

BILLS SUPPLEMENT

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Bill No. 4 *Children (Amendment) (No. 2) Bill, 2015* **AUG 2015**

THE CHILDREN (AMENDMENT) (No. 2) BILL, 2015

MEMORANDUM

1. Principles of the Bill.

The object of this Bill is to amend the Children Act Cap. 59; enhance protection of a child; provide for the guardianship of children; provide for inter country adoption, prohibit corporal punishment and provide for related matters.

2. Gaps in the existing law.

The Children Act as a law governing care, protection and maintenance of children has legal gaps and implementation challenges. The current law does not support the attainment of the overall objective of the State to promote and protect the rights of a child as undertaken under various treaties and conventions. Children are still being subjected to all forms of exploitation including but not limited to corporal punishment, child labour and neglect. The current law does not explicitly provide for guardianship, more so inter country guardianship orders have been abused by several applicants.

3. Remedies.

The purpose of this Bill therefore is to align the provisions of the Children Act Cap. 59 with the already existing laws that relate to care and protection of children, provide for fair trial of child offenders, enhance the rights and safety of children, and regulate adoption and guardianship of children.

4. Provisions of the Bill.

Clause 1- seeks to provide for the commencement date to be a date appointed by the Minister by Statutory Instrument.

Clause 2- seeks to amend section 1 of the Principal Act on interpretation and introduces new definitions including alternative care, continuum of care etc.

Clause 3- seeks to amend section 3 of the principal Act by substituting the guiding principle with welfare principle and incorporating provisions of the first schedule to section 3 of the principal Act.

Clause 4- seeks to insert section 4 to provide for better rights of a child to the existing ones under the law, these include registration at birth, right to access basic needs of life, privacy, legal representation in court, access to information and freedom of expression and provides a penalty to a person who contravenes the clause.

Clause 5-seeks to introduce a new section 4A to provide for the right of a child to a name and nationality

Clause 6- seeks to amend section 6 of the principal Act by including guardians to have parental responsibility.

Clause 7- seeks to amend section 7 of the principal Act by providing a penalty to offenders who engage children in harmful customary and cultural practices.

Clause 8-seeks to amend section 8 by restricting the age of employment of a child, and also broadly define the meaning of harmful employment.

Clause 9-seeks to amend section 9 of the principal Act by substituting the word “disabilities” with “special needs”

Clause 10-seeks to insert new sections 42A, 42B and 42C under Part V of the Principal Act to protect children from violence, provide for intervention programmes, and rights to protective services.

Clause 11-Introduces a new Part VIA with provisions 43A-M on application of guardianship, customary guardianship, joint guardianship among others

Clause 12-seeks to amend section 45 of the principal Act by substituting for "thirty six months" the words "twenty four months".

Clause 13 seeks to amend Section 46 of the Principal Act by substituting thirty-six months with twenty-four months and inserting new subsections 4, 5, 6 and 7.

Clause 14-seeks to insert a new Section 46A to provide for circumstances upon which an adoption order can be rescinded, the reasons for rescission, the implication of rescission and remedies that may be provided by court.

Clause 15 seeks to replace Section 56 of the Principal Act by providing for approval of homes subject to the approval of the Minister and a penalty for establishing homes without approval.

Clause 16-seeks to amend section 73 of the principal Act by substituting for subsection (1) to provide for the discretion of court in granting custody order to a sole or a joint applicant.

Clause 17-seeks to insert new sections 73A and 73B to the principal Act relating to interim custody order and custody by agreement respectively.

Clause 18-seeks to amend section 88 of the Principal Act by inserting a new subsection on consideration of the age of the child in determining criminal responsibility of the child.

Clause 19 seeks to amend section 91 of the principal Act by substituting subsections 5 (a) and (b).

Clause 20 seeks to amend section 94 of the principal Act by repealing subsection 1 (e) and inserting a new subsection providing for imprisonment in adult prison, and an offender who at the time of sentencing was at the age of eighteen.

Claus 21 seeks to insert a new section 95A to the principal Act on appointment and supervision of probation and social welfare officer.

Clause 22 seeks to amend section 104 of the principal Act in subsection (2) on joint trial of a child offender and an adult offender.

Clause 23 introduces a new subsection 104A on prohibition of death sentence for a person below eighteen years.

Clause 24 introduces a new section 106A on prohibition of corporal punishment in schools and provides penalty therefore.

Clause 25 seeks to Repeal the First Schedule to the Principal Act by repealing section 4.

Clause 26 seeks to insert the Third Schedule.

HON. BENARD ATIKU,
MP. Ayivu County.

