

# CHILDREN COURT PRACTICE DIRECTIONS

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## **TITLE**

IN EXERCISE of the powers conferred by Section 3, Section 4, Part VI, Part IX and Part X of the Children Act of Kenya, the Chief Justice makes the following Rules:-

THE CHILDREN ACT (PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE CHILD) CHILDREN COURT PRACTICE DIRECTIONS, 2016.

These Rules may be cited as the Children Act (Protection of Fundamental Rights and Freedoms of the Child) Children Court Practice Directions, 2016.

## **PART I – PRELIMINARY**

1. This practice direction applies to both Civil and Criminal proceedings involving Children in contact with the law in the Kenya Children Courts and all other Courts thereto as constituted by a Judge or a Magistrate.
2. Children in contact with the law have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participate in any proceedings of the court that can affect them.

The purpose of a trial in a children’s matter is to make a determination based on the best interest principle.

3. Cases children in need of care and protection/truancy shall not be used solely to provide any assistance or service needed to care for or protect a child by a negligent parent or guardian.
4. The interests of the public must also be properly represented in the hearing of proceedings in the Court and the Court will also safeguard the rights and interests of victims and witnesses involved in such proceedings as under the Victim Protection Act (no.17 of 2014).

## **PART II – GOAL OF PRACTICE DIRECTION**

5. The objective of this practice direction is to:
  - a) Facilitate access to justice as required under Article 48 of the Constitution for all persons participating in and undertaking proceedings under the Children Act, 2001 as amended

- b) To ensure fair and expeditious determination of proceedings in the courts dealing with children matters and compliance with the Constitutional rights of Children in contact with the law as well as international standards for juvenile justice as set out 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.
6. Children in conflict with the law accused of committing serious crimes are vulnerable due to their age, level of maturity or disability when standing trial in the Court. The trial process should not itself expose the child to avoidable intimidation, humiliation or distress. The ordinary trial process in the Court is therefore adapted to meet those ends and ensure due regard to the welfare of the child as is appropriate.
  7. For the purpose of furthering the overriding objective the Court shall handle all matters presented before it to achieve the following:
    - a) The just determination of the proceedings
    - b) The efficient use of the available and administrative resources
    - c) The timely disposal of proceedings at a cost affordable by the respective parties;
    - d) The use of alternative dispute resolution mechanisms for expeditious disposal of cases and
    - e) The use of appropriate technology.
  8. The practice directions do not limit or interfere in any way with the powers and discretions of the judicial officer under the Children Act, 2001.

**PART III – ADMINISTRATION OF CHILDREN’S MATTERS IN THE CHILDREN COURT [SECTION 74 CHILDREN ACT, 2001]**

9. All courts shall set aside specific days where all children in contact with the law matters shall be handled by a specific court.
10. There shall be total independence and specialization of the Children Court in terms of separate Children Court premises, separate Children Court, separate Registry staff and easy access to Court files in order to expedite access to justice for Children in Contact with the law
11. The Children Court shall also have specific Children Officers to handle its matters.
12. Children in Conflict with the law, whether detained in a police station or while being taken to or waiting to attend or leave any Court or while in any institution should not be held with adults. A female child should always be accompanied by a woman officer.
13. Children in Conflict with the law must be brought to Court on time. The department of children services shall make adequate arrangements ought to be

made with the police and remand homes to facilitate this. There must also be a dedicated transportation system customized for children separate from that of the adult.

