



ADVISORY ON CHILDREN AND THE IMPACT OF COVID-19

2020





ADVISORY BRIEF ON CHILDREN AND IMPACT OF COVID 19 PANDEMIC

PRESENTED TO:

- 1. THE CHAIRMAN, NATIONAL COUNCIL FOR ADMINISTRATION OF JUSTICE (NCAJ)**
- 2. THE CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL PROTECTION**
- 3. ATTORNEY GENERAL OF KENYA**
- 4. MINISTRY OF HEALTH**
- 5. NATIONAL EMERGENCY RESPONSE COMMITTEE (NERC)**
- 6. MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT**
- 7. COUNCIL OF GOVERNORS**

PRESENTED BY:

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)
AND THE JOINING FORCES ALLIANCE FOR CHILDREN IN KENYA (JFA-KENYA)
PARTNERS.**

Kenya National Commission on Human Rights

1st Floor, CVS Plaza, Lenana Road

P.O. Box 74359-00200

Tel: **0726 610 159** **Website:** www.knchr.org

Email: haki@knchr.org



Save the Children



NAIROBI, KENYA

Introduction

1. **The Kenya National Commission on Human Rights (KNCHR)** is a Constitutional body established under Article 59 of the Constitution of Kenya and Section 3 of the Kenya National Commission on Human Rights Act No 14 of 2011 (revised) 2012. KNCHR's core mandate is to develop a culture of human rights through the promotion and protection of human rights and fundamental freedoms of everyone within the Republic of Kenya. In addition the Commission has been given additional mandate through statutes, Government directives as well as regional bodies which includes; monitoring the implementation of the prevention of Torture Act (POTA), implementing Intersex taskforce recommendations, monitoring national compliance of the convention of the rights of persons with disability among other advisory roles through KNCHR's membership in various boards at the National level.
2. The KNCHR is a National Human Rights Institution (NHRI) whose operations are guided by the 1993 United Nation's Paris principles; on establishment and functioning of independent Human Rights Institutions. KNCHR is accredited by the Global Alliance of National Human Rights Institutions (GANHRI) as an "A" Status National Human Rights Institution as fully compliant with the Paris principles. Further, the KNCHR enjoys an affiliate status with the African Commission on Human and Peoples' Rights since 2004.
3. To actualize the above mandate, KNCHR preforms several functions including; monitoring state and non-state actors to ensure compliance with human rights standards, legislative review, complaints processing, investigations, follow up on redress on human rights violation as well as advising the Government on gaps that continue to hamper realization of human rights in Kenya.
4. **The Joining Forces Alliance for Children in Kenya (JFA-Kenya)** is a coalition of six child focused Non-Governmental organizations whose members are; Child Fund Kenya, Plan International Kenya, Save the Children Kenya, SOS Children's Villages Kenya, Terre des Hommes and World Vision Kenya. The Six agencies are working together, in the best interest of the child, to strengthen collaboration with Government of Kenya Ministries, Departments, Agencies (MDAs) and other partners in ensuring that children rights are secured and that; the principles of the United Nations Convention on the Rights of the Child upheld.
5. The KNCHR in collaboration with the **JFA-Kenya** submits this advisory to the relevant Government MDA's in order to reinforce the voice of the children who continue to be marginalised by all actors in the fight against COVID-19 pandemic.
6. It is notable Article 21 and 53 of the Constitution of Kenya, provides for the state obligation to promote, respect, protect and fulfill human rights for all, with the later



Article providing clarity on the Rights that accrue to a child, which are aimed at ensuring their development and welfare safeguards.

7. Article 53, provides that

(1) Every child has the right --

- (a) to a name and nationality from birth;***
- (b) to free and compulsory basic education;***
- (c) to basic nutrition, shelter and health care;***
- (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;***
- (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and***
- (f) not to be detained, except as a measure of last resort, and when detained, to be held –***
 - (i) for the shortest appropriate period of time; and***
 - (ii) separate from adults and in conditions that take account of the child's sex and age.***

(2) A child's best interests are of paramount importance in every matter concerning the child.

8. The KNCHR and JFA-Kenya recap that the Government, specifically the Cabinet Secretary in charge of Labour and Social Protection has the sole responsibility of administering the Children's Act of 2001 and therefore must ensure strict compliance with Section 4 of the Act which stipulates the Survival and best interests of the child as follows:

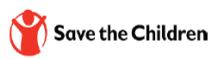
'Section 4(1) Every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.

Section 4 (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Section 4 (3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration... The Act, further provides under Section 5 measures for protection of all children against any form of discrimination.



