

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

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COMMITTEE	Labour
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 28/10/19

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- THIRD SESSION

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 29/10/19

REPORT ON THE ESTABLISHMENT OF CHILDREN'S HOMES BILL,
2019 (SENATE BILLS NO. 12 OF 2019)

Approved

 5/11/2019

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

OCTOBER, 2019

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PREFACE

1. The Standing Committee on Labour and Social Welfare was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 218.

The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

2. In executing its mandate, the Committee oversees -

- a) Ministry of Labour and Social Protection;
- b) Ministry of Public Service, Youth and Gender Affairs; and
- c) Ministry of Sports and Heritage.

3. The Committee comprises the following Members:

1. Sen. Sakaja Johnson Arthur, CBS, MP	-Chairperson
2. Sen. (Dr.) Milgo Alice Chepkorir, MP	-Vice Chairperson
3. Sen. Madzayo Stewart Mwachiru, MP	-Member
4. Sen. Poghisi Samuel Losuron, EGS, MP	-Member
5. Sen. (Dr.) Mwaura Isaac, CBS, MP	-Member
6. Sen. Cherarkey Samson Kiprotich, MP	-Member
7. Sen. Makori Beatrice Kwamboka, MP	-Member
8. Sen. (Dr.) Gertrude Musuruve Inimah, MP	-Member
9. Sen. Petronila Were Lokorio, MP	-Member

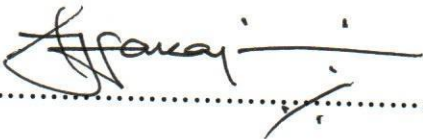
ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to present and lay on the table of the House the report of the Committee on Labour and Social Welfare on the Establishment of children's Homes Bill, 2019 (Senate Bill No. 12 of 2019) for consideration by the House.

SIGNED  DATE *wednesday, 23/10/19*

**SEN. JOHNSON SAKAJA.
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.**

1.0 INTRODUCTION

Mr. Speaker Sir,

The Establishment of Children's Homes Bill, 2019 (Senate Bills No. 12 of 2019) originated in the Senate and was gazetted on 20th June, 2019. The Bill was sponsored by the Senator (Dr.) Agnes Zani.

The Bill was read a first time in the Senate on Tuesday, 6th August, 2019 and committed to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 140(1).

Pursuant to Article 118 of the Constitution and Standing Order No. 140 (5), of the Senate Standing Order, the Standing Committee of the Senate on Labour and Social Welfare invited the public to make oral and written submission of their views on the Bill on 11th September, 2019 through advertisements in the National Newspapers dated 4th September, 2019. This was to take into account the views and recommendations of the public while preparing this report.

The bill seeks to provide a framework for the registration and licensing of children's homes to ensure the provision of care and protection to neglected children.

It therefore seeks to give effect to Article 53(1)(c) and (d) of the Constitution on the right of every child to—

(a) basic nutrition, shelter and healthcare; and

(b) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour

The Committee at its meetings held on 11th September, 2019, 3rd October, 2019 and 23rd October, 2019 deliberated on the Bill and considered the submissions from the public hearing and stakeholders and recommended that the Establishment of Children's Homes Bill, 2019 be adopted without any amendments.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

2.0 OVERVIEW OF THE ESTABLISHMENT OF CHILDREN'S HOMES BILL (SENATE BILLS NO. 12 OF 2019)

2.1 Overview of the Bill

The Bill recognises the fact that the function relating to the provision of children's facilities is a devolved function and while we have in place the Children Act which provides a framework through which existing institutions are established, it has become necessary to address any existing gaps in the care and protection of neglected children.

This Bill therefore seeks to provide a legal framework—

- (a) for the protection of the rights set out under Article 53(1)(c) and (d) of the Constitution in relation to child parents;
- (b) to promote and protect the status, well-being, safety and security of children who have no person to care for them;
- (c) for the registration, establishment and management of service and the establishment and management of children's homes; and
- (d) for the provision of quality care in children's homes.

2.2 Key Provisions of the Bill

The Bill mandates each county government to establish the legal framework for the establishment and regulation of children's homes within the respective county. In addition, the Bill provides, among others—

- (a) the provision of a framework that promotes the rights of neglected children to protection from harm and to basic nutrition, shelter and healthcare as set out under Article 53(1)(c) and (d) of the Constitution;
- (b) the guiding principles are provided under clause 4 of the Bill to include respect, protection, promotion and fulfilment of the rights of a child as enshrined under Article 53 of the Constitution;
- (c) instances where the Bill will not apply to include—

- (i) persons providing care and supervision exclusively to children who are members of their immediate families;
 - (ii) child care services that are provided exclusively to a child in the child's home by a person other than a parent of the child;
 - (iii) a home, premises or establishment that is established as a rehabilitation or remand home under the Children Act; ...
- (d) the rights of a child as provided for under Article 53 of the Constitution;
- (e) the roles and obligations of the national and county governments in the promotion of the care and protection of neglected children as follows—
- (i) national government is expected to adopt a comprehensive national strategy and plan of action and policies for the protection and care of neglected children;
 - (ii) county governments shall—
 - a. implement the national policy and strategies relating to the care and protection of neglected children; and
 - b. formulate and implement county specific programmes for the care and protection of neglected children within the respective counties;
- (f) the establishment of children's homes and the requirement for their registration and licensing as follows where each county government may enact county specific legislation setting out the—
- (i) criteria for the registration of a children's home within the respective county;
 - (ii) information required to be submitted by an applicant for registration;
 - (iii) process of determination of an application for registration of a children's home;
 - (iv) conditions for the issuance or renewal of a licence;
 - (v) grounds for the rejection of an application or cancellation of a licence; and
 - (vi) process of issuance of a licence to an applicant for the management of a home

- (g) where the licence of a children's home is cancelled, the licensee to ensure that on the closing down of the home, the children residing in the home are accommodated in another registered children's home;
- (h) the submission of reports on the management of a home to the county executive committee member and the National Council for Children's Services;
- (i) services to be rendered within a home including—
 - (i) twenty-four hour care and support services to children in the home;
 - (ii) care and supervision services to children in the home who may have special needs and those in need of special care and attention;
 - (iii) counselling and rehabilitation to a child who may have undergone any form of abuse or neglect;
 - (iv) outreach programmes; and
 - (v) recreational activities
- (j) the criteria for admission of a child into a children's home;
- (k) role of management of a home in ensuring that the needs of each child are met;
- (l) the number and qualifications of personnel in a home;
- (m) education and medical care of children in a home;
- (n) notification of abuse of a child to the county executive committee member and the Director of Medical Services of the abuse or injury; and
- (o) inspection and evaluation of safety in a children's home.

2.3 Consequences of the Bill

The Bill provides a framework through which county governments are to put in place mechanisms for the implementation of policies and programmes necessary for the protection and care of neglected children in each county. The counties are expected to establish homes and implement programmes within the county for the care of neglected children. The county governments, through the respective county executive committee members are responsible for the registration of homes and the licensing of persons responsible for the management of the homes.

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

The Committee scheduled a public hearing on 11th September, 2019 on the Establishment of Children's Homes Bill, 2019 and received oral and written submissions from Ministry of Labour and Social Protection, United Nations Children's Fund (UNICEF), Association of Charitable Children Institutions of Kenya, Children's Homes Founders Association and Association for Alternative Family Care for Children in Kenya as detailed below.

3.1 Submission by the Ministry of Labour and Social Protection

- a) The issues of children affairs are a national government function and are domiciled in the Ministry of Labour and Social Protection;
- b) the Children's Act, 2001 has provisions on the children's homes and regulations to ensure that children's rights and welfare are safeguarded;
- c) the Ministry has developed the Children Bill 2018 through a participatory process and is awaiting the Attorney General's views on the same before submission of the Bill to Parliament;
- d) the Ministry undertakes regular and periodic reviews of the existing policies and guidelines to ensure that they address emerging child related issues;
- e) the government is keen to strengthen the family care systems in line with the United Nations General Assembly Resolutions;
- f) the government is pursuing a policy on Child Care Reforms to promote Alternative Family Care Systems to ensure gradual de-institutionalisation of children;
- g) the Establishment of Children's Bill may not have been subjected to critical stakeholder participation as the Ministry was not consulted during the development of the Bill; and
- h) the Ministry's initiated Bill has covered all issues raised in the Establishment of Children's Home Bill and urge the Senate to reconsider the private members Bill to avoid duplication.

3.2 Submission by the Association for Alternative Family Care for Children Kenya

- a) In line with its international obligations the government of Kenya has committed to move away from residential care institutions for children and to move towards wider implementation of family-based care solutions;
- b) allowing each county to enact a county specific legislation on child care may fragment Kenya's child protection system;
- c) Kenya has an obligation under the African Charter on the Rights and Welfare of the Child to support parents who are unable to fulfil their parental responsibilities;
- d) research shows that there are a lot of harmful impact of institutionalisation on child development and well-being as the children are more likely to suffer developmental delays that result in poor mental health, academic failure, and increased chances of behavioral problems later in life;
- e) loss of identity is common among children who grow up in institutions;
- f) the Bill fails to appreciate family care for children in need of care and protection and only elevates institutionalization which should be the last resort;
- g) the Bill goes against the Constitution, United Nations Convention on the Rights of the Child, Guidelines for Alternative Family Care for Children in Kenya, Kenya's international legal obligations as well as the national policy;
- h) Kenya is a member of the East African Community and has adopted the East African Community Child Policy which explicitly decries the use of institutions and advises the member states to establish alternative family-based care systems; and
- i) Parliament should enhance the current legal and policy framework to support children to grow in families and community for better child development outcomes.

3.3 Submission by the United Nations Children's Fund (UNICEF)

- a) it notes the Government of Kenya's policy on upholding and promoting the right of the child to parental care as per the Constitution of Kenya Article 53 (e) and the promotion of family-based alternative care as outlined in the national Guidelines for the Alternative Family Care of Children;

- b) the Ministry of Labour and Social Protection has reiterated the Government's intention to enforce the prohibition of registration of new charitable children's institutions, affirming the Government's intention to scale up the de-institutionalization in favour of progressively removing children from institutions and promotion of family-based care;
- c) the national guidelines and policies also address the concerns raised by the UN Committee on the Rights of the Child regarding the large number of children in care institutions in Kenya, contrary to the Government's stated policy to prioritize family-based care;
- d) the African Charter on the Rights and Welfare of the Child, which Kenya ratified in 2000, also emphasizes the role of families and the right of children to be cared for by their parents, in Article 19;
- e) the African Committee of Experts on the Rights and Welfare of the Child, in its concluding recommendations on Kenya's first periodic report, encourages the Government to raise awareness on the value and importance of family for the well-being of children;
- f) as for children already separated from parents, namely children in street situations, the African Committee of Experts on the Rights and Welfare of the Child encourages the Government to strengthen its efforts to provide a family environment through re-unification with their birth parents or extended family, noting that a family environment is essential for their optimal for every child's growth and development;
- g) the promotion of family-based care options and a progressive move from an over reliance on institutional care reflect international good practice, as outlined in the UN Guidelines on Alternative Care;
- h) while residential care facilities and family-based care complement each other in meeting the needs of children, there is extensive evidence gathered over the last eighty years that clearly illustrate the potential harm for children growing up in institutions;
- i) it is UNICEF's view that registration and licensing systems for all formal care options, including residential care, is best held at the national level in order to ensure effective implementation of the national policy of promoting family-

- based care options with a view to reducing the number of Kenyan children in institutional care;
- j) registration and licensing of children's homes at the County level runs the risk of unnecessary proliferation of institutions;
 - k) county level legislation that relates to care of children, should promote family-based care in line with the national guidelines and policies as well as the government's commitment to regional and international conventions;
 - l) it is UNICEF's recommendation that registration and licensing of children's homes be a function that is retained at the national level, for the effective implementation of national policies promoting family-based care options and a progressive decrease of children in institutional care; and
 - m) eighty years of research has demonstrated the potentially severe negative impact of putting children in residential/children homes for care and protection as follows—
 - (i) Bucharest Early Intervention Project provided definitive evidence that young children raised in institutions had considerably under-developed brains in comparison to those moved to foster parents;
 - (ii) Lack of emotional and physical contact for children in institutions, together with lack of regular stimulation and interaction resulted in specific developmental delays and challenging behaviors in children;
 - (iii) Children raised in institutions/ children's home had lower IQ scores than their peers with no experience of institutional care. This is a finding from a 2010 cross-continental study;
 - (iv) Children raised in institutions/children homes showed neuropsychological deficits on tests of visual memory and attentions, visually mediated learning and inhibitory control;
 - (v) Institutionalization has an effect on physical growth and health. Another study indicates that after 8 years of adoption of children who were in institutions, they exhibited delayed physical development in comparison to children who had never been institutionalized; and
 - (vi) Research has shown that children in residential care/children's homes can experience a range of abuse including: systematic rape and other

forms of sexual abuse: neglect, exploitation, trafficking, physical harm such as beating and torture, psychological harm including isolation, denial of affection, humiliating discipline, lack of privacy.

