



# CHILDREN COURT USERS' COMMITTEES GUIDELINES





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## **CHILDREN COURT USERS' COMMITTEES GUIDELINES**

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## FOREWORD



Protection of children in need of care and protection, and the administration of child justice in the best interest of children in contact or in conflict with the law, have been matters of grave concern for nations. This is attested by the multiplicity of UN and regional treaty instruments dedicated to child protection and child justice. These instruments set the standards for child protection and the administration of justice in the best interest of the child.

In this spirit, Article 53 of the Kenyan Constitution guarantees protection of the rights of the child. In addition, the rights guaranteed by Articles 47 (the right to fair administrative action), 48 (the right of access to justice), 49 (the right of arrested persons), 50 (the right to fair hearing) and 51 (the rights of persons detained, held in custody, or imprisoned), find protection in the administration of child justice.

The administration of child justice by children's courts is subject to the principle of public participation under and by virtue of Article 10 of the Constitution. Moreover, judicial authority vests in the people, though exercised by courts and tribunals established under the Constitution.

In the spirit of public participation, section 35(2) (c) of the Judicial Service Act, 2011 mandates the National Council on the Administration of Justice to establish and operationalise court user committees at the county and court station levels. Despite the important role CUCs have played in the administration of justice in the country, an analysis of the CUC reports highlights the need to address challenges affecting the optimal administration of children cases. This is because children's issues are unique, less visible, and are usually not canvassed with the vigour that other cases (i.e., involving adult persons) attract due to poor representation and participation by their constituency. Similarly, the Status Report on Children in the Justice System in Kenya launched in 2019 affirms this finding, besides analysis of reports emanating from CUC across the country, most of which have revealed coordination gaps amongst child justice actors, resulting in delayed delivery of justice to the children of Kenya.

To this end, the NCAJ standing Committee on the Administration of Justice for children issues these Guidelines to aid in the establishment and operationalisation of Children's Court Users Committees at the county and court station levels. The guidelines address, among other matters, objectives of the Guidelines, scope of application, the policy, legislative and institutional framework for the establishment of CCUCs, the composition of CCUCs, their

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functions and administrative framework, their general powers and procedure at meetings, financial arrangements, and performance management, monitoring and evaluation.

The CCUCs established pursuant to these Guidelines provide a platform for stakeholders in the justice sector to oversee and facilitate (a) effective administration of child justice in the best interest of children in conflict with the law; and (b) the promotion of the rights of the child towards effective safeguarding of children in need of care and protection or otherwise in contact with the law. The guidelines provide a framework for partnership development, cooperation, collaboration, information sharing among stakeholders, knowledge management and coordination of judicial service delivery in children’s courts.

**Hon. Justice Martha K. Koome, EGH**  
**Chief Justice and President of the Supreme Court of Kenya &**  
**Chairperson - National Council on the Administration of Justice**

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## ACKNOWLEDGEMENT



The mandate of the National Council on the Administration of Justice (NCAJ) is to ensure a coordinated, efficient, effective, and consultative approach in the administration of justice and reform of the justice system including that relating to and concerning children.

In recognition of the vital role the justice sector plays in shaping the future of our children and towards the realisation of NCAJ's mandate through Court Users Committees, the NCAJ National Standing Committee on Court Users and the NCAJ standing Committee on the Administration of Justice for children came together to develop these guidelines to give direction to the operations of CCUCs on best practices in deliberating on, planning for and handling children matters. The process has involved collaboration between the NCAJ Secretariat, technical support through expert consultants and engagement and consultation with stakeholders who are invested in the effective delivery of child justice in Kenya. These Guidelines will ensure that our justice sector has a tool to direct its operations of Court User Committees that are specially focused on children.

I wish to thank every person that contributed their time and resources towards the development of this document for the benefit of children in Kenya. In particular, let me acknowledge the great work done by Hon. Justice Dr. K. I. Laibuta, JA who provided the technical skills and resource to deliver these guidelines; the drafting and editorial team; and members of the two (2) NCAJ Committees for leading the process. I appreciate the contribution of the NCAJ Executive Director, Dr. Moses Marang'a, Ms. Sylvia Yiantet (HOD, Court User Committees and Ag. HOD, Civil Justice Reforms) and Ms. Roselyne Kabata (HOD, Access to justice for Vulnerable Groups) in ensuring that these Guidelines are finalized.

The financial support of the Swedish Embassy through Diakonia towards the development of these Guidelines is highly appreciated. Special thanks also go to the Legal Resources Foundation Trust (LRF) for their technical assistance especially through Ms. Mildred Arum and Mr. Fredrick Otieno.

With these guidelines, I am confident that we can look towards the future of our children with an assured optimism and confidence.

**Anne A. Amadi, CBS**

**Chief Registrar of the Judiciary of Kenya &  
Secretary, National Council on the Administration of Justice**

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## TABLE OF CONTENTS

<b>FOREWORD</b> .....	iv
<b>ACKNOWLEDGEMENTS</b> .....	vi
<b>LIST OF ACRONYMS</b> .....	ix
<b>DEFINITIONS</b> .....	x
<b>1.0 INTRODUCTION</b> .....	1
1.1 Vision and Mission of CCUCs .....	2
1.1.1 Vision.....	2
1.1.2 Mission.....	2
1.1.3 The Core Values of CCUCs.....	2
1.1.4 Objectives of the Guidelines .....	3
1.1.5 Scope and Application of the Guidelines .....	3
1.1.6 Why these Guidelines? .....	4
<b>2.0 THE POLICY, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR THE ESTABLISHMENT OF CHILDREN'S COURT USERS COMMITTEES</b> .....	5
2.1 The Policy and Legislative Frameworks .....	5
2.2 Levels of CCUCs .....	8
<b>3.0 THE FUNCTIONS AND ADMINISTRATIVE FRAMEWORK OF CCUCS</b> .....	9
3.1 Functions and Scope of Policy Direction .....	9
3.2 Priority Areas in the Operations of CCUCs.....	10
3.3 Membership and Sub-Committees of CCUCs.....	11
3.3.1 Membership of CCUCs.....	11
3.3.2 Sub-Committees of CCUCs.....	12
3.3.3 Membership of County Level CCUC.....	12
3.3.4 Functions of County CCUCs .....	13
3.4 Management and Administrative Framework of CCUCs .....	13
3.4.1 Officers of CCUCs.....	13
3.4.2 Duties and Responsibilities of Officers .....	14
3.5 Operational Framework of CCUCs.....	15
3.5.1 Meetings of CCUCs .....	15
3.5.2 General Powers and Procedure at Meetings .....	15



