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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

EIGHTH PARLIAMENT – FIFTH SESSION

REPORT

OF THE

DEPARTMENTAL COMMITTEE ON HEALTH,  
HOUSING, LABOUR & SOCIAL WELFARE

ON

THE CHILDREN BILL, 2001

Parliament Buildings  
Nairobi

November, 2001

## **PREFACE**

Mr. Speaker, Sir,

On behalf of the Departmental Committee on Health, Housing, Labour and Social Welfare, it gives me great pleasure and privilege to present the Report on the Children Bill, 2001.

Let me begin by taking this opportunity to sincerely thank the Members of the Committee who have considered and deliberated on the Bill since it was first referred to the Committee in the year 2000.

I would also like to extend the Committee's gratitude and appreciation to all the organizations and individuals who spared their valuable time to share their experiences and expertise with the Committee. These organizations include, Child Welfare Society, Law Society of Kenya, Children's Legal Action Network, African Network for the Prevention and Protection Against Child Abuse and Neglect, the Coalition on Child Rights and Child Protection in Kenya and the Federation of Women Lawyers – Kenya.

Their contributions were a source of inspiration to the Committee which motivated members to even work harder in order to make the Bill better in taking care of our children who are our future as a country.

Mr. Speaker, Sir,

The Children Bill is a milestone in matters relating to children rights, responsibilities, care and protection in Kenya. It is, indeed, a bold tangible effort to raise children's rights and responsibilities to international standards by domesticating provisions of the United Nations Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child, both of which Kenya has ratified. It is a belated effort by the country to address children issues for which we should be proud as a Parliament.

The Committee, in its proposed amendments, took cognisance of the local situation and conditions that are practical on the children, parents and the government.

Mr. Speaker, Sir,

It is our hope that the House will find the Committee's recommendations useful leading to their adoption and inclusion in the Bill.



**Dr. the Hon. Newton W. Kulundu, MP**  
**Chairman - Departmental Committee on Health,**  
**Housing, Labour and Social Welfare**

Date 5<sup>th</sup> Nov. 2001



## **Part I**

Clause 2 - Interpretation

Clause 2(I) be amended by deleting (I)

adoption society - amended by deleting the word "the" immediately after the word "Council" in line two

child - amended to read:

means any human being under the age of eighteen years.

child abuse - amended by inserting the word "psychological" immediately after the word "sexual".

home - amended by inserting the words "or foster parent" immediately after the word "relative" in line two.

further amended by deleting the word "or" after the word "guardian" in line two.

relative - amended to read:

in relation to a child means any person related to him or her, whether of full blood, half blood or by affinity, and

Clause 2 be amended by inserting new definitions:

early marriage - means marriage, partnership, cohabitation or other such arrangement or relationship with a boy or girl under the age of 18 years.

female circumcision - shall mean the cutting and removal of part or all of the female genitalia and include the practices of clitoridectomy, excision, infubulation or any other practice involving removal of part of or the entire clitoris and/or labia minora of a girl.

## **Part II**

Clause 3(1) be amended by inserting the words "survival and" before the word "best" on the margin.

3(3)(b) - be amended by deleting the word "or" and inserting the word "and" in place thereof.

Clause 4 - be amended by inserting the words "political, economic" immediately after the word "social" in line four.

Clause 6(2) be deleted and replaced by the following:

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.

6(3) be inserted to read:

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

Clause 8 - be amended by deleting the words "the extended family" in line three.

Clause 13 - be amended by inserting the words "which include but are not limited to female circumcision, early marriage and all other practices" after the word "practices" in line two.

Clause 15 - be amended by inserting the words "alcohol, tobacco products" immediately after the word "narcotics" in line two.

Clause 15 - be further amended by inserting the words "or any other drugs that may be declared harmful by the Minister for the time being in charge of health" immediately after the word "drugs" in line three.

Clause 17(1) be amended by inserting a full-stop after the word "liberty" in line three.

17(2) - a new 17(2) be inserted to read:

notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or life imprisonment.

17(2) and 17(3) be renumbered as 17(3) and (4) respectively.

Renumbered - 17(4) be amended by inserting the words "by the government" after the word "assistance" in line two.

A new Clause 18(A) be inserted to read:

In the application of the provisions of this Act, and in any matter before a court of law concerning any child under this Act, 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 to 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;
- (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.

### **Part III**

Clause 20(2)(a) - be amended by listing the duties of parents in order of priority as follows:

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

20(2) (c)(i) - be amended to read:

to give parental guidance in religious, moral, social cultural and other values.

20(2) (c)(vi) - be deleted

20(5) - be amended by deleting letter (a).

Clause 21(3)(a) be amended by inserting the words:

"at the first instance" after the word "responsibility" in line two.

21(3)(b) be amended to read:

the father shall subsequently acquire parental responsibility for the child in accordance to the provisions of section 22.

Clause 26 - be amended by deleting (1).

#### **Part IV**

Clause 28(I)(a) be amended to read:

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 who shall be appointed by the President from a list of three non civil servant members submitted by the council.

Clause 28(1)(b) - be amended to read:

the Permanent Secretary in the ministry for the time being responsible for matters relating to children or his Deputy Secretary.

28(1)(c),(d), (e), (f), (h) - be amended by inserting the words "or his deputy secretary" at the end of the paragraphs.

28(1)(g) - be amended to read: "the Attorney-General"

28(1)(j) be amended by deleting the word "three" and inserting the word "six".

(j) - be further amended by inserting the words "of whom three shall be women" immediately after the word "persons" in line one .

28(1)(k) - be amended by deleting the word "two" in line one and inserting the word "three" in place thereof.

(1)(k) - be further amended to read:

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

28(1)(l) - be amended to read:

two representatives of the private sector appointed by the Minister who are knowledgeable in, or have actively contributed to the promotion of the rights and welfare of children.

28(1)(m) - be deleted.

28(2) - be amended by inserting the words "but may be nominated for a further term of three years" at the end of the paragraph.

Clause 29(1) - be amended by inserting the words "rights and" after the word "child" in line four.

29(2) - be amended by deleting (n)

(2) - be further amended by inserting a new paragraph (t) to read:

set criteria for the establishment of rehabilitation institutions.

Clause 33 - be amended by inserting the words "and other sources" after the word "Parliament".

Clause 34(1) - be amended by inserting the words "Council, in consultation with the" before the word "Minister" in line one.

