



REPUBLIC OF KENYA

**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

**REGULATORY IMPACT STATEMENT**

**ON**

**THE CHILDREN (CHARITABLE CHILDREN INSTITUTION) REGULATIONS**

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## **ABBREVIATIONS**

<b>Act</b>	Children Act (Cap 141) Laws of Kenya
<b>ACRWC</b>	The African Charter on the Rights and Welfare of the Child
<b>CCIs</b>	Charitable Children's Institutions
<b>Council</b>	National Council for Children's Services
<b>UNCRC</b>	United Nations Convention on the Rights and Welfare of the Child

## A. INTRODUCTION

### **Regulatory Making Authority and the legal mandate**

The National Council for Children Services is a State Corporation established under the Children Act (Cap 141) Laws of Kenya, and performs its mandate within the State Department for Social Protection & Senior Citizen Affairs in the Ministry of Labour and Social Protection. Its mandate can be summarized as oversight, regulation, coordination, and advisory on all matters relating to children's affairs in Kenya.

Charitable Children's Institutions in Kenya play a crucial role in providing care, protection, and support for vulnerable children, including orphans, abandoned children, and those rescued from abusive or neglectful situations through institutional care. These institutions operate under the framework of the Children Act (Cap 141), which sets out the legal and operational guidelines to ensure that children receive proper care while prioritizing family-based alternatives over institutionalization.

Section 65 of the Act provides that no person shall register or operate a Charitable Children's Institution except as provided in law. The National Council for Children's Services is mandated to keep and maintain a register of all Charitable Children's Institutions registered or approved by the Council prior to the commencement of this Act; prescribe the minimum standards and conditions for operation of existing Charitable Children's Institutions.

An existing charitable children's institution shall ensure that every employee of the institution holds a valid certificate ascertaining that they have no pending criminal investigations. Further, the Council shall inspect and assess whether the facilities and operations of existing charitable children's institution conform to the minimum standards and conditions as set out in this Act and the Regulations and may deregister a non-compliant existing charitable children's institution.

In furtherance of the above, section 89 of the Act grants the Cabinet Secretary responsible for matters relating to children's affairs the power to make regulations on the renewal of registration, management and transition of charitable children's institutions.

In consideration of the above, the Cabinet Secretary relying on proposals submitted by the Council has prepared the Charitable Children's Regulations. These Regulations are likely to impose costs to the charitable children's institutions who play a key role in matters relating to provision of institutional care for children in Kenya.

## **B. BACKGROUND AND CONTEXT**

### **International context**

Kenya ratified the United Nations Convention on the Rights and Welfare of the Child in 1990 to align with global child protection standards and has since taken steps to gradually implement its provisions.

The UNCRC in its preamble, recognizes the family as a fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children. It calls on States to accord families the protection and support necessary for them to fully discharge their responsibilities and especially towards children whose optimal growth and development is dependent on the happiness, love and understanding of family.

However, the UNCRC appreciates the existence of circumstances that cause children to separate from their families. In this regard it guides in Article 9 that such separation, as in all actions undertaken concerning children, should be in the best interest of the child. The UNCRC further states that should it be necessary to commit a child to institutional care as a form of alternative care, the State should ensure that this is done as a temporary measure. It also notes that this should be done with due regard to the desirability of continuity in the child's upbringing as well as their ethnic, religious, cultural and linguistic background. The UNCRC calls on States to ensure that institutions of care and their services conform to standards set to guide their operations.

In 2019, the United Nations adopted a resolution highlighting the global evidence of the negative impacts of institutional care on children's growth and development. The resolution urged States to prevent family separation by providing families with the necessary support to create a nurturing environment for children to grow and thrive. This resolution forms the basis on which Kenya seeks

to transition from Institutional care of children to family and community-based care as outlined in the Care Reform Strategy for Children in Kenya, 2022-2032. (Care Reform Strategy).

