

## **The Children Act, 2001 (No. 8 of 2001)**

**AN ACT of Parliament to make provision 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 principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and for connected purposes**

**ENACTED by the Parliament of Kenya as follows:**

### **PART I – PRELIMINARY**

#### **1 Short title and commencement.**

This Act may be cited as the Children Act, 2001 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

#### **2 Interpretation.**

In this Act, unless the context otherwise requires—

“Adoption Committee” means the Committee established under section 155;

“adoption order” means an adoption order under section 154 vesting the parental rights and duties relating to a child in the adopter;

“adoption society” means a society approved by the Adoption Committee under section 177;

“age” where actual age is not known means apparent age;

“appointed local authority” means a local authority appointed under section 41;

“approved officer” means a person appointed under section 38;

“Area Advisory Council” means a council established under section 32;

“authorised officer” means a police officer, an administrative officer, a children's officer, approved officer, a chief appointed under the Chiefs Act, a labour officer or any other officer authorised by the Director for the purposes of this Act;

“body of persons” means any body of persons whether incorporate or unincorporate;

“borstal institution” means a borstal institution established by section 3 of the Borstal Institutions Act.

“child” means any human being under the age of eighteen years;

“child abuse” includes physical, sexual, psychological and mental injury;

“child of tender years” means a child under the age of ten years;

“children’s remand home” means a remand home established under section 50 for the detention of children;

“Council” means the National Council for Children’s Services established by section 30;

“Director” means the Director of Children’s Services appointed under section 37;

“disabled child” means a child suffering from a physical or mental handicap which necessitates special care for the child;

“early marriage” means marriage or cohabitation with a child or any arrangement made for such marriage or cohabitation;

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

“female circumcision” means the cutting and removal of part or all of the female genitalia and includes the practices of clitoridectomy, excision, infibulation or other practice involving the removal of part, or of the entire clitoris or labia minora of a female person;

“foster parent” means a parent registered under this Act to receive and retain a child for the purpose of caring for and maintaining the child apart from the child’s parents, guardian or relative;

“foster care placement” means the placement of a child with a person who is not the child’s parent, relative or guardian and who is willing to undertake the care and maintenance of that child;

“rehabilitation school” means a rehabilitation school established under section 47;

“guardian” in relation to a child includes any person who in the opinion of the court has charge or control of the child;

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

Provided that—

(i) in the case of a parent, guardian or relative having, or having had more than one permanent place of residence, the parent, guardian or relative shall be presumed to be or to have been permanently resident at the place of such person’s principal permanent residence; and

(ii) where the court is unable to determine the home of any such child, the child shall be deemed for the purposes of this Act to have his home in the area of jurisdiction of the local authority in whose area he is found;

“medical practitioner” means a person registered as a medical practitioner under the Medical Practitioners’ and Dentists’ Act;

“Minister” means the Minister for the time being entrusted with the administration of this Act or such other Minister as may be expressly charged with any special matter which is otherwise dealt with under this Act; “National Council of Non-Governmental Organizations”

means the National Council of Non-Governmental Organizations established by section 23 of the Non-Governmental Organizations Coordination Act, 1990;

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

“parent” means the mother or father of a child and includes any person who is liable by law to maintain a child or is entitled to his custody;

“place of safety” means any institution, hospital or other suitable place the occupier of which is willing to accept the temporary care of a child;

“private sector” means the non-public sector of the economy;

“relative”, in relation to a child, means any person related to the child, whether of the full blood, half blood or by affinity, and

(a) where an adoption order has been made in respect of the child or any other person under this Act, any person who would be a relative of the child within the meaning of this definition if the adopted person was the child of the adopter born inside marriage; or

(b) where the child is born outside marriage and the father has acknowledged paternity and is contributing towards the maintenance of the child, the father of the child within the meaning of this definition if the child was the child of his mother and father born inside marriage;

“spouse” in relation to a wife of a polygamous marriage, means the wife applying for an adoption order either as the sole applicant or jointly with the husband or the wife into whose care a husband applying for an adoption order proposes to give the child.

## **PART II – SAFEGUARDS FOR THE RIGHTS AND WELFARE OF THE CHILD**

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

The Government shall take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights of the child set out in this Part.

### **4 Survival and best interests of the child.**

(1) Every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.

(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

(a) safeguard and promote the rights and welfare of the child;

(b) conserve and promote the welfare of the child;

(c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.

(4) In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity.

### **5 Non-discrimination.**

No child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.

### **6 Right to parental care.**

(1) A child shall have a right to live with and to be cared for by his parents.

(2) Subject to subsection (1), where the court or the Director determines in accordance with the law that it is in the best interests of the child to separate him from his parent, the best alternative care available shall be provided for the child.

(3) Where a child is separated from his family without the leave of the court, the Government shall provide assistance for reunification of the child with his family.

### **7 Right to education.**

(1) Every child shall be entitled to education the provision of which shall be the responsibility of the Government and the parents.

(2) Every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the United Nations Convention on the Rights of the Child.

### **8 Right to religious education.**

(1) Every child shall have a right to religious education subject to appropriate parental guidance.

(2) The Minister shall make regulations giving effect to the rights of children from minority communities to give fulfillment to their culture and to practice their own language or religion.

### **9 Right to health care.**

Every child shall have a right to health and medical care the provision of which shall be the responsibility of the parents and the Government.

### **10 Protection from child labour and armed conflict.**

(1) Every child shall be protected from economic exploitation and any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

(2) No child shall take part in hostilities or be recruited in armed conflicts, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law.

(3) It shall be the responsibility of the Government to provide protection, rehabilitation care, recovery and re-integration into normal social life for any child who may become a victim of armed conflict or natural disaster.

(4) The Minister shall make regulations in respect of periods of work and legitimate establishments for such work by children above the age of sixteen years.

(5) In this Act child labour refers to any situation where a child provides labour in exchange for payment and includes—

(a) any situation where a child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for the purposes of payment;

(b) any situation where a child's labour is used for gain by any individual or institution whether or not the child benefits directly or indirectly; and

(c) any situation where there is in existence a contract for services where the party providing the services is a child whether the person using the services does so directly or by agent.

### **11 Name and nationality.**

Every child shall have a right to a name and nationality and where a child is deprived of his identity the Government shall provide appropriate assistance and protection, with a view to establishing his identity.

### **12 Disabled child.**

A disabled child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible from harmful cultural rites, etc.

### **13 Protection from abuse, etc.**

(1) A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.

(2) Any child who becomes the victim of abuse, in the terms of subsection (1), shall be accorded appropriate treatment and rehabilitation in accordance with such regulations as the Minister may make.

### **14 Protection from harmful cultural rites, etc.**

No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.

### **15 Protection from sexual exploitation.**

A child shall be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials.

## **16 Protection from drugs.**

Every child shall be entitled to protection from the use of hallucinogens, narcotics, alcohol, tobacco products or psychotropic drugs and any other drugs that may be declared harmful by the Minister responsible for health and from being involved in their production trafficking or distribution.

## **17 Leisure and recreation.**

A child shall be entitled to leisure, play and participation in cultural and artistic activities.

## **18 Torture and deprivation of liberty.**

(1) No child shall be subjected to torture, of cruel treatment or punishment, unlawful arrest or liberty, deprivation of liberty.

(2) Notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment.

(3) A child offender shall be separated from adults in custody.

(4) A child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with his family.

## **19 Right to privacy.**

Every child shall have the right to privacy subject to parental guidance.

## **20 Penalties.**

Notwithstanding penalties contained in any other law, where any person wilfully or as a consequence of culpable negligence infringes any of the rights of a child as specified in sections 5 to 19 such person shall be liable upon summary conviction to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine.

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

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

- (a) work for the cohesion of the family;
- (b) respect his parents, superiors and elders at all times and assist them in case of need;
- (c) serve his national community by placing his physical and intellectual abilities at its service;
- (d) preserve and strengthen social and national solidarity; and
- (e) preserve and strengthen the positive cultural values of his community in his relations with other members of that community:

Provided that in reckoning the requisite duty and responsibility of any individual child, due regard shall also be had to the age and ability of such child and to such limitations as are contained in this Act.

## **22 Enforcement of rights.**

(1) Subject to subsection (2), if any person alleges that any of the provisions of sections 4 to 19 (inclusive) has been, is being or is likely to be contravened in relation to a child, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress on behalf of the child.

(2) The High Court shall hear and determine an application made by a person in pursuance of subsection (1) and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 4 to 19 (inclusive).

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it or under this section including rules with respect to the time within which applications may be brought and references shall be made to the High Court.

## **PART III – PARENTAL RESPONSIBILITY**

### **23 Definition of parental responsibility.**

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

(2) The duties referred to in subsection (1) include in particular—

(a) the duty to maintain the child and in particular to provide him with—

- (i) adequate diet;
- (ii) shelter;
- (iii) clothing;
- (iv) medical care including immunization; and
- (v) education and guidance; ,

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

(c) the right to—

- (i) give parental guidance in religious, moral, social, cultural and other values;
- (ii) determine the name of the child;
- (iii) appoint a guardian in respect of the child;

(iv) receive, recover, administer and otherwise deal with the property of the child for the benefit and in the best interests of the child;

(v) arrange or restrict the emigration of the child from Kenya;

(vi) upon the death of the child, to arrange for the burial or cremation of the child.

(3) The Minister may make regulations for the better discharge of parental responsibility by parents whose work conditions result in the separation from their children for prolonged periods.

(4) The fact that a person has or does not have parental responsibility shall not affect—

(a) any obligation which such person may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which in the event of the child's death, such person (or any other person) may have in relation to the child's property.

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

#### **24 Who has parental responsibility.**

(1) Where a child's father and mother were married to each other at the time of his birth, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility.

(2) Where a child's father and mother were not married to each other at the time of the child's birth and have subsequently married each other, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.

(3) Where a child's father and mother were not married to each other at the time of the child's birth and have not subsequently married each other—

(a) the mother shall have parental responsibility at the first instance;

(b) the father shall subsequently acquire parental responsibility for the child in accordance with the provisions of section 25.

(4) More than one person may have parental responsibility for the same child at the same time.

(5) A person who has parental responsibility for a child at any time shall not cease to have that responsibility for the child.

(6) Where more than one person have parental responsibility for a child, each of them may act alone and without the other (or others) in that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(7) The fact that a person has parental responsibility for a child may not entitle that person to act in any way which would be incompatible with any order made with respect to the child under this Act.



(8) (a) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(b) The person with whom such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(c) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of such person's parental responsibility for the child concerned.

## **25 Acquisition of parental responsibility by father.**

(1) Where a child's father and mother were not married at the time of his birth—

(a) the court may, on application of the father, order that he shall have parental responsibility for the child; or

(b) the father and mother may by agreement (“a parental responsibility agreement”) provide for the father to have parental responsibility for the child.

(2) Where a child's father and mother were not married to each other at the time of his birth but have subsequent to such birth cohabited for a period or periods which amount to not less than twelve months, or where the father has acknowledged paternity of the child or has maintained the child, he shall have acquired parental responsibility for the child, notwithstanding that a parental responsibility agreement has not been made by the mother and father of the child.

## **26 Parental responsibility agreement etc.**

(1) A parental responsibility agreement shall have effect for the purposes of this Act if it is made substantially in the form prescribed by the Chief Justice.

(2) A parental responsibility agreement may only be brought to an end by an order of the court made on application by—

(a) any person who has parental responsibility for the child; or

(b) the child himself with the leave of the court.

(3) The Court may only grant leave under subsection 2 (b) if it is satisfied that the child has sufficient understanding to make the proposed application.

## **27 Transmission of parental responsibility.**

(1) Where the mother and father of a child were married to each other at the time of the birth of the child or have subsequently married each other—

(a) on the death of the mother the father shall exercise parental responsibility for the child either alone or together with any testamentary guardian appointed by the mother;

(b) on the death of the father, the mother if living shall exercise parental responsibility for the child either alone or together with any testamentary guardian appointed by the father;

(c) where both the mother and the father of the child are deceased, parental responsibility shall be exercised by—

(i) any testamentary guardian appointed by either of the parents or

(ii) a guardian appointed by the court, or

(iii) the person in whose power a residence order was made prior to the death of the child's father and mother, and which order is still in force, or

(iv) a fit person appointed by the court; or

(v) in the absence of the persons specified in paragraphs (i), (ii), (iii) and (iv), a relative of the child.

(2) Where the father and mother of the child were not married at the time of the birth of the child and have not subsequently married each other—

(a) on the death of the mother of the child, the father of the child, if he has acquired parental responsibility under the provisions of this Act, shall if he is still living, have parental responsibility for the child either alone or with any testamentary guardian appointed by the mother or the relatives of the mother.

(b) on the death of the father of a child who has acquired parental responsibility under the provisions of this Act, the mother of the child shall exercise parental responsibility in respect of the child either alone, or with any testamentary guardian appointed by the father;

(c) the surviving mother or father of the child, as the case may be, shall be entitled to object to any testamentary guardian appointed by either of them acting and may apply to the court for the revocation of the appointment of the testamentary guardian and the relatives of the deceased mother or father of the child, may, if they consider the surviving father or mother of the child, as the case may be, to be unfit to exercise parental responsibility for the child, apply to the court to make such appropriate orders as shall be necessary in the circumstances of the case to safeguard the best interests of the child.

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

(1) Parental responsibility in respect of a child may be extended by the court beyond the date of the child's eighteenth birthday if the court is satisfied upon application or of its own motion, that special circumstances exist with regard to the welfare of the child that would necessitate such extension being made:

Provided that the order may be applied for after the child's eighteenth birthday.

(2) An application under this section may be made by—

(a) the parent or relative of a child;

(b) any person who has parental responsibility for the child;

(c) the Director;

(d) the child.

## **29 Regulations by Chief Justice.**

The Chief Justice shall make such regulations as shall be necessary for giving effect to any of the provisions of this Part.

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

### *The National Council for Children’s Services*

## **30 Establishment of National Council for Children’s Services.**

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

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

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

## **31 Composition of Council.**

(1) The Council shall consist of—

- (a) a chairperson who shall be an eminent person who is knowledgeable in, or has actively contributed to the promotion of the rights and welfare of children, and who shall be appointed by the President;
- (b) the Permanent Secretary in the Ministry responsible for matters relating to children;
- (c) the Permanent Secretary in the Ministry responsible for matters relating to education;
- (d) the Permanent Secretary in the Ministry responsible for local authorities;
- (e) the Permanent Secretary in the Ministry responsible for health;
- (f) the Permanent Secretary in the Ministry responsible for finance;
- (g) the Attorney-General;
- (h) the Permanent Secretary in the Ministry responsible for labour;
- (i) the Commissioner of Police;

(j) six persons representing non-governmental organizations engaged in child welfare activities nominated by the Minister in accordance with such procedure may be prescribed;

Provided that membership under this paragraph shall be representative of the interest of all stakeholders and shall take into account the principle of gender parity;

(k) three persons representing religious organizations, nominated by the Episcopal Conference, the National Council of Churches of Kenya and Supreme Council of Kenya Muslims, respectively;

(l) two representatives of the private sector appointed by the Minister being persons knowledgeable in or who have actively contributed to the promotion of the rights and welfare of children;

(m) the Director of Children's Services who shall be the Secretary to the Council.

(2) The members of the Council nominated under paragraph (j) of subsection (1) shall hold office for three years but may be nominated for a further term of three years.

(3) The conduct and regulation of the business and affairs of the Council shall be as provided for in the First Schedule.

### **32 Functions of the Council.**

(1) The object and purpose for which the Council is established is to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects thereof.

(2) Without prejudice to the generality of subsection (1), the Council shall—

(a) design and formulate policy on the planning, financing and co-ordination of child welfare activities;

(b) determine priorities in the field of child welfare in relation to the socio-economic policies of the Government;

(c) plan, supervise and co-ordinate public education programmes on the welfare of children;

(d) facilitate donor funding of child welfare projects;

(e) co-ordinate and control the disbursement of all funding that may be received by the Council for child welfare projects;

(f) provide technical and other support services to agencies participating in child welfare programmes;

(g) prescribe training requirements and qualifications for authorised officers;

(h) ensure the enhancement of the best interests of children among displaced or unaccompanied children held in care, whether in refugee camps or in any other institution;

(i) ensure the full implementation of Kenya's international and regional obligations relating to children and facilitate the formulation of appropriate reports under such obligations;

- (j) participate in the formulation of policies on family employment and social security, that are designed to alleviate the hardships that impair the social welfare of children;
- (k) work towards the provision of social services essential to the welfare of families in general and children in particular;
- (l) consider and approve or disapprove child welfare programmes proposed by charitable children's institutions in accordance with section 69;
- (m) formulate strategies for the creation of public awareness in all matters touching on the rights and welfare of children;
- (n) set criteria for the establishment of children's institutions under this Act;
- (o) design programmes for the alleviation of the plight of children with special needs or requiring special attention;
- (p) establish panels of persons from whom guardians ad litem appointed by the court may be selected by the court to assist the Minister in carrying out his duties under this Act and in particular in the appointment of any officers prescribed under this Act, in the establishment of children's institutions and the formulation of any regulations that may be provided under this Act;
- (q) establish Area Advisory Councils to specialise in various matters affecting the rights and welfare of children;
- (r) create linkages and exchange programmes with other organisations locally and abroad;
- (s) endeavour to create an enabling environment for the effective implementation of this Act.

### **33 Power of the Council.**

The Council shall have power for the purpose of carrying out its functions, to do all such acts and things as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out of its functions or incidental to their proper discharge and may carry out any activities in that behalf alone or in association with other persons or bodies.

### **34 Co-option and committees.**

The Council may co-opt members or regional representatives or appoint committees as it deems fit for the specialised aspects of its functions.

### **35 Regulations by the Council.**

The Council may, with the approval of the Minister, make regulations for the purpose of giving effect to the provisions of section 32.

### **36 Expenses.**

The expenses of the Council shall be defrayed out of moneys provided by Parliament or obtained from any other sources for that purpose.

### **37 Appointment of Director, Deputy Directors and Children's Officers.**

(1) The Minister shall appoint a Director of Children's Services and may also appoint one or more Deputy Directors of Children's Services and such number of senior children's officers and other officers as may be necessary to assist the Director in carrying out the purposes of this Act.