34(2) - a new sub-section be inserted to read:

the Director shall be an eminent person who is knowledgeable in, or has actively contributed to the promotion of the rights and welfare of children.

Original 34(2) - be renumbered (3) and be amended by deleting the word "Minister" in line two and inserting the word "Council" in place thereof.

Original 34(3) - be renumbered (4).

Clause 35(2)(c) - be amended by deleting the words "on the government" in line one and two and inserting the words "for the management" in place thereof.

35(2)(q) - be amended by deleting the word "government" in line two and inserting the word "management" in place thereof.

Clause 36 - be amended by deleting the word "twenty" in line four and inserting the words "one hundred" in place thereof.

be further amended by deleting the word "nine" in line six and inserting the word "twelve" in place thereof.

Clause 37(a) be amended by inserting the words "rights and" after the word "the" in line one.



## **Part V**

A new clause 44 be inserted to read:

- Clause 44(1)        there shall be established an inspection committee which shall comprise of such number of members that may be from time to time be prescribed by the council.
- (2)        the members of the committee shall be nominated by the council and shall be appointed by the minister by the way of a notice in the Gazette within thirty days of notification.
- (3)        The functions of the committee shall be:
- (a)        To inspect or cause to be inspected all rehabilitation schools, children's remand homes and charitable children's institutions.
  - (b)        Visit them 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)        Require the production of no fewer than two reports per year and any records required to be kept in accordance with regulations made under section 69.
  - (f)        Inspect the conditions and facilities provided by the institution or manager of the premises.
  - (g)        Shall make and present to the council bi-annual reports on the state and condition of the rehabilitation schools, children's remand homes, and charitable children's institutions.
  - (h)        Make recommendations on closure, improvement, remedial requirements, relocation of children to the director who shall be bound to implement; and
  - (i)        Make recommendations to the Minister for the establishment and approval of rehabilitation schools, children's remand homes, and charitable children's institutions.
- (4)        The conduct and regulation of the affairs of the inspection committee shall be as prescribed by the council but subject thereto the committee shall regulate its own proceedings.

Original Clause 44 - be amended by being renumbered 44A.

Renumbered 44A be further amended by replacing the word "Minister" with the word "Council" as appropriate whenever it appears.

52(1)(b) be amended by deleting the word "seventeen" in line two and inserting the word "sixteen" in place thereof.

52 be further amended by inserting paragraphs (c) and (d) to read.

- c. in the case of any child, where a medical practitioner provides a certificate to the effect that the child's conduct is attributable to an addiction to or the use of drugs, to have the child provided with appropriate medical treatment and professional counseling at the rehabilitation school or to have the child sent to a drug rehabilitation center for such period as the court shall direct.
- d. In the case of any child, where a medical practitioner provides a certificate to the effect that a child's conduct is attributable to the child being of unsound mind or for reason that the child suffers from a mental illness, to have the child provided with appropriate medical treatment and professional counselling at the rehabilitation school or to have the child transferred to mental institution charged with care of the treatment of children of unsound mind or mental illness for such period as the court shall direct.

provided that parents of the child and any person who has parental responsibility for the child shall served and heard any proceedings instituted under this section, unless the court is satisfied that upon the exercise of due diligence such persons cannot be found, or where served have failed and or neglected to attend the proceedings.

A new 52(2) be inserted to read;

the expenses incurred by committing a child under sub-section (1) shall be borne by the State.

Clause 55 - be amended by inserting the words "upon recommendations made by the Inspection Committee" after the word "Council" in line six.

Clause 56 - be amended by inserting a proviso to read:

provided that nothing in this section shall prevent a charitable children's institution from providing medical care and education and training for children accommodated therein, if the provision of such facilities and care

shall have been approved by the Council upon recommendation made by the Inspection committee.

Clause 64(1) be amended by inserting a proviso to read:

provided that these powers shall be supplemental and not in derogation to the powers conferred on the Inspection Committee in this Act.

64(4) be amended to read:

upon receipt of an inspection report from the Inspection Committee or from its authorized officer, the Director shall take and implement the remedial measures as may be prescribed by the Inspection Committee including requiring a charitable children's institution to appoint a new management and institute appropriate measures;

provided that the Director may:

(a) in consultation with the Area Advisory Committee appoint a manager to manage the institution for a period not exceeding six months in order to institute remedial measures.

(b) upon the recommendation of the Area Advisory Committees apply to the court for the extension of the period of the management of the institution by the appointed manager for a period exceeding twelve months.

Clause 67(I) amend proviso to read:

provided that the Council shall give fifteen days notice of the proposed cancellation and upon such notice taking effect, the Director shall, unless prevented from doing so by an order of stay from the Minister, take such remedial measures as shall be necessary to protect the children accommodated in the home including removing any child or children from the home, procuring the closure of the home or instituting appropriate disciplinary measures against the manager of the home.

## **Part VI**

Clause 69(b) be amended by inserting the words "all criminal charges against a child including" after the word "hearing" in line one.

69(d)(i) be amended to read:

where a child is brought before a court in connection with an offence which would apart from the provisions of this section be triable only by the High Court, he may nevertheless elect to be tried at the High Court.

Clause 71 - be amended by inserting the words "or by a child" after the word "against" in line two.

be further amended by deleting the word "may " in line five and inserting the word "shall" in place thereof.

Clause 72(1) be amended by renumbering it 72(1)(a) and inserting a new paragraph (b) to read:

The child's exposure to and 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.

Clause 72 be further amended by inserting sub-section (4) to read:

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, provided the expenses of any such witness will be determined by the court and shall be defrayed out of monies provided by Parliament.

Clause 72 be further amended by inserting sub-section (5) to read:

In any proceedings concerning a child, whether instituted under this Act or under any written law, the name, identity, home or last place of residence, school, the particulars of the child's parents or relatives, any photograph or any depiction or caricature of the child, shall not be published or revealed whether in any publication or report (including any law report) or otherwise.

Any person who contravenes the provisions of this sub-section shall be, on summary conviction, liable to imprisonment for a period of three months or to a fine not exceeding one hundred thousand shillings or to both.

Clause 73(I) be amended by deleting the word "may" in line three and inserting the word "shall" in place thereof.

Clause 75 be deleted.

Clause 77(1) be amended by inserting paragraphs (c) and (d) to read:

(c) legal custody means so much as parental rights and duties as relate to the possession of the 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 of a child is shared with one or more.

Clause 79(1)(h) be amended by inserting the words "or an exclusion order" after the word "order" in line two.