THE CHILDREN (AMENDMENT) BILL, 2015

ARRANGEMENT OF CLAUSES

Clause

1. Commencement.
2. Amendment of section 1 of the principal Act.
3. Replacement of section 3 of the principal Act.
4. Replacement of section 4 of the principal Act.
5. Insertion of a new section 4A in the principal Act.
6. Amendment of section 6 of the principal Act.
7. Amendment of section 7 of the principal Act.
8. Replacement of section 8 of the principal Act.
9. Amendment of section 9 of the principal Act.
10. Insertion of new sections 42A, 42B and 42C under PART V of the principal Act.
11. Insertion of a new Part VIA in the principal Act.
12. Amendment of section 45 of the principal Act.
13. Amendment of section 46 of the principal Act.
14. Insertion of new section 46A to the principal Act.
15. Replacement of section 56 of the principal Act.
16. Amendment of section 73 of the principal Act.
17. Insertion of new sections 73A and 73B to the principal Act.
18. Amendment of section 88 of the principal Act.
19. Amendment of section 91 of the principal Act.
20. Amendment of section 94 of the principal Act.
21. Insertion of new section 95A to the principal Act
22. Amendment of section 104 of the principal Act
23. Insertion of new section 104A to the principal Act
24. Insertion of new section 106A to the principal Act
25. Repeal of the First Schedule to the Principal Act
26. Insertion of the Third Schedule to the principal Act

THE CHILDREN (AMENDMENT) BILL, 2015

A BILL for an Act

ENTITLED

THE CHILDREN (AMENDMENT) ACT, 2015

An Act to amend the Children Act Cap.59 to enhance the protection of children; strengthen the provision for guardianship of children; strengthen the conditions for inter-country adoption; prohibit corporal punishment; and to provide for other related matters.

BE IT ENACTED by Parliament as follows:

1. Commencement.

This Act shall come into force on a date appointed by the Minister by Statutory Instrument.

2. Amendment of section 1 of the principal Act.

The Children Act, in this Act referred to as the principal Act, is amended in section 1 by inserting in the appropriate alphabetical order the following definitions—

“child labour” means work that is mentally, physically, socially or morally dangerous and harmful to a child, and circumstances under which it is performed jeopardizes the health, safety, morals and education of a child;

“child exploitation” means the employment of a child in activities from which other people derive a benefit, whether financial, sexual or political and includes activities such as child trafficking, child prostitution, child pornography and involvement of children in armed conflict;

“child neglect” means the failure to provide for the basic physical, emotional and developmental needs of a child, in areas such as health, education, emotional development, nutrition, shelter and safe living conditions, which cause or have a high probability of causing, impairment to a child’s health or physical, mental, spiritual, moral or social development;

“Continuum of care” means the services and support to families ranging from prevention, early identification and family support services to crisis response intervention;

“violence” means any form of physical, emotional or mental injury or abuse, neglect, maltreatment and exploitation, including sexual abuse, intentional use of physical force or power, threatened or actual, against an individual which may result in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation;

“corporal punishment” means any punishment in which physical force is intentionally used to cause pain or injury to a child, and includes punishment which is intended to belittle, humiliate or ridicule a child;

“joint custody” means an order granting custody of a child to two or more persons;

“relative” means a person connected with another or others by blood or marriage.

3. Replacement of section 3 of the principal Act.

For section 3 of the principal Act, there is substituted the following—

“3. Welfare and guiding principles.

(1) The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child’s property, or the application of any income arising from that administration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the general principle that any delay in determining the matter is likely to be prejudicial to the welfare of the child.

(3) In determining any question under subsection (1), court or any other person shall have regard to—

- (a) the ascertainable wishes and feelings of the child concerned, with due regard to his or her age and understanding;
- (b) the child’s physical, emotional and educational needs;
- (c) the likely effects of any change in the child’s circumstances;
- (d) the child’s sex, age, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at the risk of suffering; and
- (f) where relevant, the capacity of the child’s parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child.”

4. Replacement of section 4 of the principal Act.

For section 4 of the principal Act, there is substituted the following—

“4. Rights of the child.

