



**REPUBLIC OF KENYA**

**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

**REGULATORY IMPACT STATEMENT**

**ON**

**THE CHILDREN (WELFARE PROGRAMMES) 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.

The Regulatory Making Authority is the Ministry of Labour and Social Protection in which pursuant to Section 89 of the Children Act (Cap 141) grants the Cabinet Secretary responsible for matters relating to children's affairs the power to make regulations on the requirements and procedure for approval of children's welfare programmes.

## **B. BACKGROUND AND CONTEXT**

### **International context**

Kenya ratified the United Nations Convention on the Rights of the Child in 1990 to conform to global standards of safeguarding the rights and welfare of the child. Article 9 of the UNCRC requires State parties to ensure that children are not separated from their parents against their will, except when competent authorities, subject to judicial review, determine in accordance with the law that such separation serves the child's best interests. The provision lays emphasis on the need to have children cared for in their families and communities to avoid unnecessary separation.

The UNCRC emphasizes on the importance of raising children within a family set up and calls on State parties to provide families with necessary protection and support so that they are effective in taking care of children. Although the UNCRC recognizes institutional care of children as a form of alternative care for children separated from their families, the United Nations Committee on the Rights of the Child which is mandated to oversee the implementation of the UNCRC by State parties, in November 2019 adopted a resolution to prevent institutionalization of children. This

resolution was informed by overwhelming global evidence that institutional care negatively impacts the growth and development of children. It calls on States to deploy mechanisms to ensure that as much as possible, children are cared for within their families and communities while ensuring that those already in institutions are reintegrated back to their families and communities.

### **Regional context**

Kenya is party to the African Charter on the Rights and Welfare of the Child. The Charter places emphasis on the need for children to grow within families and communities and states that institutional care should be undertaken as a measure of last resort. It calls on State parties to strengthen the family and secure every child's entitlement to enjoyment of parental care and family.

In recognition of the challenges that the continent experiences from time to time such as conflict, natural disasters and harmful cultural practices, the Charter appreciates that these circumstances may cause children to separate from their families. In this regard, the Charter guides that separated children should be placed with alternative families and outlines the different forms of alternative care.

The Charter also calls upon state parties to provide support to children whose parents/caregivers are not able to provide necessary care and protection. Children's welfare programmes are a means through which the Government partners with non-governmental agencies and/or individuals to provide family and community support with a view of preventing separation.

### **Domestic context**

Article 45 of the Constitution recognizes the family as the natural and fundamental unit of society and the necessary basis for social order. Further, Article 53 outlines the rights of children in Kenya and these include the right to parental care and protection.

Similarly, the Children Act (Cap 141) underscores the significance of family in ensuring that children not only enjoy wholesome childhoods but also reach their full potential. In appreciating the harm that institutional care may cause children, the Act states that all existing Charitable

Children's Institutions (CCIs) shall cease to exist in 2032 and should work towards promoting family and community care of children.

The Act provides for the establishment of children's welfare programmes to support family and community care of children. This is also in line with the National Care Reform Strategy for Children in Kenya 2022-2032, a ten year plan that is hinged on prevention of separation and family strengthening; promotion of alternative family care for children without parental care; as well as tracing, reintegration and transitioning to family and community-based care.

### **C. PURPOSE AND OBJECTS**

The scope of the Regulation is to provide the criteria for the establishment, application, assessment and approval of Children's Welfare Programmes, its implementation and monitoring and reporting framework.

#### **General objective**

To regulate the establishment and management and implementation of children's welfare programmes in the country.

#### **Specific objectives**

- i. To provide criteria for the establishment, application, assessment and approval of Children's Welfare Programmes.
- ii. To provide minimum standards in the establishment and provision of Children's welfare programmes.
- iii. To provide a framework for the monitoring, evaluation, accountability and learning in regards to the Children's welfare Programmes.

### **D. PUBLIC PARTICIPATION AND CONSULTATION**

As part of the efforts to ensure an inclusive development of the proposed Regulations to the Children's Welfare Programmes, 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**

Beyond public participation, targeted consultations were held with key institutions and individuals critical to the adoption and implementation of the Regulations. These included:

- Directorate of Children's Services
- Directorate of Social Development
- CCIs Managers
- Association of Charitable Children's Institutions in Kenya
- Adoption Societies
- Association of Foster Parents
- Association of Care Leavers

Recognizing the importance of their contribution, the Council proactively reached out to these stakeholders inviting them to participate in consultative meetings before the Regulations were subjected to broader public participation.

These consultations were designed to:

- Ensure inclusivity and gather expert opinions and technical input from professionals in the sector to strengthen the legal and policy framework of the regulations.
- Address concerns and recommendations from stakeholders in advance, ensuring that the Regulations were well-informed and reflective of the realities on the ground.
- Enhance transparency and legitimacy by involving those who will be directly impacted by the implementation of the regulations.

This stakeholder engagement was coordinated by members of the Technical Working Group together with staff from the Council. The consultative meetings took place at Lilian Towers, Nairobi Safari Club, on 5<sup>th</sup> September 2024.