79(3) be amended by deleting the words "as of right" in line nine and inserting the words "except with the leave of the court" after the word "child" at the end of the paragraph.

Clause 81(I) be amended by inserting the words "and where the child has been removed from the local limits for the jurisdiction of the court or the Republic of Kenya, make a wardship order and or a production order subject to such condition as the court may deem appropriate in the circumstances" after the word "applicant" in line four.

Clause 83(I) be amended by inserting the words "or any other order the court may deem fit under section 109 of this Act" after the word "thereafter" in line four.

Clause 83(5) be amended to read:

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

83(6) be amended by deleting the word "contact" in line two and inserting the word "access" in place thereof.

83(6) be further amended by inserting a proviso to read:

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.

A new section 83A be inserted to read:

A Court shall have power to make interim custody orders and in addition thereto may, from time to time, review, suspend or vary that order.

Provided that such interim orders shall not exceed 12 months.

Clause 85 be amended by inserting a new paragraph (e) to read:

where the mother and father of child were not married to each other at the time of the birth of the child and have not subsequently remarried, but the father of the child has acquired parental responsibility of the child, it shall be the joint responsibility of the mother and father of the child to maintain the child.

Clause 87 be amended by deleting the words "an order under this section" in lines one and two and inserting the following words in place thereof:

"a maintenance order"

Clause 91(2) be amended by deleting the word "cease" in line one and inserting the words "be reviewed by the court" in place thereof.

Clause 96(5)(b) be amended by deleting the word "defaulter" in line one and inserting the word "respondent" in place thereof.

Clause 97(1) be amended by inserting the words "shall, unless as provided by section 100(1)(a) and (b)" after the word "guardian" in line two.

97(1) be further amended by deleting all the words after the word "Act" in line nine.

Clause 99(1) be amended by inserting the words "by will or deed" after the word "may" in line one.

99(3)(b) be amended by inserting the word "written" after the word "by" in line one.

99(3)(b) be further amended by inserting the words "or in the case of an appointment made by an oral will, if it is made in accordance with the provisions of section 10 of the Law of Succession Act".

Clause 99 be amended by inserting a new sub-section (8) to read:

Any person who, not being a parent of a child, possesses an existing custody order or a residence order in respect of a child, 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 and or his guardian;

provided that the surviving parent or the guardian shall be entitled to apply to the court for the variation or revocation orders mentioned in this section or of the parental responsibility accorded to that person.

Clause 100(1) be amended by deleting the expression (1).

Clause 103(2) be amended by inserting the words "or the Director or person who has parental responsibility for the child has been authorized to act jointly with a guardian under section 99(8)" immediately before the word "may" in line one.

Clause 108(2) be amended to read:

A person qualified to apply for a judicial order for the protection of children includes:

- (a) the child, or
- (b) the parent or guardian, or custodian of the child; or
- (c) a relative of the child; or
- (d) the director; or
- (e) authorized officer

The 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.

Clause 109 be amended by inserting a new paragraph (h) to read:

A personal protection order which shall protect the child from any person who has used violence or threatened to use violence against the child or has harmed or threatened to harm or exposed the child to harm or risk of injury whether within the home where the child resides or elsewhere and to restrain that person from continuing the violence, harmful acts or threats thereof.

Clause 114(1) be amended by inserting a new paragraph (s) to read:

who is engaged in the use or trafficking of drugs or any other substances that may be declared harmful by the Minister for the time being in charge of health.

114(2) be amended to read:

the provisions of this section shall not be equated to those of the Penal Code in relation to offenses involving children but shall be in addition to those of the Employment Act in relation to safeguards for working children.

114 be further amended by inserting a new paragraph (3) to read:

children apprehended under this section shall be placed in separate facilities from child offenders.

Clause 115(10) be amended by inserting the words "or his representative" after the word "Director" in line four.

Clause 116(1) be amended by deleting the word "hospital" appearing twice in line four and inserting the words "health institution" in places thereof.

That 116(1) be further amended by deleting the word "hospital" in line six.

116(2) be amended by deleting the word "hospital" in line two and inserting the words "health institution" in place thereof.

That 116(2) be further amended by deleting all the words after the word "concerned" in line five and the words "or the Director or his representative" be inserted in place thereof.

116(3) be amended by deleting the word "hospital" in line four and inserting the words "health institution" in place thereof.

Clause 117 - the proviso be amended by inserting the word "children's" after the word "another" in line two.

Clause 118(2) be amended by inserting the words "who knows or is known to the child or the parents or relatives of the child" after the word "person" in line four.

Clause 120(2)(c) be amended by inserting the words:

"provided however that the court must first ascertain that there is available space at the rehabilitation" after the word "attainments" in line four.

120(2)(g) be amended to read:



if a 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.

120(2) be further amended by inserting a new paragraph (h) to read:

where it is satisfied that the child has been engaged in drug abuse and that it is in the child's best interests to commit him to a Drug Rehabilitation Centre for treatment.

120(5)(b) be amended by deleting the words "twenty eight" in line two and inserting the words "fourteen" in place thereof.

Clause 122(I)(a) be amended by deleting the word "or" at the end of the paragraph.

the following provision be inserted after paragraph (a):

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.

Clause 127(8): the proviso be amended by inserting the words "or his representative" after the word "Director" in line three.

Clause 127(9) be amended by inserting the words "or his representative" after the word "Director" in line two.

127(13) : the proviso be amended by deleting all the words after the word "enquiry" in line two and inserting the words "the Council shall give such consent" in place thereof.

Clause 128(4) be amended by deleting the word "premises" in line three and inserting the words "individual and" in place thereof.

Clause 129(a) be amended by deleting the word "offender" in line two and inserting the word "child" in place thereof.

129 be further amended by inserting new paragraphs to read:

(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.

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

Clause 131 be amended by deleting the word "ten" in line twelve and inserting the word "fifty" in place thereof.

Clause 132 be amended by deleting the word "twenty" and inserting the word "fifty" in place thereof.

Clause 133 be amended by:

deleting the words "brought back to that person, institution or authority, if he or it is willing to receive such child, or may be" after the word "and" in line eight.

deleting the words "in the case of a child under supervision or care under this Act" in lines thirteen and fourteen.

A new paragraph numbered (i) be inserted to read:

"order the child to be taken where he ran away from"

renumbering the original paragraphs as (ii), (iii), (iv) and (v).

Clause 135(1) be amended by inserting the words "subject to section 133" after the word "home" in line four.