**4.0 FINANCIAL ARRANGEMENTS AND PERFORMANCE MANAGEMENT** .....16

4.1 Financial Arrangements .....16

4.2 Monitoring, Evaluation and Reporting Obligations.....17

4.2.1 Annual Work and Procurement Plans .....17

4.2.2 Reporting Obligations.....17

4.2.3 Monitoring and Evaluation.....17

4.3 Performance Indicators.....18

4.4 Performance Standards and Guidelines for CCUC Members .....20





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## LIST OF ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>CUC</b>	Court Users Committee
<b>CCUC</b>	Children Court Users' Committee
<b>CPC</b>	Child Protection Centre
<b>DCS</b>	Directorate of Children Services
<b>KRA</b>	Key Results Area
<b>LRF</b>	Legal Resources Foundation Trust - Kenya
<b>NCAJ</b>	National Council on the Administration of Justice
<b>ODPP</b>	Office of the Director of Public Prosecutions
<b>UN</b>	United Nations

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## DEFINITIONS

The following definitions apply to these guidelines:

### **“Alternative Dispute Resolution” (ADR)**

refers to alternative forms of resolving disputes in place of litigation in court. Examples of ADR that are suited for restorative child justice include reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms.

### **“Bail”**

refers to an agreement between a child in conflict with the law or his/ her sureties and the court that the child in conflict with the law will attend court when required, and that should the child abscond, in addition to the court issuing warrants of arrest, a sum of money or property directed by the court to be deposited, will be forfeited to the court; or an agreement between an officer in charge of a police station at which a child is held and their parent or guardian, or other responsible person, to release the child on a personal recognizance, with or without surety, for such amount as will, in the opinion of the officer, secure the attendance of the apprehended child at the hearing of the charge.

### **“Bond”**

is an undertaking, with or without sureties or security, entered into by a parent or guardian of a child in conflict with the law in custody under which he or she binds him or herself to comply with the conditions of the undertaking and, if in default of such compliance, to pay the amount of bail or other sum stated in the bond.

### **“Child”**

means an individual who has not attained the age of eighteen years. ‘Children’ has a corresponding meaning.

### **“Child in Conflict with the Law”**

means a person who is above the age of eight years, but below the age of eighteen years, who has gone through the child justice system in accordance with the Children Act, 2022 or any other written law for contravention of the law; or a child who has been suspected of having infringed the law.

### **“Child in Contact with the Law”**

refers to a child involved in a judicial process.

### **“Child in need of care and protection”**

any child defined under section 144 of the Children Act No. 29 of 2022

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### **“Child Protection Unit”**

means a child-friendly facility located at designated police stations and established to provide, on a temporary basis, a safe and non-threatening environment for children in need of care and protection.

### **“Children Rescue Centre”**

includes any institution established under the Children Act that is suitably designed for temporary care of children in need of care and protection but does not include a remand home or police station.

### **“Children’s Remand Home”**

means a place of safety where children in conflict with the law are committed under an order of the Court until their matters are finalized.

### **“Court”**

means any High Court or Magistrate’s Court with jurisdiction to conduct a trial of any child related civil or criminal matter in accordance with the law.

### **“Committal”**

refers to an order of the court for a child to be placed in the care of a person or an institution, such as a rehabilitation school, probation hostel or Borstal institution. The word ‘committal’ is used as an alternative to the word ‘sentence’ and ‘conviction’.

### **“Detention”**

includes confinement in a police cell, place of safety, rehabilitation school, child protection unit, child rescue centre, children remand home or other residential facility in which the child is deprived of liberty.

### **“Diversion”**

means the intervention and programmes designed to divert children from the criminal justice system with the aim of—

- (a) identifying at risk children and connecting them with appropriate support services in an attempt to reduce the likelihood of the children engaging in anti-social behaviour; and
- (b) providing programmes and support to children who have engaged in offending conduct, to prevent them progressing further into the criminal justice system.

### **“Justice Systems”**

refers to formal and informal systems, including administrative systems, for the reporting, investigation, and resolution of disputes in criminal and other matters, for the allocation

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of legal responsibilities, for conferring and determining of legal status or the allocation of care-giving responsibilities, and for the social and economic protection of the child in ways recognized at law.

**“Legal Aid”**

as defined in the Legal Aid Act, 2016

**“Personal Recognizance”**

refers to the release of an apprehended or child in conflict with the law on the undertaking of such a person that he or she will appear in court as and when required.

**“Plea Bargain”**

is a voluntary agreement between the child in conflict with the law and the prosecution to resolve a case on terms accepted by the child in conflict with the law, such as to agree to plead guilty on lesser charges. This is done with the approval of the court and reduced to writing in the form of a ‘plea agreement’ under the Criminal Procedure Code.

**“Re-integration”**

refers to the process aimed at disengaging children from institutions and re-uniting them with their families and communities through interventions, programmes and services designed to assist them to resettle into their families and communities.