## **Regional context**

Kenya is party to the African Charter on the Rights and Welfare of the Child. The Charter recognizes the significance of family in the life of a child and as a platform for the continuity of the African Society and calls on States to deploy mechanisms that seek to preserve families. With the understanding that Africa experiences unique challenges such as civil strife, natural calamities and harmful cultural practices that often cause separation of children from their families, the Charter makes provisions for the alternative care of children. Article 25 states that a child without parental care, or one who is temporarily or permanently deprived of a family environment, should be provided with alternative care, including placement in an institution suitable for the care of children. The Charter emphasizes on the adherence to the principle of Best Interest of the Child as a key guiding principle in any matter concerning a child.

## **Domestic context**

Article 53 of the Constitution of Kenya states that every child has the right to parental care and protection, which includes the responsibility of the mother and father of a child. In Kenya, it is evident that not all children are raised in two-parent households, and many receive care and protection through institutional care. Article 43 of the Constitution states that persons unable to support themselves and their dependents are entitled to social security.

In line with the foregoing, section 12 of the Children Act (Cap 141) states that every child whose parent or guardian is unable to maintain them has a right to social security. Section 12(7) recognizes institutional care as a form of social security and requires the Cabinet Secretary for matters relating to finance to establish the Child Welfare Fund under the Public Finance Management Act (Cap 412A). This Fund aims to support the right guaranteed under Article 43(3) of the Constitution by covering reasonable expenses incurred in alternative care and other social security programs designed to promote the welfare of children.

The Act defines Charitable Children's Institutions as a home or institution established by any person, either alone or in association with others, or by a civil society organisation and which has

been duly registered with the Council for the purposes of managing programmes for the care, protection, rehabilitation and reintegration or control of children.

The Act recognizes CCIs as institutions that provide emergency and/or temporary care to children who are deprived of parental care. It states that the placement of a child in a CCI should be a last resort and that unless there are compelling circumstances, no child should be placed in a CCI for a period exceeding three (3) years. The Act further states that children below the age of three (3) years should not be placed under institutional care except in compelling circumstances and not for a period exceeding three (3) months.

The Act makes provisions for the registration of CCIs and identifies key personnel and their responsibilities in ensuring that these institutions exist in the best interest of the child. It calls for development of minimum standards within which CCIs should operate to ensure that safeguards for the protection of children are upheld.

In line with Care Reform Strategy and the commitment by Kenya to transition into family and community care of children, section 67(1) of the Act sets out objectives of CCIs to include provision of family and community-based care. It also states that CCIs should work towards completely transitioning to family and community based care within a ten (10) year period from when it came into force.

These regulations therefore seek to guide the registration, operations, and transition of CCIs in accordance with the Act, the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Constitution.

## **C. REQUIREMENT FOR REGULATORY IMPACT STATEMENT**

### **Requirements of the Statutory Instruments Act**

The Statutory Instruments Act (Cap 2A) is the legal framework governing the conduct of Regulatory Impact Assessment in Kenya. Sections 6 and 7 of the Statutory Instruments Act provide that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory

instrument, prepare a Regulatory Impact Assessment about the proposed instrument. This Act further sets out certain key elements that must be contained in the Regulatory Impact Assessment namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Section 5 of the Statutory Instruments Act requires a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content. The Cabinet Secretary now undertakes public consultations and prepares this Regulatory Impact Statement in partial fulfilment of the requirements of the Statutory Instruments Act.

### **What is a Regulatory Impact Assessment?**

The Regulatory Impact Assessment is a systematic policy tool used to examine and measure the likely benefits, costs and effects of a proposed or existing regulation. It is an analytical report to assist decision makers. It includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit.

The structure of a Regulatory Impact Assessment should contain the following elements:

- (a) title of the proposal;
- (b) the objective and intended effect of the proposed legislation;
- (c) an evaluation of the problem statement;
- (d) consideration of alternative options to the regulation in consideration;

- (e) assessment of all their impacts distribution,
- (f) results of public/stakeholder consultation,
- (g) risk assessment which entails risk identification and compliance strategies; and
- (h) processes for monitoring and evaluation.

