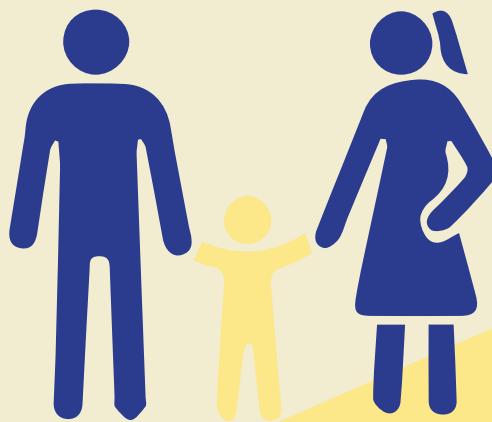





**THE CONSTITUTION OF KENYA
THE JUDICATURE ACT (Cap. 8)
THE CHILDREN ACT, 2001**

**PRACTICE DIRECTIONS RELATING
TO PROCEEDINGS IN
CHILDREN'S COURT**





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IN EXERCISE of the powers under Article 161 (2) (a) and Article 165(6) of the Constitution of Kenya, in pursuance of section 10 of the Judicature Act, which makes provisions for the Chief Justice to make Rules of Court for regulating the practice and procedure in the High Court and Subordinate Courts, and the Children Act, 2001 the Chief Justice of the Republic of Kenya gives the following practice directions:

PART I - PRELIMINARY

Citation

1. These Practice Directions may be cited as the Children’s Court Practice Directions, 2020.

Interpretation

2. In these Practice Directions, unless the context otherwise requires –

“Act” means the Children Act;

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

“child in conflict with the law” means a person who is above the age of twelve years, but below the age of eighteen years, who has been dealt with or punished in accordance with Part XIII of the Act or any other written law for contravention of the law;

“child in contact with the law” means a child in need of care and protection within the meaning of section 119 of the Act, and includes a child in conflict with the law;

“children’s court” means a court constituted in accordance with, and for the purposes prescribed in, section 73 of the Act;

“Court” means the Children’s Court;

“Director” has the meaning assigned to it under section 2 of the Act;

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

“guardian” has the meaning assigned to it under section 2 of the Act;

“judicial officer” has the meaning assigned to it under section 2 of the Judicial Service Act;

“legal aid” has the meaning assigned to it under section 2 of the Legal Aid Act;

“parent” has the meaning assigned to it under section 2 of the Act;

“relative” has the meaning attached to it under section 2 of the Act;

“Rules” mean the rules of practice and procedure in Children’s Court.

Application

3. (1) Subject to the Act and the Rules made thereunder, these Practice Directions apply to criminal and civil proceedings involving children in contact and in conflict with the law in Kenya, children’s courts and all other courts in conduct of child-related proceedings, whether constituted by a Judge or Magistrate.

(2) Any Rule that is inconsistent with these Practice Directions shall, to the extent of its inconsistency, not apply, and these Practice Directions shall prevail and apply without undue regard to technicalities of procedure.

Commencement

4. These Practice Directions shall come into force on a date to be determined by the Chief Justice by Notice in the Gazette.

General Principles

5. (1) A child in contact or in conflict with the law is equal before the law, and has the right to equal protection and equal benefit of the law.

(2) A child in contact or conflict with the law has the rights and freedoms guaranteed by the Constitution on an equal basis with others and, in particular, the right to be heard and to participate in proceedings of the Court affecting the child.

(3) Court proceedings shall not be instituted for the purpose only of securing child welfare services in relation to a child who is willfully neglected by their parent or guardian.

(4) In conduct of proceedings before it, the Court shall –

(a) have regard to public interest; and

(b) make such orders and give such directions as may be necessary to safeguard the rights and interests of victims and witnesses involved in such proceedings in accordance with the Victim Protection Act.

Overriding Objectives

6. (1) The objectives of these Practice Directions are to –

(a) facilitate access to justice by children in contact or conflict with the law, and other persons involved in proceedings relating to children’s matters under the Act, and in accordance with Article 48 of the Constitution;

(b) to ensure fair and expeditious determination of proceedings before the Court in accordance with Article 50 of the Constitution;

(c) to facilitate the promotion and protection of the rights of the child guaranteed under the Constitution; and

(d) to ensure respect for, and the realisation of, the international standards of juvenile justice set out in, but not limited to, the African Charter on the Rights and Welfare of the Child, the Convention on the Rights of the Child, the Concluding Observations of the Committee on the Rights of the Child, and the United Nations “Beijing Rules” on the Administration of Juvenile Justice.