(2) The Director may, subject to any regulations made by the Minister to the contrary, delegate to a Deputy Director or any children's officer appointed under subsection (1), or any person 99 as the Minister shall deem fit, authority to exercise and perform any of the powers and duties conferred or imposed on the Director under this Act.

(3) Children's officers shall perform the functions and exercise the powers conferred on them by this Act and shall, in addition, perform such duties as the Director may from time to time direct.

### **38 Functions of Director.**

(1) The Director shall safeguard the welfare of children and shall in particular, assist in the establishment, promotion, co-ordination and supervision of services and facilities designed to advance the well being of children and their families.

(2) Without prejudice to the generality of subsection (1) the Director shall—

(a) supervise children's officers and coordinate and regulate their work in the provision of children's welfare services;

(b) work in collaboration with relevant Government departments and public and private agencies to ensure the efficiency and effectiveness of all social programmes established in the interests of children;

(c) maintain up-to-date records and data on the management of children's services in Kenya, indicating the respective degrees of access to welfare amenities applicable to the various categories of children;

(d) provide the secretariat for the Council, and ensure that all decisions taken by the Council are fully processed and implemented;

(e) secure the conduct of investigations into cases of hardship affecting children throughout Kenya, and formulate, for the consideration of the Council, proposals for programmes to alleviate the hardships afflicting such children;

(f) give attention and provide assistance to the acute situations of children in hardship, including disabled children, street children, orphaned and destitute children, children who abuse drugs, children who are sexually abused and children who are affected by domestic violence, and formulate programmes for the consideration by the Council, for the alleviation of the plight of such children;

(g) make such enquiries and investigations and provide such reports and assessments as may be required by any court or for the enforcement of any order made by a court under this Act;

(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 achieve fulfillment;

(i) safeguard the welfare of any child or children placed under care, by virtue of a care order or an interim order;

(j) provide assistance and procure accommodation for any child not in proper custody, any child who is abandoned or any child who is in need of refuge or safety;

(k) trace the parents or guardians of any lost or abandoned child, or return a lost or abandoned child to his lawful place of residence;

(l) intervene on behalf of any child who is in need of care and protection and is in danger of imminent injury or harm, where possible by securing the removal of such child to a place of safety;

(m) mediate, in so far as permitted under this Act, in family disputes involving children, and their parents, guardians or other persons who have parental responsibility in respect of the children, and promote family reconciliation;

(n) make arrangements for the assessment of children placed under care and provide counselling, guidance and other support services for children and their families;

(o) provide care, guidance and other assistance and 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 children's hearings;

(p) supervise all children's rehabilitation centres, children's homes and remand homes and safeguard and promote the welfare of any children admitted therein;

(q) provide quarterly reports on the management of children's rehabilitation centres, children's homes and remand homes;

(r) safeguard the welfare of children in foster care;

(s) perform any functions prescribed in this Act, or as may be prescribed by any regulations made by the Minister.

(3) The Director shall have power, for the purpose of carrying out his functions, to do all such acts and things as appear to him to be requisite, advantageous or convenient for or in connection with the carrying out of his functions or incidental to their proper discharge and may carry out any activities in that behalf alone or in association with any other person or institution.

(4) Without prejudice to the generality of subsection (3), the Director shall have power to—

(a) appoint and supervise approved officers and foster parents;

(b) call for information from any individual or institution for the purpose of safeguarding the interests of children in accordance with this Act;

(c) take over arrangements of proceedings before any public institution or court, involving children, being conducted by a different person as may be authorised under the law.

### **39 Penalty for obstruction.**

A person who obstructs the Director or a children's officer in the execution of his duties or powers under this Act commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term of twelve months in default, or to both.

#### **40 The role of local authorities.**

It shall be the general duty of every local authority—

- (a) to safeguard and promote the rights and welfare of children within its jurisdiction;
- (b) to promote the good up-bringing of children by their families, through the establishment of suitable family-oriented programmes, and through the creation of a department to deal with the rights and welfare of children, public awareness and the co-ordination of relevant programme support initiatives from different social sub-sectors.

#### **41 Appointed local authorities.**

The Director may from time to time, appoint a local authority for the purposes of this Act and a local authority so appointed shall, subject to the provisions of section 43, perform the duties imposed and have the powers conferred upon appointed local authorities under this Act.

#### **42 Local authority welfare schemes.**

A local authority either by itself or jointly with other local authorities shall make welfare schemes for children embracing any or all of the items set out in the Second Schedule to this Act and the Director may by order appoint such local authority or joint local authorities to be an appointed local authority for the purposes and to the extent set out in such schemes.

#### **43 Delegation of powers and duties by appointed local authorities.**

(1) Where any powers or duties are by this Act conferred or imposed on an appointed local authority, those powers and duties shall—

- (a) in the case of a child who has his home in a municipality or within a township, be powers and duties of the municipal council;
- (b) in a county outside a municipality or township, the powers and duties of the county council.

(2) Where, for any district, there is, for the time being, no appointed local authority having jurisdiction therein, the Minister may with the concurrence of the Treasury, by order appoint the District Commissioner of the district to have the functions of an appointed local authority under this Part, and have the powers imposed and conferred upon appointed local authorities by this Act in respect of all children having their homes within the district.

#### **44 Delegation of functions of county councils.**

(1) A county council which is an appointed local authority may, with the concurrence of the Council, delegate a county division, with or without restrictions or conditions, any of its functions as an appointed local authority.

(2) Where functions are delegated to the council of a county division under this section, such council, in the discharge of those functions, shall act as agent for the county council.

#### **45 Delegation to charitable children's institution.**

An appointed local authority may, with the approval of the Director, delegate its powers duties relating to the investigations under section 120 (12) (d) to a charitable children's institution or an approved officer.



#### **46 Powers of local authorities to incur expenditure in temporary care.**

Any local authority, whether an appointed local authority or not, and any District Commissioner may incur expenditure in or about the temporary care of any child in need of care including his maintenance in a place of safety or in the return of any such child to his parent or guardian or to the area of the appointed local authority, if any, notwithstanding that in the case of an appointed local authority such a child has not been committed to its care under the provisions of this Act.

### **PART V – CHILDREN’S INSTITUTIONS**

#### *Rehabilitation Schools and Remand Homes*

#### **47 Establishment of rehabilitation schools.**

(1) The Minister may establish such number of rehabilitation schools (hereinafter referred to as “rehabilitation school) “as he may consider necessary to provide accommodation and facilities for the care and protection of children.

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

(3) If at any time the Minister is dissatisfied with the condition or management of a rehabilitation school he may—

(i) subject the manager to disciplinary proceedings; or

(ii) request him in writing to show cause why the certificate of approval should not be withdrawn, and upon the expiration of the notice to show cause, if the manager has not responded, the certificate of approval shall be deemed to have been withdrawn and the school shall cease to be a rehabilitation school:

Provided that the Minister, instead of withdrawing the certificate of approval, may by notice served on the manager of the school, prohibit further admission of persons to the school for such time as may be specified in the notice until the notice is revoked.

(4) If the Minister is satisfied or considers the continuation of a rehabilitation school to be unnecessary he may give to the manager not less than six months notice in writing of his intention to withdraw the certificate of approval, and upon the expiration of the notice the certificate of approval shall be deemed to have been withdrawn and the school shall cease to be a rehabilitation school.

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

(6) No child shall be received into a rehabilitation school under the provisions of this Act after notice has been given of intention to withdraw or surrender the certificate of approval, but

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

(7) The Minister shall cause any notice of intention to withdraw or surrender a certificate of approval to be published in the Gazette.

#### **48 Separate sections in the rehabilitation schools.**

A rehabilitation school shall have separate sections for children of different sexes, and age categories, and separate sections for children offenders and children in need of care and protection.

#### **49 Obligation of managers.**

The manager of a rehabilitation school shall be bound to accept every child who is duly sent or transferred to the school or otherwise committed to his care, unless—

(a) the school is an institution for persons of a different religion or of a different sex from that of the child whom it is proposed to send or transfer there; or

(b) the manager of the school satisfies the Minister that it is undesirable that any more children should be admitted to the school or otherwise committed to the manager's care.

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

(1) The Minister may establish such children's remand homes as he considers necessary.

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

#### **51 Supervision of rehabilitation schools and children's remand homes.**

The Director shall be responsible for the supervision of all rehabilitation schools and children's remand homes and for this purpose shall periodically visit them or cause them to be visited.

#### **52 Leave of absence.**

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

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

(1) If at anytime during the period of a child's stay at a rehabilitation school the Director is satisfied that such child should not remain subject to the applicable committal order, he may refer the matter to the Children's Court for revocation of the committal order.

(2) A Children's Court may at any time, on its own motion or on the application of any person, revoke an order committing a child to a rehabilitation school, but before doing so it shall call for all the relevant records of the court which made the order, and all relevant records of any court which may previously have considered an application under this section.

(3) Notwithstanding anything in this Act, an order committing a child to a rehabilitation school shall not remain in force beyond the date on which the child attains the age of eighteen years, nor shall any such order remain in force for longer than three years at a time except by order of the court.

(4) On an application for an order under subsection (2) or subsection (3) the manager of the rehabilitation school where the child is, shall cause the child to be brought before the court, unless the court otherwise orders.

#### **54 Transfers and supervision after release.**

(1) The Director may at any time order a child to be transferred from one rehabilitation school to another, but the period of his rehabilitative care shall not be increased thereby.

(2) A child committed to a rehabilitation school shall, after the expiration of the prescribed period of his stay, be under the supervision of such person as the Director shall appoint, for a period of two years, or until he attains the age of twenty one years whichever shall be the shorter period.

#### **55 Treatment of absconders and children of difficult character.**

(1) Where the Director is of the opinion that a child committed to a rehabilitation school is a persistent absconder, is of difficult character or is exercising inappropriate influence on the other children in the school, he may apply to the children's court having jurisdiction in the place where the school is situate—

(a) to have the period of committal increased by a period not exceeding six months, if the child is of or below the age of sixteen years; or

(b) to have the child sent to a borstal institution, the child is above the age of sixteen years; or

(c) to have the child provided with appropriate medical treatment or professional counselling, if the child's conduct is attributable to drug abuse, or if the child is of unsound mind or is suffering from a mental illness.

(2) The parents of the child or any person who has parental responsibility for the child shall be notified of, and afforded an opportunity to be heard in, any proceedings instituted under this section, unless the court is satisfied that such persons cannot be found or cannot reasonably be expected to attend the proceedings.

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

Provided that a child whose period of committal is increased or who is sent to a borstal institution shall be provided with appropriate professional assistance.

#### **56 Removal to health institution.**

(1) In the case of serious illness of a child staying in a children's remand home or a rehabilitation school the manager, on the advice of a medical officer or medical practitioner, may make an order for his removal to a health institution.

(2) Whenever the medical officer in charge of a health institution considers that the health of a child removed to a hospital under the provisions of this section no longer requires treatment therein, he shall notify the manager of the remand home or rehabilitation school from which he

was removed to hospital, who shall thereupon cause such a child to be returned to the school if he is still liable to be kept therein.

(3) Every reasonable precaution shall be taken by the medical officer in charge of the health institution to prevent the escape of any child who is hospitalised therein under this section:

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

### **57 Authority for confinement in children's remand homes, rehabilitation school and hospital.**

The order committing a child to custody in a children's remand home or ordering him to be sent to a rehabilitation school shall be sufficient authority for his confinement in that place in accordance with the tenor thereof, or in a health institution under section 56, and a child while confined and while being conveyed to or from a children's remand home or a rehabilitation school to or from a health institution, as the case may be, shall be deemed to be in lawful custody.

### *Charitable Children's Institutions*

### **58 Definition of a charitable children's institution.**

In this Part a "charitable children's institution" means a home or institution which has been established by a person, corporate or unincorporate, a religious organisation or a non-governmental organisation and has been granted approval by the Council to manage a programme for the care, protection, rehabilitation or control of children.

### **59 Exceptions.**

A charitable children's institution shall not include—

- (a) a rehabilitation school established by the Minister under section 47;
- (b) a school within the meaning of the Education Act;
- (c) a borstal institution;
- (d) any health institution;
- (e) a children's day care centre, nursery or other similar establishment.

### **60 Proof of registration.**

A non-governmental organisation or a religious organisation which establishes a charitable children's institution shall be required to show proof of the registration of the organisation under a recognized system of registration of private institutions before applying for approval to implement a child welfare programme.

### **61 Institution set up by a person or unincorporated body of persons.**

Any person or unincorporated body of persons who or which establishes a charitable institution for the care, protection, rehabilitation or control of children shall be required to furnish the

Director with a list of the trustees of the institution before applying for approval to implement a child welfare programme.

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

The Council shall provide the criteria for approval of child welfare programmes of charitable institutions.

### **63 Reception of children in a charitable children's institution.**

(1) A child shall be received in the care of a charitable children's institution if—

(a) in an emergency situation, 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;

(b) he is referred to the institution by way of an interim care order or a care order;

(2) A child who is received by a charitable institution in accordance with subsection 1 (a) shall be brought before a court without delay

(a) his guardian or parent applies to the Director for his release;

(b) he is held in accordance with section 120 (2);

(c) it is not in the best interest of the child to do so.

### **64 Duty to maintain a child in a charitable children's institution.**

A charitable children's institution in which the child is received, shall provide the child with adequate care and protection for the period of his accommodation therein as provided in the criteria set by the Council.

### **65 Director to monitor progress of children.**

(1) The Director shall monitor the progress of a child admitted into a charitable children's institution, until the child is discharged therefrom or until the expiry of a care order made in respect of the child.

(2) The Director shall ensure that the child is periodically visited and interviewed by an officer authorized by him.

### **66 Appointment and powers of approved officers.**

(1) A charitable children's institution may, with the approval of the Director, by notice in the Gazette, appoint one or more persons to be approved officers, to further the purposes of the institution which relate to the care, protection and control of children:

Provided that no approved officer shall enter upon the exercise of his functions as such in the area of any appointed local authority without the concurrence of such authority.

(2) The appointment of an approved officer may be revoked by the Director on the recommendation of the charitable children's institution and any such revocation shall be published in the Gazette.

(3) Approved officers shall have such powers as the Director may prescribe.

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

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

(2) Any authorised officer acting in accordance with subsection (1) may at all reasonable times, enter, after producing, if asked to do so, some duly authenticated document showing that he is so authorised to enter, any charitable children's institution or premises aforesaid and shall in particular—

(a) interview any child in the institution or premises;

(b) require the production of an annual report and any records required to be kept in accordance with the regulations made under section 72;

(c) inspect the conditions and facilities provided by the institution or managers of the premises;

(d) prepare and submit a report to the Director outlining his findings and recommendations.

(3) (a) A refusal to allow any authorised officer referred to in subsection (2) to enter a charitable children's institution or such premises as are mentioned in subsection (1) to inspect or interview any person in the institution or premises, shall be deemed to be a reasonable cause to suspect that a child in the institution or the premises is being neglected or abused in a manner which causes the child to be in need of care and protection.

(b) Any person who unlawfully refuses to allow an authorised officer referred to in subsection (2) to enter a charitable children's institution or such premises as are mentioned in subsection (1), or who interferes in any way with the work of such officer or fails to produce any report or records, or conceals any facility within such institution or premises, commits an offence and is liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding Kenya shillings fifty thousand or to both.

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

Provided that the Director may in consultation with the Area Advisory Council appoint a manager to manage the institution for a period not exceeding two months in order to institute remedial measures.

(5) The functions and powers of the authorised officer appointed under this section shall be supplementary to and not in derogation of the functions and powers conferred on an inspection committee appointed under section 68.

## **68 Inspection committees.**

(1) The Minister may appoint an inspection committee to inspect any rehabilitation school, children's remand home or charitable children's institution.

(2) The committee appointed under subsection (1) shall comprise not more than five persons and shall exercise and perform, subject to any directions given by the Minister, the powers and functions specified in the Eighth Schedule.

(3) Recommendations of the committee shall be reported to the Minister and shall, subject to any directions given by the Minister, be implemented by the Director.

(4) The Director shall, within six months of the submission of a report by the committee to the Minister, report to the Council on the action taken to implement any recommendations contained in the report.

#### **69 Duty to notify the Area Advisory Council.**

(1) Any charitable children's institution which intends to implement a child welfare programme shall notify the Area Advisory Council and shall provide full information on the mode of operation and the specific objects of the programme.

(2) The Area Advisory Council shall submit to the Director particulars of the proposed child welfare programme with recommendations.

(3) The Director shall place before the Council all information on the proposed child welfare programme supplied by virtue of subsection (2), and the Council may approve or disapprove such programme or part of it taking into account the best interests of children.

(4) Where the Council disapproves a programme or part of a programme by virtue of subsection (2), any person or organisation who proceeds with it or with the part that is disapproved shall be liable to a fine not exceeding twenty thousand shillings and to an additional one thousand shillings for each day that the disapproved programme remains in operation.

#### **70 Review of programme.**

The Director shall, at the end of twelve months beginning with the date of approval of a child welfare programme, and thereafter annually, review the programme in order to advise the Council on whether the programme should continue being in force or be cancelled.

#### **71 Cancellation of a programme.**

(1) The Council, upon the recommendation of the Director, may cancel a programme undertaken by a charitable children's institution on the grounds that—

(a) the institution is unfit for the care, protection and control of children; or

(b) the children admitted into the institution are suffering or are likely to suffer harm; or

(c) the manager of the institution has contravened any of the regulations made under this Act:

Provided that the Council shall give fifteen days notice of the proposed cancellation.

(2) Any person aggrieved by the Council's decision made in accordance with subsection (1) may appeal to the Minister whose decision shall be final.

(3) When a cancellation under this section takes effect, the Director shall, subject to any directions of the Minister, take such remedial measures as may be necessary to protect the children accommodated in the home.

(4) The Director may, under subsection (3)

- (a) remove any child or children from the home;
- (b) procure the closure of the home;
- (c) institute disciplinary measures against the manager of the home; or
- (d) take such other action as may be necessary for the protection of the children.