9. This advisory has been prompted by the **gapping omission and sidelining of child rights and child protection perspectives in all the COVID-19 Directives and Measures issued by policy and main actors** who includes; the Ministry of labour and social protection, ministry of Interior, the national council for administration of justice (NCAJ), Ministry of health (MOH), National emergency response committee (NERC), the National council for children services (NCCS), Department of children's services (DCS) and their respective child protection and emergency sub committees/working groups.
10. The KNCHR and JFA-Kenya brings to your attention the following major concerns that have impeded on realization of child rights during COVID-19 pandemic. These includes; lack of specific child protection and COVID-19 pandemic guidelines, lack of transparency in the measures put in place to enhance child protection for all categories of children in Kenya (institutionalized and non-institutionalized), lack of clear guidelines on handling increased cases of child abuse and SGBV, lack of guidelines to safeguard access to justice and assistance for children during this pandemic, lack of prioritization of all children in vulnerable situations in the ongoing COVID-19 social protection humanitarian support. Poor public sensitization on the role of community, CSOs, National and County Government actors as well as care givers in ensuring safety and care for all children during this pandemic.
11. The KNCHR and JFA-Kenya, have therefore taken up their respective obligation outlined in Articles 3 and 10 of the Constitution 2010, which obligates everyone to defend the Constitution guided by the national values principles which includes; rule of law, respect for human dignity, human rights, non-discrimination, transparency and patriotism. This is in addition to their institutional mandates assigned by various legal frameworks. From the onset, we reiterate that ***children rights must be at the centre of the COVID-19 response mechanisms and any other emergencies resulting from the ongoing floods.***
12. The KNCHR and the Joining Forces Alliance for Children in Kenya, appreciates the efforts put in place to safeguard children rights generally in addition to the opportunity for improvement to enhance safeguards for all children in vulnerable situations, including the child victims, intersex, migrant children. **As we commemorate the day of African Child this week on Tuesday, 16th June, 2020 and applaud the 30th Anniversary of the African Charter on the Rights and Welfare of the Child (ACRWC); we must remember that all of us have a responsibility of ensuring that, 'NO CHILD IS LEFT BEHIND.'**
13. Further, **the unnecessary delays in enacting the Childrens' Bill, 2019; continues to impact retrogressively to Kenya's commitment and obligation to promote protect and uphold children rights pursuant to the 2010 Constitution, African Charter on the Rights and Welfare of the Child (ACRWC), the UN Convention on the Rights of the Child (UNCRC), the Global Compact on Migration, Sustainable**



Development Goals (SDGs) among others. We therefore call upon the Attorney General to expedite the enactment of the Children' Bill, 2019 in order to ensure that children are not left behind in the 2010 Constitutional dispensation.

14. In view of the above, this advisory is tailored to identify the existing gaps on behalf of the children of Kenya as well as propose possible solutions as one way of enhancing child protection safeguards for all children, during the current pandemic in addition to giving input to Government measures' being developed on re-opening the economy and the 'new normal' post COVID-19 way of life. The table below provides a summary of identified child protection concern/gaps, the agency responsible to act and further proposes actions that will address the gap.

	Child protection Concern/gap	Responsible Institutions	Advisory- proposed intervention
1.	The gapping silence by the Ministry of Labour and Social protection in advocating for child protection measures in the National and County Governments' COVID-19 decisions and directives.	The Cabinet Secretary, Ministry of Labour and Social protection.	<p>The C.S voice must be heard both in the directives developed to fight COVID-19 pandemic now as well as post COVID.</p> <p>The voice of the ministry is crucial both in the media and through targeted actions that focus on all child protection concerns for all children towards empowering the communities to uphold child rights.</p> <p>Justification: The Children's Act, 2001 section 2 among others empowers the minister in charge of this Act, to administer it and develop relevant rules as well as ensure setting up of relevant institutions to enhance implementation of this law.</p>
2.	Lack of information and reports on measures put in place to safeguard wellbeing and welfare of	National Council for Children Services (NCCS) And	The NCCS, should urgently share with the key actors and the public a comprehensive Status report on current situation of children in Kenya,

