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**THE MANDERA COUNTY ORPHANAGE FACILITIES BILL,
2021**

A Bill for

AN ACT of Mandera County Assembly to provide for establishment of Orphanage Facilities, to control and regulate Orphanage and Childcare Facilities within the County, and for connected purposes

ENACTED by the County Assembly of Mandera, as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Mandera County Orphanage Facilities Act, 2021 and shall come into operation on the date of publication in the *Kenya Gazette*.

Interpretation

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

“applicant” means an individual applying for a license;

“Council” means the Orphanage Facilities Council established under this Act;

“Certificate” means the certificate of registration issued under this Act;

“child” for the purpose of this Act, means an individual who has not attained the age of eighteen years;

“Orphanage Facility” means any facility in the county, either home-based or institution -based, where child care or day care is offered at any time to more than ten children;

“county” means the Mandera County Government;

“inspector” means a person appointed as an inspector under this Act;

“Executive Member” means the county executive committee member responsible for matters relating to children and childcare;

“prescribed” means prescribed by regulations;

“Principle” means the person who is responsible for the management of an Orphanage Facility and its programs;

“program” means the activities planned to help the physical, social, emotional and learning development of orphans.

Application of the Act

3. This Act shall apply to all Orphanage and Child Care Facilities within the county.

Implementation of the Act

4. (1) In order to implement the purposes of the Act the county Executive Member may—

- (a) formulate county policy for necessary laws and regulations, for regulating the establishment and management of Orphanage Facilities;
- (b) take all measures possible to ensure childcare activities within the county to conform with the national and county legislations on health, safety and safety of children and other relevant standards;
- (c) oversee the Council's functions and responsibilities under this Act; and
- (d) take any other step to implement this Act.

Establishment of an Orphanage Facilities

5. (1) The Governor shall ensure the establishment of Orphanage Facilities by the county government.

(2) The County shall establish Orphanage Facilities at least one in every sub-county.

PART II—ADMINISTRATION OF ORPHANAGE FACILITIES**Orphanage Facilities Council**

6. (1) The Orphanage Facilities established by the County Government shall have a governing body known as an Orphanage Facilities Council.

- (2) The Orphanage Facilities Council is responsible for—
- (a) the education policy and mission of Orphanage Facilities;
 - (b) overseeing the activities of Orphanage Facilities;
 - (c) safeguarding the assets of the Facilities and the effective and efficient use of its resources;
 - (d) considering and approving annual estimates of income and expenditure of Orphanage Facilities;
 - (e) the disciplining of the Principal, and other senior officers as the Council may determine;

- (f) the determination of the conditions of service of the Principal and other senior officers of Orphanage Facilities with prior approval of the Executive Committee Member responsible for Finance;
- (g) the establishment of committees which may be necessary for the efficient performance of its business; and
- (h) such other functions that are incidental to the achievement of the aims and objectives of Orphanage Facilities.

Composition of Council

7. (1) The Orphanage Facilities Council shall consist of –

- (a) Chief Officer responsible for social services who shall be the Chairperson;
- (b) Chief Officer responsible for education who shall be the vice chairperson;
- (c) Chief Office responsible for finance
- (d) a representative of the County Education Board; and
- (e) not less than six and not more than twelve persons representing the community in the sub-county, taking into consideration gender balance, persons with disabilities and the disadvantaged community.

(2) All members of the Council shall be appointed by the Governor.

(3) Members of the Council shall hold office for a period of five years from the date of appointment and shall be eligible for reappointment.

(4) The Council shall appoint a qualified person be the secretary to the Council.

Vacation of office of member of Council

8. (1) A member of the Council shall cease to hold office if the member—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared bankrupt or becomes insolvent;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (d) resigns in writing to the Executive Member;
- (e) without reasonable cause, is absent from three consecutive meetings of the Council;

- (f) is found guilty of professional misconduct by the relevant professional body;
- (g) is disqualified from holding a public office under the Constitution;
- (h) engages in any gross misbehaviour or misconduct; or
- (i) dies.

(2) The Executive Member in consultation with the Governor may remove a member from the office if in his or her opinion the member is unfit to continue in office on any of the grounds under sub-section (1).

Filling of vacancy

9. If the office of a member of the Council falls vacant, the Executive Member may appoint another person to fill the vacancy and the person appointed shall be in office for the remainder of the term of the vacating member.