## **72 Regulations.**

The Minister may, in consultation with the Council make regulations for the better carrying out of the provisions of this Part and in particular, such regulations may make provision for—

- (a) the requirements of and procedure for approval of children's welfare programmes;
- (b) the management of remand homes, rehabilitation schools, and charitable children's institutions;
- (c) requirements as to the accommodation, staff and equipment to be provided in charitable children's institutions;
- (d) the qualifications of managers;
- (e) the training and remuneration of persons employed in children's remand homes, and rehabilitation schools;
- (f) the criteria to be applied to limit the number of children who may be accommodated in charitable children's institutions;
- (g) the education and training of children in charitable children's institutions;
- (h) religious instruction to children in charitable children's institutions appropriate to the religious persuasion to which they belong;
- (i) requirements as to arrangements for medical care (including psychiatric and dental health) and for the prevention of infectious and contagious diseases in charitable children's institutions;
- (j) special care for children with disabilities and children with chronic ailments;
- (k) requirements as to the keeping of records and giving of notices in respect of children received in charitable children's institutions;
- (l) the conduct of reviews under section 70;
- (m) the conduct of inspections of charitable children's institutions;
- (n) corrective measures which should be imposed by the Director after inspection of a charitable children's institution and penalties for non-compliance therewith;
- (o) appeals against decisions made under this Part.



## PART VI – CHILDREN’S COURTS

### 73 Jurisdiction of Children’s Courts.

There shall be courts to be known as Children’s Courts constituted in accordance with the provisions of this section for the purpose of—

- (a) conducting civil proceedings on matters set out under Parts III, V, VII, VIII, IX, X, XI and XIII;
- (b) hearing any charge against a child, other than a charge of murder or a charge in which the child is charged together with a person or persons of or above the age of eighteen years;
- (c) hearing a charge against any person accused of an offence under this Act;
- (d) exercising any other jurisdiction conferred by this or any other written law;

Provided that—

- (i) reference to subordinate courts of any class, in the First Schedule to the Criminal Procedure Code, shall include a Children’s Court;
- (ii) the Chief Justice may, by notice in the Gazette, appoint a magistrate to preside over cases involving children in respect of any area of the country;
- (iii) where in the course of any proceedings in a Children’s Court it appears to the court that the person charged, or to whom the proceedings relate, is over eighteen years of age, or where in the course of any proceedings in any court other than a Children’s Court it appears to the court that the person charged or to whom the proceedings relate, is under eighteen years of age, nothing in this section shall prevent the court, if it thinks fit, from proceeding with the hearing and determination of the case;
- (vi) where any conviction or sentence made or passed by a court other than a Children’s Court is appealed against or is brought before the High Court for confirmation or revision and it appears that the person convicted was at the time of the commission of the offence under eighteen years of age, the High Court shall have power to substitute for the conviction a finding of guilty in accordance with section 196 and substitute for the sentence an order under section 125(2) of this Act.

### 74 Sittings of Children’s Courts.

A Children’s Court shall sit in a different building or room, or at different times, from those in which sittings of courts other than Children’s Courts are held, and no person shall be present at any sitting of a Children’s Court except—

- (a) members and officers of the court;
- (b) parties to the case before the court, their advocates and witnesses and other persons directly concerned in the case;
- (c) parents or guardians of any child brought before the court;
- (d) *bona fide* registered representatives of newspapers or news agencies;
- (e) such other persons as the court may specially authorise to be present.

## **75 Power to clear court.**

Where in any proceedings in relation to an offence against or by a child, or any conduct contrary to decency or morality, a person who, in the opinion of the court, is under eighteen years of age is called as a witness, the court may direct that all or any persons, not being members or officers of the court, or parties to the case or their advocates, shall be excluded from the court.

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

(1) Subject to section 4 where a court is considering whether or not to make one or more orders under this Act with respect to a child it shall not make the order or any other orders unless it considers that doing so would be more beneficial to the welfare of the child than making no order at all.

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

(3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters—

(a) the ascertainable feelings and wishes of the child concerned with reference to the child's age and understanding;

(b) the child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child;

(c) the likely effect on the child of any change in circumstances;

(d) the child's age, sex, religious persuasion and cultural background;

(e) any harm the child may have suffered, or is at risk of suffering;

(f) the ability of the parent, or any other person in relation to whom the court considers the question to be relevant, to provide for and care for the child;

(g) the customs and practices of the community to which the child belongs;

(h) the child's exposure to, or use of drugs or other psychotropic substances and, in particular, whether the child is addicted to the same, and the ability of any person or institution to provide any special care or medical attention that may be required for the child;

(i) the range of powers available to the court under this Act.

(4) The court may, if it considers it imperative for the proper determination of any matter in issue before it, of its own motion or upon application, call any expert witness it shall deem appropriate to provide assistance to the court, and the expenses of any such witness shall be determined by the court and shall be defrayed out of moneys provided by Parliament.

(5) In any proceedings concerning a child, whether instituted under this Act or under any written law, a child's name, identity, home or last place of residence, school shall not, nor shall the particulars of the child's parents or relatives, any photograph or any depiction or caricature of

the child, be published or revealed, whether in any publication or report (including any law report) or otherwise.

(6) Any person who contravenes the provisions of subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months, or to both.

#### **77 Legal aid.**

(1) Where a child is brought before a court in proceedings under this Act or any other written law, the court may, where the child is unrepresented, order that the child be granted legal representation.

(2) Any expenses incurred in relation to the legal representation of a child under subsection (1) shall be defrayed out of monies provided by Parliament.

#### **78 Reports.**

(1) A court while considering any question with respect to a child under this Act, may require to have presented to it a report, either oral or written as the court may direct, on such matters relating to the child as the court may consider necessary; and the court may direct that such report be prepared by such person or persons as the court may designate.

(2) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take into account—

(a) any statement contained in the report, or

(b) any evidence given in respect of the matters referred to in the report, in so far as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.

#### **79 Appointment of guardian**

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

#### **80 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.

## **PART VII – CUSTODY AND MAINTENANCE**

#### **81 Meaning of custody, care and control.**

(1) In this Part unless the context otherwise requires—

(a) “custody” with respect to a child, means so much of the parental rights and duties as relate to the possession of the child;

(b) “care and control” means actual possession of a child, whether or not that possession is shared with one or more persons.

(c) “legal custody” means so much of the parental rights and duties in relation to possession of a child as are conferred upon a person by a custody order;

(d) “actual custody” means the actual possession of a child, whether or not that possession is shared with one or more persons.

(2) Where a person, not having legal custody of a child, has care and control of the child, he shall be under a duty to safeguard the interests and welfare of that child.

(3) Where a person, not having legal custody of a child, has actual custody he shall be deemed to have care and charge of the child and shall be under a duty to take all reasonable steps to safeguard the interests and welfare of that child.

(4) In this Act, unless the context otherwise requires, reference to the person under whom a child has his home refers to the person who, disregarding absence of the child at a hospital or boarding school and any other temporary absence, has care and control of that child.

## **82 Custody.**

(1) A court may, on the application of one or more persons qualified under subsection (3) of this section, make an order vesting the custody of a child in the applicant or, as the case may be, in one or more of the applicants.

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

(3) Custody of a child may be granted to the following persons—

(a) a parent;

(b) a guardian;

(c) any person who applies with the consent of a parent or guardian of a child and has had actual custody of the child for three months preceding the making of the application;

(d) any person who, while not falling within paragraph (a), (b) or (c), can show cause, having regard to section 83, why an order should be made awarding that person custody of the child.

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

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

(a) the conduct and wishes of the parent or guardian of the child;

(b) the ascertainable wishes of the relatives of the child;

(c) the ascertainable wishes of any foster parent, or any person who has had actual custody of the child and under whom the child has made his home in the last three years preceding the application;

(d) the ascertainable wishes of the child;

(e) whether the child has suffered any harm or is likely to suffer any harm if the order is not made;

- (f) the customs of the community to which the child belongs;
- (g) the religious persuasion of the child;
- (h) whether a care order, or a supervision order, or a personal protection order, or an exclusion order has been made in relation to the child concerned and whether those orders remain in force;
- (i) the circumstances of any sibling of the child concerned, and of any other children of the home, if any;
- (j) the best interest of the child.

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

(3) In any case where a decree for judicial separation or a decree, either nisi or absolute for divorce, is pronounced, and the court pronouncing the decree either nisi or absolute finds the parent by reason of whose misconduct the decree is made to be unfit to have the legal custody of the child or children of the marriage, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled to legal custody of the child except with the leave of the court.

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

(1) Where an application for a custody of order in respect of a child made by the person with whom the child has, at the time the application is made, had his home for a period, whether continuous or not, of three years, no person shall be entitled, against the will of the applicant, to remove the child from the applicant's custody except with the leave of the court.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding ten thousand shillings or to both.

#### **85 Return of child taken away in breach of section 80.**

(1) A court may, on the application of a person from whom a child has been removed in breach of section 84, order the person who has so removed the child to return the child to the applicant and where the child has been removed from the jurisdiction of the court or the Republic of Kenya, make a wardship order or a production order on such conditions as the court may deem appropriate in the circumstances.

(2) A court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's custody in breach of section 84, by order direct that other person not to remove the child from the applicant.

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

(4) Whenever a court makes a custody order with respect to a child it shall, in addition, give such directions as to any rights of access to the child, and with regard to the maintenance of the child as the court may deem fit.

#### **86 Disputes between joint custodians.**

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

#### **87 Revocation of custody order.**

(1) A court may, on application, revoke a custody order, provided that before doing so it shall make an order as to who is to have custody of the child thereafter or an appropriate section 114 order.

(2) The Court shall not proceed to hear an application made for the revocation of a custody order where a previous such application made by the same person has been refused by that or any other court unless—

(a) in refusing the previous application the court directed that this subsection should not apply, or

(b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

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

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

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

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

Provided that the court shall have power, upon application being made, to extend a custody, access or maintenance order beyond the child's eighteenth birthday, for such period as it shall deem fit.

#### **88 Interim custody orders.**

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

(2) An interim custody order shall not be made in respect of a period exceeding twelve months.

### **89 Agreement not to be invalid by reason of giving custody to mother.**

No agreement made between the parents of a child, shall be held to be invalid by reason only of its providing that the father shall give legal custody or actual custody thereof to the mother:

Provided that the court shall not enforce any such agreement if it is of the opinion that it will not be for the benefit of the child to give effect thereto.

### *Maintenance of Children*

### **90 Joint maintenance of children.**

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

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

### **91 Power to make maintenance order.**

Any parent, guardian or custodian, of the child, may apply to the court to determine any matter relating to the maintenance of the child and to make an order that a specified person make such periodical or lump sum payment for the maintenance of a child, in this Act referred to as a “maintenance order,” as the court may see fit:

Provided that—

- (a) on the making, varying, or discharging of a residence, guardianship or custody order, the court may make a maintenance order for a child even though no application has been made by any person;
- (b) a person who has attained the age of eighteen years may, with the leave of the court, apply to the court for a maintenance order to be made in his favour in the following circumstances—
  - (i) the person is or will be involved in education and training which will extend beyond the person’s eighteenth birthday; or
  - (ii) the person is disabled and requires specialised care which

will extend beyond the person's eighteenth birthday; or

(iii) the person is suffering from an illness or ailment and will require medical care which will extend beyond the person's eighteenth birthday; or

(iv) other special circumstances exist which would warrant the making of the order.

### **92 Maintenance during matrimonial proceedings.**

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

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

### **93 Financial provisions.**

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

(i) periodical payments, or

(ii) such lump sum payment as the court shall deem fit, to the person in whose favour the order is made or to any other person appointed by the Court.

### **94 Financial provisions by step-parents and father of child born out of wedlock.**

(1) The Court may order financial provision to be made by a parent for a child including a child of the other parent who has been accepted as a child of the family and in deciding to make such an order the court shall have regard to the circumstances of the case and without prejudice to the generality of the foregoing, shall be guided by the following considerations

(a) the income or earning capacity, property and other financial resources which the parties or any other person in whose favour the court proposes to make an order, have or are likely to have in the foreseeable future;

(b) the financial needs, obligations, or responsibilities which each party has or is likely to have in the foreseeable future;

(c) the financial needs of the child and the child's current circumstances;

(d) the income or earning capacity, if any, property and other financial resources of the child.

(e) any physical or mental disabilities, illness or medical condition of the child;

(f) the manner in which the child is being or was expected to be educated or trained;

(g) the circumstances of any of the child's siblings;

(h) the customs, practices and religion of the parties and the child;



(i) whether the respondent has assumed responsibility for the maintenance of the child and if so, the extent to which and the basis on which he has assumed that responsibility and the length of the period during which he has met that responsibility;

(j) whether the respondent assumed responsibility for the maintenance of the child knowing the child was not his child, or knowing that he was not legally married to the mother of the child;

(k) the liability of any other person to maintain the child;

(l) the liability of that person to maintain other children.

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

Whenever a maintenance order is made under this section the court may, at the time of making the order, or from time to time thereafter, on being satisfied that the person in whose favour the order is made—

(a) is not a fit or proper person to receive any maintenance monies specified in the order in respect of a child; or

(b) has left the jurisdiction of the court for an indefinite period, or is dead, or is incapacitated or has become of unsound mind, or has been imprisoned or has been declared bankrupt; or

(c) has misappropriated, misapplied or mismanaged any maintenance monies paid to him for the benefit of the child,

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

### **96 Duration of financial provisions.**

(1) A maintenance order requiring that a financial provision in respect of a child be paid by periodical payments may commence on the date of the application or such later date as the court may direct, but will not remain in force beyond the child's eighteenth birthday, subject to the provisions of section 91.

(2) An order for periodical payment shall be reviewed by the court upon the death of the person who is liable to make the payment.

### **97 Interim orders.**

A court shall have power to make an interim maintenance order and in so doing may dispense with any notice that may be prescribed to be given to any person, if it is satisfied that it is in the best interests of the child so to do.

### **98 Other maintenance provisions.**

A court shall have power to make an order and to give directions regarding any aspect of the maintenance of a child, including but not limited to, matters relating to the provision of education, medical care, housing and clothing for the child; and in this behalf may make an order for financial provisions for the child.

### **99 Power to impose conditions and to vary order.**

The court shall have power to impose such conditions as it thinks fit to an order made under this section and shall have power to vary, modify or discharge any order made under section 98 with respect to the making of any financial provision, by altering the times of payments or by increasing or diminishing the amount payable or may temporarily suspend the order as to the whole or any part of the money paid and subsequently revive it wholly or in part as the court thinks fit.

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

Where the parents, guardians or custodians of a child, have entered into an agreement whether oral or written in respect of the maintenance of the child the court may, upon application, vary the terms of the agreement if it is satisfied that such variation is reasonable and in the best interests of the child.

#### *Enforcement of Maintenance Orders and Contribution Orders*

### **101 Enforcement of maintenance orders and contribution orders.**

(1) Any person, including the child in whose favour a maintenance order has been made pursuant to section 91, may apply to the court for the enforcement of the order under this section, if the person against whom the order is made has failed to comply with any provision contained in a maintenance order or has defaulted in any payment specified by the order, for the recovery of any arrears with regard to any financial provision stipulated in the order.

(2) Where a contribution order has been made under section 144 of this Act, a person or an institution in whose favour the order has been made may apply to the court under this section for the enforcement of the order and for the recovery of any arrears from the person required to make a contribution to the maintenance of the child.

(3) Unless otherwise directed by the court, notice of proceedings under this section shall be served on the respondent who may be summoned or arrested on a warrant issued by the court.

(4) Prior to the making of an order under this section, the court may hold an enquiry as to the means of the respondent who shall, whenever possible, be present and where such enquiry is held the court may direct that—

(a) enquiries be made as to the means of the respondent by such person as the court may direct; or

(b) the respondent's income, assets and liabilities be searched to establish such information as the court may require to make an order under this section; or

(c) a statement of means from the respondent's employer, or auditors or from such other person as the court shall direct, be availed to the court.

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

(a) order that any arrears in respect of any maintenance monies or contribution monies as the case may be, be paid forthwith, or by instalments or within such other period as shall be specified by the court;

(b) order the remission of the arrears, but the court shall not make an order of this nature without prior notice to the child, or the person or institution as the case may be, in favour of whom the maintenance order or contribution order has been made and without allowing them a reasonable opportunity to make representations;

(c) issue a warrant for distress on the respondent's property forthwith or postpone the issue of the warrant until such time as the court may direct, or on such conditions as the court may deem fit and order the attachment of the respondent's earnings including any pension payable to the defaulter if the court is satisfied that—

(i) the failure to make payment was due to the wilful refusal or culpable neglect of the respondent; and

(ii) the respondent is gainfully employed or is engaged in some business enterprise or undertaking or owns property from which he derives an income;

Provided that the court shall not, unless special circumstances exist, make an order for the attachment of the respondent's earnings in an amount which shall exceed more than 45% of the respondent's annual income in any period of twelve months,

(d) order the detention, attachment, preservation or inspection of any property of the respondent and, for all or any of the purposes aforesaid, authorise such person, as the court may deem fit, to enter upon any land or building in which the respondent has an interest whether in the possession or control of the defaulter or not;

(e) subject to the rights of bona fide purchaser for value without notice set aside any disposition of any property belonging to the respondent from which any income has occurred and on an application, the court may make orders for the re-sale of the said property to any person and may direct the proceeds of such sale to be applied to the settlement of any arrears of maintenance monies and to the payment of future maintenance monies for the child concerned;

(f) restrain by way of an injunction the disposition, wastage or damage of any property belonging to the respondent.

(6) The court shall not make an order under subsection (5) paragraphs (c), (d), (e) or (f) unless satisfied that—

(a) the respondent has wilfully and deliberately concealed or misled the court or any person appointed or directed to carry out enquiries under subsection (4) of this section as to the true nature and extent of his earnings or income, or

(b) the respondent, with the intent to obstruct or delay the execution of any order that may be passed against him under this section or with the object of reducing his means to provide maintenance for the child—

(i) is about to dispose of most or the whole of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court; or

(iii) is about to abscond or leave the local limits of the jurisdiction of the court.