**“Restorative Justice”**

is an approach to justice that focuses on the needs of the victims and the offenders, as well as the involved community.

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## 1.0 INTRODUCTION

Article 159 (1) of the Constitution of Kenya, 2010 recognises that “judicial authority is derived from the people” and vests in, and is exercised by, the courts and tribunals established by or under the Constitution. Read together with Article 10 of the Constitution, Article 159 (1) contemplates that the exercise of judicial authority by courts and tribunals, including children’s courts charged with the administration of child justice, and which deal with matters relating to children, be subject to, among other national values and principles of governance, public participation.

In accordance with the spirit of public participation, section 34 of the Judicial Service Act, 2011 establishes the NCAJ, which is mandated by section 35(1) of the Act to “ensure a coordinated, efficient, effective and consultative approach in the administration of justice”. In discharge of its mandate to “implement, monitor, evaluate and review strategies for the administration of justice,” the Council is empowered by section 35(2) (c) to “facilitate the establishment of court user committees at the county level” in order to, among other things, ensure a coordinated, efficient, effective and consultative approach in the administration of child justice in the best interest of children. The CCUCs are modelled on the Court Users Committee Guidelines (Revised) 2019 and are suitably designed to facilitate equal access to justice and the realisation of the rights of the child.

In addition to the foregoing constitutional and statutory basis for the establishment of CCUCs, the NCAJ, through its Special Taskforce on Children’s Matters, spearheaded reforms in policy, statute law and procedure relating to the administration of child justice in Kenya. The reforms are modelled on the conceptions of restorative and transformative justice in relation to which CCUCs play a critical supervisory role. The establishment of CCUCs demonstrates Kenya’s unreserved commitment to the emerging models of partnership-driven and participatory, restorative, and transformative judicial systems administered in the best interest of the child.

In order to facilitate the realisation of the right of the child and the effective administration of child justice, these Guidelines respond to the need to engage meaningful public participation through CCUCs and relevant non-state agencies in the administration of justice in children’s courts in accordance with international and regional treaty instruments binding on Kenya by virtue of Article 2(5) and (6) of the Constitution, which provide minimum standards for care and protection of children.

Pursuant to these Guidelines, CCUCs provide the much-needed platform that brings together court users and the diverse range of stakeholders in the justice sector in order to enhance public participation, stakeholder engagement, enhanced understanding by members of the public of court operations, and promote efficient, effective and

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consultative partnership in the administration of child justice. The Guidelines provide a mechanism for policy direction and oversight by CCUCs towards (a) the efficient and effective administration of justice in children's courts; and (b) care and protection of children in contact with or in conflict with the law.

## 1.1 Vision and Mission of CCUCs



### 1.1.1 VISION

A coordinated, cohesive, and socially transformative justice system that serves the children in Kenya.



### 1.1.2 MISSION

To foster consultation and collaboration among State and non-state agencies in the promotion and protection of the rights of the child in the administration of child justice and to facilitate the expeditious provision of restorative justice in the best interest of the child.

## 1.1.3 The Core Values of CCUCs



### Collective Responsibility

In discharge of their functions, every agency and individual member or stakeholder in the child justice sector bears equal responsibility for the successes and shortcomings of their CCUC.



### Interdependence

While the agencies comprising a CCUC remain independent, they shall nonetheless be interdependent in the operations of the CCUC.



### Quality Service

All stakeholders recognize that CCUCs are suitably designed to provide quality service to court users and the public at large with special focus on children.



### **Constitutionalism**

All agencies and individual children court users are required to demonstrate fidelity to the Constitution and the principles therein enshrined.



### **Mutual Accountability and Transparency**

All court users and stakeholders shall, in discharge of their obligations within the CCUCs, be open and accountable to each other.



### **Non-Discrimination**

All court users and stakeholders shall, in discharge of their obligations, be guided by the principle of non-discrimination of children with special needs and intersex children, and



### **Safeguarding Children**

All court users and stakeholders shall adhere to the highest level of safeguarding children from abuse, harm, neglect, or any violations at all times.

## **1.1.4 Objectives of the Guidelines**

The main objective of these Guidelines is to provide a regulatory framework for the cooperation and collaboration among national and county governments, State and non-state agencies engaged in the administration of child justice in children's courts in accordance with the Constitution, statute law and international treaty instruments binding on Kenya. The Guidelines are neither prescriptive nor self-limiting and, accordingly, individual CCUCs may, in their absolute discretion, augment their provisions to meet their specific needs in conformity with their statutory mandate.

## **1.1.5 Scope and Application of the Guidelines**

These Guidelines apply to all civil and criminal proceedings or administrative procedures, whether formal or informal, in which children come into contact or in conflict with the law, whether as victims or witnesses, or as alleged offenders, whether or not they admit responsibility or are found to be responsible for an offence or offences, or are otherwise the subject of proceedings relating to their care and protection, or are involved in family disputes falling within the jurisdiction of children's courts. The Guidelines shall be implemented in accordance with the Constitution, the national children policy and

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legislation, and with international standards for the protection of children in need of care and protection, and for the administration of child justice.

### 1.1.6 Why these Guidelines?

**Preamble:** Acknowledging that judicial authority is derived from the people.

Committed to the realisation of the national values and principles of governance, patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.

Taking cognizance that the justice system is chain-linked in service of the people of Kenya. In recognition of the fact that the respective mandates, the potential, capacity of every player in the child justice system are connected, intertwined and inter-dependent.

Seeking to depart from the hitherto disjointed silo approaches in the administration of child justice, and to entrench the principle of collective responsibility and mutual accountability among actors in the administration of child justice.

The NCAJ is mandated by statute to establish and operationalise CUCs at the County Level. In addition, the CUC guidelines provide for the establishment and operationalisation of CUCs at the court station, tribunals and other specialised courts including in the Children's Court.