34 Submission by the Children Homes Founders Association of Kenya

- a) the bill is in the best interests of the children;
- b) there is need for county governments to support the children's homes established by private applicants in accordance with the bill;
- c) Proposed that an additional sub section to section 8(i) to read—

Collaborate with and support children's homes established by other applicants in accordance with this statute.

3.5 Submission by the Association of Charitable Children Institutions of Kenya

- a) there is need to harmonise the Bill with the current international, national and regional legal and policy framework on provision of alternative care that provide for institutional care to be temporary and the last resort measure;
- b) the Bill should broaden the scope to include ways of preventing children being in need of care and protection by strengthening families;
- c) the objective of institutional care should be to provide care, protection, rehabilitation and re-unification of rescued children;
- d) the Bill should be very clear on the roles of the National Council of Children Services and the Department of Children Services, Street Family Fund and how the county government will partner with them;
- e) the Bill should talk of children in need of care and protection as per section 119 of the Children Act, 2001;
- f) the county governments should focus more on rehabilitation of street children;
- g) the powers of registration, licensing, inspection and closure of children's homes should be vested in a structure such as a County Area Advisory Council. The CEC Health and Social Services should be incorporated in this section; and
- h) the Bill should be clear on renewal of licenses.

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Committee Observations

1. The Committee noted the Government of Kenya's policy on upholding and promoting the right of the child to parental care as per the Constitution of Kenya Article 53 (e) and the promotion of family-based alternative care as outlined in the National Guidelines for the Alternative Family Care of Children; and that the Ministry of Labour and Social Protection has enforced the prohibition of registration of new charitable children's institutions.
2. The Committee also notes the Government's intention to scale up the de-institutionalization in favour of progressively removing children from institutions and promotion of family-based care.
3. The Committee notes that the UN Committee on the Rights of the Child has raised concerns raised by the regarding the large number of children in care institutions in Kenya.
4. The Committee notes that Kenya is a signatory to the African Charter on the Rights and Welfare of the Child which emphasizes the role of families and the right of children to be cared for by their parents, in Article 19, and that Kenya ratified it in 2000.
5. Members observed that there is a lot of business in the management of children.

4.2 Committee Recommendations

1. In view of the above observations, the Committee recommends that the Bill should be passed without any amendments so as to regulate the children homes and centres that are already in existence, and
2. The Ministry should demonstrate on how it is going to address the financial aspect of implementing reintegration of children in the promotion of family based alternative care.

THE ESTABLISHMENT OF CHILDREN'S HOMES BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

PART I – PRELIMINARY

- 1 — Short title.
- 2 — Interpretation.
- 3 — Object and purposes.
- 4 — Guiding principles.
- 5 — Non-application of Act.

PART II – CARE AND PROTECTION OF NEGLECTED CHILDREN

- 6 — Rights of a child.
- 7 — Obligations of the National government with respect to the rights of neglected children.
- 8 — Obligations of a County Government with respect to the rights of neglected children.

PART III — ESTABLISHMENT OF CHILDREN'S HOMES

- 9 — Establishment of children's homes.
- 10 — Requirement for registration and licensing.
- 11 — Registration and licencing of children's homes.
- 12 — Location assessment of intended home.
- 13 — Refusal to register a home.
- 14 — Cancellation of a licence.
- 15 — Notice of non-compliance.
- 16 — Effect of cancellation of licence.

- 17 — Closure of a home.
- 18 — Submission of reports on the management of a home.
- 19 — Establishment of committees and appointment of authorised officers.

PART IV - CARE FOR CHILDREN WITHIN A CHILDREN'S HOMES

- 20 — Welfare of children in a home.
- 21 — Right to education of children residing in a home.
- 22 — Medical care of children in a home.
- 23 — Delivery of child care in a home.
- 24 — Management of a children's home.
- 25 — Personnel in a children's home.
- 26 — Qualification of personnel in a home.
- 27 — Admission of a child into a children's home.
- 28 — Records relating to children in a home.
- 29 — Services rendered within a home.
- 30 — Role of management of a home.
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- 33 — Risk management within a home.
- 34 — Monitoring and surveillance.
- 35 — Notification of abuse of a child.
- 36 — Register of notifications on abuse of children in a home.

**PART V – INSPECTION AND EVALUATION OF SAFETY IN A
CHILDREN'S HOME**

- 37 — Safety in a children's home.
- 38 — Appointment of inspectors.
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PART VI – MISCELLANEOUS PROVISIONS

40 — General penalty.

41 — Regulations.

**PART VII - TRANSITIONAL PROVISIONS AND CONSEQUENTIAL
AMENDMENTS**

42 — Existing homes.

43 — Amendments to No. 8 of 2012.

THE ESTABLISHMENT OF CHILDREN'S HOMES BILL, 2019

A Bill for

AN ACT of Parliament to provide a framework for the care and protection of neglected children within the Counties; to provide a legal framework for the registration and licensing of children's homes within the Counties; to give effect to Article 53 with regard to neglected children; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

Short title.

1. (1) This Act may be cited as the Establishment of Children's Homes Act, 2019.

Interpretation.

2. (1) In this Act, unless the context otherwise requires —

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to children;

“child” has the meaning assigned to it under Article 260 of the Constitution;

“child abuse” has the meaning assigned to it under the Children Act;

“child care” means services that have as their primary purpose the care and supervision of neglected children;

“children's home” means facility that provides child care services, but does not include a family child care home;

No. 8 of 2001.

“Council” means the National Council for Children's Services established under section 30 of the Children Act;

“county executive committee member” means the county executive committee member responsible for health;

“neglected child” means any child in need of care and protection as defined under section 119 of the Children Act and includes a child -

- (a) who is not receiving –
 - (i) the proper care necessary for his or her well-being, including adequate food, clothing and shelter;
 - (ii) the necessary nourishment or medically indicated treatment including food;
- (b) whose care is not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician or otherwise is not receiving the proper or necessary support or medical or other remedial care necessary for a child's well-being, or other or who is subjected to an environment which is injurious insofar as –
 - (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare; and
 - (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or
- (c) who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; and

“rehabilitation” means the process by which a neglected child is enabled to reach and maintain the child's optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care.

(2) A child shall not, for the purpose of this Act, be considered as a neglected child for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time.

Objects of the Act.

3. The objects of this Act are to—
- (a) provide a framework that promotes the rights of neglected children to protection from harm and to basic nutrition, shelter and healthcare as set out under Article 53(1)(c) and (d) of the Constitution;
 - (b) promote and protect the status, well-being, safety and security of children who have no person to care for them;
 - (c) provide a framework for the registration, establishment and management of service and the establishment and management of children's homes; and
 - (d) provide a framework for the provision of quality care in children's homes established under this Act.

Guiding principles.

4. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles—
- (a) the welfare of the child is the paramount consideration;
 - (b) respect, protection, promotion and fulfilment of the rights of a child as enshrined under Article 53 of the Constitution;
 - (c) the need to rehabilitate any child who has undergone abuse or neglect and to enable such child to manage the effects of such abuse or neglect;
 - (d) the need to nurture each child as an individual with talents, strengths and capabilities that can develop over time;
 - (e) accountability of duty bearers and transparency in the implementation of this Act;

- (f) coordinated public participation in the formulation and implementation of policies and plans related to care and protection of children; and
- (g) the need to ensure that interventions for the care and protection of neglected children are based on objective information and methods and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the management of facilities and care of neglected children.

Non-application
of Act.

5. This Act shall not apply to —

- (a) persons providing care and supervision exclusively to children who are members of their immediate families;
- (b) child care services that are provided exclusively to a child in the child's home by a person other than a parent of the child; or
- (c) a home, premises or establishment that —
 - (i) would, save for this Act, be a home merely because it is used to provide accommodation for children for the purpose of a holiday or for cultural, educational, recreational or sporting activities;
 - (ii) provides day care services to children;
 - (iii) is established as a rehabilitation or remand home under the Children Act; or
 - (iv) is established as a borstal institution under section 3 of the Borstal Institutions Act.

No. 8 of 2012.

Cap. 92

**PART II – CARE AND PROTECTION OF
NEGLECTED CHILDREN**

Rights of a child.

6. Pursuant to Article 53 of the Constitution, every child has

the right to —

- (a) free and compulsory basic education;
- (b) basic nutrition, shelter and health care;
- (c) protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour;
- (d) protection from any form of physical and mental abuse;
- (e) protection from discrimination and to be free from exploitation;
- (f) take part in activities that promote the child's social, physical, mental and emotional well-being; and
- (g) receive reasonable care, assistance and protection from the family and the State.

Obligations of the National Government with respect to the rights of neglected children.

7. (1) The National and County Governments shall, to the extent of their constitutional mandate, promote the care and protection of neglected children.

(2) In ensuring that the National Government fulfils its obligations under subsection (1), the Council shall —

- (a) adopt a comprehensive national strategy and plan of action and policies for the protection and care of neglected children;
- (b) collaborate with County Governments in the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of basic services to neglected children; and
- (c) maintain a data base on neglected children in the Republic, on their status and their needs in order to put in place adequate mechanisms for the provision of services to meet such needs.

(3) In performing its functions under subsection (1), the Council shall —

- (a) collaborate with the relevant public entities in establishing mechanisms that ensure that all neglected children have access to community and State based care support systems;
- (b) collaborate with the County Governments and relevant State and private agencies in carrying out activities for the provision of such basic services to neglected children found within the respective Counties;
- (c) carry out research, data collection, analysis and the sharing and dissemination of information on the welfare of children in the Republic; and
- (d) collaborate with the County Governments in —
 - (i) establishing a mechanism for the care of neglected children to ensure that the rights conferred on a child under Article 53 of the Constitution are attained with respect to the neglected children; and
 - (ii) expanding and strengthening community and family based care and support systems for the care of neglected children; and
- (e) perform such other functions as may be necessary for the implementation of this Act.

(4) The Council may, for the purpose of subsection (3), conduct inquiries, including public inquiries, into any matter relating to the welfare, care and protection of neglected children within a County.

Obligations of a
County
Government with
respect to the care

8. Each county executive committee member shall, in ensuring that the County Government fulfils its obligation under section 7(1), —

of neglected
children.