(2) For the purpose of furthering the overriding objectives set out in these Practice Directions, the Court shall conduct all proceedings before it with a view of achieving –

(a) the just determination of the proceedings;

(b) the efficient use of the available financial and human resources;

- (c) the timely disposal of proceedings at a cost proportionate to each case, and affordable to the parties;
- (d) the use of alternative dispute resolution mechanisms for expeditious disposal of cases;
- (e) the effective use of appropriate information communication technology, including teleconferencing, videoconferencing, and other forms of virtual technology in court proceedings; and
- (f) the use of alternatives to trial, such as plea agreements, to fairly and efficiently resolve children's cases.

PART II – POWERS OF THE COURT

Powers of Judicial Officers Not Limited by Practice Directions

7. These Practice Directions do not limit or in any way interfere with the general powers and discretions of a judicial officer exercisable under the Act or any other written law.

Conduct of Proceedings in Serious Offences

8. (1) The Court shall, in conduct of proceedings relating to serious offences, consider that a child in conflict with the law accused of committing a serious offence is, when appearing in court, vulnerable due to their age, level of maturity or disability.

(2) In view of sub-paragraph (1), the Court shall not conduct the proceedings in such a manner as to expose the child to intimidation, humiliation or distress.

(3) In every case, the Court shall adapt such proceedings as may be necessary to meet the ends of justice while ensuring due regard to the welfare and the best interest of the child.

Time Limit for Determination of Proceedings

9. (1) The Court shall endeavour to complete at least ninety percent of criminal cases before it within twelve months of commencement.

(2) To facilitate expeditious determination of cases before it, the Court shall not grant an application for adjournment except on substantial grounds, and in the best interest of the child to whom the proceedings relate.

(3) Where a party is unable to comply with the Court's directions, he or she shall contact all the other parties and make alternative arrangements to ensure that the matter progresses without undue delay.

(4) If the inability to comply with the Court directions as contemplated in sub-paragraph (3) will or is likely to delay final determination of the matter, the defaulting party shall advise the Court in writing not later than the next working day after the party becomes aware that the default cannot be cured by arrangements agreed between the parties, whereupon the Court shall make such orders and give such directions as it considers appropriate for expeditious determination of the proceeding.

PART III – ADMINISTRATION OF CHILDREN'S COURTS

Court to Maintain Child-Friendly Environment

10. (1) The facilities within the Court shall be distinctive from those in ordinary courts, and shall be customized to be child-friendly so as to meet the needs of children, including children with special needs, in compliance with section 188 of the Act.

(2) The Court shall be equipped with a child-friendly witness protection box suitably designed to protect children from avoidable intimidation, humiliation or distress.

(3) There shall be complete independence and specialization of the Court in relation to the court premises, separate registry staff, and easy access to court files, in order to expedite access to justice for children in contact with the law.

(4) There shall be no uniformed presence in the courtroom except for good reason, such as security.

Duty to Maintain Court Calendar

11. (1) The Court shall set aside specific days on which proceedings in matters involving children in contact with the law shall be conducted.

(2) Without prejudice to the generality of sub-paragraph (1), the Court may not vacate a hearing date on written application by a party, unless the party seeking to vacate the hearing date –

(a) shows to the satisfaction of the Court cogent and compelling reasons; and

(b) makes his or her application as soon as reasonably practicable on becoming aware of the need to make the application.

Court to Safeguard the Safety and Welfare of Children

12. The Court may, at any stage in the proceedings, make such orders and give such directions as are necessary to ensure strict compliance with Rule 7 of the Rules so as to ensure that children in conflict with the law do not associate with adult offenders.

Conveyance of Children to and From Court

13. The Director shall make adequate arrangements with authorised officers and managers of children remand homes to ensure that –

(a) the children scheduled to appear before the Court are brought on time;

(b) the children are conveyed separately from adults; and

(c) the mode of transportation meets safety standards.

Familiarisation of Children with Court Environment

14. The Director shall make arrangements to enable children in contact or conflict with the law to visit, out of court hours and before the trial, the courtroom in which the proceedings involving the children are scheduled to take place with a view of familiarizing themselves with the court environment.

