

LEGAL NOTICE NO. 58

THE STATE CORPORATIONS ACT

(Cap. 446)

IN EXERCISE of the powers conferred by section 3 (1) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, make the following Order:—

THE CHILD WELFARE SOCIETY OF KENYA ORDER, 2014

PART I—PRELIMINARY

1. This Order may be cited as the Child Welfare Society of Kenya Order, 2014.

Citation.

2. The objective and purpose of this Order is to provide a legal and institutional framework for the care, control, protection, welfare and adoption of children through the establishment of the Child Welfare Society of Kenya.

Objective.

3. In this Order, except where the context otherwise requires —

Interpretation.

“Act” means the State Corporations Act;

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“adoption” means the process through which a child is permanently placed with an alternative family and is provided with new permanent legal parents and severs the bond between a child and the child’s natural parents;

“Board” means Board established under paragraph 7;

“Board of Trustees” means the Board of Trustees registered under the irrevocable Trust Deed of the Child Welfare Society of Kenya on the 12th June, 1970 as reviewed from time to time;

“Cabinet Secretary” means the Cabinet Secretary responsible for children;

“chief executive officer” means the chief executive officer appointed in accordance with paragraph 16;

“child” has the meaning assigned in the Children Act, 2001;

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“children without appropriate care” means children who are lost, abandoned, in institutions, in abusive families or in unformalized foster care or unformalized adoption, in child headed households, living in the streets, of imprisoned parents, in emergency situations, refugees and other separated children;

“duty bearer” means any person or institution, including the state that has the responsibility of promoting the welfare of the child;

“Endowment and Trust Fund” means the Fund established under the Trust Deed of the 12th June, 1970;

“family” includes the nuclear family, extended family, foster family, adoptive family, kinship care family and guardianship family;

“foster care” means temporary placement of a child or children who for any reason cannot remain in the natural family and urgently require alternative family care while other measures are being undertaken to address their circumstances in order to either restore the child or children to their families or place them in a permanent family set up;

“Society” means the Child Welfare Society of Kenya established by paragraph 4 of this Order;

“temporary places of safety” means foster families or abodes where children are cared for and are provided with residential care on a temporary basis as interventions are being made to address the circumstances under which a child was made to be in need of care and protection;

“Trust Deed” means the irrevocable Trust Deed of the Child Welfare Society of Kenya dated the 12th June, 1970 as reviewed from time to time.

#### PART II—ESTABLISHMENT OF THE CHILD WELFARE SOCIETY OF KENYA

4. (1) There is established a state corporation to be known as the Child Welfare Society of Kenya.

Establishment of the Society.

(2) The Society shall be a body corporate with perpetual succession and a common seal, and which shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing or performing such other things or acts necessary for the proper performance of the functions of the Society under the Order and which may lawfully be done or performed by a body corporate.

(3) The Society shall be the successor of the Child Welfare Society of Kenya a society exempted from registration under the Societies Act and approved as a society working for the purpose of care, protection and control of children vide Gazette Notice No. 1768 of 1955, and approved as an adoption society vide Gazette Notice No. 1356 of 1969 as read with section 200 of the Children Act, 2001 and paragraph 9(1) of the Seventh Schedule to the Children Act, 2001.

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(4) Subject to this Order, all the rights, duties, obligations, functions of care, protection and control of children, exemptions, assets

and liabilities of the Child Welfare Society of Kenya existing immediately before the commencement of this Order shall be automatically and fully transferred to the Society.

5. The Headquarters of the Society shall be in Nairobi but the Society may establish offices and branches in other parts of the country in order to extend its services to all parts of the country.

Headquarters of the Society.

6. (1) The Society shall—

Functions of the Society.

