



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS



**PRACTICE DIRECTIONS ON
PROSECUTION OF CHILDREN CASES;
RIGHT TO PRIVACY FOR CHILDREN AND RIGHTS OF
SUBJECTS TO LEGAL REPRESENTATION**

(Pursuant to Article 20(2), 25(c), 53(2) and 157 of the Constitution of Kenya; section 4 of the ODPP Act; section 4(2) and (3), 76(5), 77 and 186(b) of the Children Act and section 35(2), 36(1)(b), 43(1)(b) and 43(1A) of the Legal Aid Act)

ISSUED ON 9TH OCTOBER, 2020

1. PREAMBLE

IN EXERCISE of the powers conferred under Article 157 of the Constitution of Kenya as read together with Section 4 of the ODPP Act and all other enabling provisions of the law, the Director of Public Prosecution issues these Practice Directions to all persons exercising prosecutorial authority under the Constitution of Kenya, 2010 as read together with any statutes that Parliament may enact conferring powers of prosecution on authorities other than the Director of Public Prosecution as envisaged under Article 157(12) of the Constitution of Kenya.

The Practice Directions are meant to provide guidance to persons performing prosecutorial functions in the Republic of Kenya in order to streamline the prosecution service and enhance efficiency and effectiveness.

2. RIGHTS OF CHILDREN TO PRIVACY

Pursuant to article 53(2) of the Constitution of Kenya and section 4 (2) and (3) and 76(5) of the Children Act, the DPP issues the following directions;

- 2.1. In drafting the charge sheet OR other legal document, the initials of the subject or child victim shall be used
- 2.2. The identity, home or last place of residence or school shall not, nor shall the particulars of the child's parents or relatives, any photograph or any depiction or caricature of the child, be revealed

3. RIGHTS OF A SUBJECT TO LEGAL REPRESENTATION

Pursuant to Article 20(2), 25(c), 53(2) and 157 of the Constitution of Kenya; section 4 of the ODPP Act; section 4(2)and (3) and 186(b) of the Children Act and section 35(2), 36(1)(b), 43(1)(b)and 43(1A) of the Legal Aid Act), the DPP issues the following directions;

- 3.1 In all cases where a child has been charged with a criminal case (subject), the prosecution counsel shall take steps to ascertain whether the subject has legal representation
- 3.2 Where the subject does not have a legal representative, the prosecution counsel shall make a formal application to court under the above quoted articles and sections for the court to assign an advocate for the subject and at the expense of the state
- 3.3 The above procedure shall apply in the course of proceedings when and if the prosecution counsel discovers that the subject no longer has legal representation
- 3.4 The prosecution counsel may revise in the high court a decision by the court to decline assigning an advocate for an unrepresented minor

- 3.5 Diversion should be considered in all children matters

Provided that in appropriate cases, to be determined by the Deputy Directors or Regional Heads or Divisional Heads, specific directions of the DPP may be sought where necessary.

4. These directions should be read together with Article 157 of the Constitution, the ODPP Act and any other enabling Act and ODPP Policies and Guidelines including Decision to Charge Guidelines, Code of Ethics for the Prosecutors and Prosecution Policy.
5. These directions are subject to review and regular updates to reflect changes in law and practice.



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