- (a) implement the national policy and strategies relating to the care and protection of neglected children within the County;
- (b) formulate and implement county specific programmes for the care and protection of neglected children within the respective County;
- (c) deliver, in collaboration with the Council, such social services for the care and protection of neglected children within the respective County as may be considered appropriate;
- (d) provide the necessary social services essential for the welfare of families and in particular, children within the respective County;
- (e) approve and oversee the proper implementation of child welfare programmes proposed by children's homes established under this Act;
- (f) design, in collaboration with the Council, County specific programmes for the care, protection and alleviation of the plight of children –
 - (i) with special needs or requiring special care and attention within the County; and
 - (ii) living in conditions of acute hardship including street children and children who abuse drugs or who suffer any form of child abuse;
- (g) monitor and supervise children's homes and such other persons involved in the delivery of social services to neglected children in the County and coordinate the delivery of such services within the County; and
- (h) collaborate with the Council in the provision of such technical assistance, information and facilities as may be necessary to ensure the efficient delivery of

social services to in children's homes established within the county.

PART III – ESTABLISHMENT OF CHILDREN'S HOMES

Establishment of children's homes.

9. (1) A County Government may establish and maintain a children's home for the care and protection of neglected children within the county.

(2) A person shall not establish or manage a children's home unless the home is registered and a licence issued in accordance with this Act.

(3) Subsection (2) shall not apply with respect to a children's home that is established by a County Government.

Requirement for registration and licensing.

10. (1) A person shall not own or operate a children's home unless –

(a) the home is registered in accordance with this Act; and

(b) such person is issued with a licence to operate the home under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Registration and licencing of a children's home.

11. (1) A person who intends to establish a children's home shall make an application to the county executive committee member in the form prescribed by the county executive committee member for the registration of the home and the issuance of a licence to an applicant to operate the home.

(2) Each County Government may enact county specific legislation setting out the –

(a) criteria for the registration of a children's home within the respective county;

- (b) information required to be submitted by an applicant for registration;
- (c) process of determination of an application for registration of a children's home;
- (d) the conditions for the issuance or renewal of a licence under this Act;
- (e) the grounds for the rejection of an application or cancellation of a licence issued under this Act;
- (f) the process of issuance of a licence to an applicant for the management of a home; and
- (g) process of application for the renewal of licences, de-registration and revocation of a licence issued to an applicant under this Act.

(3) Where county legislation has not been enacted, the requirements under the Schedule shall apply.

Location
assessment of
intended home.

12. (1) An applicant for registration and licencing shall undertake and submit, together with the application for registration under section 11, a location assessment report setting out evidence of the steps taken to ensure that the premises used for the purposes of the children's home are appropriately and suitably located.

(2) A location assessment report shall contain the following information –

- (a) whether the premises are suitably located so that children cared for in the home are –
 - (i) effectively safeguarded, and
 - (ii) able to access services to meet the needs identified for their care;
- (b) whether the location of the home influences the

potential for an already vulnerable child to be a victim of crime;

- (c) whether there is a likelihood of children placed in the home becoming drawn into gang crime or anti-social behaviour in the local area;
- (d) the suitability of the local neighbourhood as a location to care for children who may have already been victims of abuse and neglect;
- (e) whether there are environmental factors that would represent a hazard to children within the home; and
- (f) such other criteria as the county executive committee member shall determine.

(3) A person who is licensed under this Act shall undertake a location assessment to review the appropriateness and suitability of the location of the premises at least once in every four calendar years.

Refusal to register
a home.

13. (1) The county executive committee member may refuse to register a children's home where—

- (a) the applicant fails to meet the conditions for registration specified in county legislation enacted pursuant to section 11; or
- (b) the application does not comply with the requirements imposed under this Act or prescribed under the specific county legislation.

(2) The county executive committee member shall notify the applicant of the decision within fourteen days of such refusal.

Cancellation of a
licence.

14. (1) The county executive committee member may, subject to the provisions of section 15, cancel the licence issued to a person under this Act in accordance with legislation enacted pursuant to subsection (4).

(2) The county executive committee member shall not cancel

a licence under subsection (1) unless the Committee Member—

(a) issues to the licensee, a notice of at least fourteen days of the intention to revoke the licence in accordance with section 15; and

(a) grants the licensee, an opportunity to be heard on the revocation.

(3) The county executive committee member shall cancel the licence issued to an applicant in relation to, and de-register, a home which has ceased to be a home or which has been closed down.

(4) A county government may enact county legislation prescribing the grounds for, and the process of, cancelling a licence issued to a person to manage a home under this Act.

(5) Where county legislation has not been enacted, the provisions of the Schedule shall apply.

Notice of non-compliance.

15. (1) A county executive committee member shall, before cancelling the licence issued to a person to manage a home under this Act, issue to the licensee a compliance notice in the prescribed form.

(2) A compliance notice issued under subsection (1) shall—

(a) be in writing;

(b) notify the licensee of the non-compliance and the steps required to be undertaken in order to comply; and

(c) inform the licensee of the time period within which the manager is required to comply with the notice.

(3) The county executive committee member may, upon request by the licensee and, where there are sufficient grounds shown by the licensee, extend the period of compliance for such period as the committee member may consider necessary to ensure compliance.

Effect of

16. (1) Where a licensee who receives a notice under section

cancellation of
licence.

15 fails to comply with such notice, the county executive committee member shall —

- (a) cancel the licence issued to such person;
- (b) notify the licensee in writing of—
 - (i) the cancellation and the reasons for it; and
 - (ii) the date on which the licence was cancelled;
- (c) remove the name of the licensee from the register of licenced persons; and
- (d) cause the name of the licensee whose licence has been revoked to be published in the *County Gazette* within seven days from the date of the revocation.

(2) Where the licence of a home has been cancelled, all the rights and benefits that accrue to the home by virtue of being registered under this Act shall cease to accrue to it.

(3) For purposes of this Act, a cancellation of registration takes effect on the date on which the licence is cancelled by the county executive committee member.

Closure of a
home.

17. (1) Where the licence of a children's home is cancelled under section 14, the licensee shall ensure that on the closing down of the home, the children residing in the home are accommodated in another registered children's home.

(2) Where a licensee intends to close down a children's home for any other reason other than the de-registration of the home, the licensee shall —

- (a) inform the county executive committee member of the intention to close down the home and submit a report to the committee member containing information regarding—
 - (i) the children residing in the home;
 - (ii) the management and persons employed in the

home;

- (iii) any investigations or cases that may have been carried out or instituted against the home or that are pending in relation to the home;
 - (iv) the steps taken regarding the future accommodation of the children residing in the home; and
 - (v) such other information as the county executive committee member may require;
- (b) at least six months before the closing down of that home notify the children of such closure; and
- (c) ensure that prior to closing down of the home, the children residing in the home have been accommodated in another registered home.

(3) A licensee under subsection (2) shall not close down the home unless the licensee has applied for and obtained the approval of the county executive committee member in the prescribed form.

(4) The county executive committee member shall, upon receipt of an application to close down a home under subsection (3), consider the application within thirty days from the date of receipt of the application and approve the application for such closure except where -

- (a) the manager fails to comply with subsection (2); or
- (b) such closure would be against public interest.

Submission of reports on the management of a home.

18. (1) The manager of a children's home under this Act shall, within three months from the end of each financial year, submit to the county executive committee member and the Council, a report regarding the management of the home.

(2) A report under subsection (1) shall contain the following information-

- (a) compliance with the standards for service delivery ,

prescribed in this Act or any other law;

- (b) the number of children residing in the home including the date of their admission into, and discharge from the home;
- (c) compliance with principles of sound management systems;
- (d) compliance with the conditions for continued registration; and
- (e) such other information as the county executive committee member may require.

(2) If the manager of a children's home fails to submit a report in accordance with subsection (1), the county executive committee member may revoke the licence issued to the licensee and de-register the home or take such action as the county executive committee member may consider necessary to ensure compliance.

Establishment of committees and appointment of authorised officers.

19. A county executive committee member may establish a committee and appoint such authorized officers as may be necessary for the implementation of this Act.

PART IV - CARE OF CHILDREN WITHIN A CHILDREN'S HOME

Welfare of children in a home.

20. A licensee shall, in respect of a home to which a licence is issued, ensure that –

- (a) each child is provided with sufficient and nutritious food to keep the child in good health;
- (b) in the case of children of four or more years of age, children of different gender do not sleep in the same room;
- (c) the daily routine of the home, including the hours appointed for rising, school instruction, practical training, chores, meals, recreation, study and retiring

to bed, are in accordance with the standards and conditions that may be prescribed by the county executive committee member;

- (d) a child who resides in the home does not engage in the solicitation of money or other aid for the maintenance of the home from any member of the public; and
- (e) no child who resides, or is, at the home is employed in any work that is likely to-
 - (i) impair that child's health or capacity for benefiting from instruction; or
 - (ii) deprive the child of reasonable recreation or leisure.

Right to education of children residing in a home.

21. (1) A licensee shall arrange for the proper education of every child who resides at the children's home.

(2) Where educational programmes are provided at the home, the licensee shall ensure that –

- (a) the educational programmes are in accordance with a curriculum approved by the Cabinet Secretary responsible for matters relating to education in the case primary and secondary education and the county executive committee member responsible for education in the case of early childhood education and vocational training; and
- (b) the attendance of each child who resides at the home for educational and practical training classes is recorded in a register provided by the licensee for that purpose.

Medical care of children in a home.

22. (1) A licensee shall-

- (a) appoint a medical officer, who is a qualified medical practitioner, for the home; or

- (b) make suitable arrangements for the treatment of the children of the home at a health facility located at reasonably accessible proximity to the home.

(2) The county executive committee member shall, in consultation with the county executive committee member responsible for matters relating to health, make regulations for the medical care of children residing in a children's home.

Delivery of child care in a home.

23. The delivery of child care in a children's home under this Act shall ensure—

- (a) the protection and promotion of the welfare of each child in the home;
- (b) that every child is treated with dignity and respect;
- (c) that as far as possible, that every child received personalised care that meets the child's needs;
- (d) the support of each child to manage the consequences of any abuse or neglect;
- (e) the support of each child to develop resilience and skills that prepare them to live in a new place or live independently as an adult; and
- (f) that each child is —
 - (i) provided with the necessary physical necessities including personal items; and
 - (ii) enabled to provide feedback to, and raise issues with, the relevant persons in the home regarding the support, services and care received by that child in the home.

Management of a children's home.

24. A licensee shall ensure that-

- (a) the home commences operation as a children's home not later than six months after the grant of the licence;

- (b) the number of children resident in the home at any time shall not exceed the number specified in the licence;
- (c) a child who is not within the age limits specified in the licence is not allowed to reside in the home;
- (d) the standards set out in -
 - (i) legislation enacted by the respective County Assembly; or
 - (ii) any other legislation applicable to a children's home, issuedare observed in relation to the home; and
- (e) the licence is displayed in a conspicuous place in the home.

Personnel in a children's home.

25. (1) Every children's home shall have such number of qualified personnel including social or community workers as shall be determined by the county executive committee member in accordance with subsection (2).

(2) The number of personnel in a children's home shall be based on the number of children cared for or housed in the home and on such other factors as the county executive committee member may, by notice in the *Gazette*, determine.

Qualification of personnel in a home.

26. The licensee shall—

- (a) where the licensee is not the manager of the registered children's home, employ a qualified person to manage the home;
- (b) employ such qualified personnel who meet the criteria specified under county legislation;
- (c) ensure that each employee completes an appropriate induction; and

- (d) provide each employee with a job description outlining the employee's responsibilities.

Admission of a child into a children's home.

27. (1) The manager of a children's home which is established by a County Government shall not refuse to admit into the home, a neglected child.

(2) The manager of a children's home shall admit a child where such child is not a neglected child but who is—

- (a) in urgent need of care and protection and who is delivered to the children's home; or
- (b) referred to the institution by way of an order of the court for the care and protection of the child in a children's home.

