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This Compendium on the Submissions made by stakeholders to the Committee on Child Rights was put together by the Kenya National Commission on Human Rights upon the realization that many stakeholders struggle to find information relating to the enjoyment of the rights by children in Kenya provided for under the United Nations Convention on the rights of the Child.

The submissions made by various stakeholders on all the provisions of the Convention on the Rights of the Child will therefore provide a rich source of information with respect to the current state of the right in Kenya. The submissions made by the non state actors will therefore be key in providing a complementary to the report submitted by the state, this in itself is key since it is possible to compare the positions of the right from the perspective of the state and that of non state actors who work in the Child sector arena.

The Compendium has also included a section on the Concluding recommendations made to the state by the United Nations Committee on the Rights of the Child. The Concluding recommendations in our view will form a basis for all the actors to craft a mechanism for implementation and monitoring of the Concluding recommendations.

The Compendium will also be useful as a reference material for the actors in the Children sector on key issues and trends as regards the rights of the child in Kenya.
The Kenya National Commission on Human Rights (KNCHR) acknowledges the role played by various individuals and organisations in submitting their submissions to the Committee on the Rights of the Child. KNCHR particularly acknowledges the submissions made by:

- Centre for Reproductive Rights
- Each Rights
- Edmund Rice
- Equality Now
- Elizabeth Glaser Foundation
- Cultural Survival Organisation
- Kenya Alliance for Advancement of Children
- The Public service, Youth and Gender Affairs

Further, KNCHR acknowledges the role played by the United Nations Committee on the Rights of the Child (UNCRC) for the tireless effort made to review the numerous documents submitted by the state and other stakeholders and eventually issuing concluding recommendations after the review.

On the same breath the Commission appreciates the role played by the Kenyan Government through the Ministry of Public service, Youth and Gender Affairs in ensuring that the report to the United Nations Committee on the Rights of the Child was submitted in a timely manner and for attending the review of Kenya by the UNCRC.

Lastly, KNCHR Acknowledges the support extended to it by the Royal Netherlands Embassy in Nairobi which support made this publication possible.
Kenya ratified the Convention on Rights of the Child on 30th July 1990; the convention created obligations on the state to promote, protect and fulfill the rights that are protected and provided for under the convention. It further created an obligation on the part of the state to submit reports to the Committee on Rights of the Child pursuant to the provisions of Article xxxxx of the Convention.

Kenya submitted its initial report to the Committee on 13th January 2000 and the latest report on 19th March 2013; the reports submitted by the state form the basis in which the human rights record of the state in line with the provisions of the Convention is appraised by the committee.

In seeking to ascertain the true position of the human rights situation in the country under review the committee calls for submissions from other stakeholders such as Community based organisation, Non Governmental organisations and also National Human Rights institution operating in the country under review.

In some cases, like in the case with the Committee on the Rights of the Child, once the committee receives the state report it appraises it and comes up with a list of issues that which they then transmit to the state under review to provide further information.

Other stakeholders have a role to play in the development of the List of issues by providing the committee with information that will guide the committee in developing the List of issues. Non state actors working on Children Rights have an opportunity to respond to the list of issues by submitting alternative reports as well as responses to the list of issues; these reports alongside those submitted by the state form a basis for the review of the implementation of the Covenant by the state.

During the review of Kenya by the Committee a total of 9 non state organisations submitted a total of 9 submissions; the state was then reviewed 21st January 2016 with the committee rendering its Concluding recommendations on 21st of March 2016.

The state is expected to implement the concluding recommendations in order to fulfil the rights of all as provided for in the Covenant; the state will do this through preparation of an implementation plan while the non state actors have the important role of monitoring the implementation of the Concluding recommendations.
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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AAC</td>
<td>Area Advisory Council</td>
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<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency</td>
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<td>ANC</td>
<td>Antenatal Care</td>
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<tr>
<td>AOP</td>
<td>Annual Operation Plan</td>
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<td>APHIA</td>
<td>11 Aids Population Health Integrated Assistance 11</td>
</tr>
<tr>
<td>ARV</td>
<td>Antiretroviral Medicine</td>
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<tr>
<td>ASAL</td>
<td>Arid and Semi-Arid Land</td>
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<tr>
<td>BCG</td>
<td>Bacillus Calmette-Guérin (or Bacille Calmette-Guérin, BCG) is a vaccine against tuberculosis given infants</td>
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<tr>
<td>CBOs</td>
<td>Community Based Organizations</td>
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<tr>
<td>CCI</td>
<td>Charitable Children’s Institution</td>
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<td>CCK</td>
<td>Communications Commission of Kenya</td>
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<tr>
<td>CDF</td>
<td>Constituency Development Fund</td>
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<td>CHS</td>
<td>Community Health Strategy</td>
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<td>CIRCLE</td>
<td>Community Based Innovations to Reduce Child Labour through Education</td>
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<tr>
<td>CPU</td>
<td>Child Protection Units</td>
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<td>CRC</td>
<td>Convention on the Right of the Child</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organizations</td>
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<tr>
<td>CT-OVC</td>
<td>Cash Transfer to Orphans and Vulnerable Children</td>
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<tr>
<td>DCS</td>
<td>Department of Children’s Services</td>
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<tr>
<td>DFID</td>
<td>Department of International Development</td>
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<tr>
<td>DNO</td>
<td>Data Not Obtainable</td>
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<tr>
<td>DPT-DPT</td>
<td>refers to a class of combination vaccines Against three infectious diseases in humans: diphtheria, pertussis (whooping cough) and tetanus.</td>
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<tr>
<td>EARS</td>
<td>Educational Assessment and Resource Services</td>
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<tr>
<td>ECDE</td>
<td>Early Childhood Development Education</td>
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<td>ECPAT</td>
<td>End Child prostitution/Pornography</td>
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<tr>
<td>EFA</td>
<td>Education for All</td>
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<tr>
<td>EMIS</td>
<td>Education Management Information System</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FBOs</td>
<td>Faith Based Organizations</td>
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<td>FDSE</td>
<td>Free Day Secondary Education</td>
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<td>FGM</td>
<td>Female Genital Mutilation</td>
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<td>FPE</td>
<td>Free Primary Education</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GOK</td>
<td>Government of Kenya</td>
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<tr>
<td>HIV</td>
<td>Human immunodeficiency virus</td>
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<td>HGSFP</td>
<td>Home Grown School Feeding Programme</td>
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<tr>
<td>IDPs</td>
<td>Internally Displaced Persons</td>
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<tr>
<td>IMCI</td>
<td>Integrated Management of Childhood Illness</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>ILO/IPEC</td>
<td>International labour Organization International Programme to End Child Labour</td>
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<tr>
<td>INTERPOL</td>
<td>International Criminal Police Organization</td>
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<tr>
<td>JICA</td>
<td>Japanese International Cooperation Assistance</td>
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<tr>
<td>KENSUP</td>
<td>Kenya Slum Upgrading Programme</td>
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<td>KESSP</td>
<td>Kenya Education Support Programme</td>
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<td>KDHS</td>
<td>Kenya Demographic and Health Survey</td>
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<td>KFCB</td>
<td>Kenya Film Classification Board</td>
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<tr>
<td>KISE</td>
<td>Kenya Institute for Special Education</td>
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<tr>
<td>KNBS</td>
<td>Kenya National Bureau of Statistics</td>
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<tr>
<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<tr>
<td>KNHR&amp;EC</td>
<td>Kenya National Human Right and Equality Commission</td>
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<tr>
<td>Ksh</td>
<td>Kenya Shillings</td>
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<td>LASDAP</td>
<td>Local Authority Service Delivery Action Plan</td>
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<td>LATF</td>
<td>Local Authority Transfer Fund</td>
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<tr>
<td>MDG</td>
<td>Millennium Development Goal</td>
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<tr>
<td>MGCS&amp;D</td>
<td>Ministry of Gender, Children and Social Development</td>
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<tr>
<td>MICS</td>
<td>Multiple Indicator Cluster Survey</td>
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<tr>
<td>MOE</td>
<td>Ministry of Education</td>
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<tr>
<td>MOM’s</td>
<td>Ministry of Medical Services</td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>N/A</td>
<td>Not Applicable</td>
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<tr>
<td>NACADA</td>
<td>National Agency for the Campaign Against Drug Abuse</td>
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<tr>
<td>NACADAA</td>
<td>National Campaign Against Drug Abuse Authority</td>
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<td>NCCS</td>
<td>National Council for Children Services</td>
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<td>NCP</td>
<td>National Children Policy</td>
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<td>NCPWD</td>
<td>National Council for Persons with Disability</td>
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<tr>
<td>NGO’s</td>
<td>Non-Governmental Organization</td>
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<td>NPA</td>
<td>National Plan of Action</td>
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<td>OVC</td>
<td>Orphans and Vulnerable Children</td>
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<td>PEV</td>
<td>Post Election Violence</td>
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<tr>
<td>PMTCT</td>
<td>Prevention of Mother to Child Transmission</td>
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<tr>
<td>SFRTF</td>
<td>Street Families Rehabilitation Trust Fund</td>
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<tr>
<td>SMT</td>
<td>Science, Mathematics and Technology</td>
</tr>
<tr>
<td>TBP</td>
<td>Time Bound Programme</td>
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<tr>
<td>TIVET</td>
<td>Technical Industrial Vocational and Entrepreneurship</td>
</tr>
<tr>
<td>TSC</td>
<td>Teachers Service Commission</td>
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<tr>
<td>UNCRC</td>
<td>United Nation Committee on the Rights of the Child</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<tr>
<td>UNHCR</td>
<td>United Nation High Commission for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>WHO</td>
<td>World Health Organization</td>
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STATE REPORT
Preamble

1. Kenya is a State Party to the Convention on the Rights of the Child which it ratified on 30th July 1990. This report is submitted in accordance with article 44 of the Convention which obligates the State Party to submit an initial report two years after ratification of the Convention, and periodic reports every five years thereafter. The State Party submitted its first and second reports in 1998 and 2004, respectively. The State Party welcomed the position of the United Nations Committee on the Rights of the Child (UNCRC) that its third periodic report be combined with the fourth and fifth periodic reports and be submitted by September 2012. The State Party considered the concluding observations of the Second report and responses to these remarks are included in this report.

I. Follow-up to the concluding remarks of the Committee

2. The State Party considered all the recommendations contained in the Committee’s concluding observations on its initial and the second reports and addressed them as follows:

Cluster 1: General measures of implementation (arts. 4, 42 and 44)

Legislation

3. The State Party has considered the recommendations made by the UNCRC and taken specific actions to address the issues raised. Actions taken by the State Party include:


(b) Draft amendments to the Children Act 2001 to address the noted inconsistencies and weakness therein and further ensure it is in congruent with Article 53 of the Constitution of Kenya 2010.

Coordination and national plan of action


5. The Ministry of Gender, Children and Social Development (MGC&SD) is the primary Ministry offering services to children in need of care and protection through the Department of Children’s Services (DCS). The DCS coordinates and supervises services aimed at promoting and protecting the wellbeing of children and their families. The DCS works closely with development partners and non-State actors who complement the State Party programmes for the implementation of the goals set by the United Nations General Assembly in the “World Fit for Children” guidelines.

6. The National Council for Children’s Services (NCCS) was established under Section 30 (1) of the Children Act 2 to exercise general supervision and control over planning, financing and coordination of child rights activities and to advise the State Party on all aspects relating to children. The Council is composed of representatives from relevant Government ministries, NGOs, FBOs, and the private sector. The State Party has put in place mechanisms to ensure independent operation of the Council.

7. The functions of the NCCS are cascaded to the local levels through Area Advisory Councils (AACs) at district, division and location levels. The AACs have similar membership as NCCS. The operation of the AACs is guided by the principles of the best interests of the child, the right to protection, survival, participation and development. The overall role of AACs is to coordinate children activities in their area of jurisdiction. To date there are 153 districts with AACs across the country. Plans are under way to ensure that AACs are part of the devolved government structure at the county level.


Independent monitoring and independent human rights organizations

9. The Kenya National Commission on Human Rights (KNCHR) was established in 2003 to replace the Standing Committee on Human Rights. Under the Constitution of Kenya 2010, Article 59, KNCHR was replaced by Kenya National Human Right and Equality Commission (KNHR&EC). KNHR&EC is mandated to oversee the promotion and observance of human rights in the country and to promote equality and freedom from discrimination in accordance with Article 27 of the Constitution alongside other related mandates. There are currently 30 members of staff and 9 commissioners. The budget allocation has been increasing every year. For example in 2004, it was Ksh 50 million and in 2006/2007, it doubled to Ksh 107 million. The Commission has one commissioner in charge of children affairs.

10. The other commissions relevant to children rights are the National Gender and Equality Commission and the Commission on Administrative Justice. These commissions are mandated to act as watchdogs over the State role to protect and promote human rights.

1. CRC/C/3/Add.62.
2. See CRC/C/KEN/2.
**Allocation of resources**


12. With technical assistance from UNICEF, the State Party has instituted “social budgeting”, with a child’s rights perspective on a pilot basis. This began in three districts in 2005, and had been extended to 10 districts by 2010.

13. The State Party notes that no measures have been taken on budget tracking from a child’s rights perspective whether at the national level in the devolved government structures.

14. The “Cancel Debt for Children Campaign”, spearheaded by civil society organizations, did not realize the intended results. Nevertheless a lot of awareness on Kenya domestic and external debts has been created.

15. The State Party has put in place legal regimes which protect and promote the rights of children from extreme forms of poverty. Some of these include Free Primary Education, Free Day Secondary Education, Constituency Development Fund (CDF), and Cash Transfer for Orphans and Vulnerable Children (CT-OVC).

16. Under Articles 4, 23, and 26 of the Convention, the State Party has made commitments to take measures in collaboration with international development partners to ensure the rights of children to survival, participation, protection and development are fulfilled. In this regard, the State Party has worked hand in hand with partners under the Kenya Joint Assistance Strategy 2007–2012 to contribute to the implementation of the Millennium Development Goal Number One - Eradicate Extreme Poverty and Hunger. The partners include the World Bank, USAID/APHIA II, DFID, and United Nations Agencies among others.

17. Kenya is committed to promoting gender equality and equal access to basic social services, such as education, nutrition, health care, reproductive health care, immunizations, and protection from diseases and to mainstreaming gender in all development policies and programmes.

**Data collection**

18. The State Party has made some progress in centralizing data collection and dissemination through platforms such as KENINFO5 and the Kenya National Bureau of Statistics (KNBS). The KNBS coordinate National Statistical System to strengthen data management. Through this it is able to produce publications such as Violence Against Children Survey, Kenya Population and Housing Census, Kenya Demographic and Health Survey (KDHS), Persons with Disability Survey, Kenya Integrated Household Budget Survey, Kenya AIDS Indicator Survey, Multiple Indicators Cluster Survey (MICS) and Labour Force survey.

19. The National Council for Children Services (NCCS) is developing a national children database with technical assistance from the International Labour Organization (ILO).

**Cooperation with civil society**

20. The NCCS, comprising State actors, NGOs, FBOs and the private sector, has as part of its mandate been monitoring the implementation of the State Party’s regional and international obligations and facilitating the preparation of appropriate reports. The Council meets four times a year.

21. At the grassroots level, the AACS are established by NCCS. They have similar membership composition as at the national level and are charged with the responsibility of addressing the plight of children. The State Party, through the Ministry of Gender, Children and Social Development, has endeavoured to engage the civil society organizations, children and other stakeholders in the implementation of the Convention. In this regard a national steering committee, comprising the State and non-State actors, including NGOs, FBOs, was formed in 2003 to monitor implementation of the Convention.

**Dissemination and training**

22. In 2008, a high-level workshop involving more than 200 key policy makers was held to disseminate the State Party’s second report and the UNCRC’s concluding remarks and observations. Thereafter, district forums to disseminate the State Party’s second report and the concluding observations were held.

23. The State Party has continued to provide training on the Convention to teachers, judicial officers, AAC members, chiefs, children’s officers, law enforcement personnel, school administrators, health personnel, psychologists, social workers, staff of childcare institutions, traditional or community leaders and children’s services providers among others. This training has further been complimented by non-State actors who have disseminated the Convention widely, including translating it from English to Swahili. The State Party has further supported training and forums for children with special needs and translated the Children Act into Braille.

24. The Ministry of Education has also been implementing a child rights curriculum at preschool and primary school teacher training levels, and in the training curriculum of the Police officers in Kenya.


26. The State Party has also infused children’s rights in the training of magistrates, judges and at the Faculty of Law of the university.

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5 KENINFO is a development data system designed to enhance data storage and access by policy makers, development partners and research institutions, among other users. Similarly, while providing the State Party and stakeholders with reliable mechanisms to measure the efficiency and the effectiveness of public policies and service delivery and are part of the State Party commitment to improve transparency and accountability.
27. The hoteliers have been sensitized on commercial sex exploitation of children and sex tourism. Some hoteliers at the Kenyan coast have signed the “International Code of Conduct for the Protection of Children in Travel and Tourism Kenya”. Other stakeholders who have signed this code of conduct include the Association of Hotels Keepers and Caterers, Kenya Tourism Federation, Coast Tourist Association, Kenya Tourism Board and the Association of Tour Operators.

Cluster 2: Definition of the child (art. 1 of the Convention)

28. The State Party wishes to state that the Constitution of Kenya and the Children Act 2001 have resolved the issue of legal age for marriage of girls and boys. The Constitution prohibits marriage of persons under the age of eighteen (18) years. In addition the Marriage Bill 2011 seeks to consolidate all marriage laws in Kenya to further remove any discriminatory provisions with respect to boys and girls.

Cluster 3: General principles (arts. 2, 3, 6 and 12 of the Convention)

29. The State Party has taken the following actions on the issues raised under general principles:
   (a) The Constitution of Kenya, Article 53 (1) (e) assigns parental responsibility to both parents whether they are married or not. This provides for protection of children born out of wedlock;
   (b) Article 56 specifically deals with minority and marginalized groups;
   (c) Article 14 (1) states that a child born to a Kenyan citizen, whether or not the child is born in Kenya, shall acquire Kenyan citizenship as long as either the mother or father is a Kenyan citizen;
   (d) Article 56 of the Constitution further provides that any unknown child found in Kenya who is or appears to be eight (8) years of age is presumed to be a citizen by birth;
   (e) The Kenya Citizens and Foreign Nationals Management Service Bill 2011, further provides for a framework that protects the right to identity for all people;
   (f) The National Gender and Equality Commission Act of 2011, emphasizes non-discrimination;
   (g) Draft amendments to the Children Act seek to harmonize various legislation relevant to children rights and align them to the Constitution;
   (h) The Prohibition of Female Genital Mutilation Act, 2011, protects the rights of the girl child against FGM.

30. The Constitution of Kenya (Art. 27) and the Children Act 2001 (Sect. 5) have outlawed discrimination of children on grounds of social economic status, birth, sex, religion, colour, race, tribe, disability among others. The constitution has therefore addressed issues raised in the World Conference Against Racism.

31. The Persons with Disabilities Act 2003, Section 5 outlaws discrimination of children on any grounds including disability. The Act also provides that no child with a disability shall be denied the right to education as provided for in the Children Act 2001, and the Convention.

32. The State Party established the HIV and AIDS Tribunal in 2011. The Tribunal is authorized to hear and determine complaints or appeals arising from any breach of the HIV and AIDS Prevention Act 2006 excluding criminal jurisdiction. The Tribunal has powers to address fundamental human rights abuses resulting from an individual’s HIV status and come up with remedies to redress the injustices. It also has the power to award damages in respect of any proven financial loss or impairment of dignity, pain or emotional and psychological suffering as a result of discrimination.

33. In addition, the National Cohesion and Integration Act, 2008 provides for the establishment of the National Cohesion and Integration Commission with the mandate to facilitate and promote equality of opportunity, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds in Kenya and to advice the State Party thereof.

34. The State Party acknowledges that several civil society organizations with the support of development partners are undertaking awareness campaigns against all forms of discrimination against children and women.

Best interests of the child

35. The principle of the best interests of the child has been enshrined in the Constitution and the State Party will continue to adhere to the principle of the best interests of the child in all situations.

Respect for the views of the child

36. The State Party through the Department of Children’s Services (DCS) and various Area Advisory Councils had facilitated participation of children in development of policies at the sub-national and national levels. In this regard, the DCS has established Children Assemblies in all counties (47) while Children Voices platforms managed by Civil Society Organizations are annually held at regional level. Respect for the views of children has improved since the last reporting period. Children are allowed to give their views during judicial proceedings, in schools, and in the community forums. Child Rights Clubs and Student Councils in Secondary schools have also been established in many areas.

37. The State Party through NCCS has formed a Child Participation Committee at the national level, printed more than 22,000 copies of the National Child Participation Guidelines. These have been disseminated to stakeholders in the children sector and to children for their own use. Child friendly school guidelines have been distributed to schools through Ministry of Education.
Birth registration

38. The State Party through the Department of Civil Registration has taken the following actions to improve birth registration of all children:
   (a) Increased the number of civil registration offices from 69 in 2005 to 112 by the end of 2011;
   (b) The Births and Deaths Registration Act is under review to align it with the Constitution.

39. There has been substantial increase in actual registration of birth of children between 2005 and 2010 rising from 541,664 to 749,693.6 This is a result of intensive campaigns undertaken by the State Party and the policy to make it mandatory for all children to acquire a birth certificate before sitting for national examinations at the end of primary school and secondary school cycles.

Torture or other cruel, inhuman or degrading treatment or punishment

40. The State Party has instituted comprehensive reforms in the Police Service under the on-going police service reforms. The term “police force” has been changed to “police service” to reflect the new thinking. The National Police Service Act 2011(Art. 95 (1)), among other things, provides that no person shall be subjected to torture or other cruel and degrading treatment. In Article 10 (1), paragraph (o), the Act provides for an independent complaints mechanism where one feels aggrieved by the force.

41. The State Party has established a toll-free hotline to police stations (999/112), a toll-free child help line (116) for children in distress and children's/gender desks in all police stations, including Child Protection Units (CPUs), in 14 police stations to serve children in need of protection.

42. From 2008 to 2011 the State Party initiated and piloted a legal aid and awareness programme for child victims of abuse and children in need of care and protection. From the lessons learnt, a National Legal Aid Bill and Policy have been prepared and are at an expert review level.

Corporal punishment

43. The National Children's Policy (NCP) 2008, Section 53 (I) prohibits corporal punishment for children. It has been outlawed in schools through Legal Notice No. 56 of 2001 issued by the Ministry of Education (MOE). In addition, Article 29 (e) and (f) of the Constitution of Kenya prohibits corporal punishment, cruel, inhuman and degrading treatment. Furthermore, there are proposals to amend Section 18 of the Children Act 2001 to prohibit the administration of unreasonable punishment at home and in institutions that provide alternative care for children as well as to align it with the provisions in the NCP, 2008.

44. The State Party launched the Framework for the National Child Protection System for Kenya, established the National Child Protection Committee to look into ways of eradicating corporal punishment, and in partnership with non-State actors, has facilitated intensive awareness campaigns on corporal punishment.

Cluster 5: Family environment and alternative care (arts. 5, 18 (paras. 1 and 2), 9–11, 19–21, 25, 27 (para. 4) and 39 of the Convention)

Family support

45. The State Party has endeavoured to support children in their family setting and under alternative care such as foster care or adoption. It has ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

46. The State Party increased the number of Children's Officers from 432 in 2003 to 581 in 2010 and opened offices in 154 out of 288 districts. Those offices and other non-State actors offer parenting education.

47. On maternity and paternity leave, the State Party wishes to state that the Employment Act 2007 7 has provided for enhanced maternity leave for women in Kenya for up to three months, plus annual leave and paternity leave for two weeks.

Alternative care

48. The State Party has developed a Policy on Social Protection which has provisions for vulnerable populations, including children. The policy focus areas include:
   (a) Reduction of extreme poverty;
   (b) Provision of cash transfers for those who cannot support themselves;
   (c) Emphasis on long-term and predictable interventions for the poor and excluded groups;
   (d) Incorporation of asset creation and support for the vulnerable groups.

49. The State Party has management guidelines and regulations for Charitable Children’s Institutions (CCI), as well as a training manual and best practice standards for CCIs. The State Party is also taking steps to amend the Foster Care rules (Section 153 of the Children Act) to ensure that they are understood clearly.

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6  Statistical Annex, Table 10.
50. The State Party is aware of the need to harmonize provisions dealing with adoption and the fourth schedule of the Children Act and will report on progress in its next periodic report to the UNCRC.

51. The Judiciary has established within its structures of the High Court, a specialized “Family Division” to handle diverse family’s issues, including property inheritance rights of orphans and widows.

52. The State Party has scaled up the Cash Transfer to OVC from 3,000 households in 13 districts in 2005/06 to cover 124,991 households in 28 districts by 2010/11. The State Party has provided training to chiefs, police officers and local leaders on children rights, the Constitution, and the protection of rights of properties that belong to orphans. It has improved alternative care services, including information sharing with all actors in the child rights sector. By 2010, the State Party had trained 4,704 professionals on children rights.

53. The CCI regulations contain provisions for setting up an independent complaint mechanism for children in institutions.

Adoption

54. The State Party has developed and implemented the adoption regulations, which are currently under review to be in line with the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. It has established a vibrant National Adoption Committee and a Secretariat to oversee alternative family care placements. The State Party also wishes to acknowledge the technical assistance offered by the Hague Secretariat in 2007 and 2011.

Abuse and neglect, ill-treatment and violence

55. The State Party has established offices in 154 out of 288 districts where Children’s Officers and AACs are actively handling child protection matters. It has also set up a number of institutional mechanisms designed to ensure that children who interact with the justice system are protected accordingly. These include:

(a) Children Courts;
(b) Child Protection Units at Police Stations;
(c) Progressive gazettlement of children’s magistrates;
(d) A child helpline number 116, established to enhance quick responses to children in distress and in need of assistance;
(e) Call centres in Eldoret, Garissa and Nairobi with 64 trained professionals and volunteers;
(f) Community services for child offenders and children in conflict with the law;
(g) Community police services to enhance quick responses to children in distress as result of abuse or neglect;
(h) Appointment of women police officers to respond to cases relating to physical, emotional and sexual abuse of girls.

Cluster 6: Basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26 and 27 (paras. 1–3) of the Convention)

Children with disabilities

56. The State Party launched the Special Needs Education policy framework on 11th March 2010. This has led to increased enrolment of children with disabilities into primary or integrated units, from 255,650 in 2007 to 272,911 in 2008.

57. The State Party has established 345 sub-district disability assessment centres and 52 district-based Educational Assessment and Resource Services (EARS). In addition, there are guidelines for early identification and referral for children with disabilities and special needs. In essence, these services have been taken close to the communities. However, the number of children taken for assessment and placed in education programs is still small compared to those whose parents have not taken advantage of these facilities. This is partly attributed to ignorance and apathy by parents.

58. The National School Health Policy 2009 has addressed the physical environment in schools, sports and leisure facilities. The State Party also offers training at Kenya Institute for Special Education (KISE) for teachers who are eventually posted to both primary and secondary schools to teach children with special needs.

59. The State Party together with CSOs and National Council for Persons with Disability have regular awareness programmes for children with disabilities to reduce stigmatization, and at the same time encourage parents to seek medical and education services for their children. The awareness campaign has contributed to increased enrolment of children with special needs in primary, secondary and vocational training centres.

60. The National Council for Persons with Disability (NCPWD) has published, The Persons with Disability Act 2003 in simple readable language including Braille and circulated it widely in Kenya.

61. On programmatic interventions, the State Party launched a Cash Transfer Program in 2010 to assist households with disabled persons and children. This programme is still on pilot basis and will be scaled up progressively.

Health and health services

(a) Increase funding to the health sector
(b) Reduce infant mortality

8 Statistical Annex, Table 15.
9 Statistical Annex, Table 61.
63. Within this reporting period, full immunization of children aged 12–23 months increased from 57 per cent to 77 per cent (2003–2008/09) while immunization against measles for children aged 12–23 months rose from 73 per cent to 85 per cent during the same period.

64. In 2011 the State Party also added pneumococcal vaccine to the national immunization schedule. In the reporting period the State Party has distributed over 13.5 million insecticide treated mosquito nets and continues to provide the same at MCH clinics to pregnant women and infants in high risk districts. Other measures to address malaria are indoor residual spraying and use of Artemisinin Combination Therapies.

(c) Reduce distances to health facilities

65. There has been a significant increase of primary health care facilities under the strategic plan for rationalization of health care services in level 3 and 4. To this effect, the number of health facilities increased from 4,912 to 7,111 between 2005 and 2010.10 Rift Valley province recorded the highest number of health facilities at 1,867 in 2010 while North Eastern had the lowest number at 264 during the same year.

66. The State Party wishes to state that the provision of health services is a major concern and hence it has established the health policy framework which supports and encourages other health providers to set up health facilities in underserved communities and especially in rural and remote areas including urban informal settlements areas. Under the Economic Stimulus Programme funds has been allocated for construction of a Health Centre in 200 Constituencies. This was accompanied with constituency based yearly hiring of Health workers. The State Party also works in partnership with FBOs, NGOs and private health providers as indicated in statistical data in the annex.11

(d) Nutrition status of children under five years of age

67. It is policy for children 6–59 months to receive Vitamin A every month.

68. Exclusive breastfeeding rates have also increased from 13 per cent in 2003 to 32 per cent in 2008/09.

(e) Safe clean drinking water and sanitation

69. Safe clean drinking water is no doubt a fundamental human right. In this regard the State Party increased access to clean water sources from 74 per cent to 91 per cent in urban areas and 32 per cent to 54 per cent in rural areas between 2003 and 2008/09 (KDHS 2003 and 2008/09 Report).

(f) Sanitation

70. Sanitation improved from 95 per cent to 99 per cent in urban areas and from 79 per cent to 84 per cent in rural households between 2003 and 2008/09.12 This is underscored by the constitutional provision in Kenya which states in section 43 (1) (b) that "every person has the right to accessible and adequate housing and to reasonable standards of sanitation."

Adolescent health

71. The KNBS which is the main State Party Institution that collects and collates statistical data in its Demographic and Health Survey 2008/09 incorporated issues concerning adolescent health, teenage pregnancy and ability to access services. This information has provided an avenue for planning for the adolescent health programmes and policies.

72. The State Party through the Ministry of Education has designated teachers who offer counselling in schools to prevent unwanted pregnancies. Reproductive health (Sex Education) is taught in primary and secondary schools as part of Social Studies and Ethics.

73. The State Party has through the Ministry of Education issued a circular that allows teenage mothers to go back to school. This circular although a way forward to ensuring that rights of adolescent mothers are respected, has been undermined by the stigmatization of young mothers which deters them from returning to school. The State Party however has made all necessary efforts to ensure that girls who are victims of unwanted pregnancies are not stigmatized nor denied re-entry opportunity by school administrators.

HIV/AIDS

74. The State Party developed the National HIV/AIDS Strategic plan (2009/10 to 2012/13) which has a PMCTC component and the National Guidelines on Prevention of Mother to Child Transmission. Between 2003 and 2007 the proportion of women attending Antenatal Care (ANC) who got tested for HIV increased from 45 per cent to 70 per cent.13 PMTCT services are free in government facilities. The Ministry of Health has also adapted WHO guidelines on infant and young child feeding in the context of HIV, promotes breastfeeding with use of Anti-Retroviral Therapy (ARVs) to protect infants, and early infant diagnosis. During this reporting period children accessing ART treatment increased from 1,500 in 2005 to 36,000 in 2010 and 48,000 in 2011.

75. The State Party is committed to scale up its financial budget in order to meet the Abuja commitment as well as increase pediatric services to children infected by HIV and AIDS.

76. Several non-state actors, National Aids Control Council, Ministry of Public Health and Sanitation and Ministry of Education have continued to undertake awareness programmes on adolescent reproductive health to reduce incidences of sexual harassment, teenage pregnancies and sexual violence, and stigmatization related to HIV and Aids including prevention of HIV.

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10 Statistical Annex, Table 37
11 Statistical Annex, Table 38
12 KDHS 2003 and 2008/09.
77. The State Party has developed the National Programme Guidelines on orphans and other children made vulnerable by HIV and AIDS. In addition HIV and AIDS information has been included in primary teacher training curriculum and the school syllabus.

78. The Cash Transfer programme for Orphans and Vulnerable Children resources increased from Ksh 48 million to Ksh 816 million between 2006 and 2010.14

79. The National AIDS Control Act 2006 prohibits discrimination against people living with HIV and AIDS.

80. Pregnant women and children under the age of five years are entitled to free medical services including access to ARVs in public health facilities. This is further subsidized by faith based institutions and other institutions specializing in providing health services to people living with HIV and AIDS.

**Harmful traditional practices**

81. The Prohibition of Female Genital Mutilation Act, 2011 provides new opportunities for eradication of FGM. The Act empowers chiefs and Children’s Officers to enter into places without warrant to ascertain whether such a crime has been or is about to be committed. The Act criminalizes:

(a) Aiding and abetting the circumcision of women and girls and procuring of a person to perform the cut;
(b) Taking a Kenyan to another country for, and bringing another person to Kenya for, female circumcision;
(c) Allowing premises for which one is responsible to be used for female circumcision;
(d) Being found in possession of tools or equipment for female cutting;
(e) Knowing that someone has the intention of performing the cut and failing to report to the authorities;
(f) Any Kenya citizen who undergoes FGM outside the country is also liable for prosecution.

82. Beside this Act, the National School Health Policy (2009) addresses issues relating to FGM and early/forced marriages.

83. The State Party through the Ministry of Gender, Children and Social Development has conducted public awareness forums as well as facilitated community dialogue on FGM in five pilot districts where the practice is rampant. Additionally the ministry has conducted training for district gender and social development committee members on gender based violence and other harmful cultural practices. UN Agencies, development partners, FBOs and NGOs have supported advocacy campaigns against FGM among 33 tribes which practice this culture. Through these campaign initiatives, the practice is slowly lessening. However, it must be noted that deep rooted cultural practices take long time to eradicate.

84. The State Party through the National Council for Children’s Services in 2010 undertook a study on child marriage in two communities where the practice is prevalent. The findings will inform future planning of programmes and interventions.

**Standard of living**

85. The social protection policy has been developed and applied in 60 districts already participating in Cash Transfer. The Social Protection Programmes for OVC are implemented through the Ministry of Gender, Children and Social Development. The Programme now serves 134,000 households15 as of 2010 across the country.

86. Through the devolved fund, such as CDF, LASDAP/LATIF and the private sector such as Banks, poor and bright children have received bursaries for their secondary education.

87. The State Party has established the Youth Enterprise Development Fund as a vehicle to enhance youth social economic empowerment.

88. The State Party designated Ksh 15 billion for the “Kazi Kwa Vijana” (jobs for youth) programme to create three hundred thousand (300,000) jobs for the youth in urban and rural communities. This initiative is aimed at addressing goal number one of the MDG to eradicate extreme poverty and hence improve the status of vulnerable children.

**Cluster 7: Education, leisure and cultural activities (art. 28, 29 and 31 of the Convention)**

89. The State Party has been providing the Free Day Secondary Education (FDSE) in public schools since 2008. The objective of this programme is to increase access to secondary education with the Constitutional Framework of 12 years of basic education for every child. In addition, the State Party has introduced mobile schools in arid and semi-arid areas in Kenya.

90. The budget expenditures in the education sectors have increased since 2005. In 2005/2006 the total budget expenditures was Ksh 11,580.9 billion this increased to Ksh 33,549.3 million in 2010/2011.

91. The State Party has banned extra coaching by teachers to reduce indirect cost to parents. This notwithstanding, parent’s willingness to pay for extra coaching fees defeats the implementation of this policy.

92. The Ministry of Education has included ECDE in the overall learning curriculum and national education policy. It developed a national ECDE policy framework and service standards guidelines in the 2005/2006 financial year.

93. ECDE is currently provided by the State Party in partnership with Non-governmental Organizations (NGOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs), Parents and the private sector. Cluster 8: Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)–(d), 32–36 of the Convention)
Refugee children

94. The Refugee Act was passed in 2006 and regulations to facilitate its implementation enacted in February 2009. This Act is being repealed under the Refugee draft Bill 2011 to align to international human rights treaties, the international refugee instruments and the Constitution of Kenya.

95. The State Party, through the Department of Refugees’ Affairs and the Ministry of Immigration and the Registration of Persons, in collaboration with UNHCR, keeps records of refugees and asylum seekers at all points of entry into the country.

96. Comprehensive disaggregated data on asylum seekers and refugees is kept by the Department of Refugees’ Affairs, under the Ministry of Immigration and the Registration of Persons and UNHCR. In 2010, Kenya hosted 157,454 refugee children and 61,232 child asylum seekers.¹⁶

97. In order to ensure protection of the rights of unaccompanied refugees and asylum-seeking children, the State Party has special registration mechanisms for children whereby any child who enters the country unaccompanied is registered and issued with individual documentation within the shortest time, but not longer than 3 months.

98. The State Party, UNHCR and other organizations continue to raise funds through various partners to assist refugee children residing in Kenya and has provided land to expand Dadaab camp (Ifo 2) as part of its contribution of resources for refugees in Kenya. In partnership with UNHCR and other development partners, has established educational facilities in the two main refugee camps (Kakuma and Dadaab) aimed at ensuring that refugee children access and continue receiving quality education as their basic right. Furthermore, a Memorandum of Understanding (MOU) between the State Party and UNHCR has been signed to ensure that there is a systematic and organized capacity-building programme for magistrates and judges on International Refugee Law and the Convention on the Rights of the Child. This training includes the requirement to expeditiously attend to issues concerning the violation of children’s rights. The State Party has also deployed Children’s Officers and Probation Officers in the camps to attend to cases involving refugee children.

Economic exploitation

99. The Employment Act No. 11 of 2007¹⁷ prohibits the worst forms of child labour and defines a child as any person who has not attained the age of eighteen years. It further provides that no person shall employ a child who has not attained the age of thirteen years, whether gainfully or otherwise, in any form of labour. In addition, the Children’s Act (2001) contains provisions for the protection of children subjected to the worst forms of child labour.

100. The Kenya Integrated Household Budget Survey of 2005 derived significant information on child labour in Kenya and this has facilitated the establishment of programmes to remove and protect children from the worst forms of child labour. This survey has aided the State Party to develop a National Action Plan on Prevention of Child labour (2004–2015).

101. The State Party, through the Steering Committee on Child Labour, is working with ILO to develop a national children’s database.

Street children

102. The State Party conducted a baseline survey on street children in 2010 to establish the root causes of children living and working on the street (both push and pull factors). This survey is helping the State Party address the underlying causes of this phenomenon.

103. The State Party has also established a Street Family Rehabilitation Trust Fund (SFRTF), which seeks to rehabilitate children working and living on the streets. Through this initiative the children are given special protection, education, health care and psychosocial support. In addition to this, there are other Non-State actors working with street children/family in reintegration programmes in major towns and cities. Between 2005 and 2010 the number of street children assisted was 8,820 while the number of children reintegrated with families during the same period being 800.

104. The State Party, in collaboration with UNICEF, has established and operationalized Child Protection Centres (CPCs) in Mombasa, Eldoret, Malindi and Garissa, and it is in the process of establishing additional CPCs in Nairobi, Nakuru, Kakamega and Siaya, where street children and other vulnerable children can access services such as health care, shelter, nutrition, education and vocational training.

105. The local authorities have been raising awareness on street children, including the establishment of specific programmes addressing needs and rights of street children. In this respect, vocational training centres for street children have been established in Meru, Isiolo, Machakos, Nyeri, Mombasa, Eldoret and Nairobi.

Sexual exploitation and trafficking

106. The National Plan of Action for Children 2008–2012 has addressed issues emanating from the World Congress against Commercial Sexual Exploitation of Children. The State Party however admits that issues relating to commercial sexual exploitation are interlinked to poverty, ignorance of parents and complications related to tracking perpetrators of child trafficking beyond the Kenyan borders.

107. The State Party has introduced a Code of Conduct for teachers, which ensures that stringent measures are in place to protect children against sexual exploitation.

¹⁶ Statistical Annex, Table 67.
¹⁷ Employment Act 2007, sect. 53 and 56.
108. The State Party has signed a MOU with neighbouring countries on combating trafficking in persons across borders.

**Commercial sexual exploitation of children**

109. The State Party, through its Penal Code, criminalizes the sale of children, child prostitution and child pornography. Furthermore, the Sexual Offences Act 2006 criminalizes sexual exploitation of children.

110. The State Party has also enacted the Counter-Trafficking in Persons Act, 2010, which provides for the prevention and suppression of trafficking in persons as well as punishment for trafficking of persons, especially women and children.

111. The State Party works closely with INTERPOL to support investigations into acts of child sex tourism perpetrated by foreigners in Kenya.

112. In 2006, a study was undertaken by the State Party and UNICEF on the extent and effect of child sex tourism on the Kenyan coast. As follow up on the study, by end of August 2009, about 20 hotels and tour companies had signed the International Code of Conduct targeting elimination of sexual exploitation of children in the tourism industry. Secondly, the Ministry of Tourism, MGC&SD, Ministry of Labour, and UNICEF are in the process of domesticate this international code of conduct into a national code of conduct targeting domestic tourism in all major towns in Kenya.

113. On child pornography the Communications Commission of Kenya (CCK) is mandated under the Kenya Communications Act of 1998 and subsequent amendments to regulate media activities. The Commission is responsible for providing broadcasting licenses and frequency spectrum. The Communications Act under section 20 also provides for the protection of children. It states that “a licensee shall ensure due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence, request for permission to conduct interview with a minor from the minor’s parents or guardian before conducting an interview with a minor”. The Act further provides for setting of watershed times when certain programmes can be aired on National television stations.

**Administration of juvenile justice**

114. In accordance with the Children Act, Section 73, the State Party has established children-specific courts, known as Children's Courts, in Nairobi, Mombasa, and Kakamega. Where there are no specific children courts, the Judiciary has gazetted magistrates to deal with matters concerning children.

115. The State Party, in collaboration with Japanese International Cooperation Agency (JICA), has provided comprehensive training to 130 officers drawn from police services, Children’s department Children's Court, Prisons and Probation department on a wide range of issues affecting children in the juvenile justice system, including the Convention of the Rights of the Child and in particular article 37, 39 and 40 on the administration of juvenile justice.


117. The State Party has put in place a programme for “special needs offenders”, in which children in conflict with the law are included.

118. The State Party is in the process of piloting, a web-based National Children's Database, which includes data on children in conflict with the law and other vulnerable children.

119. Through the office of the Police Commissioner, data is collected on all cases of persons in conflict with the law, including children. This data is published annually by KNBS in the Economic Survey and is used in policy formulation, including programme design for children and persons in conflict with the law.

120. The State Party has set up Child Protection Units at fourteen (14) police stations for care of children in need of protection. Where there are no protection units, children in need of protection are referred to different sections of remand homes.

121. The State Party and other partners operate diversion programmes for children in conflict with the law under the juvenile justice system. It has also put in place a corrections policy that encourages non-custodial sentences for children.

122. The State Party, through the National Legal Aid Programme under the Ministry of Justice, Constitutional Affairs and National Cohesion, is piloting the provision of legal aid to children in two projects in Nairobi and Nakuru. In addition there are three other pilot legal aid projects which also serve children in Kisumu, Eldoret and Nairobi.