In effect, CCUCs are intended to provide a suitable mechanism for cooperation and collaboration among State organs, non-state agencies and individual court users in the child justice sector in order to enhance public participation, stakeholder engagement, appreciation by the general public of the operations of children's courts, and to promote effective partnership in the child justice sector. This would in turn guarantee a coordinated, efficient, effective, and consultative approach in child protection and the administration of child justice.



### 2.1 The Policy and Legislative Frameworks

The promulgation of the Constitution on 27<sup>th</sup> August 2010 ushered in a new era of fundamental rights and freedoms of the individual modelled on an ambitious Bill of Rights, which rekindles the enduring hope and the renewed aspirations of every person. Indeed, the 2010 Constitution provides a firm foundation for the boundless dreams of every child to whom the Children Act and the related subsidiary legislation, including the administrative procedures in these Guidelines are dedicated.

These Guidelines are formulated in the backdrop of efforts by the international community to address the pressing need for the establishment of a multidisciplinary approach to the administration of child justice. For instance, Article 60 of the United Nations Guidelines for the Prevention of juvenile delinquency (the Riyadh Guidelines), 1990 calls on member countries to take steps to establish mechanisms

*“... to promote, on both a multidisciplinary and intradisciplinary basis, interaction, and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.”*

The constitutional framework and the related treaty instruments call for (a) the formulation of sound policy and legislation, including subsidiary legislation and other administrative procedures to guide the administration of justice in matters affecting children; (b) the establishment of effective institutional frameworks for the promotion and protection of children's rights; and (c) the realisation of, and adherence to, the international standards for the promotion and protection of children's rights.

The recent legislative and institutional reforms intended to give effect to, among others, (a) Article 47 of the Constitution (fair administrative action); (b) article 48 (right of access to justice, i.e., child justice); (c) article 49 (rights of arrested persons); (d) article 50 (right to fair hearing); (e) article 51 (rights of persons detained, held in custody or imprisoned); and (f) article 53 (basic rights of the child), placed children's courts at the centre-stage in the administration of child justice. The exercise of judicial authority by these courts calls for a participatory approach that engages a range of multisectoral bodies of stakeholders actively engaged in child protection programmes and in the administration of child justice.

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Article 159(1) of the Constitution of Kenya, 2010 recognizes that “judicial authority is derived from the people” and vests in, and is exercised by, the courts and tribunals established by or under the Constitution. Read together with Article 10 of the Constitution, Article 159(1) contemplates that the exercise of judicial authority by courts and tribunals, including children’s courts charged with the administration of child justice, and which deal with matters relating to children in need of care and protection, be subject to, among other national values and principles of governance including public participation.

To this end, section 35(2) (c) of the Judicial Service Act, 2011 mandates the NCAJ to “facilitate the establishment of court user committees at the county level.” Table I (next page) is a list of international treaty instruments, statutory instruments, subsidiary legislation, and administrative procedures that inform the text of these Guidelines.

**Table I – Main Reference Documents**

<b>International Treaty Instruments</b>	Convention on the Rights of the Child, 1989 The African Charter on the Rights and Welfare of Children, 1999 United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (Riyadh Guidelines) United Nations Standard Minimum Rules for Non-custodial Measures, 1990 (Tokyo Rules)
<b>Statute Law</b>	The Constitution of Kenya, 2010 The Children’s Act, 2022 Penal Code, Revised 2018 (1948) Criminal Procedure Code, Revised 2018 (1948) Evidence Act, Revised 2014 (1963) The Prisons Act, Revised 2009 (1977) Law of Succession Act, 1981 Probation of Offenders Act, Revised 2012 (1981) Community Service Orders Act, No. 10 of 1998 (Revised 2012) Sexual Offences Act, 2006 Witness Protection Act, 2008 Prohibition of Female Genital Mutilation Act, 2011 Judicial Service Act, 2011 National Police Service Act, 2012 Public Finance Management Act, Revised 2020 (2012) Basic Education Act, 2013 The Persons with Disabilities Act, 2013 The Office of the Director of Prosecutions Act, 2013 Victim Protection Act, 2014 Persons Deprived of Liberty Act, 2014 Legal Aid Act, 2016 Computer Misuse and Cyber Crimes Act, 2018 Data Protection Act, 2019 Counter Trafficking in Persons Act, Revised 2012

<b>Subsidiary Legislation</b>	<p>Children’s Court Practice Directions, 2020</p> <p>Child Offender Rules, 2001</p> <p>Practice Directions Relating to Pauper Briefs Scheme and Pro-bono Services, 2016</p> <p>Data Protection General Regulations, 2021</p>
<b>Policies &amp; Guidelines</b>	<p>Court Users’ Committee Guidelines, 2019</p> <p>Active Case Management Guidelines, 2019</p> <p>Bail and Bond Policy Guidelines, 2015</p> <p>Sentencing Policy Guidelines,</p> <p>Guidelines for Active Case Management of Criminal Cases in Magistrates Courts and High Courts, 2017</p> <p>National Guidelines on Management of Sexual Violence in Kenya, 2014</p> <p>The Alternative Family Care Guidelines, 2014</p> <p>Plea Bargaining Guidelines, 2019</p> <p>Decision to Charge Guidelines</p> <p>Practice Directions on Prosecution of Children Cases, 2021</p> <p>Diversion Guidelines,</p> <p>Diversion Policy</p> <p>Policy on Mandatory Continuous Professional Development on Juvenile Justice (2020)</p> <p>National Children Policy, 2010</p>
<b>NCAJ Reports</b>	<p>The Criminal Justice System in Kenya: An Audit, 2016</p> <p>Status Report on Children in The Justice System in Kenya, 2019</p> <p>Standard Operating Procedures for Child Protection Units, 2020</p> <p>Guidebook On the Operations of Children’s Court, June 2016</p>

## 2.2 Levels of CCUCs

CCUCs shall be established at different levels and locations (i.e., at the county level and court station level) to ensure accountable, coordinated, efficient, effective, and consultative approach in the administration of child justice at the county level and in other decentralized units of judicial service delivery by Magistrates Courts designated as children’s courts, including mobile courts.