135(2)(b) be amended by deleting the words "and shall be brought back to the school" after the word "warrant" in line seven.

the word "may" in line eight be deleted and the word "shall" be inserted in place thereof.

the figure "120" in line eleven be deleted and figure "133" be inserted in place thereof.

135(3) be amended by deleting the words "whether or not he is brought before a court" after the figure (2) in line two.

Clause 136(c) be amended by deleting the word "ten" in line eight and inserting the word "fifty" in place thereof.

Clause 137 be amended by deleting the words "twenty" and "six" in lines eleven and twelve respectively and inserting the words "one hundred" and "twenty four" in places thereof.

Clause 139 be amended by deleting sub-section (7) and inserting a new subsection (7) to read:

"any institution or person who receives payment of any monies under a contribution order shall keep proper accounts in respect of the said sums and shall furnish the parents or guardian liable to make such payments with accounts in respect of the same on quarterly basis or such lesser period as the court shall direct throughout the duration of the care order. Any person or manager who shall fail to comply with this provision shall commit an offence and shall upon conviction be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding twelve months, or to both".

Clause 140(2) be amended by:

inserting the word "any" after the word "or" in line three.

inserting the word "of such an institution or person" after the word "custody" in line six.

**Part XI - the heading be amended to read: Foster Care Placement and Parenting**

Clause 143(1)(a) be amended by inserting the words "or polygamous" after the word "monogamous".

143(1)(b) be amended by deleting the words "twenty one" in line two and inserting the words "twenty five" in place thereof.

143(1)(c) be amended by deleting the words "twenty one" in line two and inserting the words "twenty five" in place thereof.

143(2) be renumbered as (2)(a)

a new 143(2)(b) be inserted to read:

a single woman shall not qualify to foster a male child under this Part.

A new 143(3) be inserted to read:

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

A new 143(4) be inserted to read:

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

Clause 149A(1) be amended to read:

The Minister shall establish an Adoption Committee hereinafter in this Part referred to as the "Committee" which shall comprise the following members:

- a. The Director of Children's services
- b. four representatives from charitable children's institutions and organizations engaged in child welfare activities.
- c. one representative from Kenyatta National Hospital and one representative from private hospitals dealing primarily with children, appointed by the Kenya Medical Association.
- d. One representative from the Law Society of Kenya knowledgeable in the rights and welfare of children.
- e. A representative from the Ministry of Foreign Affairs
- f. A member of the Judiciary.
- g. A member representing the Attorney-General.

Clause 151(1) be renumbered 151(1)(a).

A new 151(1)(b) be inserted to read:

A court may waive the requirement contained in subsection (1)(a) herein above and allow the applicant or applicants to serve the three (3) months period, or any portion of such duration, in the proposed country of residence subject to such terms and conditions that the court may deem

fit, provided however that Kenya has a reciprocal foreign judgement agreement with the said country.

A new 151(3) be inserted to read:

With the leave of the court, the court may grant an adoption order upon application in respect of a person of eighteen years and above where such a person has been:

- (a) in the continuous foster care of the applicant or applicants for a period of at least three years preceding the making of an application.
- (b) born out of wedlock and the mother has married; or
- (c) born from a previous marriage and the applicant has remarried.

A new 151(4) be inserted to read:

An application brought under section 151(2) of this Act shall be made by way of originating summons and shall only be made if the court is satisfied that:

- a. exceptional circumstances in relation to the health, welfare, and safety of the child exist;
- b. 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
- c. a welfare report has been made by the guardian ad litem recommending the removal of the child from Kenya.

A new paragraph 151(4)(a) be inserted to read:

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 or applicants to execute a security bond with or without sureties requiring the child to be returned to Kenya by the applicant or applicants within such period as may be specified by the court and may make such order or arrangements as it shall deem fit to secure the return of the child to Kenya for purposes of adoption.

A new paragraph 151(4)(b) be inserted to read:

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 both.

152(1)(d) be amended by deleting the word "lawfully" in line one .

152(2) be amended by deleting paragraph (c).

152(2) be amended by renumbering (d) as (c) and inserting a new paragraph (d) to read:

a sole foreign female applicant.

152(3)(e) be amended by inserting the word "male" after the word "foreign".

152(4)(a) be amended by deleting the word "infant" in line two and inserting the word "child" in place thereof.

Clause 155(1)(d) be amended by deleting the word "fifty" in line seven and inserting the words "two hundred" in place thereof.

Clause 157(1)(f) be amended by deleting the word "infant" in line one and inserting the word "child" in place thereof.

Clause 171(10) be amended by deleting the word "twenty" in line three and inserting the words "one hundred" in place thereof.

171(11) be amended by deleting the word "ten" in line five and inserting the words "one hundred" in place thereof.

Clause 172(2)(c) be amended by deleting the word "ten" in line five and inserting the word "twenty" in place thereof.

Clause 173(1)(b)(ii) be amended by deleting the words "one year" in line nine and "ten" in line ten and inserting the words "three years" and "one hundred" respectively in places thereof.

Clause 178(1) be amended to read:

Notwithstanding the provisions of Parts II and VII of the Criminal Procedure Code, a children's court may try a child for any offence including murder, manslaughter and offences punishable by death, and in cases where he is charged jointly with a person over eighteen years.

The proviso be amended by deleting the words "other than manslaughter or an offence punishable by death" after the word "court" in line four.

Clause 179(1) be amended by deleting the words "other than murder or manslaughter" after the word "offence" in line five.

Clause 180 - the paragraphs be numbered accordingly.

Clause 184(1)(j) be amended by inserting the words "under the provisions of the Probation of Offenders Act" after the word "hostel".

A new 184(1)(k) be inserted to read:

by making a community service order.

The present 184(1)(k) be renumbered as (l).