(1) Every child shall have the right to—

- (a) live with his or her parent or guardian;
- (b) where capable, express his or her view, belief or opinion on any matter that affects his or her wellbeing;
- (c) access any information to which a parent, guardian or other persons in authority deems critical to the child's wellbeing;
- (d) be registered after birth;
- (e) inherit property where applicable;
- (f) safety, privacy, information and access to basics social services;
- (g) leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;
- (h) to use any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;
- (i) be treated without discrimination of any kind, irrespective of his or her race, colour, religion, belief, age, family status, culture, language, ethnicity, nationality, or social origin, citizenship, gender, disability if any, political or social opinion, property or any other condition;

- (j) effective legal aid including representation in all civil, criminal and administrative proceedings;
- (k) exercise, in addition to all the rights stated in this section and this Act, the rights set out in the United Nations Convention on the Rights of the Child and the Organization of African Unity Charter on the Rights and Welfare of the African Child with appropriate modifications to suit circumstances in Uganda that are not specifically mentioned in this Act.

(2) Subject to subsection (1) (a), where a competent Authority determines in accordance with the laws and procedure applicable that it is in the best interest of the child to separate the child from his or her parent, the best substitute care available shall be provided for the child.

(3) A person who contradicts the provision of sub section (1) commits an offence and is liable on conviction, to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.

(4) A person who witnesses an abuse against the rights of a child shall, as soon as possible, report the matter to the police or any authority responsible for child welfare.

(5) A person who fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding twenty currency points or imprisonment not exceeding one year or both.”

5. Insertion of a new section 4A in the principal Act.

The principal Act is amended by inserting a new section 4A immediately after section 4 to read as follows—

“4A. Right to a name and nationality.

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

6. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended in subsection (1) by inserting the words “or guardian” between the words “parent” and “shall”.

7. Amendment of section 7 of the principal Act.

For section 7 of the principal Act there is substituted the following—

“7. Harmful customary or cultural practices.

(1) A person shall not expose a child to any customary or cultural practice that is harmful to his or her health, well being, education or social-economic development.

(2) For purposes of this section, “harmful customary or cultural practice” means any activity that is mentally, physically, socially or morally harmful to a child and includes an activity that interferes with a child’s education and social development.

(3) A person who contravenes this section commits an offence and is liable, on conviction, to imprisonment of seven years or to a fine not exceeding one hundred and sixty eight currency points, or both.”

8. Replacement of section 8 of the principal Act.

For section 8 of the principle Act there is substituted the following—

“8. Harmful Employment.

(1) A person shall not employ or engage a child in any activity that maybe harmful or hazardous to his or her health, or his or her physical, mental, spiritual, moral or social development.

(2) Subject to subsection (1), the minimum age of employment of a child shall be 16 years.

(3) For the purpose of this section, “harmful or hazardous employment” includes work which exposes a child to physical, psychological, sexual abuse, work underground, work at dangerous heights or in confined spaces, work with dangerous machinery, equipment and tools, or manual handling or transportation of heavy loads, work with chemicals and dangerous substances, work under extreme temperatures, high level of noise, or working for longer hours; or any other form of child labour which includes slavery, trafficking in persons, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and illicit activities.”

9. Amendment of section 9 of the principal Act.

Section 9 of the principal Act is amended by—

Substituting the word “disabilities” with the words “special needs”.

10. Insertion of new sections 42A, 42B and 42C under PART V of the principal Act.

The Principal Act is amended by inserting three new sections under PART V as follows—

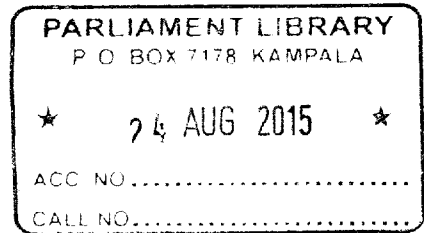
“42A. Protection of children from all forms of violence.

(1) Every child has a right to be protected against all forms of violence including sexual abuse and exploitation, child sacrifice, child labour, child marriage, child trafficking, institutional abuse, female genital mutilation, and any other form of physical and emotional abuse.

(2) A person who on reasonable grounds believes that a child has been abused or is in eminent danger which may result in physical injury, sexual abuse, deliberate neglect, or is in need of care and protection may report to a designated child protection organization or authority.

(3) Notwithstanding the provisions of subsection (2), it shall be mandatory for the following persons to report on any matter which affect the well being of a child under their charge—

- (a) a medical practitioner;
- (b) a social worker; or
- (c) a teacher.



(4) The designated child protection organization, probation and social welfare officer, or police officer or any other responsible person to whom a report has been made must—

- (a) ensure the safety and wellbeing of the child concerned, if the child's safety or wellbeing is at risk;
- (b) make an initial assessment of the report;
- (c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and
- (d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child.

(5) A designated child protection organization to which a report has been made must report the matter to the probation and social welfare officer.

(6) Notwithstanding the provisions of sub section (4), the probation and social welfare officer shall monitor the progress of all matters reported.