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## 3.0 THE FUNCTIONS AND ADMINISTRATIVE FRAMEWORK OF CCUCS

### 3.1 Functions and Scope of CCUCs

The main functions of CCUCs are to :-

- (a) Implement the policies and strategies of the NCAJ in the administration of child justice.
- (b) Identify needs and challenges that stand in the way of effective implementation of child protection programmes or otherwise hinder expeditious delivery of child justice and propose strategic interventions by the respective member institutions.
- (c) Ensure an accountable, coordinated, efficient, effective, and consultative approach in the administration of child justice.
- (d) Facilitate the improvement of access to justice and effective service delivery by State and non-state agencies engaged in child protection services and in the administration of child justice.
- (e) Facilitate the enhancement of public participation and engagement in the administration of child justice.
- (f) Promote information sharing and capacity building among stakeholders and, in particular, among State and non-state agencies engaged in child protection and in the administration of child justice, and in other relevant areas of concern to the NCAJ.
- (g) Strengthen feedback mechanisms and promote dialogue among stakeholders and court users in matters relating to the protection of children in contact or conflict with the law.
- (h) Promote diversion and other alternative dispute resolution mechanisms in accordance with Article 159(2) (c) of the Constitution.
- (i) Organize and hold annual open days, children service weeks, sensitization events and carry out outreach programmes.
- (j) Conduct fact-finding missions to rescue centres, charitable children's institutions medical facilities in which children may be admitted, child protection units, remand homes, prisons, rehabilitation schools, borstal institutions, probation hostels and other places of detention, and make such recommendations as may be necessary for the maintenance of the highest attainable standards for the care and protection of children in contact or in conflict with the law.
- (k) Propose reforms in policy and legislation for implementation by the NCAJ to facilitate efficient and effective delivery of child justice.

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- (l) Promote children’s right of access to justice and all initiatives designed to strengthen the rule of law.
  - (m) Prepare and submit annual and other periodic reports on all activities of the CCUC with the NCAJ secretariat
  - (n) Carry out all other functions that are necessary or incidental to the operations of CCUCs.

In discharge of their functions, CCUCs shall familiarize themselves with, adhere to, and be guided by, the provisions of, among other statutory instruments and administrative procedures relating to (a) the rights of the child; (b) child protection; and (c) the administration of child justice:

- (i) The Constitution of Kenya, 2010.
- (ii) The Children Act, 2022
- (iii) The Judicial Service Act, 2011.
- (iv) The Court Users Guidelines, 2019.
- (v) The National Children Policy; 2010
- (vi) Children’s Court Practice Directions, 2020.
- (viii) The Standard Operating Procedures for Child Protection Units, 2020.
- (ix) Policy on Continuous Professional Development on Juvenile Justice, 2020.
- (x) Throughcare and Aftercare Procedures for Children in Statutory Institutions in Kenya, 2013.

### **3.2 Priority Areas in the Operations of CCUCs**

CCUCs are mandated to address the following as a matter of priority:

- (a) Case backlog with particular emphasis on efficient time and active case management for each case.
- (b) The effective application of statute law and administrative procedures relating to bail and bond for children.
- (c) Ensure provision of legal aid to all children in the justice system
- (d) Provision of psychosocial support to all children in the justice system
- (e) General conditions in rescue centres, child protection units, children’s courts, remand homes, rehabilitation schools and other correction centres, rehabilitation hostels, educational and vocational training institutions in which children in conflict with the law are placed under any diversion programme, and Borstal institutions.
- (f) Coordination, collaboration, knowledge management, and communication, among State and non-state agencies engaged in child protection and the administration of child justice.

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- (g) Access to justice and expeditious delivery of child justice.
  - (h) Capacity in the child justice sector, including physical infrastructure and human resource.
  - (i) Access to information by children in contact or conflict with the law, their parents or guardians, and other stakeholders in the child justice system.
  - (j) Maintenance of high standards of ethical conduct and prevention of corruption.
  - (k) Efficient records management, file tracking and files colour coding (off white case files folders for children matters).
  - (l) Access to justice by children in need of care and protection, including victims of crime, refugees, children with disabilities, intersex children, children from marginalised groups and vulnerable children.
  - (m) Prevention of juvenile delinquency and re-offending.
  - (n) Witness and victim protection.
  - (o) Emerging issues in cybercrime, social media, digital records of evidence, the right to privacy and data protection, digitization of court proceedings and automation of court services, intersex identity and records, counterfeiting and human trafficking.
  - (p) Data collection, monitoring and evaluation; and
  - (q) Any other relevant area.

### **3.3 Membership and Sub-Committees of CCUCs**

#### **3.3.1 Membership of CCUCs**

Membership of a CCUC shall be comprised of representatives of the following institutions and agencies appointed in writing by their respective institutions to the Chair of the CCUC:

- (a) The Head of Station in charge of children's matters, who shall be the chairperson of the CCUC.
- (b) Judicial officers and executive officers and other administrative officers of the Court.
- (c) The Office of the Attorney-General and the Department of Justice.
- (d) The Office of the Director of Public Prosecutions.
- (e) The National Police Service.
- (f) The Kenya Prison Service.
- (g) Probation and Aftercare Service.
- (h) The Witness Protection Agency.
- (i) A representative of the National Government at the County level nominated by the County Commissioner.
- (j) A representative of the County Government.
- (k) The Commission on Administrative Justice.

