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SPECIAL BILL SUPPLEMENT

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THE CHILD PROTECTION LAWS (MISCELLANEOUS
AMENDMENTS) BILL, 2024

ARRANGEMENT OF SECTIONS

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PRELIMINARY PROVISIONS

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2. Amendments of certain written laws.

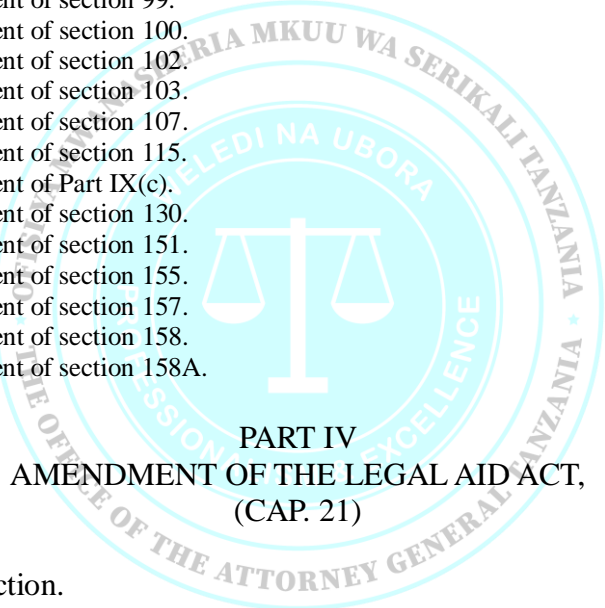
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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dodoma,
3rd June, 2024

MOSES M. KUSILUKA
Secretary to the Cabinet

A Bill
for

An Act to amend certain laws in relation to child protection.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Child Protection Laws (Miscellaneous Amendments) Act, 2024.

Amendment of certain written laws

2. The written laws specified in various Parts of this Act are amended in the manner specified in their respective Parts.

PART II
AMENDMENT OF THE CYBER CRIMES ACT,
(CAP. 443)

Construction
Cap. 443

3. This Part shall be read as one with the Cyber Crimes Act, hereinafter referred to as the “principal Act”.

Amendment of section 3

4. The principal Act is amended in section 3, by-
(a) deleting the definition of the term “child

pornography.”;

- (b) deleting the definition of the terms “law enforcement officer” and “property” and substituting for them the following:

““law enforcement officer” means a police officer or any other person authorised in any written law;

“property” includes-

- (a) an asset whether movable or immovable, tangible or intangible;
- (b) a legal document or instrument in any form, including electronic or digital, evidencing title to or interest in a property; or
- (c) bank credit, travellers’ cheque, bankers’ cheque, money order, shares, bond and other securities drafts and letter of credits, and any interest, dividend or other income on, or value from, or generated by, such property whether situated in or outside the United Republic;”;
- (c) adding in the appropriate alphabetical order the following new definitions:

““child sexual abuse material” or “child sexual exploitation material” means any kind of material, visual display including words or audio, sexual activities, other activities that are not sexual, that engage a child such as image, video or any computer-generated material which cannot easily be differentiated from a real child and any image which shows a child to be involved in such activity whether it is created, adopted or modified;

“pornography” refers to any representation, through publication, exhibition, cinematography, indecent show,

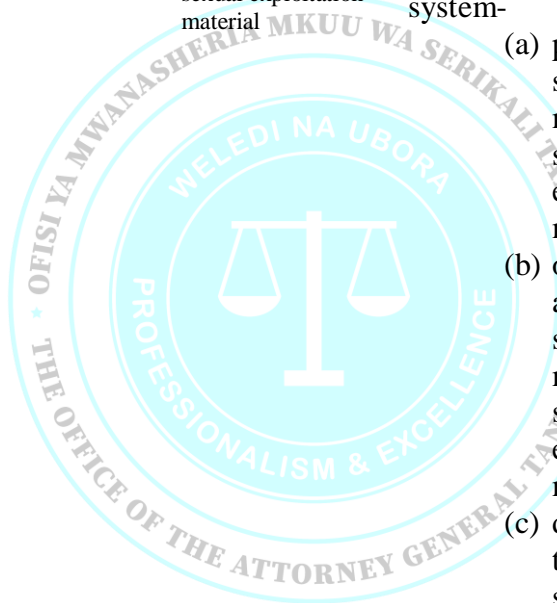
information technology or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person primarily for sexual purposes;”.

Repeal and replacement of section 13

5. The principal Act is amended by repealing section 13 and replacing for it the following:

“Child sexual abuse material or child sexual exploitation material” **13.**-(1) A person shall not, through computer system-

- (a) produce child sexual abuse material or child sexual exploitation material;
- (b) offer or make available child sexual abuse material or child sexual exploitation material;
- (c) distribute or transmit child sexual abuse material or child sexual exploitation material;
- (d) procure any child sexual abuse material or child sexual exploitation material for oneself or for



- another person;
- (e) compel, invite or allow a child to view pornography, child sexual abuse material or child sexual exploitation material; or
- (f) knowingly possess child sexual abuse material or child sexual exploitation material in a computer data storage medium.