\* \* \*

**MINUTES OF ONE HUNDRED AND ELEVENTH (111<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS, ON WEDNESDAY, 5<sup>TH</sup> SEPTEMBER, 2001 AT 3.00 P.M.**

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**PRESENT:** The following Members were present:

Dr. the Hon. N.W. Kulundu, MP - Chairman  
Hon. Norman M.G.K. Nyagah, MP  
Hon. G.B. Nyanja, MP  
Hon. Njehu Gatabaki, MP  
Hon. Joshua Toro, MP  
Hon. Raphael Kitur, M.P.  
Hon. Z. Opore, MP  
Hon. Frederick Kalulu, MP

**ABSENT:**

Hon. Kihara Mwangi, MP  
Hon. Mrs Grace Mwewa, MP  
Hon. J.J. Mugalla, MP

**IN ATTENDANCE:                      NATIONAL ASSEMBLY**

David Ziah     -     Clerk Assistant II  
S. Njenga       -     Clerk Assistant III

**MIN.218/01: CONSIDERATION OF THE CHILDREN BILL, 2001**

The Committee deliberated on the Children's Bill, 2001 and agreed as follows:

**Part I**

clause 2 - Interpretation

clause 2(I) be amended by deleting (I)

adoption society - amended by deleting the word "the" immediately after the word "Council" in line two

child - amended to read:

means any human being under the age of eighteen years.



child abuse - amended by inserting the word "psychological" immediately after the word "sexual".

home - amended by inserting the words "or foster parent" immediately after the word relative in line two.

further amended by deleting the word "or" after the word "guardian" in line two.

relative - amended to read:

in relation to a child means any person related to him or her, whether of full blood, half blood or by affinity and

## **Part II**

The heading be amended to read:

Safeguard for the rights, welfare and responsibilities of the child.

Clause 3 - be amended by shifting the notes on the margin from 3(1) to 3(2).

3(3)(b) - be amended by deleting the word "or" and inserting the word "and" in place thereof.

Clause 4 - be amended by inserting the words "political, economic" immediately after the word "social" in line four.

Clause 6(2) - be deleted and replaced by the following:

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.

6(3) be inserted to read:

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

Clause 8 - be amended by deleting the words "the expended family" in line three.

Clause 15 - be amended by inserting the words "alcohol, tobacco products" immediately after the word "narcotics" in line two.

Clause 15 - be further amended by inserting the words "or any other drugs that may be declared harmful by the Minister for the time being in charge of health" immediately after the word "drugs" in line three.

Clause 17(1) be amended by inserting a full-stop after the word "liberty" in line three.

17(2) - a new \*17(2) be inserted to read:

notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or life imprisonment.

17(2) and 17(3) be renumbered as 17(3) and (4) respectively.

Renumbered 17(4) be amended by inserting the words "by" the government" after the word 'assistance" in line two.

A new Clause 18(A) be inserted to read:

In the application of the provisions of this Act, and in any matter before a court of law concerning any child under this Act, 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 to 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;
- (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.

### **Part III**

Clause 20(2)(a) - be amended by listing the duties of parents in order of priority as follows:

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

20(2) (c)(l) - be amended to read:

to give parental guidance in religious, moral, social cultural and other values.

20(2) (c)(vi) - be deleted

20(5) - be amended by deleting letter (a).

20(5) - be further amended by inserting the words "subject to the provisions of section 23" before the words "a person".

Clause 22(l)(b) - parental responsibility agreement should be defined and a specimen appended to the schedule.

Clause 26 - be amended by deleting (1).

#### **Part IV**

Clause 28(l)(a) be amended to read:

A chairperson who shall be an eminent person who is knowledgeable or has actively contributed to the promotion of the rights and welfare of children who shall be appointed by the President from a list of three non civil servant members submitted by the council.

Clause (1)(b) - be amended to read:

the Permanent Secretary in the ministry for the time being responsible for matters relating to children or his Deputy Secretary.

28(1)(c),(d), (e), (f), (h) - be amended by inserting the words "or his deputy secretary" at the end of the paragraphs.

28(1)(g) - be amended to read: "the Attorney-General"

28(1)(j) be amended by deleting the word "three" and inserting the word "six".

(j) - be further amended by inserting the words "of whom three shall be women" immediately after the word "persons" in line one .

28(1)(k) - be amended by deleting the word "two" in line one and inserting the word "three" in place thereof.

(1)(k) - be further amended to read:

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

28(1)(l) - be amended to read:

two representatives of the private sector appointed by the Minister for the relating to children who are knowledgeable or have actively contributed to the promotion of the rights and welfare of children.

28(1)(m) - be deleted

28(2) - be amended by inserting the words "but can be nominated for another term of three years" at the end of the paragraph.

Clause 29 (1) - be amended by inserting the words "rights and" after the word "child" in line four.

29(1) - be amended by deleting (n)

(2) - be further amended by inserting a new paragraph (t) to read:

set criteria for the establishment of rehabilitation institutions.

**MIN.219/01: ADJOURNMENT**

And there being no other business, the Chairman adjourned the sitting at Five O'clock until Thursday, 6<sup>th</sup> September, 2001 at 2.30 p.m.

Confirmed.....(Sgd).....  
(Chairman)

Date: 2<sup>nd</sup> November, 2001

**MINUTES OF ONE HUNDRED AND TWELFTH (112<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS, ON THURSDAY, 6<sup>TH</sup> SEPTEMBER, 2001 AT 3.00 P.M.**

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**PRESENT:** The following Members were present:

Dr. the Hon. N.W. Kulundu, MP - Chairman  
Hon. Norman M.G.K. Nyagah, MP  
Hon. G.B. Nyanja, MP  
Hon. Njehu Gatabaki, MP  
Hon. Joshua Toro, MP  
Hon. Raphael Kitur, M.P.  
Hon. Z. Opore, MP  
Hon. Frederick Kalulu, MP

**ABSENT:**

Hon. Kihara Mwangi, MP  
Hon. Mrs Grace Mwewa, MP  
Hon. J.J. Mugalla, MP

**IN ATTENDANCE:                      NATIONAL ASSEMBLY**

David Ziah     -     Clerk Assistant II  
S. Njenga       -     Clerk Assistant III

**MIN.220/ 01: CONSIDERATION OF THE CHILDREN'S BILL, 2001**

The committee deliberated on the Bill and agreed as follows:

Clause 33 - be amended by inserting the words "and other sources" after the word "Parliament".

Clause 34(l) - be amended by inserting the words "Council, in consultation with the" before the word "Minister" in line one.

34(2) - a new sub-section be inserted to read:

the Director shall be an eminent person who is knowledgeable or has actively contributed to the promotion of the rights and welfare of children.

Original 34(2) - be renumbered (3) and be amended by deleting the word "Minister" in line two and inserting the word "Council" in place thereof.

Original 34(3) - be renumbered (4)

Clause 35(2)(c) - be amended by deleting the words "on the government" in line one and two and inserting the words "for the management" in place thereof.

35(2)(q) - be amended by deleting the word "government" in line two and inserting the word "management" in place thereof.