(7) The court shall have power under this section to issue a warrant committing the respondent to imprisonment for a period of not less than five days nor more than four weeks:

Provided that the court shall not issue a warrant for imprisonment unless it is satisfied that—

(a) the respondent has persistently and wilfully refused or neglected to make payment of all or any part of the monies ordered to be paid under a maintenance order or a contribution order without reasonable cause;

(b) the respondent is present at the hearing;

(c) an order for attachment of earning would not be appropriate;

(d) it has enquired into the cause of the default and is satisfied that such default was due to the respondent's wilful refusal or culpable neglect.

(8) The issue of the warrant may be postponed on such terms as the court may think fit but if postponed, it may not be issued without further notice being given if requested by the defaulter, and a further review by the court.

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

## **PART VIII – GUARDIANSHIP**

### **102 Appointment of guardian.**

(1) For the avoidance of doubt, in this Part, “guardian” means a person appointed by will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child upon the death of the parent of the child either alone or in conjunction with the surviving parent of the child or the father of a child born out of wedlock who has acquired parental responsibility for the child in accordance with the provisions of this Act.

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

(3) A guardian appointed under this Act need not be a Kenyan citizen or resident in Kenya.

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

(5) Where a guardian is appointed only in respect of the estate of the child, he need not have actual custody of the child but he shall have—

(a) the power and responsibility to administer the estate of the child and in particular to receive and recover and invest the property of the child in his own name for the benefit of the child;

(b) the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;

(c) the duty to produce and avail accounts in respect of the child's estate to the parent or custodian of the child or to such other person as the court may direct, or to the court, as the case may be, on every anniversary of the date of his appointment;

(d) to produce any account or inventory in respect of the child's estate when required to do so by the court.

### **103 Rights of surviving parent as to guardianship and power of court.**

(1) On the death of the father of a child, the mother if surviving shall, subject to the provisions of this Act, be the guardian of the child and when no guardian has been appointed by the father or the guardian appointed by the father is dead or refuses to act, the court may appoint a guardian to act jointly with the mother;

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

### **104 Appointment of testamentary guardian.**

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

(2) A guardian of a child may by will or deed appoint another individual to take his place as the guardian of the child in the event of his death.

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

(a) in the case of an appointment by deed, the deed is dated and is signed by the person making the appointment and in the presence of two witnesses;

(b) in the case of an appointment made by a written will, it is made, executed and attested in accordance with the provisions of section 11 of the Law of Succession Act, or an appointment made in the course of an oral will if it is made in accordance with section 9 of that Act.

(4) A guardian so appointed shall act jointly with the surviving parent of the child as long as that parent remains alive, unless the parent objects to his so acting.

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

(a) refuse to make any order in which case the parent shall remain the sole guardian; or

(b) make an order that the guardian shall act jointly with the parent; or

(c) make an order appointing a relative of the child or a person who is willing to so act, a guardian of the child, to act jointly with the parent or guardian or both of them; or

(d) make an order that the guardian shall be the sole guardian of the child, in which case the court shall make such order regarding the custody of the child and the rights of contact thereto of his parent and relatives, having regard to the welfare of the child as it may think fit and further order that the parent shall pay the guardian a financial provision towards the maintenance of the child having regard to the means of the parent, as the court may consider reasonable:

Provided, that the court shall not appoint the guardian, sole guardian for the child if he is not a relative of the child, unless exceptional circumstances exist with regard to the welfare of the child.

(6) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(7) If under subsection (5) a guardian has been appointed by the court to act jointly with the surviving parent, he shall continue to act as guardian after the death of the parent, but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the parent.

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

Provided that the surviving parent or the guardian shall be entitled to apply to court for an order giving effect to some other arrangement.

### **105 Appointment of guardian by the court.**

In addition to the powers of the court to appoint a guardian under subsection (5) of section 104 the court may appoint a guardian in the following circumstances—

(a) on the application of any individual, where the child's parents are no longer living, or cannot be found and the child has no guardian and no other person having parental responsibility for him;

(b) on the application of any individual, where the child is a displaced child within the meaning of section 119 of this Act.

### **106 Guardian's revocation and disclaimer.**

(1) An appointment under section 104 revokes an earlier appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(2) An appointment under section 104 (including one made in a unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a dated instrument which is signed—

(a) by him; or

(b) at his direction, in his presence and in the presence of two witnesses who each attest to the signature.

(3) For the avoidance of doubt, an appointment under section 104 is revoked if the will or codicil is revoked.

(4) A person who is appointed a guardian under section 104 or 105 may disclaim his appointment by an instrument signed by him and made within reasonable time of his first knowing that the appointment has taken effect.

(5) Where regulations are made by the Chief Justice prescribing the manner in which such disclaimer must be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.

(6) Any appointment of a guardian may be brought to an end at any time by order of the court on the application of—

- (a) any parent or guardian; or
- (b) the child concerned, with the leave of the court; or
- (c) a relative of the child,

in any proceedings if the court considers that it should be brought to an end even though no application has been made.

(7) Where a court revokes an appointment of guardian the court shall prior to doing so, ascertain who would have guardianship or legal custody of the child if, on the revocation of the appointment of the guardian, no further order was made.

### **107 Extension of appointment of guardian beyond child's eighteenth birthday.**

(1) The appointment of a guardian shall be determined upon the child attaining the age of eighteen years, unless exceptional circumstances exist that would require a court to make an order that the appointment be extended.

(2) The exceptional circumstances referred to in subsection (1) are that the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or of managing his own affairs and his property without the assistance of a guardian after his eighteenth birthday or such other exceptional circumstances with regard to the child as the court may deem proper to warrant the making of an order under this section.

(3) Where an order is made under subsection (1), it shall be made prior to the child's eighteenth birthday and may be made on an application by—

- (i) the child; or
- (ii) the parent or guardian of the child; or
- (iii) a relative of the child; or
- (iv) the Director:

Provided that no order shall be made without the consent of the child, if he is capable of giving such consent, and of the guardian whose appointment is required to be extended.

(4) A court making an order under this section may attach such conditions as to the duration of the order and containing directions as to how it shall be carried out, imposing such other conditions that must be complied with and with such incidental, supplemental or consequential provisions as the court thinks fit.

(5) A court shall have power to vary, modify or revoke any order made under this section after the child's eighteenth birthday, on the application of any of the persons named in subsection (3), or where the child marries after his eighteenth birthday, his spouse.

### **108 Dispute between guardians.**

(1) Where two or more persons act as guardians to a child, or where the surviving parent and a guardian act jointly and they are unable to agree on any question affecting the welfare of the

child, any of them may apply to the court for its direction, and the court may make orders regarding the matters of difference as it may think proper.

(2) A relative of the child, or the child, or the Director, or a person who has parental responsibility for the child, or a person who has been authorised to act jointly with a guardian under sections 104 and 105, may with the leave of the court, apply to the court for its directions or settlement of any question affecting the welfare of the child arising from or connected with the exercise of the guardian's parental responsibility with respect to the child, and the court may make such order regarding the matters in contention as it may think proper.

### **109 Powers of guardian.**

A guardian appointed under section 105 shall have the same powers over the estate and the person, or over the estate, as the case may be, of a child, as a guardian appointed by deed or will or otherwise under the Law of Succession Act.

### **110 Neglect or misapplication of assets by guardians of the estate of the child.**

Where a guardian of the estate of a child whether or not that guardian is also a guardian of the person of the child neglects to recover or safeguard, or misplaces any asset forming part of the estate of the child, or subjects the estate to loss or damage, he shall whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.

### **111 Offence by guardians of the estate of a child.**

Any guardian of the estate of a child who—

- (a) wilfully or recklessly neglects to receive and safeguard any asset forming part of the estate, misapplies any such asset or subjects any such asset to loss, waste or damage; or
- (b) wilfully fails to produce to the court, or the parent or guardian of the child any account or inventory required by the provisions of section 102; or
- (c) wilfully or recklessly produces any such inventory or account which is false in any material particular,

shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

### **112 Rules.**

The Chief Justice shall make rules of Court directing the manner in which applications to the court are to be made and generally providing for matters of procedure and incidental matters arising under this Part.

## **PART IX – JUDICIAL ORDERS FOR THE PROTECTION OF CHILDREN**

### **113 Power of court to make orders in certain proceedings.**

(1) The court may make any order mentioned in this Part in any proceedings concerning the welfare and upbringing of a child instituted under this Act or under any other written law.

(2) Persons qualified to apply for an order under this Part for the protection of a child include—



- (a) the child;
- (b) the parent, guardian or custodian of the child;
- (c) a relative of the child;
- (d) the Director; and
- (e) an authorised officer:

Provided that a qualified person may apply for more than one order at the same time, but the court shall not make more than one order in response to the application if to do so would be detrimental to the interest of a child, or if the desired effect of the orders sought by the applicant may be achieved by making only one order.

(3) The court may make an order under this Part-

- (a) containing directions as to how it should be carried out; and/or
- (b) imposing conditions that must be complied with; and/or
- (c) defining its duration; and/or
- (d) attaching such supplementary or consequential provisions as the court may think fit.

(4) An application for an order under this Part may be made separately or as part of any proceedings under this Act.

(5) Subject to the provisions of this Act, any order made under this Part shall cease to have effect upon the child attaining the age of eighteen years.

#### **114 Orders which court may make.**

The court may from time to time make any of the following orders in this Act referred to as “section 114 orders”—

- (a) an “access order”, which shall require the person with whom the child is residing to allow the child to visit, or to stay periodically with the person named in the order or to allow such person to have such other contact with the child as may be directed by the court:

Provided that an access order made under this section shall not be made in relation to a child in respect of whom a care order has been made under this Part but access to the child concerned may be obtained upon an application made under section 133.

- (b) a “residence order”, which shall require a child to reside with a person named in the order and/or determine the arrangements to be made to facilitate the residence of the child with the person named in the order;

- (c) an “exclusion order” requiring a person who has used violence or threatened to use violence against a child, whether or not that person permanently resides with the child, to depart from the home in which the child is residing or to restrain the person from entering the home or a specified part of the home or from a specified area in which the home is included, or to restrain any other person from taking the child to the person against whom the child needs protection for such period as the court may specify;

(d) a “child assessment order” requiring a child to be investigated or evaluated by a person appointed by the court to assist the court in determining any matter concerning the welfare and upbringing of the child;

(e) a “family assistance order” requiring a person appointed by the court to provide such advice counselling and guidance to a child, his parents or custodian or guardians, the child’s relatives, or any person who has care and control of the child or with whom the child is residing, as the court may specify.

(f) a “wardship order” requiring that a child be placed under the protection and custody of the court.

(g) a “production order” requiring any person who is harbouring, concealing or otherwise unlawfully detaining a child, or who intends to remove a child from Kenya or from the local limits of the jurisdiction of the court, to disclose any information regarding the whereabouts of the child and/or to produce the child before the court and/or restraining the person from removing the child from the jurisdiction of the court for such period as the court may specify.

#### **115 Power of arrest.**

Where a court makes an order under paragraphs (c), (d), and (g) of section 114, the court may attach a power of arrest to the order and the person named in the order shall be liable to arrest if he shall contravene any stipulation or condition contained in the order, whilst the order remains in force.

#### **116 Penalty.**

Any person who contravenes an order made under paragraphs (c), (d) and (g) of section 114 or who obstructs or unlawfully interferes with a person appointed by the court in the execution of his duties under an order made pursuant to subsection (e) and (f) of section 114 commits an offence and shall be liable upon conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding six months, or to both.

#### **117 Review etc. of order.**

The court may from time to time review, vary, suspend or discharge any order made under this Part or revive an order after it has been suspended or discharged.

### **PART X – CHILDREN IN NEED OF CARE AND PROTECTION**

#### **118 Jurisdiction of the court.**

A Children’s Court shall have jurisdiction to make an order or give a judgement under this Part notwithstanding that any act, matter, thing or circumstances giving rise to such order or judgement did not occur or arise within the area of jurisdiction of the court.

#### **119 When a child is in need of care and protection.**

(1) For the purposes of this Act, a child is in need of care and protection—

(a) who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute; or

- (b) who is found begging or receiving alms; or
- (c) who has no parent or the parent has been imprisoned; or
- (d) whose parents or guardian find difficulty in parenting; or
- (e) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or
- (f) who is truant or is falling into bad associations; or
- (g) who is prevented from receiving education; or
- (h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; or
- (i) who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous; or
- (j) who is exposed to domestic violence; or
- (k) who is pregnant; or
- (l) who is terminally ill, or whose parent is terminally ill; or
- (m) who is disabled and is being unlawfully confined or ill treated; or
- (n) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or
- (o) who is engaged in any work likely to harm his health, education, mental or moral development; or
- (p) who is displaced as a consequence of war, civil disturbances or natural disasters; or
- (q) who is exposed to any circumstances likely to interfere with his physical, mental and social development; or
- (r) if any of the offences mentioned in the Third Schedule to this Act has been committed against him or if he is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child; or
- (s) who is engaged in the use of, or trafficking of drugs or any other substance that may be declared harmful by the Minister responsible for health.

(2) A child apprehended under this section shall be placed in separate facilities from a child offenders' facilities.

(3) The provisions of this section shall be in addition to, and not in derogation of, those of the Penal Code in relation to offences involving children, or the Employment Act in relation to safeguards for working children.

## **120 Proceedings in respect of children in need of care and protection.**

(1) Any person who has reasonable cause to believe that a child is in need of care and protection may report the matter to the nearest authorised officer.

(2) Any child in need of care and protection may take refuge in a place of safety.

(3) Any authorised officer may take to a place of safety any child who is about to be brought before a court as being in need of care and protection, and a child so taken to a place of safety, or who has taken refuge in a place of safety, may be accommodated there until he can be brought before a court.

(4) Any authorised officer having reasonable grounds for believing that a child is in need of care and protection may apprehend him without warrant and in such a case shall without delay bring him before a Children's Court; and a children's officer shall bring before a court any child who appears to such officer to be in need of care and protection unless proceedings are about to be taken by any other person.

(5) Where an application is to be made to a court for an order under section 125 of this Act and the child is not in a place of safety, the court may issue a summons requiring him to be brought before the court, and thereupon the provisions of subsection (3) of that section shall apply for enabling the court to make an interim order for the temporary accommodation of the child in a place of safety or for his temporary committal to the care of a fit person.

(6) Where a court makes an order under subsection (5) it may make such other orders as it deems necessary for the establishment of contact between the child and his parent, or between the child and any person who has parental responsibility for him and for the enforcement of the order.

(7) Where a child is taken to a place of safety by an authorized officer without reference to the court, the parent or guardian or any person who has parental responsibility in respect of the child may apply to the Director for the release of the child from the place of safety into his care:

Provided that if the Director refuses an application under this subsection he shall notify the applicant in writing of the decision and the reasons therefor.

(8) Any applicant who is aggrieved by the decision of the Director under subsection (6) may apply to the court for the discharge of the child from the place of safety concerned into the care of such applicant.

(9) Where under the provisions of this section a child is taken to or ordered to be taken to a place of safety, the person who so takes him or as the case may be, the person bringing him before the court, shall forthwith send a notice to the court specifying the grounds on which the child is to be brought before the court and shall send particulars to his parent or guardian or such other person who has parental responsibility over the child requiring such person to attend at the court before which the child will appear.

(10) Where any application is to be made to a court for an order under section 125, the person intending to make the application shall forthwith notify the Director or his representative, of the name and address of the child and the day and hour when, and the nature of the grounds on which, he is to be brought before the court.

(11) The Director having received a notice under subsection (9), shall make such investigations and render available to the court such information as to the home, circumstances, age, health, character and general antecedents of the child or as may be necessary to assist the court.

(12) When it appears to an appointed local authority or a charitable children's institution that a child in its area is in need of care and protection and that its intervention is necessary the local authority, or charitable children's institution shall receive such child into its care and need not bring him before a court immediately:

Provided that—

- (a) the local authority or charitable children's institution shall notify the Director within seven days of receiving the child into its care;
- (b) the child shall be brought before a court within three months;
- (c) a monthly report is rendered to the Director of all children received and held;
- (d) all cases are investigated by the local authority, or charitable children's institution;
- (e) the local authority, or charitable children's institution shall not retain the child in its care if his parent or guardian seeks to assume the care of the child;
- (f) the local authority, or charitable children's institution shall, when it appears to be in the interests of the child, endeavour to secure that the care of the child is assumed by a parent or guardian or a person who has parental responsibility for the child by a relative or friend who should, if possible, be of the same religion, race, tribe or clan as the child.

(13) A local authority or charitable children's institution which receives a child into its care under the provisions of this section shall be entitled to recover the cost of maintenance of such child from his parent, guardian or the person who has responsibility for the child.

#### **121 Medical care.**

(1) If it appears to an authorized officer exercising powers under section 120 that a child is in need of medical care, he shall forthwith take the child to a registered health institution, and such health institution shall provide the appropriate treatment, care and necessary hospital accommodation for the child.

(2) Where a child is accommodated in any health institution for in-patient care the authorized officer who took the child shall forthwith notify the child's parent, or guardian, or any person who has parental responsibility for the child concerned, or the Director or his representative.

(3) Where it appears to any health institution or medical practitioner that any of the offences mentioned in the Third Schedule to this Act have been committed against a child, the health institution or medical practitioner shall forthwith take such measures as shall be necessary to record and preserve any information with regard to the condition of the child in the manner that may be prescribed by the Minister in regulations made under this Part.

(4) Any expenses incurred in connection with the medical treatment or hospital accommodation of a child under this section shall be defrayed out of public funds.

#### **122 Determination as to child's home etc.**

Whenever a child is brought before a court as being in need of care and protection and the court determines that he has his home or, as the case may be, has been found within the area of jurisdiction of a particular local authority, such determination shall for the purposes of this Act, be final and conclusive:

Provided that a court may, whenever it thinks it convenient so to do, remit any such case to another Children's Court to be dealt with by that court, without prejudice, however, to the provisions of section 43.

### **123 Parent or guardian to be heard in any application.**

(1) Where a child is brought before a court as being in need of care and protection, the court shall allow his parent or guardian or the person who has parental responsibility for such child to be heard on any application made in relation to the child.

(2) Where the parent or guardian cannot be found or cannot, in the opinion of the court, be reasonably required to attend, the court may allow any relative or any other responsible person who knows or is known to the parents or any relative of the child to take the place of the parent or guardian for the purposes of this section.