123. Street children are not automatically treated as children in conflict in the law. Rather, street children are children in need of protection to benefit from rescue centres and CCI's for care, protection and rehabilitation.

124. All children placed in statutory rehabilitation institutions are provided with education, vocational training, psychosocial support and upon discharge they are integrated and resettled back into their communities.

**Minority and indigenous children**

125. The Constitution of Kenya, in Article 63, recognizes community land, which includes ancestral lands and lands traditionally occupied by hunter-gatherer communities. Schedule five of the Constitution further states that specific laws to protect such land shall be enacted within five years of the Constitution which came into force in 2010.

126. The Constitution recognizes the principle of affirmative action for vulnerable groups as provided under Article 27. Under Article 56, it has created an enabling environment for recognition and protection of the rights of indigenous and marginalized populations. Specific mention is made of the right to reasonable access to water, health services and infrastructure.
127. The State Party has also introduced a quota system that provides special places in national schools for children from minority and indigenous communities, as well as mobile schools for children in pastoralist communities.
128. The State Party, in 2007 created the Ministry of Development of Northern Kenya and other Arid Lands, which is mandated to support development and to address the specific problems experienced by pastoralist communities.
129. The State Party has scaled-up the provision of cash transfers for orphans and vulnerable children in all areas, including children from pastoralist communities.

Optional Protocols to the Convention on the Rights of the Child

130. The Constitution of Kenya 2010 states in article 2 (6) any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution. The State Party is in the process of legislating convention and treaty ratification bill. The final report on this process will be included in the 6th periodic report. We anticipate that the Optional Protocol on the sale of children, child prostitution and child pornography will come into force under this bill.
131. The State Party ratified the Optional Protocol on children in armed conflict on 28th January 2002. In this regard, it has put in place initiatives to protect children in areas prone to cattle rustling, militia activities in volatile borders, such as the Kenya/Somalia, Kenya/Sudan and Kenya/Ethiopia. Some of these initiatives include increasing security, disarmament programmes in cattle rustling areas, and peace and reconciliation initiatives.

II. Comprehensive national programme monitoring

A. Legal and policy framework

132. The Constitution of Kenya 2010 as the Supreme Law provides ample legal ground to review a host of national legislations to make them congruent to the Convention on Rights of the Child.
133. Legal instruments which were enacted during this reporting period and not mentioned elsewhere in this report are:
   (a) The Witness Protection Act enacted in 2008, and amended in 2010, offers protection to persons who are witnesses of crime;
   (b) The Kenya Citizens and Foreign Nationals Management Service Act 2011 that deals with matters relating to registration of births, citizenship and immigration;
   (c) The National Gender and Equality Commission Act 2011 which has provisions on gender and equality;
   (d) Education Act 2012.
134. Other policies enacted are:
   (a) The Education Sector Policy on HIV/AIDS;
   (b) The National Early Childhood Development Policy Framework (2006) and its Guidelines;
   (c) The Gender Policy in Education (2007);
   (d) Policy for Alternative Provision of Basic Education and Training (2009);18
   (e) National School Health Policy (2009) and its Guidelines;
   (f) Policy on Nomadic Education (2009);

B. Programme monitoring

1. HIV and AIDS

135. There has been a decline in both new infections and prevalence rate from a peak of 6.0 per cent in 2006 and 5.1 per cent in 2007. Nyanza continues to have the highest prevalence at 14.9 per cent and North Eastern province the least (0.8 per cent). The age category 25–49 has the highest prevalence (9.8 per cent) followed by 50–64 years (5.0 per cent) and 15–24 years being the lowest (3.8 per cent).19

2. Parental guidance, responsibility, recovery and maintenance (arts. 5 and 18, paras. 1 and 2)

136. The Constitution bestows parental responsibility to both parents whether in marriage or out of marriage. In this regard the Department of Children’s Services handled many cases relating to parental responsibility during this reporting period. A general trend noted from the statistics provided by the Department of Children’s Services between 2005 and 2010 showed that the cases of neglect involved fathers. This trend was exacerbated by the loophole in the Children Act 2001 regarding conditions for acquiring parental responsibility by fathers who are not married to the children’s mother. The Act made it optional for fathers of children born out of wedlock to acquire parental responsibility.

3. Separation from parents (art. 9)

137. Incidences of parental negligence of their children rose from 21,496 to 49,05720 between 2000 and 2010. Most of these cases resulted in court orders for removal of the child from the lawful parents as the last resort and placed in CCI or government rescue centres as alternative care institutions.

20 Statistical Annex, Table 18.
138. There were no cases of children separated as a result of exile or deportation of parents. Separation of children due to imprisonment of the mother only affected children older than four years who are not permitted to accompany their mothers to prisons. A total of 1,583 children were separated due to imprisonment of the mother.

4. **Family reunification (art. 10)**

139. The 2007/08 Post Election Violence (PEV) led to 8,165 children being separated from their families. Through the collaborative programme with CSOs a total of 6,165 children were reunited with their families as at December 2010 and will continue to reunite and resettle the remaining lot.

140. The State Party hosts many refugee children and child asylum seekers who occasionally arrive in Kenya as unaccompanied minors; in partnership with UNHCR and development partners. The State Party has further seconded Children’s Officers in the camps to assist in reunification of children.

5. **Adoption (art. 21)**

141. Provisions for Adoption are under Part 12 of the Children Act 2001, Section 155 (1) and the 2005 adoption regulations. These regulations are in line with the Hague Convention and are used by the courts in all matters concerning adoption.

6. **Protection from abuse and neglect, including physical and psychological recovery and social reintegration (arts. 19 and 39)**

142. The State Party registered CCIs increased from 302 to 646. Population of children in CCIs stood at 40,545 in 2010.

143. Children Rescue Centres are established under Part 5, Section 48 of the Children Act 2001 care for children in need of special protection as per article 38 of the Convention. During this reporting period, the State Party increased rescue centres from three to four. They housed 3,511 children as at December 2011.

7. **Health and health services (art. 24)**

144. The State Party has developed the National Health Sector Strategic Plan 2005–2010 and implementation of Annual Operation Plans (AOP), the Child Survival and Development Strategy (2008–2015) which identified the priority interventions/actions to address child health problems and the Human Resource for Health Strategic Plan. The two ministries responsible for health (Medical Services and Public Health and Sanitation) are engaging the Ministry of Finance on how to implement this Plan in a scheduled manner due to the financial implications.

145. The State Party is implementing the Community Health Strategy (CHS) to ensure that communities and individuals take charge of their own health. The strategy incorporates the Community Integrated Management of Childhood Illness (IMCI), home and community based health care. The ministry has community level health workers addressing the health needs of specific households.

146. The State Party has further exempted children under five years from payment of user fee under the State Party policy on cost-sharing. In addition, it has exempted pregnant women from paying for antenatal care, family planning and delivery at levels 2 and 3 facilities.

147. Development of the Reproductive Health Policy and a road map to accelerate maternal and new born care has also helped in providing health services to children.

148. The State Party has decentralized health services within the country. This has seen capital investment in constituency based health care provision such as construction of model health centres in each constituency and employment of 20 nurses per constituency among others. There has also been continued training of human resource (both pre-service and in-service) to meet the demand for both the public and the private sectors.

149. Improved immunization coverage as well as preventive and curative health care services for diseases closely related to child and infant mortality such as diarrhea and acute respiratory infections has been scaled up.

150. This has seen the State Party develop disease specific strategic plans for diseases such as HIV and AIDS, Tuberculosis, and Malaria.

8. **Adolescent health (art. 24)**

151. In 2006 the State Party launched the Adolescent Reproductive Health and Development Policy to cater for the needs of adolescents. This is vital as many adolescents die of reproductive health related complications yet there are no adequate services to address their plight. A few health facilities now have youth friendly services and will continue to encourage more health providers to establish youth friendly service centres.

9. **Health and sanitation (art. 24)**

152. The State Party has placed a lot of emphasis on environmental health and sanitation as exemplified by its creation of the Ministry of Public Health and Sanitation and development of Health Sector Policies including guidelines to support improved Sanitation and Hygiene. These include:

- National School Health Policy
- Guidelines for implementation of Environmental Sanitation and Hygiene Policy;
- Food Safety Policy.

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21 Statistical Annex, Table 20.
22 Statistical Annex, Table 22.
10. **Standards of living (art. 27)**

153. The indicators for improved standards of living and good health is access to improved sanitation, access to safe water and good housing, disposable income and education. In this regard the State Party has embarked on the following initiatives;

(a) The Kenya Slum Upgrading Programme (KENSUP);

(b) Giving incentives to encourage developers to construct low cost housing;

(c) Initiated a Housing Bill to provide legal basis for regulation, coordination, guidance, monitoring and evaluation of housing and human settlement including a building code to regulate planning and construction.

11. **Right of the child to education (art. 28)**

154. The State Party is committed to meeting the World Declaration on Education for All (EFA) Jomtien, Thailand (1990) goals and the Millennium Development Goal 2 (MDG 2) – Achieving Universal Primary Education by 2015. The detailed national education targets are stipulated in Kenya Vision 2030, the Medium Term Plan (2008 to 2012) and the Kenya Education Sector Support Programme (KESSP) (2005 to 2009–2010). This includes increasing primary net enrolment and completion rates to 100 per cent by 2015; improving internal efficiency in education by reducing repetition, drop-out rates, and increasing primary to secondary transition levels. To address inequalities in access, the Nomadic Education Policy and its budgeted implementation plan was put in place to enhance provision of learning opportunities for children in Arid and Semi-Arid Lands (ASAL).

155. Non Formal Education is also among the 23 Investment Programs under KESSP. The program seeks to increase access to quality basic education for children and youth who due to special circumstances are unable to attend formal schools.

156. The State Party has developed a program on Technical Industrial Vocational and Entrepreneurship Training (TIVET). This is one of the Investment Programs under the KESSP. The objective of this program is “to reduce inequity in society through increased training opportunities for the female students, the disabled learners, and learners from poor households”. The enrolment in TIVET increased by 32.1 per cent between 2008 and 2010.

157. The Ministry of Education and other key line ministries in partnership with development partners and Civil Society Organizations have instituted measures to ensure that vulnerable children and children in need of care and protection access quality basic education. These measures include, introduction of low cost boarding schools that target children from ASAL regions, mobile schools that target children of pastoral communities and School Feeding Programs.

158. The School Feeding Program under the School Health, Nutrition and Feeding Investment Program of the KESSP supported by the World Food Program and the MOE feed 661,209 children in 32 districts in the Northern part of Kenya and the Coast Province. It also targets some schools in the informal settlements of Nairobi. MOE Home Grown School Feeding Programme (HGSFP) also supports 659,249 children in 58 semi-arid districts. The State Party further expands the school feeding programmes during times of extensive drought to provide a cushion in the high risk areas and reduce school drop outs. The expanded school feeding program is supported by the Ministry of Special Programmes in partnership with MOE.

159. The State Party has set aside Ksh 300 million for purchase of sanitary towels in the 2011/2012 financial year. In addition to ensuring access, retention and participation of girls in education, the State Party zero-rated the taxes on sanitary towels to make them cheaper and affordable.

160. To fulfill the obligation of protecting the rights of children affected by conflict in their countries of origin and seeking refuge in Kenya, the State Party in partnership with non-state actors has established educational facilities in the 2 main refugee camps (Kakuma and Dadaab).

161. In 2007, the Ministry of Education established a grant program to support the OVCs in 3,215 primary schools. The Ministry had spent by 2010, Ksh 65.8 million. This grant has further been complemented by other initiatives such as PEPFAR Scholarship Funds, Cash Transfer Funds for OVCs, LATIF and the Constituency Development Funds for Scholarship.

162. The State Party in partnership with non-state actors has developed a Peace Education Curriculum which is aimed at fostering peaceful co-existence, national unity, patriotism and nurturing children as agents of peace.

163. The State Party has also established programmes in cattle rustling/militia prone areas and volatile borders such as the Kenya-Somalia, Sudan and Ethiopia aimed at ensuring children access quality education and their rights protected. Some of these initiatives include increasing security in the areas, disarmament programs in all the cattle rustling areas, peace and reconciliation dialogues among fighting groups.

164. The recent Post Election Violence (PEV) that was experienced in the country had a negative impact on the education sector. However measures to mitigate the calamity were put in place to ensure that children affected by PEV continued to access education. Some of these measures included establishing temporary schools within the IDP Camps and later integrating the children into schools near the IDP camps.

165. The State Party has worked in partnership with non-state actors, in areas such as Mt. Elgon region in conflict transformation and peace building initiatives targeting the local community as well as strengthening of the education sector, these efforts are also being replicated in other regions that are prone to conflict.

12. **Leisure, recreation and cultural activities (art. 31)**

166. The State Party is committed to promoting Leisure, Recreation and Cultural Activities. In this regard it has banned holiday tuition as part of its effort to ensure children rest and engage in leisure activities. Through the Local Authorities, there

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are by-laws that require all neighbourhoods and suburbs to set aside designated areas and space for children and the public to use for leisure, recreation, and cultural activities. In addition the State Party has mainstreamed leisure and cultural activities in the Basic Education Curriculum.

167. The State Party supports co-curricular activities such as Young Farmers Club, Peer Clubs, Child Rights Clubs, Debating Clubs, Boy Scout and Girl Guides clubs, Health Clubs, Disaster Prevention Clubs, and First Aid Clubs, Peace clubs among many others.

168. The Ministry of Sports and Youth Affairs have developed sports programs targeting children in and out of schools from a young age such as the Ligi Ndogo and Athletic Programs with an aim of coaching them into professional sports men and women.

13. Refugee Children (Art. 22)

169. The State Party wishes to state that the refugee population in Kenya has been fluctuating by nationality as a result of a number of factors, which include:

(a) Cessation of hostilities in Southern Sudan resulting in reduced inflows of new arrivals;
(b) Repatriation to Uganda, Rwanda, Burundi, Ethiopia, Mozambique has decongested the camp;
(c) Resettlement in third countries as per the principle of burden sharing;
(d) Increased hostility in Somalia has seen unprecedented new arrivals in Kenya.

170. In 2010 the refugee children population in Kenya was 218,686 including asylum-seeking children.24 Reflected in the nationality population of refugees’ trends, Somali children account for 81 per cent of all refugee children in the country while children account for 50.4 per cent of the refugee camp population.

171. The State Party, through the Department of Refugee Affairs, and UNHCR are involved in joint planning (Common Strategic Plan) in which children are identified as a vulnerable group in need of special care and protection. In pursuant of the best interest of the child, the State Party has taken an active role in the refugee camps through the Department of Children’s Services in the last four years. It has a designated an officer to sit on the Best Interest Determination Panel.

172. The State Party has put in place a family tracing mechanism programme for separated and unaccompanied minors, though the success rate is very low. This is due to existing hostilities in areas where tracing could be possibly instituted.

173. The State Party, through the Department of Children’s Services admits refugee children to Kenyan statutory institutions whenever they are in need of care and protection.

14. Child Labour (Art. 32)

174. The State Party has participated in the Community Based Innovations to Reduce Child Labour through Education (CIRCLE) global project, which is funded by USAID.

175. The State Party, in partnership with ILO/IPEC, implemented programmes on the elimination of child labour, especially its worst forms. Between 2005 and 2009, the Time Bound Programme (TBP) on the elimination of the worst forms of child labour was implemented.

15. Cash Transfer for Orphans and Vulnerable Children (OVC)

176. The programme for Cash Transfers for Orphans and Vulnerable Children (OVC) started on a pilot basis targeting 500 OVC households receiving Ksh 500 per month. Currently 124,991 households are benefiting at Ksh 2,000 per month. The allocation for OVC increased from Ksh 169.7 million to Ksh 827.7 million between 2005/06 and 2009/10. Direct cash disbursement increased from Ksh 150 million to Ksh 766.9 million during the same period.25

16. Drug Abuse (Art. 33)

177. The State Party in 2007 established the National Campaign Against Drug Abuse Authority (NACADAA) to replace NACADA with a reinforced mandate to coordinate a multi-sectorial effort aimed at preventing, controlling and mitigating the menace of drugs and substance abuse within Kenya. Under NACADAA, a toll free number was established to assist victims of drug and substance abuse. The toll free number provides children with a forum where they can access information, guidance and counselling on substance abuse. Children have also an option of using the Child Helpline 116 to seek assistance.

178. The Constitution of Kenya contains sufficient provisions to deal with impunity issues related to child trafficking and in this regard it has established a National Steering Committee to handle matters relating to Human Trafficking.

179. The State Party adopted Adoption Regulations in 2005 to regulate the national and international adoption and counter illegal adoption and child trafficking.

180. On data collection, the State Party, through the Ministry of Gender, Children and Social Development, has begun collecting information on trafficking cases from the police, media, foreign governments and UNODC.

18. Children Deprived of Liberty (Art. 37)

181. The State Party has established rehabilitation schools under Part V, Section 47 of the Children Act 2001, to rehabilitate

24 Statistical Annex, Table 67.
25 Statistical Annex, Table 92.
III. Key highlights on statistical data

182. The State Party’s commitment to invest in social services to improve the welfare of its population has been consistent in the past years. The number of educational institutions increased from 63,487 units to 74,408 units between 2005 and 2010. There was marginal rise in the total number of pre-primary institutions from 32,043 units to 38,523 units during the same period. This translates to an increase of 6,480 units. There was an increase of 33.4 per cent in enrolment of pupils in pre-primary education in 2010. Between 2005 and 2008, Rift Valley province recorded the highest enrolments rates while North Eastern recorded the lowest enrolment rates.

183. Between 2005 and 2010 the enrolment increased from 7,591,500 to 9,381,200 an increase of 23.6 per cent. Secondary enrolment rates increased from 93,449 to 1,701,501.

184. The number of health institutions increased from 4,912 to 7,111 between 2005 and 2010 an increase of 44.8 per cent. Rift Valley province recorded the highest number of health institutions while North Eastern had the lowest number of health institutions.

185. In 2009 and 2010 children deaths due to illness decreased by 4.2 per cent from 46,360 to 44,398 respectively.

186. The three major causes of death of children include diarrhoea, malaria and pneumonia. Children deaths as a result of traffic or other accidents accounted for 2 per cent of deaths during the reporting period.

187. There has been an increase in birth registration of children from 541,664 to 749,693 between 2005 and 2010. These figures include late registration that accounts for 37,283 plus refugees and asylum seeking children. Rift Valley province recorded the highest birth registration (162,524) for the year 2010 followed by Western (122,409), Eastern (108,325) and Nyanza (107,072).

188. A total of 6,552 males and 6,237 female refugee children were registered at birth in the year 2010 while 3,003 female and 3,555 male refugee and asylum seeking children were registered after six months.

189. Regarding children accessing information, the State Party notes that there is an increment in the number of libraries accessible to children from 36 to 56 during this reporting period. The number of mobile libraries decreased from 8 mobile buses to 4 in 2010 due to high cost of repairs and maintenance. The period under review is marked by an increase of 2,581, 469 library users who include refugees, children with disabilities, girls and boys accessing information in libraries.

190. The total number of OVC who were supported between 2005 and 2010 is 1,059,305 and household/families assisted were 302,658 between 2005/06 to 2010/11. There has been an improvement in infant mortality rates and under-five mortality rates from 77/1000 to 52/1000 and 115/1000 to 74/1000, respectively between 2003 and 2008 and decrease in the number of children infected by HIV and AIDS from 244,767 to 229,953 between 2005 and 2010. The number of children who received assistance including medical treatment, counselling, care and support increased from 10,500 to 437,469 between 2005 and 2010.

191. The number of children on ART increased from 1,500 to 36,000 in 2010, and 48,000 in 2011. The number of children living with relatives/foster care guidance increased from 10,500 to 437,469. Generally there has been a decrease in the number of orphans as a result of HIV and AIDS from 1,153,650 to 1,106,331.

192. There has been an increase in the number of health institutions from 4,912 to 7,111 between 2005 and 2010. Rift Valley had the highest increase in the number of institutions (1,867) compared to other province while North Eastern province recorded the least at 264.

193. In regard to vaccination coverage, the proportion of children aged 12–23 months who were fully immunized increased from 57 per cent to 77 per cent between 2003 and 2008/09 while the proportion of children who have never received any of the recommended vaccinations reduced from 7.4 per cent to 3.2 per cent during the same period. The country has also seen the proportion of children who are immunized against measles rise from 72 per cent to 85 per cent between 2003 and 2008/2009. Central province (86 per cent) recorded the highest proportion of children fully vaccinated followed by Rift Valley province (85 per cent) while Nyanza and North Eastern provinces recorded the lowest proportion of 65 per cent and 48 per cent respectively. The full immunization coverage rate in the period 2005 to 2010, for children under one year increased from 57 per cent in 2003 to 71 per cent in 2008/09, with the high coverage rates being registered in North Eastern (89 per cent), and Central (86 per cent), provinces while Eastern and Rift Valley provinces recorded the lowest rates of 64 per cent.

194. The ECDE enrolment rose from 1,643,644 million to 2,193,071 million between 2005 and 2010 while the gross enrolment rose from 57.9 per cent to 60.2 per cent between 2005 and 2008. The number of Public ECDE centres increased from 32,043 to 38,523 during the same period. The State Party notes that the number of teachers increased significantly by 18.8 per cent from 78, 230 in 2008 to 92,955 in 2009 with the number of trained ECDE teachers increasing from 50,973 to 73,012 between 2005 and 2010.
IV. Factors and difficulties

A. Child poverty

204. Poverty risks are high among children between the ages of 0–14 years (averaging about 16 per cent) and among adolescents aged 15–24 years (averaging about 12 per cent) in contrast to other age categories. Children of the poor living in Arid, Semi-Arid and urban informal settlements are most affected. Other factors which contribute to poverty are unemployment, alcoholism, irresponsible parenting, increasing population growth, drought, famine, impact of HIV/AIDS, natural recurrent calamities and global economic meltdowns. This observation confirms that, children are not only vulnerable to poverty, but also validates the fact that poverty tends to affect children more than any other age group.

B. Resource allocation

205. There is inequitable balance between Recurrent and Development budget and this often fuels poverty, social deprivations, and spatial disparities and perpetuate the vulnerability of both boys and girls and women in Kenya. The State Party has faced a challenge in tracking resources allocated for children rights and welfare visa-a-visa the benefits derived by the child. Although there has been substantial increase in the budget of the Department of Children’s Services and NCCS, this increase does not match the overwhelming services required for children in need of special protection.

C. Public debt

207. Public debt continues to be a major hindrance to government’s efforts to implement pro-poor development programmes as a significant proportion of the budget is allocated to servicing public debt. Over the period 2005–2010, the total public debt increased from Ksh 789,076 to Ksh 1,229,406.
D. **Enforcement of legal and policy instruments**

208. Although the State Party has good legal and policy provisions for protection of children, the enforcement of these laws and policies is hampered by attitudes, cultural practices and ignorance.

E. **Enforcement of civil rights and freedom**

209. Ignorance of the public, social-cultural and religious inhibitions, long distances to birth registration centres, and apathy regarding statutory requirements continue to negate the State Party efforts to have all children births and deaths registered.

210. The State Party does not have adequate mechanisms to prevent and protect children from accessing harmful information through the internet.

211. Informal “adoptions” and “foster care” at the community level is a common practice. The lack of documentation for these informal arrangements makes it impossible to monitor them, thereby making the children vulnerable to abuse and exploitation.

F. **Access to delivery and post-natal care services**

212. Women with low levels of literacy and those living below the poverty line of one dollar per day often do not seek services of skilled birth attendants. Most mothers who deliver at home do not attend postnatal care clinics. This is partly due to long distance to health facilities, and lack of information on the importance of early postnatal care for treatment of complications arising from delivery.

213. There is still poor health seeking behaviour and inadequate early recognition of danger signs in pregnancy. This is due to lack of information as well as lethargy on the part of communities. These are further aggravated by retrogressive cultural beliefs and practices.

G. **Children with disabilities**

214. Early detection of disability is still a challenge as most parents seek help as the last resort. This coupled with household poverty, low literacy rate among women, lack of information; cultural beliefs about causes of disability leave some children with disabilities unattended.

H. **HIV and AIDS**

215. There are limited pediatric HIV diagnostic facilities and most HIV-infected children, are diagnosed very late in the course of illness, or not at all. Yet, for the most part, HIV infection in children is preventable.

I. **Access to education**

216. The State Party has done a lot with regard to provision of primary education. There has been increases in the enrolment rates across all levels during the reporting period but retention and transition rates of girls has remained low compared to boys. This is contributed by a number of factors such as harmful cultural practices, preference given to boys to go to school, poverty and early pregnancies.

217. Although the government provides free primary and day secondary education, schools still charge levy fee for other services posing a hindrance to the participation of girls and boys particularly those from poor households. Children from Western province said “Although the government says that it (primary education) is free, in our school we pay money for games, examinations, development, to buy desks etc. it is not compulsory since many children are not going to school and nothing is done” Children in North Rift said “We pay for exam fee, P.T.A fee, Electricity money, remedial money, and development money.”

218. Although the number of street children is growing by day the state party has no system of monitoring the day to day entry of children into street life and how best to stop it.

V. **Way forward**

219. The State Party is committed to eradication of extreme poverty under Goal one of the MDGs. Special attention will be given to eradication of extreme child poverty through expanded social protection programmes and rationalization of national social protection policy.

220. The State Party through the Ministry of Planning, National Development and Vision 2030 launched the Social Budgeting Guidelines in June 2010 to better link national and sub national planning and budgeting with community needs and priorities. This model of social budgeting will continue to be reviewed in order to accommodate the new structure of governance and address all social sectors with specific attention to vulnerable groups such as children, the elderly and the disabled.

221. The State Party will develop and implement a National Monitoring and Evaluation Framework under the auspices of the NCCS. It is also expected that the National Children Database will streamline monitoring and evaluation of children’s programmes in the Country. This will enable the State Party to critically review and assess performance and impact of various programmes and interventions.

222. The State Party will continue to strengthen KNCHR&EC to adequately monitor and protect the human rights of all citizens including children.

223. The State Party and Non State actors will continue to raise awareness on the impact of retrogressive cultural practices on children and in particular the girl child and ensure such cultural practices are eventually eradicated.
224. The State Party will continue to nurture and strengthen all Children Assemblies in the country and promote their expansion in every school and mainstream the principle of Best Interests of the child in Government Ministries and Counties.

225. With the expanded programmes on birth registration including awareness through schools and public meetings, the State Party hopes to reduce apathy, and discourage negative attitudes toward birth and death registration. It will also expand the use of mobile birth registration facilities to take the services in communities which are hard to reach and especially in the arid and semi-arid areas and informal settlements in Kenya.

226. The State Party through the Ministry of Information and Communications will develop Policy Regulations targeting children, parents, caregivers and cyber café operators to prevent and control access of harmful information through the internet.

227. The State Party will put in place measures to strengthen the family support systems to cater for children in need of care and protection including those separated from their parents, deprived of family environment and in need of psychosocial support.

228. The State Party is bound by the Constitution Article 43 (1) which guarantees every person, the right to the highest attainable standards of health. This includes health care services. This is further reinforced by Article 53 (1) (c) which specifically guarantees children the right to basic nutrition, shelter and health care. All future interventions as regards this cluster will continuously make reference to the Constitution.

229. The State Party will continue to support basic education in general and in particular increase the number of teachers in every school in order to comply with the MOE regulations on ratio of pupils to teachers (40:1). More funds will be invested in infrastructure development to decongest overcrowded facilities at primary school level and improve the learning environment for children. Emphasis will be placed on improvement of infrastructure in Special Needs and Early Childhood Education.

230. The State Party will pay special attention to Counties with low enrolment, retention and transition rates. This will include development of a special strategy to increase hardship allowance to attract and retain qualified teachers in arid and semi-arid areas, develop effective mechanisms that will attract deployment of female teachers to ASAL area, expansion of mobile schools, and reduction of conflict related occurrences including improved food security in arid and semi-arid areas and informal settlements. The State Party shall continue to support the construction of low cost boarding schools in ASAL regions as outlined in the Alternative Provision of Basic Education and Training Policy (2009).

231. The State Party will continue to implement Counter Trafficking in Persons Act 2010, which provides for prevention, suppression and punishment of trafficking in persons, especially women and children.

232. The State Party will expedite the legislation on ratification of treaties and conventions as provided in Article 2 (6) of the Constitution. This will make ratified treaties and conventions part law of Kenya.

233. The State Party will make all efforts necessary to increase its budget allocation to the Department of Children’s Services and the National Council for Children’s Services, in order to expand and increase services to children in all 47 counties.

234. The State Party will endeavour to develop a comprehensive strategy to address the street children phenomena.

235. The State Party will continue to expand support to vulnerable families through cash transfer and other social welfare programmes.
Annex 2

References

Dr. Nyokabi Kamau – Gender Mentor, CEF – Kenya: Mainstreaming Gender in Education Using the Group Mentoring Approach.
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Part I

In this section, the State party is requested to submit its responses to the following questions.

1. Please provide the Committee with updated information on the proposed amendment to the Children Act 2001.

2. Please inform the Committee of the major outcomes of the National Plan of Action for Children for 2008–2012 as well as the main contents of the draft National Plan of Action for Children for 2013–2022.

3. Please explain the reasons why social sector expenditure is declining as a share of the national budget, despite the overall economic growth and the expansion of the Government’s budget in recent years. Please also elaborate on the measures taken to prevent and eradicate poverty, particularly in the health-care, education, justice and law enforcement sectors.

4. Please provide detailed information on the measures taken to prevent and combat the attacks against and killings and trafficking of children with albinism in the State party, to protect these children and to prosecute and punish those responsible for these crimes.

5. In the light of information received about ill-treatment of children by members of the police force, please provide information on investigations and prosecutions conducted and on the sanctions pronounced, if any. Please also inform the Committee about the kinds of services that are provided for the care, recovery and reintegration, including the psychological support, of child victims of torture and other cruel, inhuman or degrading treatment or punishment.

6. Please indicate the progress made in ensuring universal and free access to a birth certificate for all children residing in the State party, including refugee children, children of Nubian descent, Somali indigenous children in Kenya, and intersex children. Please also indicate the measures taken concerning children belonging to the Nubian, Pemba, Galjel and Makonde communities who remain stateless, in particular those between 8 and 18 years of age.

7. Please clarify whether all forms of violence, including corporal punishment, are prohibited in all settings, and indicate the measures taken in practice to combat violence, abuse and harassment committed in the home and in educational and care institutions.

8. Please indicate whether an investigation was conducted into the alleged use of tear gas against children demonstrating against the grabbing of their playing field by a private developer in January 2015 at Lang‘ata Road Primary School, and if so, what was its outcome in terms of the legal proceedings engaged and the sanctions pronounced. Please also indicate the measures taken to protect public schools from land grabbing by private enterprises.

9. Please provide detailed information on the measures taken to combat harmful practices that remain prevalent in the State party, especially female genital mutilation, child marriage, and “beading” which is practised notably in the Samburu community. Please also elaborate on measures to address the medicalization of female genital mutilation, to ensure effective enforcement of the laws and policies on the above-mentioned practices, and to ensure victims’ access to justice.

10. Please elaborate on the development of a policy and legal framework for child adoption since the establishment in February 2015 of the Expert Committee on Child Adoptions. Please also provide information on any urgent measures taken to prevent and investigate cases of child abduction and child trafficking for adoption, and their outcome.

11. Please elaborate on the measures taken to ensure inclusive education for children with disabilities, including those living in remote areas and in refugee camps. Please also provide information on the schools that have already implemented an inclusive policy and on the measures taken to progressively convert specialized classes into inclusive classes.

12. Please provide an update and elaborate on the efforts made and progress achieved over the past three years in reducing regional disparities, particularly in arid and semi-arid areas and in informal urban settlements, in relation to health, nutrition, water and sanitation, and education, and to early childhood development services, particularly for girls, children with disabilities, children deprived of a family environment, children living with HIV/AIDS and indigenous and minority children. Please also provide information on measures taken to ensure that devolution of power from the central government to county governments does not disrupt the delivery of social services or increase regional disparities.

13. Please indicate the progress made and resources allocated for the implementation of laws and policies to combat child malnutrition, including the National Food and Nutrition Security Policy 2011, the National Nutrition Action Plan 2012–2017 and laws and policies on the promotion of breastfeeding. Please elaborate on the sexual and reproductive health information and services that are available to adolescents and indicate whether adolescent girls can have access to safe abortion and post-abortion services.

14. Regarding the policy referred to in paragraph 39 of the State party report, please comment on information received according to which the mandatory requirement of a birth certificate for national examinations at primary and secondary schools denies access to education for children without birth registration, especially refugee children and children belonging to ethnic minority or indigenous groups, such as children of Nubian descent and Somali indigenous children in Kenya. Please also provide information on measures taken to ensure equal access to education for children without a birth certificate.

15. Please provide information on measures taken to eliminate the hidden costs of education, to improve the quality of education, and to ensure the enrolment in school of children belonging to disadvantaged and marginalized communities, such as children in pastoral communities and informal urban settlements, children with disabilities and refugee children.
16. Please update the Committee on the measures taken to implement the recommendations made by the African Commission on Human and Peoples’ Rights in 2010 on the Endrois case, regarding protection of the rights of indigenous children to culture, life and development through the use of traditional land and enjoyment of a quality natural environment.

17. In the context of the State party’s policy of relocating all refugees, particularly Somali refugees, to refugee camps in Kenya, or of deporting them to their country of origin, please explain the measures taken to protect the rights of refugee and asylum-seeking children, including the rights to non-refoulement, family reunification, personal liberty, education and health. Please comment on information received according to which refugee children were detained and were affected by family separation and the disruption of their education during the security operations in 2014 aimed at relocating refugees from urban areas to refugee camps. Finally, please inform the Committee of the outcome of the investigation by the Office of the Inspector General of National Police Services, in 2012, into police brutality in the Dadaab refugee camp.

18. Please provide the Committee with detailed updated information on the implementation of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012, and on any other measures taken to prevent displacement and to protect and assist the resettlement of internally displaced children, including those displaced due to the 2007 and 2008 post-election violence, those displaced due to other violence and those displaced due to the implementation of development projects.

19. Please provide detailed information on any investigation conducted into the allegations of child sexual abuse allegedly perpetrated, since 2013, by Kenyan peacekeepers in Somalia.

20. Please provide an update on the progress made towards the establishment of a juvenile justice system in the State party in line with the amendment of the Children Act 2001, including in relation to raising the minimum age for criminal responsibility to bring it into line with internationally accepted standards.

21. Please provide information on measures taken to prevent the radicalization of children and the recruitment of children into non-State armed groups, notably by addressing the root causes of such a phenomenon. Please also indicate the measures taken to ensure that children’s rights are protected during anti-terrorism and security operations. Finally, please indicate the measures taken or planned for preventing the marginalization of children who belong to the communities suspected of collaborating with terrorist groups.

Part II

In this section, the Committee invites the State party to briefly (three pages maximum) update the information presented in its report with regard to:

(a) New bills and laws, and their respective regulations;
(b) New institutions and their mandates, and institutional reforms;
(c) Recently introduced policies, programmes and action plans and their scope and financing;
(d) Recent ratifications of human rights instruments.

Part III

Data, statistics and other information, if available

1. Please provide consolidated information about the budget required for the implementation of the proposed amendment to the Children Act 2001 and of the National Plan of Action for Children for 2013–2022, indicating the percentage of each budget line in terms of the total national budget and gross national product, and the geographic allocation.

2. Please provide, if available, updated statistical data, disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, covering the past three years, on:

(a) The number of complaints of violations of the rights of the child that have been received and followed up on by the Kenya National Commission on Human Rights and the National Gender and Equality Commission;
(b) The number of incidents of violence, including sexual violence, committed by law enforcement officers, against children who are the subject of investigation and/or prosecution, and the number of child victims of police violence;
(c) The number of cases of violence against children, including corporal punishment and sexual violence; please also provide information on the relevant investigations and the prosecution of the perpetrators and on the sentences imposed by the courts. Please also indicate the number of cases of alleged sexual violence brought to court but eventually settled out of court, and the reasons for the choice of non-judicial settlements;
(d) The number of adolescent girls who have access to information, services and care relating to sexual and reproductive health, including access to contraceptives;
(e) The prevalence of underweight and stunting among children aged under 5;
(f) The number of children benefitting from early childhood development programmes;
(g) The number of refugee and asylum-seeking children currently in the State party, the number that are in refugee camps in the State party, and the number that have been returned to the State of origin;
(h) The number of internally displaced children in the State party, including those displaced in relation to the implementation of development projects;
(i) The number of children in street situations;

(j) The number of children engaged in child labour, including the worst forms of child labour, and the number of investigations and prosecutions made in response to allegations of illegal child labour or the worst forms of child labour. Please indicate the type of work;

(k) The number of children in conflict with the law who have been reported to the police, who have been arrested, and who have been in detention (pretrial detention, prison, and statutory rehabilitation institutions), and the number of children under the age of 18 tried and sentenced as adults. With regard to the children in detention, please indicate whether they are detained alongside adults;

(l) The average duration of pretrial detention for children, the types of sentences and punishments imposed by courts for children in conflict with the law, and the number of reported cases of abuse and ill-treatment of children during their arrest and detention;

(m) The number of children involved in sexual exploitation, pornography and trafficking.

3. Please provide data disaggregated by age, sex, socioeconomic background, ethnic origin and geographical location, covering the past three years, relating to the situation of children deprived of a family environment, on:

(a) The number of children separated from their parents;

(b) The number of children living in child-headed households;

(c) The number of children placed in institutions;

(d) The number of children placed with foster families;

(e) The number of children adopted domestically or through inter-country adoptions.

4. Please provide data, disaggregated by age, sex, type of disability, ethnic origin and geographical location, covering the past three years, on the number of children with disabilities:

(a) Living with their families;

(b) In institutions;

(c) Attending regular primary schools;

(d) Attending regular secondary schools;

(e) Attending special schools;

(f) Out of school;

(g) Abandoned by their families.

5. Please provide the Committee with an update of any data in the report which may have been superseded by more recent data collected or affected by new developments.

6. In addition, the State party may list areas affecting children that it considers to be of priority with regard to the implementation of the Convention.
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Addendum

Replies of Kenya to the list of issues*

* The present document is being issued without formal editing.

[Date received: 15 October 2015]
Part I

Reply to the issues raised in part I, paragraph 1, of the list of issues (CRC/C/KEN/Q/3-5)

1. The Children Act Amendment Bill was, in mid-2014, submitted to the Kenya Law Reform Commission which then forwarded it to the Constitution Implementation Commission (CIC). The CIC, in consultation with a number of stakeholders, deliberated upon the Bill and decided that a new statute be developed since the proposed amendments exceeded the threshold for amendment. This therefore, means that the Children Act 2001 will be repealed and another Statute developed. The development of the new Statute has commenced.

Reply to the issues raised in part I, paragraph 2, of the list of issues

2. The State developed the National Plan of Action for Children (NPA) 2008-2012 based on the four pillars of the Convention on the Rights of the Child. Upon its expiry, an analysis to take stock of the achievements, challenges and opportunities was carried out. The following are some of the major outcomes.

3. Regarding the right to survival:
   • The period 2010 and 2012 saw the development of significant policy documents in the area of health that were guided by the Constitution. Major Policies include; the Health Policy framework, draft Kenya Health Sector Strategic Plan II and Health Law, Food and Nutrition Security Policy and the Breast Milk Substitute and Control Bill.
   • There was also an increase in the health budgetary allocation to meet the Abuja Declaration from 47 billion in 2009/2010 to 60 billion Kenyan shillings in 2011/2012.
   • The under 5 mortality rate decreased from 70 percent in 2008 to 56 percent in 2012.
   • There was increased immunization coverage from 71 percent in 2008 to 80 percent in 2012.
   • Prevalence of HIV declined from 6.3 percent in 2009 to 5.9 percent in 2012. The mother to child transmission rate fell from 23 percent in 2009 to 15 percent in 2012.

4. Regarding the right to development:
   • The Gross Enrolment Rates (GER) and Net Enrolment Rates (NER) at pre-primary school levels saw an increase from 59% and 42.1% respectively in 2007 to 65.6% and 52.4% in 2011.
   • At primary level, the GER increased from 108.9% from 2011 to 115.8% in 2012. The NER on the other hand marginally decreased from 95.7% in 2011 to 95.3% in 2012.
   • Secondary education registered an increase in the number of pupils enrolled from 1,382,211 in 2008 to 1,914,823 in 2012.
   • Transition from Primary school to Secondary School improved from 57.3% in 2005 to 76% in 2012.
   • In addition a Sessional Paper of 2012 on Integration of health and nutritional support for children under five years of age attending day care centers at ECDE was developed to enhance holistic child development.
   • The Special Needs Education Policy Framework was also developed in 2010 to provide a roadmap for engagement with stakeholders in the sector to transition to an inclusive education approach by 2015. Further, the allocation to Special Needs Education allocation increased from 441.07 million Kenyan shillings in 2008/2009 to 444.2 million Kenyan shillings in 2011/2012.

5. The State also developed policies that promote parental family care for children by encouraging family, kinship, foster care, adoption and guardianship.

6. Laws and policies that were developed under the 2008-2012 to guide the education sector include:
   • Teachers Service Commission Act (2012).
   • National School Health Policy (2010).

7. Guided by the NPA, the Government has also put in place measures to promote recreation, leisure and play as outlined in the National Children Policy 2010 to enhance the holistic development of children.

8. Regarding the right to protection:
   • Article 53(1) d of the 2010 Kenya Constitution provides for protection of children from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous or exploitative labour.
   • The Kenya National Children’s Policy (2010) makes a provision that all children especially those with disabilities and those with special needs have a right to be protected from any harm that may interfere with their growth and development.
   • The review of the National Plan of Action 2008–2012 indicated that the Constitution and other legislations have strengthened the child protection system in several areas including trafficking of persons, alcoholic drinks control and prohibition of Female Genital Mutilation. Kenya has an elaborate legal and policy framework to protect children from all forms of abuse and exploitation.
9. Laws, policies and guidelines that have been developed to protect children include:
   - The Counter Trafficking in Persons Act (2010).
   - Prohibition of the Female Genital Mutilation Act (2011).
   - Standards for Quality Improvement for OVC services.

10. Allocation for social protection for OVC increased from 579.00 million Kenyan shillings in 2008/2009 to 1,026.90 million Kenyan shillings in 2011/2012. Direct cash disbursement increased from 546.00 million Kenyan shillings in 2008/2009 to 896.90 million Kenyan shillings in 2011/2012.

11. Regarding the right to participation:
   - The involvement of children and young people during the drafting of the current Constitution demonstrated the significance of meaningful participation of children and young persons in decision-making process that could impact their lives.
   - Children have also participated in reporting on the implementation of international and regional legal instruments such as the Convention on the Rights of the Child.
   - The Kenya Children’s Assembly was also established in 2012 at the National, County and Sub-County levels to enhance child participation by providing regular forums where children can voice their concerns regarding their rights and welfare.
   - Current NPA 2015-2022

12. The NPA was developed through a consultative process with key partners and stakeholders. It is organized according to the four pillars of the Convention which are; survival, development, protection and participation. The first four chapters highlight the overall situation for each pillar, the legal and policy framework as well as the planned activities to achieve relevant targets during the period 2015-2022.