### **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.

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

The analysis of the expected costs and benefits of the proposed regulations contained in this part seeks to answer the question of whether the benefits justify the costs. This would enable the Regulator to estimate the total expected cost and benefit of every aspect of the Regulations. The objective of the proposed Regulations is to make provision for the requirements and procedure for approval of children's welfare programmes. Additionally, they provide for the Council to advice on technical and support services to state and non-state agencies participating in children's welfare programmes.

### **The Alternatives**

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

Maintaining the status quo means that no regulations will be developed and therefore the Children Act will not be fully implemented. Maintaining the status quo ensures continuity and stability in the implementation of children's welfare programmes. It avoids the disruption that may arise from the implementation of the Regulations. The development of these Regulations is a requirement of the Act which seeks to address the challenges that have faced the sector. As enacted, the Act requires these Regulations for its full implementation. The effect of non-implementation of the Act will include:

- (a) The care and assistance to the child will be unregulated potentially leading to abuse of institutions established by the Act poor execution of the mandates;
- (b) Child protection and welfare involve multiple sectors with diverse stakeholders who require guidance in service delivery to achieve optimal results. Without such guidance, the sector risks confusion and disorder.
- (c) Child protection involves compliance and enforcement, requiring clear guidelines on actions to be taken. Without regulations, children would be exposed to abuse.

- (d) The inability to ensure that children's welfare programmes are suitably designed to satisfy specific needs of children.

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

This involves improving the efficiency and effectiveness of current administrative processes without making significant changes to the sector. Administrative measures do not have the force of law and may be challenged in a court of law. Administrative improvements alone may not be sufficient to address all the challenges faced by children and families. There might still be a need for regulatory changes to ensure comprehensive protection and support.

This necessitates the need to include all the information on regulations to streamline the welfare programmes provided by CCIs and other institutions licensed. The Act confers duties to various organs who have to be legally guided to undertake the statutory mandates. Administrative guidelines would be laborious since this would require frequent communicate across the different sectors, the means and channels for this is not practical. The Act provides a raft of new welfare programmes proposed which should be unpacked and clearly described for effective execution.

## **3. Option Three: Adoption of the Proposed Regulations**

The development of these Regulations will ensure full implementation of the Act. This will entail regulating the welfare programmes that are offered to vulnerable children and offer better services to the children. Developing the Regulations:

- i. will provide more targeted and effective support for children and families.
- ii. will address specific issues such as child labor, abuse, and neglect more comprehensively.
- iii. will provide clear flow within the service chain providing timelines which will support the monitoring and evaluation for service delivery.
- iv. will enable a complaint and grievance system to be developed within the assigned entities since the required work outputs and outcomes are clear.
- v. will provide means by which the government could generate some revenue to support service delivery to the child.

The enactment of the Regulations is a legislative mandate and it confers responsibilities to various institutions so assigned to play this role and provide order and uniformity in administration of

government services and programs and therefore attain to the goal of non-discrimination, equality and equity. This similarly reduces subjectivity in the determination of service provision, judgements and decision making.

**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. Ongoing challenges and inefficiencies</li> <li>ii. Missed opportunities for improvement and innovation</li> </ul>	<ul style="list-style-type: none"> <li>i. Continuity and stability</li> <li>ii. Avoids disruptions</li> </ul>	<ul style="list-style-type: none"> <li>i. The Children Act will not be fully implemented.</li> <li>ii. Issues such as child labour, abuse and neglect will persist</li> </ul>
2.	Self-Regulation	<ul style="list-style-type: none"> <li>i. Potential lack of uniformity in standards and practices.</li> <li>ii. Limited enforcement power</li> <li>iii. Possible legal challenges</li> </ul>	Flexibility of organizations to tailor programmes to their needs	<ul style="list-style-type: none"> <li>i. Can provide short term improvements</li> <li>ii. May not address systemic issues</li> <li>iii. Need for ongoing monitoring and support</li> </ul>
3.	Government Regulation	<ul style="list-style-type: none"> <li>i. Requires significant resources for implementation</li> <li>ii. Potential resistance from stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>i. Ensures full implementation of the Act</li> <li>ii. Comprehensive protection and support for children</li> </ul>	Provides a clear and enforceable framework

			iii. Better targeted support for vulnerable children	
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### Cost-Benefit Analysis

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

Problem gap/issue	Proposed reform from regulations	Estimated costs (Kes)	Estimated benefits
<b>Financial</b>			
Lack of a streamlined structured approval and registration for child welfare programmes	The Council is mandated to approve, regulate, register, evaluate, and monitor child welfare programs to ensure compliance with set standards. <b>(Reg 6 of children's welfare program)</b>	Kes. 50M annually for regulatory body operations	20% reduction in operational inefficiencies, improved programme compliance
Inadequate transparency in financial management	Institutions applying for programme approval must provide evidence of good financial standing, including audited financial statements. <b>(Reg 8 (2) (c) of children's welfare program)</b>	Kes 100,000 per institution annually for auditing	25% increase in donor confidence and funding