(7) The designated child protection organization, probation and social welfare officer or a police officer who has conducted an investigation may—

- (a) take measures to assist the child, or refer the child to protective services such as counseling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behavior modification, and problem solving;
- (b) initiate actions for the long term protection of the child if it is assessed that the current environment in which the child lives poses significant threat or risk to the child.

(8) The designated child protection organization or probation and social welfare officer who has conducted an investigation must report the findings to the Police.

(b) “42B. Prevention and intervention programmes.

(1) The Minister responsible for children affairs must, after consultation with relevant persons, include in the relevant sector strategies a comprehensive national strategy aimed at securing the provision of prevention and early intervention programmes to families, parents, caregivers and children across the country.

(2) Prevention and early intervention programmes must focus on—

- (a) preserving a child’s family structure;
- (b) developing appropriate parenting skills and the capacity of parents and caregivers to safeguard the wellbeing and best interest of the child, including the promotion of positive, nonviolent forms of discipline;

- (c) developing appropriate parenting skills and the capacity of parents and caregivers to safeguard the wellbeing and best interest of children with disabilities and chronic diseases;
- (d) promoting appropriate interpersonal relationships within the family;
- (e) providing psychological, rehabilitation and therapeutic programmes for children;
- (f) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
- (g) preventing recurrence of problems in the family environment that may harm children or adversely affect their development;
- (h) avoiding the removal of a child from the family environment;
- (i) promoting the participation of families, parents, caregivers and children in identifying and seeking solutions to their problems.

(C) 42C. Rights to protective services.

(1) Every child shall be entitled to access protective services.

(2) The Ministry responsible for children affairs shall in consultation with relevant government institutions ensure that designated child protection services are available and accessible to children.

(3) Designated child protection services include;

(a) services aimed at supporting—

(i) the proceedings of children court; and

(ii) the implementation of court orders;

(b) services related to—

(i) prevention and early intervention child care services;

(ii) the reunification of children in alternative care with their parents;

(iii) the integration of children into alternative care arrangements;

(iv) the placement of children in alternative care; and

(v) the adoption of children, including inter-country adoption;

(vi) the carrying out of investigations and the making of assessments, in case of suspected abuse, neglect or abandonment of children;

(vii) intervention and removal of children in appropriate cases;

(viii) the drawing up of individual development plans or plans for children removed, or at risk of being removed, from their family;

- (ix) any other social work services as may be prescribed by a Minister by statutory instrument; and
- (x) protection of children at all stages of the justice process, including before, during and after trial and holding proceedings in camera during trial not only for child offenders but also child victims and witnesses.

11. Insertion of a new Part VIA in the principal Act.

The principal Act is amended by inserting immediately after Part VI the following new part—

“PART VIA—GUARDIANSHIP.

43A. Application of the Part.

(1) This Part applies to the guardianship of children in Uganda by—

- (a) a person who is not a citizen of Uganda;
- (b) a citizen of Uganda who is not resident in Uganda.

(2) This Part does not apply to customary guardianship.

43B. Application for guardianship.

(1) An application for guardianship of a child—

- (a) may be made by any person above the age of eighteen;
- (b) shall be made to the High Court;
- (c) shall be by petition in Form 1 in the Third schedule;

- (d) shall be accompanied by a report of the probation and social welfare officer.

43C. Customary guardianship.

(1) Family members may appoint a guardian of a child in accordance with the customs, culture or tradition of the respective people where—

- (a) both parents of the child are deceased or cannot be found;
- (b) the surviving parent is incapacitated; or
- (c) the child has no guardian or any other person having parental responsibility for him or her.

(2) A guardian appointed under subsection (1) shall act as trustee in respect of the property of that child.

(3) A person who misappropriates the property of a child commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred and fifty currency points or both.”

(4) For purposes of this section, “customary guardianship” means parental responsibility of a Ugandan child by a Ugandan citizen resident in Uganda in accordance with the customs, culture or tradition of the respective people

43D. Appointment of a guardian by agreement.

(1) The parent of a child may, by agreement or deed, appoint any person to be a guardian.

(2) The appointment made under subsection (1) shall not have effect unless the agreement or deed is dated and signed by the parent in the presence of two witnesses.

43E. Dispute between joint guardians.

Where two or more persons appointed to act as joint guardians in respect of a child are unable to agree on any matter affecting the welfare of a child, any of them may apply to the court for its direction.

43F. Conditions for guardianship.