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	<p>all children in Kenya as they continue to remain at home in the wake of COVID-19 pandemic.</p> <p>Lack of child friendly COVID-19 messaging save for the generic messages that are for the general public.</p>	<p>Director of Children Services (DCS)</p> <p>NCCS, MOH, MOE and DCS.</p>	<p>measures put in place to protect all children, trends of child abuse cases reported, concerns raised for assistance due to Impact of COVID-19 as well as follow up action for children within the Institutions, those at home, the most vulnerable and a category that was recently integrated to the community.</p> <p>The NCCS working closely with the MOH and MOE should develop child friendly messaging with the support of experts to target all children including children with different types of disabilities.</p> <p>Dissemination strategy too must be well thought out.</p> <p>Justification: This is NCCS mandate under section 32 of the Children Act, 2001.</p> <p>Justification: The Director is mandated under Section 38(4) (b), 'Directors powers to call for information call for information from any individual or institution for the purpose of safeguarding the interests of children in accordance with this Act;'</p>
3.	Lack of clarity on measures put in place to enhance safeguards on access to justice (both formal and informal systems), for children during this pandemic.	<p>The National Council for Administration of Justice (NCAJ),</p> <p>And</p>	<p>The NCAJ (council), must prioritize and give directions to all court users on how to manage children cases during Covid-19 period.</p> <p>Further, the NCAJ must be intentionally develop General</p>

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	Lack of coordinated approach in handling of child protection cases in emergencies. This has resulted to a broken chain link for children who are caught up in justice process during the COVID 19 period this has impeded on victims access to protection, medial legal, psychosocial and pro bono services, some of which are provided by CSOs and other agencies.	National Council for Children Services (NCCS)	<p>child protection and practice guidelines that will boost access to justice for children by strengthening the chain links, referral pathways as well as human rights accountability measures to safeguard children while in the justice process.</p> <p>Justification: Section 34 of the Judicial Service Act (No. 1 of 2011) mandates the council to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.</p> <p>Justification: Section 32 provides for objects and function of the NCCS which is; 'to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects thereof.</p>
4.	Lack of proper guidance and general public awareness of measures put in place to prevent children against COVID-19, handling of children during the quarantine process as well as mass testing exercise.	Ministry of health (MOH) and National emergency response committee (NERC),	The MOH should develop specific guidelines that will address the context of children and their access to COVID-19 pandemic services which includes; care and protection in quarantine facilities, access to health for general illnesses, mass testing as well as sensitizing the care givers, parents on reporting mechanisms for any child rights violations suffered in the

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			<p>course of these service delivery.</p> <p>Guidelines develop must be accessible to all children in Kenya taking into consideration their best interest and their and Age appropriate.</p> <p>Justification: The MOH and the NERC have been mandated to put in measures to prevent the spread of COVID-19 and subsequent impacts, refer to the Executive Order No. 2 of 2020.</p>
5.	Inaction by the County Area Advisory Councils who remain silent in supporting the national and County Governments on interventions that can safeguard children in the wake of COVID-19.	<p>National Council for Children Services (NCCS)</p> <p>Director of Children Services (DCS), County Commissioners - the County Area Advisory councils(CAAC) And Council of Governors (CoG)</p>	<p>The DCS, should empower all the children officers in the county to support the 47 County Commissioners who are chairperson of the County Area Advisory Councils (CAAC) to monitor and report on the situation of children in their respective counties and propose county specific measures to address the challenges and further enhance preventive measures for child rights abuses.</p> <p>Intentional focus on data and plight of children in vulnerable situations such as children on the move, children with disability, intersex children, OVC, children in the streets, children in contact with the law and the larger group of children in need of care and protection must be emphasized.</p>

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			<p>Advise on available services for child protection and accessibility in their areas during this pandemic and how to enhance access to them as well as human rights accountability measures for these service providers.</p> <p>A weekly County Situation Report on children would suffice.</p> <p>Encourage virtual meetings and continued collaboration with the CAAC members, KNCHR, child protection CSOs, INGOs and communities.</p> <p>Justification: Section 32 (q) Council's powers to establish area advisory councils. Section 38 functions of the Director as well as Section 119 of the Children's Act, 2001.</p>
6.	<p>Lack of clear role and messaging by the key actors in the County level on children protection and preventive measures in the wake of COVID-19</p> <p>Weak co-ordination of Child Protection service providers at the National, County and Community levels, which has resulted to low public sensitization and unclear reporting and follow up mechanisms for</p>	<p>The Ministry of Labour and Social Protection, and Ministry of Interior and Coordination of National Government And Council of Governors.</p>	<p>The Ministry of Interior and Coordination of Government, The Ministry of Labour and Social Protection in collaboration with ministry of interior should strengthen public sensitization specifically encourage prevention measures to enhance welfare and safety of all children across the country.</p> <p>Further, the two ministries should leverage on the existing partnership through the area advisory councils and the county advisory councils to</p>