(2) A person shall not propose, groom or solicit, through computer system, to meet a child, followed by material acts leading to such meeting for the purpose of-

- (a) engaging in sexual activities with a child by any means including:
 - (i) use of coercion, inducement, force or threat;
 - (ii) abuse of a recognised position of trust or authority;

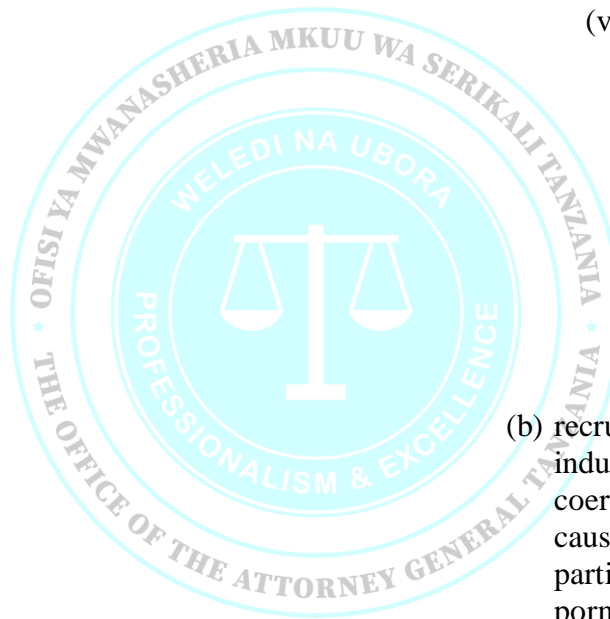
(iii) influence over the child;

(iv) taking advantage of a particularly vulnerable situation of the child;

(v) taking advantage of mental or physical disability or a situation of dependency; or

(b) recruiting, inducing, coercing, or causing a child to participate in pornographic performances or profiting from or otherwise exploiting a child for such purposes.

(3) A person who contravenes this section commits an offence and on conviction shall be liable to a fine of not less than fifty



million shillings or three times the value of undue advantage received, whichever is greater, or to imprisonment for a term of not less than seven years or to both.

(4) A person who is convicted of an offence under this section may, in addition to any other punishment, be ordered to compensate the victim of the offence.”.

Amendment of section 19

6. The principal Act is amended in section 19, by adding at the end of subsection (3) the words “and “crimes against humanity” shall have the meaning ascribed to it under the Rome Statute of International Criminal Court of 1998”.

Addition of section 19A

7. The principal Act is amended by adding immediately after section 19 the following:

“Cyber terrorism

19A.-(1) A person shall not access or cause to be accessed a computer or computer system or network for purposes of carrying out a terrorist act.

(2) A person who contravenes subsection (1) commits an offence and on conviction shall be liable to imprisonment for a term of not less than twenty years.

(3) For the purpose of this section, “terrorist act” shall have the meaning ascribed to it under the Prevention of Terrorism

Cap. 19

Act.”.

Amendment of section 34

8. The principal Act is amended in section 34 by deleting the word “computer” appearing in the opening phrase to subsection (1) and substituting for it the word “traffic”.

Repeal and replacement of section 49

9. The principal Act is amended by repealing section 49 and replacing for it the following:

“Offences by company or other bodies

49.-(1) Where an offence under this Act is committed by a company, society, association or body of persons, every person who, at the time of the commission of the offence, was concerned as a director or an officer with the management of the affairs or activities of such company, society, association or body of persons, commits an offence and on conviction shall be liable to a fine of not less than fifteen million shillings but not exceeding twenty five million shillings.

(2) It shall be a defence for such person, director, or any officer to prove to the satisfaction of the court that he had no knowledge of the commission of the offence.”.

Amendment of section 50

10. The principal Act is amended in section 50 by adding immediately after subsection (2) the following:

“(3) The provisions of this section shall not apply to section 13.”.

PART III
AMENDMENT OF THE LAW OF THE CHILD ACT,
(CAP. 13)

Construction
Cap. 13

11. This Part shall be read as one with the Law of the Child Act, hereinafter referred to as the “principal Act”.

Amendment of
section 3

12. The principal Act is amended in section 3, by-
(a) deleting the definition of the term “court” and substituting for it the following:

““court” means-

- (a) a primary court, juvenile court, district court, court of resident magistrate or the High Court;
- (b) for the purpose of closed adoption, the High Court; and
- (c) for the purpose of open adoption, district court, court of resident magistrate or juvenile court;”;
- (b) adding the words “upon obtaining permission of the commissioner” at the end of definition of the term “foster care or fosterage”; and
- (c) inserting in the appropriate alphabetical order the following new definitions:

““closed adoption” means adoption of the child by a person other than a relative;

“guardian *ad litem*” means, in matters relating to-

- (a) juvenile court, a person who takes the responsibility or is appointed to represent and protect interests of a child in a juvenile court proceeding; and
- (b) adoption, a social welfare officer appointed by the Commissioner for Social Welfare to represent rights of the child in court during the process of application

for adoption;

“diversion” means referring a child outside of judicial system at any time prior to or during court proceedings;”.

Amendment of section 14

13. The principal Act is amended in section 14 by deleting the phrase “not exceeding five million shillings or to imprisonment for a term not exceeding six months or to both” and substituting for it the phrase “of not less than one million shillings but not exceeding five million shillings or to imprisonment for a term of not less than six months but not exceeding two years or to both”.

Amendment of section 22

14. The principal Act is amended in section 22(2), by deleting the words “approved school” and substituting for them the words “approved residential home or institution”.

Amendment of section 32

15. The principal Act is amended in section 32 by deleting subsection (6).

Amendment of section 36

16. The principal Act is amended in section 36, by-

(a) adding immediately after subsection (3) the following:

“(4) The court shall, when making an order under subsection (3), consider a social inquiry report submitted by a social welfare officer.”; and

(b) renumbering subsections (4) and (5) as subsections (5) and (6) respectively.

Amendment of section 45

17. The principal Act is amended in section 45 by deleting subsection (1) and substituting for it the following:

“(1) A court shall order a social welfare officer to prepare a social inquiry report before consideration of an application to make an order for parentage,

maintenance, custody or access.”.

Amendment of section 53

- 18.** The principal Act is amended in section 53-
- (a) in subsection (1), by deleting the word “supervision” appearing in paragraph (a) and substituting for it the word “care”;
 - (b) by deleting subsection (2) and substituting for it the following:
 - “(2) An application to foster a child shall be made to the Commissioner through a social welfare officer.”;
 - (c) by deleting subsection (6); and
 - (d) by renumbering subsection (7) as subsection (6).