Clause 36 - be amended by deleting the word "twenty" in line four and inserting the words "one hundred" in place thereof.

Be further amended by deleting the word "nine" in line six and inserting the word "twelve" in place thereof.

Clause 37(a) be amended by inserting the words "rights and" after the word "the" in line one.

## **Part V**

A new clause 44A be inserted to read:

- Clause 44A(1)        there shall be established an inspection committee which shall comprise of such number of members that may be from time to time be prescribed by the council.
- (2)        the members of the committee shall be nominated by the council and shall be appointed by the minister by the way of a notice in the Gazette within thirty days of notification.
  - (3)        The functions of the committee shall be:
    - (a)        To inspect or cause to be inspected all rehabilitation schools, children's remand homes and charitable children's institutions.
    - (b)        Visit them 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)        Require the production of no fewer than two reports per year and any records required to be kept in accordance with regulations made under section 69.
  - (f)        Inspect the conditions and facilities provided by the institution or managers of the premises.

- (g) Shall make and present to the council bi-annual reports on the state and condition of the rehabilitation schools, children's remand homes, and charitable children's institutions.
  - (h) Make recommendations on closure, improvement, remedial requirements, relocation of children to the director who shall be bound to implement; and
  - (i) Make recommendations to the Minister for the establishment and approval of rehabilitation schools children's remand homes, and charitable children's institutions.
- (4) The conduct and regulation of the affairs of the inspection committee shall be as prescribed by the council but subject thereto the committee shall regulate its own proceedings.

Clause 44 - be amended by being renumbered 44B.

Renumbered 44B be further amended by replacing the word "Minister" with the word "Council" as appropriate whenever it appears.

Clause 52(l) be amended by deleting the (l)

52(b) be amended by deleting the word "seventeen" in line tow and inserting the word "sixteen" in place thereof.

52 be further amended by inserting paragraphs (c) and (d) to read;

- (c) in the case of any child, where a medical practitioner provides a certificate to the effect that the child's conduct is attributable to an addiction to or the use of drugs, to have the child provided with appropriate medical treatment and professional counseling at the rehabilitation school or to have the child sent to a drug rehabilitation center for such period as the court shall direct.
- (d) In the case of any child, where a medical practitioner provides a certificate to the effect that a child's conduct is attributable to the child being of unsound mind or for reason that the child suffers from a mental illness, to have the child provided with appropriate medical treatment and professional counselling at the rehabilitation school or to have the child transferred to mental institution charged with care of the treatment of children of unsound mind or mental illness for such period as the court shall direct;

provided that parents of the child and any person who has parental responsibility for the child shall served and heard any proceedings instituted under this section, unless the court is satisfied that upon the exercise of due diligence such persons cannot be found, or where served have failed and or neglected to attend the proceedings.

Clause 55 - be amended by inserting the words "area advisory" after the word "the" in line five.

be further amended by inserting the words "upon recommendations made by the Inspection Committee" after the word "Council" in line six.

Clause 56 - be amended by inserting a proviso to read:

Provided that nothing in this section shall prevent a charitable children's institution from providing medical care and education and training for children accommodated therein, if the provision of such facilities and care shall have been approved by the Area Advisory Council upon recommendation made by the Inspection committee.

Clause 64(1) be amended by inserting a proviso to read;

provided that these powers shall be supplemental and not in derogation to the powers conferred on the Inspection committee in this Act.

64(4) be amended to read:

upon receipt of an inspection report from the Inspection Committee or from its authorized officer, the Director shall take and implement the remedial measures as may be prescribed by the Inspection Committee including requiring a charitable children's institution to appoint a new management and institute appropriate measures;

provided that the Director may:

- (a) n consultation with the Area Advisory Council and the Inspection Committee appoint a manager to manage the institution for a period not exceeding six months in order to institute remedial measures.
- (b) upon the recommendation of the Area Advisory Committees and the Inspection Committee apply to the court for the extension of the period of the management of the institution by the appointed manager for a period exceeding twelve months.



Clause 67(l) amend proviso to read:

provided that the council shall give fifteen days notice of the proposed cancellation and upon such notice taking effect, the Director shall, unless prevented from doing so by an order of stay from the Minister, take such remedial measures as shall be necessary to protect the children accommodated in the home including removing any child or children from the home, procuring the closure of the home or instituting appropriate disciplinary measures against the manager of the home.

## **Part VI**

Clause 69(b) be amended by inserting the words "all criminal charges against a child including" after the word "hearing" in line one.

69(d)(i) be amended to read:

where a child is brought before a court in connection with an offence which would apart from the provisions of this section be triable only by the High Court, he may nevertheless elect to be tried at the High Court.

Clause 71 - be amended by inserting the words "or by a child" after the word "against" in line two.

be further amended by deleting the word "may " in line five and inserting the word "shall" in place thereof.

Clause 72(1) be amended by renumbering it 72(1)(a) and inserting a new paragraph (b) to read:

The child's exposure to and 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.

Clause 72 be further amended by inserting sub-section (4) to read:

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, provided the expenses of any such witness will be determined by the court and shall be defrayed out of monies provided by Parliament.

Clause 72 be further amended by inserting sub-section (5) to read:



**MINUTES OF ONE HUNDRED AND THIRTEENTH (113<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS, ON FRIDAY, 7<sup>TH</sup> SEPTEMBER, 2001 AT 9.30 A.M.**

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**PRESENT:** The following Members were present:

Dr. the Hon. N.W. Kulundu, MP - Chairman  
Hon. Norman M.G.K. Nyagah, MP  
Hon. G.B. Nyanja, MP  
Hon. Njehu Gatabaki, MP  
Hon. Joshua Toro, MP  
Hon. Z. Opore, MP

**ABSENT:**

Hon. Raphael Kitur, M.P.  
Hon. Kihara Mwangi, MP  
Hon. Mrs Grace Mwewa, MP  
Hon. J.J. Mugalla, MP  
Hon. Frederick Kalulu, MP

**IN ATTENDANCE:**                      **NATIONAL ASSEMBLY**

David Ziah       -       Clerk Assistant II  
S. Njenga        -       Clerk Assistant III

**MIN.222/01: CONSIDERATION OF THE CHILDREN'S BILL, 2001**

The Committee deliberated on the Bill and agreed as follows:

Clause 77(1) be amended by inserting paragraphs (c) and (d) to read:

(c) legal custody means so much as parental rights and duties as relate to the possession of the 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 of a child is shared with one or more.

