



**EXPLANATORY MEMORANDUM TO THE CHILD WELFARE SOCIETY OF KENYA ORDER, 2014**

**PART I**

The Child Welfare Society of Kenya Order, 2014

The State Corporation Act, (Cap 446) and the Children Act, 2001

Enacted Pursuant to section 3 of the State Corporations Act

**MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES**

*Gazetted on 23<sup>rd</sup> May, 2014*

**Tabled on:**

**PART II**

**1. Purpose of the Statutory instrument**

1.1 The object of the Bill is to establish a comprehensive legal, institutional and regulatory framework for the effective care, control, protection, welfare and adoption of children in Kenya.

**2. Legislative Context**

The Child Welfare Society of Kenya was gazetted as an approved society as a Government agency for the purposes of care, protection and control of children vide Gazette Notice No. 1768 of 27<sup>th</sup> December, 1955. The Society was gazetted as an adoption society vide legal Notice No. 1356 of 28<sup>th</sup> April, 1969 under the repealed Adoption Act, Cap 143 as the only government agency offering free adoption services, among other children welfare services.

The laws governing children were consolidated in the Children Act, 2001. Section 200 of the Children Act repeals the Adoption Act but contains a transitional clause 9 (1) in the Seventh Schedule which transits the Child Welfare Society of Kenya. However, the Child Welfare Society is not formally established or anchored in the country's legislation and its functions are not set out in the Children's Act 2001. The Order will restore the functions, responsibilities, mandate and powers of the Child Welfare Society of Kenya which were omitted following the repeal of The Prevention of Cruelty to and Neglect of Children Ordinance (No. 12 of 1955) and the Adoption Act under which the Society was approved.



### **3. Policy Background**

#### **3.1**

The National Children Policy that was approved by the Cabinet in 2010 provides a comprehensive framework for addressing issues related to children's rights in a holistic manner. It further provides for the development of institutional, legislative and regulatory framework for addressing children issues.

The Child Welfare Society of Kenya is a Government agency offering free adoption services, among other children welfare services such as foster care, guardianship, tracing and re-unification of children with families as well as provision of temporary places of safety for children in distress, among others. All other registered adoption societies in Kenya are private agencies, hence such a crucial function and obligation of the Government under article 53 of the Constitution to protect children should not be left to private adoption societies only.

The Child Welfare Society of Kenya is funded by the Government and receives budgetary allocation from the National Treasury and it is important to have an effective institutional framework to ensure accountability for public resources.

### **4. Consultation outcome**

4.1 The development of the Child Welfare Society of Kenya Order involved wide stakeholder consultations. Public hearings were held in various parts of the country to get views from the public which is a cardinal requirement under the Constitution for any legislative or policy making process. Public hearings were conducted in Nairobi, Thika, Maragua, Bungoma, Kitale, Kapenguria, Kitui, Isiolo, Nannyuki, , Molo, Kisii, Kisumu,, Kilifi and Mombasda.

### **5. Guidance**

5.1 The Order was developed with support from the Office of the Attorney General.

### **6. Impact**

#### **6.1 *Impact on Fundamental Rights and Freedoms***

In line with the constitutional mandate of the government under article 53 of the Constitution the Child Welfare Society of Kenya is established as an adoption society and approved to carry out free adoption arrangements on behalf of the government and for the benefit of the financially disadvantaged Kenyans and other well-wishers who intend to adopt and give care to abandoned or homeless children. This ensures that homeless or abandoned children are able to enjoy the right to parental care and protection and other socio-economic rights that are guaranteed in the Constitution, the Children Act and International Human Rights Instruments which Kenya has ratified.

## **6.2 The impact on the Private Sector**

The Order allows the Private Secretary to compliment the Government's efforts in ensuring effective care and protection of children.

## **6.3 The impact on the public sector**

The public sector will greatly benefit from the implementation of the Child Welfare Society of Kenya Order as the Government's burden for taking care of homeless children in Government institutions will be reduced. As the adopted children have a greater chance of having a good education, this will lead to overall socio-economic growth and stability in the country.

## **6.4 Impact assessment**

An impact assessment has not been prepared for this statutory instrument. However, a report on the country baseline survey commissioned by the Child Welfare Society of Kenya on the identification of gaps in law and access to welfare and care for children in relation to the Society prepared by the Legislative and Governance Institute in 2013 identified gaps in access to child welfare services in Kenya. The gaps included lack of a clear structure and roles of the various Government agencies dealing with children matters such as the Department of Children, the National Council for Children Services and the Child Welfare Society and lack of effective institutional framework to offer welfare services to vulnerable children.

## **7. Monitoring and review**

7.1 Implementation of the Order will be monitored as provided under State Corporations Act and the Children Act and the Order will be reviewed as and when necessary to comply with the Constitution and other relevant laws.

## **8. Contact**

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Dated the 12<sup>th</sup> .....day of June .....2014.



*Hon. Samwel Kazungu Kambi,  
Cabinet Secretary,  
Ministry of Labour, Social Security and Services.*