14. Children in Conflict with the law should normally, if they wish, be free to sit close to members of their family or others in a like relationship.
15. Before the commencement of each hearing, the prosecution and child's legal representative shall identify themselves to the Court and shall also identify and introduce to the Court the subject that they represent, relevant family members and all relevant witnesses present in the court in connection with the case.
16. Once a case has been called; by initials only, no person unconnected with the proceedings may enter the courtroom once the case has been commenced unless called as a witness.
17. In a proceeding before the Court relating to children in conflict with the law, the Court shall exclude from the courtroom a person who is not:
  - a) A member or officer of the court
  - b) The parents or guardians of the child brought before the Court
  - c) Parties to the case before the court, their advocates and witnesses and other persons directly concerned in the case; or
  - e) Such other persons as the court may specially authorize to be present
18. The Court may limit attendance of the categories of persons set out at 17 above to those with an immediate and direct interest in the outcome of the trial so as to ensure fair trial procedures of the Children in Conflict with the law are respected. Fair trial procedures must take into consideration the vulnerability of the **child** and the space available in the courtroom having regard to the numbers of parties involved.
19. Where it is determined that access to the court room by the press be allowed, such must be restricted in a proportionate manner so as to ensure fair trial procedures of the Children in conflict with the law. Arrangements shall be made prior to court so that the public's general right to be informed about the administration of justice within the court is safeguarded.
20. Where a proceeding regarding Children in contact with the law has attracted or may attract widespread public or media interest, measures/arrangements should be made in advance to protect the identity of the Children in contact with the law to ensure fair trial procedures.
21. The Order or decision of the Court (if any) in Children in Contact with the law proceedings shall be announced in public session of the Children Court in a manner which protects legal identification and legal reporting restrictions as contained in the Children Act, 2001 as amended.

22. The Children Court must follow up with various institutions including, remand homes, children homes, borstal institutions and rehabilitation schools when making its decisions in order to help assess the impact of its decision and whether such will be in the best interest of the welfare of the Children in Contact with the law.
  - a. After a child has been committed to an institution, the court shall make a follow up on a quarterly basis, depending on the length of stay of the child.
23. The court shall ensure that the children in conflict with the law have legal representation in court.
24. In accordance with the Children Act 2001, cases of children in conflict with the law cases shall be dismissed if it is not completed within 6 months from the time plea is taken. This provision will not be used to defeat justice.
25. A child not be remanded for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

#### **PART IV – CHILDREN COURT ENVIRONMENT**

26. There should be no recognizable uniformed presence in the courtroom save for good reason but for which good reason includes the security of the court by a member or officer of the Court responsible for the security of the court.
27. Arrangements shall be made by children officers for Children in contact with the law to visit; Out of court hours and before the trial, the courtroom in which the trial is to be held so that they can familiarize themselves with the court environment.
28. The facilities within the Children Court must be distinctive from the ordinary courts and therefore must be customized to be child friendly.
29. Children in Contact with the law living with disability shall be provided with special facilities to cater to their needs:
  - a) The mode of communication shall be in print as well as in braille to enable the visually impaired to access to information critical to them.
  - b) The Children Court shall have all relevant infrastructure put in place for easy access and convenience to the Children in Conflict with the law living with disability.
  - c) Judicial services cost for children living with disability shall be waived in accordance with the Persons living with Disability Act of 2003. Special arrangements should be made to ensure that Children in Conflict living with disability access judicial support by specifically trained Judicial staff.

30. All Courts shall be equipped with witness protection boxes designed in a child friendly fashion.
31. The Court shall direct provide counselling to Children in Contact with the law in need of such services.

#### **PART V – COURTS EXPECTATION OF LEGAL PRACTITIONERS**

32. Tabs, robes and wigs should not be worn in the Children Court.
33. Where a child has a particular vulnerability requiring special arrangements, or requires translation of advocacy facilities in order to meaningfully participate in the proceedings, it is the duty of the legal practitioner to bring this to the attention of the court as soon as is practicable.
34. The prosecution and defense should where appropriate, discuss bail conditions prior to court and ensure that bail conditions proposed to the court can be complied with by the Children in Conflict with the law.
35. Legal representatives shall take all steps necessary to ensure that Children in Conflict with the law are fully aware of what is involved in complying with bail and bond conditions and understand the consequences which flow from such conditions.