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- (l) The Independent Policing and Oversight Authority.
  - (m) The National Gender and Equality Commission.
  - (n) The Kenya National Commission on Human Rights.
  - (o) The Directorate of Children Services.
  - (p) A representative of the Law Society of Kenya.
  - (q) The Ethics and Anti-Corruption Commission.
  - (r) The local hospital superintendent.
  - (s) A child psychologist, child counselling therapist, or other professional mental health practitioner.
  - (t) The legal aid service.
  - (u) Public benefit organisations engaged in child protection and the administration of child justice, including faith-based organizations within the local limits of the Court's jurisdiction.
  - (v) Educational and vocational training institutions within the local limits of the court's jurisdiction.
  - (w) Interest groups engaged in the promotion and protection of the rights of the child, the rights of persons with disabilities, marginalised and vulnerable groups within the local limits of the court's jurisdiction; and
  - (x) Other special interest groups that have a stake in the administration of justice in children's courts.

In determining the composition of a CCUC, regard shall be given to the agencies that operate within the local limits of the Court's jurisdiction. Each institution shall nominate one representative to the Committee and an alternate person who may attend meetings in the absence of the substantive member. In any event, membership of a CCUC shall not be less than fifteen (15) or in excess of thirty-five (35) in the aggregate.

### **3.3.2 Sub-Committees of CCUCs**

A CCUC may establish such sub-committees as it considers necessary for the proper discharge of its functions and may co-opt into its sub-committees such persons as it requires to carry out its operations.

### **3.3.3 Membership of County Level CCUC**

Every county shall establish a county CCUC comprised of representatives of the following persons or institutions appointed in writing:

- (a) A chairperson, who shall be the Presiding Judge of the High Court in the county, and appointed by the Chief Registrar of the Judiciary.
- (b) Heads of magistrates' courts in the county designated as children's courts.
- (c) Office of the Attorney-General and Department of Justice.



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- (d) Office of the Director of Public Prosecutions.
  - (e) The Directorate of Children Services.
  - (f) The Probation and Aftercare Service.
  - (g) Two other representatives of each CCUC in the county.
  - (h) The county Governor.
  - (i) The National Police Service County Commander; and
  - (j) Ministry of Health Representatives
  - (k) Such other persons as the Committee may co-opt.
  - (l) Legal Aid providers

### **3.3.4 Functions of County CCUCs**

The functions of a county CCUC shall be to:–

- (a) Oversee the operations of CCUCs in the county.
- (b) Receive and consider periodic reports of the CCUCs in the county and make recommendations to the respective agencies represented therein for their necessary intervention towards improved service delivery in child protection, rehabilitation, re-integration, and the effective administration of child justice.
- (c) Receive and consider budgetary proposals from CCUCs in the county, and make recommendations to the NCAJ.
- (d) Monitor and make recommendations for the improvement of child protection, re-integration, and rehabilitation programmes in the county, in the best interest of children in contact with, or in conflict with, the law.
- (e) Facilitate information sharing among CCUCs in the county.
- (f) Organize training programmes for members of CCUCs in the county; and
- (g) Undertake such other functions as may be necessary to facilitate the due administration of CCUCs in the county.

## **3.4 Management and Administrative Framework of CCUCs**

### **3.4.1 Officers of CCUCs**

The officers of a CCUC shall be :–

- (a) A chairperson appointed by the Chief Registrar of the Judiciary, and who shall be the head of a children’s court.
- (b) A vice-chairperson.
- (c) Treasurer; and
- (d) Secretary.

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The vice-chairperson, Secretary and Treasurer shall be elected by a majority of the members of the CCUC in such manner as the Committee may determine, but shall not be members of the same sector institution. They shall hold office for a period not exceeding two years, but shall be eligible for re-election for a further term of two years. In the event of transfer, resignation, suspension, dismissal, retirement, or death of an office holder, the alternate or incoming replacement shall assume the position held by his or her predecessor for the remainder of the term of office.

### **3.4.2 Duties and Responsibilities of Officers**

- (a) The Chairperson of a CCUC shall :-
- (i) Convene and preside over the meetings of the Committee.
  - (ii) Ensure effective implementation of the Committee's resolutions.
  - (iii) Submit quarterly reports of the Committee to the NCAJ Secretariat.
  - (iv) Take such steps as may be necessary to secure adequate financial and human resources to facilitate the carrying out of the CCUC's activities.
  - (v) Be the Accounting Officer of the CCUC; and
  - (vi) Perform such other functions as may be necessary in furtherance of the objectives of the CCUC.
- (b) The Vice-Chairperson of a CUC shall :-
- (i) Perform the duties and responsibilities of the chairperson in the absence of the chairperson.
  - (ii) Support the chairperson in performance of his or her responsibilities.
  - (iii) Be responsible for the monitoring and evaluation of the activities of the CCUC; and
  - (iv) Perform such other functions as may be delegated by the chairperson in furtherance of the objectives of the CCUC.
- (c) The Treasurer shall :-
- (i) Be the Chair of the CCUC Finance Sub-Committee.
  - (ii) Coordinate resource mobilization and management of the CCUC's financial resources.
  - (iii) Be accountable to the Chairperson of the CCUC, and ensure that the Finance Sub-committee carries out its functions in accordance with the Public Finance Regulations for the time being in force.
  - (iv) Facilitate the CCUC Secretariat in the coordination of the operations of the CCUC; and
  - (v) Prepare and submit quarterly financial and related reports.

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- (d) The Secretary shall :-
- (i) Prepare and issue notices of, and settle the agenda for, meetings of the Committee.
  - (ii) Record and maintain minutes of meetings of the Committee.
  - (iii) Extract and circulate the resolutions of the committee.
  - (iv) Prepare reports of the Committee.
  - (v) Oversee the day-to-day functions of the Secretariat, including handling logistical issues, preparing reports and organising meetings of the Committee.
  - (v) Facilitate communication of information and materials received from the chairperson and members of the CCUC as well as NCAJ; and
  - (vii) Be the custodian of minutes and records of the Committee.

