

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Sixth Schedule

Written Laws to be Repealed

Cap. 141 The Children and Young Persons Act

Cap. 143 The Adoption Act

Cap. 144 The Guardianship of Infants Act