



JOINING FORCES ALLIANCE FOR CHILDREN IN KENYA

MEMORANDUM SUBMITTED

ON 10TH JULY 2020

TO THE NATIONAL CRIME RESEARCH CENTER

**ON THE PROBE ON GENDER BASED VIOLENCE AND VIOLATION OF CHILDREN'S RIGHTS
AS DIRECTED DURING THE NINTH STATE ADDRESS ON THE CORONAVIRUS PANDEMIC**

Pursuant to the ninth State address on the coronavirus pandemic, delivered on 6th July 2020 by the President of the Republic of Kenya, that acknowledged the increasing tensions within homes, increased cases of Gender-Based Violence, worsened mental health issues have worsened and escalated instances of teenage pregnancy,

Noting that a directive and order were issued to the National Crime Research Center to probe (i) the escalating cases of gender-based violence; (ii) the worrying trend of cases where the girl child has been disempowered; and (iii) the violation of children's rights,

Noting further the National Crime Research Center was directed to prepare an advisory to the security agencies on remedial action within 30 days from the date thereof and initiate immediate prosecution of all violators,

Recalling that Article 21 of the Constitution of Kenya clearly provides that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights; and that all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including children, whose rights are guaranteed in Article 53 of the Constitution of Kenya,

Concerned with the reported worrying trend of various forms of violence against children in Kenya, among which include, child neglect, child labour, sexual violence and exploitation, which often results into child pregnancy, child marriage, female genital mutilation, physical violence, child trafficking, children living and begging in the streets and missing children,

The Joining Forces Alliance for Children in Kenya (whose members are ChildFund Kenya, Plan International Kenya, Save the Children Kenya, SOS Children's Villages Kenya, Terre des Hommes and World Vision Kenya) submits this memorandum with specific recommendations to the National Crime Research Center for consideration as it implements the Presidential directive.



1. Focus areas for the probe

In undertaking the probe, the National Crime Research Center should establish the following, among others,

- (i) The status of documentation and preservation of evidence that supports prosecution of perpetrators of various forms of violence against children
- (ii) The functionality and effectiveness of the coordination by Department of Children Services under the Ministry of Labour and Social Protection in prevention and response to various forms of violence against children
- (iii) The functionality and effectiveness of the Area Advisory Councils (AACs) at the County, Sub-County, Ward, Location and Sub-location levels, as established under section 32(2) q of the Children Act 2001 and in alignment with the guidelines for the operation of Area Advisory Councils, as published by the National Council for Children Services (NCCS)
- (iv) The effectiveness of other Community Based Child Protection and Response Mechanisms in Kenya
- (v) The factors that contribute to disempowerment of girls and boys, and related root causes

2. Documentation of the Voices of Children during the probe

When mapping the target groups to be involved during the probe, the National Crime Research Center should sample children, and collect, analyse and document the voices of children on the status of forms of violence against children in Kenya. In doing so, the following should apply

- (i) Children should be encouraged to raise their voices and express their feelings on the status of their protection by the state, their families and communities while assuring them of confidentiality and safety. Supporting and facilitating child participation during assessments and surveys is one of the ways of gathering credible information.
- (ii) The National Crime Research Center should be guided by Article 12 of the Convention on the Rights of the Child which provides that (1) States Parties shall assure to the 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 and that (2) the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. This is further explained in the UN's Committee on the Rights of the Child's General Comment No. 12 of 2009 on the Right of the Child to be heard.
- (iii) The National Crime Research Center should further be guided by Section 4(4) of the Children Act 2001, provides clarity that in any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity. In addition Articles 10 (2), 174(d) and 232(1d) of the Constitution of Kenya provides for public participation. The meaning of 'public' should be appreciated to include children.

3. Data Analysis and Presentation

Where practically possible, the National Crime Research Center should ensure that

- (i) Data, as collected and analysed, is presented by age group, sex, disability and socio-economic characteristics
- (ii) Data is further presented by administrative units, including Sub-locations, Locations, Wards, Sub-Counties and Counties, so as to inform context specific response actions

4. Advisory to Government departments and agencies

While preparing an advisory on remedial action, The National Crime Research Center, should consider the following, among others,

(i) Child Protection Standards of Operation Procedures (CP-SOP)

The Ministry of Interior and Coordination of Government, The Ministry of Labour and Social Protection (Ministry Responsible for Children Matters) in collaboration with the Ministry of Health should develop specific Child Protection Standards of Operation Procedures that would guide all actors involved in child protection services in the Country during this emergency period. Such standards of operation should provide clarity on;

- a) The specific child protection roles of various government departments and agencies during the current emergency, at all levels of governance
- b) Gender Responsive Mechanism for identification, reporting and referral of specific child protection cases from various households and communities
- c) The framework and tool for use in the villages and estates in monitoring and reporting on the Situation of Children, during the current pandemic

The Child Protection Standards of Operation Procedures upon being developed should be approved by the National COVID-19 Emergency Committee and disseminated across the country for reference and use

(ii) County Commissioners' role in ensuring that children rights are not violated

All the 47 County Commissioners, being the Chairpersons of the County Area Advisory Councils, should ensure that the County Area Advisory Councils are involved in monitoring and reporting on the situation of children on a weekly basis in their respective counties. While doing so, critical attention should be on the situation of the most vulnerable children among whom include malnourished children, those with pre-existing medical conditions, orphans, children living with disabilities, children of imprisoned parents, children living and working on the streets, children living in refugee camps and children living in very poor households. Production and dissemination of a weekly County Situation Report on children would suffice

(iii) Public Report on the Situation of Children in Kenya

The National Council of Children Services, in line with its mandate, as provided for under section 32 of the Children Act, to urgently share with the public a Report on the Current Situation of Children in Kenya. Such a report should provide details on the progress made in ensuring that children in Kenya remain protected from the threats of COVID-19 and the status on reported violations against children from various parts of the country.

(iv) Health facilities cooperation with the criminal justice mechanisms

Health facilities hold very critical information on violence against children. This includes documentation of information on sexual and physical abuse, and other forms of violence. In this regard, the Ministry of Health should ensure that all health facilities provide the said information to the relevant criminal justice mechanisms including the National Government Administration Offices, the police, and the children department among others. Such information includes, but not limited to;

- a) Number of adolescent receiving family planning services, disaggregated by age, sex and disability
- b) Number adolescents presenting with pregnancy disaggregated by age and disability
- c) Number of deliveries by adolescents; disaggregated by age and disability
- d) Number of adolescent accessing Post Abortion Care (PAC) services disaggregated by age and disability
- e) Number of adolescent maternal deaths disaggregated by age and disability
- f) Number of patients with Sexually Transmitted Infections (STIs) attended to, disaggregated by age, sex and disability
- g) Number of patients attended to due to Sexual and Gender Based Violence (SGBV), disaggregated by age, sex and disability

The Joining Forces Alliance for Children in Kenya confirms its willingness and availability to collaborate with the National Crime Research Center in executing its functions as provided for in Section 5 of the National Crime Research Act.

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