### **3.5 Operational Framework of CCUCs**

#### **3.5.1 Meetings of CCUCs**

- (a) A CCUC shall meet at least once every three months in accordance with the NCAJ schedule of meetings in the financial year.
- (b) Notwithstanding paragraph (a), a CCUC or its sub-committee may meet at any other time as need arises.
- (c) The quorum for the meeting of a CCUC shall be at least 50% of its members.
- (d) The venue for meetings of a CCUC shall be agreed upon by members, having regard to the distance of the proposed venue and convenience.
- (e) A CCUC or any of its sub-committees may hold joint meetings with the station's general CUC from time to time to transact such business as may be necessary for the advancement of child protection and the administration of child justice.

#### **3.5.2 General Powers and Procedure at Meetings**

In discharge of its functions, a CCUC shall :-

- (a) Determine the procedure at meetings in accordance with these guidelines.
- (b) In cases of large membership or vast jurisdictional coverage, establish such sub-committees as the Committee may consider necessary for effective discharge of its functions.
- (c) Establish such task-oriented Special Working Groups as the Committee considers necessary for effective discharge of its functions.
- (d) So far as is reasonably practicable, adopt an informal approach in the conduct of its business.
- (e) Determine the agenda for its meetings, having regard to the issues of concern to court users in the local limits of its jurisdiction; and,
- (f) Ensure that minutes of the concluded meeting are circulated to the members at least two weeks prior to the next meeting.

**4.1 Financial Arrangements**

- (a) CCUCs shall be financed from monies allocated by Parliament for the purposes of the NCAJ.
- (b) A CCUC is at liberty to mobilize other financial resources from development partners and stakeholders, provided that such resource mobilization activities are conducted according to Chapter Six of the Constitution, and without any conflict of interest.
- (c) A CCUC may open and maintain a bank account in respect of which the Committee is accountable to a specified development partner. Such an account may only be opened and maintained with the written authority of the Chief Registrar of the Judiciary.
- (d) Every CCUC shall prepare and submit a financial budget of all its proposed activities to the NCAJ Secretariat within the third quarter of each financial year.
- (e) Funds allocated to a CUC shall be applied in accordance with the laws and regulations governing Public Finance Management.
- (f) Funds received from development partners shall be applied for the purpose of financing the activities agreed between the CCUC and the relevant development partner. Other donor-supported activities that are not directly controlled by the CCUC concerned shall be brought to the notice of the NCAJ Secretariat and noted in its financial and other periodic reports.
- (g) Every CCUC shall file annual returns with the NCAJ Secretariat at the end of each financial year setting out the expenditure of the activities undertaken during that year.
- (h) The Chairperson of each CCUC shall ensure that the Committee keeps and maintains proper books and statements of accounts in accordance with Public Finance Management Regulations.
- (i) The responsibilities relating to financial accounting within the CCUC framework shall be determined in accordance with the Public Finance Management Regulations.

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## 4.2 Monitoring, Evaluation and Reporting Obligations

### 4.2.1 Annual Work and Procurement Plans

- (a) Each CCUC shall, prior to the next financial year, develop its annual Work Plan, considering priorities, available financial resources, issues of concern and challenges faced in their respective court stations.
- (b) The annual Work Plan shall consider key deliverables in the best interest of the child, including enhancing access to justice, access to information, child participation, public participation, community participation, stakeholder engagement, timely delivery of court decisions, and restoration of public confidence in the justice sector.
- (c) Every CCUC shall prepare and submit, along with its work plan, its annual procurement plan to the NCAJ Secretariat.
- (d) The implementation of the work plan shall be in line with timelines determined by the NCAJ.

### 4.2.2 Reporting Obligations

- (a) Every CCUC shall prepare and submit quarterly narrative and financial progress reports to the NCAJ secretariat.
- (b) In discharge of their reporting obligations, CCUCs shall adopt the NCAJ standard reporting framework.
- (c) All CCUCs shall prepare minutes of their quarterly meetings and submit duly signed copies to the NCAJ Secretariat with a copy to the County CCUC Secretariat for their attention and necessary action.

### 4.2.3 Monitoring and Evaluation

- (a) NCAJ shall conduct biennial stakeholder surveys on the effectiveness of CCUCs using tools developed by the NCAJ Secretariat.
- (b) The County CCUC Secretariat shall coordinate, monitor, and evaluate the activities of CCUCs within the County and all Court Stations falling within the supervisory jurisdiction of the High Court.
- (c) The NCAJ Secretariat shall prepare an annual report on the work of all CCUCs within the first quarter of the succeeding financial year.
- (d) Nothing in this clause precludes a CCUC from undertaking self-evaluation to gauge its own performance, or that of its members, identify performance gaps and adopt such remedial measures as may be necessary to facilitate effective discharge of its functions.