Repeal and replacement of section 54

- 19.** The principal Act is amended by repealing section 54 and replacing for it the following:

“Power to make adoption order

54.-(1) Subject to the provisions of this Act-

- (a) an application for closed adoption shall be made to the High Court; and
- (b) an application for open adoption shall be made to the court of resident magistrate, the district court or juvenile court.

(2) Upon receipt of the application, the court may grant an application for adoption order in accordance with this Act.”.

Amendment of section 55

- 20.** The principal Act is amended in section 55, by-
- (a) deleting subsection (2); and

(b) designating the contents of subsection (1) as section 55.

Amendment of section 56

21. The principal Act is amended in section 56 by deleting subsection (1) and substituting for it the following:

“(1) An adoption order shall not be made unless-

(a) the applicant or, in the case of a joint application, one of the applicants-

(i) is of or above twenty-five years of age and at least twenty-one years older than the child; or

(ii) is a relative of the child and is above the age of twenty-five years;

(b) the other party has consented to the adoption, where an application is made by one of the spouses; or

(c) the applicant is a citizen of Tanzania.”.

Amendment of section 60

22. The principal Act is amended in section 60(2) by deleting the words “without the permission of the court” appearing in paragraph (b).

Addition of section 71A

23. The principal Act is amended by adding immediately after section 71 the following:

“Revocation of adoption order

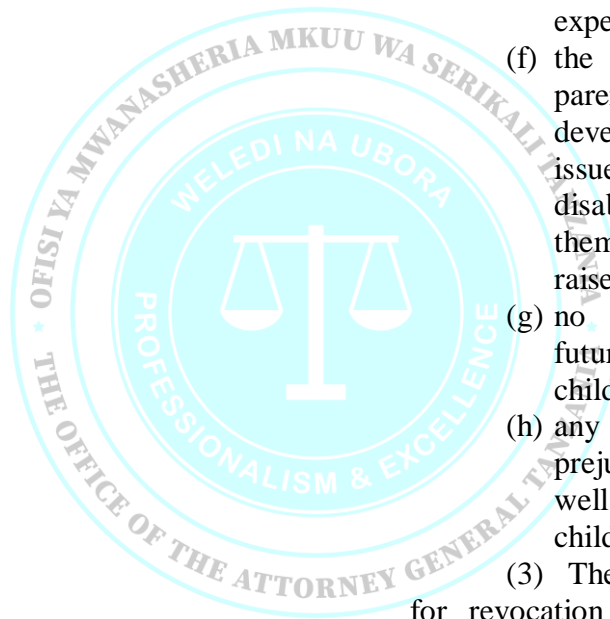
71A.-(1) The court may, upon application by a child, guardian *ad litem*, parent, guardian, or any other interested person, revoke an adoption order if it is satisfied that the adoption is not for the best interest of the child.

(2) The court shall, when revoking an adoption order, consider the following factors:

- (a) fraud by adoptive parent;
- (b) wrongful adoption;
- (c) adoptive child subjected to abuse and exploitation;
- (d) misrepresentation ;
- (e) failure to address the child's expected needs;
- (f) the adoptive parents developed health issues or disability causing them difficult to raise the child;
- (g) no promised future for the child; or
- (h) any other factor prejudicial to the well being of the child.

(3) The application for revocation of adoption order under this section shall be made before the adoptive child attains the age of twenty-four years:

Provided that, the court may, where there is sufficient ground, admit an application for revocation of adoption order for an adoptive child who has attained the age of twenty-



four years and above.”.

Amendment of
section 74

- by-
- 24.** The principal Act is amended in section 74(1),
- (a) deleting the word “three” appearing in paragraph (b) and substituting for it the word “two”; and
 - (b) deleting the word “three” appearing in paragraph (c) and substituting for it the word “six”.

Amendment of
section 94

25. The principal Act is amended in section 94(6), by deleting the words “and, where the authority does not succeed, refer the matter to the social welfare officer”.

Amendment of
section 96

26. The principal Act is amended in section 96(2), by deleting the phrase “remove the child to a place of safety for a period of not more than seven days” and substituting for it the phrase “within the period of seven days, take a child to a place of safety”.

Addition of
section 96A

27. The principal Act is amended by adding immediately after section 96 the following:

“Junior councils

96A.-(1) There shall be established junior councils in every village, ward, district, regional and at the national level which shall be used as a forum for children to discuss matters concerning their rights and welfare.

(2) A regional administration and a local government authority, in consultation with the Ministry, shall be responsible for the establishment of the village, ward, district and regional

level junior councils within their areas of jurisdiction.

(3) The Ministry shall be responsible for establishment and coordination of the national junior council.”.

Amendment of Part IX

28. The principal Act is amended by deleting the heading to Part IX and substituting for it the following:

“CHILD IN CONFLICT OR IN CONTACT WITH LAW”.

Amendment of section 97

29. The principal Act is amended in section 97-

(a) in subsection (1), by deleting the phrase “There shall be established” and substituting for it the phrase “It is hereby established in every district”;

(b) by adding immediately after subsection (2) the following:

“(3) The Chief Justice may, by notice published in the *Gazette*, designate any premise to be a Juvenile Court.”;

(c) by deleting subsections (3) and (4); and

(d) by renumbering subsections (5) and (6) as subsections (4) and (5) respectively.

Amendment of section 99

30. The principal Act is amended in section 99(1) by deleting the words “next of kin” appearing in paragraphs (e) and (f) and substituting for them the words “next friend”.

Amendment of section 100

31. The principal Act is amended in section 100-

(a) by deleting the marginal note and substituting for it the following:

“Proceedings and committal of child to Juvenile Court”; and

(b) in subsection (3), by deleting the phrase “proceed with the hearing and determination of the case according to the provisions of the

Magistrates Court Act or Criminal Procedure Act, as the case may be” and substituting for it the phrase “commit the person to the court of competent jurisdiction”.