(3) The manager of a children's home shall, upon admitting a child into the home, explain and inform the child regarding —

- (a) the available facilities and services within the home and the entitlements to such child in the home;
- (b) the manner in which access to such facilities can be obtained;
- (c) the personnel in the home and the persons whom the child may consult in the home; and
- (d) the complaints procedure including the person to whom a complaint may be lodged or any issue raised.

(4) A child shall be admitted into a children's home in accordance with legislation enacted by the respective County Assembly.

Records relating to children in a home.

28. The manager of a home shall keep or cause to be kept, in respect of each child in the home, a register containing —

- (a) all available information on the status, health and welfare of the child, including demographic data,

physical and mental health status, educational profile, socio-economic status, guardianship, and closest family relation, and, for that purpose, information may be received from a social inquiry report and any data available from the Council;

(b) a health record containing the following details-

(i) every visit to a medical practitioner or health care provider, with the dates and times of such visits and the names of the persons who accompanied the child on such visits;

(ii) illnesses, presenting symptoms, treatment and drugs prescribed or administered, accompanied by a health card indicating diseases against which the child has been immunized; and

(c) the school record with respect to a child.

Services rendered
within a home.

29. The manager of a home registered under this Act shall ensure that the following services are provided in the home –

(a) twenty-four hour care and support services to children in the home;

(b) care and supervision services to children in the home who may have special needs and those in need of special care and attention;

(c) counselling and rehabilitation to a child who may have undergone any form of abuse or neglect;

(d) outreach programmes; and

(e) recreational activities.

Role of
management of a
home.

30. (1) The manager of a children's home shall —

(a) ensure that the premises used for the purposes of the home are designed and furnished so as to —

- (i) meet the needs of each child; and
 - (ii) enable each child to participate in the daily life of the home;
 - (b) ensure that any care that is arranged or provided for a child that relates to the child's development;
 - (c) seek to develop and maintain effective professional relationships with such persons, bodies or organizations as may be appropriate having regard to the range of needs of children who the children's home provide care and accommodation;
 - (d) ensure the provision of quality service to the home;
 - (e) ensure the continuous training of the personnel in the home;
 - (f) apply principles of sound financial management and submit quarterly financial reports to the residents or the family members of the residents of the home;
 - (g) monitor activities at the home in order to deal speedily with any incidents of abuse of the children in the home and takes steps to report such incidents to the appropriate authority; and
 - (h) meet the conditions set out under subsection (2) with respect to the home.
- (2) A manager in a children's home shall ensure that –
- (a) the standard of care provided in the children's home is reviewed from time to time to ensure that the obligations with respect to the provision of care is of children in the home under this Act are met;
 - (b) the care is delivered by a person who –
 - (i) has the experience, knowledge and skills to deliver that care; and

(ii) is under the supervision of a person who is appropriately skilled and qualified to supervise that care; and

(c) there is in place medical facilities within the vicinity of the children's home.

Conduct of
personnel in a
children's home.

31. The manager of a children's home shall ensure that the employees of the home give quality care to children in the home and in particular, shall —

(a) deliver care that meets the needs of each child and supports each child to fulfil their potential

(b) protect and promote each child's welfare;

(c) treat each child with dignity and respect;

(d) provide personalised care that meets each child's needs taking account of the background of the child;

(e) help each child to understand and manage the impact of any experience of abuse or neglect;

(f) help each child to develop resilience and skills that prepare the child to live in an adoption home or to live independently as an adult;

(g) provide to children living in the home the physical necessities they need in order to live there comfortably;

(h) provide to children personal items that are appropriate for their age and understanding;

(i) make decisions about the day-to-day arrangements with respect to each child, in accordance with the child's relevant plans, which give the child an appropriate degree of freedom and choice; and

(j) ensure that the premises used for the purposes of the

home are designed and furnished so as to —

- (i) meet the needs of each child; and
- (ii) enable each child to participate in the daily life of the home.

Discipline of
children in a
home.

32. (1) No measure of control or discipline which is excessive, unreasonable or contrary to subsection (2) may be used in relation to any child.

(2) The following measures shall not be used to discipline any child—

- (a) any form of corporal punishment;
- (b) any punishment involving the consumption or deprivation of food or drink;
- (c) any restriction, other than one imposed by a court;
- (d) the use or withholding of medication, or medical or dental treatment;
- (e) the intentional deprivation of sleep;
- (f) any inappropriate physical examination;
- (g) withholding any aids or equipment needed by a disabled child;
- (h) any measure involving a child imposing any measure against another child; or
- (i) any measure involving punishing a group of children for the behaviour of an individual child.

(3) Nothing in this section shall prohibit—

- (a) the taking of any action by, or in accordance with the instructions of, a registered medical practitioner or a registered dental practitioner which is necessary to

protect the health of the child; or

- (b) taking any action that is necessary to prevent injury to any person or serious damage to property.

Risk management within a home.

33. (1) The manager of a children's home shall put in place such management strategies as the manager considers appropriate for the purpose of supporting children within the home to manage any safeguarding concerns and enabling the children to access the appropriate services within the county.

(2) The manager shall, for the purpose of subsection (1) –

- (a) collaborate with the relevant authorities and stakeholders in developing strategies for the management of, and the minimizing of risks that are likely to be faced by children within the home;
- (b) involve the children in the development of strategies under paragraph (a);
- (c) sensitise the children in the home about risks and support them in developing skills and strategies for managing those risks;
- (d) facilitate access, by children within the home to sources of confidential advice and advocacy so as to enable them feel safe to disclose any risks that they face; and
- (e) put in place the necessary infrastructure for the purpose of improving the security and securing the home from potential predators.

Monitoring and surveillance.

34. (1) The manager of a home may only use devices for the monitoring or surveillance of children in the home where—

- (a) such monitoring or surveillance is for the purpose of safeguarding and promoting the welfare of the children within the home;
- (b) so far as reasonably practicable in the light of the

child's age and understanding, the child is informed in advance of the intention to do the monitoring or surveillance; and

- (c) the monitoring or surveillance is no more intrusive than necessary, having regard to the child's need for privacy.

(2) The county executive committee member may make regulations for the monitoring and surveillance of children's homes within the County.

Notification of
abuse of a child.

35. (1) Every medical practitioner, social worker or any other person who examines, attends to or deals with a child in a children's home and who suspects that the child—

- (a) has been abused; or

- (b) suffers from any injury,

shall notify the county executive committee member and the Director of Medical Services of the abuse or injury.

(2) Upon receipt of a notification under subsection (1), the Director of Medical Services shall conduct such investigation as the Director considers necessary and upon establishing that the child has been subjected to any form of abuse, the Director shall inform the Inspector General who shall take such action as is appropriate.

(3) On receipt of a notification under subsection (1), the Director of Medical Services in consultation with the county executive committee member may, in addition to such action as may be taken by the Inspector General of Police —

- (a) remove of the child from the current home and place the child in a hospital, another children's or such other place as the Director may consider appropriate;

- (b) arrange, where necessary, that the child receives medical treatment;

- (c) arrange, where necessary, for the removal and transfer of

the other children housed in the home to another children's home;

(4) Any medical practitioner, social worker or other person is not liable for any action or claim for damages in respect of any notification given in good faith in accordance with subsection (1).

(5) Any medical practitioner, nurse, social worker or other person who fails to comply with subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both such fine and such imprisonment.

Register of notifications on abuse of children in a home.

36. (1) The county executive committee member shall keep a register of notifications received by it pursuant to section 14(1) containing –

- (a) information relating to the affected children;
- (b) information relating to the person alleged to have abused the children;
- (c) the date of the notification;
- (d) a description of the circumstances regarding each notification;
- (e) the action taken by the relevant authorities; and
- (f) such other information as the county executive committee member shall consider appropriate.

(2) A person who is found guilty of having abused a child in a children's home and whose name appears in the register kept under subsection (1) shall not –

- (a) operate or be employed in any children's home; or
- (b) provide any community-based care and services.

PART V – INSPECTION AND EVALUATION OF SAFETY IN A CHILDREN'S HOME

Safety in a
children's home.

37. A licenced person and manager in children's home under this Act shall –

- (a) maintain premises that meet the requirements of the occupational health, safety regulations and building standards;
- (b) ensure the welfare and safety of the children within the home;
- (c) put in place fire fighting equipment, first aid and other emergency equipment and non-prescription medicine as the county executive committee member may prescribe; and
- (d) have a list of the contacts of emergency service providers including hospitals, readily available to all members of staff.

(2) In providing the equipment specified under subsection (1)(c), the manager shall ensure that such equipment is accessible during an emergency.

(3) The equipment and medicine under subsection (1) shall be maintained or kept by a centre in such manner as to ensure that it is out of the reach of children and ensures that the safety of the children is not compromised.

(4) The county executive committee member shall prescribe minimum standards for the health and safety of children and for a satisfactory environment for the housing of the children in the home.

Appointment of
inspectors.

38. (1) The county executive committee member shall, for purposes of monitoring and evaluating the provision of services by homes registered under this Act, designate such authorised officers or other county public officers as inspectors as the county executive committee member may consider appropriate.

(2) The County Public Service Board shall, in consultation with the county executive committee member, issue to every inspector appointed under subsection (1) in writing or in such form

as the County Public Service Board may determine, a certificate of appointment and authority to act as an inspector.

(3) A person appointed as an inspector under subsection (1) may, at all reasonable times, enter a children's home and -

- (a) enter the home and to have access to every part thereof;
- (b) interview any child of the home, either alone or in the presence and hearing of a member of staff of the home;
- (c) hear and make enquiries concerning any complaint made to them by a child of the home;
- (d) inspect, photocopy, print out, or copy onto disk any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the home; or
- (e) remove any document specified in paragraph (b), whether in its original form or as an electronic or paper copy.

(4) Every person exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation and evidence of identity, and shall produce them to the person in charge of the home concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

(5) For the purposes of this section, inspection, in relation to any home, includes meeting and talking with the children residing in the home.

(6) The County Executive Committee member shall make

regulations for the conduct of inspections of children's homes under this Act.

Powers of an inspection officer.

39. (1) Every written authorisation issued to an inspector under section 37 shall contain—

- (a) a reference to this section;
- (b) the full name of the person authorised; and
- (c) a statement of the powers conferred on that person by this section.

PART VI - MISCELLANEOUS PROVISIONS

General penalty

40. A person who is convicted of an offence under this Act for which no penalty is provided is liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.

Regulations.

41. (1) The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make Regulations –

- (a) setting out the standards required to be adhered to by County Governments in the establishment of children's homes;
- (b) prescribing the programmes that may be administered in a children's home; and
- (c) prescribing the qualifications required to be held by persons managing, employed in or rendering services in a children's home.

(3) Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to neglected children; and
- (b) in respect of different kinds of licencing.

(4) For the purposes of Article 94(6) of the Constitution –

Cap. 2.

No. 23 of 2013.

- (a) the authority of the county executive committee member to make Regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to Regulations made under this Act.

PART VII - TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

Existing homes.

No. 8 of 2001.

42. (1) Subject to subsections (2), (3), and (6), every home that, immediately before the commencement of this Act, was registered as a charitable children's institution under the Children Act or as a children's home under any other law shall be deemed to be registered as a children's home under this Act, and continues to be so licensed for the relevant period of registration subject to such conditions of registration as may be imposed under this Act.

(2) Despite subsection (1), the county executive committee member may give written notice to the registered owner of a home registered under subsection (1), requiring the manager who operates that home to apply for registration under section 11 within three months of the date of that notice, and—

- (a) if the manager fails to apply for registration within the specified period, the home ceases to be registered under subsection (1) at the end of that period; or
- (b) if the manager applies for registration within the required period, the centre shall continue to be a

registered home under subsection (1) until that application has been determined.