## *Children*

### **124 Power of director to take over application.**

The Attorney-General may authorise the Director at any stage in the proceedings under this Part, 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 shall not be entitled to terminate any proceedings over which he has authorised the Director to assume control under this section without the leave of the court.

### **125 Powers of court in respect of children in need of care and protection.**

(1) A court before which any child in need of care and protection is brought may require an authorised officer or any other person to give a report or advise on any aspect of the proceedings.

(2) If a court is satisfied that a child brought before it is in need of care and protection it may—

(a) order that such child be returned to his parent or guardian or the person who has parental responsibility for him;

(b) order such child's parent or guardian, or person who has parental responsibility for him to execute a bond with or without sureties to exercise proper care and guardianship;

(c) where it is satisfied that it is in the best interests of the child, commit such child to a rehabilitation school suitable to his needs and attainments after the court has ascertained that there is a vacancy at the school; or

(d) without making any other order, or in addition to making an order under this section make an order under Part IX; or

(e) if the child is a victim of armed conflict, civil disturbance or natural disaster make an order requiring the Director to take the necessary steps to ensure that the child is provided with care, and where possible, is reunited with his family; or

(f) if the child is disabled, make an order which requires the Director to take the necessary steps to ensure that the child is provided with care commensurate with his special needs; or

(g) if the child is subjected to early marriage, make an order rendering such marriage null and void *ab initio* and requiring the child to be placed under the care of a fit person and to return to school; or

(h) where it is satisfied that the child has been engaged in drug abuse and that it is in the child's best interest to do so, by order commit him to a drug rehabilitation centre for treatment, or order that the child be accorded professional counselling.

(3) A parent who is ordered to exercise proper care and guardianship under subsection 2 (b) shall also be required to seek the assistance of a professional counsellor.

(4) The court may from time to time, of its own motion or on the application of any person, review, vary or revoke any order made under this section;

(5) The court may order that a child shall remain in the custody of an appointed local authority, a charitable children's institution or a fit person until the age of eighteen years or such lesser age as the court may decide.

(6) If a court before which a child is brought is unable to decide whether any order, or what order ought to be made in respect of the child, it may make such interim order as it thinks fit for the child's accommodation in a place of safety not being a police station, or for his committal to the care of a fit person whether a relative or not who is willing to undertake the care of the child;

(7) An interim order under subsection (1) shall not remain in force for more than fourteen days, but if at the expiration of that period the court deems it expedient so to do, it may continue to make further interim orders.

### **126 Application of trusts for maintenance of children.**

(1) Where a child is, by an order of the court made under this Part, removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the child's maintenance, the court may order the whole or any part of the sums so payable under the trust to be paid to the person, children's voluntary institution or appointed local authority to whose care the child is committed, to be applied for his benefit in such manner as the court, having regard to the terms of the trust, may direct.

(2) A person making default in complying with an order of the court made under this section shall be punished in the prescribed manner, or if no punishment is prescribed may at the discretion of the court be ordered to pay a sum not exceeding two hundred shillings for every day during which such person is in default or to be imprisoned or dealt with under section 144 (5) until the default has been remedied.

(3) An appeal shall lie to the High Court from an order made under this section.

### **127 Penalty for cruelty to or neglect of children.**

(1) Any person who having parental responsibility, custody, charge or care of any child and who—

(a) wilfully assaults, ill-treats, abandons, or exposes, in any manner likely to cause him unnecessary suffering or injury to health (including injury or loss of sight, hearing, limb or organ of the body, and any mental derangement); or

(b) by any act or omission, knowingly or wilfully causes that child to become, or contributes to his becoming, in need of care and protection,

commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both.

Provided that the court at any time in the course of proceedings for an offence under this subsection, may direct that the person charged shall be charged with and tried for an offence under the Penal Code, if the court is of the opinion that the acts or omissions of the person charged are of a serious or aggravated nature.

(2) For the purposes of this section, a person having parental responsibility, custody, charge or care of a child shall be deemed to have neglected such child in a manner likely to cause injury to his health if the person concerned has failed to provide adequate food, clothing, education, immunization, shelter and medical care.

(3) Any person charged under this section may be charged before the same Court as that before which is brought as being in need of protection or discipline and at the same time and both issues shall be tried simultaneously and the same court shall sentence the person charged, if convicted, and make an order under section 125 if the child is found to be in need of care and protection.

(4) A person may be convicted of an offence under this section notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, of the child was obviated by the action of another person, or the child in question has died.

(5) Nothing in this section shall affect the right of any parent or other person having the lawful control or charge of a child to administer reasonable punishment on him.

### **128 Warrants for search of children.**

(1) If it appears to a magistrate on information laid by at least two persons who, in the opinion of the magistrate are acting in the interests of a child, that there is reasonable cause to suspect—

(a) that one of the offences specified in the Third Schedule has been or is about to be committed against a child; or

(b) that a child is in need of care and protection, the magistrate may issue a warrant authorising any police officer of or above the rank of Inspector and named therein to search for the child, and, if it appears to such police officer that any offence as aforesaid has been or is being or is about to be committed against the child or that he is in need of care and protection, to take him to and accommodate him in a place of safety until he can be brought before a court.

(2) Any police officer of or above the rank of a Inspector authorised by warrant under this section to search for any child may enter (if need be by force) any house, building or other place specified in the warrant, and, subject as aforesaid, may remove the child therefrom.

(3) A police officer executing a warrant under this section shall take with him any person laying or joining in laying information who desires to accompany the officer, unless the magistrate issuing the warrant otherwise directs, and may also, if such magistrate so directs, be accompanied by a medical practitioner.

(4) It shall not be necessary in any information or warrant under this section to name the child.



(5) A magistrate issuing a warrant under this section may by the same warrant cause any person accused of an offence against the child to be apprehended and brought before a court, and proceedings to be taken against such person according to law.

(6) A refusal to allow the Director, a children's officer or an approved officer to enter any place or dwelling in the exercise of his powers under this Act shall for the purposes of subsection (1) of this section be deemed to be a reasonable cause to suspect that a child therein is in need of care and protection.

(7) The provisions of this section shall be in addition to, and not in derogation of those of the Criminal Procedure Code in relation to entry of premises and arrest of persons.

### **129 Arrest without warrant.**

A police officer may arrest without warrant any person who he has reason to believe has committed any offence under this Part or any other offence involving bodily injury to a child, if the police officer has reasonable ground for believing that the person will abscond or if he does not know and is unable to immediately ascertain the person's name and address.

## *Supervision and Care Orders*

### **130 Supervision order.**

The court may make an order (in this Act referred to as a "supervision order") placing the child under the supervision of a children's officer or an authorised officer whilst allowing the child to remain in the care and possession of his parent, guardian, custodian or any other person with whom the child is residing.

### **131 Preliminary inquiries.**

(1) Prior to making a supervision order the court shall procure that—

- (a) such enquiries or investigations as may be prescribed by the rules made under this Part are carried out and in particular that a welfare report is availed to the court; and
- (b) written notice of the proceedings is given to the parent, guardians, custodian or any other person with whom the child is residing.

(2) A supervision order shall not remain in force for a period exceeding twelve months, but the court may upon the application of the supervisor vary, discharge, or extend the order for a further period as it shall deem expedient, having regard to the best interests of the child;

Provided that the court shall not make an order extending a supervision order unless notice of the relevant application has been given to the parents, or guardians of the child or any other person having parental responsibility in respect of the child, who may be heard on the application.

(3) A court may make an interim supervision order, either on application or of its own motion—

- (a) where it has reason to believe that the circumstances of the child concerned require that an order be made pending the submission of a welfare report prepared in accordance with subsection (1); or
- (b) upon adjourning an application for a supervision order; or

(c) upon the making of orders for the assessment of the child under section 113.

(4) Where an interim order is made, it shall not remain in force for a period exceeding eight weeks, but at the expiration of that period the court if it deems it expedient so to do, may continue to make further interim orders.

(5) A court which has made a supervision order or an interim supervision order may vary or discharge the same upon the application of—

(a) the child with the leave of the court;

(b) the parents or custodian of the child or any person with parental responsibility in respect of the child; or

(c) the supervisor; or

(d) any person with whom the child is living in so far as the order imposes a requirement that directly affects that person.

(6) Where a child in respect of whom any order is made under this section attains the age of eighteen years the order shall automatically be discharged.

### **132 Care order and grounds thereof.**

(1) In this Part a “care order” means an order entrusting the care, control and possession of the child to a person not being the parent, guardian or custodian of the child or to an appointed local authority or an institution appointed by the court.

(2) A court may make a care order in respect of a child only if it is satisfied that—

(a) all possible alternative methods for assisting the child have been unsuccessful and that it is in the best interests of the child to make the order; or

(b) the child concerned is suffering or is likely to suffer significant harm, and that the harm, or probability of harm is attributed to—

(i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give the child;

(ii) the child is beyond the control of his parent, guardian or other person who has parental responsibility in respect of the child.

(c) the danger to which the child is exposed is so severe as to require his immediate removal from the place where he is residing.

(3) Where a court makes a care order or an interim care order in respect of any child, the court may include in the order such conditions, restrictions and directions as it shall deem fit, as to the enforcement of the order by any person or as to the conduct of the child or any person named in the order.

(4) The court making a care order shall as far as shall be practicable entrust the care of the child to a person or institution which professes the same religion as the child.

(5) Where a child is disabled, the court shall as far as practicable entrust the care of the child to a person or institution that is suitably placed to cater for the needs of the child.

(6) Every care order shall be in writing and shall contain a declaration as to age and religion of the child concerned and may be made in his absence with the consent of the person or institution into whose care the child has been entrusted.

(7) The court making a care order shall cause to be delivered to the person or institution entrusted with the care of the child, a record in the prescribed form containing such information regarding the child concerned as the court thinks necessary.

(8) Every care order shall be made so as to commit a child to such care until he attains the age of eighteen or for such shorter period as the court thinks fit:

Provided that the court, on making a care order, shall make such further orders or directions requiring the Director or his representative to supervise the mode of compliance with such orders and to make such recommendations as the Director or his representative shall consider relevant to the court in respect of the order, including applying for the variation or discharge of the order.

(9) Upon the making of a care order under this section, it shall be the duty of the Director or his representative to supervise and monitor the care provided to the child concerned by the person or institution to whom or to which the child is committed under the order, and to periodically assess the condition and circumstances of the child.

(10) A court may on application or of its own motion, make an interim care order—

(a) if it has reasonable grounds for believing that the circumstances of the child are as mentioned in subsection (1) of this section; or

(b) upon the adjournment of an application for a care order; or upon making orders as to the assessment of a child under section 113.

(11) An interim order made under subsection (10) shall not remain in force for a period exceeding eight weeks but if at the expiry of the period the court deems it expedient so to do, it may extend the order for a further period of four weeks.

(12) A care order or interim care order may be discharged by—

(a) the making of an adoption order in respect of the child, if the care order was not made in respect of the child by reason of the child having been found to be guilty of a criminal offence under Part XII;

(b) the making of a residence order in respect of the child;

(c) the making of a supervision order in respect of the child;

Notwithstanding the foregoing provisions of this subsection, the court shall have power on the application of the child, the Director or the parents or guardian of the child, or any other person who has parental responsibility in respect of the child to vary or discharge the care order or interim order on such terms as it thinks fit and including replacing the care order with a supervision order.

(13) The court shall have power, where it considers that it would be for the benefit of a child to authorise a foster parent, or a voluntary children's institution, to whose care a child has been

committed, to arrange for the child's emigration from Kenya, but the court shall not authorise such arrangements unless the child and his parents or guardian or any other person who has parental responsibility for the child, consent;

Provided that where the parents or guardians cannot be found after diligent and reasonable enquiry, the Director may give such consent.

### **133 Arrangements for access to children in care.**

(1) Prior to making a care order, the court shall consider the arrangements the Director has made or proposes to make for affording any individual contact with the child during the term of a care order, and shall invite the parties to the proceedings to comment on the said arrangements and or to make such applications for contact in the manner prescribed in subsection (4).

(2) Unless a court otherwise directs or it is determined that such contact would be detrimental to the best interests of the child, there shall be a rebuttable presumption of reasonable contact between the child and—

- (a) the child's parent or guardian;
- (b) any person who has parental responsibility in respect of the child;
- (c) the relatives of the child;
- (d) such other person as the court shall direct.

(3) Where the court makes an access order under this section it shall determine the frequency and duration of access to the child subject to such conditions as the court may consider appropriate.

(4) The Director or the child, with the leave of the court, may apply to the court for refusal of access to any individual and upon such application the court, if satisfied that such contact between the child and any individual should be refused shall make an order authorising the Director to refuse to allow contact between the child and the person named in the order.

(5) A court making a contact order under this section shall have power to vary, suspend or discharge the order or revive the order after it has been discharged on such terms as it shall deem fit; but no contact order shall remain in force beyond the child's eighteenth birthday or after the date of a discharge of a care order.

### **134 Contents of care order.**

Where a care order to a rehabilitation school has been made by a court against a child, on a finding of guilt of an offence, the committal order shall specify the grounds of the order and—

- (a) contain a declaration as to the age and religion of the child;
- (b) specify the rehabilitation school to which he is to be sent;
- (c) specify the person or authority that is to convey the child to the school;
- (d) contain directions as to any special care or treatment required for the child;
- (e) contain directions as to access arrangements for the child by his parent, guardian or relative; and

(f) specify details of any contribution order made against the parents or the guardian of the child and the dates upon which accounts shall be supplied to them.

### **135 Transmission of order.**

The Court making a care order to a rehabilitation school shall send such order together with a record in the prescribed form of such information regarding the child placed in care as the court thinks necessary, to the manager of the rehabilitation school.

### **136 Production of child.**

Where a person authorised to escort a child to a rehabilitation school is unable to find or obtain possession of the child, the court may, if satisfied by information on oath that some person named in the information can produce the child, issue a summons requiring the person so named to attend at the court on a specified day and produce the child and, if the person so summoned fails without reasonable cause to attend, in addition to any other liability to which he may be subject under the provisions of any law including this Act, he commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding one year or to both.

### **137 Harboursing or concealing a child.**

Where a child has been placed under care in a rehabilitation school any person who harbours or conceals him after the time fixed for him to enter the rehabilitation school commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or a fine not exceeding fifty thousand shillings or to both.

## *Escapees*

### **138 Escape from institutions etc.**

A child who runs away from a fit person, charitable children's institution or appointed local authority to whose care the child has been entrusted under this Act, or from any person or institution with whom he has been placed by a charitable children's institution, or appointed local authority under any regulations made under this Act, may be apprehended without warrant and be brought before a Children's Court having jurisdiction in the place where he was residing immediately before he ran away, and that court may—

- (i) order that the child be returned to where he ran away from; or
- (ii) place him under the care of some other person or charitable children's institution; or
- (iii) order him to be sent to a rehabilitation school; or
- (iv) make any order which a court may make under section 125; or
- (v) make an order requiring the child to undergo professional counselling.

### **139 Charitable children's institutions and local authorities.**

Whenever a child runs away from any person or institution with whom or with which he has been placed by a charitable children's institution or appointed local authority, as aforesaid, it shall be the duty of the secretary, clerk or other appropriate officer of such institution or authority, within forty-eight hours of such occurrence coming to his knowledge, to notify the

Director thereof; and any secretary, clerk or other officer who contravenes the provisions of this subsection commits an offence and is liable on conviction to a fine not exceeding five thousand shillings or imprisonment for a term not exceeding three months or to both.

#### **140 Escape from children's remand home or rehabilitation school.**

(1) Any child who escapes from a children's remand home or while being conveyed thereto or therefrom, may be apprehended without warrant and dealt with in accordance with section 138.

(2) Any child who has been committed to a rehabilitation school and who—

(a) escapes from such school or from any hospital, home or institution in which he is receiving medical or other treatment, or while being conveyed to or from any such place; or

(b) being absent from such school on leave of absence or on licence, runs away from the person in whose charge the child has been placed or fails to return to the school upon the expiration of his leave or upon the revocation of his licence,

may be apprehended without warrant and shall be brought before a court having jurisdiction where the school is situated to be dealt with under the provisions of section 138.

(3) Where a child is brought back to a rehabilitation school under subsection (2), the period of his committal shall be increased over and above any increase ordered by court, by a period equal to the period during which he was at large and should have been at the school.

#### **141 Assisting escape etc.**

Any person who knowingly—

(a) assists or induces a child—

(i) to run away from a fit person, a charitable children's institution or appointed local authority to whose care the child has been committed, or from any person or institution with whom or with which he has been placed by a charitable children's institution or an approved appointed local authority under or by virtue of this Act or any regulations made thereunder; or

(ii) to do any of the things specified in section 140 (2); or

(b) harbours or conceals a child who has so run away or has done any such things as aforesaid; or

(c) prevents such a child from returning, or induces such a child not to return, to the care of the person to whom he has been committed, or to any place in which he should be,

commits an offence and is liable on conviction to imprisonment for a term not exceeding one year, or to a fine of fifty thousand shillings, or to both.

#### **142 Production of escaped child.**

If a Children's Court is satisfied by information on oath that there are reasonable grounds for supposing that a child has run away or done any of the things specified in section 140, and that some other person named in the information can produce the child, the court may issue summons requiring that other person to attend at the court and produce the child and, if the person fails to do so without reasonable excuse, he commits an offence, and in addition to any

other liability to which he may be subject under this Act, is liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

### *Miscellaneous Provisions on Protection of Children*

#### **143 Presumption and determination of age.**

(1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that such person is under eighteen years of age, the Court shall make due inquiry as to the age of that person and for that purpose shall take such evidence, including medical evidence, as it may require, but an order or judgement of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act and of all proceedings thereunder, be deemed to be the true age of the person.

(2) A certificate purporting to be signed by a medical practitioner as to the age of a person under eighteen years of age shall be evidence thereof and shall be receivable by a court without proof of signature unless the court otherwise directs.

#### **144 Contribution order.**

(1) A court making an order placing a child under the care of a rehabilitation school may also, at the same time or subsequently, make an order (hereinafter referred to as a "contribution order") requiring either or both of the parents or the guardian to contribute such sums for such periods as the court shall think fit towards the maintenance of the child concerned.