Regulatory Impact Assessment is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. It promotes evidence-based policy making as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the Regulatory Impact Assessment should confirm whether or not a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. Regulatory Impact Assessment therefore has objectives of improving understanding of the real- world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

#### **D. REGULATIONS UNDER THE ACT**

Section 89 of the Children Act provides that the Cabinet Secretary may, on the recommendation of the Council, make Regulations for the better carrying out of the provisions of the Act and, in particular, such regulations shall make provision for—

- (a) the establishment, administration and supervision of children institutions;
- (b) the requirements and procedure for approval of children's welfare programmes;
- (c) the management of remand homes, rehabilitation schools, child rescue centres, child protection centres, and charitable children's institutions;
- (d) requirements as to the accommodation, staff and equipment to be provided in the institutions referred to in paragraph (a);
- (e) academic qualifications for persons to be employed in children's institutions
- (f) the training and remuneration of persons employed in children's remand homes, rehabilitation schools, child rescue centres, and child protection centres;

- (g) the criteria to be applied to limit the number of children who may be accommodated in the institutions referred to in paragraph (a);
- (h) the education and training of children in the institutions referred to in paragraph (a);
- (i) religious instruction to children in the institutions referred to in paragraph (a);
- (j) the access to health care by children in the institutions referred to in paragraph (a);
- (k) special care for children with disabilities, chronic ailments or other special needs in the institutions referred to in paragraph (a);
- (l) requirements as to the keeping of records and giving of notices in respect of children received in the institutions referred to in paragraph (a);
- (m) the conduct of reviews under section 78;
- (n) the conduct of inspections of the institutions referred to in paragraph (a);
- (o) corrective measures which may be imposed by the Secretary after inspection of the institutions referred to in paragraph (a), and penalties for non-compliance therewith;
- (p) appeals against decisions made under this Part; and
- (q) the minimum standards to be adhered to before the approval of an application to establish a charitable children's institution under section 65.

## **E. PURPOSE OBJECTS AND OVERVIEW**

### **Scope**

The Regulations cover the management and operation of CCIs established by public benefit organizations, religious groups, or other associations, whether incorporated or not, that provide residential care. They also guide the transition from residential care institutions to family-based care, as outlined in Part 16 of the Seventh Schedule of the Act.

The proposed Regulations outline standards for residential and physical facilities within institutions, staff qualifications, staff-to-child ratios, and the administration of child welfare services. They also provide penalties for any violations of these standards.

### **General objective of the Regulations**

The proposed Regulations aim to regulate, renew registrations, manage, and oversee the transition of existing Charitable Children Institutions.

## **Specific objectives**

The implementation of the Regulations is intended to specifically:

- (a) regulate the conduct of Charitable Children Institutions established through a Public Benefits Organisation, religious organisation or other association, whether incorporated or unincorporated that offer residential care in the name of an institution;
- (b) provide guidance on transition of residential institutions of care to family based-care in line with transitional provisions part 16 of the Seventh Schedule of the Act;
- (c) set the standards relating to the residential and physical facilities within the institution;
- (d) set standards on the requirements and qualifications and ratio of staff employed within the Institution;
- (e) set standards on the administration of child welfare services for children within the institution; and
- (f) provide penalties for violation of the Regulations.

## **F. PUBLIC PARTICIPATION AND CONSULTATION**

As part of the efforts to ensure an inclusive development of the proposed Charitable Children's Institutions Regulations, a Technical Working Group was constituted with membership drawn from the Council and key stakeholders with varied expertise. The Council engaged in extensive consultations with various stakeholders and the public. This participatory approach enabled the Technical Working Group to gather diverse perspectives and insights for a comprehensive and effective policy framework.