Provision of Parental and Other Assistance

15. (1) To facilitate parental assistance, children in contact or conflict with the law may, if they so wish, sit close to their parent, guardian, relative or other person closely connected with the child.

(2) Where the parent, guardian or other person contemplated in sub-paragraph (1) is not available, the child may, if they so wish, sit close to a children officer.

(3) In addition to the assistance specified in sub-paragraph (1), the Court may direct or order that a child in contact or conflict with the law be provided with counselling services in appropriate cases.

PART IV – PROCEEDINGS IN CHILDREN’S COURT

Legal Representation of Children in Conflict with the Law

16. Before commencement of proceedings involving a child in conflict with the law, the Court shall, subject to section 77 of the Act, ensure that the child has legal representation.

Introduction of Persons Appearing at Hearing

17. (1) Before commencement of hearing, the Court shall call out each case of a child in conflict with the law by initials only to ensure confidentiality in the proceedings.

(2) At the commencement of hearing, the Director of Public Prosecution and the child’s legal representative shall introduce themselves to the Court and identify, and introduce to the Court, the party that they represent, family members, relatives and witnesses present in court in connection with the case.

(3) After introduction, only the persons connected with the particular case may be present, and no person other than witnesses may enter the courtroom during the hearing.

(4) At the pre-trial conference, a child’s legal counsel shall bring to the attention of the Court any vulnerability or special needs that the child might have requiring special arrangements, translation or other assistance, in order to meaningfully participate in the proceedings.

(5) In a proceeding before the Court relating to children in contact or conflict with the law, the Court shall exclude from the courtroom any person who is not –

(a) a member or officer of the Court;

(b) a parent or guardian of the child;

(c) a party to the case before the Court, their advocates, witnesses and other persons directly involved in the case; and

(d) such other person as the Court may, by order, authorise to be present.

(6) The Court may limit the attendance of the categories of the persons specified in sub-paragraphs (2) and (3) to those with an immediate and direct interest in the outcome of the proceeding so as to ensure confidentiality and fair hearing procedures and, in doing so, shall take into consideration the vulnerability of the child and the space available in the courtroom, having regard to the number of the persons involved.

(7) Where the Court allows access to the courtroom by the press, the Court may restrict such access on such terms as it may direct so as to ensure fair trial procedures, and direct that suitable arrangements be made to facilitate public information on its administration of justice.

(8) Where a proceeding involving a child in contact or conflict with the law has attracted or is likely to attract widespread media coverage or public interest, the Court shall direct that such measures or arrangements be made in advance so as to protect the identity of the child and ensure fair trial procedures.

Orders and Decisions of the Court

18. (1) An order or decision of the Court relating to proceedings involving children in conflict with the law shall be pronounced in open court in such a manner as to ensure confidentiality in accordance with section 76(5) of the Act.

(2) In undertaking its assessment on placement or committal of a child in conflict with the law, the Court shall consider such matters as it thinks necessary and receive such information as it considers relevant from the proposed remand homes, charitable children's institutions, borstal institutions or rehabilitation schools.

Restriction on Disclosure of Certain Reports and Materials

19. (1) The Court may direct that a report or other evidential document (or any part thereof) not be given, or its contents disclosed, to a child, having regard to –

(a) the prejudicial effect on the child on becoming aware of the information contained in the report or document; and

(b) any psychological or emotional harm that is likely to be occasioned to the child if the child is made aware of that information.

(2) The Court may give directions to ensure that a child who is over twelve years of age receives information that has the potential to cause psychological or emotional harm in an appropriate setting, and from a suitably qualified person.

PART V – COURT'S EXPECTATION OF LEGAL PRACTITIONERS

Dress Code

20. Tabs, robes and wigs should not be worn in court.

Bail and Bond Conditions

21. (1) Before granting bail, the Director of Public Prosecutions and the child's legal counsel shall endeavour to agree on minimum bail or bond conditions prior to the Court's order in that regard, and submit to the Court accordingly.

(2) A child's legal counsel shall take all necessary steps to ensure that the child who they represent is fully aware of what is involved in complying with bail and bond conditions, and the consequences of non-compliance.

Dated the..... day of 2020

David Maraga,
Chief Justice and President of the Supreme Court of Kenya.