13. Coordination and Monitoring and Evaluation (M&E) mechanisms are important processes of any plan of action and have been incorporated in the NPA. Coordination ensures that the planned activities run smoothly while M&E helps in improving performance. The plan also highlights expected outcomes, broad objectives, outputs, indicators and time frame, which are outlined in the planning matrix.

Reply to the issues raised in part I, paragraph 3, of the list of issues

14. The percentage spending in health has fallen from 5.2 to 3.3% of the National budget between 2012 and 2014. This can be attributed to the devolution process where most of the functions have been devolved to the County levels. The falling budget is most likely compensated by what the Counties are allocated. The data on these allocations at the County level is yet to be made available. Allocations for the education sector have been rising 15%- 16.6% between 2012 and 2013. This figure is likely to keep rising because the function is not devolved, with the exception of the Early Childhood Education (ECDE).

15. To combat corruption the Government has taken the following steps:
   - Reviewed the Legal, Policy and Institutional Framework for fighting corruption in Kenya. It has for instance developed Whistle Blower Protection Bill, 2015, the National Ethics and Anti-Corruption Policy and reviewed the Public Officer Ethics Regulations, 2011.
   - Implementation of the National Anti-Corruption Campaign Programme.
   - Mainstreamed corruption eradication in all sectors of the economy and has set up integrity committees in all Ministries, Departments and Agencies (MDAs) and trained integrity officers.
   - Carried out reforms in most public institutions. For instance the judicial reforms following the adoption of the current constitution in 2010 which led to: vetting of all judges and magistrates, competitive hiring of judges, increased judicial manpower to reduce backlog in courts, modernization of judicial infrastructure including cashless payment system for court services. Disciplinary action has also been taken against Judicial Officers and staff who have been linked to cases of corruption and impropriety.
   - Devolution as provided under the Constitution and the corresponding legislation- Public Finance and Management Act 2012 and the County Government Act 2012 has strong public participation channels in social services.
   - The government has transitioned public procurement from paper to electronic format to increase transparency and reduce corruption.
   - The Commission of Administrative Justice (CAJ) has played a prominent role in receiving, reviewing and responding to public complaints touching on service delivery.

Reply to the issues raised in part I, paragraph 4, of the list of issues

16. Albinism in Kenya is categorized as one form of disabilities and children with albinism, therefore, qualify for benefits ascribed to persons with disabilities as stipulated in the Constitution and the Persons with Disabilities Act of 2003.

17. The following are some of the measures the state has put in place to ensure the safety of persons, including children, with Albinism:
• The establishment and funding of the National Council for Persons with Disabilities (NCPWD) whose functions include:
  • Formulate and develop measures and policies designed to achieve equal opportunities for PWDs.
  • Recommend measures to prevent discrimination against PWDs.
• Encourage and secure the rehabilitation of PWDs within their own communities and social environment.
• Identify and register persons with disabilities and institutions and organizations giving services to PWDs.
• Create public awareness on Disability.
• NCPWD is currently registering people with Albinism both at the County and Sub-County levels. It is also managing this year’s Government allocation of Kshs. 100 million to support activities for protection of persons with albinism.
• The Government has also collaborated with other stakeholders including the media and neighboring countries to advocate for the rights of people with albinism. These advocacy efforts include sensitization of the public to demystify the myths surrounding the presumed value in the body parts of persons with albinism.
• There is increased vigilance internally and also at the borders with Tanzania to ensure that children with albinism are not kidnapped and trafficked across the border. Stiff penalties have been meted out on perpetrators of crimes against people with Albinism as prescribed in the Penal Code and the Counter Trafficking in Persons Act 2010.

Reply to the issues raised in part I, paragraph 5, of the list of issues

18. Article 53 of the Constitution provides for protection of children from all forms of violence and inhumane treatment. On this basis, all children whose rights have been violated in such manner have equal access to justice regardless of the status of the perpetrators. A case in point is where police officers were recently arraigned in court for allegedly stripping, taking and circulating on social media, nude pictures of a female student they found in possession of drugs hidden in her private parts. The officers are on interdiction until the case is determined.
19. The Government has also put in place measures to enhance the protection of children from all forms of abuse. These include; the establishment of a toll free — 24 hour — child help line 116, the establishment of Rescue Centres and Gender Violence Recovery Centres, legal aid clinics that offer free legal advice to the public, the establishment of child help desks in all police stations and Child Protection Units (CPU’S), as well as the establishment of children’s courts.

Reply to the issues raised in part I, paragraph 6, of the list of issues

20. Registration of births in Kenya is guided by the Constitution and the Births and Deaths Registration Act. Section 53 of the Constitution states that every child born in Kenya has a right to a name and nationality while Section 14 states that any child below the age of eight and whose nationality and parents are not known, is presumed to be a citizen by birth and is therefore, entitled to a birth certificate. The Births and Deaths Registration Act provides for the registration of all births occurring in Kenya immediately they occur irrespective of creed, nationality, race or marital status of a child’s parents. The Act also provides for registration of births of Kenyans occurring abroad.
21. Section 149 of the Births and Deaths Registration Act, confers the Department of Civil Registration, the responsibility to notify births and deaths to various categories of entities such as parents, health institutions, in-charges of quarantined individuals in institutions such as Prisons, Institutions of care and Refugee camps. The Department works closely with these institutions to fulfill its mandate.
22. In cases of refugees, the Government collaborates with UNHCR to register all of these events and issues certificates within the camp.
23. Processing of birth certificates attracts statutory fees as stipulated in Section 149 of the Births and Deaths Registration Act. However, the Government is working towards eliminating this cost and has proposed issuing the first copy of birth certificate free of charge in the National Registration and Identification Bill 2012.
24. Other measures to ensure universal birth registration include: advanced plans to pilot issuance of birth certificates to children during routine immunization regime; establishment of mobile universal registration centers at the Counties; establishment of “one stop-shop” registration centres dubbed Huduma Centers; issuance of birth certificates to adopted children and; intensified advocacy efforts by the Government and other stakeholders on the significance of registration.

Reply to the issues raised in part I, paragraph 7, of the list of issues

25. The Constitution of Kenya, specifically the Bill of Rights is categorical that the state and every state organ has a duty to observe, respect, protect, promote and fulfill the rights and freedoms of every Kenyan. Article 53 of the Constitution, further states that every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.
26. The Basic Education Act 2013 outlaws corporal punishment in schools and states that no pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment in any manner, whether physical or psychological. The Act also provides for punishment on all offenders who violate this right.
27. The Prevention Against Domestic Violence Act 2015, provides for the protection and relief of domestic violence including physical abuse for all persons including children.
28. To give effect to the provisions of the law, the Government has done the following:
   • Issued a circular to all schools banning Corporal punishment and most schools have consequently established and/or
     strengthened Guidance and Counseling units to deal with discipline issues.
   • It regulates the establishment and operations of all Charitable Children’s Institutions (CCIS) and has made it a requirement
     for them to develop a Child Protection Policy before they can be registered.
   • It has also developed Guidelines on Best Practices; Manual for Managers of Charitable Children’s Institutions to equip them
     with knowledge and skills on care giving including positive forms of behavior management.
   • It makes regular visits to these institutions and closes any that is found to contravene the law in terms of child care.
   • It has developed Guidelines for Positive Discipline methods in schools. The product of these Guidelines will be teacher’s
     Hand Book and an accompanying training manual.
   • It has, in collaboration with stakeholders, established a 24 hour toll, free helpline 116 for children through which they can
     report incidences of child abuse including corporal punishment, and get appropriate help.
   • It has also developed and continues to implement an action plan to address the various forms of violence against children
     based on the findings and recommendations of a study it conducted in 2010 on violence against children.

Reply to the issues raised in part I, paragraph 8, of the list of issues

29. An investigation was carried out by the Commission on Administrative Justice – Office of the Ombudsman and the outcomes
    compiled into a report titled “An Investigation Report on use of Excessive Force by Police Officers and improper conduct
    by other public officers involved in quelling the 19th January 2015 Demonstration at Lang’ata Road Primary School.”
30. The report recommended disciplinary action against the concerned officers and this is under consideration. It also
    recommended review of the Riot Manual in line with the current International Standards as contained in the United Nations Basic
    Principles on the use of Force and Firearms by Law Enforcement Officials. A committee has been set up to review the manual.
31. To protect schools from land grabbing, the Government:
   • Issued an executive order that all the heads of public schools should process titles deeds for their school land and the
     Government agency mandated to issue title deeds directed to give priority to processing of school title deeds.
   • Directed schools to fence off their school land to protect them from encroachment.

Reply to the issues raised in part I, paragraph 9, of the list of issues

32. To combat child marriage in the Country, Kenya has enacted a law that prohibits child marriage by setting the age of
    marriage at 18 years. The Constitution as well the Children Act of 2001, define a child as anyone below the age of 18 years. In the
    same spirit, the Marriage Act of 2014 clearly states that “A person shall not marry unless that person has attained the age of 18
    years.” This Act further states that any person who marries a person below 18 years commits an offence and if convicted will be
    liable to imprisonment for up to five years or a fine of up to One million Kenya shillings or both.
33. Kenya has also enacted a host of other laws to curb other harmful cultural and religious practices that precipitate child
    marriage. The Protection Against Domestic Violence Act 2015, provides for the protection against domestic violence and defines
    it to include child marriage, forced marriage, defilement and FGM.
34. In the year 2011, Kenya enacted a law against FGM. The Prohibition of Female Genital Mutilation Act outlaws this practice
    to safeguard against violation of a person’s mental or physical integrity. The Act also, established the Anti-FGM Board whose
    functions include formulation of policies, mobilization of resources, designing and co-ordination of public awareness programmes
    against the practice and advising the Government on issues related to FGM.
35. To mitigate against the social, cultural, economic and religious factors that precipitate these harmful practices, the
    Government has also put in place measures that include:
   • Free and Compulsory Primary Education and subsidized Secondary Education that have enhance accessibility, equity
     and retention of children in school and therefore delayed marriage. The Government is also keen on ensuring that there
     is gender parity at all levels of education and as such, works closely with other stakeholders in the sector to ensure that
     schools are gender friendly and that both boys and girls are retained in school until completion.
   • Setting aside money annually, to buy sanitary towels for girls especially in arid and semi-arid areas and other parts of the
     country with high poverty levels. The Government has also zero-rated taxes on sanitary towels making them cheaper and
     affordable to the girls that do not benefit from those it provides. These have ensured that children are retained in school
     for longer and consequently increased their chances of completing education both at primary and secondary levels.
   • Establishment and continuous expansion of Cash Transfers to Orphans and Vulnerable Children, Older Persons and those
     with severe disabilities to cushion families from the effects of poverty and other social inequities that would otherwise
     promote FGM and child marriage. These initiatives have had a significant impact on poverty reduction, the rates of
     enrolment and retention of children in schools and consequently reduced the occurrences of FGM and child marriage
     across the Country.
   • Enhancing child participation by establishing the Kenya Children’s Assembly both at the National, County and Sub-County
     levels and developing guidelines for Child Participation. Through these, children have been able to voice their concerns
     and opinions to relevant authorities for consideration.
• Carrying out studies on these practices to foster a deeper understanding of their dynamics. For instance the 2010 National study on violence against children and 2011 study on child marriage among the Kuria and Rendille of Kenya whose findings and recommendations provided useful information in the development of National Plan of Action for Children 2013-2017.
• Advocating for the elimination of these practices in collaboration with other stakeholders including the media.
• Other measures include; the formulation of the Framework for the National Child Protection System in 2011, the establishment of the toll free - 24 hour child help line 116 and the creation of awareness on its existence, the establishment of Rescue Centres and Gender Violence Recovery Centres across the country, legal aid clinics that offer free legal advice to the public, the establishment of child help desks in all police stations and Child Protection Units (CPU’S) in some, as well as the establishment of children’s courts. The Government also exercises utmost vigilance in areas where these practices are common and in many instances; makes arrests, prosecutes and metes out penalties on perpetrators of these vices.

Reply to the issues raised in part I, paragraph 10, of the list of issues

36. To prevent and investigate cases of child abduction and child trafficking for adoption, the Government enacted the Counter Trafficking in Persons in 2010 and thereafter, developed a National Plan of Action for Combating Human Trafficking for 2013-2017 to provide a road map for the implementation the Act.
37. Since the establishment of the Committee of Experts on adoption, Kenya has made no progress in as far as developing a policy and legal framework on adoption is concerned.

Reply to the issues raised in part I, paragraph 11, of the list of issues

38. Kenya is a signatory of the Convention on the rights of people with Disabilities that requires governments to ensure that people with disabilities have access to an inclusive quality and free basic education. Article 54(1) (b) of the Kenyan Constitution states that persons with disability are entitled to access educational institutions and facilities for persons with disability that are integrated into society to the extent compatible with the interests of these persons. Further, the Persons with Disability Act 2003 outlaws all forms of discrimination against persons with disabilities.
39. The Basic Education Act provides for the establishment of inclusive schools and as such, the Government has reviewed policies to promote inclusive education. It has also directed regular schools to create disability friendly infrastructure and has established centers of excellence for inclusive education in all Counties. It has also enhanced its advocacy efforts on the benefits of inclusive education and has progressively trained teachers on Special Needs Education with a target to have at least one of these trained Teachers in all primary schools by the end 2015.
40. To fulfill its obligation of protecting the rights of refugee children in Kenya, the Government has partnered with other stakeholders to establish Education facilities in the 2 main refugee camps namely, Kakuma and Dadaab. These facilities are meant to ensure that refugee children have access to affordable quality education like other children in the Country.
41. The following is a breakdown on the number of special needs schools in comparison to the number of integrated schools as at the end of 2013:

<table>
<thead>
<tr>
<th>S/N</th>
<th>Disability</th>
<th>Special Schools</th>
<th>Integrated Schools</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>VI</td>
<td>06</td>
<td>31</td>
<td>37</td>
</tr>
<tr>
<td>2</td>
<td>HI</td>
<td>09</td>
<td>09</td>
<td>18</td>
</tr>
<tr>
<td>3</td>
<td>PH</td>
<td>05</td>
<td>24</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total</strong></td>
<td><strong>64</strong></td>
<td><strong>84</strong></td>
</tr>
</tbody>
</table>

Key: VI – Visually impairment. HI – Hearing impairment. PH – Physical handicap.

Reply to the issues raised in part I, paragraph 12, of the list of issues

42. To reduce regional disparities in relation to health, nutrition and education, the government of Kenya has:
• Decentralized health services as well as Early Childhood Development with guidance from the Transitional Authority, a legislative body charged with the role of ensuring smooth handover of roles from the National to County governments.
• Established an equalization fund under article 204(2) of the Constitution to provide basic services including; water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in these areas to the level generally enjoyed by the rest of the population, so far as possible.
• Come up with targeted interventions to address maternal and child health issues especially to reduce morbidity and mortality. This is ongoing in the 15 Counties with a high burden of maternal and child morbidity and mortality and 15 million USD has been allocated to cover interventions from 2014-2017. The activities to be undertaken include:
  • Capacity building on emergency obstetric and new born care
  • Renovation of health care facilities
  • Purchase of equipment for primary health care facilities
  • Provision of ambulances for effective referral systems
• Adopted a resource allocation criteria as stipulated by article 203 of the Constitution, which considers economic disparities within and among counties and the need to remedy them and the need for affirmative action in respect of disadvantaged areas and groups.
• Embarked on setting up of health facilities in urban settlements.
• The Government also conducts bi-annual food security surveys immediately after the long and short rains and develops necessary targeted interventions based on the findings and recommendations.
• Removed user-fees at primary healthcare facilities and allocated financial resources to these facilities to enable them carry out the services.
• Established a Water Services Trust Fund, a state cooperation formed under the Water Act 2002, to support equity in access to water services through grants to groups in rural areas and informal settlements. The Government allocation to this body grew from 175 Million on 2002/03 to 333 million in 2013/14.
• Partnered with Her Excellency the First Lady in the Beyond Zero campaign to reduce maternal and child deaths that has so far seen; the distribution of mobile clinics to 32 out of the 47 Counties, the sensitization of men and communities to spearhead maternal and child health issues, the scaling up of HIV testing and ART and the scaling up of cancer screening.
• Constructed low cost boarding schools in Arid and semi-arid areas and advances special grants to schools in the same areas. It has also established school feeding programmes and mobile schools in these areas.
• Granted teachers in these areas Hardship allowances to attract and keep them.
• Established complimentary low cost schools in Informal settlements.
• It has also established a number of bursary funds to ensure that children in these areas access education regardless of their economic status.
• It is developing a National policy on social protection.

43. The State also has a National Council for Children’s Services which has structures at the grassroots levels referred to as the Area Advisory Councils’ (AACs) that are composed of members from the Civil society, Religious Organisations and representatives of Government Ministries and departments. These AACs’ ensure that all children have access to affordable and good health, nutrition and education facilities.

Reply to the issues raised in part I, paragraph 13, of the list of issues

44. The Government of Kenya continues to make effort in its quest to combat child malnutrition and these efforts include:
• The development of the Breast Milk Substitutes Act to promote breastfeeding and outlaw the sale of breast milk substitutes in health facilities.
• Declaration of hospitals as baby friendly when they promote breastfeeding.
• Enhancement of maternity leave to 90 calendar days and paternity leave to two weeks.
• Partnership with private sector to promote breastfeeding at work e.g. baby crèches and work place day care centers.

45. As a result of all the aforementioned, exclusive breastfeeding for the first six months has increased to 61% according to the 2014 Kenya Demographic and Household Survey (KDHS) from 32% in the 2008/2009 KDHS.
• Gazettement of the National committee on infant and young child feeding which was officially launched in March, 2015, that is working with the AG to formulate regulations to operationalize the Breast Milk Substitutes Act.
• Increased resource allocation by the Government for nutrition from Ksh.433M. in F/Y. 2013/14 to Ksh.682M. in F/Y. 2014/15 representing a 57.7% increase in the allocation.
• Multi-Sectoral collaboration with other nutrition sensitive sectors e.g. Agriculture, education, water and environment. Following these, guidelines that integrate agriculture and nutrition for communities were developed and launched. Kenya joined the global movement scaling up nutrition (SUN) with the aim of bringing people together for a common goal of mobilizing resources and focus on improving communication.
• Enactment and implementation of the School Health Nutrition Policy. The Government together with stakeholders has introduced school feeding, deworming, inoculation and vaccination as well as WASH programmes.
• The established and subsequent expansion of OVC-CT programme that has greatly improved the nutrition of the targeted households.

46. On sexual reproductive health information to adolescents, the Government has:
• Developed the Adolescent Sexual Reproductive Health Policy.
• Established youth friendly centers to offer sexual reproductive health information to adolescents.
• Adopted the use of social media and Information Technology to provide Sexual Reproductive Health information to adolescents.
• Signed a commitment to promote comprehensive sexuality education and sexual and reproductive health services for adolescents and young people on the 7th of December 2013 in South Africa.
• Developed an education sector policy on HIV and AIDS available.
• Teaches Life skills in schools.
47. On access to safe abortion and post abortion services, the Government has:

- Made Safe abortion available according to article 26 of the Constitution which states that "Abortion is permitted if in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law."
- Made Post Abortion Care available to all.

Reply to the issues raised in part I, paragraph 14, of the list of issues

48. The Constitution of Kenya, in congruence with the Convention on the Rights of the Child as well as the ACRWC, and the Basic Education Act of 2013 prohibit the denial of children to access basic education on the basis of proof of age or any other consideration. As such, no child in Kenya is in record as having been denied their right to education for failure to produce a birth certificate.

49. Following reports that incidences of underage children seeking enrolment to school and/or sitting for National Examinations were on the increase, the Ministry of Education through the Kenya National Examination Council instituted a policy that requires candidates to present Birth Certificates when registering for examination. It also issued a directive to all primary schools not to admit children below the age of six. The Ministry of Education has since been collaborating with the Department of Civil Registration to implement this and this has not only ensured that children access education at the appropriate age but also, increased registration of children.

Reply to the issues raised in part I, paragraph 15, of the list of issues

50. The State is committed to providing quality education to all its children since education is a basic right. Under Article 53 of the Constitution which states that children have the right to free and compulsory basic education. Upon the realization that hidden costs were hindering the access to free basic education in Kenya, the government undertook to eliminate them by:

- Progressively scaling up subsidized Secondary Education and Free Primary Education grants. This has steadily increased from Kes.441.07 Million in 2007 to Kes.551.4 Million in 2010/11.
- Allocating funds to schools for special needs education and overtime, increasing this allocation. For instance, from Kes.96 Million to Kes.420 Million in the 2010/2011 Financial Year and the State also provides Kes.8,000/= allocation for every child in these institutions.
- Setting up a task force on School fees which made recommendations aimed at rationalizing school fees.
- Encouraging parental participation in discussing and recommending charges to be levied on pupils/parents as provided for in the Basic Education Act.
- Setting aside money every year to buy sanitary towels for girls, especially in arid and semi-arid areas and other parts of the country with high poverty levels. The Government has also zero-rated taxes on sanitary towels making them cheaper and affordable to the girls that do not benefit from those provided by the Government.
- Issuing a directive to ban holiday tuition and the accompanying holiday tuition fee after it emerged that some schools were using this as money making schemes.

Reply to the issues raised in part I, paragraph 16, of the list of issues

51. The Government established a task force chaired by the Solicitor General which comprised of representatives from the Ministries in charges of land matters and culture as well as representatives from the Endrois Community to develop a framework on the implementation of the ACHPR Court order. The task force made its first visit to the land to engage the community. However, the community was hostile and insisted on having engagements directly amongst themselves. The term of the Task Force has since come to an end and is awaiting reconstitution by the Attorney General.

52. Meanwhile, The Government has also developed the Community Land Bill which has been submitted to Parliament for debate. This Bill proposes measures to deal with cases of community land including the Endrois case.

Reply to the issues raised in part I, paragraph 17, of the list of issues

53. Kenya is a signatory to the International Conventions aimed at protecting refugees and has no intention of reneging on these obligations. In this regard, the country will not forcefully repatriate refugees, including children, back to Somalia or any other country.

54. In addition, to protect the interests of the children, social amenities including schools and hospitals have been constructed and operationalised in the refugee camps. Security in the camps has also been improved with the establishment of police posts and Army camps in view of the incursions from across the borders.

55. The Constitution under Articles 23 &25 considers refugee children in Kenya as children in situations of emergency and must therefore, enjoy all the rights accorded to children under the Constitution including the right to an expeditious trial and representation before court.

56. The State in collaboration with non-state actors conducts registration of new born babies in the refugee camps.
57. In collaboration with the UNHCR, the judiciary has taken deliberate steps to train the Judges and Magistrates on refugee law and now most of them are well equipped to deal with refugee law and concerns.

58. On the alleged police brutality at Dadaab refugee camp, investigations were conducted and the findings compiled into a report that was handed over to the Inspector General (I.G) of Police. The I.G is studying the report for appropriate action.

Reply to the issues raised in part I, paragraph 18, of the list of issues

59. In 2008, the State launched a programme dubbed "Operation Rudi Nyumbani" to resettle the 350,000 registered Internally Displaced Persons of the 2007/2008 post-election violence. The operation involved the following strategies amongst others:

- Start-up funds of ten thousand shillings to each IDP household.
- Provision of twenty five thousand shillings for the reconstruction of houses.
- Provision of relief food by the State and other non-state actors.
- Reconstruction of infrastructural facilities.
- Purchase of land for IDP’s.
- Peace building and reconciliation to create harmony amongst communities.

60. For those who have been displaced as a result of other violence, the Government has been in the forefront of conflict resolution and resettling the displaced. It has, in a number of occasions, arrested and prosecuted inciters and executors of such violence. It has also collaborated with other stakeholders and the affected communities in promoting peace building initiatives.

61. In the event that a Government development project necessitates the displacement of persons, the Government compensates them with the full value of their property at the time of displacement and allows for reasonably ample time for relocation.

Reply to the issues raised in part I, paragraph 19, of the list of issues

62. This information is unavailable at the moment.

Reply to the issues raised in part I, paragraph 20, of the list of issues

63. There exists a juvenile justice system in Kenya and progress is being made to strengthen it as the Government develops a new statute for children. Raising the minimum age of criminal responsibility by internationally accepted standards is among the issues that will be put into consideration as this new law is written.

Reply to the issues raised in part I, paragraph 21, of the list of issues

64. Kenya ratified the Optional Protocol on the Involvement of Children in Armed Conflict and in 2010, enacted the Prevention of Organized Crimes Act which outlaws the recruitment of children by non-state actors into armed conflict.

65. In addition, the Government, in conjunction with stakeholders, has taken the following measures in an effort prevent the radicalization and recruitment of children into armed groups:

- Strengthening policies on social Media and countering distribution of radical literature.
- Addressing social economic factors fuelling radicalization e.g. unemployment, lack of education by empowering the youth through initiatives like the Uwezo fund and the National Youth service.
- Enhancement of security initiatives like the Nyumba Kumi Initiative and Community Policing.
- Capacity building of school heads on radicalization.
- Identification of schools that were said to have had their students radicalized in Nairobi, Kiambu and Mombasa Counties.
- Established a de-radicalization programme.

66. Articles 3, 26 and 27 of the Constitution outlaw discrimination and stipulate that every person is equal before the law and the Government, therefore, does not discriminate or allow for discrimination against any child including those who belong to the communities suspected of collaborating with terrorist groups

Part II

Reply to the issues raised in part II of the list of issues

(a) New bills, laws and their respective regulations

67. In 2010 Kenya adopted its current Constitution that has necessitated a number changes affecting laws and institutions that existed before it came into force. The new bills, laws and their respective regulations include:
Basic Education Act, No. 14 of 2013

68. An Act of Parliament to give effect to Article 53 of the Constitution. The Act provides for the right of every child to free and compulsory education. It obligates parents in Kenya to ensure that children attend school and any parent who fails to take his or her child to school commits an offence. Further, it bestows the responsibility to the Government to provide free and compulsory education. Relevant Sections 28, 30, 32, 36, 38, 39, 47 and 48.

69. The Basic Education Act Regulations have been made for purposes of carrying out the objects of the Act.

Persons Deprived of Liberty Act, No. 23 of 2014

70. An Act of Parliament to give effect to Articles 29(f) and 51 of the Constitution. The Act provides for the rights of children detained and states that the competent authorities shall within forty eight hours notify a parent or guardian of a child that is detained or deprived of liberty. Relevant Sections 21 and 22.

Marriage Act, No. 4 of 2014

71. An Act of Parliament to amend and consolidate the various laws relating to marriage and divorce and for general purposes. The Act defines a ‘child’ – as an individual who has not attained the age of eighteen years. It provides that a person shall not marry unless that person has attained the age of eighteen years and makes it an offence for marriage to a person under the prescribed minimum age. Relevant Sections 4, 11, 12 and 87. The Marriage (General) Rules, 2014 were made to operationalise the Act.

Victim Protection Act, No. 17 of 2014

72. An Act of Parliament to give effect to Article 50(9) of the constitution; to provide for protection of victims of crime and abuse of poor; to provide special protection for vulnerable victims and for connected purposes.

73. According to the Act, a ‘Child’ has the meaning assigned to it under the Children’s Act and renders a child of a victim born after the death of the victim whereas a ‘Victim’ means any person who suffers injury, loss or damage as a consequence of an offence. Relevant Sections 18 and 31.

Protection Against Domestic Violence Act, No. 2 of 2015

74. An Act of Parliament to provide for the protection to provide for the protection and relief of domestic violence; to provide for the protection of a spouse and any children or other dependent persons and to provide for matters connected therewith or incidental thereto. Section 3 defines the meaning of domestic violence.

75. According to the Act, violence means abuse that includes:
   - Child marriage
   - Female Genital Mutilation
   - Forced marriage
   - Defilement
   - Incest
   - Sexual abuse
   - Virginity testing
   - Physical abuse
   - Emotional and psychological abuse, among others.

76. Other relevant Sections include 3(3) and 9.

In-Vitro Fertilization Bill, 2014

77. The Bill proposes to provide for the regulation of In-Vitro Fertilization, prohibit certain practices in connection with In-Vitro Fertilization, establishment of an In-Vitro Fertilization Authority, to make provision in relation to children born of In-Vitro Fertilization process and for connected purposes.

78. It also proposes that a child born of In-Vitro Fertilization should have the same legal rights under the constitution or any other written law as that of a child born through sexual intercourse.

79. Relevant Sections 25, 28 and 31.

Legal Aid Bill, 2015

80. The Bill provides that a ‘Child’ has the meaning assigned to it under Article 260 of the Constitution. Section 36(b) proposes for persons eligible for Legal Aid which include a child. In addition, Section 43(3) further proposes that it shall be the duty of
the court to order the National Legal Aid Service where the child is unrepresented to provide legal representation for the child in instances where a child is brought before a court in proceedings under the Children Act or any other written law.

81. The Bill underwent the first reading in the National Assembly and has been subjected to public participation as required by the Constitution.

**Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2015**

82. A Bill for an Act of Parliament to establish a framework for the preservation of human dignity, promotion, monitoring and enforcement of economic and social rights, to establish mechanisms to monitor and promote adherence by both National and County governments.

83. Economic and Social Rights Section 5(1) of the Bill proposes that in pursuit to Article 43(1) (e) of the Constitution every person has the right to the attainable standards of economic and social rights including the right to; basic nutrition for children

**Employment (Amendment) Bill, 2015**

84. A Private members Bill that seeks to amend the Employment Act by providing for leave for employees in respect of whom an adoption order is made authorizing such employees to adopt a child pursuant to Section 154 of the Children Act. The Employment Act presently provides for maternity and paternity leave which applies to biological children, but not adopted children.

**Labour Institutions (Amendment) Bill, 2015**

85. The Bill proposes for the establishment of a National Steering Committee on Child Labour (NSCCL) and County Child Labour Committees. The NSCCL will advise the Cabinet Secretary responsible for matters relating to labour on policies, programmes, national action programmes on child labour as well as coordinating and monitoring of agencies dealing with child labour issues.

**Employment (Amendment) Bill, 2015**

86. This is a Bill that has been initiated by the Ministry responsible for labour matters for an Act of Parliament to amend the Employment Act, 2007 and for connected purposes. It proposes to amend Section 53 (1) of the Principal Act by providing that no person shall employ a child that places at risk the child's well-being, educational, physical or mental health, or spiritual, moral or social development in contravention of which an offence is committed; among others.

**Sexual Offences - Rules of Court, 2014**

87. Section 2 (c) of the Rules, mandates the court to issue orders to protect the privacy of a child accused of an offence under the Sexual Offences Act.

**Employment Act - General Rules, 2014**

88. Part IV of the Rules provides for employment of children whereas Section 12 (1) states that no person shall employ a child who has not attained the age of sixteen years without prior permission from an authorized officer. The Rules also list hazardous and light work which children are not allowed to perform and engage in respectively.

(b) New institutions (and their mandates) or institutional reforms

89. The Labour Institutions Bill, 2015 aims to institutionalize the National Steering Committee within the provision of the law. The Committee is currently gazetted without a legal framework. The Bill also seeks to establish County Child Labour Committees, its membership and functions.

(c) Recently introduced policies, programmes and action plans and their scope

90. These include the following:

- From July 2012 to June 2015, the Government with support from ILO/IPEC implemented National Action Programme in Turkana County. The objective of the programme was to strengthen human security in the border communities of Turkana County. The project ends in December, 2015. As of June, 2015, 1,150 children were withdrawn from child labour.
- The Short National Action Programme (SNAP) with support from ILO was implemented in Busia, Kilifi and Kitui Counties that is; from 2010 to 2013. The objective of the programme was to support in elimination of child labour. 8348 children were withdrawn from child labour as a result.
- A programme on skills and livelihood training for adolescent children was implemented from 2014-2015. The objective of the programme was to equip children who are out of school with livelihood skills. 410 children were trained.
(d) **Recent ratifications of human rights instruments**

91. Kenya signed the Optional Protocol to the Convention on the Rights of the Child on Prostitution and Pornography on 8th September, 2009 signaling its approval of the framework and intention to be bound by the provisions therein. The Protocol is yet to be ratified.

92. Be that as it may, the Country has enacted robust legislation outlawing child pornography and prostitution vide the Sexual Offences Act, No. 3 of 2006 substantively incorporating the provisions of the Protocol.

**Part III**

Reply to the issues raised in part III, paragraph 1, of the list of issues

93. The proposed Amendments to the Children’s Act, upon assessment by the Constitution Implementation Commission, were found to exceed the threshold for amendment and a decision to develop a new statute for children was made. The process was justified and therefore, there is no information on the budget required to implement the proposed amendments.

94. The National Plan of Action for Children 2015-2022 was not costed and this information, therefore, is not available.

Reply to the issues raised in part III, paragraph 2, of the list of issues:

(a) **Complaints of violation of the rights of the child**

95. This Data is not available at the moment.

(b) **Incidences of violence, including sexual violence, committed by law-enforcement officers and the police**

96. During the period from January 2012 to July 2013, a total of 13 out of 47 Counties recorded incidents of violence against children by law enforcement officers.

97. 16 cases involving 18 children were reported and no case has been settled outside court.

98. A total of 12 cases are before court awaiting determination, 2 cases are still being investigated and 2 cases involved accused persons who are known but are yet to be arrested while 1 case was withdrawn under section 87A of the Criminal Procedure Code.

(c) **Cases of violence against children, including corporal punishment and sexual violence**

99. According to the Violence Against Children Report completed in 2012 (GOK and UNICEF), violence against children is a serious problem in Kenya with lifetime consequences for victims. An estimated 73 per cent of boys and 66 per cent of girls have experienced physical violence before the age of 18. The report concludes that sexual and physical violence does not discriminate on the basis of ethnicity or socio-economic status. Violence against children is mostly committed by person closest to them, including parents, relatives, figures of authority such as teachers and religious leaders. Over 50 per cent of children report that they have been physically abused by their parents before the age of 18, showing that domestic violence is a considerable problem.

100. Violence in schools remains a major concern. Among females and males who reported being punched, kicked, whipped or beaten with an object by an authority figure prior to age 18, teachers accounted for 99.9 per cent of perpetrators reported by females and 96.2 per cent of perpetrators mentioned by males. The Basic Education Act 2013 criminalises corporal punishment in schools. Based on the Violence Against Children Study, the Government of Kenya has developed a response plan outlining several key strategies to combat and prevent violence.

(d) **Adolescent girls having access to information, services and care on sexual and reproductive health, including access to contraceptives**

101. Statistics are not available but as earlier stated efforts are being made by the Government in collaboration with other stakeholders to ensure that these services are availed to as many adolescent boys and girls as possible.

(e) **Underweight and stunted children under five years of age**

102. Stunting has declined from 35% in 2008/09 KDHS to 26% in 2014 KDHS.

103. Underweight children has declined from 7% in 2008/09 KDHS to 4% in 2014 KDHS.

(f) **Children benefitting from early childhood development programmes**

104. This data is not available at the moment.
(g) **Refugee and asylum-seeking children**

105. According to the Situation Analysis of Children and Adolescents in Kenya (SITAN 2014), there are currently 550,000 refugees from Somalia, Burundi the Democratic Republic of Congo, Ethiopia and South Sudan and other countries. About 256,000 of these refugees are in the Daadab camp and approximately 160,000 are in the Kakuma camp. The Daadab camp is the largest one in the world with an estimated 252,889 of the refugees below 18 years of age.

106. The search for durable solutions to Kenya’s refugee problem is challenging. However the Government is confident that with the support and collaboration with its partners and the international community the refugees will continue to get protection while in Kenya or when they resettle back home.

(h) **Internally displaced children.**

107. This data is not available at the moment.

(i) **Children in street situations**

108. According to the SITAN, it is estimated that in Kenya around 250,000-300,000 children live and work in the streets. Most of them come from rural areas and from large or single parent families. These children end up in the streets due to factors such as poverty and lack of care in the family setting. Many children cite lack of food, abuse and lack of access to education as the direct cause for leaving their homes. The major pull-factor is the ability to make money.

(j) **Children engaged in child labour, including worst forms of child labour**

109. From 2012 to 2014, the Government carried out a total of 233 labour inspections related to child labour.

110. During the same period, a total of 5,286 labour complaints involving 28,271 children were investigated.

111. The type of work the children were performing is as follows:

- Scrap metal collection.
- House help/domestic work.
- Scavenging for metal.
- Street children.
- Selling liquor.
- Hawking.

(k) **Children in conflict with law, children under 18 years old tried and sentenced as adults, children in detention**

112. Children in pre-trial detention are remanded (detained) at Children Remand Homes established under section 50 of the Children Act, 2001 as they await determination of their cases by the Court and the population was as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Boys</td>
<td>1,859</td>
<td>1,551</td>
<td>1,834</td>
</tr>
<tr>
<td>Girls</td>
<td>478</td>
<td>446</td>
<td>294</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,337</strong></td>
<td><strong>1,997</strong></td>
<td><strong>2,128</strong></td>
</tr>
</tbody>
</table>

Source: Department of children’s services.

113. Kindly note that there are children who are bonded and therefore, do not get to these institutions.

114. There are no known cases where children have been tried and sentenced as adults. There are situations upon age assessment, persons detained in these institutions as children are found to be adults and as such transferred to adult facilities. It is under only this circumstance that adults can be found in Children Remand homes.

115. Children in Rehabilitation Schools are committed after trial and sent there for rehabilitation.

116. The data for the last three years is as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Boys</td>
<td>304</td>
<td>354</td>
<td>221</td>
</tr>
<tr>
<td>Girls</td>
<td>29</td>
<td>23</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>333</strong></td>
<td><strong>377</strong></td>
<td><strong>231</strong></td>
</tr>
</tbody>
</table>

Source: Department of children’s services.
(l) Average duration of pretrial detention for children, type of sentences and punishment, abuse and ill-treatment of children during arrest and detention

117. On average, the pre-trial detention for children who have not been discharged on bond or bail is 14-28 days. Children, as a matter of policy, are given very flexible bond terms including free bonds where appropriate. In addition, children matters, both civil and criminal are given priority and should be concluded within 6 months of being filed.

118. In the event that a child is found culpable after a trial, the applicable sentences are:
- Unconditional or conditional discharge
- Committal to Probation hostels, Borstal Institutions or Rehabilitation schools
- Committal to Charitable Children’s Institutions
- Detention at the President’s pleasure for serious offences like Murder or robbery with violence

(m) Children involved in sexual exploitation, pornography and trafficking

<table>
<thead>
<tr>
<th>Case Category</th>
<th>2012-2013</th>
<th>Sub-Total</th>
<th>Sub-Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>390</td>
<td>690</td>
<td>1,080</td>
<td></td>
</tr>
<tr>
<td>Child Trafficking</td>
<td>127</td>
<td>100</td>
<td>227</td>
<td></td>
</tr>
</tbody>
</table>

Source: Department of children’s services.

<table>
<thead>
<tr>
<th>Case Category</th>
<th>2013-2014</th>
<th>Sub-Total</th>
<th>Sub-Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>267</td>
<td>960</td>
<td>1,027</td>
<td></td>
</tr>
<tr>
<td>Child Trafficking</td>
<td>128</td>
<td>134</td>
<td>262</td>
<td></td>
</tr>
</tbody>
</table>

Source: Department of children’s services.

Reply to issues raised in part III, paragraph 3, of the list of issues, regarding children deprived of a family environment

(a) Separated from their parents

119. Children deprived of family environment are mostly in Charitable Children Institutions (CCIs). These include children who are separated from their parents due to several factors.

120. Data for the last three years is as follows:

Population in CCIs as at the end of June 2012/2013

<table>
<thead>
<tr>
<th>S.no</th>
<th>County</th>
<th>Boys</th>
<th>Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kisii</td>
<td>275</td>
<td>171</td>
</tr>
<tr>
<td>2</td>
<td>Marsabit</td>
<td>54</td>
<td>71</td>
</tr>
<tr>
<td>3</td>
<td>Makueni</td>
<td>269</td>
<td>309</td>
</tr>
<tr>
<td>4</td>
<td>Nyandarua</td>
<td>420</td>
<td>531</td>
</tr>
<tr>
<td>5</td>
<td>Lamu</td>
<td>200</td>
<td>82</td>
</tr>
<tr>
<td>6</td>
<td>Taita Taveta</td>
<td>77</td>
<td>56</td>
</tr>
<tr>
<td>7</td>
<td>Samburu</td>
<td>300</td>
<td>250</td>
</tr>
<tr>
<td>8</td>
<td>Kitui</td>
<td>650</td>
<td>550</td>
</tr>
<tr>
<td>9</td>
<td>Nyeri</td>
<td>600</td>
<td>330</td>
</tr>
<tr>
<td>10</td>
<td>Muranga</td>
<td>275</td>
<td>200</td>
</tr>
<tr>
<td>11</td>
<td>Kiambu</td>
<td>700</td>
<td>530</td>
</tr>
<tr>
<td>12</td>
<td>West Pokot</td>
<td>69</td>
<td>70</td>
</tr>
<tr>
<td>13</td>
<td>Kajiado</td>
<td>1,100</td>
<td>600</td>
</tr>
<tr>
<td>14</td>
<td>Machakos</td>
<td>1,935</td>
<td>1,595</td>
</tr>
<tr>
<td>15</td>
<td>Embu</td>
<td>230</td>
<td>216</td>
</tr>
<tr>
<td>16</td>
<td>Kericho</td>
<td>80</td>
<td>40</td>
</tr>
</tbody>
</table>
### Population in CCIs as at the end of June 2013/2014

<table>
<thead>
<tr>
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</thead>
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<td>Kisii</td>
<td>275</td>
<td>171</td>
</tr>
<tr>
<td>2.</td>
<td>Marsabit</td>
<td>154</td>
<td>71</td>
</tr>
<tr>
<td>3.</td>
<td>Makueni</td>
<td>269</td>
<td>309</td>
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<tr>
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<td>Nyandarua</td>
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<td>531</td>
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<td>5.</td>
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<td>6.</td>
<td>Taita taveta</td>
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<td>250</td>
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<td>8.</td>
<td>Kitui</td>
<td>650</td>
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<td>600</td>
<td>330</td>
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<td>West Pokot</td>
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<td>13.</td>
<td>Kajiado</td>
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<td>14.</td>
<td>Machakos</td>
<td>1,935</td>
<td>1,595</td>
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Source: Department of children’s services.
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<th>County</th>
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<tbody>
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<td>15.</td>
<td>Embu</td>
<td>230</td>
<td>216</td>
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<tr>
<td>16.</td>
<td>Kericho</td>
<td>80</td>
<td>40</td>
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<tr>
<td>17.</td>
<td>Kirinyaga</td>
<td>251</td>
<td>258</td>
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<td>18.</td>
<td>Kisumu</td>
<td>1,255</td>
<td>936</td>
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<td>19.</td>
<td>Siaya</td>
<td>192</td>
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<tr>
<td>20.</td>
<td>Uasin Gishu</td>
<td>753</td>
<td>719</td>
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<tr>
<td>21.</td>
<td>Nyamira</td>
<td>80</td>
<td>65</td>
</tr>
<tr>
<td>22.</td>
<td>Mombasa</td>
<td>880</td>
<td>742</td>
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<tr>
<td>23.</td>
<td>Kwale</td>
<td>190</td>
<td>39</td>
</tr>
<tr>
<td>24.</td>
<td>Trans-Nzoia</td>
<td>220</td>
<td>170</td>
</tr>
<tr>
<td>25.</td>
<td>Laikipia</td>
<td>228</td>
<td>223</td>
</tr>
<tr>
<td>26.</td>
<td>Nakuru</td>
<td>2,052</td>
<td>1,715</td>
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<tr>
<td>27.</td>
<td>Narok</td>
<td>119</td>
<td>140</td>
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<td>28.</td>
<td>Elgeyo- Marakwet</td>
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<tr>
<td>29.</td>
<td>Kilifi</td>
<td>300</td>
<td>120</td>
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<td>30.</td>
<td>Nandi</td>
<td>140</td>
<td>121</td>
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<tr>
<td>31.</td>
<td>Nairobi</td>
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<td>2,970</td>
</tr>
<tr>
<td>32.</td>
<td>Tharaka Nithi</td>
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<tr>
<td>33.</td>
<td>Bomet</td>
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<tr>
<td>34.</td>
<td>Meru</td>
<td>930</td>
<td>800</td>
</tr>
<tr>
<td>35.</td>
<td>Migori</td>
<td>337</td>
<td>334</td>
</tr>
<tr>
<td>36.</td>
<td>Vihiga</td>
<td>100</td>
<td>68</td>
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<tr>
<td>37.</td>
<td>Busia</td>
<td>226</td>
<td>219</td>
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<tr>
<td>38.</td>
<td>Kakamega</td>
<td>567</td>
<td>455</td>
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<td>39.</td>
<td>Bungoma</td>
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<tr>
<td>40.</td>
<td>Tana River</td>
<td>80</td>
<td>22</td>
</tr>
<tr>
<td>41.</td>
<td>Wajir</td>
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<td>86</td>
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<td>42.</td>
<td>Mandera</td>
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<td>43.</td>
<td>Garissa</td>
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<td>44.</td>
<td>Baringo</td>
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<td>158</td>
</tr>
<tr>
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Source: Department of children’s services.