Amendment of section 102

32. The principal Act is amended in section 102 by deleting the word “unless he is a relative”.

Amendment of section 103

33. The principal Act is amended in section 103 by adding immediately after subsection (3) the following:

“(4) Notwithstanding any other law, for offences involving homicide, the court shall not adjourn a case for an aggregate exceeding ninety days except under circumstances specified under section 225(4) and (5) of the Criminal Procedure Act.”.

Cap. 20

Amendment of section 107

34. The principal Act is amended in section 107, by-

- (a) designating the contents of section 107 as subsection (1); and
- (b) adding immediately after subsection (1) as designated the following:

“(2) Notwithstanding subsection (1), where the child has pleaded guilty to an offence which is less serious, the Director of Public Prosecutions may consider a child for diversion.”.

Amendment of section 115

35. The principal Act is amended in section 115, by-

- (a) adding immediately after subsection (3) the following:

“(4) In all proceedings where a child is called as a witness, the court shall require the attendance of the social welfare officer.”;

- (b) renumbering subsection (4) as subsection (5); and

(c) adding immediately after subsection (5) as renumbered the following:

“(6) The Chief Justice may make rules prescribing procedure for conducting cross examination of a child in matters involving a child.”.

Amendment of Part IX(c)

36. The principal Act is amended in Part IX by deleting heading to subpart (c) and substituting for it the following:

“(c) *Non-custodial Sentence*”.

Amendment of section 130

37. The principal Act is amended in section 130-
(a) in subsection (1), by deleting the word “entered” and substituting for it the words “filed in the High Court”; and
(b) by deleting subsection (3).

Amendment of section 151

38. The principal Act is amended in section 151, by-
(a) deleting the words “an approved residential home or institution” appearing in subsection (1);
(b) deleting subsection (4);
(c) renumbering subsection (5) as subsection (4); and
(d) deleting the words “crèche approved residential home whose licence” appearing in subsection (4) as renumbered and substituting for them the words “or crèche whose certificate of registration”.

Amendment of section 155

39. The principal Act is amended in section 155 by deleting the word “licence” appearing in paragraph (a) and substituting for it the words “certificate of registration”.

Amendment of section 157

40. The principal Act is amended in section 157, by-
(a) adding immediately after paragraph (h) the

following:

- “(i) procedure for diversion and measures to be taken against a child upon diversion;
 - (j) matter to be taken into consideration in determining the best interest of the child;”;
- (b) renaming paragraphs (i) and (j) as paragraphs (k) and (l) respectively.

Amendment of section 158

41. The principal Act is amended in section 158(1), by-

(a) adding immediately after paragraph (d) the following:

“(e) engage, influence, encourage a child to engage in sexual activities with any person;

(f) utter any word, make any sound, make any gesture or exhibit any object or part of body with the intention that such word or sound shall be heard, or such gesture, object or part of body shall be seen by a child;

(g) make a child exhibit his body or any part of his body so as it is seen by such person or any other person;

(h) repeatedly or constantly follow, watch or contact a child either directly or through electronic, digital or any other means with the intent to abuse;

(i) threaten to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act;

(j) possess, for any ill motive, through the internet or any other information and communication technology device, child sexual abuse material;”;

(b) renaming paragraphs (e) and (f) as paragraphs (k) and (l) respectively.

Amendment of section 158A

42. The principal Act is amended in section 158A by adding at the beginning of subsection (2) the words “Notwithstanding any other law, ”.

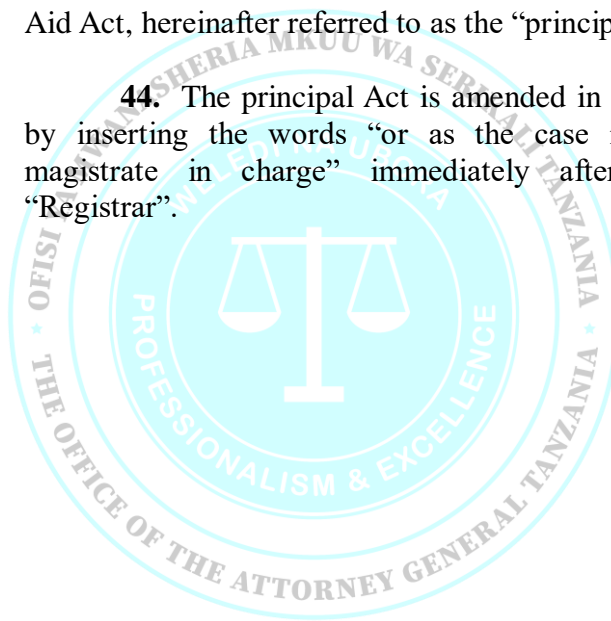
**PART IV
AMENDMENT OF THE LEGAL AID ACT,
(CAP. 21)**

Construction Cap. 21

43. This Part shall be read as one with the Legal Aid Act, hereinafter referred to as the “principal Act”.

Amendment of section 33

44. The principal Act is amended in section 33(2) by inserting the words “or as the case may be, the magistrate in charge” immediately after the word “Registrar”.



OBJECTS AND REASONS

This Bill proposes to amend Three laws namely the Cyber Crimes Act, Cap. 443, the Law of the Child Act, Cap. 13 and the Legal Aid Act, Cap. 21. The proposed amendments seek to address challenges identified during implementation of various provisions of the respective laws and improve such provisions in order to strengthen protection and best interests of a child.

This Bill is divided into Four Parts whereby, Part I deals with Preliminary Provisions which include the title of the Bill and the manner in which the laws proposed to be amended are amended in their respective Parts.