Meetings of a Council

10. (1) The Council shall meet for the dispatch of business at a time and place that the Chairperson may determine but shall meet at least three times each academic year.

(2) The Chairperson shall preside at each meeting of the Council, in the absence of the Chairperson the Vice Chairperson shall preside and in the absence both the Chairperson and the Vice Chairperson, a member of the Council elected by the other members present may preside.

(3) A meeting shall be convened if six members of the Council sign a requisition to that effect.

(4) The quorum at a meeting of the Council shall be half of the members of the Council.

(5) A decision of the Council shall be decided by consensus failing which a simple majority of votes cast shall decide the matter.

(6) The person chairing a meeting of the Council shall have an original and a casting vote.

(7) The Council may co-opt any person to attend a meeting of the Council but that person shall not vote on a matter for a decision by the Council.

Principal and Deputy Principal of a Facilities

11. (1) the County shall, through an open, transparent and competitive recruitment, appoint a suitably qualified person to be the Principal of the Facility.

(2) A person shall be qualified for appointment as the Principal if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least three years proven experience at management level;
- (c) has experience in any technical field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Principal shall serve on such terms and conditions as the County may determine.

(4) The Principal shall, in the performance of the functions and duties of office, be responsible to the Council.

(5) The Principal shall be the chief executive and accounting officer of the Orphanage Facilities and as such, shall be responsible for—

- (a) the academic performance of the Facility;
- (b) carrying into effect the decisions of the Council;
- (c) day-to-day administration and management of the affairs of the Orphanage Facility;
- (d) supervision of the academic and other staff of the Facility; and
- (e) perform such other duties as may be assigned by the Council.

(6) The County shall appoint a Deputy Principal of the facility who shall deputize the Principal and perform such work as the Principal may assign.

(7) The provisions of subsection (2) (a), (c) and (d) shall apply to the appointment of a Deputy Principal.

Officers, employees and other staff of the Facility

12. The County shall second such officers, employees and other staff as may be necessary for the efficient discharge of the functions of the Facility under this Act.

Remuneration

13. The Principles, deputy principle, the officers, employees and other staff of the Facility shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the County Public Service Board in consultation with the Salaries and Remuneration Commission.

Reporting

14. (1) The Principle shall submit an annual report to the county executive committee.

(2) Notwithstanding subsection (1), the county executive committee may, at any time, require a report from the principle on a particular matter.

PART III—REGISTRATION OF ORPHANAGE FACILITIES**Registration of Orphanage Facilities**

15. (1) All Orphanage Facilities shall be registered under this Act.

(2) No person shall operate or take part in the management of an Orphanage Facility which is not registered under this Act.

(3) Any person who contravenes subsection (2) commits an offence, and shall on conviction be liable to a fine not exceeding Kenya Shillings five hundred thousand or to imprisonment for a term not exceeding two years, or to both.

Application for registration

16. (1) An Application for registration of an Orphanage Facility shall be made to the Executive in the prescribed form accompanied by prescribed fees.

(2) After an application is made under sub-section (1), the Executive may—

- (a) if satisfied, register the Orphanage Facility subject to section 16, and issue a Certificate of registration under section 18; or
- (b) refuse to register on any ground which may appear to the Executive to be sufficient under this Act, and inform the applicant in writing of the refusal and the reasons thereof.

Terms and conditions for registration

17. The Chairperson of the Council may register any Orphanage Facility under section 15 subject to the following—

- (a) limiting the number of children who may be received in such Facility at any one time;
- (b) ensuring that the applicant is a fit and proper person, whether by reason of age or otherwise, to operate the Facility;
- (c) ensuring that such Facility shall be adequately staffed, both as regards the number and the qualifications or experience of the persons employed therein, or taking part in the conduct thereof;

- (d) ensuring that such Facility shall be adequately and suitably equipped and maintained;
- (e) ensuring that, where any children are received in the Facility and remain there for a continuous period exceeding four hours in any one day, there shall be adequate and suitable arrangement for feedings, resting and recreation for such children, and that adequate and balanced diet shall be provided;
- (f) complying with any requirement relating to the structure, fire precautions, health, sanitation and safety; and
- (g) any other conditions which deems proper.

Certificate of registration

18. (1) Where any Orphanage Facility is registered under this Act, the Executive shall issue a Certificate of registration in respect of such Orphanage Facility in the prescribed form and upon payment of a prescribed fee.

(2) The Certificate shall specify the name and address of the Orphanage Facility to which the registration relates and also such conditions as may be imposed under this Act.