**Population in CCIs as at the end of June 2014/2015**

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<th>Boys</th>
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Reply to list of Issues
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<td>47.</td>
<td>Isiolo</td>
<td>170</td>
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</table>

Total 23,380 18,634

Source: Department of children’s services.

(b) Living in child-headed households

<table>
<thead>
<tr>
<th>County</th>
<th>Males</th>
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<tbody>
<tr>
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<td>3 Nyeri</td>
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<td>1,213</td>
<td>3,131</td>
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<td>4 Kirinyaga</td>
<td>7,995</td>
<td>7,576</td>
<td>15,571</td>
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<td>5 Murang’/a</td>
<td>3,778</td>
<td>2,882</td>
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<td>6 Kiambu</td>
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<td>1,561</td>
<td>1,408</td>
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<td>11 Lamu</td>
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<td>461</td>
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<td>12 Taita-Taveta</td>
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Source: Department of children’s services.
### County Males Females Total

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<td>8,808</td>
<td>5,983</td>
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<td>9,435</td>
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Source: KNBS-national population & housing census 2009.

(c) **Placed in institutions**

121. Refer to reply to part III, paragraph 3 (a), above

(d) Placed with foster families

122. This information is not available at the moment

(e) **Children adopted domestically or through inter-country adoptions**

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<td><strong>Total</strong></td>
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Source: Judiciary.

1 In 2012 the number of males was 111 and females 117. In 2013 the number of males was 91 and females 112.
Reply to the issues raised in part III, paragraph 4, of the list of issues, regarding children with disabilities

(a) Living with their families

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Source: KNBS-national population & housing census 2009.

(b) In institutions²

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<td>8</td>
</tr>
<tr>
<td>Epileptic</td>
<td>3</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Gender Identity Disorder</td>
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<td>1</td>
</tr>
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<td>Dwarfism</td>
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<td>1</td>
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<td>Intellectual Disability/Epilepsy</td>
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<td>1</td>
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<td>Short Sightedness/Visual Defects</td>
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<td>T.B.I./Brain Injury</td>
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<td>0</td>
<td>1</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Deaf and Dumb</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
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Source: Department of children’s services.

(c) Attending regular primary schools

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<td>Private Schools</td>
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</tr>
<tr>
<td>Total</td>
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Source: Ministry of education science & technology.

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² Number of Children with disabilities in Statutory Institutions.
(d) Attending regular secondary schools

<table>
<thead>
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<th>Enrolment by 2014</th>
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<tr>
<td>Private Schools</td>
<td>1,0404</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>14,098</strong></td>
</tr>
</tbody>
</table>

Source: Ministry of education science & technology.

(e) Attending special schools

123. Refer to c) and d) above. The numbers above are inclusive of children in special schools.

(f) Out of school

<table>
<thead>
<tr>
<th>Age</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>11,721</td>
<td>6,448</td>
<td>5,273</td>
</tr>
<tr>
<td>4</td>
<td>10,298</td>
<td>5,687</td>
<td>4,611</td>
</tr>
<tr>
<td>5</td>
<td>7,957</td>
<td>4,497</td>
<td>3,460</td>
</tr>
<tr>
<td>6</td>
<td>6,603</td>
<td>3,701</td>
<td>2,902</td>
</tr>
<tr>
<td>7</td>
<td>5,088</td>
<td>2,768</td>
<td>2,320</td>
</tr>
<tr>
<td>8</td>
<td>5,443</td>
<td>2,983</td>
<td>2,460</td>
</tr>
<tr>
<td>9</td>
<td>4,582</td>
<td>2,546</td>
<td>2,036</td>
</tr>
<tr>
<td>10</td>
<td>6,314</td>
<td>3,540</td>
<td>2,774</td>
</tr>
<tr>
<td>11</td>
<td>3,489</td>
<td>1,827</td>
<td>1,662</td>
</tr>
<tr>
<td>12</td>
<td>5,749</td>
<td>3,201</td>
<td>2,548</td>
</tr>
<tr>
<td>13</td>
<td>4,692</td>
<td>2,536</td>
<td>2,156</td>
</tr>
<tr>
<td>14</td>
<td>5,634</td>
<td>3,131</td>
<td>2,503</td>
</tr>
<tr>
<td>15</td>
<td>6,431</td>
<td>3,475</td>
<td>2,956</td>
</tr>
<tr>
<td>16</td>
<td>7,116</td>
<td>3,657</td>
<td>3,459</td>
</tr>
<tr>
<td>17</td>
<td>8,048</td>
<td>4,103</td>
<td>3,945</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>99,165</strong></td>
<td><strong>54,100</strong></td>
<td><strong>45,065</strong></td>
</tr>
</tbody>
</table>

Source: KNBS-national population & housing census 2009.

(g) Abandoned by their families

<table>
<thead>
<tr>
<th>Age</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>610</td>
<td>326</td>
<td>284</td>
</tr>
<tr>
<td>1</td>
<td>569</td>
<td>277</td>
<td>292</td>
</tr>
<tr>
<td>2</td>
<td>659</td>
<td>333</td>
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<td>362</td>
<td>336</td>
</tr>
<tr>
<td>4</td>
<td>831</td>
<td>422</td>
<td>409</td>
</tr>
<tr>
<td>5</td>
<td>918</td>
<td>460</td>
<td>458</td>
</tr>
<tr>
<td>6</td>
<td>1,028</td>
<td>513</td>
<td>515</td>
</tr>
<tr>
<td>7</td>
<td>1,142</td>
<td>537</td>
<td>605</td>
</tr>
<tr>
<td>8</td>
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<td>630</td>
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<td>9</td>
<td>1,338</td>
<td>609</td>
<td>729</td>
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<tr>
<td>10</td>
<td>1,976</td>
<td>962</td>
<td>1,014</td>
</tr>
<tr>
<td>11</td>
<td>1,361</td>
<td>631</td>
<td>730</td>
</tr>
<tr>
<td>12</td>
<td>2,073</td>
<td>1,006</td>
<td>1,067</td>
</tr>
<tr>
<td>13</td>
<td>1,972</td>
<td>962</td>
<td>1,010</td>
</tr>
<tr>
<td>14</td>
<td>2,089</td>
<td>988</td>
<td>1,101</td>
</tr>
<tr>
<td>15</td>
<td>2,433</td>
<td>1,175</td>
<td>1,258</td>
</tr>
<tr>
<td>16</td>
<td>2,325</td>
<td>1,079</td>
<td>1,246</td>
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<tr>
<td>17</td>
<td>2,560</td>
<td>1,227</td>
<td>1,333</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>25,742</strong></td>
<td><strong>12,399</strong></td>
<td><strong>13,343</strong></td>
</tr>
</tbody>
</table>

Source: KNBS-national population & housing census 2009.
Reply to the issues raised in part III, paragraph 5, of the list of issues

124. This report contains some of the recent developments which have occurred after the State Party submitted the 3rd, 4th and 5th Report.

Reply to the issues raised in part III, paragraph 6, of the list of issues

- Moratorium on Inter-Country Adoption.
- Drugs and Substance Abuse.
- Age appropriate sexual education.
- Safety in schools.
- De-institutionalization of children.

Part III

1. Please provide consolidated budget information required for the implementation of the proposed amendment of the Children Act (2001) and the National Plan of Action for Children 2015-2022, indicating the percentage of each budget line in terms of the total national budget and gross national product, and geographic allocation.
   - The proposed Amendments to the Children’s Act, upon assessment by the Constitution Implementation Commission, were found to exceed the threshold for amendment and a decision to develop a new statute for children was made. The process was justified and therefore, there is no information on the budget required to implement the proposed amendments.
   - The National Plan of Action for Children 2015-2022 was not costed and this information, therefore, is not available.

2. Updated statistical data (disaggregated by age, sex, ethnic origin, national origin, geographic location, and socio-economic status) for the past three years on:
   a) No. of complaints on violation of the rights of the child received and followed up by the Kenyan National Commission on Human Rights and the National Gender and Equality Commission.
      - This Data is not available at the moment.
   b) No. of incidences of violence, including sexual violence, committed by the law-enforcement officers against children investigated and persecuted, and no. of child victims of police violence.
      - During the period from January 2012 to July 2013, a total of 13 out of 47 Counties recorded incidents of violence against children by law enforcement officers.
      - 16 cases involving 18 children were reported and no case has been settled outside court.
      - A total of 12 cases are before court awaiting determination, 2 cases are still being investigated and 2 cases involved accused persons who are known but are yet to be arrested while 1 case was withdrawn under section 87 A of the Criminal Procedure Code.
   c) No. of cases of violence against children, including corporal punishment and sexual violence, with information on investigation and prosecution of perpetrators and the sentences granted by the court. Please also indicate no. of cases of alleged sexual violence brought to the court but eventually settled outside of court, and reasons for the choice for non-judicial settlements.
      - According to the Violence Against Children Report completed in 2012 (GOK and UNICEF), violence against children is a serious problem in Kenya with lifetime consequences for victims. An estimated 73 per cent of boys and 66 per cent of girls have experienced physical violence before the age of 18. The report concludes that sexual and physical violence does not discriminate on the basis of ethnicity or socio-economic status. Violence against children is mostly committed by person closest to them, including parents, relatives, figures of authority such as teachers and religious leaders. Over 50 per cent of children report that they have been physically abused by their parents before the age of 18, showing that domestic violence is a considerable problem.
      - Violence in schools remains a major concern. Among females and males who reported being punched, kicked, whipped or beaten with an object by an authority figure prior to age 18, teachers accounted for 99.9 per cent of perpetrators reported by females and 96.2 per cent of perpetrators mentioned by males. The Basic Education Act 2013 criminalises corporal punishment in schools. Based on the Violence Against Children Study, the Government of Kenya has developed a response plan outlining several key strategies to combat and prevent violence.
   d) No. of adolescent girls having access to information, services and care on sexual and reproductive health, including access to contraceptives.
      - Statistics are not available but as earlier stated efforts are being made by the Government in collaboration with other stakeholders to ensure that these services are availed to as many adolescent boys and girls as possible.
   e) Prevalence of underweight and stunted children under five years of age.
      - Stunting has declined from 35% in 2008/09 KDHS to 26% in 2014 KDHS.
      - Underweight children has declined from 7% in 2008/09 KDHS to 4% in 2014 KDHS.
f) No. of children benefitting from early childhood development programmes.
   - This Data is not available at the moment.
   - According to the Situation Analysis of Children and Adolescents in Kenya (SITAN 2014), there are currently 550,000
     refugees from Somalia, Burundi the Democratic Republic of Congo, Ethiopia and South Sudan and other countries.
     About 256,000 of these refugees are in the Daadab camp and approximately 160,000 are in the Kakuma camp. The
     Daadab camp is the largest one in the world with an estimated 252,889 of the refugees below 18 years of age.
     The search for durable solutions to Kenya’s refugee problem is challenging. However the Government is confident
     that with the support and collaboration with its partners and the international community the refugees will continue to get
     protection while in Kenya or when they resettle back home.

h) No. of IDP children, including those displaced in relation to the implementation of development projects.
   - This Data is not available at the moment.

i) No. of children in street situations.
   - According to the SITAN, it is estimated that in Kenya around 250,000-300,000 children live and work in the streets.
     Most of them come from rural areas and from large or single parent families. These children end up in the streets due to
     factors such as poverty and lack of care in the family setting. Many children cite lack of food, abuse and lack of access
     to education as the direct cause for leaving their homes. The major pull-factor is the ability to make money.

j) No. of children engaged with child labour, including worst forms of child labour, and the no. of investigation and prosecution
   made on the allegation of illegal or worst forms of child labour. Please indicate type of work.
   - From 2012 to 2014, the Government carried out a total of 233 labour inspections related to child labour.
   - During the same period, a total of 5,286 labour complaints involving 28,271 children were investigated.

k) No. of children in conflict with law who are reported to police, arrested, in detention (pre-trial detention, prison, and statutory
   rehabilitation institutions) and no. of children under 18 years old tried and sentenced as adults. As for the children in detention,
   please indicate whether they are detained with adults.

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Boys</th>
<th>Girls</th>
<th>Boys</th>
<th>Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/2013</td>
<td>1,859</td>
<td>478</td>
<td>1,551</td>
<td>446</td>
<td>1,834</td>
<td>294</td>
</tr>
<tr>
<td>2013/2014</td>
<td>2,337</td>
<td></td>
<td>1,997</td>
<td></td>
<td>2,128</td>
<td></td>
</tr>
<tr>
<td>2014/2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: department of children’s services

- Kindly note that there are children who are bonded and therefore, do not get to these institutions.
- There are no known cases where children have been tried and sentenced as adults. There are situations upon age
  assessment, persons detained in these institutions as children are found to be adults and as such transferred to adult
  facilities. It is under only this circumstance that adults can be found in Children Remand homes.
- Children in Rehabilitation Schools are committed after trial and sent there for rehabilitation.

The data for the last three years is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Boys</th>
<th>Girls</th>
<th>Boys</th>
<th>Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/2013</td>
<td>304</td>
<td>29</td>
<td>354</td>
<td>23</td>
<td>221</td>
<td>10</td>
</tr>
<tr>
<td>2013/2014</td>
<td>333</td>
<td></td>
<td>377</td>
<td></td>
<td>231</td>
<td></td>
</tr>
<tr>
<td>2014/2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: department of children’s services
I) Average duration of pre-trial detention for children, type of sentences and punishment granted by courts for children in conflict with laws; reported cases of abuse and ill-treatment of children during their arrest and detention.

- On average, the pre-trial detention for children who have not been discharged on bond or bail is 14-28 days. Children, as a matter of policy, are given very flexible bond terms including free bonds where appropriate. In addition, children matters, both civil and criminal are given priority and should be concluded within 6 months of being filed.

In the event that a child is found culpable after a trial, the applicable sentences are:

- i. Unconditional or conditional discharge,
- ii. Committal to Probation hostels, Borstal Institutions or Rehabilitation schools
- iii. Committal to Charitable Children’s Institutions,
- iv. Detention at the President’s pleasure for serious offences like Murder or robbery with violence.

m) No. of children involved in sexual exploitation, pornography and trafficking.

<table>
<thead>
<tr>
<th>Case Category</th>
<th>2012-2013</th>
<th>Sub-Total</th>
<th>Sub-Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual Abuse</td>
<td></td>
<td>390</td>
<td>690</td>
<td>1080</td>
</tr>
<tr>
<td>Child Trafficking</td>
<td></td>
<td>127</td>
<td>100</td>
<td>227</td>
</tr>
</tbody>
</table>

Source: department of children’s services

<table>
<thead>
<tr>
<th>Case Category</th>
<th>2012-2013</th>
<th>Sub-Total</th>
<th>Sub-Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual Abuse</td>
<td></td>
<td>267</td>
<td>960</td>
<td>1027</td>
</tr>
<tr>
<td>Child Trafficking</td>
<td></td>
<td>128</td>
<td>134</td>
<td>262</td>
</tr>
</tbody>
</table>

Source: department of children’s services

3. Please provide data disaggregated by age, sex, socio-economic background, ethnic origin and geographical location regarding the situation of children deprived of a family environment, covering the past three years, on the number of children:

a) Separated from their Parents

- Children deprived of family environment are mostly in Charitable Children Institutions (CCIs). These include children who are separated from their parents due to several factors.
- Data for the last three years is as follows:

**POPULATION IN CCIS AS AT THE END OF JUNE 2012/2013**

<table>
<thead>
<tr>
<th>S.NO</th>
<th>COUNTY</th>
<th>BOYS</th>
<th>GIRLS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Kisii</td>
<td>275</td>
<td>171</td>
</tr>
<tr>
<td>2.</td>
<td>Marsabit</td>
<td>154</td>
<td>71</td>
</tr>
<tr>
<td>3.</td>
<td>Makueni</td>
<td>269</td>
<td>309</td>
</tr>
<tr>
<td>4.</td>
<td>Nyandarua</td>
<td>420</td>
<td>531</td>
</tr>
<tr>
<td>5.</td>
<td>Lamu</td>
<td>200</td>
<td>82</td>
</tr>
<tr>
<td>6.</td>
<td>Taita Taveta</td>
<td>77</td>
<td>56</td>
</tr>
<tr>
<td>7.</td>
<td>Samburu</td>
<td>300</td>
<td>250</td>
</tr>
<tr>
<td>8.</td>
<td>Kitui</td>
<td>650</td>
<td>550</td>
</tr>
<tr>
<td>9.</td>
<td>Nyeri</td>
<td>600</td>
<td>330</td>
</tr>
<tr>
<td>10.</td>
<td>Muranga</td>
<td>275</td>
<td>200</td>
</tr>
<tr>
<td>11.</td>
<td>Kiambu</td>
<td>700</td>
<td>530</td>
</tr>
<tr>
<td>12.</td>
<td>West Pokot</td>
<td>69</td>
<td>70</td>
</tr>
<tr>
<td>13.</td>
<td>Kajiado</td>
<td>1100</td>
<td>600</td>
</tr>
<tr>
<td>14.</td>
<td>Machakos</td>
<td>1935</td>
<td>1595</td>
</tr>
<tr>
<td>15.</td>
<td>Embu</td>
<td>230</td>
<td>216</td>
</tr>
<tr>
<td>16.</td>
<td>Kericho</td>
<td>80</td>
<td>40</td>
</tr>
<tr>
<td>17.</td>
<td>Kirinyaga</td>
<td>251</td>
<td>258</td>
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<tr>
<td>18.</td>
<td>Kisumu</td>
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<td>936</td>
</tr>
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<td>19.</td>
<td>Siaya</td>
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<td>2</td>
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<td>20.</td>
<td>Uasin Gishu</td>
<td>753</td>
<td>719</td>
</tr>
<tr>
<td>21.</td>
<td>Nyamira</td>
<td>80</td>
<td>65</td>
</tr>
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<td>S.NO</td>
<td>COUNTY</td>
<td>BOYS</td>
<td>GIRLS</td>
</tr>
<tr>
<td>------</td>
<td>---------------------</td>
<td>------</td>
<td>-------</td>
</tr>
<tr>
<td>22.</td>
<td>Mombasa</td>
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<td>742</td>
</tr>
<tr>
<td>23.</td>
<td>Kwale</td>
<td>190</td>
<td>239</td>
</tr>
<tr>
<td>24.</td>
<td>Trans-Nzoia</td>
<td>220</td>
<td>170</td>
</tr>
<tr>
<td>25.</td>
<td>Laikipia</td>
<td>228</td>
<td>223</td>
</tr>
<tr>
<td>26.</td>
<td>Nakuru</td>
<td>2052</td>
<td>1715</td>
</tr>
<tr>
<td>27.</td>
<td>Narok</td>
<td>119</td>
<td>140</td>
</tr>
<tr>
<td>28.</td>
<td>Elgeyo- Marakwet</td>
<td>78</td>
<td>69</td>
</tr>
<tr>
<td>29.</td>
<td>Kilifi</td>
<td>300</td>
<td>120</td>
</tr>
<tr>
<td>30.</td>
<td>Nandi</td>
<td>140</td>
<td>121</td>
</tr>
<tr>
<td>31.</td>
<td>Nairobi</td>
<td>3050</td>
<td>2970</td>
</tr>
<tr>
<td>32.</td>
<td>Tharaka Nithi</td>
<td>64</td>
<td>48</td>
</tr>
<tr>
<td>33.</td>
<td>Bomet</td>
<td>120</td>
<td>160</td>
</tr>
<tr>
<td>34.</td>
<td>Meru</td>
<td>930</td>
<td>800</td>
</tr>
<tr>
<td>35.</td>
<td>Migori</td>
<td>337</td>
<td>334</td>
</tr>
<tr>
<td>36.</td>
<td>Vihiga</td>
<td>100</td>
<td>68</td>
</tr>
<tr>
<td>37.</td>
<td>Busia</td>
<td>226</td>
<td>219</td>
</tr>
<tr>
<td>38.</td>
<td>Kakamega</td>
<td>567</td>
<td>455</td>
</tr>
<tr>
<td>39.</td>
<td>Bungoma</td>
<td>294</td>
<td>220</td>
</tr>
<tr>
<td>40.</td>
<td>Tana River</td>
<td>80</td>
<td>22</td>
</tr>
<tr>
<td>41.</td>
<td>Wajir</td>
<td>300</td>
<td>86</td>
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<tr>
<td>42.</td>
<td>Mandera</td>
<td>79</td>
<td>0</td>
</tr>
<tr>
<td>43.</td>
<td>Garissa</td>
<td>1038</td>
<td>220</td>
</tr>
<tr>
<td>44.</td>
<td>Baringo</td>
<td>104</td>
<td>158</td>
</tr>
<tr>
<td>45.</td>
<td>Turkana</td>
<td>350</td>
<td>365</td>
</tr>
<tr>
<td>46.</td>
<td>Homa-Bay</td>
<td>400</td>
<td>250</td>
</tr>
<tr>
<td>47.</td>
<td>Isiolo</td>
<td>170</td>
<td>280</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>23,600</strong></td>
<td><strong>18,734</strong></td>
</tr>
</tbody>
</table>

Source: department of children’s services

**POPULATION IN CCIS AS AT THE END OF JUNE 2013/2014**

<table>
<thead>
<tr>
<th>S.NO</th>
<th>COUNTY</th>
<th>BOYS</th>
<th>GIRLS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Kisii</td>
<td>275</td>
<td>171</td>
</tr>
<tr>
<td>2.</td>
<td>Marsabit</td>
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<td>7.</td>
<td>Samburu</td>
<td>300</td>
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### S.NO COUNTY BOYS GIRLS
22. Mombasa 880 742
23. Kwale 190 239
24. Trans-Nzoia 220 170
25. Laikipia 228 223
26. Nakuru 2052 1715
27. Narok 119 140
28. Elgeyo- Marakwet 78 69
29. Kilifi 300 120
30. Nandi 140 121
31. Nairobi 3052 1715
32. Narok 119 140
33. Bomet 120 160
34. Meru 930 800
35. Migori 337 334
36. Vihiga 100 68
37. Busia 226 219
38. Kakamega 567 455
39. Bungoma 294 220
40. Tana River 80 22
41. Wajir 300 86
42. Mandera 79 0
43. Garissa 1038 220
44. Baringo 104 158
45. Turkana 350 365
46. Eldama Revolving 400 250
47. Isiolo 170 280

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Source: department of children’s services

### POPULATION IN CCIS AS AT THE END OF JUNE 2014/2015

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## Living Boys and Girls

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<td>223</td>
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Total: **23,450**

### Source
Department of Children’s Services

## Living in Child Headed Households

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<th>Females</th>
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Source: knbs-national population & housing census 2009

c) Placed in Institutions
   - Refer to 3. a)
d) Placed with foster families
   - This information is not available at the moment
e) Children adopted domestically or through inter-country adoptions

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Source: judiciary

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1 In 2012 the number of males was 111 and females 117. In 2013 the number of males was 99 and females 112.
4. Please provide data, on the number of children with disabilities:

a) Living with their families

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Source: knbs-national population & housing census 2009

b) In Institutions

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<td>Dwarfism</td>
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<td>1</td>
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<tr>
<td>Intellectual Disability/Epilepsy</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Mild Retardition</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Hearing Loss</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Short Sightedness/Visual Defects</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Mood Disorder</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Cerebella Atrophy/Cerebral Palsy</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Speech and Communication Problem</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>T.B.I/Brain Injury</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Physical Deformity</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Deaf and Dumb</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>32</td>
<td>18</td>
<td>50</td>
</tr>
</tbody>
</table>

Source: department of children's services

c) Attending regular primary schools:

<table>
<thead>
<tr>
<th>Type</th>
<th>Enrolment by 2014</th>
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<tbody>
<tr>
<td>Public Schools</td>
<td>243,081</td>
</tr>
<tr>
<td>Private Schools</td>
<td>8,461</td>
</tr>
<tr>
<td>Total</td>
<td>251,542</td>
</tr>
</tbody>
</table>

Source: ministry of education science &technology

---

2  Number of Children with disabilities in Statutory Institutions
a) Attending regular secondary schools;

<table>
<thead>
<tr>
<th>Type</th>
<th>Enrolment by 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Schools</td>
<td>12,694</td>
</tr>
<tr>
<td>Private Schools</td>
<td>1,040</td>
</tr>
<tr>
<td>Total</td>
<td>14,098</td>
</tr>
</tbody>
</table>

Source: ministry of education science & technology

e) Attending special schools;

- Refer to c) and d) above. The numbers above are inclusive of children in special schools.

b) Out of school:

<table>
<thead>
<tr>
<th>Age</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>11,721</td>
<td>6,448</td>
<td>5,273</td>
</tr>
<tr>
<td>4</td>
<td>10,298</td>
<td>5,687</td>
<td>4,611</td>
</tr>
<tr>
<td>5</td>
<td>7,957</td>
<td>4,497</td>
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<tr>
<td>6</td>
<td>6,603</td>
<td>3,701</td>
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</tr>
<tr>
<td>7</td>
<td>5,088</td>
<td>2,768</td>
<td>2,320</td>
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<tr>
<td>8</td>
<td>5,443</td>
<td>2,983</td>
<td>2,460</td>
</tr>
<tr>
<td>9</td>
<td>4,582</td>
<td>2,546</td>
<td>2,036</td>
</tr>
<tr>
<td>10</td>
<td>6,314</td>
<td>3,540</td>
<td>2,774</td>
</tr>
<tr>
<td>11</td>
<td>3,489</td>
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<td>1,662</td>
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<tr>
<td>13</td>
<td>4,692</td>
<td>2,536</td>
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<td>14</td>
<td>5,634</td>
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<tr>
<td>15</td>
<td>6,431</td>
<td>3,475</td>
<td>2,956</td>
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<tr>
<td>16</td>
<td>7,116</td>
<td>3,657</td>
<td>3,459</td>
</tr>
<tr>
<td>17</td>
<td>8,048</td>
<td>4,103</td>
<td>3,945</td>
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<tr>
<td>Total</td>
<td>99,165</td>
<td>54,100</td>
<td>45,065</td>
</tr>
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</table>

Source: knbs-national population & housing census 2009

g) Abandoned by their families

<table>
<thead>
<tr>
<th>Age</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>610</td>
<td>326</td>
<td>284</td>
</tr>
<tr>
<td>1</td>
<td>569</td>
<td>277</td>
<td>292</td>
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<td>2</td>
<td>659</td>
<td>333</td>
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<td>3</td>
<td>698</td>
<td>362</td>
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<td>831</td>
<td>422</td>
<td>409</td>
</tr>
<tr>
<td>5</td>
<td>918</td>
<td>460</td>
<td>458</td>
</tr>
<tr>
<td>6</td>
<td>1,028</td>
<td>513</td>
<td>515</td>
</tr>
<tr>
<td>7</td>
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<td>8</td>
<td>1,160</td>
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<td>9</td>
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<td>10</td>
<td>1,976</td>
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<td>12</td>
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<td>14</td>
<td>2,089</td>
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<tr>
<td>15</td>
<td>2,433</td>
<td>1,175</td>
<td>1,258</td>
</tr>
<tr>
<td>16</td>
<td>2,325</td>
<td>1,079</td>
<td>1,246</td>
</tr>
<tr>
<td>17</td>
<td>2,560</td>
<td>1,227</td>
<td>1,333</td>
</tr>
<tr>
<td>Total</td>
<td>25,742</td>
<td>12,399</td>
<td>13,343</td>
</tr>
</tbody>
</table>

Source: knbs-national population & housing census 2009
5. Please provide the Committee with an update of any data in the report which may have been outdated by more recent data collected or other new developments.
   - This report contains some of the recent developments which have occurred after the State Party submitted the 3rd, 4th and 5th Report.

6. In addition, the State party may list areas affecting children that it considers to be of priority with regard to the implementation of the Convention.
   - Moratorium on Inter-Country Adoption
   - Drugs and Substance Abuse
   - Age appropriate sexual education
   - Safety in schools
   - De-institutionalization of children
Stakeholders Submissions
ACKNOWLEDGEMENT

The NGO Child Rights Committee, whose secretariat is at Kenya Alliance for Advancement of Children (KAACR), would like to thank all the various stakeholders who participated in the preparation of this complementary report on Kenya’s combined 3rd, 4th & 5th state party periodic report on the implementation of the UN Convention on the Rights of the Child.

As a sector, we would like to thank the children government line ministry for involving us in the drafting process of drafting and validating the State Party Report. We would also in particular like to thank child representatives from seven counties who participated in Focus Group Discussions to give valuable views and recommendations, some of which are represented in the works of the children (verbatim).

The complementary process benefited a lot from the selected representatives of the children line ministries and departments both at the national and county levels. Their input on the new issues that are affecting children in this process of devolution cannot be gainsaid. We sincerely thank all the CSO representatives, FBOs and the various experts on children who provided invaluable information that makes good additions to the state party.

We thank the members of the NGO Child Rights Committees in the counties and at the national level for input they made in the tools of data collection and validation of this report. We also thank the NCCS for convening the National Children Assembly where child representatives raised issues that have been captured in this report.

Lastly, we thank Save the Children International Kenya for providing financial and technical support to KAACR that enabled compilation of this report. We also thank the Child Rights Connect for providing technical support in preparation and submission of this report.

We are positive that the report and participation of the CSOs and children representatives in the pre-session will be of value to the rapporteur who will review Kenya’s state party report.
Kenya Alliance for Advancement of Children (KAACR), which has ECOSOC status, is a national umbrella body for NGOs cooperation and exchange of information on children whose mandate is to monitor the implementation of children rights in Kenya. KAACR, which has a membership of 118 CSOs in Kenya, is the secretariat of the NGO Child Rights Committee. KAACR in collaboration with Save the Children International worked with a consultant to prepare the CSO complimentary report to the state party report on the UNCRC.

**NGO Child Rights Committee**

The NGO CRC is the network (Coalition) in the children sector that is mandated to monitor Kenya’s implementation of child-related international, regional treaties besides national legislations and participates in periodic reviews of such treaties. The objectives of the committee that is composed of about 25 CSOs are to monitor and evaluate government policies aimed at implementing children rights, provide information to the stakeholders in the sector on activities being undertaken at national and county levels and establish and over see issue specific sub committees. The committee works through three sub committees and the County Child Rights Networks that have been formed in most counties. The committee and the county networks draw up annual plan of activities that are undertaken and quarterly reports submitted to the NGO CRC secretariat.

The committee has in the past made alternative/complementary reports on the initial & first and second periodic reports on the UNCRC, two reports on the UPR, the UNCAT and two reports to the ACRWC.

**Methodology of compilation of the report**

The compilation process entailed analyzing the state party report on the UNCRC for the period 2005 – 2011, undertaking a literature review (secondary data) of all materials and data during the reporting period, developing a child friendly data collection tool that drew its content from the state party report based on the eight thematic clusters and collecting data from children and adult stakeholders from seven sampled Counties of Kenya over four months (September – December 2014) that provided the primary data. The report was then validated at the national level by the NGO Child Rights Committee.

The report is divided into ten (10) chapters that follow UNCRC 8 thematic clusters as provided for in the revised UNCRC guidelines, 2005 and two chapters on challenges and recommendations.
CHAPTER I

CLUSTER 1: GENERAL MEASURE OF IMPLEMENTATION

Articles 4, 42 and 44 of the Convention

Legislative Framework

1. The Constitution of Kenya 2010

The Constitution of Kenya 2010 is the principal legislation guiding the implementation of children’s rights in the country. The Constitution provides that international law shall form part of the laws of Kenya thereby domesticating international instruments including the ACRWC and UNCRC.

The Constitution specifically protects children by providing for their right to nationality. It goes on to specifically provide for all the rights of the child under Article 53 where, in addition to the right to a name and nationality, the Constitution sets out all other fundamental rights of the child. The Constitution also recognizes the best interests of the child to be of paramount importance in all matters concerning the child. At Article 260 the Constitution recognizes a child as being anyone under the age of 18 years in keeping with the international standards.

2. The Children Act, 2001

The Children's Act is “an Act of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children’s institutions; to give effect to the principles of the UN CRC and ACRWC and for connected purposes.”

With the promulgation of the Constitution 2010, it was necessary that the Act be reviewed to ensure that it is in line with the provisions of the Constitution. This concern was raised partly due to the fact that the provisions regarding parental responsibility in the Act appeared to contravene the provisions of the Constitution. The review process is yet to be concluded and is being carried out by the National Council for Children Services (NCCS) which is a department under the state Ministry for Labour, Social Security and Services.

3. The Marriage Act 2014

The Marriage Act 2014 was enacted on 29th April 2014. The Act makes a number of provisions for children including but not limited to; defining the child as any person under the age of 18 years in keeping with international law and providing for custody and maintenance of children on accordance with the Children Act and other acts relating to children. The Act also protects children by setting the minimum age for marriage and witnessing of a marriage at 18 years, prohibiting marriage to one’s own children and grandchildren as well as stating that cruelty against children shall be a reason for the dissolution of a marriage.


Parliament is in the process of developing the Child Justice Bill, 2012 which seeks to raise the age of criminal responsibility from 8 years to 12 years. Whereas the Children Department is of the opinion that this Bill should be merged with the Children Act (Amendment) Bill, as stated above, the Department of Probation and After Care (which deals with children in conflict with the law) is of the view that the draft Child Justice Bill should not be merged with the Children Act, 2001, and should operate as a “stand alone legislation” alongside the Children Act.

5. Counter Trafficking in Persons Act, No. 8 of 2010

The Counter Trafficking in Persons Act was created to implement Kenya’s obligations under the United Nations Convention Against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to provide for the offences relating to trafficking in persons and for connected purposes. This Act was made into law in August 2010. However, it only got a commencement date in October 2012 after child rights organization sued the State over the legislation lacking a commencement date. The Act establishes an Advisory Committee which was established in 2014 and is currently working on a work plan.

6. The Basic Education Act, No. 14 of 2013

The Basic Education Act was enacted to give effect to Article 53 of the Constitution and to promote and regulate free and compulsory basic education.

7. Alcoholic Drinks Control Act, 2010

The Alcoholic Drinks Control Act, 2010 protects children with regard to sale and consumption of alcohol. The Act additionally prohibits parents and guardians from taking children to premises where alcohol is on sale. In terms of implementation, there
is visible headway in terms of protecting children from accessing alcohol whenever possible. This is seen in the advertising regulations for alcoholic products whereby such advertisements can only be placed in a manner so as to ensure there is minimum exposure of the same to children. The Act also regulates the manufacture and sale of alcohol to ensure that children do not have access to alcohol.

8. The Prohibition of Female Genital Mutilation Act, 2011

The Prohibition of Female Genital Mutilation Act, 2011 outlaws the practice of female genital mutilation. There is established a board known as the Anti-Female Genital Mutilation Board. Some of the functions of the Board are to design, supervise and coordinate public awareness programs against the practice of female genital mutilation; and to generally advise the Government on matters relating to female genital mutilation and the implementation of this Act.


The Employment Act, Part VII provides for protection of children including protection from the worst forms of child labour. The same however exhibits major gaps that leave room for the economic exploitation of children. Section 56 prohibits employing a child below 13 years to any form of undertaking. However it allows employment of children from the ages of 13 to 16 years for light work and defines those of 16 to 18 as employable. It defines a young person as a child who has attained the age of sixteen years but has not attained the age of eighteen years.


An Act of Parliament to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities; and for connected purposes. The Persons with Disabilities Act is under review to ensure that the provisions of the Convention are fully domesticated. The council for Persons with Disabilities has been fully operationalized to oversee the implementation of the obligations that Kenya has signed to under the Convention. The Council also has the mandate ensure that the National Fund for the Disabled of Kenya, an endowment fund established under the Perpetual Succession Act Cap 164 of the Laws of Kenya, utilizes its income for the benefit of persons with disabilities within Kenya.

The Children's Department

The State no longer has a substantive Ministry that deals specifically with children matters. The Children Department has been placed under the Ministry of Labour, Social Security and Services.

The Children Act 2001, however, establishes the National Council for Children Services whose mandate is to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects thereof.

Among actions taken by the State include:

2. Government drafted amendments to the Children Act, 2001 to address the noted inconsistencies and weakness therein and further ensure it is in congruent with Article 53 of the COK 2010.

CASE STUDY

In April, 2014, a chief from Narok County was arraigned in court for allegedly allowing his two daughters to undergo forceful circumcision. The 50 year old administrator was accused of aiding female genital mutilation (FGM) on his two daughters aged 15, and 16 years old who are pupils at a local primary school in Narok South District. He was further accused of knowingly allowing female genital mutilation in his homestead as the head of the home and failing to report the occurrence to the authorities contrary to the Anti FGM Act, 2011.

“Being a chief he failed to report accordingly that an offense of FGM is being conducted in his homestead contrary to section 24 of the Prohibition of FGM Act,” said the charge sheet.

The two girls who underwent the process were rushed for treatment at the Narok General Hospital after developing complications related to FGM. The girls were rescued by Narok South Sub-County Commissioner following a tip off from members of public.

The chief was arrested while conducting a “Ntalengo” (a Maasai circumcision ceremony) in his home. The prosecution led by state counsel pleaded with the court to expedite the case and applied for a closer hearing date where the two girls will testify before they go back to school as the schools open. He said the girls are currently sheltered at a Girls Rescue Home in Narok town.


12 Ibid Section 46
13 Section 3 of the Prohibition of the Female Genital Mutilation Act, 2011 (Revised 2012)
14 Section 5, Prohibition of the Female Genital Mutilation Act, 2011 (Revised 2012)
15 Established under Section 3 of the Persons with Disabilities Act 2003
16 Section 30, Children Act 2001
17 Ibid Section 32(1)
State Policies

(i) National Plan of Action for Children (2013-2018);
The State, through the coordination of the National Council for Children Services (NCCS), and partners developed a National Plan of Action for children (2008-2012) which determined priorities and interventions to address the gaps that may exist whose implementation are necessary for the progressive realization of the rights of the child in Kenya. The NPA 2008-2012 has expired and the NCCS in the process of reviewing the NPA so as to develop another one to run for the next five years.

(ii) The Ministry of Labour, Social Security and Services
This is the Primary Ministry offering services to children in need of care and protection through the Department of Children’s Services (DCS). The DCS coordinates and supervises services aimed at promoting and protecting the wellbeing of children and their families. The DCS works closely with development partners including Faith Based Organizations (FBOs), Community Based Organizations (CBOs) and Non-Governmental Organizations (NGOs) who complement the State Party programmes for the implementations of the goals set by the UN General Assembly in the “World Fit for Children” guidelines.

(iii) The National Council for Children’s Services (NCCS)
NCCS was established under Section 30 (1) of the Children Act18 to exercise general supervision and control over planning, financing and coordination of child rights activities and to advise the State Party on all aspects relating to children19. The Council is composed of representatives from relevant Government ministries, NGOs, FBOs, and the private sector. The State Party has put in place mechanisms to ensure independent operation of the Council.

- The functions of the NCCS are cascaded to the local levels through Area Advisory Council found at sub-county and locational levels. The operation of the AACs is guided by the principles of the best interests of the child, the right to protection, survival, participation and development20. The overall role of AACs is to co-ordinate children activities in their area of jurisdiction. There are 153 sub-counties with AACs across the country.

The development of a National Policy on Human Rights (NPHR) was based on the need to provide a framework for the integration and mainstreaming of human rights in development planning, implementation and evaluation in all sectors in order to fully implement the Constitution of Kenya, 201021.

(v) The National Policy on PWDs of 2006
This Policy has specific provisions for children with disability. It is currently under review to comply with the Constitution. However, the State has so far not provided adequate resources for the construction or provision of educational services to children with disability, particularly children who cannot be integrated in mainstream schools. The three arms of Government should all be involved in the mainstreaming of PWDs. There is need for a coordination mechanism for the implementation of policies and legislation. This will help in the institutionalization and the mainstreaming of disability concerns. The Sexual Offences Act, 2006 is silent on provisions pertaining sexual violence against children/individuals with disability. The Persons with Disabilities Act requires that all facilities be compliant with: public transport, school buildings and hospitals. The Reproductive Health Care Bill, 2014 gazetted 22nd, April 2014 to provide for the recognition of reproductive rights; to set the standards of reproductive health; provide for the right to make decisions regarding reproduction free from discrimination, coercion and violence.

Other policies put in place that respond to the issue of children with special needs are the National Special Needs Educational Policy Framework22 which is aimed at enhancing an all-inclusive, equitable and access to education which includes special needs education as per the Constitution of Kenya as well as the country’s development blue-print, the Kenya Vision 2030.

The introduction of Free Primary Education has contributed to an increase in the number of children with special needs who are able to access education in Kenya. The state has also taken steps to increase the number of specialized schools and teachers’ training institutions. These interventions, though notable, are few and limited to cater for all types and disabilities.

This Policy was launched in 2012 and stipulates strategies that are aimed at addressing chronic hunger and malnutrition currently affecting millions of citizens. Unfortunately, we still have children dying of hunger and malnutrition, particularly in Turkana County and among pockets of urban poor. Since agriculture and its related activities remains the main source of livelihood for a majority of Kenyan’s, the rural poor, the State needs to ensure that the subsistence farmers have access to knowledge, financial services, information and access to markets. Such a strategy will go a long way in ensuring that areas prone to drought and food insecurity do not perpetually depend on external donors to survive, but can also produce their own food. Any food intervention made has to be nutrition sensitive so as to address and reduce forms of malnutrition among children.