### **Engagement with key stakeholders**

In addition to public participation, targeted consultations were conducted with key stakeholders who play a crucial role in the adoption process. These stakeholders included managers of the Charitable Children Institutions, the Association of Charitable Children's Institutions in Kenya,

and adoption societies. Their input was important in understanding the operational challenges, best practices, and areas requiring interventions within CCIs.

The members of the Technical Working Group on the development of the Regulations and staff members of the Council coordinated the stakeholder engagement and public participation.

### **Selection of clustered Regions and rationale**

To ensure a balanced and representative consultation process, strategic selection of specific regions based on key factors was done, including:

1. Clustering regional boundaries to ensure comprehensive coverage of all counties in Kenya, while optimizing available resources and addressing financial constraints effectively. This strategic approach enhanced accessibility, promoted equitable service delivery, and maximized impact within the allocated budget.
2. Accessibility and Stakeholder – Locations that could accommodate both in-person and online participation were considered to maximize engagement.

The clustered regions ensured a broad and inclusive consultation process, reflecting diverse views from different parts of the country. Below is the schedule that was put up in the different websites and newspapers.

REGION (CLUSTERED COUNTIES)	VENUE	DATE	TIME
<b>Cluster 1</b> – (Uasin – Gishu, west- Pokot, Turkana, Trans – Nzoia, elgeyo-Marakwet, Nandi, Bungoma	<b>Eldoret</b> - <i>Home Craft Centre</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 2</b> – Isiolo, Marsabit, Samburu, Meru, Tharaka – Nithi & Embu	<b>Meru</b> – <i>Kamunde Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 3</b> – Migori, Kisumu, Homabay, Vihiga, Busia, Siaya, Nyamira, Kisii & Kakamega	<b>Kisumu</b> - <i>Mama Grace County Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm

<b>Cluster 4</b> – Narok, Bomet, Nyandarua, Nyeri, Nakuru, Baringo, Laikipia, Kericho & Nairobi	<b>Nakuru</b> - <i>Shaabab Social Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 5</b> – Taita –Taveta, Kwale, Kilifi, Lamu, Tana- River, Kitui, Makueni, & Mombasa	<b>Mombasa</b> – <i>Tononoka Social Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 6</b> – Kiambu, Muranga, Kirinyaga, Machakos, Kajiado, Garissa, Wajir & Mandera	<b>Murang'a</b> - <i>ACK Mother's Union</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 7:</b> Other Stakeholders, CSOs, ACIK, Adoption Societies	<b>Nairobi</b> – <i>Kariokor Social Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm

### Collection of Public Memoranda

The advertisement for public participation was published on *My Gov.* newspaper, the Ministry of Labour and Social Protection website and the National Council for Children's Service website, running for 14 days from 14<sup>th</sup> May 2024 to 27<sup>th</sup> May 2024. The Notice was additionally circulated on various social media platforms.

To facilitate public participation effectively, written submissions were invited from individuals, institutions, and organizations. Members of the public were encouraged to share their views, feedback, and recommendations through the email address provided. This approach allowed stakeholders to provide detailed input at their convenience, ensuring that as many voices as possible were heard in the Regulations review process.

### Modes of Public Engagement

The consultation process utilized both online platforms and physical public forums to ensure accessibility for all stakeholders.

1. **Online Engagement** – Virtual meetings and email submissions allowed participants from different locations to contribute their views without geographical limitations. This method facilitated broader participation, especially for those unable to attend physical meetings.
2. **Public Forums** – Physical meetings were held in select regions to engage directly with community members, local leaders, and adoption stakeholders. These forums provided an opportunity for in-depth discussions, clarifications, and firsthand accounts of adoption experiences.

The employment of this hybrid approach ensured that participation was inclusive, accommodating both digital and in-person engagements.