(2) The contribution order shall name the person to whom the sums are to be paid.

(3) A contribution order may be made on the complaint or application of a person, to whose care the child has been or the manager of the rehabilitation school to which the child has been ordered to be sent, and may require that contributions shall be made from the date of the order placing the child under care; and every sum contributed in accordance with the order shall be applied to or towards his maintenance.

(4) A court which has made a contribution order under this section may at any time vary, suspend or rescind the order, or revive the order after it has been rescinded, but no contribution order shall be made, varied, suspended, rescinded, or revived unless the court is satisfied that the person liable to make payments under the order and the person, or manager of the rehabilitation school to whom such payments are due, or are to become due, has received due notification of the complaint or application and had an opportunity to appear before the court on the hearing thereof.

(5) Arrears of contribution shall be recovered in the manner provided in sections 334 to 342 of the Criminal Procedure Code for the levying of fines imposed by a court in criminal proceedings and the court shall be empowered to make an attachment order against the defaulter's salary or other source of income, subject always to any written law protecting pensions or other sources of income from attachment.

(6) A person against whom a contribution order has been made shall, if he changes his address, forthwith give notice thereof to the person entitled to receive the contribution and if he fails to do so shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or imprisonment for a term not exceeding one month or to both.

(7) Any institution or person who receives payment of any moneys under a contribution order shall keep proper accounts in respect of such moneys and shall furnish the parents or guardian liable to make such payments with accounts in respect of the same on a quarterly basis, or in respect of such lesser period as the court may direct, throughout the duration of the order.

(8) Any person who fails to comply with the provisions of subsection (7) commits an offence and shall upon conviction be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a period not exceeding five years, or to both.

#### **145 International reciprocity.**

(1) It shall be lawful for the Minister, with the approval of the National Assembly, to enter into an agreement with the government of any other country or territory on such terms and conditions as he may think fit, whereby a child who has been ordered by a court under the provisions of this Act to be sent to a rehabilitation school or other institution or committed to the care of a fit person, may be received into that country or territory and then placed in a rehabilitation school or other institution approved under the relevant legislation of that country or territory or received into the care of a fit person or returned to his parent or guardian.

(2) Any child who has been ordered under the provisions of this Act to be placed in a rehabilitation school or any other institution, or committed to the care of a person, may, while still subject to such order, by warrant signed by the Minister, be removed from custody of such an institution or person into any other country or territory with which an agreement has been concluded under subsection (1), and placed in a rehabilitation school or other institution, placed in the care of a fit person, or of his parent or guardian, in accordance with the law in force in the country or territory authorising such placement until the expiration of the order or until such child is sooner released according to law.

(3) An order of a court of a country or territory with which an agreement has been entered into in accordance with the provisions of subsection (2) which could lawfully have been made by a court in Kenya if the person had been within its jurisdiction, shall upon the person being received in Kenya have the same effect and be enforceable as if the order had been made by a court in Kenya.

#### **146 Bonds.**

The provisions of the Criminal Procedure Code with respect to bonds for good behaviour (including the provisions as to their enforcement) shall apply to bonds entered into under this Act.

### **PART XI – FOSTER CARE PLACEMENT**

#### **147 Conditions for foster care placement.**

(1) Where a child has, by virtue of a care order, been committed to a rehabilitation school or to a charitable children's institution, the Director in conjunction with the manager of the institution may place the child with a foster parent, for such period as the Director may from time to time authorise.

Provided that a child in relation to whom a care order has been made by reason of having been found guilty of a criminal offence, shall not be placed with a foster parent without the leave of the court.



(2) When a child has been placed in the care of a foster parent, it shall be the duty of the manager of the institution to which the child was first committed under a care order to supervise and assess the condition of the child periodically and to take such steps as shall be necessary to safeguard the welfare of the child.

(3) A foster parent in whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the child's maintenance as if he were the parent of the child.

(4) The provisions of this Part shall cease to have effect in relation to a child—

(a) upon the discharge of the care order;

(b) upon the expiry of the period specified by the Director for the duration of the foster placement of the child;

(c) upon the child attaining the age of eighteen years.

#### **148 Persons qualified to foster children.**

(1) Any of the following persons may apply to be appointed a foster parent or foster parents—

(a) spouses of a marriage;

(b) a single woman not below the age of twenty-five years;

(c) a single man not below the age of twenty-five years.

(2) No single man may qualify to foster a female child and no single woman may qualify to foster a male child under this Part.

(3) No person shall be appointed to be a foster parent unless the person is resident in the Republic of Kenya and has been so resident for a period of at least twelve months.

(4) A foster parent shall not remove a child from the jurisdiction of the Republic of Kenya without the leave of the court and such leave shall only be granted upon exceptional circumstances being shown.

(5) Where such leave is granted, the court shall impose such conditions and restrictions as it shall deem appropriate having regard to the best interests of the child.

#### **149 Registration for foster care placement.**

No person shall, for the purposes of fostering a child, retain a child in his care and possession whose parents, custodian or guardians cannot be readily identified, without first notifying the Director.

#### **150 Agreement for maintenance of foster child.**

(1) The Director may, on the request of the foster parent or the parent or guardian of a child, arrange an agreement between the foster parent and the parent or guardian of a child placed in foster care, stipulating the maintenance payable for the child's care.

(2) Any maintenance agreement may be enforceable by the Director in the like manner as a maintenance order under section 101.

### **151 Penalty for contravening provisions of this Part.**

A person who, without reasonable cause, contravenes the provisions of this Part commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or of imprisonment to a term not exceeding two years or both.

### **152 Rules.**

Foster care placement shall be made in accordance with the rules set out in the Fourth Schedule to this Act.

### **153 Amendment of rules.**

The Chief Justice may amend the rules set out in the Fourth Schedule to this Act.

### **154 Power to make adoption orders.**

(1) Subject to this Act, the High Court may upon an application made to it in the prescribed form make an order (in this Act referred to as “adoption order”) authorising an applicant to adopt a child.

(2) All proceedings under this Part shall be heard and determined in chambers and the identity of the child and the applicants shall be kept confidential.

### **155 Establishment of Adoption Committee.**

(1) The Minister shall establish a committee to be known as the Adoption Committee which shall comprise the members set out in the Ninth Schedule.

(2) The functions of the Committee shall be—

- (a) formulating the governing policy in matters of adoption;
- (b) effecting liaison between adoption societies, the Government and Non-Governmental Organizations;
- (c) considering and proposing names of officers who may serve as guardians ad litem;
- (d) monitoring adoption activities in the country; and
- (e) such other functions as are conferred on the Committee by this Act.

(3) The conduct and regulation of the affairs of the Committee shall be as prescribed by the Minister, but subject thereto, the Committee shall regulate its own proceedings.

### *Pre-requisites for Adoption*

### **156 Preliminaries.**

(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 free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.

(2) It shall not be lawful for any person whether being a parent or guardian of a child or otherwise, 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, if an adoption order in respect of the child cannot be lawfully made in favour of that person.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both.

#### **157 Children who may be adopted.**

(1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya:

Provided that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant with in the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya.

(2) Any person who contravenes the provision of subsection (1) of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand shillings or to both such imprisonment and such fine.

#### **158 Adoption applicants.**

(1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.

(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order—

(a) a sole male applicant in respect of a female child;

(b) a sole female applicant in respect of a male child;

(c) an applicant or joint applicants who has or both have attained the age of sixty-five years;

(d) a sole foreign female applicant.

(3) An adoption order shall not be made if the applicant or, in the case of joint applicants, both or any of them—

(a) is not of sound mind within the meaning of the Mental Health Act;

(b) has been charged and convicted by a court of competent jurisdiction for or any of the offences set out in the Third Schedule to this Act or similar offences;

(c) is a homosexual;

(d) in the case of joint applicants, if they are, not married to each other;

(e) is a sole foreign male applicant:

Provided that the court may refuse to make an adoption order in respect of any person or persons if it is satisfied for any reason that it would not be in the best interests of the welfare of the child to do so.

(4) Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child—

(a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;

(b) in the case of a child, born out of wedlock whose mother is a child with the consent of the parents or guardian of the mother of the child;

(c) in the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child under the provisions of this Act, with the consent of the father;

(d) on the application of one of the spouses, with the consent of the other spouse;

(e) in the case of two spouses who are not Kenyan citizens and who are not resident in Kenya, with the consent of the court of competent jurisdiction or of a government authority situated in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child;

(f) in the case of a child who has attained the age of 14 years, with the consent of the child.

#### **159 Power to dispense with consent.**

(1) The court may dispense with any consent required under paragraph (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that—

(a) in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;

Provided that:

(i) abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months;

(ii) persistent failure to maintain may be presumed where despite demands made, no parent or guardian has contributed to the maintenance of the infant for a period of at least six consecutive months and such failure is not due to indulgence;

(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refuses to so contribute;

(c) in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.

(2) The court may dispense with the consent of the spouse of the applicant for an adoption order if satisfied that the person whose consent is to be dispensed with, cannot be found or is incapable of giving consent, or that the spouses have separated or divorced and are living apart and that such separation is likely to be permanent.

(3) The consent of any person, to the making of an adoption order in pursuance of an application, may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up) without knowing the identity of the applicant for the order; and where the consent so given by any person is subsequently withdrawn on the grounds only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to have been unreasonably withheld.

(4) In considering whether or not to dispense with the consent of any person to the making of an adoption order, or whether to grant leave or refuse leave under the provisions of subsection (1) and (2) of this section, the court shall regard the interests of the child as paramount and subject thereto, shall consider firstly the interests of the parents, guardians or relatives of the child and secondly the interests of the applicants.

(5) Any person's consent to the making of an adoption order, may be withdrawn prior to the filing of the application without the leave of the court and with the leave of the court any time after the filing of the application for the adoption order but prior to the making of the order.

Provided that the court may at the request of the person withdrawing the consent keep his name and identity confidential.

(6) Where any person whose consent to the making of the adoption order is required by section 158 does not attend the proceedings for the purposes of giving it, then subject to the provisions of subsection 7 of this section a document in the prescribed form and attested by a person of such class as may be prescribed signifying his consent to the making of such order shall, if the person in whose favour the order is to be made is named in the document or (where the identity of the person is not known to the consenting party) if distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings.

(7) Any document whether executed in or outside Kenya, shall be admissible without further proof of the signature of the person by whom it was executed, and for the purposes of this subsection a document purporting to be attested as aforesaid, shall be deemed to be so attested and executed on the date and at the place specified therein unless the contrary is proved.

(8) A document signifying the consent of the mother of the child, shall not be admissible under this section unless—

(a) the child is at least six weeks old on the date of the execution of the document;

(b) the document is attested by a person of the class prescribed for the purposes of subsection (2).

## *Guardian Ad Litem*

### **160 Guardian *ad litem* for the child.**

(1) For the purposes of any application for an adoption order, the court shall upon the application of the applicant or of its own motion, appoint a guardian *ad litem* for the child pending the hearing and determination of the adoption application.

(2) It shall be the duty of the guardian *ad litem* to—

(a) safeguard the interests of the child pending the determination of the adoption proceedings;

(b) investigate and apprise the court as to the circumstances pertinent to the adoption of the child in the prescribed manner;

(c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;

(d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act;

(e) undertake such duties as the court may from time to time direct or as may be prescribed by the rules made under this Part.

(3) Where arrangements for the adoption of any child have been made by an adoption society, neither the society nor any member thereof, shall be appointed guardian *ad litem* of that child for the purposes of its adoption.

(4) The appointment of a guardian *ad litem* shall expire upon the making of a final order by the court under this Part unless the court, having regard to the interests of the child extends the period of the appointment.

(5) Without prejudice to the generality of subsection (4), where an appeal is lodged against a final order by the court under this Part, the court shall have power to extend the appointment of a guardian *ad litem* until the date of the determination of the appeal.

## *Interim Orders*

### **161 Interim orders.**

(1) Whilst an application for an adoption order is pending in court—

(a) any person who has given his consent to the adoption shall not be entitled, except with the leave of the court, to remove the child concerned from the care and control of the applicant.

(b) the applicant who has received a child into his care for the purposes of an adoption shall not without the leave of the court remove the child from Kenya and where an application is made for such leave, the court, may only make an order if it is satisfied that—

(i) exceptional circumstances in relation to the health, welfare and safety of the child exist;

(ii) the written consent of the parents or guardian of the child (if they are living or can be found) to the removal of the child from Kenya has been obtained; and

(iii) a welfare report has been made by parents the guardian of the child (if they are living or can be found) to the removal of the child from Kenya has been obtained; and

(c) where a court makes an order under this paragraph the court shall make a wardship order in respect of the child and shall cause the applicant to execute a security bond with or without sureties requiring that the child be returned to Kenya by the applicant within such period as may be specified by the court and may make such other arrangements as it shall deem fit to secure the return of the child to Kenya;

(d) any person who fails without any reasonable or justifiable cause to return a child to Kenya within the period specified by an order issued under this section shall be guilty of an offence and liable to imprisonment for a term not exceeding three years, or to a fine not exceeding two hundred thousand shillings, or to both.

(2) The court may, upon the application of the applicant or an adoption society or the parent or guardian of the infant or the appointed guardian *ad litem*, or of its own motion, make such interim orders as appear just in respect to the legal custody, maintenance, access, education, residence, safety, or welfare of the child generally and parental responsibility in respect of the child, and may direct that such proceedings be taken for placing the child under the protection of the court.

(3) All such consents as are required for an adoption order shall be necessary for an interim order but subject to a like power on the part of the court to dispense with any such consent.

(4) An interim order shall not be made in any case where the making of an adoption order would be unlawful.

(5) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

### *International Adoptions*

#### **162 International adoptions.**

An adoption order may be made in options, respect of a child upon the joint application of two spouses who are not Kenya citizens and not resident in Kenya (in this Act referred to as an “international adoption”) if they—

(a) have obtained the consents specified in paragraph (e) of subsection 4 of section 158; and

(b) have satisfied the court that the country where they ordinarily reside and where they expect to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and will grant resident status to the child; and

(c) have been authorised and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country immediately after the making of the adoption order.

*Powers of the Court on Adoption Application*

**163 Powers of the court.**

(1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.

(2) The court may impose such terms and conditions as it may think fit and without prejudice to the generality of the foregoing it may—

(a) require the adopter by bond or otherwise to make for the child such provision as in the opinion of the court just and expedient;

(b) order that the child shall not be removed from the jurisdiction of the court without the consent of the court for such period as the court may specify;

(c) require the adopter to accept supervision by and advice from an adoption society specified by the court for such period as the court may specify;

(d) where the consent to the making of an adoption order is conditioned upon the child being brought up in a particular religious persuasion, require the infant to be brought up in that persuasion;

(e) require the adopter to furnish such security by bond or otherwise as the court may think fit for the due performance of any condition that the court may impose;

(f) where the adopter is not a resident of Kenya or a citizen of Kenya, require him to avail such periodical reports from a court or competent authority in the adopter's country of residence for such period as the court may specify.



#### **164 Power to appoint guardian.**

(1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.

#### **165 Adoption order in respect of children previously adopted**

(1) An adoption order or an interim adoption order, may be made in respect of a child of who has already been the subject of an adoption order under this Act or under any other Act or Ordinance for previously the time being in force in any country in the Commonwealth.

(2) In relation to an application for an adoption order in respect of such a child, the adopter or adopters under the previous or last adoption order shall be deemed to be the parent or the parent of the child for all purposes of this Part.

#### **166 Parental responsibility when adoption is refused.**

If the court refuses to make an adoption order, the court may make such order in respect of parental responsibilities for the child as the court may think fit.

#### **167 Appeals.**

Any person aggrieved by the making or refusal to make of an adoption order or an order pertaining to parental responsibility for a child may appeal therefrom in the same manner as if the application were a suit instituted under the Civil Procedure Act.

#### **168 Amendment of orders.**

(1) The court by which an adoption order has been made under the Adoption Act (now repealed) may, on the application of the adopter amend the order by the correction of any defect in the particulars contained therein; and where, an adoption order is so amended, the court shall cause the amendment to be communicated in the prescribed manner to the Registrar-General who shall cause the Adopted Children Register to be amended accordingly.

(2) Where the adoption order was made before the commencement of this Act, the power of the court under subsection (1) shall include power to amend the order—

(a) by the insertion of the country of birth of the adopted person; or

(b) where the order does not specify a precise date as the date of the adopted person's birth by the insertion of the date which appears to the court to be the probable date of such birth, and the provisions of that subsection shall have effect accordingly.

(3) Where an adoption order is quashed or an appeal against an adoption order is allowed, the court which made the order shall give directions to the Registrar-General to cancel any entry in the Register of Births and any entry in the Adopted Children Register which was effected in pursuance of the order.

(4) A copy of, or extract from, and entry in any register being an entry the making of which is cancelled under this section, shall be deemed to be an accurate copy or extract and only if both the marking and the cancellation are omitted therefrom.

### *Registration of Adoption Orders*

#### **169 Adopted children register.**

(1) The Registrar-General shall maintain a register, to be called the “Adopted Children Register”, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries shall be made therein.

(2) A certified copy of an entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the Registrar-General’s Office, shall without any further or other proof of that entry, be received as evidence of the adoption to which it relates, and, where the entry contains a record of the date of the birth or the country of birth of the adopted person, shall also be received as aforesaid as evidence of the date or country in all respects as if the copy was a certified copy of an entry in the Registry of Births.

(3) The Registrar-General shall cause an index of the Adopted Children Register to be made and every person shall be entitled to search that index and to have a certified copy of an entry in the Adopted Children Register upon payment of such fee as may be prescribed.

(4) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make, such entries therein, as may be necessary to record and make traceable the connection between any entry in the Register of Births which has been marked “Adopted” and any corresponding entry in the Adopted Children Register, but such other register or books shall not be, nor shall any index thereof be, open to public inspection or search, except under the order of a court of competent jurisdiction, shall the Registrar General supply any person who requests information with respect to his own adoption, with any information contained in or with any copy or extract from any such registers or books.

#### **170 Registration of adoption orders.**

(1) Every adoption order made by the court order shall contain a direction to the Registrar-General to make an entry in the Adopted Children Register in the prescribed form.