- (a) be the national emergency response and rescue organization for children;
- (b) ensure the welfare of children and vulnerable young persons;
- (c) be the national adoption society;
- (d) strengthen families and provide families for separated children, children at risk of separation and children without appropriate care by facilitating—
  - (i) family empowerment and rehabilitation;
  - (ii) local and international tracing and reunification;
  - (iii) guardianship;
  - (iv) foster care;
  - (v) custody, including providing professional social work assessment;
  - (vi) adoption; and
  - (vii) any other suitable means that the Society considers necessary;
- (e) develop and review standards and guidelines on child welfare, care, protection and control to be applied by the Society;
- (f) establish such temporary places of safety including child care facilities, group homes, foster care homes, child rescue centres, child protection centres and child protection units as may be considered necessary and in the best interest of children;
- (g) receive separated children and children without appropriate care into temporary places of safety;
- (h) rescue, receive and provide care to lost or abandoned children, children given up by their parents or committed to the Society by courts, referred by duty bearers or other stakeholders in the temporary places of safety and undertake family tracing, mediation and reunification;
- (i) ensure rapid response by initiating urgent action in response to children in distress and rescue of children in distress including the provision of psychosocial support;
- (j) advise any party on the procedure to be followed to adopt, foster or be a guardian to a child;

- (k) develop and publish guidelines, training manuals or any other literature in relation to any of the matters dealt with by the Society;
- (l) educate, give vocational training and skills to children and vulnerable young persons;
- (m) conduct research into matters relevant to its functions and publish reports on such research;
- (n) maintain relevant records and documents relating to the Society and the activities of the Society;
- (o) establish and maintain appropriate information and communication systems and data base based on contemporary trends and practices for the purposes of linking knowledge and information with its stakeholders;
- (p) establish mechanism to combat sexual exploitation of children and other forms of child labour;
- (q) build capacity of children and promote their participation in national affairs;
- (r) build capacity of duty bearers and institutional strengthening;
- (s) establish programmes for orphans and other vulnerable children; and
- (t) perform any other functions as may be necessary to achieve the objectives of the Society under this Order.

7. (1) The management of the Society shall be vested on a non-executive Board which shall consist of—

The Board of the Society.

- (a) a Chairperson, appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters relating to children affairs or a representative;
- (c) the Principal Secretary for the time being responsible for matters relating to finance or a representative;
- (d) one member of the existing Board of Trustees or a representative of the Board of Trustees;
- (e) a person who has at least a bachelor's degree from a recognized institution and who has experience in social work;
- (f) a medical doctor duly registered under the Medical Practitioners and Dentist Act;
- (g) a trustee from the existing Endowment and Trust Fund; and
- (h) the Chief Executive Officer of the Society who shall be the Secretary to the Board, but not be entitled to vote.

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(2) The members of the Board appointed under paragraph (d), (e), (f) and (g) shall be appointed by the Cabinet Secretary.

(3) In appointing the Members under paragraphs 7(1) (a), (d), (e), (f) and (g), the President and the Cabinet Secretary shall ensure that the persons have knowledge, experience, and expertise in matters relating to child welfare.

(4) The members of the Board of Trustees of the Society existing immediately before the commencement of this Order shall recommend to the Cabinet Secretary the names of people to be appointed to the first Board.

8. (1) The Chairperson and Members of the Board appointed under paragraphs 7(1)(a), (d), (e), (f) and (g) shall serve for a term of three years and shall be eligible for appointment for one further term of three years.

Term of office.

(2) Notwithstanding paragraph (1), the office of a member of the Board shall be vacant if the member—

- (a) resigns from office, in writing, to the appointing authority;
- (b) is absent without reasonable excuse from three consecutive meetings of the Board of which the member had notice;
- (c) is adjudged bankrupt;
- (d) is incapacitated by prolonged physical or other illness;
- (e) is convicted of any offence in contravention of the requirements of Chapter Six of the Constitution; and
- (f) is otherwise unable or unfit to discharge the functions of the Board.

(3) Where the office of the Chairperson or a member of the Board becomes vacant under this paragraph, the President or the Cabinet Secretary, as the case may be, may appoint another person as a replacement of the person vacating office in accordance with paragraph 7.

9. The Board shall—

Functions of the Board.

- (a) control, supervise and administer the assets of the Society in a manner that best promotes the purpose for which the Society is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Society and the Trust Fund;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) mobilize resources for the Society;
- (e) strengthen the Endowment and Trust Funds established under the irrevocable Trust Deed of the 12th June, 1970 and such other funds as may be necessary for achieving the objectives of the Society;

- (f) cause necessary programmes to be developed and regularly review programmes developed to effect the objectives of the Society;
- (g) contribute towards the development and revision of the National Strategy for the promotion, securing and protection of children's rights;
- (h) prescribe fees payable for services rendered by the Society;
- (i) advise the Government on laws and policies relating to child welfare and their implementation;
- (j) promote public and private sector partnerships for sustainable child welfare programmes and activities;
- (k) perform such other functions as may be assigned to it by the President or the Cabinet Secretary.

10. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Order. Powers of the Board.

(2) Without prejudice to the generality of paragraph (1), the Board shall have the power to—

- (a) establish such committees as it may consider necessary for the discharge of the functions of the Board;
- (b) develop and review policies to be undertaken by the Society;
- (c) open such banking accounts for the funds of the Society as may be necessary;
- (d) invest any funds of the Society not immediately required for its purposes in the manner provided under this Order;
- (e) gather relevant information, including requisition of reports, records, documents or any information from any source, including governmental authorities, and maintain a database on children affairs;
- (f) develop, in consultation with the Cabinet secretary, and publish in the Gazette guidelines for the better carrying out of this Order;
- (g) prescribe the qualifications for the appointment and the procedure of appointing and gazetting of Child Welfare Officers; and
- (h) do any other thing which is necessary or incidental to the functions of the Society.

11. (1) The Chairperson shall preside over all meetings in which the Chairperson is present and in the absence of the Chairperson, the members present at the meeting shall appoint one of the members to act as a Chairperson for the purpose of that meeting. Meetings of the Board.

(2) The quorum for a Board meeting shall be two-thirds of all the members.

(3) The Board may co-opt not more than three persons whose assistance or advice it may require for such period as it may determine, but the persons so co-opted shall not be considered as members for the purpose of forming a quorum and shall not be entitled to vote at any meeting of the Board.

(4) Subject to the provisions of this Order, the Board may regulate its own proceedings.

12. The Chairman and Members of the Board shall be paid such remuneration, fees, allowances and such other reimbursements as the Cabinet Secretary shall in consultation with the Cabinet Secretary to the National Treasury determine.

Remuneration.

13. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of the votes of the members present and voting, and in the case of an equality of votes, the Chairperson or the person appointed to be the Chairperson under paragraph 11(1) shall have a casting vote as well as a deliberative vote.

Decisions of the Board.

14. The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, or the chief executive officer of the Society the exercise of any powers or the performance of any of the functions or duties of the Board.

Delegation by the Board.

15. (1) The common seal of the Board shall be authenticated by the signature of the Chairperson and the chief executive officer, or by either the Chairperson or the chief executive officer, together with one member other than an ex-officio member of the Board authorized, in writing, by the Board in that behalf.

Execution of Documents.

(2) Any document, other than a document which is required by any law to be made under seal, and any decision of the Board, may be signified under the hand of the Chairperson, or the chief executive officer or any other member of the Board or any other person authorized in writing by the Board in that behalf.

16. (1) There shall be a chief executive officer to the Society who shall be appointed by Cabinet Secretary on the recommendation of the Board following a competitive recruitment process.

Chief Executive Officer of the Board and the Secretariat

(2) A person shall qualify for appointment as a chief executive officer if that person—

- (a) holds at least a Bachelor's degree in social work and a relevant Masters degree from a recognised university;
- (b) has at least ten years' post-qualification experience in the field of child welfare; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The chief executive officer shall be the secretary to the Board, and shall be responsible for the day-to-day operations and administration of the Society.

(4) The chief executive officer shall hold office for such period and on such terms and conditions of employment as the Board shall, with the approval of the Cabinet Secretary, determine.

17. (1) The Board shall employ and appoint such number of child welfare officers to undertake duties relating to the care, protection and control of children and other senior officers as may be necessary to assist the chief executive officer in carrying out the purposes of this Order.

Officers.

(2) The Society shall upon the appointment of the child welfare officers publish the names of the officers in the Gazette.

(3) The child welfare officers appointed under this paragraph shall perform the functions conferred on them by this Order and such other duties as the chief executive officer may from time to time direct.

### PART III—FINANCIAL PROVISIONS

18. (1) The funds of Society shall comprise of—

Funds of the Society.

- (a) such sums as may be provided by Parliament;
- (b) monies held in the Endowment Fund;
- (c) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Order or under any other written law; and
- (d) all monies from any other source provided or donated or lent to the Society.