### 4.3 Performance Indicators

When monitoring and evaluating the performance of the child justice system as administered by the respective children’s courts, the CCUCs shall, in addition to CCUC’s achievements against set targets in the annual Work Plan, be guided by the performance indicators set out in Table II below

**Table II – Indicators for Monitoring and Evaluation of the Child Justice System**

Indicator		Definition
<b>Quantitative indicators</b>		
1	<b>Children in conflict with the law</b>	• Number of children apprehended during a 12-month period per 100,000 child population.
2	<b>Children in detention</b>	• Number of children in detention per 100,000 child population.
3	<b>Children in detention prior to an order finding them in conflict with the law</b>	• Number of children in detention prior to an order finding them in conflict with the law per 100,000 child population.
4	<b>Duration of detention before an order finding them in conflict with the law</b>	• Time spent in detention by children before an order finding them in conflict with the law.
5	<b>Duration of detention on finding them in conflict with the law</b>	• Time spent in detention by children after finding them in conflict with the law.
6	<b>Child deaths in detention</b>	• Number of child deaths in detention during a 12-month period, per 1,000 children detained.
7	<b>Separation from adults</b>	• No of children in detention not wholly separated from adults.
8	<b>Contact with parents and family</b>	• No of children in detention who have been visited by, or visited, parents, guardian, or an adult family member in the last 3 months.
9	<b>Committal to correctional institution</b>	• No of children in conflict with the law and committed to detention, children accompanying their mothers in detention.
10	<b>Diversion prior to a finding of being in conflict with the law</b>	• No of children diverted or in conflict with the law, and who enter a pre-sentence diversion scheme.

11	<b>Plea Bargaining prior to a finding of being in conflict with the law</b>	<ul style="list-style-type: none"> <li>No of children processed through plea bargain or in conflict with the law, and who enter a pre-sentence diversion scheme.</li> </ul>
12	<b>Aftercare</b>	<ul style="list-style-type: none"> <li>No of children released from detention receiving aftercare.</li> </ul>
13	<b>Legal Representation</b>	<ul style="list-style-type: none"> <li>No of children accorded legal representation to conclusion of the case</li> </ul>
14	<b>Psychosocial support</b>	<ul style="list-style-type: none"> <li>No of children accorded psychosocial support.</li> </ul>
<b>Policy indicators</b>		
15	<b>Regular independent inspections</b>	<ul style="list-style-type: none"> <li>Existence of a system guaranteeing regular independent inspection of places of detention</li> <li>Percentage of places of detention that have received an independent inspection visit in the last 12 months</li> </ul>
16	<b>Complaints mechanism</b>	<ul style="list-style-type: none"> <li>Existence of a complaints system for children in detention</li> <li>Percentage of places of detention operating a complaints system</li> </ul>
17	<b>Structured child justice system</b>	<ul style="list-style-type: none"> <li>Existence of a structured child justice system</li> </ul>
18	<b>Crime/delinquency Prevention</b>	<ul style="list-style-type: none"> <li>Existence of a national plan for the prevention of child involvement in unlawful conduct</li> </ul>
19	<b>Care and protection</b>	<ul style="list-style-type: none"> <li>Existence of effective care and protection programmes</li> </ul>

#### 4.4 Performance Standards and Guidelines for CCUC Members

In performance of their functions in the administration of justice, CCUC members shall be guided by the standards of operation set out in the Table below.

**Table III – Performance Standards and Guidelines**

Key Activity	Performance Guidelines
<b>Investigation, Apprehension and Arraignment</b>	<ol style="list-style-type: none"><li>1. A child shall not be held in custody at a Child Protection Unit or Police Station for a period exceeding twenty-four hours from the time of their apprehension, without the leave of the Court.</li><li>2. As far as is reasonably practicable, investigations shall be completed before apprehension and charge.</li><li>3. The prosecution shall ensure that all investigations relating to a child in conflict with the law are completed within 30 days.</li><li>4. A child held in custody at a Child Protection Unit or Police Station shall not be detained with, or be allowed to associate with an adult who is not a relative of the child or an authorised officer.</li><li>5. The ODPP Decision to Charge Guidelines, 2019 shall be strictly observed with regard to children in conflict with the law.</li></ol>
<b>Bail, Bond, and Remand</b>	<ol style="list-style-type: none"><li>1. While determining bail applications in respect of children in conflict with the law, the court shall be guided by the Bail and Bond Policy Guidelines, 2015.</li><li>2. The prosecution may, for good reason, oppose a bail application and the court shall record the reason for the opposition and its decision.</li><li>3. When considering bail/ bond for a perpetrator, the Court shall consider the proximity to the child or the relationship of the child to the perpetrator and the best interest of the child.</li><li>4. Where children are charged with serious offences bail hearings should be conducted.</li><li>5. Detention of children should be as a last resort and free bond shall be considered on a case-to-case basis.</li><li>6. The National Police Service and DCS shall respectively furnish the courts with monthly accounts of the children held in pre-trial detention at statutory children's institutions.</li></ol>



## Hearing and Disposal of Cases in Court

1. All Children shall be accorded legal representation throughout the trial.
2. The court shall be guided by the Active Case Management Guidelines, 2019 and the Guidebook on the Operations of Children's Court, 2016 during the hearing and disposal of matters.
3. The court shall conduct hearings on a day-to-day basis on conclusion of the Preliminary Inquiry.
4. A child who is being conveyed to or from a court, or who is waiting to attend court, shall not be detained with, or be allowed to associate with an adult who is not a relative of the child or an authorised officer.
5. The court shall prioritize all children cases.
7. After taking plea, a capital offence case shall take a maximum of 6 months.
8. The ODPP Plea Bargaining Guidelines as read together with the Criminal Procedure (Plea Bargaining) Rules and section 137A to O of the CPC shall apply.
9. The court shall be guided by the Sentencing Policy Guidelines during the sentencing phase of all matters involving children in conflict with the law.
10. Courts with the support of the CCUCs shall ensure that Children courts are child friendly.

## Establishing monitoring systems

1. Police and managers of statutory children's institutions shall utilize a court files movement register.
2. The court shall register capital and minor offences in separate registers and list them by year of registration.
3. Records management personnel shall be trained from time-to-time to ensure efficient records management in the respective court stations.
4. CCUCs shall conduct regular inspection of places of detention, including police cells, prisons, remand homes and other statutory children's institutions.
5. CCUCs shall monitor and track placement of children in institutions to determine gaps in execution of placement orders by responsible agencies.
6. Protection and care files should be opened for every child in the justice system.







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