## **G. CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS**

### **Introduction**

This Part considers whether these proposed Regulations are the best form of government action pertaining to matters relating to Charitable Children Institutions. The Statutory Instruments Act (Cap 2A) requires a regulator to carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulation should be the last resort in realizing policy objectives. There are alternatives, which could come in handy in dealing with certain aspects of social security. The options considered under this part are as follows:

- (a) **maintaining the status quo** where the Children (Charitable Children Institution) Regulations, 2005 that aligned with the Children Act, 2001;
- (b) **application of administrative measures** or non-regulatory measures; and
- (c) regulatory measure through the **adoption of the proposed Regulations**

The impact assessment involved evaluating the costs and benefits of implementing the Regulations based on the policy options outlined above. A policy change is considered desirable if it will result in real or potential improvement. This is determined by accumulating its direct and indirect

benefits and costs. Based on this philosophy, policy guideline option presents strengths and weaknesses and therefore may result to ineffective implementation of the Act. For instance, issuing policy guidelines or administrative measures without regulations would certainly occasion a sub-optimal result because of limited options for enforcement.

Providing a regulatory option is more practical and sounds effective. However, it is worth to note that all the options were considered and it was found necessary that the regulations to oversee management and transition of existing of CCIs be formulated in order to effectively implement the Act as amended in 2022.

## **The Alternatives**

### **1. Option One: The Status Quo**

Maintaining the status quo means that the Children (Charitable Children’s Institutions) Regulations, 2005 will continue to operate. The Regulations are in line with the repealed Children Act, 2001. The Children Act (Cap 141) which came into force in 2022 requires that Regulations for CCIs be developed to regulate the renewal of registration, management and transition of existing CCIs.

### **2. Option Two: Application of Administrative Measures**

This is a non-regulatory measure which, if applied, will depend on the goodwill of public officers to implement the provision of the Act. Administrative measures involve issuance of directives and circulars to the various departments hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law. These Regulations seek to impose payment of mandatory fees for renewal of registration of licenses.

### **3. Option Three: Adopting the Proposed Regulations**

The development and adoption of these proposed Regulations will ensure full implementation of the Act and more so to regulate the conduct of Charitable Children’s Institutions, their renewal of registration, and their code of conduct.

**The table below outlines the potential costs and implications associated with each option:**

S/No	Option	Possible Costs	Possible Direct benefits	Implication
1.	Status Quo	<ul style="list-style-type: none"> <li>i. Inconsistent standards.</li> <li>ii. Lack of accountability.</li> <li>iii. Child protection risks.</li> <li>iv. Legal challenges.</li> </ul>	No immediate costs incurred	<ul style="list-style-type: none"> <li>i. Ongoing challenges in the regulation of CCIs.</li> <li>ii. Potential risks to child protection</li> </ul>
2.	Self-Regulation	<ul style="list-style-type: none"> <li>i. Dependence on goodwill of public officers.</li> <li>ii. Potential lack of oversight.</li> <li>iii. Risks of legal challenges.</li> </ul>	<ul style="list-style-type: none"> <li>i. Flexibility for CCIs.</li> <li>ii. Reduced government interventions.</li> </ul>	<ul style="list-style-type: none"> <li>i. Risks of unethical practices.</li> <li>ii. Inconsistent standards.</li> <li>iii. Limited enforcement.</li> </ul>
3.	Government Regulation	<ul style="list-style-type: none"> <li>i. Implementation and enforcement costs</li> <li>ii. Administrative burden</li> </ul>	<ul style="list-style-type: none"> <li>i. Enhanced Child protection.</li> <li>ii. Standardized procedures.</li> </ul>	<ul style="list-style-type: none"> <li>i. Improved outcomes for children.</li> <li>ii. Consistent and ethical practices.</li> </ul>

			iii. Increased accountability.	
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## Cost-Benefit Analysis

The impacts of the Proposed Regulations can be categorized as follows:

Problem gap/issue	Reform from CCI Regulations	Estimated costs	Estimated benefits
<b>Financial</b>			
Inadequate/Lack of financial sustainability of institutions	<p>Institutions must ensure financial viability and notify the Council in case of financial distress or winding up.</p> <p>Regular financial audits are required.</p> <p><b>(Part VII – Misc Provisions, Regulation 44)</b></p>	<p>Kes. 3.6B - 4.9B annually for child protection services and institutional financial audits.</p>	<p>Improved financial sustainability and continuous care for children; increased donor confidence by 25-30%.</p>
Lax governance and management of CC institutions	<p>Institutions must notify the Council of any changes in management, location, or significant operational modifications.</p>	<p>Minimal administrative costs for compliance reporting.</p>	<p>Accountability in management reduces operational risks and improves donor trust, increasing funding by 15%.</p>

	<b>Regulation 46– Notice of Changes</b>		
<b>Economic</b>			
Limited transition of children from CCIs to family-based care	Institutions must develop transition strategies to shift from institutional care to family-based care by 2032. <b>(Part VI – Transition Provisions, Regulation 51)</b>	Kes. 100,000 - 300,000 per institution to implement transition strategies and support reintegration into family care.	Family-based care costs approximately Kes. 70,000 per child annually, compared to higher costs in institutional care.
Unregulated child admission and placement procedures	Establishment of clear Regulatory Impact Assessment for admitting children to CCIs, including adherence to safeguarding policies and placement approvals from authorities. <b>(Part II – Registration of existing CCIs)</b>	Kes. 500M - 800M annually for administrative costs and placement protocol enforcement.	Ensures only children in genuine need are institutionalized, reducing unnecessary admissions by 25%.

Legal gaps in penalties for non-compliance	Stronger enforcement mechanisms with penalties for institutions that violate provisions of the regulations. <b>(Regulations 48 &amp; 49 – Offences and General Penalty)</b>	Legal costs of up to Kes. 500,000 per non-compliant institution for penalties and enforcement.	Reduces cases of non-compliance by 50%, improving institutional efficiency and service delivery.
<b>Social</b>			
Insufficient oversight and regulation of CCIs	Mandatory registration renewal for CCIs every three years, with submission of mission and policy statements, financial audits, and operational plans. <b>(Part II – Registration of CCIs, Regulation 6)</b>	Kes. 25,000 registration renewal fee per institution every three years.	Enhanced oversight leads to higher compliance, reducing institutional mismanagement by 40%.
Exploitation of children for fundraising	Strict prohibition of using children for fundraising activities, with penalties for institutions that violate this rule. <b>Regulation 44(2) – Financial Standing of the Institution</b>	Loss of approximately 20-30% of annual donations previously raised through child involvement.	Protects children from exploitation, improving psychological well-being and reducing trauma cases by 30%.

Inadequate quality standards in CCIs	<p>Institutions must adhere to minimum care standards, ensuring physical, emotional, social, intellectual, and cultural needs are met. Regular inspections mandated.</p> <p><b>(Part III – Standards Relating to Premises, Regulation 12)</b></p>	<p>Kes. 1.5M per institution for facility upgrades and training to meet new standards.</p>	<p>Better care leads to a 20% reduction in child mental health issues and improved educational outcomes.</p>
Lack of child participation and feedback mechanisms	<p>Institutions must develop child complaint procedures, allowing children to express grievances and seek redress.</p> <p><b>(Regulation 11 – Review of Mission and Policy Statement and Children's Guide)</b></p>	<p>Kes. 50,000 - 150,000 annually per institution for establishing and maintaining feedback systems.</p>	<p>Empowers children, leading to a 35% increase in child participation in institutional decision-making.</p>

## Risk Identification and Mitigation Strategies

	<b>Risk Identification</b>	<b>Risk Description</b>	<b>Mitigation Strategies</b>	<b>Expected Outcome of Mitigation Strategy</b>