19. The financial year of the Society shall be the period of twelve months ending on the thirtieth day of June in each year.

Financial year.

20. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure for that year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Society for the financial year concerned, and in particular shall provide for—

- (a) the undertaking of welfare, emergency, education, skills development, local and international tracing and reunification, psychosocial support, maintenance of children, separated children, foster care, adoption, guardianship, custody, programmes for orphans and other vulnerable children and vulnerable young persons, capacity building, institutional strengthening and other programmes of the society;
- (b) the maintenance of temporary places of safety;
- (c) the payment of the salaries, allowances, consultancy fees and other charges;
- (d) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Society;



- (e) the proper maintenance of the buildings and grounds of the Society;
- (f) the proper maintenance, repair and replacement of the equipment and other movable property of the Society;
- (g) the development of temporary places of safety, schools, health facilities, housing and educational institutions;
- (h) the development of children and vulnerable young persons;
- (i) running and operating livelihood programmes for children and vulnerable young persons and families; and
- (j) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may consider necessary.

(3) The Board shall approve the annual estimates before the commencement of the financial year to which they relate and once approved the estimates shall be submitted to the Cabinet Secretary for approval.

(4) Any balance of grant may be carried forward in the accounts of the Society from one year to the next and be expended as the Board may determine, or be put into a reserve account of the Society.

21. The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Society.

Maintenance of records and books of account.

22. (1) The Board may invest any of the funds of the Society which are not immediately required for its purposes in such securities as the National Treasury may, from time to time, approve.

Investments by the Board.

(2) The Board may place on deposit with such bank or banks as it may determine any moneys not immediately required for the purposes of the Society.

23. The accounts of the Society shall be audited in accordance with the Public Audit Act, 2003.

Audit.  
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24. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediately preceding year.

Annual report.

(2) The Cabinet Secretary shall submit the annual report to the National Assembly as soon as reasonably practicable after the report is submitted to him or her under this paragraph.

25. No matter or thing done by the Chairman or any other member of the Board or any officer, employee or agent of the Society shall, if the matter or thing is done in good faith for the purpose of executing any provisions of this Order, render the Chairperson, member, officer, employee or agent or any person acting under the directions of those persons, personally liable to any action, claim or demand.

Protection from liability.

26 . The provisions of this Order shall not relieve the Society of the liability to pay compensation or damages to any person for any injury to him or his property or any of his interests caused by the exercise of any power conferred by this Order or by the failure, whether wholly or partially, of any action.

Liability for Damages.

27. (1) In this section—

Transitional provisions.

“former Society” means the Child Welfare Society of Kenya operating as an exempted society under the Societies Act vide Gazette Notice No. 1536 of 1955, approved as a society working for the purpose of care, protection and control of children vide Gazette Notice No. 1768 of 1955, and approved as an adoption society vide Gazette Notice No. 1356 of 1969 as read with section 200 of the Children Act, 2001 and paragraph 9(1) of the Seventh Schedule to the Children Act, 2001.

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(2) Every person who at the commencement of this Order is an employee of the former Society shall, subject to this Order, be deemed to be an employee of the Child Welfare Society of Kenya established by paragraph 4.

(3) A person who at the commencement of this Order is the Chief Executive Officer of the former Society shall, on that day and subject to this Order, be deemed to have been appointed as Chief Executive Officer under this Order.

(4) All the land, the developments and fixtures therein held in the name of the former Society by the Trustees shall vest in the Child Welfare Society of Kenya established by this Order.

(5) All projects previously undertaken as income generating activities by the Trustees including any property held thereunder shall continue to be presided over by the Trustees under the Trust Deed of the 12th June, 1970.

(6) The Endowment and Trust Funds established under an irrevocable Trust Deed of the 12th June, 1970 of the former Society and in existence immediately before commencement of this Order shall continue to be managed by the Board of Trustees and shall be used to supplement the operations of the Society to enable it meet its objectives.

(7) Any reference to the Child Welfare Society of Kenya in any contract or document shall, for all purposes, be deemed to be a reference to the Child Welfare Society of Kenya established under this Order.

Made on the 21st May, 2014.

UHURU KENYATTA,  
*President.*