Part II of the Bill proposes to amend the Cybercrimes Act, Cap. 443, whereby section 3 is proposed to be amended by deleting definitions of certain terms, amending the existing definitions and introducing definitions of new terms. The aim of this amendment is to ensure clarity on the proper usage of the terms.

Section 13 is proposed to be repealed and replaced in order to make provisions relating to child sexual abuse and exploitation offences through computer system. The purpose of this amendment is to protect children following the escalation of children sexual abuse through computer system equipment which are mainly used to solicit, or display pornography materials for purposes of soliciting them to engage in sexual activities.

Section 19 is proposed to be amended by adding the definition of the term “crimes against humanity” which is used in the Act but was not defined. The purpose of this amendment is to enhance clarity by referring the term as defined in the Rome Statute for International Criminal Court and easing implementation of the Act.

Section 19A is proposed to be added in order to make provisions preventing a person from using a computer or computer system to carry out a terrorist act as well as imposing penalties on the person who violates those provisions. The purpose of this amendment is to control and prevent

terrorist acts which may be committed through computer or computer systems.

Section 49 is proposed to be repealed and replaced in order to make provisions regarding penalties for offences committed by a company or body corporate. The purpose of the amendment is to identify how to address crimes committed by a company or body corporate and to ensure that the directors of the companies or body corporates are legally responsible for cybercrimes committed by such body corporates.

Section 50 is proposed to be amended to exempt offences relating to child sexual abuse from compounding provisions. The amendments aim to exclusively confer powers to punish offences relating to child sexual abuse to courts.

Part III of the Bill proposes amendment to the Law of the Child, Chapter 13, whereby section 3 is proposed to be amended by deleting and substituting, improving and adding definitions of certain terms. The aim of this amendment is to improve the interpretation of terminologies used in the Act to align with the intended context and provide clarification of terminologies that were not previously interpreted to facilitate the better implementation of the Act. Section 14 is proposed to be amended to specify the minimum threshold of punishment. The aim of this amendment is to ensure that the punishment imposed corresponds to the gravity of the respective offence.

Section 22 is proposed to be amended with the aim of rectifying identified errors in the provisions of the relevant section by removing the concept of approved schools and instead introducing the intended concept of approved residential homes or institutions for the upbringing of children who runs away from approved schools. Sections 32 and 53 are proposed to be amended with the aim of rectifying typographical errors and removing repetitive provisions in the Act, whereas the authority to make regulations regarding foster care has already been specified in section 157. Amendments in section 53 also aim to streamline the process of submitting applications for foster care by eliminating the current lengthy procedure.

Furthermore, section 36 is proposed to be amended by adding a mandatory requirement for the court to consider social inquiry report from a social

welfare officer when issuing costs order for DNA tests. The aim of the amendment is to enable the court to reach a fair and enforceable decision.

Section 45 is proposed to be amended by introducing requirements for a social welfare officer to prepare social inquiry report to be used in court proceedings regarding parentage, maintenance, custody and access of children. The aim of the amendment is to assist the court in obtaining information that will enable it to make a fair decision based on the best interest of the child. Section 54 is proposed to be amended to specify the jurisdiction of the court in handling adoption cases. Furthermore, the Juvenile Courts are added among the courts that will handle such cases to increase efficiency and reduce backlog in other courts. Section 55 is proposed to be amended to eliminate repetitions of provisions already specified in another section.

Section 56 is proposed to be amended with the aim of improving the provisions of that section and rectifying errors identified during implementation of the said provisions. Section 60 is proposed to be amended to remove the power of courts to allow a child to be taken out of the country during issuance of interim order pending adoption. The aim of the amendment is to ensure protection for the child intended for adoption before issuance of adoption order by the court.

A new section 71A is proposed to be added with the aim of empowering the court to revoke an adoption order in the best interest of the child upon application by the parent, guardian, or relative of the adopted child. Section 74 is proposed to be amended to reduce the period required for a non-citizen who wants to adopt a child to stay within the country from three years to two years consecutively. Moreover, the duration to foster care a child before adoption is extended from three months to six months. The aim of the amendments is to facilitate and streamline the adoption process and to protect the best interests of the child.

Section 94 is proposed to be amended by removing the requirement for the local government authority upon failure to locate a parent or relative of a lost or abandoned child to refer the matter to a social welfare officer. The aim of the amendment is to remove ambiguity since the person responsible for children's affairs in the local government authority is the social welfare officer of the respective local government authority. Section 96 is proposed

to be amended to rectify typographical errors and achieve the intended meaning in the relevant section.

A new section 96A is proposed to be added to establish and formalize Junior councils at the Village, Ward, District, Regional and National levels. The aim of the amendments is to have platforms available for children to air their challenges in order to protect them from abuse and crimes in the community.

The heading to Part IX is proposed to be amended so as to reflect the contents under that Part. Section 97 is proposed to be amended to establish and recognize Juveniles Courts in each district. The aim of the amendment is to facilitate timely justice delivery for children and improve their welfare and interests. The amendments also aim at complying with international treaties on children's rights directing member countries to have Juvenile Courts for proceedings involving children.

Section 99 is proposed to be amended to remove the term "next of kin" in the provisions of that section, which is currently not used, and instead use the term "next friend," which is applicable. Section 100 is proposed to be amended to improve the provisions of that section and aligning them with the amendments proposed in this Bill to establish juvenile courts. The current position is that, where it appears to the court that the person charged is not a child, instead of proceeding with the case, the matter should be referred to the court of competent jurisdiction.

Section 102 is proposed to be amended to protect the child from crime by preventing the child from associating with adult criminals even if they are relatives. Section 103 is proposed to be amended to provide for provisions regarding courts adjourning cases involving children accused of homicide. The aim of the amendment is to expedite the hearing of children's cases and protect them from learning criminal behaviors while in custody.