(1) The court shall before making a guardianship order satisfy itself that—

- (a) there is no known relative or next of kin of the child;
- (b) the relative or next of kin are unwilling or unable to take parental responsibility of the child;
- (c) all alternative care options available to the child have been exhausted;
- (d) the child is suffering or likely to suffer significant harm under present custody;
- (e) consideration has been given to the wishes of the child, having regard to the age and understanding of the child, where in the view of the court, the child is able to understand the guardianship proceedings; and
- (f) where the child is fourteen years of age or above, his or her consent to the guardianship has been obtained, unless it is impossible for the child to express his or her consent.

(2) The court shall before making a guardianship order satisfy itself that the applicant—

- (a) has continuously lived in Uganda for at least one year;
- (b) does not have a criminal record;
- (c) has a recommendation concerning his or her ability as a guardian from probation and welfare office or other competent authority in the applicant's country of origin; and
- (d) the applicant's country of origin will respect and recognize the guardianship order if granted.

(3) The court shall not make an order for guardianship, unless it is satisfied that the applicant has not made, given or agreed to make any payment or other reward in consideration of the guardianship.

(4) The court may dispense with any consent required under subsection (1) (b) if satisfied that the person whose consent is to be dispensed with has abandoned, or deserted the child, cannot be found or is incapable of giving consent or being a person responsible for the support of the child, has persistently neglected or refused to contribute to the support of the child.

(5) The court may, in addition to the report of the probation and welfare officer require a local authority, the probation and welfare officer in the relevant District in Uganda or any other person to make a report in respect of the guardianship application.

43G. Guardianship order.

(1) The Court may, if satisfied that the applicant has fulfilled the conditions for guardianship under this Part, make an order for the guardianship of the child.

(2) Except where the application is made jointly by spouses, a guardianship order shall not be made to authorize more than one person as guardian of a child.

43H. Effect and duration of a guardianship order.

(1) A guardianship order shall vest parental responsibility of the child in the guardian.

(2) A guardianship order shall remain in force until the child in relation to whom it is issued attains the age of eighteen years.

(3) The guardianship order shall cease to apply where the guardian dies or is suffering from infirmity of body or mind.

43I. Registration of guardianship order.

(1) Every person to whom a guardianship order is granted shall within seven days register the order with the Uganda Registration Services Bureau and the Ministry responsible for children affairs and submit a copy of the order to the National Council for Children.

(2) The registration of a guardianship order shall be Form 2 set out in the Third Schedule.

43J. Reports by a guardian.

(1) Every guardian resident outside Uganda shall-

- (a) submit an annual progressive report to the probation and social welfare officer and to the Ugandan Diplomatic Mission in the Country of residence detailing the welfare of the child, the adoption of the child to his or her new environment and any changes in the guardian's status of living;
- (b) submit any change of address to the responsible person or authority mentioned in subsection (1), where the guardian changes physical address.

(2) The probation and social welfare officer shall within one month of receiving the reports mentioned in subsection (1) (a) transmit them to the court that made the guardianship order and to the Minister responsible for children affairs in Uganda.

43K. Revocation of guardianship order.

(1) A probation and welfare officer or a relative of a child under guardianship may apply to court to revoke a guardianship order.

(2) The court may revoke a guardianship order where—

- (a) it is satisfied that the guardianship order was obtained by fraud or misrepresentation;
- (b) the guardian has not complied with the conditions issued by the court in respect of the child or the guardianship;
- (c) the guardian has neglected the parental responsibility over a child.

(3) Where the court revokes a guardianship order, the court shall upon considering submissions by the Minister responsible for children affairs, place the child under alternative care.

43L. Appeals.

A person aggrieved by a decision of the High Court under this Part, may appeal to the Court of Appeal.

43M. Offences by the administrator of the estate of a child.

(1) An administrator of the estate of a child who—

- (a) neglects, misappropriates, wastes or occasions loss or damage to any asset forming a part of the estate of a child;
- (b) fails to submit to court, or the parent or guardian of the child any account or inventory required by law; or
- (c) produces an inventory or an account which is false in any material particular, knowing it to be so;

Commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred and twenty currency points or both.

(2) Court may in addition to the penalty imposed under subsection (1) require the person so convicted to make good any loss or damage caused.

(3) Court shall exercise its discretion in determining the modalities of accountability in guardianship matters.

12. Amendment of section 45 of the principal Act.

Section 45 of the principal Act is amended in subsection (4) by substituting for “thirty six months” the words “twelve months”.

13. Amendment of section 46 of the principal Act

Section 46 of the principal Act is amended—

- (a) in subsection (1) (b) by substituting for “thirty six months” the words “twenty four months”;
- (b) by inserting immediately after subsection (3) the following new provisions—

“(4) The court may in exceptional circumstances waive any of the requirements specified in subsection (1).