(2) For the purposes of compliance with the requirements of subsection (1)—

(a) where the precise date of the child’s birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth; and

(b) where the country of birth of the child is not proved to the satisfaction of the court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon an application to the court for an adoption order in respect of a child not being a child who has previously been the subject of an adoption order made by the court under this Act or the Adoption Act (now repealed) there is proof to the satisfaction of the court of the identity of the child to whom an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the word “Adopted”.

(4) Where an adoption order is made by the court in respect of a child who has previously been the subject of an adoption order made by such court under this Act or the Adoption Act (now repealed), the order shall contain a direction to the Registrar-General to be marked with the word “Re-adopted”.

(5) Where an adoption order is made by the court, the court shall cause the order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such communication, the Registrar-General shall cause compliance to be made with the directions contained in the order both with regard to marking an entry in the Register of Births with the word “Adopted” and in regard to making the appropriate entry in the Adopted Children Register.

### *Effect of Adoption Order*

#### **171 Rights and duties of parents and capacity to marry.**

(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the child were a child born to the adopter inside marriage and in respect of the matters aforesaid the child shall stand to the adopter as a child inside marriage.

(2) In any case where two spouses are the adopters, the spouses shall in respect of the matters aforesaid, and for the purpose of the jurisdiction of any court to make orders as to the legal custody and maintenance of and right of contact with children, stand to each other and to the child in the same relation as they would have stood if they had been the lawful father and mother of the child and the child shall stand to them in the same relation as to a lawful father and mother respectively.

(3) For the purpose of any written law relating to marriage for the time being in force in Kenya, an adopter and the person whom he has been authorised to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subject shall continue to have effect notwithstanding that some person other than the adopter is authorised by a subsequent order to adopt the same child.

#### **172 Workmen’s Compensation.**

For the purposes of the Workman’s Compensation Act, a child whom a deceased workman has been authorised to adopt under the adoption order shall be deemed to be a member of the family of the workman, and an adopter shall be deemed to be the parent of a deceased child whom he has been authorised to adopt.

#### **173 Orders and agreements in respect of child born outside marriage.**

(1) Where an adoption order is made in respect of a child born outside marriage then subject to this section, any order, decree or agreement whereby the father of the child is required or has undertaken to make payments specifically for the benefit of the child shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the decree, order or agreement at the date of the adoption order.

(2) Where a child to whom any such order, decree or agreement as aforesaid relates is adopted by his mother and the mother is a single mother, the order, decree or agreement shall not cease

to have effect by virtue of subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

(3) Where an adoption order is made in respect of a child committed to the care of foster parents, a voluntary children's institution or a children's institution or a rehabilitation school by a care order in force under this Act, the care order shall cease to have effect; and in any case any contribution order made in respect of the child shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order at the date of the adoption order.

#### **174 Intestacies, wills and settlements.**

(1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any movable or immovable property (other than property subject to an entailed interest under a disposition made before the date of the adoption order), that property shall devolve in all respects as if the adopted person were the child of the adopter born inside marriage and were not the child of any other person.

(2) In any disposition of movable or immovable property made, whether by instrument *inter vivos* or will (including codicil), at the date of an adoption order—

(a) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being or as not including, a reference to the adopted person; and

(c) any reference (whether express or implied) to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born inside marriage and were not the child of any other person.

(3) Where under any disposition any movable or immovable property or any interest in such property is limited (whether subject to any proceedings limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title or honour, then whether or not the disposition contains an express reference to the dignity or title or honour and whether or not the property may in some event become severed therefrom, nothing in this section shall operate to sever the property or any interest therein from the dignity, but the property or interest shall devolve in all respect as if this section had not been enacted.

#### *Children*

#### **175 Provisions supplementary to section 168.**

(1) For the purpose of the application of provisions any written law for the time in force in Kenya relating to the devolution of any property in accordance with section 174 and for purposes of the construction of any such disposition as is mentioned in that section, an adopted person shall be deemed to be related to any other person being the child or adopted child of the adopter or (in the case of a joint adoption) of either of the adopters—

(a) where he or she was adopted by two spouses jointly and that the other person is the child or adopted child of both of them, as brother and sister of the whole blood; and

(b) in any other case, as brother and sister of the half blood.

(2) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order shall not be treated, for the purposes of section 174, as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

(3) Notwithstanding anything in section 174, trustees or personal representatives may convey or distribute any movable or immovable property to or among the persons entitled thereto without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser for value without notice, who may have received it.

(4) Where an adoption order is made in respect of a person who has previously been adopted, the previous adoption shall be disregarded for the purposes of section 174 in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made after that date.

#### **176 Effect of overseas adoption.**

(1) Where a person has been adopted (whether before or after the commencement of this Act) in any place and the adoption is one to which this section applies, then, for the purposes of this Act and all other written laws, the adoption shall have the same effect as an adoption order validly made under this Act, and shall have no other effect.

(2) Subsection (1) shall apply to an adoption in any place outside Kenya, if

(a) the adoption order was made by any court of law in the Commonwealth and any court of competent jurisdiction in any other country;

(b) in consequence of the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the person; and

(c) in consequence of the adoption, the adopter had, immediately following the adoption, according to the law of that country, a right superior or equal to that of any natural parent in respect of any property of the adopted person which was capable of passing to the parent or any property of the person dying intestate without other next-of-kin, and domiciled in that place where the adoption was made and a national of the country which had jurisdiction in respect of that place, but not otherwise.

(3) An adoption order made overseas in favour of an adopter who is resident in Kenya shall be lodged in the court within the period and in the manner specified by the rules made by the Chief Justice.

#### *Adoption Societies*

#### **177 Restriction on making arrangements for adoption.**

(1) No body of persons shall make any arrangement for the adoption of a child under the provisions of this Act unless that body is registered as an adoption society under this Part.

(2) An application for registration of an adoption society under this Act shall be made to the Director in the manner prescribed by this Act.

(3) Where an application is made, the Director shall refer the matter to the Adoption Committee which may—

(a) accept the application for registration;

(b) refuse the application for registration on the ground that;

(i) a person taking part in the management or control of the society or a member of the society has been convicted of an offence under this Part, or of a breach of any regulations made under this Part;

(ii) it would not be in the public interest to approve the same, having regard to the number of adoption societies already approved and functioning in the particular locality.

(4) Where an application for registration is refused, no further application for registration of the adoption society may be made under this section within a period of six months beginning with the date when the applicant is notified of such refusal.

(5) Where the Adoption Committee approves and accepts the registration of an adoption society, it shall issue a Certificate of Registration in the prescribed form and shall at the end of the period of twelve months beginning with the date of registration and annually thereafter, review the registration of the adoption society for the purpose of determining whether the registration should continue being in force or be cancelled.

(6) An appeal against the decision of the Adoption Committee in refusing or cancelling the registration of an adoption society shall be made in the prescribed manner to the Minister whose decision upon the hearing and determination of the appeal shall be final.

(7) The functions of an adoption society shall be—

(a) to make such inquiries and investigations and to cause such reports as shall be prescribed or as the court may direct, to be obtained for the purpose of ensuring so far as may be possible, the suitability of a child for adoption.

(b) to examine and interview any prospective applicant for an adoption order and to make such inquiries and investigations and to cause such reports as shall be prescribed, to be obtained or as the court may direct; for the purpose of ensuring so far as may be possible, the suitability of the applicant for the making of an adoption.

(c) to ensure that the parent or guardian of the child concerned understands the effect in relation to his rights as a parent or guardian, of the making of an adoption order in respect of the child, and in this regard and whenever possible to procure any consents to the adoption from the persons specified under section 158 (4);

(d) where the child in respect of whom arrangements for adoption are to be made appears to have been abandoned, to ensure that as far as possible all necessary steps are taken to trace the parents or relatives of the child;

(e) subject to its having the facilities to do so, to take care and possession of any child whose parent or guardian is desirous of causing the child to be adopted, pending arrangements for adoption;

(f) when appointed by the court to act as guardian ad litem in any adoption proceedings to nominate a member or officer of the society to so act;

(g) in so far as the funds at its disposal permit, to make provision for the care and supervision of children who have been placed by their parents or guardians at the disposition of the society;

(h) to maintain a register and records in respect of all or any children in respect of whom arrangements for adoption have been made by the society, and the names and particulars of any applicants for adoption or of the adopters; and

(i) to perform such other duties as may be prescribed.

(9) Any corporate body of persons or any person who takes part in the management or control of an unregistered body of persons, which makes arrangements for the adoption of a child in contravention of subsection (1) commits an offence.

(10) Any corporate body which commits an offence under this section shall be liable on conviction to a fine not exceeding one hundred thousand shillings.

(11) Any person who takes part in the management or control of a corporate body of persons which is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one hundred thousand shillings or to both.

(12) In any proceedings under this section, proof of the things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body, shall be admissible as evidence of the purpose for which that body exists.

### **178 Information to be confidential.**

(1) Every member or officer of an adoption society and every person having any official duty under or being employed in the administration of this Act, shall regard and deal with all documents and information relating to the adoption or proposed adoption of any child, or to any such child, or to the parent or guardian of such child, or to the proposed adopter of such child, as secret and confidential.

(2) Every person having possession or control over any such documents or information who at any time communicates any such information or anything contained in any such documents to any person—

(a) other than the court, the Adoption Committee, the Minister, the Registrar-General or any other member or officer of the society; or

(b) an advocate representing the applicant or the guardian ad litem appointed under this Part;

(c) otherwise than for the purposes of this Act, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year, or to a fine not exceeding twenty thousand shillings, or to both;

Provided that nothing contained in this section shall apply to the communication of any document or information in good faith in the interest or intended interest of such child as aforesaid or of the parent or guardian of, or proposed adopter of the child.

(3) No officer or member of an adoption society, and no person having any official duty or being employed in the administration of this Part, shall be required to produce before any court

any such document as aforesaid, or to divulge or communicate to any court any such information as aforesaid except as may be necessary for the purpose of carrying into effect the provisions of this Part, or in order to bring or assist in the course of a prosecution for any offence under this Part.

(4) The Minister may by order exempt any person by name or office from the provisions of this section.

### **179 Prohibition of certain payments.**

(1) Subject to subsection (2)

(a) any adopter or any parent or guardian of a child who receives any payment or other reward in consideration of the adoption of a child under this Act; or

(b) any person who—

(i) makes or gives or agrees to give to any adopter or any parent or guardian of the child any payment or other reward in consideration of the adoption of any child under this Act; or

(ii) makes arrangement for the adoption of a child and receives or makes or gives any payment or other reward in connection with the making of the arrangements commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or a fine not exceeding one hundred thousand shillings, or to both.

(2) Subsection (1) shall not apply—

(a) to any payment the making or receipt of which is sanctioned by the court to which an application for an adoption order in respect of a child is made; or

(b) to any payment made by or on behalf of an adoption society in respect of the maintenance of a child who has been placed at the disposition of the society; or

(c) to any payment made to an adoption society by the parent or guardian of a child or by any other person in respect of the maintenance of the child, so long as the child is not in care and possession of a person who has adopted or proposes to adopt him, whether Under an adoption order or some other order; or

(d) to any payment made to an advocate who acts for any party in or in connection with an application for an adoption order, being payments made in respect of such application; or

(e) to any voluntary contribution made by any adopter or any parent or guardian to an adoption society; or

(f) to any fee prescribed by the Minister to be payable to an adoption society in the conduct of any functions under this Act.

### **180 Restriction on advertisement.**

(1) It shall not be lawful for any advertisement to be published indicating—

(a) that the parent or guardian of a child desires to cause the child to be adopted; or

(b) that a person desires to adopt a child; or



(c) that any person (not being an adoption society) is willing to make arrangements for the adoption of a child.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of this section commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings.

### **181 Offences under Part.**

Where any offence under any regulations made under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, member of a committee, secretary or other officer of the body, he as well as the body corporate shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

### **182 Regulations.**

The Minister in consultation with the Council may make regulations for the better carrying of the provisions and purposes of this Part, and without prejudice to the generality of the foregoing, for any of the following purposes—

(a) for regulating and maintaining supervision over the activities of adoption Societies and persons or bodies of persons purporting to assist in making arrangements for the adoption of children; or

(b) for regulating the making of international adoptions and prescribing safeguards therefor; or

(c) for prescribing the manner in which arrangements for adoption shall be conducted; or

(d) for prescribing any matter authorised or required to be prescribed under this Part.

### **183 Rules of court under this Part.**

The Chief Justice may make rules of court directing the manner in which applications to court have to be made and generally providing for matters of procedure and incidental matters arising under this Part.

## **PART XIII –CHILD OFFENDERS**

### **184 Jurisdiction of Children’s Court.**

(1) Notwithstanding the provisions of Parts II and VII of the Criminal Procedure Code, a Children’s Court may try a child for any offence except for—

(a) the offence of murder; or

(b) an offence with which the child is charged together with a person or persons of or above the age of eighteen years.

(2) References to subordinate courts of any class, in the First Schedule to the Criminal Procedure Code, include a Children’s Court.

### **185 Power to remit cases to Children's Court.**

(1) Subject to any rules or directions made or issued by the Chief Justice, where it appears to a court, other than a Children's Court, at any stage of the proceedings that a child is charged before it with an offence other than murder and is not charged together with a person or persons of or above the age of eighteen years, the court may, and where within the area of a subordinate court's jurisdiction there is established a Children's Court having jurisdiction, the subordinate court shall, remit the case to a Children's Court—

Provided that nothing in this subsection shall be construed as preventing a court, if it considers in the circumstances (including the stage reached in the proceedings) that it is proper so to do, from proceeding with the hearing and determination of the charge.

(2) Where in accordance with the provisions of subsection (1) of this section, a case is remitted to a Children's Court after a finding that the child charged is guilty of the offence, the Children's Court to which the case has been remitted may deal with the offender in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(3) No appeal shall lie against an order of remission made under this section, but nothing in this section shall affect any right of appeal against the verdict or finding on which such an order is founded, and if a child has been found guilty by the High Court and his case remitted to a Children's Court for an order under section 191 of this Act, he may appeal against such findings to the Court of Appeal.

(4) A court by which an order remitting a case to a Children's Court is made under this section may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail or bond until he can be brought before the Children's Court and shall cause to be transmitted to the clerk of the Children's Court a certificate setting out the nature of the offence and stating the stage reached in the case, and that the case has been remitted for the purposes of being dealt with under this section.

(5) Where, pursuant to the provisions of section 184, a court other than a children's court hears a charge against a child, the court shall apply all the provisions of this Act as relate to the safeguards to be accorded a child offender.

### **186 Guarantees to a child accused of an offence.**

Every child accused of having infringed to a child any law shall—

- (a) be informed promptly and directly of the charges against him;
- (b) if he is unable to obtain legal assistance be provided by the Government with assistance in the preparation and presentation of his defence;
- (c) have the matter determined without delay;
- (d) not be compelled to give testimony or to confess guilt;
- (e) have free assistance of an interpreter if the child cannot understand or speak the language used;
- (f) if found guilty, have the decisions and any measures imposed in consequence thereof reviewed by a higher court;
- (g) have his privacy fully respected at all the proceedings;

(h) if he is disabled, be given special care and be treated with the same dignity as a child with no disability.

### **187 Consideration of welfare.**

(1) Every court in dealing with a child who is brought before it shall have regard to the best interests of the child and shall, in a proper case, take steps for removing him from undesirable surroundings and for securing that proper provision be made for his maintenance, education and training.

(2) Every child in remand or custodial care who is ill, or who complains of illness, (physical or mental), shall be examined promptly by a qualified medical practitioner and treated.

### **188 Friendly setting of Children's Court.**

A Children's Court shall have a setting that is friendly to the child offender.

### **189 Words "conviction" and "sentence" not to be used of child.**

The words "conviction" and "sentence" shall not be used in relation to a child dealt with by the Children's Court, and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order upon such a finding, as the case may be.

### **190 Restriction on punishment.**

(1) No child shall be ordered to imprisonment or to be placed in a detention camp.

(2) No child shall be sentenced to death.

(3) No child under the age of ten years shall be ordered by a Children's Court to be sent to a rehabilitation school.

### **191 Methods of dealing with offenders.**

(1) In spite of the provisions of any other law and subject to this Act, where a child is tried for an offence, and the court is satisfied as to his guilt, the court may deal with the case in one or more of the following ways—

(a) by discharging the offender under section 35 (1) of the Penal Code;

(b) by discharging the offender on his entering into a recognisance, with or without sureties;

(c) by making a probation order against the offender under the provisions of the Probation of Offenders Act;

(d) by committing the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake his care;

(e) if the offender is above ten years and under fifteen years of age, by ordering him to be sent to a rehabilitation school suitable to his needs and attainments;

(f) by ordering the offender to pay a fine, compensation or costs, or any or all of them;

(g) in the case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of borstal institutions;

(h) by placing the offender under the care of a qualified counsellor;

(i) by ordering him to be placed in an educational institution or a vocational training programme;

(j) by ordering him to be placed in a probation hostel under provisions of the Probation of Offenders Act;

(k) by making a community service order; or

(l) in any other lawful manner.

(2) No child offender shall be subjected to corporal punishment.

### **192 Mental treatment.**

If it appears to the court on the evidence of a medical practitioner that a child requires or may benefit from mental treatment, the court when making a probation order against him, may require him to undergo mental treatment at the hand or under the direction of a medical practitioner for a period not exceeding twelve months subject to review by the court, as a condition of the probation order.

### **193 Power to order parent to pay fine etc.**

(1) Where a child is charged with an offence for which a fine, compensation or costs may be imposed, if the court is of the opinion that the case would best be met by imposition of a fine, compensation or costs, whether with or without any other punishment, the court may in any case order that the fine, compensation or costs imposed or awarded be paid by the child's parent or guardian instead of by the offender, unless the court is satisfied that the parent or guardian cannot be found or that he or she has not induced the commission of the offence, by neglecting to exercise due care of the offender.

(2) Where a child is charged with an offence, the court may order his parent or guardian to give security for his good behaviour.