(3) Despite subsection (1), if subsection (4) applies, the county executive committee member may, by written notice to the manager who operates a children's home that is deemed to be registered under subsection (1), declare that the home is no longer registered under subsection (1) and the notice has effect accordingly.

(4) The county executive committee member may give a notice under subsection (3) only if it is satisfied that the manager or the home—

(a) has failed to comply with this Act on the requirements of registration; or

(b) has failed to comply with any conditions for registration.

(5) The county executive committee member may, despite the fact that the home concerned does not meet the minimum requirements for registration prescribed under this Act, issue to the manager operating the home a transitional certificate in such manner as the county executive committee member may prescribe and subject to such conditions as he or she may impose.

(6) Where the county executive committee member is not satisfied that the conditions specified in a certificate issued under subsection (5) are being complied with, the county executive committee member may, by written notice to the manager operating the home, cancel the certificate of registration.

(7) Every notice under subsection (3) or subsection (6) shall set out the reasons for the action taken.

(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of a children's home in the manner prescribed by the county executive committee member.

Amendment to
No. 8 of 2012.

43. The Children Act is amended –

(a) in section 2 by –

- (i) deleting the definition of the word "appointed local authority";
- (ii) deleting the definition of the word "Area Advisory Council";
- (iii) deleting the definition of the word "authorised officer";
- (iv) by deleting the definition of the word "home";
- (v) by inserting the following new definitions in their proper alphabetical sequence -
 - (a) "authorised officer" means a person appointed by the county executive committee member under the Establishment of Children's Homes Act for the purposes of this Act;
 - (b) "children's home" has the meaning assigned to it under the Establishment of Children's Home Act";
 - (c) "county executive committee member" means the county executive committee member responsible for matters relating to child welfare services in the County;
- (b) In section 31 by deleting the words "Local Authorities" appearing immediately after the words "Ministry responsible for" and substituting therefor the words "devolution";
- (c) in section 32 by –
 - (i) deleting subsection (1) and substituting the following new subsection -
 - (1) The object and purpose for which the Council is established is to design and formulate policy and strategies in relation to the delivery of child welfare services and, in consultation with the

county executive committee members in each County, co-ordinate and oversee the implementation of such policy and strategies in each County.

- (ii) deleting the word "supervise" appearing in paragraph (b) of subsection (2);
- (iii) inserting the words "County Governments and other" immediately after the words "support services to" in paragraph (f) of subsection (2); and
- (iv) deleting paragraphs (k), (l) (n), and (o);
- (d) by deleting sections 40 to 46;
- (e) by deleting sections 58 to 72;
- (f) in section 120 by –
 - (i) deleting subsection (12) and substituting therefor the following new subsection -

(12) Where it appears to a children's home that a child in its area is in need of care and protection and that its intervention is necessary, the children's home shall -

- (a) receive such child into its care and need not bring the child before a court immediately;
- (b) notify the county executive committee member within seven days of receiving the child into its care;
- (c) ensure that the child is brought before a court within three months;
- (d) hand over the child to the parent or guardian of the child where such parent or guardian seeks to assume the care of the child; and

- (e) where it appears to be in the best interest 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 a friend who should, if possible, be of the same religion, race, tribe or clan as the child.
- (ii) deleting the words "A local authority or charitable children's institution" appearing in subsection (13) and substituting therefore the words "A children's home".
- (f) in section 122 by deleting the words "local authority" appearing immediately after the words "of a particular" and substituting therefor the words "County";
- (g) in section 125 by deleting the words "an appointed local authority, a charitable children's institution" appearing immediately after the words "custody of" in subsection (5) and substituting therefor the words "children's home";
- (h) in section 126 by deleting the words "children's voluntary institution or appointed local authority" appearing immediately after the words "to the person" in subsection (1) and substituting therefor the words "children's home or county executive committee member";
- (i) in section 132 by deleting the words "appointed local authority or an institution" appearing immediately after the words "child or to an" and substituting therefor the words "children's home";
- (j) in section 138 by –
 - (i) deleting the words "charitable children's institution or appointed local authority" appearing immediately after the words "fit person" in the

opening paragraph and substituting therefore the words "children's home"; and

(ii) deleting the words "charitable children's institution" appearing in paragraph (ii) and substituting therefor the words "children's home";

(k) by deleting section 139 and substituting therefor the following new section –

139. (1) Whenever a child runs away from any person or home with whom or with which he has been placed by a children's home aforesaid, it shall be the duty of the officer responsible for the management of the home or relevant authorised officer, within forty-eight hours of such occurrence coming to his or her knowledge, to notify the county executive committee member.

(2) A person who contravenes the provision of subsection (1) 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 six months or to both.

(l) in section 141 by deleting the words "charitable children's institution" appearing in subparagraph (i) of paragraph (a) and substituting therefor the words "children's home";

(m) in section 147 by deleting the words "charitable children's institution" appearing immediately after the words "or to a" in subsection (1) and substituting therefor the words "children's home";

(n) in section 191 by deleting the words "charitable children's institution" appearing immediately after the words "or a" in paragraph (d) of subsection (1) and substituting therefor the words "children's home";

(o) in section 199 by deleting the words "local authorities or charitable children's institution" appearing

immediately after the words "in aid to" in subsection (1) and substituting therefor the words "children's home";

(p) by deleting the Second Schedule; and

(q) by deleting the Eighth Schedule.

SCHEDULE

S. 11(3), 14(5)

LICENCING AND REGISTRATION PROVISIONS TO BE APPLIED BY A COUNTY GOVERNMENT PENDING THE ENACTMENT OF LEGISLATION

Determination of an application for registration and licencing

1. A county executive committee member shall consider an application made for registration of a children's home and may, if satisfied that the applicant meets the requirements of this Act, register the applicant upon payment of the prescribed fee.
2. The county executive committee member shall –
 - (a) communicate the decision under paragraph in writing;
 - (b) enter the name of the home into a register maintained for that purpose; and
 - (c) issue to the applicant a licence,

within fourteen days of its decision to register the applicant.
3. The county executive committee member may, where the Committee Member considers it necessary, call for such further information or carry out such inspections as county executive committee member may consider necessary for the determination of the application.
4. The county executive committee member may, in registering and issuing a licence under paragraph 1, impose such terms and conditions on the applicant as maybe necessary and may, from time to time, vary such conditions.

5. The county executive committee member shall set out in the licence granted to an applicant under this section, any term or condition imposed under paragraph 4.
6. A licence issued to an applicant under paragraph 2 shall not be transferable to another person.
7. A licence issued under this Act shall, unless earlier revoked, be valid up to the 31st December of the year in which it is issued and may, on expiry, be renewed on application by the licensee.
8. Despite paragraph 7, where an application for the renewal of a licence is made, the licence shall be deemed to continue in force until the application is determined.
9. The county executive committee member may for the purpose of considering applications under this section constitute a committee consisting of such public officers serving within the relevant department not exceeding three to consider such applications.

Renewal of a licence

10. An application for the renewal of a licence shall be made to the county executive committee member in the prescribed form and shall be—
 - (a) made at least three months immediately preceding the expiry of the licence;
 - (b) submitted to the county executive committee member together with the documents required for registration under the Act; and
 - (c) be considered in the same manner as an application for registration.
11. Where an application for the renewal of a licence is not lodged within three months immediately preceding its expiry, the county executive committee member may consider such application upon payment of an additional fee of such an amount as the county executive committee member may, by notice in the Gazette, determine.
12. The county executive committee member shall consider an application made under paragraph 10 and may, if satisfied that the applicant meets the requirements of this Act, renew the licence of an applicant upon payment of the prescribed fee.

Refusal to register a home

13. The county executive committee member may refuse to register a children's home where—
- (a) the applicant has submitted false or misleading information in the application;
 - (b) the application does not comply with the provisions of this Act;
 - (c) the name of the home is identical to another registered home or so nearly resembles the name of another home as to be likely to mislead the public as to its nature or identity; or
 - (d) the managers or personnel do not meet the qualifications required for the care and support of senior citizens prescribed under this Act or under any other written law.
14. The county executive committee member shall notify the applicant of the decision within fourteen days of such refusal.

Grounds for cancellation of a licence

15. The county executive committee member may, subject to the issuance of a notice in accordance with the Act, cancel the registration of a children's home where —
- (a) the county executive committee member has reasonable cause to believe that the home has among its objects or is likely to pursue an unlawful cause or purpose prejudicial to the peace, welfare or good order of the community;
 - (b) the manager or employees of the home fail to comply with—
 - (i) any directive issued by the county executive committee member to ensure compliance with the provisions of the Act; or
 - (ii) a condition for registration and issuance of a licence under the Act;
 - (c) the applicant fails to submit any information required under this Act or requested by the county executive committee member in order to ensure compliance with the Act; or
 - (d) the county executive committee member determines that the applicant submitted false information or statements at the time of registration of

the home.

16. The county executive committee member shall not revoke a licence under paragraph 15 unless the Committee Member—

(a) issues to the licensee, a notice of at least fourteen days of its intention to revoke the licence; and

(b) grants the licensee, an opportunity to be heard on the revocation.

17. The county executive committee member shall cancel the registration of any registered home which has ceased to be a home or which has been closed down.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to provide a framework for the registration and licensing of children's homes so as to ensure the provision of care and protection to neglected children found in every County. This would therefore give effect to Article 53(1)(c) and (d) of the Constitution on the right of every child to –

(c) basic nutrition, shelter and healthcare; and

(d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.

The Bill recognises the fact that the function relating to the provision of children's facilities is a devolved function and while we have in place the Children Act which provides a provides a framework through which existing institutions are established, it has become necessary to amend the Children Act in order to align it with the Constitution and to address any existing gaps in the care and protection of neglected children.

The Bill provides the overall framework and sets out the standards that are to be adhered to by the County Governments and leaves it to each County Government to establish the legal framework for the establishment and regulation of children's homes within the respective County.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalising the Act in order to implement the objectives set out in the Bill. The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

This Bill is expected to provide a framework through which county governments are to put in place mechanisms for the implementation of policies and programmes necessary for the protection and care of neglected children in each County. In particular, the counties are expected to establish homes and implement programmes within the county for the care of neglected children. The County Governments, through the respective county executive committee members are responsible for the registration of homes and the licensing of persons responsible for the management of the homes.

Paragraph 9 in Part 2 of the Fourth Schedule to the Constitution confers on each County Government, a role with respect to the provision of childcare facilities. These include the establishment of homes particularly for the vulnerable children who have no one to care for them. The Bill sets out the overall framework with regards to the minimum standards required for the establishment of children's homes by each County. Each County is required to prepare county specific legislation for the regulation of such homes.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the, 2019.

AGNES ZANI
Senator.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT THE SENATE

PUBLIC HEARINGS / RECEIPT OF MEMORANDA

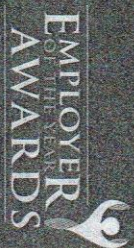
The Establishment of Children's Homes Bill (Senate Bills No. 12 of 2019) was read a First Time in the Senate on Tuesday, 6th August, 2019 and was thereafter committed to the Senate Standing Committee on Labour and Social Welfare for consideration.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Senate Standing Committee on Labour and Social Welfare now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted in the following manner-

1. Public Hearing for the Bill shall be held on **Wednesday, 11th September, 2019 at the County Hall Mini Chamber, 1st Floor, County Hall Building, Nairobi** from 11.30 am to 1.00 pm.
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to csenate@parliament.go.ke, to be received **on or before Wednesday, 11th September, 2019 at 5.00 p.m.**

The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/senate>.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**



**20TH SEPT 2019
TIME: 6:00 pm**

Employer of the Year Awards (EYA) & Gala Dinner

The Federation of Kenya Employers invites all its members to the EYA gala dinner on **Friday, 20th September 2019 to Honour the Best Employers.**

VENUE:
Radisson Blu, Elgon Road, Upper Hill, Nairobi.