Clause 79(1)(h) be amended by inserting the words "or an exclusion order" after the word "order" in line two.

79(3) be amended by inserting the words "except with the leave of the court" after the word "child" in line nine.



**MINUTES OF ONE HUNDRED AND EIGHTEENTH (118<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS, ON WEDNESDAY, 19<sup>TH</sup> SEPTEMBER, 2001 AT 2.50 P.M.**

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**PRESENT:** The following Members were present:

Dr. the Hon. N.W. Kulundu, MP - Chairman  
Hon. Norman M.G.K. Nyagah, MP  
Hon. G.B. Nyanja, MP  
Hon. Njehu Gatabaki, MP  
Hon. Joshua Toro, MP  
Hon. Z. Opore, MP  
Hon. Raphael Kitur, M.P.  
Hon. Kihara Mwangi, MP  
Hon. J.J. Mugalla, MP  
Hon. Frederick Kalulu, MP

**ABSENT:**

Hon. Mrs Grace Mwewa, MP

**IN ATTENDANCE:**                      **NATIONAL ASSEMBLY**

S. Njenga      -      Clerk Assistant III

**MIN.238/01: CONSIDERATION OF THE CHILDREN'S BILL, 2001**

Clause 85 be amended by inserting a new paragraph (e) to read:

where the mother and father of child were not married to each other at the time of the birth of the child and have not subsequently remarried, but the father of the child has acquired parental responsibility of the child, it shall be the joint responsibility of the mother and father of the child to maintain the child.

Clause 87 be amended by deleting the words "an order under this section" in lines one and two and inserting the following words in place thereof:

"a maintenance order"

Clause 91(2) be amended by deleting the word "cease" in line one and inserting the words "be reviewed by the court" in place thereof.

Clause 96(5)(b) be amended by deleting the word "defaulter" in line one and inserting the word "respondent" in place thereof.



**MINUTES OF ONE HUNDRED AND NINETEENTH (119<sup>TH</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS, ON THURSDAY, 20<sup>TH</sup> SEPTEMBER, 2001 AT 2.45 P.M.**

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**PRESENT:** The following Members were present:

Dr. the Hon. N.W. Kulundu, MP - Chairman  
Hon. Norman M.G.K. Nyagah, MP  
Hon. Njehu Gatabaki, MP  
Hon. Joshua Toro, MP  
Hon. Z. Opore, MP  
Hon. Kihara Mwangi, MP  
Hon. Frederick Kalulu, MP

**ABSENT:**

Hon. Raphael Kitur, M.P.  
Hon. J.J. Mugalla, MP  
Hon. G.B. Nyanja, MP  
Hon. Mrs Grace Mwewa, MP

**IN ATTENDANCE:                      NATIONAL ASSEMBLY**

S. Njenga                      -                      Clerk Assistant III

**MIN.240/01: CONSIDERATION OF THE CHILDREN'S BILL, 2001**

Clause 108(2) be amended to read:

A person qualified to apply for a judicial order for the protection of children includes:

- (a) the child, or
- (b) the parent or guardian, or custodian of the child; or
- (c) a relative of the child; or
- (d) the director; or
- (e) authorized officer

The 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.

Clause 109 be amended by inserting a new paragraph (h) to read:

A personal protection order which shall protect the child from any person who has used violence or threatened to use violence against the child or has harmed or threatened to harm or exposed the child to harm or risk of injury whether within the home where the child resides or elsewhere and to restrain that person from continuing the violence, harmful acts or threats thereof.

Clause 114(1) be amended by inserting a new paragraph (s) to read:

who is engaged in the use or trafficking of drugs or any other substances that may be declared harmful by the Minister for the time being in charge of health.

114(2) be amended to read:

the provisions of this section shall not be equated to those of the Penal Code in relation to offenses involving children but shall be in addition to those of the Employment Act in relation to safeguards for working children.

114 be further amended by inserting a new paragraph (3) to read:

children apprehended under this section shall be placed in separate facilities from child offenders.

Clause 115(10) be amended by inserting the words "or his representative" after the word "Director" in line four.

Clause 116(1) be amended by deleting the word "hospital" appearing twice in line four and inserting the words "health institution" in places thereof.

That 116(1) be further amended by deleting the word "hospital" in line six.

116(2) be amended by deleting the word "hospital" in line two and inserting the words "health institution" in place thereof.

That 116(2) be further amended by deleting all the words after the word "concerned" in line five and the words "or the Director or his representative" be inserted in place thereof.

116(3) be amended by deleting the word "hospital" in line four and inserting the words "health institution" in place thereof.

116(4) be amended by inserting the words "under this Act" after the word "funds" in line four.

Clause 117 - the proviso be amended as follows:

By deleting the word "may" in line one and inserting the word "shall" in place thereof.



By inserting the word "children's" after the word "another" in line two.

Clause 118(2) be amended by inserting the words "who knows or is known to the child or the parents or relatives of the child" after the word "person" in line four.

Clause 120(2)(c) be amended by inserting the words:

"provided however that the court must first ascertain that there is available space at the rehabilitation" after the word "attainments" in line four.

120(g) be amended to read:

if a 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.

120(2) be further amended by inserting a new paragraph (h) to read:

where it is satisfied that the child has been engaged in drug abuse and that it is in the child's best interests to commit him to a Drug Rehabilitation Centre for treatment.

120(5)(b) be amended by deleting the words "twenty eight" in line two and inserting the words "fourteen" in place thereof.

Clause 122(l)(a) be amended by deleting the word "or" at the end of the paragraph.

the following provision be inserted after paragraph (a):

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.

Clause 127(8): the proviso be amended by inserting the words "or his representative" after the word "Director" in line three.

Clause 127(9) be amended by inserting the words "or his representative" after the word "Director" in line two.

127(13) : the proviso be amended by deleting all the words after the word "enquiry" in line two and inserting the words "the Council shall give such consent" in place thereof.

Clause 128(4) be amended by deleting the word "premises" in line three and inserting the words "individual and" in place thereof.

Clause 129(a) be amended by deleting the word "offender" in line two and inserting the word "child" in place thereof.

129 be further amended by inserting new paragraphs to read:

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

Clause 131 be amended by deleting the word "ten" in line twelve and inserting the word "fifty" in place thereof.

Clause 132 be amended by deleting the word "twenty" and inserting the word "fifty" in place thereof.