(3) An order under this section may be made against a parent or guardian who having been required to attend before the court, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(4) Any sums imposed and ordered to be paid by a parent or guardian under this section, or forfeiture of any such security as aforesaid, may be recovered from him or her in a like manner as if the order had been made on the conviction of the parent or guardian of the offender.

(5) A parent or guardian may appeal to the High Court against an order made under this section by a Children's Court.

### **194 Proceedings in respect of offences committed by a child.**

(1) Proceedings in respect of a child accused of having infringed any law shall be conducted in accordance with the rules set out in the Fifth Schedule.

(2) The Minister may by regulations amend the rules made in accordance with subsection (1).

## **PART XIV – MISCELLANEOUS AND GENERAL PROVISIONS**

### **195 Appeals to the Minister.**

(1) A person aggrieved by any act of the Director or an authorised officer in exercise of powers conferred by this Act may appeal to the Minister within fourteen days.

(2) An appeal under subsection (1) shall be made in the prescribed manner.

(3) The Minister shall make regulations prescribing the procedure of appeal under this section.

### **196 General penalty.**

A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to imprisonment for twelve months, or to a fine not exceeding twenty thousand shillings, or to both such imprisonment and such fine.

### **197 General power to make regulations.**

Subject to the provisions of this Act, the Minister may make regulations—

(a) for prescribing anything that may be prescribed under this Act, or

(b) generally for the better carrying out of the provisions of this Act.

### **198 Exemption.**

The Minister may, from time to time, by order, either retrospectively from the passing of this Act or prospectively, exclude from the operation of all or any of the provisions of this Act the members of any race, tribe, religious group or sect in Kenya, or any part of such race, tribe, religious group or sect, or to whom he Minister may consider it impracticable or inexpedient to apply such provisions, and may also from time to time revoke any such order, but not so that the revocation shall have any retrospective effect.

### **199 Grants and expenses of the Minister.**

There shall be paid out of moneys provided Grants and by Parliament—

(a) such sums on such conditions as the Minister may prescribe towards—

(i) the expenses incurred by rehabilitation schools, and children's remand homes;

(ii) expenses incurred by the Director in the administration of services to children in need of care and protection;

(c) such sums as grants or grants in aid to appointed local authorities or charitable children's institutions as may be authorized by the Minister from time to time;

(d) any other expenses incurred by the Minister and the Director in the administration of this Act.

## **200 Repeals.**

- (1) The laws specified in the Sixth Schedule are repealed.
- (2) Without prejudice to the generality of the application of section 3 of the Interpretation and General Provisions Act, the transitional provisions set out in the Seventh Schedule shall have effect upon the repeal of the Acts specified in the Schedule.

## **Schedules**

### **FIRST SCHEDULE – PROCEEDINGS OF THE NATIONAL COUNCIL OF CHILDREN’S SERVICES (s. 31 (3))**

1. The Council shall have at least four meetings in one calendar year.
2. The Chairman shall preside at every meeting of the Council at which he is present, and in the absence of the Chairman from a meeting the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairman.
3. The quorum for a meeting of the Council shall be seven.
4. At any meeting of the Council the Chairman shall have a casting as well as a deliberative vote and subject thereto, the decision of the majority of the members present and voting at the meeting of the Council shall be deemed to be the decision of the Council.
5. Subject to paragraph (2), no proceedings of the Council shall be invalid by reason of a vacancy among the members thereof.
6. The chairman may at any time of his own motion and shall within fourteen days of the receipt by him of a written request signed by at least three members convene a meeting of the Council.
7. All instruments made by, and all decisions of the Council shall be signified under the hand of the Chairman or the secretary.
8. Except as provided by this Schedule, the Council may regulate its own proceedings.

### **SECOND SCHEDULE – WELFARE SCHEMES (s. 42)**

#### *PART I: Provisions for the assumption by local authorities of the care of persons including—*

- (a) provisions for children who are orphans who have been deserted or are in need of care and protection;
- (b) provisions for children and families already subject or becoming subject to orders of court; and
- (c) provision requiring parents of persons committed to the care of local authorities to maintain contact with such authorities.

#### *PART II: Treatment of children in care of Local Authorities.*

1. Furtherance of the best interests of children in their care.

2. Provision for the accommodation and maintenance of children.
3. The establishment and maintenance of institutions or day nurseries.
4. The accommodation of children in voluntary homes including homes set up by voluntary children's institutions.
5. The provision of hostels and youth organizations.
6. The provision of financial assistance towards the expenses of maintenance, education or training of children.

*PART III: Voluntary Children's Institutions*

1. The appointment of voluntary children's institutions to act as agents of local authorities.
2. Provision for the after care of children formerly in the care of local authorities or voluntary children's institutions.

*PART IV: Administrative and Financial Provisions*

1. Establishment of a children's Committee.
2. Appointment of children's officers and appropriate staff.
3. Grants for training in child care.
4. Grants to voluntary children's institutions.

*PART V: Miscellaneous and General*

1. Provision of places of safety.
2. Any other provisions which may be approved by the Minister.

**THIRD SCHEDULE – OFFENCES AGAINST CHILDREN WITH RESPECT TO WHICH PART IX APPLIES (ss.119, 121 and 128)**

1. Offences under sections 140, 141, 142,143, 144, 145, 146, 147, 148,149, 150, 151, 157, 158, 162, 165, 166, 167, 250 and 251 of the Penal Code.
2. Offences under this Act.
3. Any other offences involving bodily injury.

**FOURTH SCHEDULE – FOSTER CARE PLACEMENT RULES**

1. These Rules may be cited as the Foster Care Placement Rules.
2. In these Rules—

“Director” means the Director of Children's Services;

“foster care placement” means the placing of a foster child with a foster parent;

“foster parent” means a person or persons with whom a foster child is for the time being proposed to be placed for fostering.

3. A person who wishes to register as a foster parent shall complete the application form specified in Form 1 of the Schedule to these Rules and submit it to the Director directly or through the manager of a rehabilitation school or the manager of a voluntary children’s institution who shall forward the application to the Director.

4. (1) A child shall not be placed with a foster parent unless—

(a) a children’s officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;

(b) a children’s officer has visited the home of the prospective foster parent and has confirmed in writing that the home is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;

(c) two persons who know the prospective foster parent well will have vouched for his or her good character and suitability to care for the child;

(d) it has been established by the officer in charge of the police station in the applicant’s area of residence that no person in the home has been convicted of a serious offence rendering it undesirable for the child to associate with that person; and

(e) the wishes of the child so far as can be ascertained have, so far as practicable been taken into account.

(f) the children’s officer has completed and filed in the Director’s office a report containing the particulars specified in Form 2 in the Schedule to these Rules.

5. (1) Where a child’s religion is known, the child shall be placed with a foster parent who either is of the same religious persuasion as the foster child or who gives an undertaking that the child will be brought up in that religious persuasion.

6. (1) Whenever possible, a child shall be placed with a foster parent who has the same cultural background as the child’s parents and who originates from the same area in Kenya as the parents of the child.

7. (1) If after such inquiry as the Director deems necessary, the Director is satisfied as to the character and fitness of the applicant and the premises proposed to be used by the applicant as a foster home, the Director shall register the applicant as a foster parent.

(2) A person registered under paragraph (1) shall make an undertaking containing particulars set out in Form 3 and be issued with a certificate of registration as set out in Form 3 in the prescribed form and shall be entitled to receive and maintain on the premises specified in the certificate any child for the purposes of caring and nurturing him.

(3) Every registration certificate issued under paragraph (2) shall continue in force for a period of twelve months beginning on the day it is issued and shall then expire:



Provided that where an application for the renewal of a certificate is made prior to the expiry of the current certificate, the current certificate shall continue in force until a decision on the application for renewal is made.

(4) Subject to paragraph (3), the Director may at any time revoke a certificate of registration issued under paragraph (2).

(5) Where it is intended to revoke a certificate of registration under paragraph (2), the Director shall give notice of the intended revocation to the foster parent.

(6) Upon the issue of a notice under paragraph (5), the Director shall make such arrangements as may be necessary for the removal of any child residing in the foster home concerned.

8. (1) When foster placement begins the Director shall obtain and submit to the foster parent a list of immunisations carried out in respect of the child and indicate to the foster parent the list of other immunisations required to be effected in respect of the child in accordance with the Ministry of Health schedule of immunisations and the foster parent shall ensure that those immunisations are carried out.

(2) The foster parent, and the Director's office shall at all times keep a record of the immunisations in respect of the child.

(3) The Director and the voluntary children's institution which recommends foster care placement shall ensure that a foster child is examined by a medical practitioner within one month after foster placement and thereafter at least once every year, and arrangements shall be made by the Director or voluntary children's institution to obtain from the medical practitioner after each such examination a written report on the physical health and mental condition of the foster child.

(4) The Director and a voluntary children's institution shall provide adequate facilities for a foster child who is placed for fostering to receive medical and dental attention as required.

(5) The Director shall require a foster parent to report all cases of serious illness or accident to a foster child and to summon a medical practitioner immediately in all such cases.

9. (1) An authorised officer may at any time enter any foster home or any premises in which he has reason to believe a child is being maintained contrary to the provisions of these Rules, and may inspect every part of the foster home or the premises and examine the and condition of the child therein.

(2) The authorised officer may, if upon inspection under paragraph (1), he is dissatisfied with the quality of care that a child is receiving remove the child from the foster home or other premises and place the child in a place of safety until the wishes of the parent or guardian are known, or until alternative arrangements for the care and maintenance of the child can be made.

(3) The period during which a child remains in a place of safety under this section shall not exceed three months.

10. Where a child leaves the care of any person who has possession of him under these Rules, the person shall, within three days, report to the Director, parent or guardian of the child.

11. (1) Where a child placed in foster care under this Act dies, the foster parent shall within twenty-four hours of such death, notify the Director in the prescribed form.

(2) Where the child's parents or guardians are known, the Director shall inform them of the child's death.

(3) If the foster parent dies, in the case where a child is placed with a single foster parent, the child shall be returned to the home or the children rehabilitation centre or voluntary children institution from which he was received.

12. Every District Children's Office shall maintain a register of foster parents, in which shall be set out in respect of each fostering, a record set out in Forms 2 and 5 specified in the Schedule to these Rules.

13. Every District Children's Office shall report within one month after each fostering effected by it, the fact of the fostering and specifying the information in Form 5 specified in the Schedule to these Rules.

## **FIFTH SCHEDULE**

1. These Rules may be cited as the Child Offenders Rules.

2. In these Rules—

“Probation Officer” means a probation officer as defined in the Probation of Offenders Act.

“Children's Officer” means a children's officer as appointed to be a children's officer under section 37 of the Children Act.

“Director” means the Director of Children's Services appointed under section 37 (1) of the Children Act.

3. These Rules shall apply to the proceedings with respect to a child who is charged with an offence.

4. (1) Where a child is apprehended with or without a warrant on suspicion of having committed a criminal offence he shall be brought before the court as soon as practicable.

Provided that no child shall be held in custody for a period exceeding twenty four hours from the time of his apprehension, without the leave of the court.

(2) Where a child is held in police custody the officer in charge of the police station shall as soon as practicable inform—

(a) the parents or guardians of the child; or

(b) the Director of the arrest.

(3) The police shall ensure that the parent or guardian of the child, or an advocate appointed to represent the child is present at the time of any police interview with the child.

(4) Where a child's parent or guardian cannot immediately be contacted or cannot be contacted at all, a Children's Officer or an authorised officer shall be informed as soon as possible after the child's arrest so that he can attend the police interview.

5. Where a person apparently under the age of eighteen years is apprehended with or without warrant and cannot be brought forthwith before a court, the police or officer to whom such person is brought shall inquire into the case, and may in any case, and unless—

- (a) the charge is one of murder or manslaughter or other grave crime; or
- (b) it is necessary in the interests of such person to remove him or her from association with any undesirable person; or
- (c) such officer has reason to believe that the release of such person would defeat the ends of justice,

release such person on a recognizance being entered into by his parent or guardian or other responsible person, with or without sureties, for such amount as will, in the opinion of such officer, secure the attendance of such person upon the hearing of the charge.

6. (1) No child while detained in a police station or while being conveyed to any court, or while waiting to attend in or leave any court shall be detained with or be allowed to associate with any adult who is not a relative of the child.

(2) Arrangements shall be made to detain the child in a separate institution or in a separate part of the police station.

(3) A female child shall, while detained, conveyed or waiting as described in paragraph (1) of this Rule be under the care of a woman officer.

7. Where in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court is under eighteen years of age is called as a witness, the court may direct that all or any persons, not being members or officers of the court, or parties to the case or their advocates, or persons otherwise directly concerned in the case, shall be excluded from the court during the taking of the evidence of that witness.

8. Where a child is charged with any offence or is for any other reason brought before a court, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all stages of the proceedings, unless the court is satisfied that it would be unreasonable to require such attendance.

9. (1) Where a child is brought before a court and charged with an offence, the court shall inquire into the case and may release the child on bail on such terms as the court may deem appropriate.

(2) Where bail is not granted the court shall record the reasons for such refusal and shall inform the child of his right to apply for bail to the High Court.

10. (1) Where a child is not released on bail the court may make an order remanding the child in custody and shall order him to be detained for the period for which he is remanded to a children's remand homes:

Provided that if there is no children's remand home within a reasonable distance of the Court, the Court shall make such order as to the child's safe custody as it deems fit;

(2) For the purposes of this section a place of safe custody shall not be a remand home or prison in which adults are detained or remanded.

(3) A remand to a children's remand home under this section may be revoked and the child, if he is over the age of fifteen years ordered to be remanded in a borstal institution, if the child proves to be so unruly a character that he cannot safely be remanded in a children's remand home or if the child has proved to be of so depraved a character that he is not fit to be so remanded.

(4) Remand in custody shall not exceed—

(a) six months in the case of an offence punishable by death; or

(b) three months in the case of any other offence.

(5) A child who escapes from a remand home or other place of safe custody in which he is detained may be arrested with or without warrant and returned to that place.

(6) Whenever possible, the court shall consider alternatives to remand such as close supervision or placement with a counsellor or a fit person determined by the court on the recommendation of a probation officer or children's officer.

11. (1) If the Court, after a charge has been admitted and proved, is considering making a detention or probation order, a written social background report shall be prepared by a probation officer and a Children's Officer and shall be taken into account by the Court before making the order.

(2) The report shall include among other things, the social and family background, the circumstances in which the child is living and the conditions under which the offence was committed.

(3) The Court shall ensure that the contents of the report are made known to the child and that a copy of the report is provided to the child or his legal representative.

(4) In all other cases, the court may request an oral report.

12. (1) Every case involving a child shall be handled expeditiously and without unnecessary delay.

(2) Where the case of a child appearing before a Children's Court is not completed within 3 months after his plea has been taken the case shall be dismissed and the child shall not be liable to any further proceedings for the same offence.

(3) Where, owing to its seriousness, a case is heard by a court superior to the children's court the maximum period of remand for a child shall be six months, after which the child shall be released on bail.

(4) Where a case to which paragraph (3) of this rule applies is not completed within twelve months after the plea has been taken the case shall be dismissed and the child shall be discharged and shall not be liable to any further proceedings for the same offence

## **SIXTH SCHEDULE – WRITTEN LAWS TO BE REPEALED (s. 200 (1))**

Cap. 141 The Children and Young Persons Act

Cap. 143 The Adoption Act

**SEVENTH SCHEDULE – TRANSITIONAL PROVISIONS (s. 200 (2))**

1. The juvenile courts established by section 2 of the Children and Young Persons Act hereinafter referred to as “the repealed Children and Young Persons Act” shall be deemed to be the Children’s Courts for the purposes of the Act.

2. The juvenile remand homes established, and the approved schools approved or established as the case may be, under Part V of the repealed Children and Young Persons Act shall be deemed to be the children remand homes and approved schools for the purposes of the Act.

3. A person who immediately before the commencement of this Act is detained in a juvenile remand home or an approved school under the provisions of the repealed Children and Young Persons Act shall be deemed to be detained in a children’s remand home or approved school for the purposes of the Act.

4. Every person in whose care and possession a child is placed under the provisions of Part VI of the repealed Children and Young Persons Act shall within 90 days of the commencement of this Act apply for appointment as a foster parent under section 148.

5. The Chief Inspector and inspectors of children appointed under section 54 of the repealed Children and Young Persons Act shall be deemed to be the Director of Children’s Services and Children’s Officers, respectively, for the purposes of this Act.

6. The local authorities appointed by the Minister under section 58 of the repealed Children and Young Persons Act shall continue to be appointed local authorities for the purposes of this Act.

7. A person who, immediately before the commencement of this Act is an approved officer under section 64 of the repealed Children and Young Persons Act shall continue to be an approved officer for the purposes of this Act.

8. The Adopted Children Register maintained by the Registrar-General under section 13 of the Adoption Act (hereinafter referred to as “the repealed Adoption Act.”) shall continue to be the Adopted Children’s Register for the purposes of this Act.

9. (1) An adoption society other than a local authority approved under section 23 of the repealed Adoption Act shall continue to be an adoption society for the purposes of this Act.

(2) The Minister shall, forthwith on the commencement of this Act arrange for the transfer of the functions of any local authority as an adoption society to an appropriate adoption society.

**EIGHTH SCHEDULE – POWER AND FUNCTIONS OF AN INSPECTION COMMITTEE (s. 68)**

(a) Inspect rehabilitation schools, children’s remand homes and charitable children’s institutions.

(b) Visit the institutions or cause them to be visited.

(c) Interview any child in the premises or institution.

(d) Interview the manager and any staff member in the premises.

- (e) Inspect the conditions and facilities provided by the institution or manager of the premises.
- (f) Make recommendations on closure, improvement, and remedial requirements and relocation of children housed in the institution inspected.

**NINTH SCHEDULE – MEMBERS OF THE ADOPTION COMMITTEE (s. 155)**

- (a) The Director.
- (b) Four representatives from charitable children’s institutions and organizations engaged in child welfare activities, appointed by the Minister.
- (c) One representative from Kenyatta National Hospital.
- (d) One representative from private hospitals dealing primarily with children, appointed by the Kenya Medical Association.
- (e) One representative of the Law Society of Kenya knowledgeable in the rights and welfare of children.
- (f) A representative of the Ministry of Foreign Affairs.
- (g) The Attorney-General.