DRESS CODE:
Formal evening wear

COST:
Kshs 7,000 +VAT **Kshs 60,000 +VAT**
(Individual ticket) (Per corporate table of 8 delegates)

Book your ticket online by Monday 16th of September 2019 through www.eya-kenya.org or call Judy/Samuel on 0709 827101/102 or email eya@fke-kenya.org

**MEDIA
PARTNER:**



Nation Media Group



FEDERATION OF
KENYA EMPLOYERS
The Voice of Employers



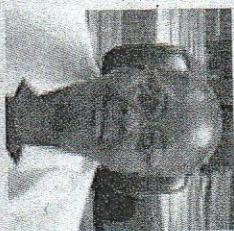
ANSO-MMU-SAJOREC INTERNATIONAL CONFERENCE ON BIODIVERSITY IN DRYLANDS AND WETLANDS FOR SUSTAINABLE DEVELOPMENT

The whole universe is craving for a forthcoming International Conference sponsored by the Alliance of International Science Organization (ANSO), and co-organized by Sino-Africa Joint Research Center (SAJOREC) and Maasai Mara University entitled:

"Biodiversity in Drylands and Wetlands: Challenges and Opportunities in the 21st Century" with the **Theme: Biodiversity for Sustainable Development**

This will be the first ever conference of such status being held in Africa, running between 4th - 6th September, 2019 at **Maasai Mara University (MMU), Narok County, Kenya**. The conference will woo several of the world's foremost research thinkers, entrepreneurs, innovators and scholars to discuss ways of harnessing Biodiversity for Sustainable Development.

The Chief Guest during the Conference Opening Ceremony on 4th September, 2019 will be Prof. BAI Chunli, a chemist and an expert in nanoscience, the President of the Chinese Academy of Sciences (CAS), and the Chairman of the Presidium of the Academic Divisions of CAS. He is also President of the World Academy of Science for the Advancement of Science in Developing Countries (TWAS), the Honorary President of the University of Science and Technology, and the Honorary President of the University of the Chinese Academy of Sciences (UCAS). Prof. BAI will also handover new ultra-modern Research Laboratories with equipment and facilities worth KSh. 65M and a world-class African Medicinal Botanical Garden (AMBG) with a modern MMU Wastewater Effluent Management System (MMWEMS) to a tune of KSh 42M



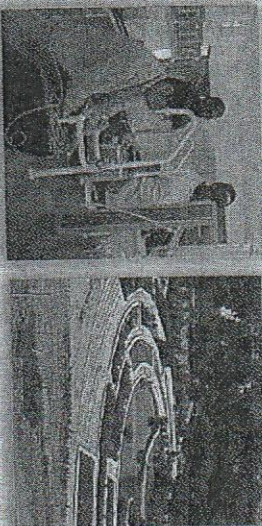
Prof. Mary Wellingo
(Vice Chancellor
Maasai Mara University)



Prof. Bai Chunli
(Chief Guest during
the Conference
Opening Ceremony)

The Chief Guest to crown the conference on 6th September, 2019 will be Dr. Erick Mwangi, Acting Director, Research and Development, Ministry of Education.

The conference purposes to provide an arena for global professionals with varied backgrounds from both private and public sector to mutually address the diverse development challenges and opportunities in the drylands and wetlands in the 21st Century. This is in the light of the Big Four Agenda steered by the Kenyan Government. The conference proceedings and inputs from experts will be repackaged and published in a global book which will ultimately culminate to noble recommendations and policies to root out the degradation of Wetlands and Drylands.



For more facts, please contact:
The Vice-Chancellor, Maasai Mara University,
P.O. Box. 861-20500, Narok, Kenya.
Tel: +254 20 5131400, Email: info@mmarau.ac.ke
Website: www.mmarau.ac.ke



REPUBLIC OF KENYA TWELFTH PARLIAMENT THE SENATE



PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The **Establishment of Children's Homes Bill (Senate Bills No. 12 of 2019)** was read a First Time in the Senate on Tuesday, 6th August, 2019 and was thereafter committed to the Senate Standing Committee on Labour and Social Welfare for consideration.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Senate Standing Committee on Labour and Social Welfare now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted in the following manner-

1. Public Hearing for the Bill shall be held on **Wednesday, 11th September, 2019 at the County Hall Mini Chamber, 1st Floor, County Hall Building, Nairobi** from 11.30 am to 1.00 pm.
2. Written Memoranda may be forwarded to the **Clerk of the Senate/Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk of the Senate/Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to csenate@parliament.go.ke to be received **on or before Wednesday, 11th September, 2019 at 5.00 p.m.**

The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/> senate.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**

MINUTES OF THE 46TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON WEDNESDAY, 23RD OCTOBER, 2019 AT THE GROUND FLOOR BOARDROOM, RED CROSS BUILDINGS FROM 10.00 AM.

MEMBERS PRESENT

- | | |
|--|-------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru | - Member |
| 4. Sen. Cherarkey Samson Kiprotich | -Member |
| 5. Sen. (Dr.) Inimah Gertrude Musuruve | -Member |
| 6. Sen. Lokorio Petronila Were | -Member |

ABSENT WITH APOLOGIES

- | | |
|--------------------------------------|---------|
| 1. Sen. Poghisio Samuel Losuron, EGH | -Member |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 3. Sen. Makori Beatrice Kwamboka | -Member |

SENATE SECRETARIAT

- | | |
|------------------------|-------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Mr. Philemon Okinda | - SAA |
| 4. Mr. Robert Rop | - Audio Officer |

MINUTE SEN/SCLSW/218/2019: PRELIMINARIES

The Chairperson called the meeting to order at 10.15 am with a word of prayer.

MINUTE SEN/SCLSW/219/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Petronila Were and seconded by Sen. Gertrude Musuruve as follows –

AGENDA

1. Preliminaries (Prayers)
2. Adoption of the Agenda;
3. Confirmation of Minutes 45, 44 and 43;
4. Consideration and Adoption of the Report on the Establishment of Children's Homes Bill, 2019;
5. Consideration and Adoption of the Report on the Care and Protection of Child Parents Bill, 2019;
6. Consideration and Adoption of the Report on the 12th Session of the Conference of State Parties to the CRPD;
7. Any Other Business & Adjournment

MINUTE SEN/SCLSW/220/2019: CONFIRMATION OF MINUTES 45, 44 & 43;

1. The Minutes of the 45th Sitting held on Wednesday, 3rd October, 2019 in Committee Room 5, Main Parliament Buildings from 11.30 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Petronila Were and seconded by Sen. Alice Milgo.
2. The Minutes of the 44th Sitting held on Wednesday, 3rd October, 2019 in Committee Room 5, Main Parliament Buildings from 11.30 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Petronila Were and seconded by Sen. Alice Milgo.
3. The Minutes of the 43rd Sitting were postponed due to lack of quorum of Members present.

MINUTE SEN/SCLSW/221/2019: CONSIDERATION & ADOPTION OF THE REPORT ON THE ESTABLISHMENT OF CHILDREN'S HOMES BILL, 2019;

Members considered the report on the Establishment of Children's Homes Bill, 2019 and adopted it after being proposed by Sen. Musuruve and seconded by Sen. Petronila.

MINUTE SEN/SCLSW/222/2019: CONSIDERATION & ADOPTION OF THE REPORT ON THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2019;

Members considered the report on the Care and Protection of Child Parents Bill, 2019 and adopted it after being proposed by Sen. Musuruve and seconded by Sen. Cherargey.

MINUTE SEN/SCLSW/223/2019: CONSIDERATION & ADOPTION OF THE REPORT ON THE 12TH SESSION OF THE UNCRPD;

Members considered the report on the 12th Session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities that was held in New York from 11th to 13th June, 2019 and adopted it after being proposed by Sen. Musuruve and seconded by Sen. Cherargey.

SEN/SCLSW/224/2019: ANY OTHER BUSINESS AND ADJOURNMENT

1. The Committee deliberated on the treatment of Sen. Mwaura during the 2019 United Nations General Assembly where he was part of the delegation from Parliament and resolved that Parliament should make a formal complaint to the Ministry of Foreign Affairs through the Committees of National Security and Legal Affairs that were represented there; and
2. Senator Musuruve requested members support in her Kenya Sign Language Bill that is due for second reading.

There being no other business the meeting was adjourned at 11.18 am in readiness for the next meeting.

SIGNATURE.....

(CHAIRPERSON: SEN. JOHNSON SAKAJA)

DATE.....24th October 2019.....

THE SENATE

ATTENDANCE REGISTER

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

Purpose.....*consideration and Adoption of the Establishment of Childrens Homes Bill, 2019.*.....

Venue.....*Ground Floor Boardroom, Red Cross Building*.....

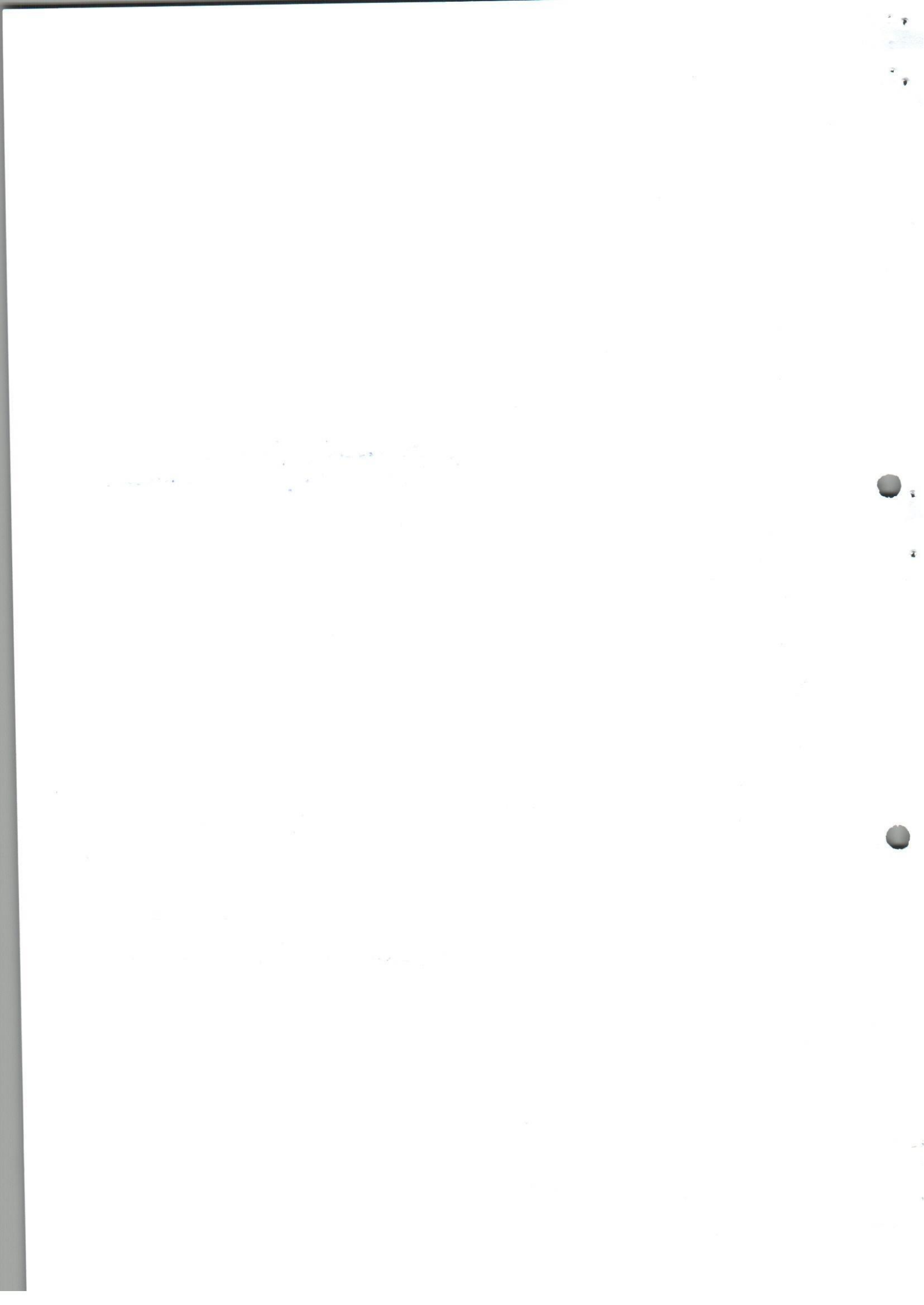
Date.....*Wednesday 23rd Oct 2019*..... **Time**.....*10:15 am*.....