Section 107 is proposed to be amended with the aim of ensuring that the child is rehabilitated outside the court system for minor offences, to help them change behavior through existing community systems, including Social Welfare Offices, and to reduce the time and costs of handling children's cases.

Section 115 is proposed to be amended with the aim of protecting any child who has come into conflict with the law by ensuring the presence of a social welfare officer in the proceeding involving a child, currently, these requirements only apply to juvenile courts and not to other courts. Furthermore, the amendments also empower the Chief Justice to make regulations specifying the procedure for cross-examination of children in the courts.

The heading to Subpart (c) of Part IX is proposed to be amended so as to reflect the contents under that Subpart concerning *Non-custodial Sentence*. Section 130 is proposed to be amended to establish the correct procedure for filing appeals from the Juvenile Courts to the High Court and remove ambiguity in those provisions.

Section 151 is proposed to be amended in order to make proper arrangement of the sections within the Act by removing provisions relating to approved residential homes that are already specified in their specific Part and retaining provisions relating to day care centres and crèches in the said section. Section 155 is proposed to be amended in order to rectify typographical errors and facilitate the better implementation of the provisions of that section because what is provided under that section is a registration certificate and not a license.

Section 157 is proposed to be amended by adding areas in which the Minister may make regulations. The aim of the amendments is to facilitate better implementation of the provisions of the Act. Section 158 is proposed to be amended to broaden the scope of sexual abuse offenses against children. The aim of the amendments is to ensure protection for children against sexual offences, which are currently on the rise due to the rapid advancement of technology and globalisation. Section 158A is proposed to be amended to give this section overriding effect against other laws regarding offences of child's female genital mutilation.

Part IV of the Bill proposes to amend the Legal Aid Act, Cap. 21 whereby section 33 is proposed to be amended to confer upon a magistrate the power of assigning an advocate to a child who is accused of an offence, upon certification that he ought to have legal aid. The purpose of the amendment is to afford adequate legal representation to a child who is accused of an offence.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kufanya marekebisho katika Sheria Tatu ambazo ni Sheria ya Makosa ya Kimtandao, Sura ya 443, Sheria ya Mtoto, Sura ya 13 na Sheria ya Msaada wa Kisheria, Sura ya 21. Mapendekezo ya marekebisho yanalenga kuondoa upungufu uliojitokeza wakati wa utekelezaji wa baadhi ya masharti katika Sheria husika na kuboresha masharti ya sheria hizo ili kuimarisha ulinzi na maslahi bora ya mtoto.

Muswada huu umegawanyika katika Sehemu Nne ambapo Sehemu ya Kwanza inahusu Masharti ya Utangulizi yanayojumuisha Jina la Muswada na namna ambavyo Sheria mbalimbali zinapendekezwa kurekebishwa katika Sehemu zake.

Sehemu ya Pili ya Muswada inapendekeza kufanya marekebisho katika Sheria ya Makosa ya Kimtandao, Sura ya 443 ambapo kifungu cha 3 kinapendelewa kurekebishwa kwa kufuta na kuboresha baadhi ya tafsiri ya misamiati kwenye Sheria na kuongeza misamiati mipya. Lengo la marekebisho haya ni kutoa ufafanuzi wa matumizi ya misamiati mbalimbali ambayo imetumika katika Sheria.

Kifungu cha 13 kinapendekezwa kufutwa na kuandikwa upya ili kuweka masharti yanayohusiana na makosa ya unyanyasaji na utumikishaji wa kingono kwa watoto kwa kutumia nyenzo za TEHAMA. Lengo la marekebisho haya ni kuwalinda watoto kutokana na kuwepo kwa ongezeko la matukio ya uhalifu wa kingono dhidi ya watoto kupitia nyenzo za TEHAMA zinazotumika kuwashawishi, kuwatishia au kuwaonyesha watoto ponografia kwa lengo la kuwashawishi kushiriki katika matendo ya kingono.

Kifungu cha 19 kinapendekezwa kurekebishwa kwa kuongeza tafsiri ya msamiati “uhalifu dhidi ya binadamu” ambao umetumika katika Sheria lakini haukuwa umetafsiriwa. Lengo la marekebisho haya ni kutoa ufafanuzi wa msamiati kwa kurejea tafsiri ya msamiati huo kama ilivyoainishwa katika Mkataba wa Roma wa Mahakama ya Kimataifa ya Jinai na kurahisisha utekelezaji wa Sheria.

Kifungu kipya cha 19A kinapendekezwa kuongezwa ili kuweka masharti yanayozuia mtu au mfumo wa kompyuta kutekeleza kitendo cha kigaidi pamoja na kuweka adhabu kwa mtu anayekiuka masharti hayo. Lengo la marekebisho haya ni kudhibiti na kuzuia vitendo vya kigaidi vinavyoweza kutendeka kwa njia ya kompyuta au mifumo ya kompyuta.

Kifungu cha 49 kinapendekezwa kufutwa na kuandikwa upya ili kuweka masharti yanayohusu adhabu kwenye makosa yanayotendwa na kampuni au taasisi. Lengo la marekebisho haya ni kuainisha namna ya kushughulikia uhalifu unaotendwa na kampuni au taasisi na kuhakikisha kuwa wakurugenzi wa kampuni wanawajibika kwa uhalifu wa kimtandao unaofanywa na kampuni au taasisi wanazosisimamia.

Kifungu cha 50 kinapendekezwa kurekebisha ili mamlaka ya kufilisha makosa yasihushe makosa ya udhalilishaji wa kingono kwa watoto. Marekebisho haya yanalenga kufanya adhabu kwa makosa ya udhalilishaji wa kingono kwa watoto zitolewe na mahakama pekee kutokana na uzito wa makosa hayo.