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	child rights violations within the communities.		<p>support community empowerment in monitoring violations of the rights of children and reporting through the chief's offices, the children officers, the police, child helpline 116 as well as KNCHR sms NO. 22359 for follow up on redress and ensure timely assistance and support to the affected child.</p> <p>These ministries should also lead in the development of guidelines on how to promote child rights, prevent abuse and protect all children who continue to suffer violations by actions of various agencies in the wake of COVID-19, these includes measures on policing and child protection, handling of children in the counties especially those at risk of COVID-19 and abuses due to psychological, cultural, economic and religious factors.</p> <p>Consider supporting Intersex children and their parents as a key vulnerable population with equalization fund to cushion them from negative impact of COVID-19.</p> <p>In this regard, we recommend development of data collection tools that are Gender response, and simplified to aid collation of information by multi sectoral actors, the area chiefs, volunteers children</p>

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			<p>officers, the community leaders, <i>nyumba kumi</i> elders, the religious leaders, social justice centres, CSOs, human rights defenders, paralegals.</p> <p>Further, simplified messaging to disseminate the National toll free Child Help line 116 hotline to the farthest corners of this country should be prioritized as a way of empowering children to report the cases and raise their concerns and fears during this pandemic.</p> <p>Justification: Article 21 (1) and (3) of the Constitution- 'Sub article 3 stipulates the obligation upon all State organs and public officers to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities.</p> <p>Other provisions includes; the Children's Act, 2001, section 2. The Constitution, mandates the State Department for Interior to keep the country safe and secure in accordance with the principles outlined in Article 238 (2) of the Constitution.</p>
7.	Minimal involvement of children in the decision	National COVID-19 Education	Acknowledging that children are the main recipient of basic

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	making process on reopening of schools	Response Committee	<p>education service provision, the National COVID-19 Education Response Committee should endeavor to get the voice of the children in these decisions to enhance the child friendly aspect of these decision and the best interest of the child.</p> <p>Justification: Child participation is a crucial element in the Children's Act, 2001 and also founded in the Constitution's article 10 proviso on National value.</p> <p>It should further be noted that children have the same right to participation, in equal measure with adults, in line with Articles 10(2), 174(d) and 232(1d) in the Constitution of Kenya.</p> <p>Article 12 (1) of the United Nations Convention on the Rights of the Child, provides for state obligation to assure a child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.</p>
13.	Lack of targeted support to increasing levels of anxiety / stress among children as they continue staying at home.	Ministry of health, Mistry of Education and the Ministry of Labour and Social Protection	These ministries should collaborate and develop strategies and protocols (National Psychosocial support programme for

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			<p>children) and disseminate it to all county governments, health care workers and teachers to support them attend and support children who are affected now and in the future.</p> <p>Justification: Constitution of Kenya provision in Article 43 (1) (a) and 53. Section 8 and 10 of the Public Health Act, cap 242 (revised 2012).</p>
14.	<p>Access to Maternal and Child Health and Nutrition services and vaccination services for children</p> <p>The Council of Governors reported that proportion of children under one year who are fully immunized reduced by 40% in the month of April compared to March 2020</p>	<p>Ministry of health and County Government's Departments for Health and</p> <p>The Council of Governors</p>	<p>Whereas COVID-19 response is the current priority, it should be noted that ongoing provision of Maternal and Child health services is critical. The Council of Governors and Departments of Health in all the 47 County Governments should ensure that the Ministry of Health's Guidelines on Continuity of Essential Health Services during COVID-19 Pandemic are effectively disseminated. The Community Health Strategies should be fully implemented and Community Health Volunteers effectively supported to make follow ups across all households and ensure that Mothers access timely antenatal, maternity and postnatal services; and that young children receive their routine vaccination and immunization services as per schedule; in addition to timely management of common childhood illnesses and</p>

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			<p>chronic illnesses. Further, growth monitoring of children and vaccinations should be sustained and any cases of acute malnutrition detected early enough and referred.</p> <p>Justification: Constitution of Kenya provision in Article 43 (1) (a) and 53. Section 8 and 10 of the Public Health Act, cap 242 (revised 2012).</p>

The KNCHR and the Joining Forces Alliance for Children in Kenya remains committed to strengthening a multi-sector and multi-stakeholder approach towards addressing the above outlined child protection concerns.

Signed on Monday, 15th June, 2020 and Endorsed by partners too.

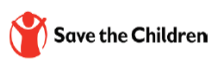


Dr. Bernard Mogesa, PhD, CPM

Chief Executive Officer/ Secretary to the Commission

The Joining Forces Alliance for Children in Kenya Partners Endorsement

Child Fund Kenya	Chege Ngugi Country Director
Plan International Kenya	Kate Maina-Vorley Country Director
Save the Children Kenya	Wang Le Country Director
SOS Children's Villages Kenya	Walter S. Odhiambo National Director



Terre des Hommes	Celine Beaudic Country Representative
World Vision Kenya	Lilian Dodzo National Director