No.	NAME	SIGNATURE	REMARKS
1.	Sen. Sakaja Johnson Arthur, CBS	<i>[Signature]</i>	<i>Chairman</i>
2.	Sen. (Dr.) Milgo Alice Chepkorir	<i>[Signature]</i>	<i>vice chairman</i>
3.	Sen. Madzayo Stewart Mwachiru	<i>[Signature]</i>	<i>Member</i>
4.	Sen. Poghisio Samuel Losuron, EGH	<i>[Signature]</i>	
5.	Sen. (Dr.) Mwaura Isaac, CBS	<i>—</i>	
6.	Sen. Cherarkey Samson Kiprotich	<i>[Signature]</i>	<i>[Signature]</i>
7.	Sen. Makori Beatrice Kwamboka	<i>—</i>	
8.	Sen. (Dr.) Inimah Gertrude Musuruve	<i>[Signature]</i>	<i>member</i>
9.	Sen. Lokorio Petronila Were	<i>[Signature]</i>	<i>Member</i>

Committee Clerk

Ms. Mwanate Shaban

[Signature]



MINUTES OF THE 44TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON THURSDAY, 3RD OCTOBER, 2019 AT THE COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS FROM 10.30 AM.

MEMBERS PRESENT

- | | |
|-------------------------------------|-------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 3. Sen. Lokorio Petronila Were | -Member |

ABSENT WITH APOLOGIES

- | | |
|--|---------------------------|
| 1. Sen. Poghisio Samuel Losuron, EGH | -Member (Ag. Chairperson) |
| 2. Sen. Madzayo Stewart Mwachiru | - Member |
| 3. Sen. Cherarkey Samson Kiprotich | -Member |
| 4. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 5. Sen. Makori Beatrice Kwamboka | -Member |
| 6. Sen. (Dr.) Inimah Gertrude Musuruve | -Member |

SENATE SECRETARIAT

- | | |
|------------------------|-------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Mr. Philemon Okinda | - SAA |

MINUTE SEN/SCLSW/206/2019: PRELIMINARIES

The Chairperson called the meeting to order at 10.45 am followed by prayers.

MINUTE SEN/SCLSW/207/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Alice Milgo and seconded by Sen. Petronila Were as follows –

AGENDA

1. Preliminaries (Prayers)
2. Adoption of the Agenda;
3. Confirmation of Minutes 39 and 40;
4. Correspondence before the Committee;
5. Consideration of Amendments on the Establishment of Children's Homes Bill, 2019;
6. Consideration of Amendments on the Care and Protection of Child Parents Bill, 2019;
7. Legislative Business Before the Committee
 - Bills
 - a) The National Museums and Heritage (Amendment) Bill, 2019
 - b) The Establishment of Children's Homes Bill, 2019
 - c) The Care and Protection of Child Parents Bill, 2019.
 - Petitions
 - a) Petition by job applicants on clearance requirements
 - b) Petition on dumping of street children in Nakuru County

- **Statements**

- a) Non-compliance with article 54 (2) of the Constitution on the representation of PWD in elective and appointive posts;
- b) Digital hailing cab applications
- c) Recognition of PWDs who have brought honour to the country;
- d) The announcement by government on hiring of public servants on contract terms
- e) Pension plans for county government officers seconded from the national government for devolved functions;
- f) Inclusion of PWD in the labour market;
- g) Recruitment of senior personnel at GDC.

- **Correspondence**

- a) Letter by Mr. Daniel Kirui proposing to launch a walk of fame in Eldoret town.
- b) Letter by Sports Kenya requesting for a meeting with the Board
- c) Letter by Maxwel Owaka requesting for the establishment of a youth parliament in Kenya
- d) Letter from Population Council requesting the Committee to nominate one member to represent the Senate in the National Steering Committee

8. Any Other Business & Adjournment

MINUTE SEN/SCLSW/208/2019: CONFIRMATION OF PREVIOUS MINUTES

1. The Minutes of the 39th Sitting held on Wednesday, 11th September, 2019 in the Ground Floor Boardroom, County Hall Building from 10.00 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Milgo and seconded by Sen. Sakaja.
2. The Minutes of the 40th Sitting held on Wednesday, 11th September, 2019 in the Ground Floor Boardroom, County Hall Building from 11.55 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Milgo and seconded by Sen. Sakaja.

MINUTE SEN/SCLSW/209/2019: CORRESPONDENCE BEFORE THE COMMITTEE

1. The Committee noted the Letter from the national Council for Population and Development requesting for a nominee to represent the Senate in the Steering Committee of the Nairobi Summit – ICPD25 meeting that will be held in November, 2019. The Committee resolved that Senator Alice Milgo should represent the Senate in the steering committee.
2. The Committee deferred all other correspondence to a later date.

MINUTE SEN/SCLSW/210/2019: CONSIDERATION OF THE PUBLIC HEARING SUBMISSIONS TO THE ESTABLISHMENT OF CHILDREN'S HOMES BILL, 2019

1. Members considered the public hearing submissions from the Ministry of Labour and Social Protection, United Nations Children Fund, Children Homes Founders Association of Kenya and Alternative Family Kenya.
2. The Committee agreed with the Ministry and UNICEF on the promotion of family-based alternative care as outlined in the national Guidelines for the Alternative Family Care of Children, but acknowledged the need to regulate the already existing homes, thus the need for the bill.
3. The Committee resolved that the Ministry should provide a framework on how it intends to implement the shift in policy to realign Kenya to family based care options through policy or proposed legislation and funding commitments.

MINUTE SEN/SCLSW/211/2019: CONSIDERATION OF THE PUBLIC HEARING SUBMISSIONS TO THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2019

1. The Committee noted the Ministry of Labour's concern on establishing of centres for child parents which go against the national and international guidelines and recommendations of providing solutions to children in their own home environments.
2. UNICEF also shared the same concerns which were against institutionalization of children.
3. Members observed that that the rate of implementation of the government's shift in policy was slow and resolved that the Ministry should submit an implementation framework on how to address the issues raised in the bill.
4. Members also noted that there had been pilot implementation programs by the Ministry since 2014 and resolved that the Ministry should submit progress reports on the same.
5. The Ministry submitted that it was consolidating all legislations that deal with children and overhaul the Children's Act, 2001 to align it to the Constitution and also the international laws that Kenya is a signatory to. The Committee directed the Ministry to submit a draft copy of the new legislation for the Committee to sponsor.
6. Members also noted that the Ministry should make regulations for specific cases under the children's Act noting that child parents in homes have unique needs to other categories of neglected or abandoned children.

STAKEHOLDER VIEWS ON THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2019
(SENATE BILLS NO. 11 OF 2019)

No	CLAUSE	STAKEHOLDERS	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
1.	Arrangement of clauses	Centre for Study of Adolescence	Replace students with learners under clause 8	No justification	Align with the terms used in the Basic Education Act and Children Act.
2.	1	Council of Governors	On the definition of a "Council" Amend section 31 of the Children Act on the representation from county governments by inserting the following new paragraph— <i>(i) two representatives nominated by the Council of Governors</i>	Given the obligations of the county governments under the Bill, there is need to amend the Children Act to include representation of county governments in the composition of the Council.	Rejected. There is no need for piecemeal amendments.
3.	2	Ministry of Labour and Social Protection	Align the definition of the term "child parent" to the Constitution.	The Bill defines Child Parents as a person who is 20 years of age or below and who is a parent to a child. This conflicts with the universally accepted definition of a child. Further, UNCRC defines a child as any human being under the age of 18 years. The Constitution (Article 260) defines a child as an individual who has not attained the age of 18 years.	Allowed. Align the Bill to the Constitution.

No	CLAUSE	STAKEHOLDERS	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
4.	4	Centre for Study of Adolescence	Amend clause 4— (i) in paragraph (a) by replacing family life with parenting; (ii) in paragraph (d) by replacing students with learners; (iii) in paragraph (h) (ii) by replacing students with learners.		Approved the replacement of family life with parenting. Align the terms used with the Basic Education Act and the Children Act.
5.	5	Council of Governors	Amend the introductory part of paragraph (f) by inserting the following words immediately before the word “establish”— “Collaborate with the Council”	There is need for an integrated approach in the establishment of the centres so as to guarantee utmost care of child parents.	Rejected. Counties should be capacitated to deal with such issues.
6.	6 & 7	Centre for Study of Adolescence	Amend subclause (1)— (i) by inserting the word “comprehensive” immediately before the words “information and education” appearing in paragraph (d); (ii) by inserting the words “sexual reproductive health” immediately before the words “entrepreneurial skills” appearing in paragraph e (iii) by replacing family life		Align the Bill with the Basic Education Act and Children Act. Delete the word “entrepreneurial” in clause 6 (1) (e).

No	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			<p>with parenting; and</p> <p>(iv) replacing family with children</p> <p>replacing children with learners wherever they appear.</p> <p>In clause 7 (2) by inserting the word "uniquely before the word "confidentially"</p>		Disallow the amendment to clause 7 (2) as the amendment is trivial.
7.	7	Council of Governors	<p>Amend subclause (2) by deleting the words "encouraging positive sexual behaviour amongst children in the institution" appearing immediately after the words "pregnancies and" in paragraph (e) and substituting therefor the following new words—</p> <p>"prioritize sex education"</p>	<p>Sex education is a holistic education and therefore should be made a priority so as to instill correct concepts of sex to children as early as possible and hence address issues of teenage pregnancies.</p>	<p>Amend the paragraph to read—</p> <p>(a) <i>put in place programmes with the aim of preventing teenage pregnancies;</i></p>
8.	10	Council of Governors	<p>Introduce a new clause immediately after clause 10 (1) to read as follows—</p> <p>(1a) <i>The principal of the institution shall inform the parent or guardian of a child's pregnancy before any measure is taken.</i></p>	<p>The involvement of parents or guardians in the management of teenage pregnancies in school before the head of the institutions can decide to refer the children to health institutions is necessary. In addition, counselling of the parents or guardians and children should be prioritised</p>	<p>Approved. A parent should always be the first point of contact.</p>

No	CLAUSE	STAKEHOLDERS	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
9.	11	Council of Governors	Amend subclause (3) to read— <i>In circumstances where the welfare of the child or of other children in the institution of basic education is considered to be at risk, the institution shall put in place measures to maintain confidentiality.</i>	In order to maintain the dignity of a child, every case of a child who is pregnant ought to be treated with confidentiality.	Approved. This also stops stigmatisation.
10.	12	Centre for Study of Adolescence	We recommend unconditional readmission of the learner to school.		Rejected
		Council of Governors	Amend subclause (2) to read as follows— <i>The National Education Board in consultation with the County Education Boards shall issue guidelines for the conditions for the re-admission of children into institutions of basic education under subsection (1).</i>	Considering that implementation of the guidelines shall be at the county level, it is necessary that development of the same is done in collaboration with the County Education Boards.	Rejected. Public participation is enshrined in the Constitution as one of the values and principles of governance.
11.	13	Centre for Study of Adolescence	We recommend the deletion of the part on producing medical report to ensure unconditional readmission.		Rejected. This is appropriate.
12.	14	Centre for Study of Adolescence	We recommend the reduction of the lapse period to six months or at the beginning of the next		Delete subclause (2). The matter should be treated on a case to case basis.