Clause 133 be amended by:

deleting the words "brought back to that person, institution or authority, if he or it is willing to receive such child, or may be" after the word "and" in line eight.

deleting the words "in the case of a child under supervision or care under this Act".

A new paragraph numbered (i) be inserted to read:

"order the child to be taken where he ran away from"

renumbering the original paragraph as (ii), (iii), (iv) and (v).

Clause 135(1) be amended by inserting the words "subject to section 133" after the word "home" in line four.

135(2)(b) be amended by deleting the words "and shall be brought back to the school" after the word "warrant" in line seven.

the word "may" in line eight be deleted and the word "shall" be inserted in place thereof.

the figure "120" in line eleven be deleted and figure "133" be inserted in place thereof.

135(3) be amended by deleting the words "whether or not he is brought before a court" after the figure (2) in line two.



**MINUTES OF ONE HUNDRED AND TWENTYFIRST (121<sup>ST</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO.7, PARLIAMENT BUILDINGS, ON MONDAY, 24<sup>TH</sup> SEPTEMBER, 2001 AT 2.30 P.M.**

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**PRESENT:** The following Members were present:

Dr. the Hon. N.W. Kulundu, MP - Chairman  
Hon. Norman M.G.K. Nyagah, MP  
Hon. Njehu Gatabaki, MP  
Hon. Joshua Toro, MP  
Hon. Zebedeo Opore, MP  
Hon. Kihara Mwangi, MP  
Hon. Frederick Kalulu, MP

**ABSENT:**

Hon. Raphael Kitur, M.P.  
Hon. J.J. Mugalla, MP  
Hon. G.B. Nyanja, MP  
Hon. Mrs Grace Mwewa, MP

**IN ATTENDANCE:                      NATIONAL ASSEMBLY**

S. Njenga       -       Clerk Assistant III

**MIN.244/01: CONSIDERATION OF THE CHILDREN'S BILL, 2001**

Part XI - the heading be amended to read: Foster Care Placement and Parenting

Clause 143(1)(a) be amended by inserting the words "or polygamous" after the word "monogamous".

143(1)(b) be amended by deleting the words "twenty one" in line two and inserting the words "twenty five" in place thereof.

143(1)(c) be amended by deleting the words "twenty one" in line two and inserting the words "twenty five" in place thereof.

143(2) be renumbered as (2)(a)

a new 143(2)(b) be inserted to read:

a single woman shall not qualify to foster a male child under this Part.

A new 143(3) be inserted to read:

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

A new 143(4) be inserted to read:

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

Clause 149A(1) be amended to read:

The Minister shall establish an Adoption Committee hereinafter in this Part referred to as the "Committee" which shall comprise the following members:

- a. Three representatives from organizations engaged in child welfare activities.
- b. The Director of Children's services
- c. Three representatives from charitable children's institute
- d. Two representatives from Kenyatta National Hospital and two representatives from private hospitals dealing primarily with children, appointed by the Kenya Medical Association.
- e. Two representatives from the Law Society of Kenya knowledgeable in the rights and welfare of children.
- f. A representative from the Ministry of Foreign Affairs
- g. A member of the Judiciary.

Clause 151(1) be renumbered 151(1)(a):

A new 151(1)(b) be inserted to read:

A court may waive the requirement contained in subsection (1)(a) herein above and allow the applicant or applicants to serve the three (3) months period, or any portion of such duration, in the proposed country of residence subject to such terms and conditions that the court may deem fit, provided however that Kenya has a reciprocal foreign judgement agreement with the said country.

A new 151(3) be inserted to read:

With the leave of the court, the court may grant an adoption order upon application in respect of a person of eighteen years and above where such a person has been:

- (a) in the continuous foster care of the applicant or applicants for a period of at least three years preceding the making of an application.
- (b) born out of wedlock and the mother has married; or
- (c) born from a previous marriage and the applicant has remarried.

A new 151(4) be inserted to read:

An application brought under section 151(2) of this Act shall be made by way of originating summons and shall only be made if the court is satisfied that:

- a. exceptional circumstances in relation to the health, welfare, and safety of the child exist;
- b. 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
- c. a welfare report has been made by the guardian ad litem recommending the removal of the child from Kenya.

A new paragraph 151(4)(a) be inserted to read:

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 or applicants to execute a security bond with or without sureties requiring the child to be returned to Kenya by the applicant or applicants within such period as may be specified by the court and may make such order or arrangements as it shall deem fit to secure the return of the child to Kenya for purposes of adoption.

A new paragraph 151(4)(b) be inserted to read:

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 both.

Clause 152(1) be amended by deleting paragraph (c).

152(1)(d) be amended by deleting the word "lawfully" in line one and renumbering the paragraph as (c).

152(2) be amended by deleting paragraph (c).

152(2) be amended by renumbering (d) as (c) and inserting a new paragraph (d) to read:

a sole foreign female applicant.

152(3)(e) be amended by inserting the word "male" after the word "foreign".

152(4)(a) be amended by deleting the word "infant" in line two and inserting the word "child" in place thereof.

Clause 155(1)(d) be amended by deleting the word "fifty" in line seven and inserting the words "two hundred" in place thereof.

Clause 157(1)(f) be amended by deleting the word "infant" in line one and inserting the word "child" in place thereof.

Clause 164(1) be amended by deleting the words "Registrar-General" in line two and inserting the words "Principal Registrar" in place thereof.

Clause 171(10) be amended by deleting the word "twenty" in line three and inserting the words "one hundred" in place thereof.

171(11) be amended by deleting the word "ten" in line five and inserting the words "one hundred" in place thereof.

Clause 172(2)(c) be amended by deleting the word "ten" in line five and inserting the word "twenty" in place thereof.

Clause 173(1)(b)(ii) be amended by deleting the words "one year" in line nine and "ten" in line ten and inserting the words "three years" and "one hundred" respectively in places thereof.

Clause 178(1) be amended to read:

Notwithstanding the provisions of Parts II and VII of the Criminal Procedure Code, a children's court may try a child for any offence including murder, manslaughter and offences punishable by death, and in cases where he is charged jointly with a person over eighteen years.

The proviso be amended by deleting the words "other than manslaughter or an offence punishable by death" after the word "court" in line four.

Clause 179(1) be amended by deleting the words "other than murder or manslaughter" after the word "offence" in line five.

Clause 180 - the paragraphs be numbered accordingly.

Clause 184(1)(j) be amended by inserting the words "under the provisions of the Probation of Offenders Act"