(5) In all adoption applications before Court, a State Attorney shall represent the interests of the child.

(6) Notwithstanding the provisions of this section, inter-country adoption shall be considered as the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services.

(7) For purpose of this section, continuum of comprehensive child welfare services includes a broad range of preventive services and community based family-centered alternative care options.”

14. Insertion of Section 46A in the principal Act.

The Principal Act is amended by inserting immediately after section 46 the following—

“46A. Rescission of an adoption order.

(1) Court may in exceptional circumstances rescind an adoption order on application by—

- (a) the adopted child;
- (b) a parent of the adopted child or other person who was a guardian in respect of the child immediately before the adoption;
- (c) the adoptive parent of the child;
- (d) any person who consented to the adoption;
- (e) the Minister in the case of an inter-country adoption;
or
- (f) any other person with justifiable reason.

(2) An adoption order may be rescinded only if—

- (a) rescission of the order is in the best interest of the child;
- (b) the order was obtained through fraud or misrepresentation.

(3) Where an adoption order is rescinded—

- (a) the adoption order shall cease to apply in respect of the child concerned; and
- (b) all responsibilities, rights and other matters which had been previously terminated by the adoption order in respect of the child shall be restored.

- (4) When rescinding an adoption order the court may—
- (a) make an appropriate placement order in respect of the child concerned;
 - (b) order that the child be kept in temporary safe custody until an appropriate placement order can be made; or
 - (c) make an ancillary order where necessary for restoration of the child.

15. Replacement of section 56 of the principal Act.

For section 56 of the principal Act there is substituted the following—

“56. Approval of homes.

(1) A government or non-governmental home set up for the purposes of caring for children shall be approved by the Minister, in consultation with the probation and social welfare officer.

(2) A person who establishes or runs a home without the approval of the Minister under this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.

(3) Where the offence under subsection (2) is committed by a body corporate and it is proved that the offence is committed with the consent or connivance of, or is attributable to the negligence on the part of a director, manager, secretary or other similar officer of a body corporate or any person who purports to act in any such capacity, he or she shall be personally liable to

the penalty prescribed under subsection (2).”

16. Amendment of section 73 of the principal Act.

Section 73 of the principal Act is amended by substituting for subsection (1) the following—

“(1) Court may on application by a sole applicant or joint applicants, grant custody of a child on such conditions as may be determined by the Court”.

17. Insertion of new sections 73A and 73B to the principal Act.

The principal Act is amended by inserting immediately after section 73 the following new sections—

(a) “73A. Interim custody order.

(1) A probation and social welfare officer, mother, father or guardian of a child may apply to the family and children court for an interim custody order pending the determination of custody of the child by the court.

(2) The application for interim custody shall be supported by an affidavit of the applicant.

(3) The court may issue an interim custody order, where the court is satisfied that—

(a) the child is suffering or likely to suffer harm if the order for interim custody is not issued; or

(b) the order is in the best interest of the child.

(4) An interim custody order may, where appropriate, contain any direction, prohibition or award.”

(b) 73B. Custody by agreement.

(1) The parents of a child may enter into a written agreement to determine which of them shall have custody of a child.

(2) Court may recognize an agreement made between the parents of a child giving the custody of the child to one of the parents, except where court finds that enforcing the agreement would not be in the best interest of the child.

(3) Court shall only grant a custody order to the parent under subsection (1), if it is satisfied that there was no duress or fraud involved in making the agreement.”

18. Amendment of section 88 of the principal Act.

Section 88 of the Principal Act is amended by inserting the following new subsections—

“(2) In determining criminal responsibility or a sentence for a child offender, the police, prosecutor or a person presiding over the matter shall consider the age of the person at the time the offence was allegedly committed;

(3) Subject to subsection (2), court shall determine the age based on a full assessment of all available information, giving due consideration to official documentation including a birth certificate, school records, health records; statement certifying age from the parent or child; or medical evidence.

(4) Specialized protection for children under this Act shall apply to all children below the age of 18 years;

(5) A person shall be presumed to be a child if he or she claims or appears to be younger than 18 years old pending a

conclusive determination of age by court.”

19. Amendment of section 91 of the principal Act.

Section 91 of the principal Act is amended as follows—

- (a) in subsection (5)(a) by substituting for “six months” the words “three months”; and
- (b) in subsection (5)(b) by substituting for “three months” the words “forty five days”

20. Amendment of section 94 of the principal Act.

Section 94 of the principal Act is amended—

- (a) by repealing subsection (1) (e);
- (b) by inserting immediately after subsection (6) the following—

“(6a) for avoidance of doubt, a person who has attained the age of eighteen at the time of sentencing shall serve the sentence in an adult detention centre.”