No	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
13.	15	Centre for Study of Adolescence	<p>school/academic year.</p> <p>Insert subclause (1) © insert the words "human sexuality education" before the words "and life skills".</p> <p>Insert the words "administration, teachers and support staff" before the words "within the school" appearing in subclause (2).</p>		Rejected. Already catered for under strategies.
14.	23	Council of Governors	<p>Amend subclause (2) paragraph (ε) to read—</p> <p><i>(a) issues to the licensee, a written notice of at least fourteen days of the intention to revoke the license.</i></p>	This is to avoid ambiguity, the clause should expressly state that any notice shall be in writing.	Allowed. This will help in streamlining licensing

SEN/SCLSW/212/2019: LEGISLATIVE BUSINESS BEFORE THE COMMITTEE

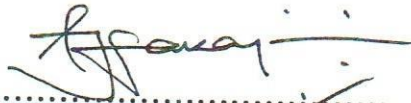
Members considered the bills, petitions and statements before the Committee and resolved the following –

1. To meet Petitioners and Institutions on Petition on Clearance requirements by the Public service bodies on application for jobs in Kenya on Wednesday, 23rd October, 2019.
2. To meet the Public Service Commission on hiring of public servants on contracts on 24th October, 2019;
3. To conduct Narok, Bomet, Kericho and Nakuru county visit from 31st October to 3rd November, 2019;
4. To meet stakeholders on the state of the creative economy industry on Wednesday, 6th November, 2019;
5. To hold a committee retreat on Culture and Sports in Kitale from 8th – 11th September, 2019;
6. To meet stakeholders on digital hailing cab applications on Wednesday 20th November, 2019;
7. To meet stakeholders on the SGR enquiry on Thursday, 21st November, 2019
8. To Conduct Eastern county visits from 21st – 26th November, 2019

SEN/SCLSW/213/2019: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business the meeting was adjourned at 11.45 am.

SIGNATURE.....



(CHAIRPERSON: SEN. JOHNSON SAKAJA)

DATE.....

Wednesday, 23rd October 2019

MINUTES OF THE 40TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON WEDNESDAY, 11TH SEPTEMBER, 2019 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL BUILDING FROM 11.55 AM.

MEMBERS PRESENT

- | | |
|--|-------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 3. Sen. Poghisio Samuel Losuron, EGH | -Member |
| 4. Sen. (Dr.) Inimah Gertrude Musuruve | -Member |
| 5. Sen. Madzayo Stewart Mwachiru | -Member |

ABSENT WITH APOLOGIES

- | | |
|------------------------------------|---------|
| 1. Sen. Cherarkey Samson Kiprotich | -Member |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 3. Sen. Makori Beatrice Kwamboka | -Member |
| 4. Sen. Lokorio Petronila Were | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|-------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Ms. Julia Gichohi | - SAA |

IN ATTENDANCE

1. Ministry of Labour and Social Protection
2. UNICEF Kenya
3. Children Homes Founders Association of Kenya
4. Alternative Family Kenya

MINUTE SEN/SCLSW/190/2019: PRELIMINARIES

The Chairperson called the meeting to order at 11.55 am with a word of prayer. This was followed by a word of prayer.

MINUTE SEN/SCLSW/191/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Stewart Madzayo and seconded by Sen. Poghisio as follows –

AGENDA

1. Preliminaries (Prayers and introductions)
2. Adoption of the Agenda;
3. **Public hearing on the Establishment of Children's Homes Bill, 2019;**
4. Any Other Business & Adjournment

MINUTE SEN/SCLSW/192/2019: PUBLIC HEARING ON THE ESTABLISHMENT OF CHILDREN'S HOMES BILL, 2019;

The Chairman welcomed all present and stated the Committee's mandate as to consider all matters relating to manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation. He mentioned that he had received a call from FIDA who had indicated that they will send written submissions.

a) Children's Homes Founders Association spokesperson stated that -

1. The Association is a consortium of different children's homes and is a very young organization.
2. The Association is concerned about the stakeholder process that was taking place through the Executive and wondered whether the Senate was engaged in the same and also wanted to know who will be in-charge of registration and licensing of homes. There was need for county governments to support the children's homes established by private applicants in accordance with the bill
3. Most of the children found in the homes are below five years and there is a big challenge in implementation since the homes lack basic stuff like diapers, food and clothing and that the bill is in the best interests of the children;
4. They wanted an additional sub section to section 8(i) of the Bill to read—

Collaborate with and support children's homes established by other applicants in accordance with this statute.

b) The Association of Charitable Children Institutions of Kenya presented as follows -

1. There is need to harmonise the Bill with the current international, national and regional legal and policy framework on provision of alternative care that provide for institutional care to be temporary and the last resort measure;
2. The Bill should broaden the scope to include ways of preventing children being in need of care and protection by strengthening families;
3. The objective of institutional care should be to provide care, protection, rehabilitation and re-unification of rescued children;
4. The Bill should be very clear on the roles of the National Council of Children Services and the Department of Children Services, Street Family Fund and how the county government will partner with them;

5. The Bill should talk of children in need of care and protection as per section 119 of the Children Act, 2001;
6. The county governments should focus more on rehabilitation of street children;
7. The powers of registration, licensing, inspection and closure of children's homes should be vested in a structure such as a County Area Advisory Council. The CEC Health and Social Services should be incorporated in this section; and
8. The Bill should be clear on renewal of licenses.

c) **The United Nations Children's Fund (UNICEF)** presented as follows —

1. That the Government of Kenya already has a policy on upholding and promoting the right of the child to parental care as per the Constitution of Kenya Article 53 (e) and the promotion of family-based alternative care as outlined in the national Guidelines for the Alternative Family Care of Children;
2. That the Ministry of Labour and Social Protection has reiterated the Government's intention to enforce the prohibition of registration of new charitable children's institutions, affirming the Government's intention to scale up the de-institutionalization in favour of progressively removing children from institutions and promotion of family-based care;
3. That the national guidelines and policies also address the concerns raised by the UN Committee on the Rights of the Child regarding the large number of children in care institutions in Kenya, contrary to the Government's stated policy to prioritize family-based care;
4. That the African Charter on the Rights and Welfare of the Child, which Kenya ratified in 2000, also emphasizes the role of families and the right of children to be cared for by their parents, in Article 19;
5. That the African Committee of Experts on the Rights and Welfare of the Child, in its concluding recommendations on Kenya's first periodic report, encourages the Government to raise awareness on the value and importance of family for the well-being of children;
6. That for children already separated from parents, namely children in street situations, the African Committee of Experts on the Rights and Welfare of the Child encourages the Government to strengthen its efforts to provide a family environment through reunification with their birth parents or extended family, noting that a family environment is essential for their optimal for every child's growth and development;

7. That the promotion of family-based care options and a progressive move from an over reliance on institutional care reflect international good practice, as outlined in the UN Guidelines on Alternative Care;
8. That while residential care facilities and family-based care complement each other in meeting the needs of children, there is extensive evidence gathered over the last eighty years that clearly illustrate the potential harm for children growing up in institutions;
9. That UNICEF is of the view that registration and licensing systems for all formal care options, including residential care, is best held at the national level in order to ensure effective implementation of the national policy of promoting family-based care options with a view to reducing the number of Kenyan children in institutional care. UNICEF therefore recommends that registration and licensing of children's homes be a function that is retained at the national level, for the effective implementation of national policies promoting family-based care options and a progressive decrease of children in institutional care
10. That registration and licensing of children's homes at the County level runs the risk of unnecessary proliferation of institutions;
11. That county level legislation that relates to care of children, should promote family-based care in line with the national guidelines and policies as well as the government's commitment to regional and international conventions; and
12. That eighty years of research has demonstrated the potentially severe negative impact of putting children in residential/children homes for care and protection as follows—
 - i. Bucharest Early Intervention Project provided definitive evidence that young children raised in institutions had considerably under-developed brains in comparison to those moved to foster parents;
 - ii. Lack of emotional and physical contact for children in institutions, together with lack of regular stimulation and interaction resulted in specific developmental delays and challenging behaviors in children;
 - iii. Children raised in institutions/ children's home had lower IQ scores than their peers with no experience of institutional care. This is a finding from a 2010 cross-continental study;
 - iv. Children raised in institutions/children homes showed neuropsychological deficits on tests of visual memory and attentions, visually mediated learning and inhibitory control;

- v. Institutionalization has an effect on physical growth and health. Another study indicates that after 8 years of adoption of children who were in institutions, they exhibited delayed physical development in comparison to children who had never been institutionalized; and
- vi. Research has shown that children in residential care/children's homes can experience a range of abuse including: systematic rape and other forms of sexual abuse: neglect, exploitation, trafficking, physical harm such as beating and torture, psychological harm including isolation, denial of affection, humiliating discipline, lack of privacy.

d) **The Ministry of Labour and Social Protection** made the following presentation —

1. The issues of children affairs are a national government function and are domiciled in the Ministry of Labour and Social Protection. Counties are assigned child care facilities which are temporary facilities that offer care to children when parents are away at work or absent.
2. The Children's Act, 2001 has provisions on the children's homes and regulations to ensure that children's rights and welfare are safeguarded;
3. The Ministry has developed the Children Bill 2018 (*copy attached*) through a participatory process and is awaiting the Attorney General's views on the same before submission of the Bill to Parliament;
4. The Ministry undertakes regular and periodic reviews of the existing policies and guidelines to ensure that they address emerging child related issues;
5. The government is keen to strengthen the family care systems in line with the United Nations General Assembly Resolutions;
6. The government is pursuing a policy on Child Care Reforms to promote Alternative Family Care Systems to ensure gradual de-institutionalisation of children;
7. The Establishment of Children's Bill may not have been subjected to critical stakeholder participation as the Ministry was not consulted during the development of the Bill; and
8. The Ministry's initiated Bill has covered all issues raised in the Establishment of Children's Home Bill and urge the Senate to reconsider the private members Bill to avoid duplication.

e) Way Forward

1. Members observed that there is a lot of business in the management of children;
2. The National and County governments should consult on issues so as to enhance service delivery;
3. The State department of Social Protection to submit alternative care guidelines to the Committee by 7 days;
4. The State department of Social protection should demonstrate that the Government has already provided a framework on what the Bill intends to cure;
5. The State Department of Social Protection should provide an actual implementation plan on children of no known parentage, abandoned children, neglected and abused children;
6. The Ministry should also demonstrate how it is going to address the financial aspect of reintegration – guidelines, implementation and reintegration.

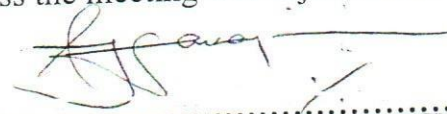
On the ongoing matter of the issues in Mama Ngina Children's home, the Ministry stated that it is looking into the matter and investigating the health facilities and will report to the Committee.

They also acknowledged that they are trying to sort out the matter of board members of Child Welfare Society.

MINUTE SEN/SCLSW/193/2019: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business the meeting was adjourned at 1.45pm.

SIGNATURE.....


(CHAIRPERSON: SEN. JOHNSON SAKAJA)

DATE.....

3/10/19