(3) The Certificate shall be issued to, and in the name of, the applicant for registration of the Orphanage Facility, and shall not be transferable to any other person.

(4) A Certificate shall be valid for twelve calendar months unless it is suspended under section 23.

(5) Where any change occurs in any of the circumstances particulars of which may be specified in a Certificate, the person to whom such Certificate was issued shall, within fourteen days, notify the Council in writing accordingly, and the Council shall issue an amended Certificate in lieu of the original Certificate.

(6) A Certificate shall be kept available for inspection at any reasonable time by an inspector.

Register to be kept

19. (1) The Executive shall cause to be kept, in such form as he or she may specify, a register of Orphanage Facilities registered under this Act.

(2) The register kept under sub-section (1) shall contain the following—

- (a) the name and address of the person operating or managing the Orphanage Facility registered under this Act;

- (b) the name and address of every registered Orphanage Facility; and
- (c) such other particulars as the Executive thinks proper.

(3) A copy of an entry in the register purporting to be certified under the hand of the Executive shall, until the contrary is proved, be admitted in evidence as proof of the facts stated therein as at the date of such certified copy.

(4) Any person may, on application in writing to the Executive and on payment of a prescribed fee, inspect the register kept under this section during office hours.

Cancellation of registration

20. The Executive may cancel the registration of any Orphanage Facility registered under this Act if the Executive is satisfied that—

- (a) there has been any contravention of or non-compliance with any conditions imposed in respect of any registration made under this Act;
- (b) there has been any failure to notify any change of circumstances in accordance with section 17;
- (c) the person in whose name the Certificate of registration has been issued has been convicted of any offence under this Act or any other written law; or
- (d) the Facility has ceased to be operated as such or to exist, or the person operating or managing the Facility has ceased to operate or manage it.

The Executive to ensure certain matters

21. (1) The Executive Member may, in respect of any Orphanage Facility registered under this Act, by notice in writing, give such directions to ensure that—

- (a) the Facility is operated and managed satisfactorily;
 - (b) the welfare of the children attending the Facility is promoted in a proper manner; and
 - (c) the provisions of this Act are complied with.
- (2) A notice under subsection (1) shall—
- (a) be served upon the person responsible for the operation or management of the Facility or its supervisor; and
 - (b) specify a period of time within which the directions shall be complied with.

Cessation and suspension of Certificate

22. (1) If, in respect of any Orphanage Facility registered under this Act —

- (a) it appears to the Executive Member that there is any danger or risk of danger to children attending the Facility; or
- (b) any direction given under section 20 is not complied with within the period of time specified in the notice of such direction,

the Executive Member, may by order in writing require the person responsible for operation or management of the Facility to cease to use the Facility as an Orphanage Facility, and suspend its Certificate until further notice or for such period as the Executive Member thinks fit.

(2) An order under sub-section (1) shall be served upon person responsible for operations or management of the Facility or his/her representative, and shall take effect from the date of the service of such order.

(3) It shall be sufficient service of an order made under this section if—

- (a) it is delivered personally to the person on whom it is to be served;
- (b) it is sent by registered post to the last known address of the person on whom it is to be served; or
- (c) a copy of the order is posted in a conspicuous place upon or in the Orphanage Facility to which it relates.

(4) Any person who fails to comply with an order served on him or her under this section commits an offence, and shall be liable on conviction to a fine not exceeding Kenya Shillings three hundred thousand or to imprisonment for a term not exceeding one year, or to both.

PART IV— FINANCIAL PROVISIONS FOR ORPHANAGE FACILITIES ESTABLISHED BY THE COUNTY GOVERNMENT

Funds of the Orphanage Facilities

23. (1) The funds of Orphanage Facilities established by the County Government shall consist of—

- (a) monies allocated by the County Government for purposes of the Orphanage Facilities;
- (b) any grants, gifts, donations or other endowments given to the Orphanage Facilities; and

(c) such funds as may vest in or accrue to the Orphanage Facilities in the performance of its functions under this Act or any other written law.

(2) Any funds donated, granted or lent to the Orphanage Facilities shall be made public before use.

Annual Estimates

24. (1) At least three months before the commencement of each financial year, the Principal of an Orphanage Facility shall cause to be prepared estimates of the revenue and expenditure of the Facility for that year.