21. Insertion of new section 95A to the principal Act.

The principal Act is amended by inserting a new section immediately after section 95 as follows—

“95A. Appointment and supervision of probation and social welfare officers.

The Minister responsible for gender, labour and social development shall be responsible for the appointment and supervision of probation and social welfare officers.”

22. Amendment of section 104 of the principal Act.

Section 104 of the principal Act is amended—

(a) by substituting for subsection (2) the following—

“(2) Where a child is tried jointly with an adult in the High Court, the High Court shall make an appropriate order under this Act.”

(b) by inserting immediately after subsection (3) the following—

“(4) A child shall not be sentenced to death.”

23. Insertion of new section 104A to the principal Act.

The principal Act is amended by inserting immediately after section 104 a new section as follows—

“104A. Death sentence for a person below eighteen years.

(1) A death sentence shall not be pronounced on or recorded against a person convicted of an offence punishable by death, if it appears to the court that at the time when the offence was committed the convicted person was below the age of eighteen years.

(2) The court shall, in lieu of the death sentence, order the person to be detained in safe custody, pending an order made by the Minister under subsection (4).

(3) The court shall submit to the Minister a record of the proceedings or a certified copy of the record of proceedings and a report signed by the presiding judge containing any recommendation or observations made by the presiding judge.

(4) Upon consideration of the record of proceedings and the report submitted under subsection (3), the Minister may order or direct that the person convicted shall be detained in a prison or any other place of custody.

(5) An order made under subsection (4) may be varied or discharged by the Minister and it shall be sufficient authority for

the detention of the person to a place specified in the order.

(6) A person removed or detained in accordance with an order made under subsection (4) shall be deemed to be in lawful custody.

(7) The Minister shall within thirty days of receipt of the certified record as provided for in subsection (2) remit the record to court for a sentence.

(8) Court shall move the Minister to show cause why the juvenile should not be released if the Minister contravenes subsection (4) and (7).

(9) Section 105 of the Trial on Indictment Act is hereby repealed.”

24. Insertion of new section 106A to the principal Act.

The principal Act is amended by inserting immediately after section 106 a new section as follows—

“106A. Corporal punishment in schools.

(1) A person of authority in institutions of learning shall not subject a child to any form of corporal punishment.

(2) A person who subjects a child to corporal punishment commits an offence and is liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred currency points or both.”

25. Repeal of the First Schedule to the Principal Act.

The First Schedule to the principal Act is repealed.

26. Insertion of the Third Schedule to the principal Act.

The principal Act is amended by inserting immediately after the

Second Schedule the following—

“Third Schedule

Form 1

Section 43B

THE REPUBLIC OF UGANDA

THE CHILDREN ACT CAP.59

PETITION FOR GUARDIANSHIP

IN THE HIGH COURT OF UGANDA

In the matter of the Children Act and in the matter of _____
(*name of Child*) of _____ village of
_____ Sub county.

The petition of _____ (*petitioner*) of
_____ (*address in Uganda*
and address in foreign country), (*and of the same address*) states as
follows—

The petitioner(s) is (are) desirous of obtaining legal guardianship of the
child _____ under the provisions of the Children Act

The petitioner _____ of _____ (*L.C.I*
zone) _____ (*town*) _____
Uganda is a citizen of _____ (*foreign Country*), who
first arrived in Uganda on the _____ (*day*) _____ (*month*)
_____ (*year*) and has stayed in Uganda at the following address(es)

Address L.C.I From To

The co-petitioner _____ of _____ who

first arrived in Uganda on _____ and has address From To

The petitioner _____ is unmarried (*was married*) to the co-petitioner _____, (at _____ on the _____ (day) _____ (month) _____ (year) (which marriage is supported by evidence annexed).

The petitioner _____ is by occupation _____ and the co-petitioner _____ is by occupation a _____.

The petitioner _____ is _____ years of age (date of birth _____ (day) _____ (month) _____ (year), these dates supported by evidence of birth annexed)

The petitioner _____ is related to the child _____ follows _____ (*and the co-petitioner _____ is related to the child _____ (as follows) (or, the petitioner (s) _____ and _____ is not (are not, nor is either of them) related to the child.*

The petitioner _____ annexes a certificate marked _____ that he/she does not have a criminal record from _____ (*country of origin*) and affirms that he/she does not have a criminal record in Uganda or any other country.

The co-petitioner _____ annexes a certificate marked _____ that he/she does not have a criminal record from _____ (*country of origin*) and affirms that he/she does not have a criminal record un Ugandan or any other Country.