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18 Kenya 2nd State Party Report to the UNCRC Committee
19 The Children Act 2001 laws of Kenya
20 NCCS, World Vision, Guidelines for the formation and operation of Area Advisory Councils
21 The World Conference on Human Rights in Vienna, 1983, recommended that States develop a national action plan identifying steps that the state would take to improve the promotion and protection of human rights
22 July 2009
The state through the Hunger Safety Net programme [HSNP] under the aegis of the Ministry for the Development of Northern Kenya and Other Arid Lands in partnership with other organizations delivers bi-monthly cash transfers to extremely poor and vulnerable people. HSNP aims at reducing poverty in Arid and Semi-Arid Lands (ASAL) counties of Kenya and addresses chronic poverty, hunger and vulnerability in targeted households, (the 10% poorest in four Counties of Turkana, Marsabit, Wajir and Mandera).

Key State Actors

(i) The Department of Civil Registration
The Department of Civil Registration is responsible for registering births and deaths and has offices in most sub-counties in the country. However, there is no legislation that makes provisions for intersex or transgender children and hence challenges during birth registrations23 24.

(ii) The Judiciary
The Judiciary has established Children’s courts manned by gazetted Children Magistrates. The Judiciary has gone a step further by gazetting all Magistrates to adjudicate in children matters.

(iii) The Ministry of Justice, National Cohesion and Constitutional Affairs
The Ministry of Justice, National Cohesion and Constitutional Affairs no longer exists. It was reduced to being the Department of Justice under the Office of the Attorney General.

CASE STUDY
In 2013, a transgender person sued both the Kenya National Examinations Council (KNEC) and the Attorney General for failing to recognize her gender. The person had also sued the Kenya Police in 2013 for violating her rights when they stripped her naked to find out her sexual identity. A judgement was delivered in her favour by a judge who declared that such an act by police officers violated her rights and dignity. She was awarded Kenya Shillings Two Hundred Thousand (Kes.200,000) compensation.

(iv) The National Police Service
The National Police Service provides security to all citizens and has established children and gender desks and Child Protection Units (CPU) in selected police stations, mainly in Nairobi25 . It noted that the national police service is undergoing major reforms.

(v) Ministry of Local Government
The Ministry of Local Government is no longer in existence and its functions transferred to County governments. Some additional and new functions have also been transferred to County governments as listed in Part 2 of the Fourth Schedule of the Constitution26.

(vi) The Ministry of Health
The Ministry of Health implements health and sanitation policies and programmes. Some of these initiatives focus specifically on child health. These initiatives include: maternal, neonatal and pediatric health of child survival and development strategy, child health policy Integrated Management of Childhood Illness (IMCI) and the National School Health Policy and Guidelines.

Recommendations

a) The State needs to address the challenge of devolving health services and the impact on provision of quality health care to children. Since health care service provision has essentially been devolved, County governments need to prioritize increasing the allocation to health services

b) There is need for the State to conduct an assessment of whether or not it should continue to leave the management of health services to County governments or if the management should revert back to National government. Article 187 of the constitution of Kenya 2010, provides for Counties unable to handle health services to revert the same to the National Government under an agreement.

Key Non-State Actors

(i) Civil Society Organizations (CSOs)
These agencies include local and international non-governmental organizations, Community Based Organizations (CBOs), Faith Based Organizations (FBOs), Trusts and Foundations. These agencies supplement government efforts in provision of services to children. The government has on several occasionsal proposed amendments to the PBO Act whose major effect would be to limit funding opportunities for organizations that advance the best interests of the child.

Recommendation

The government should operationalize the PBO Act and, if necessary, effect amendments that will not restrict the Civil Society operating space in the country thus interfering with the operations of organizations which advance the best interests of the child.

23 A draft Bill seeking legal recognition for intersex individuals - people born with both male and female sex organs - has been lying at the AG chambers since 2012
25 The fourteen project areas are: Kilimani, Kamukunji, Buruburu, Kasarani in Nairobi Province, Naivasha, Nakuru, Bondeni, Kitale in Rift Valley Province, Gucha, Kisii, Siaya, Kisumu in Nyanza Province, and Busia and Kakamega in Western Province
26 Some of the functions for the County governments are Pre-Primary Education; Child Care Facilities; Health care facilities among others
Observations

a) Information and data management on children
There is lack of disaggregated data on children in terms of sex, disability, geographical locations, family earnings, parents’ level of education and income, etc which are crucial for planning and resource allocation.

b) Independent Monitoring
The Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) have been established pursuant to Article 59(4) of the Constitution. They are among other things, mandated to oversee the promotion and observance of human rights in the country and to promote equality and freedom from discrimination in accordance with Article 27 of the Constitution. However, there should be a Commissioner or designated officer within the Commissions who works specifically on children specific issues.

c) Financing and budgetary allocation for the children sector
The annual national budgetary allocation to the Children Department has progressively increased over the years. However, a high percentage of this increment is for recurrent expenditure, with about 10-12% only being allocated to actual development.

CHAPTER II

CLUSTER 2: DEFINITION OF THE CHILD

Article 1 of the Convention

(i) Legal Framework
The Constitution of Kenya, 2010 under Article 260 defines a child as “an individual who has not attained the age of eighteen years”. Thus any other law which is in conflict with this definition is considered null and void. The Children Act, 2001 additionally defines a child as any human being under the age of eighteen years.

(ii) Minimum Age of Criminal Responsibility
The Penal Code still pegs the age of criminal responsibility in the country at eight years, this is despite the Recommendations of this Committee and the Human Rights Council’s UPR process.

(iii) The Minimum Age for Sexual Consent
The Sexual Offences Act, 2006 has criminalized sexual acts with persons under the age of 18 years, even if they give consent. Section 43 (4)(f) of the Act states that children are incapable of making a choice in sexual acts.

(iv) The Minimum Age for Marriage
The Marriage Act 2014 was enacted on 29th April 2014. Section 4 of this Act provides that “a person shall not marry unless that person has attained the age of eighteen years”. This Act repeals The Marriage Act, (Cap. 150), The African Christian Marriage and Divorce Act, (Cap. 151), The Matrimonial Causes Act, (Cap. 152), The Subordinate Courts (Separation and Maintenance) Act, (Cap. 153), The Mohammedan Marriage and Divorce Registration Act, (Cap. 155), The Mohammedan Marriage, Divorce and Succession Act, (Cap. 156), and The Hindu Marriage and Divorce Act, (Cap. 157) some of which allowed for marriage of persons below the age of 18 years, provided consent was obtained from their guardian or parent(s).

(v) The Minimum Age for Employment
Despite its prevalence in Kenya, child labor continues to receive inadequate attention from the State. Data on the extent of child labor is only available from other organizations and not the government. A report released in June 2012 revealed that more than 1.1 million children are engaged in various forms of labor. A Child Labour Policy was proposed in June 2012 at a conference the theme “Human Rights and Social Justice, Let’s End Child Labour” that was organized by the Ministry of Labour with support of NGOs and other organizations.

(vi) The Employment Act 2007 prohibits employing a child below 13 years to any form of undertaking. However it allows employment of children from the ages of 13 to 16 years for light work and defines those of 16 to 18 as employable.

(vii) Minimum Age for Alcohol Consumption (Alcoholic Drinks and Control Act, 2010)
Section 24 of the Act prohibits access to alcohol for persons under the age of eighteen years. The Act can be interpreted as therefore setting the minimum age for alcohol consumption at eighteen years. The State should put structures in place for the full implementation of the Alcoholic Drinks and Control Act.

27 Report released by CESVI
29 Section 56 of the Employment Act, 2007
June (not her real name) – “I’m 17 years old, I was rescued when I was twelve years old. My father wanted me to get married to an old man after I went through FGM. I went to children office where I was rescued and Chief Carol took me back to school.” - Il Bisil, Kajiado County

Liz (not her real name) – “I’m 15 years old. I went through FGM when I was nine years of age, one year later my father planned for me to get married after my mother died. My brother helped me to run away and I was rescued by Chief Carol.” - - Il Bisil, Kajiado County

“FGM practice is still very high. Girls in my community have no rights and are properties according to our Masai culture; they are circumcised at the age of 8 and are free to have sex. Many girls manage to escape and are brought to my office for assistance. We face many challenges as administration officers when fighting FGM. We face challenges like rejection, threats and even beaten up” – Chief, Il Bisil

“Children are used by parents to brew and sell ‘Chang’aa and Busa’ (traditional alcohol drinks). One class 6 girl, 12 years old in our school recently came to class under the influence of this alcohol.” – Teacher, Public Primary School, Bungoma County

“FGM practice is still very high. Girls in my community have no rights and are properties according to our Masai culture; they are circumcised at the age of 8 and are free to have sex. Many girls manage to escape and are brought to my office for assistance. We face many challenges as administration officers when fighting FGM. We face challenges like rejection, threats and even beaten up” – Chief, Il Bisil

b) There is need for stronger enforcement of alcohol control regulations particularly against parents who expose their children to its use by taking them to establishments that serve alcohol.

- In Bungoma County, children are used in the practice of brewing ‘Busa’ (a traditional alcohol drink). In the process of brewing, children end up drinking the very alcohol they brew.

“Children are used by parents to brew and sell ‘Chang’aa and Busa’ (traditional alcohol drinks). One class 6 girl, 12 years old in our school recently came to class under the influence of this alcohol.” – Teacher, Public Primary School, Bungoma County

c) The state should standardize the criteria of assessing the age of children who are in conflict with the law but lack any form of identification to avoid having them put in prison cells with adult

“If age assessment is confusing a date should be issued for assessment. We recommend that, enforcement officers liaise with a government Doctor in hospitals. There’s no criteria used for age assessment. Minors have ended up being imprisoned.” – Prosecutor, Kajiado County

CHAPTER III

CLUSTER 3: GENERAL PRINCIPLES

Articles 2, 3, 6, and 12 of the Convention

Non-Discrimination

Progress on Implementation

(i) Children born out of wedlock

Article 53(1)(e) protects children born out of wedlock by providing that both parents bear parental responsibility whether or not they were married at the time of the child’s birth. This has in effect repealed the section in the Children Act, 2001 that previously provided that a father to a child born out of wedlock could only acquire parental responsibility by acknowledging paternity or maintaining the child.

(ii) Nationality

The Citizenship and Immigration Act, 2011 now provides that any child born in Kenya has a right to a Kenyan nationality.

(iii) Children with Disabilities

Kenya enacted the Persons with Disabilities Act in 2003 and has subsequently ratified the UN Convention on the Rights of Persons with Disability in 2008. Even though the legislation and Convention provide that the State shall put measures in place to ensure that children with disability are not discriminated against, little has been achieved in terms of implementation.
The Best Interest of the Child

Progress on implementation

(i) Sexual offences

Even though there is in existence legislative provisions which states that the best interest of the child shall be the primary consideration in all matters concerning children—the practice is not uniform. The State has not put strong mechanisms in place to ensure that this principle is maintained.

CASE STUDY

A case in point is the plight of girls who have been defiled in Wajir County. The law provides that such cases should go through the judicial process, but cases do get reported where clan members establish Maslaha where the alleged offenders are fined and girls’ parents (mothers) are forced to withdraw the case.

The majority of the sexual offence cases brought to court are eventually thrown out for lack of evidence due to threats from family members or out of court settlements among families which ends up defeating the principle of the best interest of the Child.

“The frustration we get at the courts is this; the complainant offers to present evidence to the courts. On the day of the case, they either refuse to present evidence or refuse to show up in the court. We’ve had instances where family members ask for permission in court to settle the case themselves. In such cases, the child ends being denied justice. My role is to only give Alternative Dispute Resolution (ADR) to petty cases only, criminal cases such as sexual offences we don’t seek for ADR.” a Magistrate, Kajiado County

(ii) Parental responsibility

The Constitution of Kenya, 2010 under Article 53 (e) gives equal recognition to children whether born within or out of wedlock. It is in a child best interest, particularly those born out of wedlock that both parents acquire parental responsibility, particularly on issues involving child custody and maintenance.

Survival and Development

i. Child mortality

The current government came into office in early 2013 and fulfillment of some of its election pledges abolished maternity fee in State run medical institutions. However, this does not include caesarian deliveries and families still have to bear any additional costs that are associated with such deliveries. Furthermore, State run hospitals and medical centres are not well equipped, with Doctors and Nurses regularly going on strike over inadequate pay, lack of medical supplies or both.

In order to improve maternal and child health outcomes in the country, the First Lady of Kenya, Margaret Kenyatta launched the ‘Beyond Zero Campaign’ on 24 January in Kenya’s capital Nairobi. The new initiative also aims to accelerate the implementation of the national plan towards the elimination of new HIV infections among children.

ii. Nutrition

Kenya has a large part of its territory classified as Arid and Semi-Arid Land (ASAL). Turkana County, parts of Marsabit County and a few others are 100% dependent on food aid. Even though the State is aware of this fact, year in year out, images are aired on electronic media of children dying of hunger and malnutrition. The State has the resources, but 50 years after independence, Kenyans are still dying of preventable causes due to poor planning and State bureaucracy. However, children dying of malnutrition is not only restricted to ASAL areas as there are also pockets of poverty among slum dwellers, unfortunately, there is no feeding or nutritional programme in existence for urban poor children.

iii. Child participation

It must be noted that the State did not provide any information on child participation in its 1st Periodic Report. However, it must be noted that The State Party through the Department of Children’s Services (DCS) and various Area Advisory Councils had facilitated participation of children in development of policies at the sub-national and national levels. In this regard the DCS has established Children Assemblies in all counties (47) while Children Voices platforms managed by Civil Society Organizations are annually held at regional level. Respect for the views of children has improved since the last reporting period. Children are allowed to give their views during judicial proceedings, in schools, and in the community forums. Child Rights Clubs and Student Councils in Secondary schools have also been established in many areas.

The State Party through NCCS has formed a Child Participation Committee at the national level, printed more than 22,000 copies of the National Child Participation Guidelines. These have been disseminated to stakeholders in the children sector and to children for their own use. Child friendly school guidelines have been distributed to schools through Ministry of Education.
Recommendations:
   a) The State should expedite the process of amending the Children Act, 2001.
   b) Major Policy decisions should seek the views of children.
   c) Allocation of sufficient funds to support KCA and its build up activities

CHAPTER IV

CLUSTER 4: CIVIL RIGHTS AND FREEDOMS

Articles 7, 8, 13-17, 19 and 37(a) of the Convention

Birth Registration (Name and Nationality)
CSOs in Kenya agree with the State party that a lot of policy and legislative reform has taken place to ensure that all children born in Kenya are registered and issued with Birth Certificates. Apart from the Constitutional provisions that grants citizenship to various categories of persons in Kenya, the State has gone further and enacted the Kenya Citizenship and Immigration Act, 2011. This enabling legislation to the Constitution also confers citizenship by presumption of foundlings to any child who is or appears to be less than eight years of age; whose nationality and parents are unknown31. However, the decision on the Children of Nubian descent Communication that the African Committee of Experts on the Rights and Welfare of the Child decided in favour of the applicants is under implementation and communities that had hitherto experienced challenges in accessing citizen rights are now entitled to Kenyan citizenship.32 33
Again, whereas the independence Constitution conferred citizenship of children born to Kenyan fathers, but not Kenyan mothers (where the father is of a different nationality); the Constitution of Ken, 2010 has cured this mischief and citizenship can now be obtained by children born to Kenyan mothers, irrespective of the nationality of their fathers.34
The State has also made it mandatory that all children registering for school must have a copy of their birth certificates and this has increased the number of registrations. However, all data are captured manually on paper, then scanned and entered manually into CRVSS (Civil Registration Vital Statistics System).

Freedom of Expression
Kenya CSOs agree with the State report that it has established what is known as Children Assemblies in each of the 47 counties. There are also Area Advisory Councils that engage the participation of children in all levels. However, not all stakeholders in the child sector take the view of children seriously and often fail to engage children in forums where their views should be taken into consideration.

Freedom of Association
Children Assemblies have been established in each of the 47 Counties.35 However, they are not well understood outside the children sub-sector. Whereas children are given an opportunity to exercise their freedom of association and peaceful assembly, the State has also placed certain limitations to the enjoyment of this right.

Freedom of Thought, Conscience and Religion
Article 32(1) of the Constitution provides that “every person has the right to freedom of conscience, religion, thought, belief and opinion”; 32(2) “Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief, practice shows that the enjoyment of these rights are not fully guaranteed by the State”. However, some of the judicial decisions pronounced by the High Court have taken away the enjoyment of the right to freedom of religion.

Protection of Privacy
The network of child protective services in Kenya is currently challenged by a series of gaps due to the absence or weakness of a coordination mechanism. Currently, there are no clearly defined structures for reporting child violence at the community level, school, and other settings where violence occurs, or for referring victims of violence to the appropriate service provider36. These weaknesses and gaps in reporting and managing information may infringe child victim’s right to privacy.

31 Section 9, The Kenya Citizenship and Immigration Act, 2011
32 Section 15, 16 and 17, The Kenya Citizenship and Immigration Act, 2011
33 From the African Committee on the Rights and Welfare of the Child, Communication No. 2 of 2009
34 Article 14(1) of the CoK, 2010
**Recommendations**

a) The State ought to use appropriate digital technology for data collection to be integrated with CRVSS. This will expand the reach of registration coverage and real-time capture of vital events.

b) Need for training and awareness for parents to understand the importance of having their children registered and procure birth certificates.

> “The level of illiteracy among women here is very high. Majority of mothers have no Identification Cards or Birth Certificates which complicates the birth registration process for their children. These women need to trained on the importance of having these documents” – Director, Kuimirira Child Rights (CBO), Diani, Kwale County

b) The Freedom of Information Bill, 2012 need to be operationalized so as to give flesh to Article 35 of the Constitution which provides for the freedom of information. Under Article 35, access to information by all citizens includes children hence children should be in a position to access information in child friendly documentation. This includes information on budgeting both at the national and county level. This will enhance child participation in National and County government processes.

d) The State ought to infuse the principles of participation as provided for in Article 10 of the Constitution hence give children an opportunity to give their views and the same taken into consideration.

e) The Child Participation Guidelines should be reviewed and streamlined to ensure emerging issues are addressed.

f) Child participation should be taken into consideration during budgetary allocation processes and should be sustained.

g) The State ought to allow children to exercise their right to association and expression as enshrined in Articles 36 and 33 respectively of the Constitution.

h) The State should develop clear guidelines that to be address the situation of ensuring the right to freedom of religion of the parents and the right to access healthcare of the child do not contravene each other.

i) The State should scale up establishment of fully operational Child protection Units (CPUs) and gender and children desk in all the police stations throughout the Republic of Kenya and also establish coordination mechanisms that provide guidance to child protection actors.

j) The state should make sure that Child Protection Units (CPUs) are manned by adequate police personnel, who are also well trained on child protection issues.

> “We have more challenges as law enforcement agents. There are no rescue centres in Kisumu county to take children who need such services. Our CPU unit lack enough personnel to handle the workload of cases to take care of. Transfer of officers to the CPU from other assignments disrupts the flow of our work as they lack the training needed to function in the Child protection unit.” – said a Central Police Station, Kisumu County

**CHAPTER V**

**CLUSTER 5: FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

**Articles 5, 18 (paragraphs 1-2), 9-11, 19-21, 25, 27 (paragraph 4) and Article 39 of the Convention**

**Protection Against Child Abuse and Torture**

The State is yet to enact into legislation the Prevention of Torture Bill. Also, despite the National Children’s Policy Kenya (2010) and the Legal Notice (2001) which outlaw corporal punishment, the vice still continues in schools and within households. Section 37 of The Basic Education Act has outlawed corporal punishment. However, to several schools still practice caning and corporal punishment despite the fact that the practice has been outlawed. Recommendations

> “I wouldn’t lie to you, corporal punishment is still happening despite the fact that it has been outlawed. We do not have strong and effective alternatives to disciplining children. If they are there, we are yet to be introduced to them” – said a Teacher in a public school, Kwale County

a) The State should enact the Prevention of Torture Bill.

b) The State to establish a national system of data collection on cases of abuse disaggregated by form, age and gender including ensuring that the information is accessible by all stakeholders for accountability and transparency.

c) The State should partner with CSOs in popularizing alternative forms of discipline for children in institutions and within households.

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38 Meaningful participation goes beyond presence of children. Their contributions should influence policy

39 http://kenyalaw.org/caselaw/cases/view/87957

40 www.kenyalaw.org

41 The clip in the link provided shows a case in point where a school headteacher disabled a primary school child as a result of subjecting her to corporal punishment. www.youtube.com/watch?v=p_v77Fb2QiQ uploaded by KTN Kenya, Nov 12th, 2013
d) The State should establish and enforce a national child protection code of conduct for all state and non-state actors working with children on their commitment to uphold child protection.

e) The State should enhance partnership with CSOs for State actors capacity building on handling child abuse cases.

**Protection of the Family**

The Family Protection Bill remained a draft Bill for over 7 years but has been passed this month (March 17th, 2015).

**Recommendations**

a) The State should make necessary amendments to the Matrimonial Property Act, 2013 to strengthen protection of the family.

**Parental Responsibility**

There is still a major gap in effective parental responsibility.

**Recommendations**

a) The State should enhance its work with CSOs to strengthen holistic parenting programmes and skills and also enforce parental responsibility.

b) The State should develop parenting curriculum and incorporate parenting skills training in adult and continuing education curriculum and other adult/teenage parents programs/forums.

c) The State should develop and roll out guidelines for operationalization of daycare services and put in place mechanisms for monitoring of day care service institutions and care providers.

d) The State should revise the mandate of Area Advisory Councils to include supervision of day care services under their area of jurisdiction.

e) The State should enhance capacity building among caregivers based on emerging children issues e.g. autism, psychosocial therapy etc.

f) State to establish a national data base of caregivers from Sub County to County level to enable the national government have an effective monitoring of service delivery

“Most of the cases we are dealing with here are related to child neglect. Currently we have over 14 cases as I speak to you that are awaiting court ruling. Most parents appear to have abdicate their parenting obligations and responsibilities” – said an officer, Gender & Desk Office, Bungoma Police Station

**Adoption**

The Children Act 2001 under Part XII makes provisions for Adoption. The Children (Adoption) Regulations, 2005, also provide the guidelines on the adoption process. The purpose of the regulations is to give effect to the Act by making provisions for the appointment of authorities to carry out obligations under the Act and provide for regulation of Kenyan Adoption Orders.

**Recommendations**

a) The State should popularize adoption especially in the rural areas, where the practice of guardianship and foster care is more common.

b) The State should enhance information dissemination on adoption through public campaigns.

c) The State should strengthen coordination between Charitable Children Institutions (CCIs) and adoption societies to enhance smooth adoption process.

d) The state to establish a data base on prospective adoptive parents and disseminate this information from Sub County to National level.

e) The State should fast track amendments to the Children Act to facilitate kinship adoption

**Separation from Parents**

The State established the National Standards and Best Practices for CCIs (2011).

**Recommendations**

a) Congestion of children within CCIs despite the CCIs Regulations (2005) and the National Standards should be addressed by actions such as the construction of additional CCIs.

b) Inspection of institutions that keep children should be done at regular intervals to ensure that matters arising are addressed and popularize the findings of the inspections.42

c) Children living and working on the streets should undergo rehabilitation that is inclusive of vocational training, to ensure that they do not return to living on the streets.

d) The State to consider allocating OVC Cash Transfer to CCIs (due to dire needs of some children)

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42 Establish accessible local point areas where the information on status of CCIs can be shared with the public for accountability purposes.
e) Level of awareness on alternative care among community members is still wanting. The State should work with CSOs working in the children sector to popularize alternative care for separated children and/or for children without parental care.

f) The State should develop an annual calendar of inspections to enhance effective monitoring of service delivery within CCIs.

g) The State should work with CSOs to establish verification mechanisms to ensure poverty is not the major reason for institutionalization of children.

CHAPTER VI

CLUSTER 6: BASIC HEALTH AND WELFARE

Articles 6, 18 (paragraph 3), 23, 24, 26 and 27 (paragraphs 1-3) of the Convention

Children with Disabilities

Enrolment of children with disabilities

The last few years has seen a general increase in school enrolment for children with disabilities. However this enrolment rate has not been at par with that of other children. For instance, in 1999 there were only 22,000 learners with special needs and disabilities enrolled in special schools, units and integrated programs. This number rose to 26,885 in 2003 and 45,000 in 2008, which compares poorly with the proportion in general education. In 2008 there were 1,341 special units and 114 public special schools in the country which include vocational and technical institutions that cater for learners with special needs and disabilities.43

There is inadequate infrastructure in all schools. In addition to the FPE allocation, children with disabilities get an extra Kenya Shillings Two Thousand (Kes. 2,000). However this amount is inadequate and only caters for children attending formal institutions.44

Recommendation

a) The State should enforce the provisions of the Persons with Disability Act (2003) and also pass the amendments so that persons with disabilities are adequately protected by the law.
b) The state should consider re-introducing the Learners with Disabilities Bill 2011

Health and Health Services

National Hospital Insurance Fund (NHIF)

The NHIF only caters for treatment costs incurred as an in-patient and does not include treatment costs incurred as an outpatient. It is commendable that NHIF has been engaged in active campaigns to encourage members of the public to take up subscription. However, this still remains beyond many who live below the poverty line which thereby makes it impossible for them to benefit from the scheme.

Free healthcare for children under 5 years

The commencement of free healthcare for children aged less than 5 years has contributed towards reduced child mortality rates.45 However, it must be noted that the State has not provided for free medical services for children aged between 5 years to 18 years.

Recommendations

a) The Constitution defines a child as one who is below 18 years of age. Therefore, the State should also provide free health care for every child under the age of 18 years and not just focus on children below 5 years since they are potentially vulnerable.
b) Assessment and rehabilitation for children with disabilities should be free at the different levels of healthcare provision throughout the republic.

Maternal health

The free maternity health service only caters for normal delivery and does not include Caesarean births or complications that may arise during delivery.

Recommendations

a) The State should fast track the implementation of the free maternity health service.
b) The state should develop the National Health Policy, required in Schedule 4 of the Constitution.
c) The State should explore the possibilities of child care for adolescent mothers.
d) The state should make provisions for free maternal health care for complicated cases.

43 SNE Draft Policy, 2009
45 http://data.worldbank.org/indicator/SH.DYN.MORT accessed on 27/03/2014
Cancer care
The Cancer Prevention and Control Act, 2012 provides for the prevention, treatment and control of cancer and for connected purposes. According to the regional cancer registry at KEMRI, about 80% of reported cases of cancer are diagnosed when the disease is at an advanced stage and therefore little can be achieved in terms of curative treatment. This is largely due to the low levels of awareness of cancer signs and symptoms; inadequate screening services; inadequate diagnostic facilities; and poorly structured referral facilities. The country has few Oncologists who are mainly based private hospitals in Nairobi which makes it difficult for a great majority of the population to access cancer treatment services. Also, cancer treatment infrastructure in Kenya is inadequate and some cancer management options are not readily available. This has necessitated some Kenyans to seek cancer treatment abroad.

Recommendations
a) There is need for clear policies concerning terminal pain management, supportive and palliative care for cancer patients in Kenya. Some of the main impediments to palliative care in Kenya include shortage of financial and human resources, lack of awareness and legal restrictions on the use and availability of analgesics.
b) The State should equip hospitals with the capacity to make early diagnosis of cancer and enforce the Kenya National Cancer Control Strategy 2011-2016.

Harmful Traditional Practices
The Prohibition of Female Genital Mutilation Act, 2011 provides new opportunities for eradication of FGM. The Act empowers chiefs and Children’s Officers to enter into places without warrant to ascertain whether such a crime has been or is about to be committed. Beside this Act, the National School Health Policy (2009) addresses issues relating to FGM and early/forced marriages.

However, despite the existence of state laws and policy, there is a conflict between Customs/Cultures and the law. A case in point is the Masai community culture where they believe once a girl has gone through the FGM, she can be married off. This denies the child the right to education. The child is engaged in sexual activities at an early age with adults; child pregnancies at a young age of 11 years.

"It is very difficult to fight FGM because the culture says people are not in any way affected negatively. I think change should start with us as role models. FGM continues because of the culture, peer pressure, and stigma. Young people are standing against FGM and adults on the other side are promoting it." Noted a Program Director, Compassion International, Isinya, Kajiado County

CHAPTER VII

CLUSTER 7: EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Articles 28, 29 and 31 of the Convention

Education
The education sector is faced with a number of challenges which include access to free and compulsory primary education; quality and relevance of education; access to education for children with special needs; conflicting national and county governance structures; staffing of teachers especially in marginalized areas and low female-male teacher ratios; among others.

Kenyan CSOs acknowledge that the Education Sector is the highest budgeted sector in the country in terms of percentage. Budgetary expenditure was at Kenya Shilling One Hundred and Forty Nine Billion (Kes. 149 Billion) while only Kenya Shillings Seven Billion (Kes. 7 Billion) went to Development Budgetary Expenditure. 46

a) Access to Free and Compulsory Basic Education
There are several barriers hindering access to free and compulsory basic education in Kenya. These include low teacher to student ratio, the shortage of teachers due to the massive enrolment of pupils, insufficient learning facilities, poor learning environment particularly in arid and semi-arid areas and urban slums. Further, it is estimated that there are approximately over 1 million children who are still out of school, the majority of whom, are in ASAL areas, pockets of poverty and urban slums.47

Delays in the disbursement of Free Primary Education funds have also negated delivery and attainment of quality education which has further been contributed by alleged incidences of corruption and embezzlement of funds meant for Free Primary Education. In spite of increased enrolment there are still inequalities between the rich and poor as more parents opt for private schools, which are perceived to offer better quality education than public schools.48

There has also been increased incidences of children unable to access education due to the extra fee levies and charges in public schools despite Basic Education being articulated as free and compulsory as provided for under Article 53(1)(b) of the Constitution and the Basic Education Act, 2013. This has particularly affected children from poor backgrounds who have performed well but are unable to transit from primary to secondary education as they cannot afford the school fees.

46 Economic Survey 2012, KNBS, P.43

Stakeholder Submissions
b) Sanitary Pads
A national research conducted by Girl Child Network (GCN) established that the participation of girls in education was hindered by difficulty in managing their menstruation process. Indeed, it emerged that a girl would miss school for an average of 3 to 5 days a month due to lack of sanitary towels, resulting to missing 12 to 15 days a term, a total of 39 to 45 days a year. In response thereto, the State introduced the National Schools Sanitary Towel Program in 2011 to among other things, deal with gender disparities in education and particularly girl child education in ASAL and marginalized regions. It has been established that the budgetary allocation needed to reach the 2.5 million adolescent girls needing sanitary towels in both primary and secondary schools was estimated at Kenya Shilling Two Billion, Four Hundred Million (Kes. 2.4 billion) a year. However the amount allocated in 2011/2012 was a paltry Kenya Shillings Three Hundred Million (Kes. 300 million), a shortfall of nearly Kenya Shillings Two Billion (Kes. 2 Billion). The budgetary allocation for the Ministry of Education for this programme under in the 2013/2014 budget was reduced by Kenya Shillings Ninety Nine Million (Kes. 99 Million) to Kenya Shillings Two Hundred and One Million (Kes. 201 Million). This has resulted to only 568,925 adolescent girls in primary education benefitting from the programme. Finally, the national programme for the provision of sanitary pads has been rolled out country wide and is still yet to reach all the deserving and poorest sections of the community.49

C) Quality and Relevance of Education
According to a study by UWEZO, an NGO, a typical Standard 8 pupil could not do basic mathematics that is meant for Standard 3 pupil. This brought into sharp focus the issue of the quality of education in Kenya and in particular, the question of teacher attendance, monitoring and their quality of delivery, implementation of school curriculum and syllabus and the assessments of the children. Though the Ministry of Education is mandated to monitor the quality of education offered in schools including the implementation of the school curriculum, there is lack of effective and regular monitoring on the implementation of the curriculum including delivery of quality education.

d) Education for Children with Special Needs
Children with special needs lack sufficient, adequate, accessible and quality special schools or schools that can integrate children with special needs. Educational facilities do not adequately cater for children with disabilities including having sufficient teachers who have been trained on Special Needs Education. Most of the educational facilities offering Free Primary Education are also not easily accessible to students with physical disabilities. In response, the Government launched a Special Needs Education (SNE) Policy Framework that seeks to address how the Government will work with stakeholders to transition to an inclusive education approach in line with Education for All by 2015.

Though the plight of children with special needs is included in the Basic Education Act, integration of children with special needs into the regular school system is still a challenge at both primary and secondary level. Transition levels for children with special needs to the secondary schools is still a challenge as they are required to have the same pass marks as other children. Furthermore national, provision and deistic schools do not have the capacity to integrate children with special needs.

e) Budgetary Allocation on the Right to Education
The on-going debate about the State’s plan to introduce laptops as a teaching and learning tool in public primary schools highlights the misplaced priorities of Government for the education sector. While the Government continues in its plans to acquire laptops for pupils who will be joining Standard 1 in January 2014; there are many schools that lack basic infrastructure such as adequate teachers, classrooms, desks, books, electricity. Meanwhile the Capitation Grants of Kenya Shillings One Thousand and Twenty (Kes. 1,020) provided per pupil to cater for learning materials, operational costs and other school improvement activities remain wholly insufficient to provide even for the most basic supplies and facilities.50

**Recommendations**

a. The State should adopt inclusive education as a critical approach towards implementing Education in the country so as to ensure that all children including those with special needs and in particular children with disability access quality education.

b. The State should incorporate a compulsory unit on Special Needs Education in the Teacher Training Curriculum. This will ensure every teacher has basic skills on special needs education and therefore able to articulate inclusive education.

c. Enforcement of the implementation of the Basic Education Act (2013) to ensure access to quality learning environment and attainment of quality Education by All children with focus on public and non-formal schools.

d. More funds should be invested in infrastructure development to decongest overcrowded facilities at primary school level and improve the learning environment for children.

e. Introduce feeding programs to areas with children from poor backgrounds

f. The state should consider re-introducing the Learners With Disabilities Bill 2011

g. Transparency and accountability on the disbursement of FPE funds notwithstanding increased prioritization of budget allocation towards development programs in the education sector.

h. The State should ensure that there are adequate incentives for teachers working in ASAL areas, particularly for female teachers as a retention mechanism.

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49 Even though the State did at some point partner with Royal Media under the Inua Dada Campaign which was launched by the First Lady, the MoE and Citizen in Marigat, Baringo County to complement the National Schools Sanitary Towel Program for an increased budgetary allocation to the program, not all schools in the country have benefitted

50 Education Sector Report 2013/14-2015/16 Medium Term Expenditure Framework, October 2012
i. The National and County Government should strengthen vocational training centers and other programs that would facilitate acquisition of skills by children who are out of school including those unable to transit to higher levels of education.

“We do not think ‘Free Primary Education’ is actually free, in our school we pay money for games, examinations, development. We P.T.A fee to hire more private teachers to cater for the inadequate number of teachers available.” – Sue (not her real name) , Class 7, Kwale Primary, Kwale County

“The teacher, student ration is very high. You find some teachers are teaching a class with over 80 to 100 students. Obviously, the quality of education is compromised; the teachers’ work load has also increased significantly. The government should hire more teachers and provide allowances to teachers in hardship areas” – Teacher, Public School Machakos County

“Most children who drop out of school in this area is due to economic reasons. When children miss to eat at home, it becomes difficult for them to concentrate in school. They opt to stay at home or go look for work to feed themselves. We recommend the government should introduce feeding program in schools in our area” – Chief, Muvuti Location, Machakos County

f) Leisure, Recreation and Cultural Activities

The Basic Education Act, 2013 has banned holiday tuition that had impeded other development processes of the child including their right to play and leisure. The holiday tuition had been introduced by schools as a measure of academic achievement; however assessments revealed that this was further negating other components of child development and growth.

All schools in Kenya participate in cultural activities such as drama and music festivals that are conducted from the zonal level to the national level. Such festivals have given a positive impact as they ensure appreciation of cultural diversity and that culture is shared and passed from one generation to the next.

The State through the Ministry of Education has established Talent Academies to promote and nurture talent and skills amongst the young people. However it is of concern that these so called “Talent Academies” are academic schools which have been branded as such based on the fact that the schools perform well in certain co-curricular activities such as sports and drama. For example Maseno School and Shamba Hills School were branded Talent Academies due to their prowess in basketball; Kerugoya Girls for hockey; Kakamega High School for rugby during national secondary schools competitions. Thus it must be noted that these schools admit and retain students on the basis of academic performance and less on talent as these talents are incorporated as co-curricular activities in the school program.

As much as the Ministry of Education has provided activities in schools to cater for play, leisure and cultural activities, many of the schools do not fully provide for them as they place more emphasis on academic performance.

Recommendations

a) The Ministry of Education should ensure full implementation of co-curricular activities which should be enjoyed by all children including those in upper primary and Form 4.

b) The State should incorporate the right to play as a critical approach to Early Childhood Development Programs.

c) The state should provide more funds to be invested in infrastructure development to decongest overcrowded facilities at primary school level and enhance co-curricular activities for children.

d) There is need for the National and County governments to hold planning officers responsible for land that is sold to private developers and also that also ensure that land is set aside for recreation facilities. Further, the State should ensure that all housing projects include safe play areas for children.

e) There is need for the State to clearly define what “Talent Academies” really mean as per the set international guidelines. It should proceed to establish purely Talent Academies where children are enrolled by merit of their talent. This is not provided for in the Basic Education Act, section 43.

f) Talent Academies should also be inclusive of children with disabilities and therefore incorporate the necessary infrastructure and ensure a supportive environment

“Here there is no playground at school. Our students have to walk 3 kilometres to get to a playground where they can engage in co-curricular activities. We recommend that the government should provide us with accessible playgrounds to promote co-curricular activities among our students.” – Teacher, St. Ignatius High School, Kisumu County

Stakeholder Submissions
CHAPTER VIII

CLUSTER 8: SPECIAL PROTECTION MEASURES

Articles 22, 30, 38, 39, 40, 37(B)-(D), 32-36 of the Convention

Child Labour (Economic Exploitation)

Despite its prevalence in Kenya, child labor has over the years not received adequate attention from the State. A report released in June 2012 revealed that more than 1.1 million children are engaged in various forms of labor.\(^51\)

Recommendation: The State should adopt and implement the draft Child Labour Policy

“School drop-out rate is relatively high due to Poverty. Parents opt to send their children to do manual labor to provide for the needs of family.” – Teacher, Amani Primary, Mombasa County

Administration of Juvenile Justice

CSOs wish to acknowledge that the Judiciary, through the Judicial Transformative Framework, 2012-2016 has embarked on increasing the number of Court buildings and the rehabilitation of old Court rooms. The Judiciary has also increased the number of Magistrates gazette to adjudicate on matters concerning children.\(^52\) However, the recruitment and gazetting of Magistrates has not matched the recruitment of Court Clerks or Prosecutors by the Directorate of Public Prosecutions (DPP). Thus matters do at times get delayed, for instance, if two Courts have to share one Court Clerk. Another shortcoming with the blanket gazetting of Magistrates to adjudicate Children matters is that some of these Magistrates do not have an appreciation of the fact that there are different rules of procedure in criminal matters of children who are in conflict with the law. That capital punishment can never be prescribed to a child and that child matters have to be concluded within six months.

Recommendations

a) The State should adopt and implement the National Draft Legal Aid Bill 2014 to provide for the establishment of the National Legal Aid Service and give effect to Articles 48 and 50 (2) (g) and (h) of the Constitution and for connected purposes.

b) Train newly appointed and gazette Children Court Magistrates on the rules of procedure in child related criminal matters.

Protection Against Harmful Social and Cultural Practices

The Prohibition of Female Genital Mutilation Act, 2011 was passed to address cases of FGM such as providing prohibitive jail sentences and fine to persons found guilty of being involved in FGM. The practice of child marriages is also closely linked to FGM as the girls, after undergoing FGM, often feel that they are now women, eligible for marriage and not in need of education. This increases incidences of primary school drop outs. The State has recently appointed a Chair of the FGM board and it is yet to be seen the impact of this board in coming up with policies and the coordination of activities aimed at addressing and eradicating FGM.

Recommendations

a) The State has to put mechanisms in place to eradicate harmful traditional, cultural and religious practices.

b) Enhance public awareness about such harmful cultural practices and the laws in place.

c) Enact and harmonize criminal laws against offences committed against children across the East African Community (EAC)

“Sexual offences and early childhood marriages are very high in here. Complainants and the accused secretly draft agreements to settle through “Mukhasta” (Community Village Elders). When we make arrests, it becomes difficult to get evidence or have witnesses come to testify in court. The cases is eventually thrown out of court for lack of evidence, the child is denied justice.” – Police Officer, Gender & Child Desk, Bungoma Police Station, Bungoma County

Children in Armed Conflict

There has been increased reporting of children being killed or attacked by armed gangs in conflicts over natural resources; or stock theft.

Recommendation

The State should increase access to education and the economic welfare of the people in these communities where children are often caught up in ethnic conflicts. The State should put mechanisms in place to protect children from recruitment into criminal gangs and militia groups.

Refugee Children

Kenya continues to host a large population of refugee children in Dadaab and Kakuma Refugee Camps. In 2010 the State hosted 151,454 refugee children and 61,232 child asylum seekers. Different organisations offer services addressing violation of

51 Report released by CESVI
52 Children Court Magistrates were previously gazette to work as such in a station – they would lose their jurisdiction to act as Children Court Magistrates upon transfer
refugee rights including sexual and gender based violence. The Department of Refugee Affairs has maintained a presence in Refugee Camps and supported camp activities. In order to ensure the better protection of the rights of unaccompanied refugees and, asylum-seeking children, the State Party has individual registration mechanisms for children and any child who enters the country unaccompanied is registered and issued with individual documentation within the shortest time but not longer than 3 months.

Recommendations
a) The State should improve the security and protection of refugee children
b) The State should ensure that any repatriation of a refugee family, or any pronouncement that it makes, takes into consideration the principle of the ‘best interest of the child’.
c) The State should put in place proper mechanisms for identification and assistance of refugee children at risk of abuse, neglect and exploitation; and
d) There should be systematic engagement with the refugee community on the protection and assistance of refugee children at heightened risk- most of the work is left to UNHCR and NGOs such as HIAS to carry out child protection and assistance

Internally Displaced Persons
Kenya has had a considerable number of IDPs after the post-election violence that rocked the country in 2007/08. The State enacted the Internally Displaced Persons Act, 2012 to provide protection and assistance to internally displaced persons. The process of developing this legislation was championed by civil society organizations within the Protection Working Group on Internal Displacement (PWGID). The State has also recently kicked off the process of closing all remaining IDP camps in various parts of the country by launching a Kenya Shillings Three Billion, Two Hundred Million (Kes. 3.2 Billion) ex gratia cash payment programme for all IDPs resulting from the 2007/08 post-election violence. The cash payment compensation involves payment of Kes. 400,000 per household to enable them buy land. The State also gave a firm commitment to ensure that all the remaining IDP camps and those evicted during the Mau forest eviction exercise will be compensated by the end of September 2013.

However, the implementation of the IDP Act has not commenced despite it coming to effect in February 2013. A key aspect to this implementation is the establishment of the National Consultative Coordination Committee which is mandated with a number of functions including to coordinate prevention and preparedness efforts, protection and assistance to IDPs throughout their displacement until a durable solution is found and to host communities as needed and to raise national awareness, sensitize and facilitate and coordinate training and education on the causes, impact and consequences of internal displacement.