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

- (a) payment of remuneration in respect of the members and staff of the Facility;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Facility;
- (c) maintenance of the buildings and grounds of the Facility;
- (d) funding of training, research and development of activities of the Facility;
- (e) creation of funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of other matters that the Facility may deem fit; and
- (f) any other expenditure necessary or required for the purposes of this Act.

(3) The annual estimates shall be approved by the Orphanage Facilities Council before the commencement of the financial year to which they relate and forwarded to the Executive Member responsible for education.

Accounts and Audit

25. (1) The Orphanage Facilities Council shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Orphanage Facilities.

(2) Within a period of three months after the end of each financial year, the Orphanage Facilities Council shall submit to the Internal Auditor, the accounts of the Orphanage Facilities in respect of that year together with a—

- (a) statement of the income and expenditure of the Facilities during that year; and
- (b) statement of the assets and liabilities of the Facilities on the last day of that financial year.

Annual Report

26. (1) The Council shall, at the end of each financial year cause an annual report to be prepared.

(2) The Council shall submit the annual report to the Governor three months after the end of the year to which it relates.

(3) The annual report shall contain in respect of the year to which it relates—

- (a) the financial statements of the Orphanage Facilities;
- (b) a description of the activities of the Facilities;
- (c) other statistical information relating to the its functions that the Facilities may consider appropriate;
- (d) the impact of the exercise of any of its mandate or function;
- (e) any impediments to the achievements of the objects and functions of the Orphanage Facilities; and
- (f) any other information relating to its functions that the Council considers necessary.

(4) The annual report shall be published and publicized in a manner that the Council may determine.

PART V—MISCELLANEOUS PROVISIONS

Inspection of Orphanage Facilities

27. The Council shall inspect and monitor the standards of the Orphanage Facilities in the County.

Regulations

28. (1) The Executive Member may make regulations for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations made under this Act may provide for all or any of the following matters—

- (a) the operation, management and supervision of Orphanage Facilities;

- (b) the duties and responsibilities of persons registered in respect of Orphanage Facilities;
- (c) the qualifications of persons for the purposes of the operation, management and supervision of Orphanage Facilities;
- (d) the minimum infrastructural requirements including the safety and security requirements in an Orphanage Facility;
- (e) the health and sanitary requirements, including water supplies and nutrition care of the children cared for in Orphanage Facilities;
- (f) the granting, suspension and cancellation of Certificates and connected matters;
- (g) the fees to be paid under this Act; and
- (h) the manner and form of keeping and maintenance of registers under this Act.

(3) The Member shall cause a draft of the Regulations proposed to be made under sub-section (1) to be laid before the County Assembly for approval before publication in the County *Gazette* and the Kenya *Gazette*.

Rules

29. An Orphanage Facilities Council may make rule not inconsistent with the provisions of this Act, generally for the better functioning of the Facilities.

Offences and penalty

30. Any person who contravenes the provisions of this Act commits an offence and is liable, on conviction, to a fine not exceeding Five Hundred Thousand shilling or to a term of imprisonment not exceeding two years or to both.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Act is to provide for establishment of Orphanage Facilities, to control and regulate Orphanage Facilities within Mandera County.

Part I of the Act provides for the Preliminary provisions including the Short title, the definition of terms used as well as the objects of the Act which is to establish orphanage facilities within the Mandera County.

Part II of the Act provides for establishment, composition and functions of orphanage facilities Council. This part provides that the Council shall be chaired by the County Chief Officer for the time responsible for matters relating to social services. The council will also have a secretariat which will be headed by a Principal who will have staff to assist him in the administration of the day to day affairs of the orphanage facilities.

Part III of the Act provides for registration of County Orphanage facilities. This part establishes a register into which all the orphanage facilities will be entered. The part further provides for the terms and conditions necessary for issuance of certificate and consequential provisions, among other matters related thereto.

Part IV of the Act provides for the sources of funds for the orphanage facilities, as well as the annual estimates, audit and reporting of the funds.

Part V of the Act provides for miscellaneous provisions including inspection of orphanage facilities, authorises the Executive Committee Members to make regulations. The part also provides for offences and penalty for contravening the provisions of the Act.

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

This Act delegates legislative powers to the County Executive Committee Member to make regulations, but it does not limit fundamental rights and freedoms.

Statement as to whether the Act is a money Act within the meaning of Article 114 of the Constitution

The enactment of this Act may occasion additional expenditure of public funds.

Dated the 26th February, 2021.

UMULKER KASSIM,
Chairperson, Gender and Social Services Committee.