The petitioner _____ attaches a recommendation concerning

his/her suitability to adopt a child from _____
 (recommender) of _____ the probation and
 welfare office/other authority (specify) in _____ Country of
 origin of petitioner _____.

The co-petitioner _____ attaches a
 recommendation concerning his/her suitability to adopt a child from
 _____ (recommender) _____ of
 _____ the probation and welfare
 office/other authority (specify) in _____ Country of origin of
 co-petitioner _____.

The petitioner(s) has (have) resident with him/her (them) the following
 reasons, namely, _____ (son), aged _____ years,
 _____ (daughter), aged _____ years, and (others)

The child _____ is—

- (a) Of the _____ sex:
- (b) Unmarried;
- (c) A child of _____ (father) of _____
 Village _____ sub country _____
 District and of _____ (mother) of _____
 Village _____ sub county _____ District;
- (d) A citizen of _____;
- (e) _____ years of age, having been born at _____ the
 _____ (day) _____ (Month) _____ (year);
- (e) Resident at _____ village _____ Sub county
 _____ District;
- (g) now in the actual custody of _____ of
 _____ village or (L.C.V) _____ Sub

- county _____ Town or _____ District;
- (h) under the guardianship of _____ of _____
Village of (L.C.V) _____ Sub County or Town
_____ District;(i) entitled to the following property

- (i) the following persons are liable to contribute to support of the child-
- (a) _____ of _____ village _____ Sub county
_____ District;
- (b) _____ of _____ Village _____
Subcounty _____ District;
- (c) other _____

The petitioner(s) _____ and _____
annexes (annex) the following consent(s) marked No. _____,
required under the Children Act

Name of person Relationship with Date of consent consenting child.

_____	_____
_____	_____
_____	_____

The child has not been the subject of an a guardianship order or of an application or petition for a guardianship order (except that) (state order and application or petition, if any).

The petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the petitioner(s) (or either of them) any payment or reward in consideration of the guardianship of the child.

The petitioner(s) undertake(s) that—

- (a) He/she/they shall care for (*name of child*)
- _____

as though he/she/they were my/our own child.

- (b) He/ She/they shall bring him/her up in accordance with the _____ religion.
- (c) He/she/they shall look after his/her health and allow him/her to be medically examined as required by the district probation and social welfare office.
- (d) He/she/they shall allow an officer of the district probation and social welfare office or representative of the ministry to visit my/our home and to see the child at any time.
- (e) He/she/they shall inform the district probation and social welfare office immediately if the child is ill, or is missing, or is involved in an accident, or is in any kind of trouble.
- (f) He/she/they shall inform the district and social welfare office immediately if he/she plans to change residence and address.
- (g) He/she/they understand(s) that an officer of the district probation and social welfare has the right to remove the child from my/our home in certain circumstances.

The petitioner(s) affirms (*affirm*) that a guardianship order made by this honorable court will be respected and recognized by _____ the country of origin of petitioner _____ (and _____ the country of origin of petitioner _____), and produces (*Produce*) a sworn annexed marked _____ to that effect.

It is proposed that the costs of the petition shall be paid by the petitioner(s) _____ and _____

The petitioner(s) prays (pray)

- (a) That an order for guardianship of the child.
_____, by the petitioner(s) be made under the Children Act with all necessary directions;
- (b) That the cost of this petition be provided for as above-mentioned or

otherwise as the court may direct; and

- (c) That such further or other order be made as the nature of the case may require.

Signed _____, Petitioner

Witnessed _____ (*name*)

_____ (*occupation*), of _____ (*address*)

Signed _____, Petitioner

Witnessed _____ (*name*)

_____ (*occupation*), of _____

(*address*)

THE REPUBLIC OF UGANDA

THE CHILDREN ACT, CAP 59

GUARDIANSHIP REGISTER

Name of child (surname first) _____

Date of birth _____ Age _____ Sex _____

Religion _____

District of Origin _____

Names of Guardians _____

	<i>Guardians' home address</i>	<i>Change of address</i>
Village/street		
Parish/County		
Region/State		
Country		

Name of biological father _____ *Alive/dead/unknown*Name of biological mother _____ *Alive/dead/unknown*

<i>Biological father</i>	<i>Biological mother</i>

Details of medical history, including immunization

_____	_____
_____	_____
_____	_____

(Attach a copy of the child's immunization card)

Details of education

School (current) _____ class _____

Name of District probation and welfare officer

Address _____

District Probation and Welfare Officer's Signature

Date:

Guardian."