The establishment of this Committee is of great importance given that it will enable the State to have a well-established institutional framework to deal with the problem of internal displacement. The IDP Act will also eliminate the Ad Hoc, often political interventions when it comes to offering protection and assistance to victims of internal displacement. It is crucial to note that the State has closed down the remaining IDP camps related to the Post Election Violence.

Recommendations
a) The State should implement the Prevention Protection and Assistance to IDPs and Affected Communities Act, 2012 to ensure all genuine IDP families and their children are resettled
b) The State should relocate all vulnerable communities, IDPs settled in disaster prone areas such as flood plains, steep slopes etc. to safer settlements.

Sexual Exploitation
The entire criminal justice process in sexual offences is emotionally draining to child survivors, most of them have been subjected to humiliating cross examination by the accused persons and their counsel during the trial process this has hindered the many children and their guardians from reporting sexual exploitation cases.

Recommendation
a) Creation of new Children Courts and Operationalization of children courts which have been dormant. Creation of awareness on the magnitude of sexual abuse and engaging with stakeholders with a view of implementation of a better system of court case management
b) Proper gathering and preservation of evidence
c) Full implementation of the regulations and the law on sexual offences.
d) Evidence should be responsive to the needs of all children.

Sale, Trafficking and Abduction
While the State has enacted the Counter-Trafficking and Persons Act, 2010; there are an increasing number of reports on child trafficking, especially from the rural areas to urban under the pretext of enrolment in better schools that turn out to be slavery and forced domestic labour. Additionally, the State has neglected the plight of children with albinism by failing to adopt measures that would protect them from attacks, kidnappings and killings. Media reports indicate the increased trafficking of persons with albinism to Tanzania for ritualistic sacrificial purposes.

Despite the enactment of legislation, the State has not fully complied with the minimum international regulations for the elimination of trafficking. This includes implementing its national plan of action, addressing the role of law enforcement officials
in trafficking, or providing adequate anti-trafficking training to state officials, including diplomats, police, labour inspectors, and children’s officers. Additionally, the State has failed to investigate alleged trafficking by officials and high-ranking members of society.

Recommendations

a) Implement the National Plan of Action, addressing the role of law enforcement Officers in trafficking;

b) Sensitize more Immigration and border control Officers on recognizing persons at risk of trafficking

Children of Imprisoned Mothers

Imprisoned mothers are only allowed to keep their children with them in the prison to age four (4) years. Some of these mothers do not have families outside of prison who are willing to take their children and look after, yet the law provides that they can only remain with their mothers in prison for as long as they are below 4 years of age.

Lang’ata Women Prison in Nairobi has an excellent programme where children of imprison mothers are provided to with access to basic education and health care. The warders at the Prisons do accompany the children of imprisoned mothers to school and back to the prison facilities at the end of the learning period.

Recommendations

a) The judiciary should fast track cases of imprisoned mothers with children who have attained the age of 4 years.

b) The State should refer to institutions for the care and protection of children so that children of imprisoned mothers, who are over 4 years of are taken care of until their parents are released.

Minority and Indigenous Children

The Constitution of Kenya, in Article 63, recognizes community land, which includes ancestral lands and lands traditionally occupied by hunter-gatherer communities. Schedule five of the Constitution further states that specific laws to protect such land shall be enacted within five years of the Constitution which came into force in 2010.

The Constitution recognizes the principle of affirmative action for vulnerable groups as provided under Article 27. Under Article 56, it has created an enabling environment for recognition and protection of the rights of indigenous and marginalized populations. Specific mention is made of the right to reasonable access to water, health services and infrastructure.

Street Children

The State established a Street Family Rehabilitation Trust Fund (SFRTF), which seeks to rehabilitate children working and living on the streets. Through this initiative the children are given special protection, education, health care and psychosocial support. In addition to this, there are other Non-State actors working with street children/family in reintegration programmes in major towns and cities. CSOs acknowledge the significant increase in the number of street children assisted and those that have been reintegrated with families. The issue of Street children still requires more attention

CSOs also acknowledge that the State Party, in collaboration with UNICEF, has established and operationalized Child Protection Centres (CPCs) in Mombasa, Eldoret, Malindi and Garissa, and it is in the process of establishing additional CPCs in Nairobi, Nakuru, Kakamega and Siaya, where street children and other vulnerable children can access services such as health care, shelter, nutrition, education and vocational training.

“[I can tell you this, I have worked with street children for many years; The number of street children is growing by day. I recommend that the government should develop a strong system to monitor the day to day entry of children into street life and how best to stop it.”] - Head Of Child Link, Kisumu City, Kisumu County

Optional Protocols to the Convention on the Rights of the Child

The Constitution of Kenya 2010 states in article 2 (6) any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution. .

The State Party ratified the Optional Protocol on Children Involved in Armed Conflict on 28th January 2002. In this regard, it has put in place initiatives to protect children in areas prone to cattle rustling, militia activities in volatile borders, such as the Kenya/ Somalia, Kenya/Sudan and Kenya/Ethiopia. Some of these initiatives include increasing security, disarmament programmes in cattle rustling areas, and peace and reconciliation initiatives.

Recommendations


b. The State should be encouraged to submit its initial Report under the Optional Protocol on Children Involved in Armed Conflict.
CHAPTER IX

FACTORS AND DIFFICULTIES

Child Poverty
Poverty risks are high among children between the ages of 0-14 years (averaging about 16 percent) and among adolescents aged 15-24 years (averaging about 12 per cent) in contrast to other age categories. Children of the poor living in Arid, Semi-Arid and urban informal settlements are most affected. Other factors which contribute to poverty are unemployment, alcoholism, irresponsible parenting, increasing population growth, drought, famine, impact of HIV/AIDS, natural recurrent calamities and global economic meltdowns. Children are not only vulnerable to poverty, but also validate the fact that poverty tends to affect children more than any other age group.

RESOURCE ALLOCATION
There is inequitable balance between Recurrent and Development budget and this often fuels poverty, social deprivations, and spatial disparities and perpetuate the vulnerability of both boys and girls and women in Kenya. The State Party has faced a challenge in tracking resources allocated for children rights and welfare visa-a-visa the benefits derived by the child. Although there has been substantial increase in the budget of the Department of Children's Services and NCCS, this increase does not match the overwhelming services required for children in need of special protection.

Public Debt
Public debt continues to be a major hindrance to the State Party’s efforts to implement pro-poor development programmes as a significant proportion of the budget is allocated to servicing public debt.

Enforcement of Legal and Policy Instruments
Although the State Party has good legal and policy provisions for protection of children, the enforcement of these laws and policies is hampered by attitudes, cultural practices and ignorance.

Enforcement of Civil Rights and Freedoms
1. Ignorance of the public, social-cultural and religious inhibitions, long distances to birth registration centres, and apathy regarding statutory requirements continue to negate the State Party efforts to have all children births and deaths registered. The right of children to a birth certificate is denied.
2. The State Party does not have adequate mechanisms to prevent and protect children from accessing harmful information through the internet.
3. Informal ‘adoptions’ and ‘foster care’ at the community level is a common practice. The lack of documentation for these informal arrangements makes it impossible to monitor them, thereby making the children vulnerable to abuse and exploitation.

Access to Delivery and Postnatal Care Services
1. Women with low levels of literacy and those living below the poverty line of one dollar per day often do not seek services of skilled birth attendants. Most mothers who deliver at home do not attend postnatal care clinics. This is partly due to long distance to health facilities, and lack of information on the importance of early postnatal care for treatment of complications arising from delivery.
2. There is still poor health seeking behaviour and inadequate early recognition of danger signs in pregnancy. This is due to lack of information as well as lethargy on the part of communities. These are further aggravated by retrogressive cultural beliefs and practices.

Children with Disabilities
Early detection of disability is still a challenge as most parents seek help as the last resort. This coupled with household poverty, low literacy rate among women, lack of information; cultural beliefs about causes of disability leave some children with disabilities unattended.

HIV/AIDS
There are limited pediatric HIV diagnostic facilities and most HIV-infected children, are diagnosed very late in the course of illness, or not at all. Yet, HIV infection in children is preventable.

Access to Education
1. The State Party has done a lot with regard to provision of primary education. There has been increases in the enrolment rates across all levels during the reporting period but retention and transition rates of girls has remained low compared to boys. “This is contributed by a number of factors such as harmful cultural practices, preference given to boys to go to school, poverty and early pregnancies.
2. Although the government provides free primary and day secondary education, schools still charge levy fee for other services posing a hindrance to the participation of girls and boys particularly those from poor households. Children from Western province said “Although the government says that it (primary education) is free, in our school we pay money for games, examinations, development, to buy desks etc. it is not compulsory since many children are not going to school and nothing is done.”
3. Although the number of street children is growing by day the state party has no system of monitoring the day to day entry of children into street life and how best to stop it.
SUMMARY RECOMMENDATIONS

1. The State Party should be committed to eradication of extreme poverty under Goal one of the MDGs. Special attention should be given to eradication of extreme child poverty through expanded social protection programmes and rationalization of national social protection policy.

2. The State Party should through the Ministry of Planning, National Development and Vision 2030 continue to review the model of social budgeting in order to accommodate the new structure of governance and address all social sectors with specific attention to vulnerable groups such as children, the elderly and the disabled.

3. The State Party should develop and implement a National Monitoring and Evaluation Framework under the auspices of the NCCS. The National Children Database should streamline monitoring and evaluation of children’s programmes in the Country, as well as enable the State Party to critically review and assess performance and impact of various programmes and interventions.

4. The State Party should continue to strengthen KNCHR&EC to adequately monitor and protect the human rights of all citizens including children.

5. The State Party and Non State actors should continue to raise awareness on the impact of retrogressive cultural practices on children and in particular the girl child and ensure such cultural practices are eventually eradicated.

6. The State Party should continue to nurture and strengthen all Children Assemblies in the country and promote their expansion in every school and mainstream the principle of Best Interests of the child in Government Ministries and Counties.

7. The State Party should continue to reduce apathy, and discourage negative attitudes toward birth and death registration through expansion of programmes on birth registration and awareness through schools and public meetings. The State Party should also expand the use of mobile birth registration facilities to take the services in communities which are hard to reach and especially in the arid and semi-arid areas and informal settlements in Kenya.

8. The State Party should through the Ministry of Information and Communications develop Policy Regulations targeting children, parents, caregivers and cyber café operators to prevent and control access of harmful information through the internet.

9. The State Party should put in place measures to strengthen the family support systems to cater for children in need of care and protection including those separated from their parents, deprived of family environment and in need of psychosocial support.

10. The State Party should continue to support basic education in general and in particular increase the number of teachers in every school in order to comply with the MOE regulations on ratio of pupils to teachers (40:1). More funds should be invested in infrastructure development to decongest overcrowded facilities at primary school level and improve the learning environment for children. Emphasis should be placed on improvement of infrastructure in Special Needs and Early Childhood Education.

11. The State Party should pay special attention to Counties with low enrolment, retention and transition rates. This should include development of a special strategy to increase hardship allowance to attract and retain qualified teachers in arid and semi-arid areas, develop effective mechanisms that will attract deployment of female teachers to ASAL area, expansion of mobile schools, and reduction of conflict related occurrences including improved food security in arid and semi-arid areas and informal settlements. The State Party should continue to support the construction of low cost boarding schools in ASAL regions as outlined in the Alternative Provision of Basic Education and Training Policy (2009).

12. The State Party should continue to implement Counter Trafficking in Persons Act 2010, which provides for prevention, suppression and punishment of trafficking in persons, especially women and children.

13. The State Party should expedite the legislation on ratification of treaties and conventions as provided in Article 2(6) of the Constitution. This will make ratified treaties and conventions part of the law of Kenya.

14. The State Party should make all efforts necessary to increase its budget allocation to the Department of Children’s Services and the National Council for Children’s Services, in order to expand and increase services to children in all the 47 counties.

15. The State Party should develop a comprehensive strategy to address the street children phenomena.

16. The State Party will continue to expand support to vulnerable families through cash transfer and other social welfare programmes.

17. The State Party should to expedite the enactment of the Family Protection Bill and also make necessary amendments to the Matrimonial Property Act, 2013.

18. The State Party should be bound by the Constitution Article 43 (1) which guarantees every person, the right to the highest attainable standards of health. This includes health care services. This is further reinforced by Article 53 (1) (c) which specifically guarantees children the right to basic nutrition, shelter and health care. All future interventions as regards this cluster should continuously make reference to the Constitution.

19. The State should equip hospitals with the capacity to make early diagnosis of cancer and enforce the Kenya National Cancer Control Strategy 2011-2016.


21. The State should be encouraged to submit its initial Report under the Optional Protocol on Children Involved in Armed Conflict...
KENYA'S ECONOMIC AND SOCIAL RIGHTS COMPLEMENTARY REPORT
PRESENTED TO
THE UNITED NATIONS CONVENTION ON CHILD RIGHTS (UNCRC) COMMITTEE
SUBMITTED BY THE EAST AFRICAN CENTRE FOR HUMAN RIGHTS
(EACHRights)

COUNTRY CONTEXT
Kenya is an East African country covering a total area of 582,650km², of which 560,250km² constitutes dry land while water takes the rest of about 13,400km². Approximately 80% of the land area is arid or semi-arid and only 20% is arable. The Kenyan population census carried out in 2009 indicates a population of 38,610,097 out of whom 10.9 million school-going children were of the entire population. The enactment of a new Constitution by Kenyans in August 2010 ushered in a new dispensation where the country is governed at two levels - the national government and 47 county governments. The two tiers of government are distinct and interrelated, conducting their respective functions on the basis of consultation and cooperation.

PROGRESS ON IMPLEMENTATION AND RECOMMENDATIONS TO THE STATE
1. Legal and policy framework
Kenya domesticated the UN Convention on the Rights of the Child (UNCRC) in 2001 by enacting a Children's Act, 2001. The amendment of the Children Act, 2001 has been ongoing since 2006 and has not yet been completed. Kenya also developed a National Plan of Action for Children (NPA) 2008-2012 which made little contribution to strengthening coordination within the children sector because due to the failure to develop an action plan thus leading to it not being fully implemented. The development of a comprehensive NPA 2013-2017 has also commenced but the same has not been completed to date.

On the Optional Protocols to the UNCRC, the State signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2008 but has not ratified the same. It is also of great importance that Kenya signs and ratifies the third Optional Protocol on a Communications Procedure.

There is no Ministry that deals specifically with children matters since the Children’s Department was placed under the Ministry of Labour, Social Security and Services in 2013. The current Cabinet Secretary (Minister) does not have a full appreciation of children matters. This decision may have been advised by the fact that children need social protection. However, children matters are very complex and go just beyond just social protection. Further, the National Council for Children Services (NCCS) has had varied success in putting children issues within the public domain. This could be due to the lack of clarity of roles between the NCCS and the department of children services.

Whereas the Basic Education Act, No. 14 of 2012 seeks to promote and regulate free and compulsory basic education; provide for accreditation, registration, governance and management of institutions of basic education, all aspects that are welcome and well-intentioned, there is need for wholesome implementation of the provisions of the Basic Education Act especially the management of basic education institutions. There should also be special provisions for children with disabilities under the promotion of special needs education clause.

In 2013, the Government proposed amendments to the PBO Act that governs Civil Society Organization (CSOs), which included a proposal to place a cap on Public Benefits Organizations on international/foreign funding at Fifteen (15%) of total funding. This threatens to roll back the gains made on CSOs in the promotion and protection of children’s rights.

Under the new Constitutional dispensation, health care has been devolved to the County Governments. A majority of health workers whose employment were transferred from the National government to County governments have since resigned from public service, bringing with it an almost paralysis in County health services, including the management of hospitals. The health workers have cited interference from Members of County Assembly (MCA); delayed salaries; removal of allowances and lack of essential health supplies—such as drugs and equipment as some of the reasons of their mass resignation. The State needs to urgently address the challenge of devolving health services and the impact on provision of quality health care to children.
Recommendations

The State should:


b) Ratify the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography; and sign and ratify the third Optional Protocol on a Communications Procedure.

c) Move the department of Children services from the ministry of labor social security and services to the office of the deputy president

d) Establish the office of a children’s ombudsman or a commission that deals specifically with children or a children’s desk within one of the already existing commissions such as the Kenya National Commission on Human Rights (KNCHR)

e) Ensure that since health care service provision has essentially been devolved, county governments should prioritize and increase the allocation to health services to a minimum of Fifteen percent (15%) of the entire budget so as to be in line with the commitments made under the Abuja Declaration.

f) Conduct an assessment on the efficacy of leaving the management of health services to County governments or if this should revert back to the National government.

g) Stop the push to amend the PBO Act which seeks among other this, propose a cap on the funding from international/foreign donors to PBOs at Fifteen percent (15%) of the entire organizational funding.

2. Article 28 : The Right to Education

The Right to Education There are several barriers to access to free and compulsory basic education in Kenya. These include low teacher to student ratio, the shortage of teachers due to the massive enrolment of pupils, insufficient learning facilities, poor learning environment particularly in arid and semi-arid areas and urban slums. Further, it is estimated that there are approximately over One million children who are still out of school, the majority of whom, are in ASAL areas, pockets of poverty and urban slums.

Though the Education Sector receives the highest budgetary allocation in the country in terms of percentage, there is concern that approximately Ninety percent (90%) of the allocated budget goes to recurrent expenditure. In 2011/2012 the recurrent budgetary expenditure was at Kenya Shillings One Hundred and Forty Nine Billion (Kshs. 149 Billion) while only Kenya Shillings Seven Billion (Kshs. 7 Billion) went to Development Budgetary Expenditure.

There has also been increased incidences of children unable to access education due to extra fee levies and charges in public schools despite Basic Education being articulated as free and compulsory as provided for under Article 53(1) (b) of the Constitution and the Basic Education Act, 2013. This has particularly affected children from poor backgrounds who have performed well but are unable to transit from primary to secondary education as they cannot afford the school fees. It has been reported in the media that for a Form One student to access a national public secondary school, he or she has to pay 1st term fees of an average of Kenya Shillings Sixty Thousand (Kshs. 60,000/-) or the equivalent to approximately US Dollars Six Hundred and Seventy (USD 670), an amount that is very high considering that almost Fifty percent (50%) of the entire population lives below the poverty line.

A national research conducted by Girl Child Network (GCN) established that the participation of girls in education was hindered by difficulty in managing their menstruation. Indeed, it emerged that a girl would miss school for an average of 3 to 5 days a month due to lack of sanitary towels, resulting to missing 12 to 15 days a term, a total of 39 to 45 days a year. In response thereto, the State introduced the National Schools Sanitary Towel Program in 2011 to among other things, deal with gender disparities in education and particularly girl child education in ASAL and other marginalized regions. It has been established that the budgetary allocation needed to reach the 2.5 million adolescent girls needing sanitary towels in both primary and secondary schools was estimated at Kenya Shillings Two Billion, Four Hundred Million (Kes 2.4 Billion) a year. However the amount allocated in 2011/2012 was a paltry Kenya Shillings Three Hundred Million (Kshs. 300 Million), a shortfall of nearly Kenya Shillings Two Billion, Four Hundred Million (Kshs. 2 Billion). The budgetary allocation for the Ministry of Education for this programme under in the 2013/2014 budget is Kshs. Two Billion, Four Hundred Million (Kshs. 2 Billion). This has resulted to only 568,925 adolescent girls in primary education benefitting from the programme.

According to a study by UWEZO, a National NGO, a typical Standard 8 pupil could not do basic mathematics that is meant for Standard 3 pupil. This brought into sharp focus the issue of the quality of education in Kenya and in particular, the question of teacher attendance, monitoring and their quality of delivery, implementation of school curriculum and syllabus and the assessments of the children. Though the Ministry of Education is mandated to monitor the quality of education offered in schools including the implementation of the school curriculum, there is lack of effective and regular monitoring on the implementation of the curriculum including delivery of quality education by the Ministry.

Children with special needs lack sufficient, adequate, accessible and quality special schools or schools that can integrate children with special needs. Educational facilities do not adequately cater for children with disabilities including having sufficient


2 Economic Survey 2012, KNBS, P.43

3 Even though the State did at some point partner with Royal Media under the Inua Dada Campaign which was launched by the First Lady, the MoE and Citizen in Marigat, Baringo County to complement the National Schools San
teachers who have been trained on Special Needs Education. Most of the educational facilities offering Free Primary Education are also not easily accessible to students with physical disabilities. In response, the Government launched a Special Needs Education (SNE) Policy Framework that seeks to address how the Government will work with stakeholders to transition to an inclusive education approach in line with Education for All by 2015. Though the plight of children with special needs is included in the Basic Education Act, integration of children with special needs into the regular school system is still a challenge at both primary and secondary level. Transition levels for children with special needs to the secondary schools is still a challenge as they are required to have the same pass marks as other children. Furthermore, national, provision and deistic schools do not have the capacity to integrate children with special needs.

The on-going debate about the State’s plan to introduce laptops as a teaching and learning tool in public primary schools highlights the misplaced priorities of Government for the education sector. There are many schools that lack basic infrastructure such as adequate teachers, classrooms, desks, books, electricity, etc. Meanwhile the Capitation Grants of Kenya Shillings One Thousand and Twenty (Kshs. 1,020) provided per pupil to cater for learning materials, operational costs and other school improvement activities remain wholly insufficient to provide even for the most basic supplies and facilities.4

As much as the Ministry of Education has provided activities in schools to cater for play, leisure and cultural activities, many of the schools do not fully provide for them as they place more emphasis on academic performance. Further, grabbing of school land by private developers has been on the rise thus hindering children’s right to play.5

**Recommendations**

**The State should:**

a) Enforce of the implementation of the Basic Education Act (2013) to ensure access to quality learning environment and attainment of quality Education by All children with focus on public and non-formal schools.

b) Ensure that Free Primary and Secondary Education funds cater for the extra school levies being charged by schools.

c) Through the Treasury increase budgetary allocation to the provision of sanitary towels under the Ministry of Education National Schools Sanitary Towels Program, in a bid to ensure that all girls in ASAL, pockets of poverty and urban slums are able to access the sanitary towels. This will enhance girl child education which has been a growing concern in these areas.

d) Ensure that there are adequate incentives for teachers working in ASAL areas, particularly for female teachers as a retention mechanism.

e) Adopt inclusive education as a critical approach towards implementing Education in the country so as to ensure that all children including those with special needs and in particular children with disability access quality education.

f) Incorporate a compulsory unit on Special Needs Education in the Teacher Training Curriculum. This will ensure every teacher has basic skills on special needs education and therefore able to articulate inclusive education.

g) Strengthen vocational training centers and other programs that would facilitate acquisition of skills by children who are out of school including those unable to transit to higher levels of education.

h) Hold planning officers responsible for land that is sold to private developers and also that also ensure that land is set aside for recreation facilities.

i) Incorporate the right to play as a critical approach to Early Childhood Development Programs.

j) The Ministry of Education should ensure full implementation of co-curricular activities which should be enjoyed by all children including those in upper primary and secondary schools.

**Article 24: Right to Health**

The commencement of free healthcare for children aged less than 5 years has contributed towards reduced child mortality rates.6 However, it must be noted that the State has not provided for free medical services for children aged between 5 years to 18 years. The free maternity health service only caters for normal delivery and does not include Caesarean births or complications that may arise during delivery. In some hospitals like Pumwani Maternity Hospital, patients are still required to buy items such as gloves, cotton wool and water. There have also been reported cases of alleged child trafficking at the said Pumwani Maternity Hospital where parents of new born children are shown dead fetuses while their alive children are taken away by the health workers in that institution.

The National Hospital Insurance Fund (NHIF) only caters for treatment costs incurred as an in-patient and does not include treatment costs incurred as an out-patient. It is commendable that NHIF has been engaged in active campaigns to encourage members of the public to take up subscription. However, this still remains beyond many who live below the poverty line which means that thereby making it impossible for them to benefit from the scheme.

The devolution of county health services through the County Government Act, 2011 without clear guidelines undermines the delivery of quality healthcare given to children and the general public at large. The Health Bill, 2012, which was meant to make provisions for regulating the health sector, is yet to be enacted. Further the 2014/2015 budget only allocates 4.2% of the national budget to provision of healthcare services.7 This significantly falls below the State’s commitment under the Abuja declaration to allocate Fifteen percent (15%) of the entire national budget to healthcare services.

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5 The Standard January 30th 2015
6 http://data.worldbank.org/indicator/SH.DYN.MORT accessed on 27/03/2014
7 ibid
According to the regional cancer registry at Kenya Medical Research Institute (KEMRI), about Eighty percent (80%) of reported cases of cancer are diagnosed when the disease is at an advanced stage and therefore little can be achieved in terms of curative treatment. This is largely due to the low levels of awareness of cancer signs and symptoms; inadequate screening services; inadequate diagnostic facilities; and poorly structured referral facilities. The country has few Oncologists who are mainly based private hospitals in Nairobi which makes it difficult for a great majority of the population to access cancer treatment services. Also, cancer treatment infrastructure in Kenya is inadequate and some cancer management options are not readily available. This has necessitated some Kenyans to seek cancer treatment abroad which is very expensive. Effective cancer treatment requires that all the modes of treatment be available in the same setting to avoid distant referral and delays in treatment administration. The essential drugs list does not include chemotherapy for cancer while some of the very essential drugs for pain management are rare to find in most public hospitals.

**Recommendations**

**The State should**

a) Fast track the implementation of the free maternity health service in collaboration with the County governments. This is because it was a declaration by the executive yet the health service is a function of the county government. This therefore calls for the development of the National Health Policy which is required under Schedule 4 of the Constitution.

b) Provide free health care for every child under the age of 18 years and not just focus on children below 5 years since they are potentially vulnerable.

c) Fully investigate the alleged cases of child trafficking at the Pumwani Maternity Hospital.

d) Develop clear policies concerning terminal pain management, supportive and palliative care for cancer patients in Kenya. Some of the main impediments to palliative care in Kenya include shortage of financial and human resources, lack of awareness and legal restrictions on the use and availability of analgesics.

e) Equip hospitals with the capacity to make early diagnosis of cancer and enforce the Kenya National Cancer Control Strategy 2011-2016.

f) Enact and operationalize the Health Act, 2012 and also increase the allocation to health services to a minimum of Fifteen percent (15%) of the entire budget on the subsequent budgets-to be in line with the commitments made under the Abuja Declaration.
Edmund Rice Advocacy Network UNCRC Report 2015

INTRODUCTION

1. Edmund Rice International presents this submission concerning children rights situation in Kenya. This report will comment on three thematic areas namely: (I) Children with Disabilities; (II) Children Living with HIV and AIDS; and (III) Child Abuse, Neglect and Child Labour. The data provided in this submission was obtained from individuals and local partners with firsthand experience of working with children in these thematic areas.

CHILDREN LIVING WITH DISABILITIES

Situational Analysis

2. A survey conducted by the National Coordinating Agency for Population and Development in 2008 revealed that the overall level of disability rates in Kenya is 4.6%. Among these, 1.6% have physical disabilities and 1.4% have visual disabilities. The report established that among children between 0-14 years, 0.5% suffer from hearing disabilities, 0.2% speech, 0.4% visual, 0.1% mental, 0.6% physical, 0.3% have self care challenges. Among teenagers between 15-24 years, 0.4% have hearing difficulties, 0.2% speech, 1.1% visual, 0.2% mental, 1.1% physical, 0.3% have challenges related to self care[1].

3. The survey also established that 32% of People with Disability (PWDs) use assistive device or support service. Out of this proportion, one in every five uses an information device while 12% use a personal mobility device. Other devices such as communication aids (0.3%), household items (0.1%), personal care and protection (0.4%), handling products and goods (0.1%), and computer (0.1%) were rarely used. PWDs in urban areas (41%) were more likely to use an assistive device or support service than their rural counterparts (26%). Similarly, they were more exposed to use of information devices (30% for urban verses 11% for rural).

4. Many children living with disabilities in Kenya continue to experience discrimination due to retrogressive cultural practices and dispositions. Many children with special needs are considered a bad omen by some families and are therefore locked in and denied opportunities for personal growth and development.

5. Many public schools in Kenya, both primary and secondary, have not prioritized and integrated special needs education into their learning curricula as is required by law. There is a significant shortage of teachers with special needs training and many of the schools have no adequate equipments or facilities that support learning for children with disabilities.

6. Schools that are specialized in providing special needs education are very few and sparsely distributed across the country, often making them inaccessible to many children. Subsequently, the costs associated with special needs education are also high, making it expensive for many parents with low income to afford such specialized schools.

7. Due to inadequate facilities and equipments for children with special needs in many public and private schools, children with special needs often find it difficult to catch up with the rest of their colleagues. Some schools continue to discriminate against children with special needs by refusing them admission.

8. Treatment and medication for children with special needs are often very expensive considering that many of these children are frequently ill and in need of regular treatment and medication. Some repair procedures and equipments such as wheelchairs for physically disabled children are very expensive and unaffordable to many families.

9. Lastly, children with disabilities, particularly those who have undergone apprenticeship or vocational training programmes also find it increasingly difficult to find job placements where they can put their skills to gainful use.

Legal Framework

10. Article 53 (1) (b) of the Constitution 2010[2] states that every child has the right to free and compulsory education (c) to basic nutrition, shelter and health care. Articles 7 (1-2) of the Children’s Act 2001[3] also provides for free and compulsory education for children.


12. Article 54 (1) of the Constitution 2010 provides for the rights of persons with disabilities. In specific, Article 54 (1) (a)
There are a growing number of children living with HIV/AIDS who have been disowned by their families and/or caregivers, thus ending up on streets or children homes. In some instances, children are dispossessed of their inheritance by greedy relatives while others suffer physical, sexual and emotional abuse. Many children living with HIV/AIDS are often considered a burden in the family and believed to have a shorter time to live hence less attention is given to them, including the necessary medical and educational needs. Due to unfounded fear and belief that they may pass on the HIV virus to their children. For this reason, children living with HIV/AIDS are often stigmatized through restricted play and interaction with other children and even forced to use separate utensils and beddings.

17. A study conducted by the National AIDS Control Council of Kenya (2014)[7] established that there were at least 190, 131 children between 0-14 years living with HIV in Kenya in 2013, 95,743 male and 94, 388 female. Children between the age of 15 years and above living with HIV were estimated at 87, 291, of which 37, 514 are male and 49, 778 female.

18. The Government, other Non-Governmental Organizations (NGOs), Faith Based Organizations (FBOs) and Community Based Organizations (CBOs) have in the last decade scaled-up the fight against HIV/AIDS in view to realizing the zero infection rates. A lot of public awareness has been created in this regard to combat the spread of HIV/AIDS including other policy interventions such as the Youth Communication Strategy, Condom Policy and Strategy, Male Circumcision Policy, HIV and AIDS policy at workplace, HIV and AIDS Prevention and Control Act, National Aids Control Council and Stakeholder’s Code of Conduct and guidelines inter alia.

19. Deliberate programme interventions such as the Prevention of Mother to Child Transmission (PMTCT), Early Infant Diagnosis, PMTCT ARV prophylaxis, HIV counselling and Testing, and Cash Transfer Programmes where Orphans and Vulnerable Children receive Ksh 2000 per month have also been established.

20. However, despite these interventions, HIV/AIDS stigma, particularly of children living with HIV and AIDS still remains a significant course for concern. Many orphaned children living with HIV suffer neglect from caregivers and family members due to unfounded fear and belief that they may pass on the HIV virus to their children. For this reason, children living with HIV/AIDS are often stigmatized through restricted play and interaction with other children and even forced to use separate utensils and beddings.

21. Many children living with HIV/AIDS are not facilitated to attend hospitals or clinics for treatment and medication or when the medication has been provided, they are not properly administered by the caregivers as prescribed. Many children living with HIV/AIDS are often considered a burden in the family and believed to have a shorter time to live hence less attention is given to them, including the necessary medical and educational needs.

22. There are a growing number of children living with HIV/AIDS who have been disowned by their families and/or caregivers, thus ending up on streets or children homes. In some instances, children are dispossessed of their inheritance by greedy relatives while others suffer physical, sexual and emotional abuse.
23. There are also incidents where children living with HIV/AIDS experience discrimination in schools. Some schools either refuse to admit children living with HIV/AIDS or in other incidents; insensitive language or examples related to HIV pandemic are used in class by teachers that continue to stigmatize these children.

24. Many orphaned children are also forced to drop out of school due to lack of school fees, particularly due to high fees charged in most secondary schools.

Legal Framework

25. Article 53 (1) (b) of the Constitution 2010 states that every child has the right to free and compulsory education (c) to basic nutrition, shelter and health care.

26. Article 19 of UNCRC obligates States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.


28. Article 5 of the Children’s Act 2001 states that no child shall be discriminated against on grounds of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or connection.

29. Recommendations

1. Our organization recommends to the government of Kenya to:

2. Provide adequate protection to orphaned children to ensure their rightful inheritance is guaranteed.

3. Facilitate the provision of child and youth friendly desks in all health care institutions to sensitize children and teenagers on HIV/AIDS and reproductive health for behaviour change and character formation

4. Step-up efforts to demystify HIV/AIDS retrogressive myths through appropriate campaigns, and training and workshop particularly for teachers to avoid re-victimization of children living with HIV/AIDS within school set-ups

5. Map out and create a database of all children orphaned by and living with HIV/AIDS and prioritize the provision of bursary and sponsorships to facilitate their education

CHILD ABUSE, NEGLECT AND CHILD LABOUR

Situational Analysis

30. According to a national survey conducted in 2010 on violence against children in Kenya[8], three out of every ten females and nearly two out of every ten males aged 18 to 24 reported at least one experience of sexual violence prior to age 18; Seven percent of females aged 18 to 24 reported experiencing physically forced sexual intercourse prior to age 18; Of females whose first sex occurred before age 18, 24% reported that it was unwilling, meaning that they did not want it to happen and were forced, pressured, tricked or threatened to engage in sexual intercourse. In the 12 months prior to the survey, about 11% of females and 4% of males aged 13 to 17 experienced some type of sexual violence. Among 18 to 24 year olds, almost two-thirds of females and three-quarters of males reported experiencing physical violence prior to age of 18. During the year preceding the survey, approximately half of all females and males aged 13 to 17 experienced some type of physical violence. About one-quarter of females and one-third of males aged 18 to 24 years reported experiences of emotional violence prior to age 18.

31. The government of Kenya has put in place important measures to protect children from abuse and facilitate easy access to justice. Such measures include the establishment of institutions such as the Children’s Courts, National Council for Children’s Services, Children Offices and the introduction of children’s rights into school curriculum among other measures. Other Non-governmental Organizations also play significant role in the promotion and protection of children’s rights by establishing institutions of childcare and learning and by promoting awareness of child rights and abuse to local citizens.

32. However, many children in Kenya are continuously subjected to worst forms of child abuse in schools, childcare institutions and even at home. There have been a growing number of cases reported by the media of child defilement, physical abuse, neglect and emotional abuse. Cases of children being defiled, abducted, strangled and or badly mutilated and their bodies dumped have been on a steady rise with some of them going unresolved. The reluctance of law enforcers to expedite investigations, make arrests and charge perpetrators is worrying. There is also reluctance among the public to assist with investigation, including instances of alleged bribery, either of law enforcers or family members to compromise or withdraw cases.

33. There is also a growing concern of alleged criminal activities perpetrated by children in many informal settlements. In Mukuru informal settlements and Kayole areas in Nairobi, for instance, there is an alleged criminal gang named GAZA that is recruiting children, both boys and girls, as young as 9 years and thereafter inducting them into criminal activities. The children are lured through sports such as football and later made to take illegal oaths, which bind them as members of that gang. These children are then slowly introduced into crime, ranging from extortions, theft, robbery, sex and illicit drugs. The gang operates very secretly, making it difficult to know the whereabouts of its leaders, and it thrives through instilling fear and threats to local residents.

34. Child labour in Kenya is also rampant with a steady growth of street children, especially in Nairobi. In many informal settlements such as Mukuru, illicit brew, locally known as chang’aa also contributes to this problem. Many chang’aa dens are opened as early as 7.00am and sometimes children are involved in selling, which is often their parents’ occupation. This
happens despite the law requiring all pubs and bars selling alcohol to open not earlier than 5.00 pm on weekdays and 3.00 pm on weekends. Many children are also involved in hawking of groundnuts and fruits on streets and in bars.

35. In addition, many children are involved in plastics and scrap metal collection, sometimes to subsidize family income instead of going to school.

Legal Framework

36. Chapter Four of the Constitution 2010 provides for the bill of rights and fundamental freedoms of all citizens; Article 53 of the Constitution 2010 provides for special guarantees for children rights

37. Article 10 of the Children’s Act 2001 provides for the protection from economic exploitation and any work that is hazardous or likely to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development

38. Article 19 of UNCRC obligates States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.


40. Article 53 (1) of the Employment Act 2007 prohibits any person from employing a child in any activity that constitute worst form of child labour; Article 16 of the children’s Act

41. ILO Convention 182 illustrates the worst forms of child labour

42. The Sexual Offenses Act 2006 provides for different forms of sexual offenses and applicable penalties thereto.

43. Article 13 of the Children’s Act 2001 provides for the protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person

44. Recommendations

1. Our organization recommends to the government of Kenya to:

2. Consider establishing a child unit within the police to promote public awareness on children’s rights and to fast-track investigations and prosecution of all cases related to child abuse.

3. Investigate the activities of GAZA and provide safeguards to protect children from being recruited into this gang, and where applicable, prosecute all those found culpable of exploiting children to promote criminal activities.

4. Promote community-based initiatives that help children and teenagers to channel their energies through games and sports so as not to be victims of criminal gangs.

5. Work with other non-state actors to establish effective rehabilitation and integration measures to curb the rapid growth of street children.

6. Strengthen legislations to stop business people and individuals from buying scrap metals and plastics from children and prosecute all those found culpable of exploiting children for their commercial gains.

7. Step-up efforts to combat the distribution and sell of illicit brew through the enforcement of existing legislation and policies

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Rights of the Child’s (the Committee’s) discussion of Kenya at its 71st pre-sessional working group from 8-12 June 2015. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries. Rural Education and Economic Enhancement Programme (REEP) is a local Kenyan NGO that works on HIV/AIDS prevention and mitigation and human rights issues, including awareness raising about gender-based violence particularly against the girl child as well as organizing girls’ clubs, support groups, and facilitating access to paralegals and counselors for girls affected by gender-based violence.


Female Genital Mutilation and Child Marriage

Equality Now has long been monitoring the practices of FGM and child marriage in Kenya. FGM involves the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. Kenya’s prevalence rates for FGM and child marriage are approximately 27% and 26%, respectively. FGM is generally performed on girls aged between 12 and 18, though more recently as young as age seven. FGM can have detrimental lifelong health consequences including chronic infections, severe pain during urination, menstruation, sexual intercourse and childbirth, infertility, psychological trauma, and in some cases even death. In some communities in Kenya, FGM is seen as a rite of passage into womanhood and an immediate precursor to marriage. Therefore, once a girl has undergone FGM she is under pressure to marry as soon as possible and the parents find a husband for her.

Medicalization of FGM – the performance of FGM by a health-care provider – is also increasingly a concern in Kenya. Data indicates medicalization of FGM has been increasing in Kenya. Kenya has the third highest rate of medicalization at around 40% of all cases of FGM, just after Egypt and Sudan, among countries with practicing communities. Girls in Kenya are often taken to medical facilities under pretext of another ailment, or medical providers might be invited to the girl’s home to do the practice. Medicalization nullifies the on-going campaigns against the practice and ignores the negative social, physical and psychological impact on the lives of women and girls. Medicalization risks legitimizing and further entrenching the practice, and is a violation of medical ethical obligations to “do no harm.”

1 Available at www.equalitynow.org/take_action/fgm_action521.
2 Available at www.equalitynow.org/take_action/adolescent_girls_action541.
• Equality Now has been monitoring multiple cases of FGM and early marriage in Kenya. In October 2013, Equality Now and its partners issued an action calling on the government of Kenya to enforce its laws against FGM and child marriage. In January 2014, Equality Now also issued a child marriage report, which highlighted several examples of girls running away from FGM/early marriage:

• Elizabeth from Churo village was barred from attending school by her parents who planned to subject her to FGM and marry her off. She found refuge with her aunt for a while and was attending school, but was forced to run away when her father tried to remove her from her aunt’s home at age 16. She walked for three days before arriving at a rescue center for girls. Her father came to the center and tried to force her back home, but when the center’s management threatened him with police action, he left and did not return.

• Alsine from Tangulbei village was pulled out of school by her parents at age 14 and subjected to FGM to ‘prepare her for marriage’. She ran away to her older sister’s home, but her father forcibly removed her from her sister’s home and began marriage preparations. She managed to escape once more, and after spending two nights sleeping outdoors, was directed to a rescue center for girls where she is once again attending school.

• Liloë fled to the Rescue Center run by Tasaru Ntomonok Initiative (TNI) when she was 14 years old to escape FGM and child marriage. TNI staff arranged reconciliation with her family and her mother promised not to mutilate her. When Liloë was 16, her mother again tried to marry her off and Liloë again fled to Tasaru. FGM and early marriage are illegal in Kenya. This time TNI reported the case to the police who prosecuted Liloë’s mother in court under the Children’s Act 2001. Liloë’s mother was found guilty and sentenced in 2013 to two years of community service. Liloë continues to attend school and has been reconciled with her relatives.

We commend the increased efforts the Kenyan government has taken, particularly in the last year, to more proactively address the practices of FGM and child marriage. For example, Kenya appointed an anti-FGM advocate and former member of Parliament, Honorable Linah Jebii Kilimo, from an area with high FGM prevalence as new chairperson of the government’s Anti-FGM Board. In April 2014, Kenya’s Director of Public Prosecutions, Keriako Tobiko, established an Anti-FGM Unit, in order to streamline the prosecutorial management of FGM cases in Kenya. The unit completed a two month long roll-out program nationwide, and has begun to investigate and prosecute an increasing number of cases concerning FGM. The Directorate has also established an FGM and child marriage hotline to facilitate reporting of cases and timely intervention.

Equality Now met in November 2014 with the Anti-FGM Board and the Office of the Director of Public Prosecutions (ODPP) to advocate for enhanced systems of support and protection for girls during the upcoming year-end holiday period, when girls are at greater risk of being mutilated. Following our meeting, the ODPP released a warning letter to all parents, teachers and guardians and medical practitioners that anyone caught will be prosecuted and deployed a team of prosecutors and monitors to areas of high risk to monitor for cases of FGM. The ODPP also launched a hotline to rescue girls from FGM and child marriage. Despite the progress, we received reports of FGM procedures leading to the death of girls in Oloitoktok, West Pokot and Baringo and even reports of pregnant girls being subjected to FGM.

Until the practices of FGM and child marriage are completely eradicated, there is still more work to be done. There continue to be reports about cases of FGM and child marriage in Kenya and girls running away to avoid these practices. However, organizations such as Tasaru Ntomonok Initiative (TNI) cannot provide safe housing and education for all girls trying to escape FGM/early marriage. They cannot provide much needed protection via the criminal justice system, as their trust in the system wanes, witnesses are compromised or dissuaded from testifying, and at times community pressure against legal action persists, threatening the girl’s safety.