Sehemu ya Tatu ya Muswada inapendekeza kufanya marekebisho kwenye Sheria ya Mtoto, Sura ya 13, ambapo kifungu cha 3 kinapendekezwa kurekebisha kwa kufuta na kuandika upya, kurekebisha na kuongeza baadhi ya tafsiri za misamiati. Lengo la marekebisho haya ni kuboresha tafsiri za misamiati inayotumika katika sheria hiyo ili kuendana na muktadha uliokusudiwa na kutoa ufafanuzi wa misamiati ambayo haikuwa imetafsiriwa ili kuwezesha utekelezaji wa Sheria hiyo. Kifungu cha 14 kinapendekezwa kurekebisha kwa kuainisha ukomo wa chini wa adhabu. Lengo la marekebisho hayo ni kuhakikisha kwamba adhabu inayotolewa inaendana na ukubwa wa kosa husika.

Kifungu cha 22 kinapendekezwa kurekebisha ili kuondoa dhana ya shule za mabadiliko na badala yake kuweka dhana iliyokusudiwa katika kifungu hicho ambayo ni makao ya malezi ya watoto waliotoroka kutoka katika shule ya mabadiliko. Vifungu vya 32 na 53 vinapendekezwa kurekebisha kwa lengo la kurekebisha makosa ya kiuandishi na kuondoa masharti yanayojirudia katika Sheria kwa kuwa mamlaka ya kutengeneza kanuni kuhusu malezi ya kambo tayari yameainishwa katika kifungu cha 157. Marekebisho mengine katika kifungu cha 53 yanalenga kurahisisha utaratibu wa uwasilishaji wa maombi ya malezi ya kambo kwa kuondoa mlolongo mrefu uliopo sasa.

Aidha, kifungu cha 36 kinapendekezwa kurekebishwa kwa kuongeza sharti la ulazima kwa mahakama la kuzingatia taarifa ya uchunguzi wa kitaalamu kutoka kwa afisa ustawi wa jamii wakati wa kutoa amri ya kugharamia vipimo vya vinasaba. Lengo la marekebisho haya ni kuiwezesha mahakama kufikia uamuzi wa haki na unaotekelezeka.

Kifungu cha 45 kinapendekezwa kurekebishwa kwa kuweka masharti yanayomtaka afisa ustawi wa jamii kuandaa taarifa ya uchunguzi kwa ajili ya kutumika mahakamani wakati wa mashauri yanayohusu malezi, matunzo, uangalizi na haki ya kumuona ya mtoto. Lengo la marekebisho haya ni kuisaidia mahakama kupata taarifa ambazo zitaiwezesha kutoa uamuzi wa haki na unaozingatia maslahi bora ya mtoto. Kifungu cha 54 kinapendekezwa kurekebishwa kwa lengo la kubainisha mamlaka za mahakama katika kushughulikia mashauri ya kuasili watoto. Aidha, mahakama ya watoto inaongezwa miongoni mwa mahakama zitakazoshughulikia mashauri hayo ili kuongeza ufanisi na kupunguza mlundikano wa mashauri katika mahakama nyingine. Kifungu cha 55 kinapendekezwa kurekebishwa kwa lengo la kuondoa masharti yaliyojirudia katika kifungu kingine.

Kifungu cha 56 kinapendekezwa kurekebishwa kwa lengo la kuboresha masharti ya kifungu hicho na kuondoa kasoro zilizobainika wakati wa utekelezaji. Kifungu cha 60 kinapendekezwa kurekebishwa kwa kuiondolea mahakama mamlaka ya kuruhusu mtoto kusafirishwa nje ya nchi wakati wa utoaji wa amri ya mpito kabla ya kukamilika kwa mchakato wa kuasili mtoto. Lengo la marekebisho haya ni kuhakikisha ulinzi kwa mtoto anayekusudiwa kuasiliwa kabla ya mahakama kutoa amri ya kuasili.

Kifungu kipya cha 71A kinapendekezwa kuongezwa kwa lengo la kuipa mahakama mamlaka ya kufuta amri ya kuasili kwa manufaa ya mtoto baada ya kupokea maombi kutoka kwa mzazi, mlezi au ndugu wa mtoto aliyeasiliwa au mtu mwingine yeyote mwenye maslahi. Kifungu cha 74 kinapendekezwa kurekebishwa ili kupunguza muda unaotakiwa kwa mwombaji wa kuasili mtoto asiye mtanzania kukaa nchini kutoka miaka mitatu hadi miaka miwili mfululizo. Aidha, muda wa kumlea mtoto kabla ya kumuasili unaongezwa kutoka miezi mitatu hadi miezi sita. Lengo la marekebisho haya ni kuwezesha na kurahisisha taratibu za kuasili na kulinda maslahi bora ya mtoto.

Kifungu cha 94 kinapendekezwa kurekebishwa kwa kufuta takwa linaloelekeza kwamba halmashauri pale inaposhindwa kumpata mzazi au ndugu wa mtoto aliyepotea au kutelekezwa iwasilishe suala hilo kwa afisa ustawi wa jamii. Lengo la marekebisho haya ni kuondoa mkanganyiko kwani mtendaji wa masuala ya watoto katika halmashauri ni afisa ustawi wa jamii wa halmashauri husika. Kifungu cha 96 kinapendekezwa kurekebishwa kwa kurekebisha makosa ya kiuandishi katika masharti ya kifungu hicho kwa lengo la kupata mantiki iliyokusudiwa katika kifungu husika.

Kifungu kipya cha 96A kinapendekezwa kuongezwa kwa ajili ya kuanzisha na kurasimisha mabaraza ya watoto katika ngazi ya Kijiji, Kata, Wilaya, Mkoa na ngazi ya Taifa. Lengo la marekebisho haya ni kuwa na majukwaa yanayowafikia watoto na kujua changamoto zinazowakabili ili kuweza kuwalinda na matukio ya unyanyasaji na uhalifu katika jamii.

