LEGAL REPRESENTATI ON	Department For Social Protection, Senior Citizens Affairs And Special Programmes	1. Robbery. 2. Manslaughter. 3. Assault, involving the infliction of grievous bodily harm. 4. Arson. 5. Malicious damage to property where the damage exceeds Kshs. 10,000.00 and there are aggravating circumstances.	Amend by deleting the Seventh Schedule Every child has a right to legal representation	The Committee agreed to the proposal and the justification.

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
EIGHTH SCHEDULE-		<p>6. Housebreaking, whether under common law or a statutory provision, with intent to commit an offence, if the amount involved in the offence exceeds Kshs. 20,000.00 and there are aggravating circumstances.</p> <p>7. Theft, where the amount involved exceeds Kshs. 20,000.00 and there are aggravating circumstances.</p> <p>8. Any offence under any law relating to the illicit possession of dependence producing drugs where the quantity involved exceed Kshs. 20,000.00 in value.</p> <p>9. Forgery, uttering or fraud, where the amount concerned exceeds Kshs. 20,000.00 and there are aggravating circumstances.</p> <p>10. Kidnapping.</p> <p>11. Any statutory offence where the penalty concerned exceeds Kshs. 100,000.00.</p> <p>12. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule</p>		The Committee resolved to insert a transitional to regulate the provisions on

CLAUSE	STAKEHOLDER/ PROPOSER	SUBMISSION/PROPOSAL	JUSTIFICATION	COMMITTEE RECOMMENDATION
TRANSITIONAL PROVISIONS				international adoptions and moratorium.

CHAPTER EIGHT

8.0 COMMITTEE RECOMMENDATIONS

118. The Committee, having considered the Children Bill (*National Assembly Bill No. 38 of 2021*), recommends that the House passes the Bill with amendments.

SIGNED.....



DATE.....

6th April, 2022

HON. JOSEPHAT KABINGA WACHIRA, OGW, M.P.,

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

ANNEXES

Annexure 1: Adoption Schedule

Annexure 2: Minutes of Committee sittings on the consideration of the Bill

VOL II: Bill No. 38 of 2021, Newspaper Advertisements, Memoranda from the public





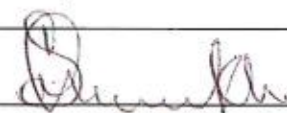


**THE NATIONAL ASSEMBLY
12TH PARLIAMENT - SIXTTH SESSION (2022)
DC- LABOUR AND SOCIAL WELFARE**

REPORT ADOPTION SCHEDULE

REPORT ON THE CHILDREN BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 38)

DATE: 5TH April, 2022

No.	HON MEMBER	SIGNATURE
1.	The Hon. Josphat Kabinga Wachira, M.P – (Chairperson)	
2.	The Hon. Gideon Koske Kimutai, M.P. (Vice Chairperson)	
3.	The Hon. Ronald Kiprotich Tonui, MP	
4.	The Hon. Abdi Mude Ibrahim, MP	
5.	The Hon. Caleb Amisi, M.P.	
6.	The Hon. Charles Kanyi Njagua, MP	
7.	The Hon. Fabian Kyule Muli, MP	
8.	The Hon. Gideon Keter, M.P.	
9.	The Hon. James Onyango K'Oyoo, MP	
10.	The Hon. Janet Marania Teyiaa, MP	
11.	The Hon. Moses Malulu Injendi, M.P	
12.	The Hon. Nelson Koech, M.P	
13.	The Hon. Ole Sankok David, MP	

No.	HON MEMBER	SIGNATURE
14.	The Hon. Omboko Milemba, MP	
15.	The Hon. Rose Museo, MP	
16.	The Hon. Safia Sheikh Adan, MP	
17.	The Hon. Titus Mukhwana Khamala, M.P.	
18.	The Hon. Tom Mboya Odege, MP	
19.	The Hon. Wilson Sossion, MP	