In addition, there are still many people, including chiefs and law enforcement officials who are not aware of the laws against FGM and child marriage, or how to effectively implement them. Anti-FGM work is also not always supported. In December 2014, chiefs and activists were attacked by the public while trying to save girls from undergoing FGM. When cases are brought forward, they are often not brought under the Prohibition of FGM Act or Children’s Act, and are brought as lesser crimes. Many girls are not able to escape FGM and child marriage in Kenya. We hope to see Kenyan authorities follow through with their commitments to provide increased support to girls escaping FGM and child marriage.

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Law enforcement agencies are often under-resourced, or lack sufficient capacity and training to effectively investigate and prosecute cases of FGM and child marriage. The Anti-FGM Board itself still requires additional funding and resources to effectively carry out its mandate. We hope Kenyan authorities will continue to proactively address these persisting challenges. Kenyan authorities also have a responsibility to ensure girls are able to obtain the support they need when they try to escape and avoid FGM and child marriage, and ensure the girls are able to stay in school.

Sexual Violence

Concerning sexual violence, the 2008–09 Kenya Demographic and Health Survey showed that 1 in 5 Kenyan women will experience sexual violence in their lifetime. An estimated 45% of Kenyan women aged 15 to 49 have experienced physical or sexual violence – and these numbers are likely to be much higher, as the Coalition on Violence against Women (COVAV) estimates that only 8% of rape survivors report the attack to authorities. In addition, survivors of sexual violence often face re-victimization when reporting their cases, as authorities often engage in harmful behaviors that diminish the survivor’s sense of confidence in the judicial process, including showing disbelief or skepticism towards complainants, employing aggressive...
interviewing techniques that are embarrassing and invasive, victim-blaming, and questioning the victim’s motives for reporting the crime. A 2009 case study of gender desks at Nairobi police stations illustrated that 52% of people who reported gender violence considered the police “not helpful” and 39% said police were “reluctant to record statements.” Another 20% were asked for bribes to pursue their case, and 28% felt “humiliated and handled without courtesy and dignity.”

While Kenya in its midterm report to the Universal Periodic Review reported that the Office of the Department of Prosecutions has made efforts to train and sensitize investigators, police prosecutors and judicial officers on addressing cases of gender based violence, the following examples show this has not been as effective as Kenyan authorities might have hoped.

The Kenyan High Court in May 2013 handed down a landmark judgment in a case known as the 160 Girls Case, finding police had mishandled over 160 cases of sexual violence. The Court held that “the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations” into the many complaints of sexual violence violated the girls’ fundamental rights and freedoms by creating a “climate of impunity.” The High Court held that police officers have an obligation to conduct “prompt, effective, proper and professional investigations” into all allegations of sexual violence. However, this ruling has not been fully implemented since then, as evidenced by the ongoing case of Liz, a girl who was gang raped in Busia, Kenya in June 2013.

It took a year for Liz’s case to go to trial, and only three of the six suspects have been apprehended. In April 2014, the Director of Public Prosecutions (DPP) finally issued arrest warrants for the suspects who remained at large at that time. When the trial finally started on 24 June 2014 (now adjourned until 6 March 2015), the hearing was held in camera and Liz was initially required to testify alone, despite having been declared a vulnerable witness and thus entitled to an intermediary under the Sexual Offenses Act. Observers and NGOs, including COVAW who had been appointed by the DPP as Liz’s intermediary, were not allowed in the courtroom.

Some progress has been made. The DPP elevated the charges from “grievous bodily harm” to “gang rape” under the Sexual Offenses Act. The DPP also appointed two special prosecutors to the case. Due to our advocacy with the DPP, Liz was later provided an intermediary and allowed to testify via video to avoid undergoing further trauma. The judge also granted the special prosecutor’s request to allow Liz to not attend the rest of the court sessions. However, the DPP appeared to only move the case forward after significant public pressure and widespread publicity of the case. This case indicates Kenya’s continuing failure to adequately investigate and prosecute all crimes of sexual violence. In light of examples like the 160 Girls Case and Liz’s case, it is clear that there are too few prosecutions of sexual violence crimes, particularly as compared to the high rate of sexual violence in Kenya.

As a result of working on Liz’s case, Equality Now has begun monitoring dozens of troubling sexual violence cases from Busia County. These cases – like Liz’s case – highlight the prevalence of sexual violence plaguing girls, and the tremendous obstacles faced by girls in accessing justice. On 23 June 2014, Equality Now wrote to Kenya’s DPP highlighting around 70 of such cases. We welcome the positive response of the DPP to initiate speedy and thorough investigations of these cases by senior staff with expertise in handling cases of sexual violence. On 3 December, the Directorate of Criminal Investigations resumed its investigation of these cases. We hope to see the DPP continue to follow through with these efforts. Some examples of these cases include:

- 14-year-old girl F., who was raped by a senior ranking police corporal in Butula sub-county. When the case was reported by a fellow female police officer, that officer’s job, security and life were threatened. A day after a doctor examined F. thanks to the help of local organizations, officers from the local Criminal Investigation Department took F. alone in the same vehicle with her rapist for new medical investigations which contradicted the original medical report. F. still awaits justice.
- 12-year-old A., who was defiled, impregnated twice, and infected with HIV by a prominent teacher who had employed her as domestic help. A. comes from a very poor family and is mentally disabled, but was able to communicate clearly what had happened to her. There are reports that officials from the local children’s office in Busia protected the perpetrator, who is still teaching and is rumored to be transferred soon to another school.
- 15-year-old Am., in very similar circumstances to Liz’s case, was gang raped walking home from a funeral.
- 13-year-old Mo., who is severely mentally handicapped and was defiled by a man who was found with her undergarments in his pocket. He was eventually set free because Mo. could not, two years later, identify in court that the undergarments were indeed her own. Kenyan authorities have an obligation to ensure that girls in Kenya are protected from all forms of violence, including sexual violence. Girls must also be able to effectively access the justice system without being re-victimized by the very authorities intended to assist them and protect their rights.

**Discriminatory Legislation**

We are also very concerned about discriminatory provisions in recently enacted Kenyan legislation, namely the Matrimonial Property Act No. 49 of 2013 and the Marriage Act No. 4 of 2014; both of which are retrogressive in nature and in clear violation of Kenya’s 2010 Constitution, and Kenya’s regional and international treaty obligations.

The Matrimonial Property Act, defines matrimonial property as only property that is jointly owned by the spouses, and only allows women the right to marital property upon the death or divorce of their spouse if they can prove their contribution to the acquisition of the property during the marriage. Given that many Kenyan women do not work in paid employment, many women are therefore denied the right to marital property. The new Marriage Act, which came into effect in 2014, further restricts women’s rights to property. The new Act states that women do not have a right to marital property upon divorce or death of their spouse unless they can prove that they have contributed to the acquisition of the property during the marriage.


are unable to contribute financially in the acquisition of matrimonial property. Even though the Act recognizes non-monetary contributions, the Solidarity for African Women’s Rights (SOAWR) Coalition has called for any such contribution to automatically be accorded equal value and for women to be entitled to an equal share in matrimonial property without having to prove such contribution.12

In late March 2014, Kenyan Members of Parliament voted to include a provision in the new Marriage Bill that formally permits polygamy in customary marriages, and omits the critical long existing cultural context that permitted first wives to weigh in or veto a husband’s choice. The Marriage Act received presidential assent on 20 April 2014. Polygamy undermines a woman’s right to enjoy equal rights in and be regarded as an equal partner in marriage. Specifically in relation to girls, these laws have a particularly negative impact in light of the fact that child marriage is widespread in Kenya and girls will be far less able generally to negotiate any rights in marriage. It is imperative that the prevailing legal framework adequately protects women’s and girls’ right to assert control over their own lives and partner choices.13 Kenyan authorities must take immediate steps to repeal all discriminatory provisions in these laws, and enforce the Children’s Act to protect girls from child marriage.

**Domestic and International Legal Obligations**

**Kenya’s Constitution and Domestic Legislation**

Kenya is bound by its own Constitution and domestic laws to protect the human rights of women and girls. Kenya’s Constitution gives significant prominence to human rights and international law, and protects the right to equality and freedom from discrimination and violence.14 In addition, Kenya’s Constitution contains provisions against both FGM and child marriage. Kenya’s Sexual Offences Act,15 Prohibition of FGM Act,16 and Children’s Act17 prohibit all forms of sexual violence, FGM, and child marriage. In addition, Kenya has developed National Guidelines on Management of Sexual Violence, which prescribe how law enforcement and medical responders must handle sexual violence cases, and how police are to collect evidence.18

**Convention on the Rights of the Child**

FGM and child marriage violate the principles of non-discrimination and rights to basic health and welfare of the girl child under the Convention on the Rights of Child. In 2007 this Committee already expressed concern over the practices of FGM and child marriage in Kenya. It encouraged Kenya to strengthen its measures regarding FGM and forced marriage to “ensure that the prohibition is strictly enforced”; “[c]onduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls”; and “[i]ntroduce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes, and engage the extended family and the traditional and religious leaders in these actions.”19

We also note the Committee’s General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), which states, “Gender-based discrimination is particularly pervasive, affecting a wide range of outcomes.... Attention also needs to be given to harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys.”20 The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in 2014 also issued a joint general comment/general recommendation calling for the “prevention and elimination of harmful practices”, explicitly encompassing FGM, child marriage and polygamy, including through the “development, enactment, implementation and monitoring of relevant legislation”.21 We hope the Committee will reaffirm the urgent need for Kenyan authorities to continue to address these practices.

The Convention on the Elimination of All Forms of Discrimination against Women

In November 2011, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) issued its Concluding Observations to Kenya, expressing concern about the persistence of FGM and the “widespread incidents of sexual violence.”22 This Committee called on Kenya to ensure the effective implementation of laws outlawing FGM and the “prosecution and punishment of perpetrators” of FGM, “[c]ontinue and increase its awareness-raising and education efforts targeting families, practitioners and medical personnel, with the support of civil society organizations and religious authorities, in order to completely eliminate” FGM, as well as “[e]stablish support services to meet the health and psychological needs of women and girls who are victims of this practice.”23 In addition, the Committee urged Kenya to prioritize “combating violence against women and girls and adopting comprehensive measures to address such violence.”24

In its General Recommendation No. 14, the CEDAW Committee called on States to “[t]ake appropriate and effective measures with a view to eradicating the practice of female circumcision” and “[i]nclude in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care’ with a special focus on the responsibility of health personnel “to explain the harmful effects of female circumcision.”25 In its General Recommendation No. 21, the CEDAW Committee also noted that women and men should have “the same right freely to choose a spouse and to enter into marriage only with their free and full consent” and that “[t]he betrothal and the marriage of a child shall have no legal effect...”26

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13 Id.
18 Ministry of Public Health and Sanitation and Ministry of Medical Services, National Guidelines on Management of Sexual Violence in Kenya

23 Id. at 20; see also Id. at 18, 22, 24.
24 Id. at 22.
The African Charter on Human and Peoples' Rights

The International Covenant on Economic, Social and Cultural Rights

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The International Covenant on Civil and Political Rights

usefulness of female genital mutilation for the promotion of marriage prospects of girls.33

children and community leaders on the harmful effects of female genital mutilation; and combat traditional beliefs about female genital mutilation; continue promoting alternative rite of passage ceremonies; educate parents, especially mothers, to education (Article 17), and the right to equality in the family (Article 18).

(Article 2), equal protection before the law (Article 3), the right to integrity of the person (Article 4), the right to dignity and reparation for victims” and direct adequate State resources towards the implementation and monitoring of preventative action.30

violence”, and to “ensure the prevention, punishment and eradication of all forms of violence against women.” Furthermore, woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal determination of cultural policies (Article 17).

Maputo Protocol requires Kenya to guarantee the right to freedom from discrimination (Article 2), the right to inherent human dignity (Article 3), the right to integrity and security of the person (Article 4, clearly prohibiting FGM), the right to freedom from female genital mutilation and other harmful practices (Article 5), equal rights in marriage including mandating 18 as the minimum age of marriage and discouraging polygamy (Article 6), the right to access to justice and equal protection before the law (Article 8), the right to health (Article 14), and the right for women to live in a positive cultural context and participate in the minimum age of marriage and discouraging polygamy (Article 6), the right to access to justice and equal protection before the law (Article 8), the right to health (Article 14), and the right for women to live in a positive cultural context and participate in the determination of cultural policies (Article 17).

Specifically, the Protocol obliges states parties to “combat all forms of discrimination against women through appropriate legislative, institutional and other measures”, to “adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence”, and to “ensure the prevention, punishment and eradication of all forms of violence against women.” Furthermore, the Protocol requires that Kenya establish “mechanisms and accessible services for effective information, rehabilitation and reparation for victims” and direct adequate State resources towards the implementation and monitoring of preventative action.

The African Charter on Human and Peoples’ Rights

Kenya has also ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Protocol), which has several provisions that explicitly prohibit the human rights violations outlined in this submission. The Maputo Protocol requires Kenya to guarantee the right to freedom from discrimination (Article 2), the right to inherent human dignity (Article 3), the right to integrity and security of the person (Article 4, clearly prohibiting FGM), the right to freedom from female genital mutilation and other harmful practices (Article 5), equal rights in marriage including mandating 18 as the minimum age of marriage and discouraging polygamy (Article 6), the right to access to justice and equal protection before the law (Article 8), the right to health (Article 14), and the right for women to live in a positive cultural context and participate in the determination of cultural policies (Article 17).

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The African Charter on Human and Peoples’ Rights

Kenya has also ratified the African Charter on Human and Peoples’ Rights, which also has various provisions that prohibit the practices outlined in this submission. The African Charter requires Kenya to guarantee the right to freedom from discrimination (Article 2), equal protection before the law (Article 3), the right to integrity of the person (Article 4), the right to dignity and freedom from torture, cruel, inhuman or degrading treatment (Article 5), the right to security of the person (Article 6), the right to education (Article 17), and the right to equality in the family (Article 18).

35 Id. at 27.
36 Id. at 14.
The African Charter on the Rights and Welfare of the Child

Kenya has also ratified the African Charter on the Rights and Welfare of the Child, which also has various provisions that prohibit the practices outlined in this submission. The African Charter on the Rights and Welfare of the Child requires Kenya to protect the right to freedom from discrimination (Article 3), the best interests of the child (Article 4), the right to education (Article 11), the right to health and health services (Article 14), the right to protection against harmful social and cultural practices (Article 21), and the right to protection from sexual abuse (Article 27).

The Universal Periodic Review and United Nations General Assembly

During the 2010 Universal Periodic Review, several states made recommendations for Kenya to take measures to end sexual violence, FGM and child marriage. Several states also expressed concern about “systematic discrimination against women,” and one state recommended Kenya “[r]eview its national laws so that they fully uphold the principle of nondiscrimination, in particular on grounds of gender . . .” In preparation for the 2015 session of the UPR where Kenya will be reviewed again, the summary of stakeholders’ information also highlights concerns for sexual violence and FGM and child marriage, which Equality Now raised in its submission to the UPR.

In addition, the continued practice of FGM runs counter to a recently passed UN General Assembly resolution on eradicating FGM which urges member states to “condemn all harmful practices that affect women and girls, in particular [FGM] . . . and to take all necessary measures, including enacting and enforcing legislation to prohibit [FGM].”

Suggested Questions for the State Party’s List of Issues

We would respectfully urge the Committee to raise with the Kenyan government in its List of Issues the following questions with regard to violations of the CRC addressed in this letter:

Female Genital Mutilation and Child Marriage in Kenya

1. What further steps does the Kenyan government plan to take to ensure laws against FGM and child marriage are effectively implemented with proper investigation and timely prosecution of violations, accompanied by strong penalties?

2. How do Kenyan authorities plan to work with practicing communities to protect, and provide support and shelter to girls escaping FGM and child marriage and to ensure that at-risk girls are not subjected to FGM or child marriage, and to ensure that girls are able to continue their education?

3. What are the government’s plans to conduct awareness-raising and education campaigns to change cultural perception and beliefs on FGM and child marriage and acknowledge the practices as human rights violations with harmful consequences?

4. What are the government’s plans to increase funding and resources for the Anti-FGM Board so that it can effectively carry out its mandate?

5. What are the government’s plans to ensure law enforcement offices and police stations have adequate logical support, capacity and training in issues concerning FGM and child marriage in order to effectively implement the laws against FGM and child marriage, collect evidence, provide sensitive support to victims, as well as monitor ongoing cases and outcomes?

6. How is Kenya engaging health professionals to take a leading role in eliminating the practice by refusing to perform it, educating communities about its harmful consequences and providing services for women who have undergone FGM?

Sexual Violence in Kenya

7. What further steps does the Kenyan government plan to take to ensure the Sexual Offences Act and the National Guidelines on Management of Sexual Violence are effectively implemented with prompt, effective, proper and professional investigations and prosecutions of all cases of sexual violence, accompanied by strong penalties?

8. What are the government’s plans to ensure law enforcement offices, police stations, and particularly gender desks in police stations have adequate logical support, capacity and training in issues concerning sexual violence in order to effectively implement the laws against sexual violence, collect evidence, provide sensitive support to victims, as well as monitor ongoing cases and outcomes?

9. What are the government’s plans to train law enforcement officials and gender desks in police stations to ensure that sexual violence complaints are appropriately handled and that officials are equipped to deal with survivors of sexual violence by rectifying harmful behaviors that might further distress victims or impede their access to justice?

10. What are the government’s plans to conduct awareness-raising and education campaigns to change cultural perceptions and stereotypes about the roles of women and men, and gender based violence, in order to build acceptance of gender-based violence as a human rights violation?

Discriminatory Legislation

11. Does the government of Kenya have any plans to repeal discriminatory and unconstitutional provisions from the Matrimonial Property Act and the Marriage Act to ensure that women and married girls have equal rights and opportunity before the law?

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,

Equality Now

Global Director

Mary A. Makokha

Executive Director

2. Id. at 60, 101.40.
Re: Supplementary information on the List of Issues for Kenya scheduled for review by the Committee on the Rights of the Child during its 71st Session

Dear Committee Members:

The Center for Reproductive Rights (the Center), a global legal advocacy organization with headquarters in New York, and regional offices in Nairobi, Bogota, Kathmandu, Geneva, and Washington D.C., submits this letter to provide responses to and recommendations on some of the questions in the List of Issues (LOIs) developed by the Committee on the Rights of the Child (the Committee) during its pre-session review of Kenya. This letter focuses on the questions that reflect the concerns raised in a letter the Center submitted for the pre-session review of Kenya. The pre-session letter also contains a list of questions we hope the Committee will consider using during its review of Kenya. We have annexed the pre-session letter for further reference.

I. The Right to Sexual and Reproductive Health Services and Information

In response to the LOIs in which the Committee asked the state to “elaborate more on the sexual and reproductive health information and services that are available to adolescents,” the state outlined some initiatives it has undertaken. This includes the adoption of the Adolescent Sexual and Reproductive Health Policy; development of the Education Sector Policy on HIV and AIDS; establishment of youth friendly centers that offer sexual reproductive health information; provision of life skills classes in schools; and the signing of the commitment to “promote comprehensive sexuality education and sexual and reproductive health services for adolescents and young people.” However, even though the Committee asked for updated statistical data on “the number of adolescent girls who have access to information, services and care related to sexual and reproductive health, including access to contraceptives,” the government admitted to the unavailability of this information but that the aforementioned efforts are being undertaken “to ensure that the services are available to as many adolescent boys and girls as possible.” Yet, despite these efforts, the following sections demonstrate that adolescents in Kenya still lack access to comprehensive sexual and reproductive health services.

A) Lack of access to contraceptive information and services

According to the 2014 Kenya Demographic and Health Survey (2014 KDHS), only about half of Kenyan women (53.4%) are able to access modern methods of contraceptives, an increase of only seven percentage points from the 2008 rate. Moreover, the rate remains startlingly low for adolescents as the use of modern contraceptives for those aged 15 to 19 who are married or unmarried but sexually active is only 36.8%. The 2014 KDHS also reflects the fact that 23% of married girls aged 15-19 have an unmet need for contraceptives.

This low rate of contraceptive usage is largely due to the barriers to girls’ access. Many public health facilities face a profound shortage of contraceptives. In many cases, preferred methods of contraception may be unavailable. Financial barriers further prevent access to contraceptives. Despite the Ministry of Health’s policy that contraceptives should be available free of charge, many government health facilities charge their patients “user fees” for family planning services and some charge for the contraceptive method itself. Community and familial attitudes and opinions towards contraception also restrict contraceptive access. For example, girls who carry condoms are perceived as promiscuous, “sexually wayward,” or “untrustworthy”; and those who are unmarried feel ashamed to obtain contraceptives. In the Center’s fact-finding report, one young woman recounted being turned away when she attempted to get an intrauterine device. “[T]hey said no at the government facility. They said you are a Muslim girl, you are going to burn in hell. She was a Muslim nurse and refused to give me contraceptives.” Adolescents in Kenya also lack formal and comprehensive sex education, resulting in misinformation about their reproductive health, including concerns about poor outcomes from using contraceptives. These misconceptions lead to lower contraceptive use rates and a higher incidence of unplanned and unwanted pregnancies.

In addition, adolescent girls in Kenya encounter significant barriers in accessing Emergency Contraceptive (EC)—a safe and effective method that can be used within 120 hours of unprotected sex and a critical component of care for survivors of sexual violence. Consistent stock outs in pharmacies and shipment delays prevent girls from reliably accessing the medicine. Some pharmacists also decline to distribute EC altogether or refuse to dispense it without a prescription, although EC is registered in Kenya as an over-the-counter medicine. Despite the Ministry of
Health's guidelines that explicitly permit EC's usage for any unprotected sex, arbitrary refusals stem from the perception that the contraceptive is only intended to be used by rape victims. Moreover, adolescents are routinely denied access to EC for arbitrary or discriminatory reasons such as “the person look[ed] young.” A 2014 study found out that only 18% of women and girls surveyed in Nairobi have ever used EC. Private health care facilities may not always offer EC either. For example, although facilities run by the Catholic Church or Christian Health Association of Kenya provide services to survivors of sexual violence, they do not provide EC to these individuals. Access to EC is an essential component of the full range of contraceptive options that adolescent girls must have—particularly for survivors of sexual assault and following unprotected sex—in order to ensure their right to reproductive autonomy.

B) Lack of access to maternal health care

Due to this lack of access to reproductive health information and services, 18% of girls aged 1519 have either given birth or are pregnant by the age 19. This is particularly concerning since teen pregnancy in Kenya is a major contributor to the overall maternal mortality, which remains alarmingly high. The WHO reports that Kenya’s maternal mortality rate (MMR) has only decreased by 0.8% per year since 1990—well short of the target rate of 5.5%—which has left Kenya far off track in achieving its Millennium Development Goal target MMR of 175 deaths per 100,000 live births by 2015. Currently, according to the same report, 400 Kenyan women and girls die per every 100,000 live births. In some low-income urban areas, the estimated MMR is as high as 706 deaths per 100,000 births. Although the current MMR has shown some improvement from the 2008-2009 rate, it has not reduced significantly from the rate in 2003.

Apart from a disproportionate risk of death during and after child birth, adolescent girls are also vulnerable to pregnancy-related complications. However, adolescents in Kenya often lack access to ante-natal, delivery and post-natal care, maternal health care services that are essential to preventing maternal mortality and morbidity. According to the 2014 KDHS, although 94% of those below the age of 20 who have given birth reported at least one antenatal care visit, only 48.9% attended the WHO recommended four or more antenatal care visits. Moreover, geographic location has a significant impact on women and adolescent girls’ access to antenatal care: for example, 68% of those living in urban areas are more likely to attend four or more antenatal care visits compared to 51% of those living in rural areas.

Adolescent girls also face challenges in obtaining quality delivery care; the 2014 KDHS notes that only about 62% of those below the age of 20 obtained delivery assistance from a skilled provider such as a doctor, nurse, or midwife. Further, while the WHO recommends postnatal care starting an hour after giving birth for the first 24 hours in order to check for complications, only 51% receive a postnatal checkup within two days of giving birth.

In recent years, the Kenyan government has made some efforts to address these issues. For example, in June 2013, the Kenyan government issued a Presidential Directive which provided that all pregnant women would be able to, “access free maternity services in all public health facilities.” Nevertheless, as described below, implementation of this Presidential Directive remains a challenge. In addition, in January 2014, the First Lady of Kenya spearheaded the Beyond Zero Campaign to raise awareness about the link between good health and a strong nation, specifically demonstrating the importance of maternal, newborn, and children’s health. The Campaign has delivered thirty six mobile clinics since its inception. However, as the First Lady has stated, “the initiative alone cannot bring about success. Success requires all actors in the health sector especially county governments to expand this program to every corner” of Kenya. As such, the government needs to scale up its efforts to ensure all pregnant adolescent girls have access to comprehensive maternal health services.

Detention, abuse and neglect of women and adolescent girls seeking maternal health services in health care facilities

Those adolescent girls who manage to overcome the barriers to accessing maternal health services often encounter detention, neglect and abuse from health care professionals and staff while attending maternal health services. As mentioned in the Center’s submission to inform the Committee’s pre-session review of Kenya (see Annex), the study conducted by the Center and the Federation of Women Lawyers-Kenya revealed the existence of serious delays and a lack of adequate medical care at maternal health care facilities. The research also documented systematic abuses in administering reproductive health services, including physical and verbal abuse against those seeking services, such as rough treatment during labor. Interviewees recounted rough, painful, and degrading treatment during physical examinations and delivery, as well as verbal abuse from nurses if they expressed pain or fear. The research further found delays in medical care during labor or while waiting for stitches after delivery, and instances of being stitched without anesthesia post-delivery causing many to endure excruciating pain.

Particularly, interviewees noted that health care providers discriminated against young girls. One interviewee described the treatment young girls receive at a public health facility saying: “There are young girls who are giving birth early, even at nine years. They labor and [the doctors and nurses] don’t care. They abuse them and the child gets confused.” Another recounted: “The nurses came and started abusing me, saying, ‘You young girl, what were you looking for in a man? Now you can’t even give birth.” Another who gave birth while in secondary school recalled the neglect she experienced during delivery saying:

“I remember I was a kid and when I was asked to push I didn’t know what to push. I pushed till I went for a long call [had a bowel movement]. The nurses left me and told me it’s my problem.”

In addition to the inhumane and abusive treatment pregnant adolescent girls face in maternal health care, the research also revealed that they are frequently denied maternity health care if they fail to pay the initial deposit for such services, both in private and in public health care facilities. Even after admission to facilities, they may be denied essential and often life-saving treatment if they fail to pay their remaining balance. And in many cases, those who are unable to pay the required fees for
services rendered during their labor and delivery are detained at the health care facilities, often without post-natal care and basic necessities, such as bedding and food for themselves and their newborns. Importantly, there is a lack of effective internal and external mechanisms for redress for these violations of their human rights. Even when redress mechanisms are available, they are usually not known or the necessary information on how to access them may be lacking. This particularly affects adolescents as they are less likely to have access to financial resources to pay the required fees and lack the capacity to demand redress for any violations.

In response to these egregious actions, the Center filed a case in the High Court of Kenya in 2012 highlighting this abuse and mistreatment at health care facilities and seeking declaration that this treatment amounts to a violation of their human rights. One of the petitioners in this case was mistreated and treated inhumanly at Pumwani Maternity Hospital (PMH). Even though she was in labor and severely bleeding upon arrival, she did not receive immediate care and was not taken to the operating room until two hours after her arrival. Although her bladder had ruptured during the caesarean section, she did not receive immediate care, subjecting her to pain and suffering. Her suffering was compounded by the fact that her wound from the surgery was infected and the stitching had been poorly performed. To make matters worse, during the days following her caesarean section, she was detained because she was unable to pay her hospital fees and was forced to sleep on a cold floor without any subsequent medical care. Both petitioners in the case were made to sleep on the floor during their detention—one was even forced to sleep next to a toilet, which routinely flooded. On September 17, 2015, the Court passed a decision and found that the rights of the two petitioners, including their right to health, liberty and dignity, had been violated by the actions of the health care professionals at PMH and that they were discriminated against based on their socio-economic status. The court also ordered the government to pay monetary compensation to the petitioners for the damages they suffered as a result of these violations. Accordingly, it is vital for the government to immediately comply with the recent judgment from the High Court that confirms the detentions are human rights violations, by ensuring the detentions do not continue. It should further ensure that those accessing maternal health services do not encounter mistreatment and abuse by providing proper training to health care professionals and staff and creating a mechanism for redress should violations occur.

**Inadequate Implementation of Presidential Directive on Free Maternity Care**

As mentioned above, the government issued a Presidential Directive in June 2013, which provided that all pregnant women and adolescent girls would be able to “access free maternity services in all public health facilities.” However, the government’s report fails to detail the steps that are being taken to ensure the effective implementation of this declaration despite various reports indicating that serious problems with implementation have resulted in significant barriers to accessing quality maternity services in practice. According to the Kenya National Commission on Human Rights (KNCHR), hospital infrastructure and staffing cannot support the increase in the number of those who come seeking free maternal health care due to this declaration, and the government has failed to allocate sufficient additional resources to remedy this issue. Furthermore, there have been no clear guidelines set by the government about how to implement the free maternal services. Although some facilities have reportedly been given extra money to cover the influx of deliveries, others have remained uncertain of how to balance the new policy of free care with their need to cover costs. In fact, on October 21, 2015, Nairobi’s County Governor, Dr. Evans Kidero, abolished free maternity care at the PMH, Kenya’s largest public maternity hospital, due to the national government’s failure to reimburse Nairobi for Sh165 million spent covering maternity services over the past nine months. A number of other counties also complained that the national government was slow in distributing reimbursements for free maternity services.

In addition, although the government has said that maternal health services would be free, in reality, not all costs associated with giving birth have been eliminated. Those who attend the health care facilities still have to purchase basic goods required for delivery, such as cotton wool and the medications used to induce labor, straining their resources. Other key components of maternal health services, including antenatal and postnatal care, are also not covered under the directive. Further, the Reproductive Healthcare Bill that was tabled in parliament provides for free antenatal care, but does not cover postnatal care or provide any guidance regarding implementation of the Directive. As mentioned above, since adolescents often lack independent financial resources, the lack of implementation of the directive will have a disparate effect on them and therefore, might be a hindrance to access.

The declaration of free services has also not addressed the issue of abuse and mistreatment while seeking maternal health services; in fact, the situation may have worsened as health care staff attempt to cope with an influx of delivery patients. The continued abuse following the Presidential Directive has been challenged in a recent case filed by the Center at the Bungoma High Court where the petitioner was neglected and abused by the hospital’s staff. She was not monitored while in labor and, when she was unable to find a free bed in the delivery ward, she collapsed unconscious on the floor, where she gave birth without any assistance from medical staff. When she subsequently regained consciousness, two nurses were slapping her face and shouting at her for dirtying the hospital floor during delivery.

**C. Lack of Access to Safe Abortion Services and Post-Abortion Care**

In the LOIs the Committee asked the state to “elaborate on the sexual and reproductive health information and services that are available to adolescents and indicate whether adolescent girls can have access to safe abortion and post-abortion services.” In response, the government stated that it had made safe abortion available in accordance with Article 26 of the Constitution which provides: “Abortion is permitted if in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.” The government further stated that it had “made Post Abortion Care available to all.”

Despite this response from the government, research shows that adolescents continue to resort to unsafe abortion due to the
number of barriers they encounter in accessing safe abortion service. First, the laws governing abortion in Kenya are confusing and conflicting. While the Constitution allows abortion in the aforementioned circumstances, the penal code has not been revised to reflect this change. Moreover, before its revision in 2014, the 2004 National Guidelines on the Medical Management of Rape and Sexual Violence provided that “[t]ermination of pregnancy is allowed in Kenya after rape” since it is allowed under the 2006 Sexual Offences Act. Even though this statement was removed during the revision of the guideline in 2014, the new guideline still provides that survivors of sexual violence have the right to “[a]ccess termination of pregnancy and post-abortion care in the event of pregnancy from rape.” Yet neither the Constitution nor the Penal Code have expressly provided for this exception, and the government has not clarified whether this exception for rape applies under the 2010 Constitution. Further, although the proposed Reproductive Health Bill would codify the life and health exception from the Constitution, the Bill places unnecessary and likely unconstitutional restrictions on access under these circumstances. The Bill would require an adolescent to get the consent of parents or a guardian to get an abortion where her life or health is at risk, which would violate her rights to life, health, and nondiscrimination by putting her at heightened risk of dying due to the denials or delays in access to safe abortion care.

Second, the confusion was further compounded by recent actions of the Ministry of Health and Director of Medical Services. Following the 2010 Constitutional amendment, the Ministry of Health developed and approved the “Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortions in Kenya” (Standards and Guidelines), which clarified the circumstances in which medical professionals could perform safe abortion services. However, this Standards and Guidelines was subsequently withdrawn under unclear circumstances, leaving health care workers without official guidance as to when abortions were legal. Further, in 2013, the Director of Medical Services issued a memo to all health care workers saying that “[t]he Constitution of Kenya 2010 is clear that abortion on demand is illegal . . . without clarifying the circumstances under which it is legal.” The memo further stated that it is illegal for health care workers to participate in trainings on either safe abortion care or the use of abortion drugs, and threatened health care workers who choose to take these trainings with legal and professional sanctions. These threats against health care workers significantly limit access to safe abortion not only by incentivizing health care workers to avoid prosecution by turning away those seeking safe and legal abortion, but also by stymying health care workers’ access to the medical information and professional skills needed to safely perform the procedure.

In June 2015, the Center filed a case in the High Court of Kenya at Nairobi that challenged the Ministry of Health’s memo and the withdrawal of the Standards and Guidelines. The case was brought on behalf of four petitioners, including “Wanjiku,” a 15-year-old girl who had an unsafe abortion after an older man coerced her into having sex. Feeling anguished and fearing rejection from her family, Wanjiku decided to end the pregnancy but found safe abortion services to be unavailable. She was forced to seek care from an unqualified individual who used a dangerous method and botched the procedure. Afterwards, she started to vomit, bleed heavily, and swell—signs that her kidney was failing. She had to travel to Nairobi to get post-abortion care (PAC). However, when she could not afford to pay the medical bills for the PAC, she was detained by the hospital and forced to sleep on the floor. Doctors diagnosed Wanjiku with a kidney disease that requires regular dialysis, and ultimately a kidney transplant. She also had to drop out of school and to date, has not been able to return.

The government’s failure to ensure access to safe and legal abortion, including for victims of sexual violence, and to address the existing legal uncertainties have sustained the high levels of unsafe abortion-related injuries and death in the country. Unsafe abortion, due to unsafe methods and unqualified providers, is prevalent, and “as many as 60% of all gynecological emergency hospital admissions are due to abortion complications.” In 2012, an estimated 119,912 women and girls experienced complications from induced abortions, approximately 40% of which were classified as moderate and 37% as severe. An estimated 266 per 100,000 die from unsafe abortions, a rate almost nine times higher than in the developed world, and unsafe abortions are estimated to cause 35–50% of all maternal deaths. In August 2015, a major newspaper in Kenya reported multiple stories of those who experienced unsafe abortion services with grave consequences to their life and health. One such story is that of Beatrice, a college student, who procured an unsafe abortion and suffered kidney failure and was paralyzed as a result. The lack of clarity about Kenya’s abortion laws is particularly harmful to young and low-income women, among whom the unintended pregnancy rate is highest. As data from the Ministry of Health shows, 45% of women aged 19 and younger and 47% of students who sought post-abortion care experienced severe complications. Even where relatively safe abortion procedures are available, the cost of these services generally exceeds the economic resources of those who need them. The cost of safe abortions varies widely depending on the clinic and stage of pregnancy, it may range from approximately $13 to $132.97. Conversely, herbalists and unqualified individuals may charge as little as $4.98. With the average daily income of Kenyans amounting to only $2.50, 99 the price disparity between safe and unsafe abortion is a drastic one, particularly for adolescents and students who are likely not to have an income or earn less than the average income.

**Post-abortion care (PAC)**

Although the government, in its response to the LOIs, stated that PAC is available to all women, adolescent girls in Kenya encounter various barriers to access. Reports by the KNCHR and the Center have revealed that those needing PAC often delay seeking the service due to fear of the social stigma and legal risks associated with the procedure, including harassment by the police and possible prosecution. Although the government has stated that PAC “is legal and not punishable by any part of Kenya laws,” this declaration only offers protection to the health care providers and not to those seeking the service. Further, delays in arriving at the health care facility and obtaining the right treatment are endemic in Kenya as a result of “shortages in staffing, equipment, drugs, and poor attitude of health care providers.” These delays can have fatal consequences for those who present with treatable conditions.

Furthermore, medical providers may exacerbate the barriers in accessing PAC. Studies indicate that since most medical personnel—
In response to the inquiry from the Committee regarding measures undertaken to combat harmful practices such as FGM, the government stated that, per the Constitution, “every child has the right to be protected from abuse, neglect, harmful traditional practices [and] all forms of violence.” It also mentioned the development of the Prevention against Domestic Violence Act 2015 which “provides for punishment of all offenders who violate this right.” The government, however, failed to include other measures it is undertaking to implement these laws and ensure that adolescents are protected from all forms of violence and provide comprehensive services to survivors.

In addition, The Committee also inquired about statistical data on the number of incidences of violence, including sexual violence, against children, information on the investigation and prosecution of the perpetrators, and the sentences given by courts. In response, the government admitted that “violence against children is a serious problem in Kenya with lifetime consequences for victims.” If further cited the study conducted by the government and UNICEF which revealed that “73 per cent of boys and 66 per cent of girls have experienced physical violence before the age of 18” and that “[v]iolence against children is mostly committed by persons closest to them, including parents, relatives, figures of authority such as teachers and religious leaders.”

The government further states that based on this study, it has developed an action plan aimed at combating and preventing violence. It did not specify what these strategies are, whether they are being implemented effectively or their impact on reducing the level of violence against children. Despite the Committee's request, the response also did not include information on the number of cases that were reported, investigated and prosecuted.

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In W.J. & Another v. Astarikoh Henry Amkoah & 9 Others, a case in which the Center submitted an amicus brief, two adolescent girls were sexually abused by the Deputy Head teacher at Jamhuri Primary School in Nakuru County, Kenya. The High Court of Kenya at Nairobi not only found the teacher civilly liable for sexual assault, but also determined that the government and Teachers Service Commission (TSC) handled the case inadequately. The Court ordered the government to provide financial reparations to the two girls and the TSC to update its guidelines to better handle sexual assault allegations. Although the TSC circular, or employee guidelines, mentions disciplinary action for the sexual assault of students, the circular fails to indicate clear mechanisms for disciplinary action or provide sexual assault survivors with psychological or essential health care. The Government of Kenya must ensure that the TSC complies with the order of the High Court to end the practice of “shuffling abusive teachers” from one school to another, and finally, content itself with dismissals. The Government must also follow the Court's order to “put in place an effective mechanism” to ensure that teachers are held accountable for any sexual abuse that they commit against their students.

In response to the inquiry from the Committee regarding measures undertaken to combat harmful practices such as FGM, the government cited the law against FGM which was passed in 2011 and the establishment of the Anti-FGM Board which mandated to formulate policies, mobilize resources, design and co-ordinate public awareness programs and advise the government on issues related to the FGM. It is also commendable that the government is implementing various initiatives such as the Cash

Female Genital Mutilation (FGM)

In response to the inquiry from the Committee regarding measures undertaken to combat harmful practices such as FGM, the government cited the law against FGM which was passed in 2011 and the establishment of the Anti-FGM Board which mandated to formulate policies, mobilize resources, design and co-ordinate public awareness programs and advise the government on issues related to the FGM. It is also commendable that the government is implementing various initiatives such as the Cash
Based on this information, we respectfully request that the Committee make the following recommendations to the government of Kenya:

1. **Take the necessary steps to enable adolescents to have the information and resources necessary to make informed decisions about their sexual and reproductive health and rights, including guaranteeing all adolescents’ access to comprehensive, scientifically accurate sexuality education, both in and out of schools, and establishing youth-friendly health centers, particularly in rural and low-income areas, where adolescents can access a full range of reproductive health services including contraceptives.**

2. **Expand its efforts to curb the high incidence of maternal mortality and ensure that adolescents have access to quality maternal health services. The government should take the necessary steps to effectively implement the Presidential Directive on Free Maternity Services including by allocating sufficient resources. It should undertake measures aimed at preventing the detention, abuse and mistreatment of adolescents in maternal health care facilities.**

3. **Ensure that adolescent girls can make autonomous and informed decisions about pregnancy, including by making sure that they have access to safe abortion services. To this end, the government should clarify the laws on abortion, restate the “Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortions in Kenya” and provide health care professionals with the necessary training and resources to provide quality, youth-friendly abortion and post-abortion care without bias or discrimination.**

4. **Institute investigation procedures and strict punishment for those, including teachers, found to have abused children. These procedures should include an oversight mechanism to help regulate and eradicate sexual and other violence against children, including those committed in schools. It should also establish a system to gather data on the number of cases reported, investigated and successfully prosecuted to monitor the effectiveness of the strategies it is implementing to address violence against children.**

5. **Intensify efforts to combat FGM including through allocating adequate resources to the Anti-FGM board and implementing the law against FGM.**

Sincerely,

Evelyne Opondo  
Regional Director  
Africa Program  
Center for Reproductive Rights

Onyema Afulukwe  
Senior Legal Advisor  
Africa Program  
Center for Reproductive Rights


19 In HARM’S WAY, supra note 8, at 47.

20 EC Status and Availability, supra note 19; 21 IN HARM’S WAY, supra note 8, at 47-48; id. at 47.


22 IN HARM’S WAY, supra note 8, at 46.


24 KDHS 2008-2009, supra note 4, at 56.


27 See id., at 33. The KDHS 2008-2009 reported an even higher maternal mortality ratio (MMR) at 488 deaths per 100,000 live births: KDHS 2008-09, supra note 4, at 27.


30 Id., at 15-16.

31 KDHS 2014 SUMMARY, supra note 3, at 24.

32 See id. at 23, 24 tbl.3 (2013); see also WORLD HEALTH ORGANIZATION, Antenatal Care (at least 4 visits) (2015), http://www.who.int/gho/urban_health/services/antenatal_care_text/en/ (last visited July 6, 2015).

33 KDHS 2014 SUMMARY, supra note 3, at 23.


35 See KDHS 2014 SUMMARY, supra note 3, at 27.


39 The examples cited herein come from the Center for Reproductive Rights and FIDA-Kenya’s fact-finding report, CENTER FOR REPRODUCTIVE RIGHTS & FIDA-KENYA, FAILURE TO DELIVER: VIOLATIONS OF WOMEN’S HUMAN RIGHTS IN KENYAN HEALTH FACILITIES 26 (2007) [hereinafter FAILURE TO DELIVER]. These findings were affirmed by a subsequent inquiry conducted by the Kenyan National Human Rights Commission. KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, REALIZING SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN KENYA: A MYTH OR REALITY? A REPORT OF THE PUBLIC INQUIRY INTO VIOLATIONS OF SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN KENYA 47 (2012) [hereinafter KNCHR, PUBLIC INQUIRY].