Kichwa cha habari cha Sehemu ya IX kinapendekezwa kurekebishwa kwa lengo la kuakisi maudhui ya masharti yaliyomo chini ya Sehemu hiyo. Kifungu cha 97 kinapendekezwa kurekebishwa ili kuanzisha na kutambua Mahakama za Watoto katika kila wilaya. Lengo la marekebisho haya ni kuwezesha utoaji haki kwa watoto kwa wakati na kuboresha ustawi na maslahi ya watoto. Vilevile, marekebisho haya yanalenga kuzingatia mikataba ya kimataifa kuhusu haki za watoto inayoelekeza nchi wanachama kuwa na Mahakama za Watoto kwa ajili ya kusikiliza mashauri ya watoto.

Kifungu cha 99 kinapendekezwa kurekebishwa kwa lengo la kuondoa maneno “*next of kin*” katika masharti ya kifungu hicho ambayo kwa sasa hayatumiki na badala yake kuweka maneno “*next friend*” ambayo ndiyo yanatumika. Kifungu cha 100 kinapendekezwa kurekebishwa kwa kuboresha masharti ya kifungu hicho ili kuendana na marekebisho yanayopendekezwa katika Muswada huu ya kuanzisha mahakama za watoto. Chini ya marekebisho yanayopendekezwa, endapo mahakama hizo zitabaini kuwa muhusika katika shauri si mtoto, basi badala ya kuendelea na shauri kama ilivyo sasa, zitapaswa kuwasilisha shauri husika katika mahakama yenye mamlaka.

Kifungu cha 102 kinapendekezwa kurekebishwa kwa lengo la kumlinda mtoto dhidi ya uhalifu kwa kutoruhusu mtoto kuchangamana na wahalifu ambao ni watu wazima hata kama ni ndugu. Kifungu cha 103

kinapendekezwa kurekebisha kwa kuweka masharti kwa mahakama kuhusu kuahirisha kesi zinazowahusu watoto wanaotuhumiwa kutenda makosa ya mauaji. Lengo la marekebisha haya ni kuharakisha usikilizwaji wa mashauri ya watoto na kuwalinda watoto hao dhidi ya kujifunza tabia za uhalifu zaidi gerezani.

Kifungu cha 107 kinapendekezwa kurekebisha kwa lengo la kuhakikisha kwamba mtoto anarekebisha nje ya mfumo wa mahakama kwa makosa madogo ili kumsaidia kubadilika kitabia kupitia mifumo ya jamii iliyopo zikiwemo ofisi za ustawi wa jamii na vilevile kupunguza muda na gharama za uendeshaji wa kesi za watoto.

Kifungu cha 115 kinapendekezwa kurekebisha kwa lengo la kumlinda mtoto ambaye amekinzana na sheria kwa kuhakikisha uwepo wa afisa ustawi wa jamii katika shauri linalohusisha mtoto. Kwa sasa masharti haya yapo kwa mahakama za watoto pekee na si katika mahakama za kawaida. Aidha, marekebisha haya pia yanampa Jaji Mkuu mamlaka ya kutengeneza kanuni zitakazoainisha utaratibu wa kuwadodosa watoto mahakamani.

Kichwa cha habari cha Sehemu Ndogo ya (c) ya Sehemu ya Tisa kinapendekezwa kurekebisha kwa lengo la kuakisi maudhui yaliyomo chini ya Sehemu hiyo yanayohusu adhabu tofauti na kutiwa kizuizini. Kifungu cha 130 kinapendekezwa kurekebisha kwa lengo la kuweka utaratibu sahihi wa uwasilishaji wa rufaa kutoka mahakama ya mtoto kwenda mahakama kuu na kuondoa utata katika masharti hayo.

Kifungu cha 151 kinapendekezwa kurekebisha kwa lengo kuweka mpangilio mzuri wa vifungu ndani ya Sheria kwa kuondoa masharti yanayohusiana na makao ya watoto ambayo tayari yameainishwa katika Sehemu yake na kubakiza masuala ya vituo vya kulea watoto wadogo na watoto wachanga katika kifungu hiki. Kifungu cha 155 kinapendekezwa kurekebisha kwa lengo la kuondoa kasoro za kiuchapaji na kuwezesha utekelezaji wa masharti ya kifungu hicho kwa kuwa kifungu hicho kinatoa cheti cha usajili na siyo leseni.

Kifungu cha 157 kinapendekezwa kurekebisha kwa lengo la kuongeza maeneo ambayo Waziri anaweza kutengeneza kanuni. Lengo la marekebisha hayo ni kuwezesha utekelezaji bora wa masharti ya Sheria hiyo. Kifungu cha 158 kinapendekezwa kurekebisha kwa lengo la

kupanua wigo wa makosa ya ukatili wa kingono dhidi ya watoto. Lengo la marekebisho haya ni kuongeza ulinzi kwa watoto dhidi ya uhalifu wa kingono ambao kwa sasa unaongezeka kwa kasi hasa kutokana na kukua kwa teknolojia na utandawazi. Kifungu cha 158A kinapendekezwa kurekebishwa kwa lengo la kukifanya kifungu hiki kuwa na nguvu dhidi ya masharti ya sheria nyingine kuhusu makosa ya ukeketaji wa watoto.

Sehemu ya Nne ya Muswada inapendekeza kufanya marekebisho katika ya Sheria ya Msaada wa Kisheria, Sura ya 21, ambapo kifungu cha 33 kinapendekezwa kurekebishwa ili kumpa hakimu mamlaka ya kumuelekeza Wakili kumwakilisha mtoto ambaye ni mshtakiwa inapothibitika kuwa mshtakiwa anapaswa kupata msaada wa kisheria. Lengo la marekebisho haya ni kuhakikisha mtoto ambaye ni mshtakiwa anapata uwakilishi wa kisheria.

Dodoma,
3rd June, 2024

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