Lack of a centralized register for approved programmes	The Council will maintain a <b>national register</b> of all approved child welfare programmes. <b>(Reg 12 of children's welfare program)</b>	Kes. 5M initial setup, Kes. 1M annually for maintenance	Better coordination and transparency across welfare services
<b>Economic</b>			
Weak monitoring and evaluation of welfare programmes	The Council and County Children Advisory Committees will periodically monitor and inspect child welfare programmes. <b>(Reg 11 (1), &amp; (2) of children's welfare program)</b>	Kes 30M annually for monitoring, Surveillance and evaluation	30% improvement in service delivery due to regular oversight
Lack of reintegration mechanisms for children from deregistered programmes	A <b>structured reintegration process</b> for affected children, including family tracing, assessment, and reunification. <b>(Reg 14 of children's welfare program)</b>	Kes 50,000 per child for reintegration services	Better psychosocial outcomes for children reintegrated into family-based care
<b>Social</b>			
Absence of a uniform standard criteria for establishing child welfare programmes	Children's welfare programmes must be established by <b>registered charitable institutions or public benefit organizations</b> , with adequate resources and alignment to institutional missions. <b>(Reg 7 of children's welfare program)</b>	Kes. 10,000 per organization for compliance documentation	15% increase in programme effectiveness due to quality requirements

No clear consequences for operating unregistered welfare programmes	Implementing an <b>unregistered</b> children's welfare programme is an <b>offense</b> with specified penalties.  <b>(Reg 13 of children's welfare program)</b>	Kes. 10M annually for enforcement and legal costs	40% reduction in unregistered welfare programmes
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### Risk identification and Mitigation Strategies

	RISK	DESCRIPTION	MITIGATION STRATEGY	OUTCOME
1.	Resource Constraints	Limited financial, human and material resources can hinder effective implementation	<ul style="list-style-type: none"> <li>i. Secure adequate funding through government budgets,</li> <li>ii. Donor support and partnerships</li> <li>iii. Implement efficient resource allocation and management practices</li> </ul>	Adequate resources for sustainability and implementation
2.	Legal and regulatory challenges	Inadequate outdated legal frameworks can impede policy enforcement	<ul style="list-style-type: none"> <li>i. Advocate for comprehensive legal and regulatory frameworks aligning with international standards.</li> <li>ii. Provide training for law enforcement and judicial officers</li> </ul>	Strengthened legal and regulatory frameworks

3.	Cultural and social barriers	Cultural norms and social practices may conflict with child welfare objectives, causing resistance	i. Conduct community sensitization and awareness campaigns. ii. Engage community leaders and influencers	Increased community support and participation in child welfare programmes.
4.	Capacity and training gaps	Lack of trained personnel and inadequate capacity within institutions	Invest in capacity-building initiatives training and professional development for child protection services	Improved service delivery and capacity to address needs
5.	Monitoring and evaluation challenges	Insufficient monitoring and evaluation mechanism	Utilize data-driven approaches	Improved accountability and programme effectiveness
6.	Political and institutional instability	Political changes and institutional instability can disrupt programme continuity	Foster collaboration among stakeholders	Stability and sustainability of programmes

## F. COMPLIANCE AND IMPLEMENTATION

It is important to determine how compliance and implementation of the proposed Children's Welfare Regulations will be achieved. It is the duty of the Council to assess the adequacy of the institutional framework through which the proposed Regulation will take effect, and design responsive implementation strategies. Implementation of the Children's Welfare Regulations should enable coordination of children advisory committees, community organizations, individuals for purposes of improving quality, efficiency and effectiveness of services delivery in children welfare programmes.

The Children's (Welfare Programme) Regulations will be implemented through the existing legal and institutional framework at the national level, in consultation with the Cabinet Secretary,

National Treasury and Economic Planning. In conforming to legal requirements in developing the proposed Regulations based on the above analysis, the following matters are apparent:

- (a) Registration of children's welfare programmes requires an appropriate regulatory framework. Programmes impacting the lives of children require monitoring to ensure they are in the best interest of the child;
- (b) For effective, efficient and sustainable management of the children's welfare programmes, the Regulations provide for registration, evaluation and monitoring the implementation of children's welfare programmes;
- (c) The Council will put in place plans and deploy resources to enable actualization of the proposed Regulations.
- (d) The regulatory-making authority and the legal mandate: Section 89 of the Act empowers the Cabinet Secretary to make regulations to give effect to the Act. The Cabinet Secretary, therefore, has the required legislative powers to propose the Regulations.

## **G. CONCLUSION**

The proposed Regulations are necessary in the operationalization of the Children Act (Cap141) 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.

## **H. RECOMMENDATION**

In light of the foregoing, the proposed Regulations will enhance and facilitate effective implementation of the Children Act (Cap. 141) by providing a clear framework for child welfare programs and enhancement mechanisms and institutional coordination. It is imperative that they be approved to ensure the protection and well-being of the children across the country.