1.	Non-compliance with registration requirements	Failure to meet legal and regulatory standards for registration, leading to potential legal issues and loss of credibility.	<ul style="list-style-type: none"> <li>i. Implement a thorough application and assessment process to ensure compliance with Regulations.</li> <li>ii. Regular audits and training for institution managers on compliance standards can also be beneficial.</li> </ul>	Increased compliance rates, enhanced credibility with stakeholders, and reduced risk of legal penalties.
2.	Inadequate standards of care	Insufficient quality of care provided to children, impacting their well-being, development, and potential for abuse.	<ul style="list-style-type: none"> <li>i. Establish clear guidelines for minimum care standards, including physical, emotional, and educational needs.</li> <li>ii. Regular inspections and feedback mechanisms should be instituted to maintain high care standards.</li> </ul>	Improved child welfare, enhanced developmental outcomes, and a reduction in incidents of neglect or harm within institutions.
3.	Child abuse and neglect	Instances of physical, emotional, or sexual abuse, or neglect, leading to severe trauma and	<ul style="list-style-type: none"> <li>i. Enforce strict reporting protocols for suspected abuse.</li> <li>ii. Provide training for staff on recognizing signs of abuse, and</li> </ul>	Reduced incidence of abuse, increased reporting of suspected cases, and improved

		long-term harm to children.	ensure that children have access to confidential support services.	support and protection for child victims.
4.	Insufficient transition to family and community-based care	Failure to reintegrate children into family or community settings, leading to prolonged institutionalization.	i. Create a structured transition plan that includes family reunification strategies and community integration programs. ii. Ongoing support and monitoring should be provided during the transition process.	Increased rates of successful family and community reintegration, improved social adjustment for children, and a reduction in long-term dependency on institutional care.
5.	Lack of child participation in decision-making	Exclusion of children from decisions that affect their lives	Develop mechanisms that encourage children's input on matters affecting them, ensuring their voices are heard in institutional policies and practices.	Increased child empowerment, improved self-esteem, and more child-centered decision-making processes within institutions.

6.	Harmful cultural practices	Exposure to cultural practices that violate children's rights or harm their well-being.	Educate staff and the community about the harmful effects of certain cultural practices on children.	Reduced incidence of harmful cultural practices, improved understanding of children's rights, and increased community support for child welfare.
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## **H. COMPLIANCE AND IMPLEMENTATION**

It is crucial to establish how adherence to and execution of the proposed Children (Charitable Children's Institutions) Regulations will be ensured. The Council is responsible for evaluating the strength of the institutional framework that will enforce the regulation and for developing effective implementation strategies.

The enactment of the proposed Regulations should foster the coordination of all stakeholders both in the private and public sector. These Regulations will be carried out within the current national legal and institutional framework to streamline the regulation and management of the Charitable Children's Institutions and ensure that they guarantee the best interests of the children within these institutions. The Council, in consultation with the Cabinet Secretary for Labour and Social Protection and the National Treasury and Economic Planning will oversee the implementation.

In developing the proposed Regulations in compliance with legal requirements based on the analysis above, the following points are evident:

- (a) The Council will develop plans and allocate resources to bring the Children (Charitable Children Institutions) Regulations to fruition. The Regulations outline a clear mechanism for integrating partner government agencies into the system, which is intended to enhance the ease of doing business in the country; and

(b) Regarding Regulatory-Making Authority and the legal mandate, section 89 of the Children Act (Cap141), authorizes the Cabinet Secretary to establish Regulations to implement the Act. Consequently, the Cabinet Secretary holds the necessary legislative power to propose these Regulations.

## **I. CONCLUSION**

The proposed Regulations are necessary in the operationalization of the Children Act (Cap 141) and the actualization of the best interests of the child and is therefore the preferred option. It is clear that the benefits and impact of developing these Regulations by far outweigh any estimated cost of its implementation.

## **J. RECOMMENDATION**

In view of the assessment elucidated above and particularly that the proposed Regulations will facilitate effective implementation of the Children Act (Cap 141), it is recommended that the Children (Charitable Children Institution) Regulations, 2024 be adopted.