40 FAILURE TO DELIVER, supra note 43, at 7; KNCHR, PUBLIC INQUIRY, supra note 43, at 31.

41 FAILURE TO DELIVER, supra note 43, at 28-29, 33-34.

42 See id., at 29.

43 Id.

44 See id., at 31.

45 Id.

46 Id.

47 Id.

48 Id.

49 Id.

50 Id.

51 Id.

52 Id.

53 Id.

54 Id.

55 Id.

56 Id.

57 Id. at 72-73.


59 Id. at 24.

60 Id.

61 Id. at 26.

62 Id. at 45.

63 Maternal Care Free, President Kenyatta Announces, DAILY NATION (June 1, 2013), http://www.nation.co.ke/News/Govt-rolls-out-free-maternal-care/-/i056/1869284/-/gyyyyyy/-/index.html (last visited July 6, 2015).


71 Owino: Not so Free, supra note 69, at 1, 4.


75 CRC, List of issues, supra note 1, Part I, para. 13.
76 Replies of Kenya to the list of issues, supra note 2, para. 47.
77 Id.
80 MINISTRY OF HEALTH, NATIONAL GUIDELINES ON MANAGEMENT OF SEXUAL VIOLENCE IN KENYA Annex 1, 78 (3d ed., 2014) [hereinafter NATIONAL GUIDELINES ON MANAGEMENT OF SEXUAL VIOLENCE, 2014].
81 See Reproductive Health Care Bill (2014), Supra note 72, at 95.
84 Ministry of Health Office of the Director of Medical Services Memo, Re: Training on Safe Abortions and use of Medabon (Misoprostol + Misoprostol) for Abortions, 24 February 2014 (on file with the Center for Reproductive Rights).
85 Id.
86 GUTTMACHER FACT SHEET 2012, supra note 30.
88 MINISTRY OF HEALTH, KENYA: INCIDENCE AND COMPLICATIONS OF UNSAFE ABORTION IN KENYA: KEY FINDINGS OF A NATIONAL STUDY 7 (2013) [hereinafter MINISTRY OF HEALTH, INCIDENCE AND COMPLICATIONS].
89 Id., at 25.
90 KNCHR, PUBLIC INQUIRY, supra note 46.
93 FAILURE TO DELIVER, supra note 43, at 24-25. Half of the women treated by a hospital for complications from unsafe abortion were under the age of 20.
95 MINISTRY OF HEALTH, INCIDENCE AND COMPLICATIONS, supra note 88, at 21.
96 IN BRIEF: ABORTION AND UNINTENDED PREGNANCY, supra note 94, “Women and men interviewed in 2002–2003 were aware that the strict abortion law led women, to procure unsafe procedures from ‘quacks,’ and they believed that rich women could obtain relatively safe abortions, while poorer women were more likely to die from unsafe procedures.” ; IN HARM’S WAY, supra note 8, at 59-60.
97 See KNCHR, PUBLIC INQUIRY, supra note 43, at 49–59. IN HARM’S WAY, supra note 8, at 76.
100 See KNCHR, PUBLIC INQUIRY, supra note 43, at 49–59. IN HARM’S WAY, supra note 8, at 76.
102 The training manual provides that “[c]omprehensive PAC is a life-saving procedure that should be available to all women and provision of comprehensive post abortion care does not lead to punishment or withdrawal of registration of the service provider.” It does not, however, address the issue of women who are deterred from seeking PAC for fear of prosecution, id. at 1-24.
104 See id.
105 IN BRIEF: ABORTION AND UNINTENDED PREGNANCY, supra note 94, at 2. IN HARM’S WAY, supra note 8, at 88– 90.
106 FAILURE TO DELIVER, supra note 43, at 25; IN HARM’S WAY, supra note 8, at 92–93.
107 IN HARM’S WAY, supra note 8, at 92–93.
108 IN HARM’S WAY, supra note 8, at 76–78 (noting further that fears of prosecution are not unfounded despite the legality of the treatment).
109 FAILURE TO DELIVER, supra note 43, at 25.
110 IN HARM’S WAY, supra note 8, at 90–92.
111 CRC, List of issues, supra note 1, Part I, para. 7.
112 Replies of Kenya to the list of issues, supra note 2, para. 25.
113 Id., para. 26.
114 CRC, List of issues, supra note 1, Part III, para. 2.
115 Replies of Kenya to the list of issues, supra note 2, para. 29.
116 Id.
118 Id.
119 Professional help includes assistance provided by institutions such as the police department, medical facilities, legal aid, religious groups and/or social services. Female adolescents are far more likely to seek assistance from their families or close friends. UNICEF, VIOLENCE AGAINST CHILDREN IN KENYA, supra note 117, at 129, tbl.7.2.1.
120 See id. at 52, fig. 6.12; see also Samuel Siringi, Shocking Details of Sex Abuse in Schools, DAILY NATION (Nov. 1, 2009), available at http://allafrica.com/stories/200911020402.html (last visited July 6, 2015).
121 Samuel Siringi, Shocking Details of Sex Abuse in Schools, DAILY NATION, Nov. 1, 2009, cited in IN HARM’S WAY, supra note 8, at 42.
123 Id. paras. 11–12, 12.
124 Id. paras. 123, 132–13, 150.
126 Id.
127 KNCHR, PUBLIC INQUIRY, supra note 43, at 82-83.
128 Id., at 83; See Migiro, One third of Kenyan girls, supra note 117.
129 Replies of Kenya to the list of issues, supra note 2, para. 35.
130 See KDHs 2014 SUMMARY, supra note 3, at 61, tbl.5.42.
131 See KDHS 2008-2009, supra note 4, at 265 tbl. 16.16.
February 27, 2015

The Committee on the Rights of the Child

Re: Supplementary Information on Kenya scheduled for review by the Committee on the Rights of the Child during the 71st Pre-Sessional Working Group

Dear Committee Members,

The Center for Reproductive Rights (the Center) submits this pre-session letter to supplement the Republic of Kenya’s report to the Committee on the Rights of the Child (the Committee). The Center—a non-profit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Kathmandu, Geneva, and Washington, D.C.—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfill.

Reproductive rights lie at the heart of human rights for adolescent girls because upholding these rights is essential to ensuring their substantive equality and reproductive autonomy. Violations affect not only the health of these girls, but can have a significant impact on their education, development, and future prospects, perpetuating cycles of poverty and resulting in life-long exclusion and discrimination. Kenya is a party to multiple international human rights treaties that require state parties to ensure the sexual and reproductive rights of girls, including the Convention on the Rights of the Child (the Convention). Despite this, adolescent girls in Kenya face numerous violations of their reproductive rights.

This letter highlights issues that affect the reproductive rights of girls in Kenya—in particular, the high incidence of maternal mortality and morbidity; lack of access to safe abortion and post-abortion care; lack of comprehensive family planning information and services; and high incidences of harmful and discriminatory practices including physical and sexual violence.

I. The Right to Equality and Non-Discrimination

The Convention strongly protects children’s rights to substantive equality and nondiscrimination. For girls, right to equality and sexual and reproductive rights interact in a mutually reinforcing nature: the stigma surrounding sexuality, and the discrimination and inequalities that they face, can prevent them from accessing sexual and reproductive health services, and their inability to access such services can perpetuate cycles of inequality and discrimination.

The Committee has explicitly recognized that gender-based discrimination and taboos or negative attitudes about girls being sexually active often limits girls’ access to preventive measures and other health services. States “must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination.” The gender-based discrimination that girls face in accessing health services or in schools may be particularly exacerbated in the context of sexual and reproductive health services, as a result of stigma and discrimination surrounding girls’ sexuality. This dually jeopardizes girls’ health and rights, as their reproductive capacities mean that they must shoulder the burden of an unplanned pregnancy and the social consequences. The Committee recognizes that, in the context of adolescent pregnancy, stigma, and discrimination can hinder girls’ access to education and services. Indeed, in many contexts, girls seeking to prevent pregnancy must also endure such stigma and discrimination.

States are obligated to ensure that children’s rights are not undermined as a result of discrimination. The Committee recognizes that children who are discriminated against “are more vulnerable to abuse, other types of violence and exploitation,” and their health and development are put at greater risk. As such, states must pay particular attention and afford protections to such children. The Committee has called on states to take positive measures to alleviate such inequalities and discrimination, including by adopting policies and programs on children’s health that are “grounded in a broad approach to gender equality that ensures young women’s full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.” The Committee has urged states to pay particular attention to the different “needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls.”

II. The Right to Sexual and Reproductive Health Services and Information (Articles 3 (2), 6, 17 and 24)

When adolescent girls are not able to access the full range of sexual and reproductive health information and services, their abilities to make meaningful choices about their reproductive lives, without coercion, is limited and can impact their enjoyment of their rights to life, health, equality, and non-discrimination, all of which receive broad protection under the Convention. For example, Article 6 recognizes that “every child has the inherent right to life.” Article 24 similarly recognizes the right “to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health[.]” and requires states to take appropriate measures “to develop ... family planning education and services,” “to ensure appropriate pre-natal and post-natal health care for mothers,” and “to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” Moreover, Article 3 (2) requires each state to “take all appropriate legislative and administrative measures” to ensure that children have the protection and care necessary for their well-being. Finally, Article 17 requires states to ensure that children have access to a diverse range of information, including health-related information.
a. Maternal health of adolescents

The Committee has noted that “preventable maternal mortality and morbidity constitute grave violations of the human rights of women and girls and pose serious threats to their own and their children’s right to health.”15 Under the convention, states have an obligation to diminish maternal mortality and morbidity, through measures such as providing a continuum of care for reproductive and maternal health, and conducting regular maternal mortality audits.16 In its 2007 Concluding Observations on Kenya, the Committee expressed concern over the high rate of teen pregnancy and the lack of access to reproductive health services contributing to maternal mortality among adolescent girls, and recommended that the state assess the problems and formulate policies focused on teen pregnancies.17 Similarly, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has expressed concern over “the very high number of teenage pregnancies” in Kenya and the fact that “the existing sex education programmes are not sufficient, and may not give enough attention to the prevention of early pregnancy and control of sexually transmitted infections (STIs).”18 The CEDAW Committee has further recommended that Kenya “promote education on sexual and reproductive health and rights targeted at adolescent girls and boys with special attention to the prevention of early pregnancy.”19

However, early pregnancy remains high in Kenya. In fact, 103 of every 1000 pregnancies are attributed to girls between 15 and 19 years of age.20 Fifteen percent of girls aged 15-19 have either given birth or are pregnant by the age 19.21 This is highly problematic since early pregnancy in Kenya has been singled out as a major contributor to the overall maternal mortality, which remains alarmingly high.22 The latest Demographic Health Survey (2008-09) (Kenya DHS) estimates put the maternal mortality ratio (MMR) at 488 maternal deaths per 100,000 live births.23 According to the World Health Organization (WHO), the MMR for Kenya has decreased by an average of only 0.8% per year since 1990.24 In some low-income areas, the estimated MMR is as high as 706 deaths per 100,000 births.25 These figures are far higher than the MMR of 175 or less that Kenya has committed to achieve by 2015—this year—as part of the United Nations’ Millennium Development Goals.26

Apart from a disproportionate risk of death during and after child birth,27 adolescent girls also face increased vulnerability to pregnancy-related complications.28 However, they often lack access to ante-natal, delivery and post-natal care; maternal health care services that are essential to preventing maternal mortality and morbidity. As the Kenya DHS shows, less than half of pregnant women and adolescents attend the WHO recommended four or more ante-natal care visits.29 The proportion of births managed by health care professionals and the proportion delivered in a health facility stand only at 44% and 43%, respectively.30 Further, about 53% of Kenyan women and adolescents do not receive the post-natal care they need;31 and only 28% receive post-natal care within four hours of delivery while only 7% receive such care between four and 24 hours.32

The Kenyan Government has repeatedly acknowledged that maternal mortality in Kenya remains unacceptably high,33 and attributes this high rate to the lack of physical and economic access to health information, care and services;34 the Kenya DHS revealed that 45% of girls below the age of 20 mentioned distance and lack of transportation as a reason for not delivering at a health care facility.35 These factors are exacerbated by the lack of skilled service providers and high rates of poverty.36 The Ministry of Health and the National Coordinating Agency for Population and Development have identified maternal health as a priority issue and set a goal of reducing maternal mortality by 77% by the year 2030.37 However, currently, very few health care facilities in the country are fully equipped and prepared to provide the comprehensive, quality maternal health care that would be required to meet this goal.38

In recent years, the Kenyan government has made some efforts to address the issue. For example, in June 2013, the Kenyan Government issued a Presidential Directive which provided that all pregnant women and adolescents would be able to, “access free maternity services in all public health facilities.”39 In January 2014, the First Lady of Kenya spearheaded the Beyond Zero Campaign to raise awareness about the link between good health and a strong nation, specifically demonstrating the importance of maternal, newborn, and children’s health.40 The Campaign has delivered eighteen mobile clinics since its inception.41 In its current report to the Committee, however, the government has failed to provide details regarding the adequacy of the Campaign and any other initiatives given the continued high levels of maternal mortality.

Detention, abuse and neglect of adolescent girls seeking maternal health services in health care facilities

Women and adolescent girls often encounter detention, neglect and abuse from health care professionals and staff while seeking maternal health care services.42 The Center, along with Federation of Women Lawyers-Kenya, published a fact-finding report on the quality of maternal health care in Kenya that revealed the prevalence of delays and a lack of adequate medical care at maternal health care facilities.43 For instance, many who sought maternity care at Pumwani Maternity Hospital (PMH) recounted being told to find their own way to the delivery ward and to lift themselves onto the maternity bed while they were in labor.44 They also reported not being provided with adequate information about the health services or procedures available to them, or being denied such services altogether.45

The research also documented systematic abuses in the administration of reproductive health services, including physical and verbal abuse, such as rough treatment during labor.46 Interviewees recounted rough, painful, and degrading treatment during physical examinations and delivery, as well as verbal abuse from nurses if they expressed pain or fear.47 The research further found delays in medical care during labor or while waiting for stitches after delivery, and instances of some being stitched without anesthesia causing them to endure excruciating pain.48

The situation is particularly worse for adolescents as they, due to their age, most often encounter discrimination and abuse from the health care professionals.49 One interviewee, who attended PMH as an adolescent, reported the treatment she received: “the nurses came and started abusing me, saying, ‘You young girl, what were you looking for in a man? Now you can’t even give birth.”50 Another who gave birth while in secondary school recalled the neglect she experienced during delivery saying51:
In addition to the abusive treatment pregnant adolescents face while seeking maternal health care, the Center’s research also revealed that they are frequently denied maternity health care if they fail to pay the initial deposit for such services, both in private and in public health care facilities. Even after admission to facilities, they may be denied essential and often life-saving treatment if they fail to pay their remaining balance. In many cases, those who are unable to pay the required fees for services rendered during their labor and delivery are detained at the health care facilities, often without post-natal care and basic necessities, such as bedding and food for themselves and their newborns. This requirement for a payment of a fee disproportionately affects adolescents who are more likely not to have any independent means of income.

Despite the aforementioned free maternity care directive, serious problems remain regarding access to maternal health care services. Hospital infrastructure and staffing cannot support the additional number of patients who come seeking free maternal health care due to the directive, and the Kenyan Government has failed to allocate additional resources to remedy this issue. Furthermore, there have been no clear guidelines set by the government about how to implement the free maternal services. Although some facilities have reportedly been given extra money to cover the influx of deliveries, others have remained uncertain of how to balance the new policy of free care with their need to cover costs. Further, although the Kenyan Government has dictated that maternal health services would be free for all, in reality, not all costs associated with giving birth have been eliminated. Basic goods required for delivery, such as cotton wool and the medications used to induce labor, still have to be purchased. Public health specialists have also recently noted that structural problems, such as far-flung maternity units, low staff motivation, poor road networks, and inadequate ambulance services, still exist making it hard to implement the directive. Other main components of maternal health services, including ante-natal and post-natal care, are also not covered under the directive.

Also the declaration of free services has not solved the problem of abuse and neglect in health care facilities; the situation may have even become worse due to the issues addressed above. For instance, a recent news report focused on a woman who was forced to give birth while standing at Nyeri Hospital because there was no nurse to attend to her, and the baby fell on the floor and died from the impact. The continued abuse has also been demonstrated by a recent case filed by the Center at the Bungoma High Court where the petitioner was forced to give birth on the floor, while unconscious,—without any assistance from the health care professionals. She subsequently awoke to two nurses shouting at her and slapping her for dirtying the hospital floor by delivering her baby on it.

b. Lack of access to safe abortion and post-abortion care

Unsafe abortion is one of the most easily preventable causes of maternal mortality. Even if death does not occur, adolescents may suffer long-term complications such as chronic pelvic pain or intestinal obstruction. The Convention mandates that governments “ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal.” In Kenya, unsafe abortions contribute to the particularly high mortality rate amongst adolescent girls. Indeed, Committee has expressed concern that “the high rates of teenage pregnancies [and] the criminalization of the termination of pregnancies in cases of rape and incest” have contributed to elevated incidences of maternal mortality among adolescent girls in Kenya. Consequently, the Committee has recommended that Kenya formulate policies and programs focused on the prevention of teenage pregnancies and unsafe abortions.

The laws governing abortion in Kenya are confusing and conflicting. While the Constitution of Kenya was amended in 2010 to allow for abortion in emergency situations and where the health of a woman is at risk— in addition to situations where the life of the mother is in danger—the penal code has not been revised to reflect this change. This means that a woman can still be held criminally liable for terminating a pregnancy that poses a risk to her health even though abortion in such circumstance is allowed under the Constitution. Moreover, Kenya’s 2004 National Guideline on the Medical Management of Rape/Sexual Violence provides that “[t]ermination of pregnancy is allowed in Kenya after rape” since it is allowed under the 2006 Sexual Offences Act, which contradicts both the Constitution and the Penal Code. None of these laws and policies allow abortions when the pregnancy is as a result of incest or when there is fetal impairment. The U.N. Human Rights Committee, the Committee, the CEDAW Committee, and the Committee against Torture (the CAT Committee) have all recognized the different facets of Kenya’s restrictions on access to safe, legal abortion as violating international human rights norms.

Due to this lack of clarity in the law, some health care providers refuse to provide abortion services, because they mistakenly believe the procedure to be illegal. The confusion was further compounded by recent actions of the Ministry of Health and Director of Medical Services. Following the 2010 Constitutional amendment, the Ministry of Health developed and approved the “Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortions in Kenya” (“Standards and Guidelines”), which clarified the circumstances in which medical professionals could perform safe abortion services. However, this Standards and Guidelines were subsequently withdrawn under unclear circumstances, leaving health care workers without official guidance as to when abortions were legal.

Further, in 2013, the Director of Medical Services issued a memo to all health care workers saying that “[t]he Constitution of Kenya 2010 is clear that abortion on demand is illegal...” without clarifying the circumstances under which it is legal. The memo further stated that it is illegal for health care workers to participate in trainings on either safe abortion care or the use of abortion drugs, and threatened health care workers who choose to take these training with legal and professional sanctions. These threats against health care workers significantly limit access to safe abortion not only by incentivizing health care workers to avoid prosecution by turning away those seeking safe and legal abortion, but also by stymying health care workers’ access to the medical information and professional skills needed to safely perform the procedure.
These confusion and restrictions in Kenyan laws, compounded with the lack of safe abortion services in the country, increase adolescents’ susceptibility to resort to unsafe abortions. Indeed, in its 2012 public inquiry, the Kenyan National Commission on Human Rights (KNCHR) found that many resort to “crude methods” administered by unqualified persons to terminate pregnancies, due to lack of abortion services in Kenya. The KNCHR further found that adolescents suffered from particularly high rates of maternal and perinatal mortality, given that “[t]hey lack easy access to quality and friendly [sexual reproductive health] … services [and] safe abortion services.” Indeed, the report notes that unsafe abortions were “said to be rampant among adolescents and youth.”

The government’s failure to ensure access to safe and legal abortion, including for victims of sexual violence, and to address the existing legal uncertainties have sustained the high levels of unsafe abortion-related injuries and death in the country. A study based on data from a nationally-representative sample of public and private sector hospitals and health facilities found that nearly 465,000 induced abortions occurred in Kenya in 2012—a rate of 48 per 1,000 women of reproductive age. This rate is significantly higher than most countries in Africa and the world as a whole. Moreover, “[t]he data on the high proportion of moderate and severe post-abortion complications, coupled with limited comprehensive abortion care training throughout Kenya, indicate that the majority of the induced abortions that occur are unsafe.” Kenyan adolescents commonly obtain abortions using unsafe methods and unqualified providers, and “as many as 60% of all gynecologic emergency hospital admissions are due to abortion complications.”

According to a 2015 publication, in 2012, an estimated 119,912 women experienced complications from induced abortions, approximately 40% of which were classified as moderate and 37% as severe. An estimated 266 per 100,000 of women die from unsafe abortions, a rate almost nine times higher than in the developed world, and unsafe abortions are estimated to cause 35-50% of all maternal deaths.

The harshness of Kenya’s abortion laws is particularly harmful to those who are young and those with low income among whom the unintended pregnancy rate is highest. As data from the Ministry of Health shows, 45% of adolescent girls aged 19 and younger and 47% of female students who sought post-abortion care experienced severe complications. Even where relatively safe abortion procedures are available, the cost of these services generally exceeds the economic resources of those who need them. Although the cost of safe abortions varies widely depending on the clinic and stage of pregnancy, it may range from approximately USD 13 to USD 132.99 Conversely, herbalists and unqualified individuals may charge as little as USD 4. With the average daily income of Kenyans amounting to only USD 2.30, the price disparity between safe and unsafe abortion is a drastic one, particularly for adolescents and students who are likely not to have an income.

In addition, many—adolescents in particular—do not know about Kenya’s abortion laws or believe that abortion is prohibited entirely. This results in a reluctance to even attempt to discuss abortion with, or seek abortion services from, a qualified health care provider. Adolescents’ lack of knowledge of abortion laws is doubly dangerous in that they also result in a reluctance to seek post-abortive care when it is necessary. According to the Ministry of Health itself acknowledges that “[lack of knowledge of the law … leads to the fear of criminal prosecution by [the post-abortion care] provider, and mistreatment of women needing care because they are regarded as criminals.”

Moreover, despite its legality, those who seek post-abortion care are still sometimes arrested. Even the qualified providers that do offer abortion services sometimes subject patients to degrading or abusive treatment.

The stigma and discrimination is particularly acute for adolescents, who are sometimes assumed by providers to be prostitutes or promiscuous. Many patients are reluctant to seek post-abortion care for the same reasons. Studies indicate that a large number of medical personnel, particularly nurses, are inadequately trained, leading to lengthy wait times for an adequately trained doctor or other medical professional. In addition, health care workers are sometimes verbally abusive to those seeking post-abortion care, and sometimes delay or refuse to provide the needed care.

The Committee maintains that “States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services.” States should also ensure that “[a]ttention … be given to ensuring confidential, universal access to [family planning] good and services for both married and unmarried female and male adolescents.” Specifically, the Committee maintains that “[s]hort term contraceptive methods such as condoms, hormonal methods and emergency contraception should be made easily and readily available to sexually active adolescents. Long-term and permanent contraceptive methods should also be provided.” In 2011, the CEDAW Committee called upon Kenya to “expand efforts to increase knowledge of and access to affordable contraceptive methods throughout the country and ensure that women in rural areas do not face barriers in accessing family planning information and services; and widely promote education on sexual and reproductive health and rights targeted at adolescent boys and girls.”

However, according to the Kenya DHS, Kenya’s contraceptive prevalence rate (CPR) is only 45.5%, just a 6.2% increase from the numbers reported in 2003. Moreover, the rate remains very low for adolescents as the CPR for those aged 15 to 24 is only 14.1%. Twenty-five percent of women and adolescents aged 15 to 49 have an unmeth need for contraception. This low rate of contraceptive usage is largely due to the barriers that women and particularly adolescent girl face in accessing family planning services. Many public health facilities face a profound shortage of contraceptives. In many cases, their preferred method of contraception may be unavailable. For many, financial barriers further prevent access to contraceptives. Despite the Ministry of Health’s policy that contraceptives should be available free of charge, many government health facilities charge their patients...
“user fees” for family planning services and some charge for the contraceptive method itself. Community and familial attitudes and opinions towards contraception also prevent some from accessing contraceptives that would otherwise be available to them. This is particularly problematic for adolescents, as most face social stigma and discrimination if they attempt to access family planning services.

In its recent report to the Committee, Kenya states that “[t]he State Party, through the Ministry of Education has designated teachers who offer counselling in schools to prevent unwanted pregnancies. Reproductive health (Sex Education) is taught in primary and secondary schools as part of Social Studies and Ethics.” However, young people in Kenya continue to be misinformed about contraceptive use and their reproductive health, directly leading to a higher incidence of unplanned and unwanted pregnancies.

Despite Kenya’s sex education policies and programs, sexual education both at home and in schools is inadequate. Few adolescents actually receive sexual education and those that do are often taught by inadequately trained teachers. Moreover, opposition from parents, religious organizations and some civil society groups results in sexual education that either omits or severely limits teaching contraceptive use and safe sex.

Emergency contraception

Many adolescent girls could avoid unplanned and unwanted pregnancies by using emergency contraception (EC), a safe and effective means of preventing pregnancy following unprotected sex and a critical component of care for survivors of sexual violence. Indeed, Kenya’s Ministry of Public Health and Sanitation has recognized that EC “is an important component of adolescent reproductive health.” EC is available in Kenya and the Ministry of Health broadly recommends its use “or those who have had unprotected sexual intercourse and desire to prevent pregnancy.” It is also included in Kenya’s essential drugs list and the National Family Planning Guidelines for Service Providers, which provides for the provision of the method without any age or other restrictions.

However, very few adolescent girls in Kenya know about EC. From all those who were surveyed in the DHS, only 0.5% of adolescent girls aged 15-19 have ever used EC despite the high incidence of sexual violence against this age group, discussed below. The level of usage has not shown much improvement in recent years as a 2014 study found that only 17% of women and adolescent girls surveyed in Nairobi have ever used EC. This lack of usage can be attributed to the numerous barriers they encounter in accessing the method. As with other forms of contraceptives, EC are not always readily available. Private health care facilities may not always offer EC and Catholic Church-owned facilities and those under the Christian Health Association of Kenya do not provide emergency contraception even though they provide services to victims of sexual violence. Moreover, Kenyan public health facilities are often insufficiently stocked. Even though the Ministry of Health’s EC guidelines state that it “should be used after unprotected sex” and “can be safely used by adolescents” and such guidelines do not further limit the conditions for dispensement, EC is commonly denied those who need it for reasons that are arbitrary, misinformed, or both, including but not limited to instances where it was withheld “because the person look[ed] young.”

III. Harmful and Discriminatory Practices Against Adolescent Girls

Harmful practices including physical and sexual violence are demonstrations of the inequality and discrimination adolescent girls encounter in their day to day lives. Where girls’ rights to equality and nondiscrimination are not fulfilled, the inequalities they face have a grave impact on their present and future lives. As such, Article 2 of the Convention prohibits discrimination on a number of grounds (including sex and other status), and mandates states to take all appropriate measures to protect children. Additionally, Article 34 obliges states to take all appropriate measures to protect the child against all forms of exploitation and sexual abuse. Despite these explicit protections in the Convention, young girls and adolescents in Kenya continue to experience these harmful and discriminatory practices at a young age.

a. Sexual and physical violence against girls

Gender-based violence has been addressed in many of the concluding observations issued by various treaty monitoring bodies with respect to Kenya in the past decade. Specifically, the Committees have noted the high prevalence of sexual and physical violence within Kenya. Furthermore, they have noted the continued incidence of rape, including marital rape, and the social legitimization of such violence as evidenced by the underreporting of these incidents.

While Kenya’s current report to the Committee discusses various legal frameworks and regimes that have been enacted to outlaw harmful practices against women and girls, the state fails to outline how these laws are administered and enforced. For example, the State Report discusses the Prohibition of Female Genital Mutilation Act, 2011, but does not address the enforcement or effectiveness of this statute. The State Report is also silent on the specific issue of sexual violence within schools, and fails to mention any steps taken or contemplated to remedy the prevalence of such issue. Further, despite the passage of the Sexual Offences Act of 2006 as an improvement over earlier laws on sexual violence, marital rape and domestic violence are still not punishable offenses at law. This is significant since more than one in three women and adolescent girls subjected to sexual violence report that the perpetrator was either a current or former husband or boyfriend.

Although there is widespread underreporting of sexual-related crimes, statistics show that violence and abuse against women and girls are a pervasive problem in Kenya. Recent survey results show that one in three Kenyan girls experience some form of sexual violence before the age of 18. Further, based on a household survey of more than 3000 young people aged 13 to 24, three out of four have experienced physical, sexual, or emotional violence. Six out of ten have been physically abused. Rape is rarely reported due to social stigma and a widespread lack of faith in police and the criminal justice system; only 3% of sexually abused girls received professional help in the form of medical, psychological, or legal assistance. Another study shows that...
50% of girls between the ages of 15 and 19 that ever experienced physical and/or sexual violence ever told anyone about it.\textsuperscript{53} Despite the legal protections that are in place, survivors of sexual and physical violence face a number of barriers that prevent them from receiving meaningful assistance from medical or legal professionals. These barriers include, but are not limited to: lack of comprehensive facilities where victims can report complaints, receive medical examination and treatment (including emergency contraceptives); lack of awareness among sexual violence victims of the services that are available; difficulties in proving sexual violence; and the high cost of obtaining services after sexual violence.\textsuperscript{54} Many, particularly girls, are also often reluctant to engage in the justice system as the police often harbor negative attitudes toward victims, and they are often subjected to societal stigma and are caused embarrassment in health facilities and police stations.\textsuperscript{55}

We ask that the Committee consider addressing the following questions to the Government of Kenya:

What measures does the government take to reduce the high maternal mortality and morbidity and ensure adolescent girls receive adequate ante-natal, delivery and post-natal care? What steps are being taken to ensure the implementation of the free maternity care directive is comprehensive and sustainable particularly by allocating the necessary resources and ensuring that health care facilities are adequately equipped and staffed?

What concrete measures is the government going to take to improve the training of health care providers about patients’ rights and eliminate the abuse and neglect by medical and hospital staff of those seeking maternal care services? How does the government propose to ensure that those who experience abuse are able to report and seek redress?

What measures is the government undertaking to clarify its laws on abortion and ensure access to legal, safe abortion and post-abortion services? What measures is the government taking to implement the 2013 recommendation of the Committee against Torture that Kenya “amend its legislation, in order to grant those who have been subjected to rape or incest the right to abortion, independent of any medical professional’s discretion”?\textsuperscript{56} What steps is the government undertaking to reintestate the Standards and Guidelines on Safe abortion and withdraw the memo that prohibits health care professionals from attending trainings on safe abortions.

What measures does the government plan to undertake to remove the barriers adolescent girls face in accessing contraceptive services, including by ensuring that they have access to comprehensive sexual and reproductive health information and services?

What measures has the government taken to prioritize and adequately address the high incidence of sexual violence? What specific actions has the government taken to ensure that perpetrators are prosecuted and held responsible? What measures has the government taken to ensure that victims of sexual violence are aware of, and have access to legal and health services?

We hope that this information is useful during the Committee’s review of Kenya. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

Evelyne Opondo  
Regional Director  
Africa Program  
Center for Reproductive Rights

Onyema Afulukwe  
Senior Legal Advisor  
Africa Program  
Center for Reproductive Rights

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4 Id.


8 Id.

9 CRC Committee, General Comment 15, supra note 6, para. 10.

10 Id. para. 9.


12 Id.

13 Id. 1

14 Id.
15 CRC Committee, General Comment 15, supra note 6, para. 51.
16 Id., para. 34.
19 Id. para. 38(e).
20 REPUBLIC OF KENYA. KENYA POPULATION SITUATION ANALYSIS 42 (2013) [hereinafter KENYA POPULATION SITUATION ANALYSIS].
22 KENYA POPULATION SITUATION ANALYSIS, supra note 42.
28 Id. at 15-15.
30 KDHS 2008-2009, supra note 21, at 116. According to the 2008-2009 KDHS, 36.1% of women who attained more than secondary school education receive antenatal care from a medical doctor compared to 21% of women with no education; 40.5% of women in the urban areas are likely to receive the same care from a doctor compared to 25.9% of women in the rural areas; and 39.2% of those in the highest wealth percentile received antenatal care from a doctor, compared to 19.9% of those in the lowest wealth percentile. Similar disparities exist in these groups’ ability to access antenatal care from a nurse or midwife.
31 KDHS 2008-2009, supra note 21, at xxi.
33 Id.
38 CONSTITUTION, art. 26(1)(4) (Kenya).
39 CRC Committee, General Comment 15, supra note 6, paras. 29, 30, 31.
41 See Beyond Zero, www.beyonzero.org (last visited Feb. 6, 2015).
42 Id.
43 CENTER FOR REPRODUCTIVE RIGHTS & FEDERATION OF WOMEN LAWYERS (FIDA)-KENYA, FAILURE TO DELIVER: VIOLATIONS ON WOMEN’S HUMAN RIGHTS IN KENYAN HEALTH FACILITIES 26 (2007) [hereinafter FAILURE TO DELIVER]. These findings were affirmed by a subsequent inquiry conducted by the Kenyan National Human Rights Commission. KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, REALIZING SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN KENYA: A MYTH OR REALITY? A REPORT OF THE PUBLIC INQUIRY INTO VIOLATIONS OF SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN KENYA 47 (2012) [hereinafter A MYTH OR REALITY?].
44 FAILURE TO DELIVER, supra note 43, at 7; A MYTH OR REALITY?, supra note 43, at 31.
45 A MYTH OR REALITY?, supra note 43, at 31.
46 FAILURE TO DELIVER, supra note 43, at 36-37. 47 Id. at 28-29, 33-34.
48 Id.
49 Id.
50 Id. at 29.
51 Id. at 29.
52 Id. at 31.
53 Id. at 52.
54 Id. at 53-54.
55 Id. at 56.
58 A matron at PMH explained that the government was reimbursing them at a flat rate of Ksh 5,000 for normal deliveries and Ksh 10,000 for caesarian sections. This created a critical financial gap at the hospital. KNCHR REPORT, supra note 56, at 6.
60 Bungoma Petition, in the High Court of Kenya at Bungoma 6 (2014) (on file with the Center for Reproductive Rights) [hereinafter Bungoma Petition].
64 Bungoma Petition, supra note 60, at 4.
65 Id.
66 CENTER FOR REPRODUCTIVE RIGHTS, IN HARM’S WAY: THE IMPACT OF KENYA’S RESTRICTIVE ABORTION LAW 9 (2010) [hereinafter IN HARM’S WAY].
67 CRC Committee, General Comment 15, supra note 6, para. 70.
69 Id.
70 CONSTITUTION, art. 26(1)(4) (Kenya).

MINISTRY OF HEALTH AND SANITATION, NATIONAL GUIDELINES ON MANAGEMENT OF SEXUAL VIOLENCE IN KENYA 21 (2009).


CRC Committee, Concluding observations: Kenya, (44th Sess.), para. 49. U.N. Doc. CRC/C/KEN/CO/2 (2007) (“The Committee ... is concerned at ... the criminalization of the termination of pregnancies in cases of rape and incest.”).

CEDAW Committee, Concluding Observations: Kenya, para. 37. U.N. Doc. CEDAW/C/KEN/CO/7 (2011) (“While welcoming the introduction of free antenatal services for pregnant women, the Committee expresses its concern that the maternal mortality rate, including deaths resulting from unsafe abortions, and the infant mortality rate remain high.”).


In 2005, the Human Rights Committee recommended that Kenya “review its abortion laws, with a view to bringing them into conformity” with the International Covenant on Civil and Political Rights (ICCPR). The CEDAW Committee has also recommended that Kenya adopt “measures to increase ... access to safe abortion.” The CAT recommended in 2013 that Kenya “amend its legislation, in order to grant women who have been subjected to rape or incest the right to abortion, independently of any medical professional’s discretion.” CRC Committee, Concluding Observations: Kenya, para. 37-38. U.N. Doc. CEDAW/C/KEN/CO/7 (2011). Committee against Torture, Concluding Observations: Kenya, para. 28, CAT/C/KEN/CO/2 (2013).

IN HARM’S WAY, supra note 66, at 60-63.


Ministry of Health Office of the Director of Medical Services Memo, Re: Training on Safe Abortions and use of Medabon (Mifepristone+ Misoprostol) for Abortions, 24 February 2014 (on file with the Center for Reproductive Rights).

id.

A MYTH OR REALITY?, supra note 43 at 47.

Id. at xxii.

Id. at 110.

Id. at 66-67.


Id. The World Health Organization estimates the case-fatality rate in developed regions to be 30 per 100,000.

Id.


Id. at 25.

A MYTH OR REALITY?, supra note 43, at 46.

FAILURE TO DELIVER, supra note 43, at 24-25. Half of the women treated by a hospital for complications from unsafe abortion were under the age of 20.

Abortion and Unintended Pregnancy in Kenya, supra note 26, at 3.

INCIDENCE AND COMPLICATION OF UNSAFE ABORTION IN KENYA, supra note 87, at 21.

Abortion and Unintended Pregnancy in Kenya, supra note 26, at 2 (“Women and men interviewed in 2002-2003 were aware that the strict abortion law led women to procure unsafe procedures from ‘quacks,’ and they believed that rich women could obtain relatively safe abortions, while poorer women were more likely to die from unsafe procedures.”); IN HARM’S WAY, supra note 66, at 59-60; IN HARM’S WAY, supra note 66, at 59-60.

Id.


IN HARM’S WAY, supra note 66, at 58-59.

Id.

FAILURE TO DELIVER, supra note 43, at 25.


IN HARM’S WAY, supra note 66, at 77-78.

Id. at 63.

Id. at 46.

Abortion and Unintended Pregnancy in Kenya, supra note 26, at 2; A MYTH OR REALITY?, supra note 43, at 47-48; IN HARM’S WAY, supra note 66, at 88-90.

FAILURE TO DELIVER, supra note 43, at 23; IN HARM’S WAY, supra note 66, at 92-95; IN HARM’S WAY, supra note 66, at 90-92.

See KENYA STATE PARTY REPORT, supra note 1.

CRC Committee, General Comment 15, supra note 6, para. 2(d).

Id., para. 2(f)(c).

Id.


One young woman recounts being turned away when she attempted to get an intra-uterine coil: “...they said no at the government facility. She was a Muslim nurse and refused to give me contraceptives.” IN HARM’S WAY, supra note 66, at 46.

KENYA STATE PARTY REPORT, supra note 1, para. 242.

IN HARM’S WAY, supra note 66, at 47.

Id. at 47-48.


Abortion and Unintended Pregnancy in Kenya, supra note 26, at 2; Review of Sex Education in Kenya, supra note 128.


FAILURE TO DELIVER, supra note 43, at 5.

FAILURE TO Deliver, supra note 43, at 5.

FAILURE TO DELIVER, supra note 43, at 5.

FAILURE TO DELIVER, supra note 43, at 5.

FAILURE TO DELIVER, supra note 43, at 5.

CANCER IN KENYA, supra note 26 at 5.

FAILURE TO DELIVER, supra note 43, at 5.

FAILURE TO DELIVER, supra note 43, at 5.
133 Id. at 2.
135 KDHS 2008-2009, supra note 21, at 60, tbl. 5.3.
137 IN HARM’S WAY, supra note 66, at 47-48.
138 Id. at 44.
139 Id. at 47 n.258.
140 QUICK REFERENCE GUIDE, supra note 132, at 3.
141 IN HARM’S WAY, supra note 66, at 47.
143 Id.
146 See, e.g., id., para. 21.
147 KENYA STATE PARTY REPORT, supra note 1, paras 252-260.
148 UNICEF, HIDDEN IN PLAIN SIGHT: A STATISTICAL ANALYSIS OF VIOLENCE AGAINST CHILDREN 77 (2014) [hereinafter HIDDEN IN PLAIN SIGHT].
150 This information was not disaggregated into male and female statistics. See Migiro, One third of Kenyan girls, supra note 149; see also HIDDEN IN PLAIN SIGHT, supra note 148, at 85.
151 HIDDEN IN PLAIN SIGHT, supra note 148, at 85.
152 See id. at 85, 90-91. Professional help includes assistance provided by institutions such as the police department, medical facilities, legal aid, religious groups and/or social services. Female victims, especially adolescents, are far more likely to seek assistance from their families or close friends.
153 Id. at 88.
154 KNCHR REPORT, supra note 56, at 82-83.
155 Id. at 83.
Parallel Report by the Elizabeth Glaser Pediatric AIDS Foundation on the Report by Kenya under Article 44 of the Committee on the Rights of the Child

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Introduction
1. The Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) was created in 1988, and is now the leading global non-profit organization dedicated to eliminating pediatric HIV and AIDS. EGPAF has been working in Kenya since 2000 to increase women’s access to high-quality services to prevent mother-to-child HIV transmission, as well as to expand access to HIV prevention, care, and treatment services in Kenya.

2. As detailed below, the HIV epidemic in Kenya has a particularly heavy impact on children, with significantly higher rates of new infections and mortality among children than adults and lower rates of treatment. While significant progress has been made in recent years in Kenya to prevent mother-to-child transmission of HIV, increased efforts are needed to meet the goal of eliminating such transmission. In addition, there remains significantly more work to be done to address the large gap in access to antiretroviral treatment (ART) between children and adults and to keep children on treatment over time. Beyond public health challenges, there remain legal, economic, societal, and cultural barriers to an effective HIV/AIDS response that are hindering HIV prevention and treatment among children in Kenya.

3. The Convention on the Rights of the Child contains several provisions with a bearing on the prevention and treatment of HIV among children, as described in General Comment No. 3 (2003): HIV/AIDS and the rights of the child. Accordingly, EGPAF would like to encourage the Committee on the Rights of the Child to include in its concluding observations to Kenya several issues that were not adequately addressed by Kenya in its report submitted to the Committee or in its response to the List of Issues developed by the Committee. Our suggestions and brief background on each element are presented below.

The Right to Health (Article 24)
4. Article 24 of the Convention on the Rights of the Child entails a legal responsibility for each State Party to ensure that quality HIV prevention, testing, treatment, and care services are available and accessible to all children, including HIV prevention among girls and women, family planning for those living with HIV, and appropriate pre-natal and post-natal health care for mothers. However, data points to a need for Kenya to make a more determined effort to improve pediatric HIV prevention and treatment in order to meet these obligations. For example, while children make up around 15% of the estimated 1.2 million people living with HIV in Kenya, they counted for 23% of total new HIV infections in 2014, and 25% of deaths from AIDS-related causes.1

5. Despite significant progress made by Kenya over the past five years in preventing new HIV infections among children through the scale-up of PMTCT, it still has the second highest number of annual new HIV infections in children in Africa.2 The final mother-to-child HIV transmission rate in 2014 was 17%, whereas the WHO defines “elimination” of mother-to-child transmission (eMTCT) after breastfeeding as a rate of under five percent.3 Numerous factors contribute to relatively high levels of new HIV infections among children, including challenges with primary HIV prevention of girls and women, family planning among girls and women living with HIV, and ensuring long-term treatment for pregnant girls and women living with HIV.

6. Concerning HIV prevention and sexual and reproductive health education, Kenya reports low rates of comprehensive knowledge about HIV prevention among young people and a “great need to raise awareness of HIV prevention among the youth.” 4 A recent report shows lower rates of modern contraception use in women living with HIV than non-HIV positive women, as well as a higher rate of unintended pregnancies.5 Accordingly, Kenya announced in September 2015 a plan to scale up implementation of the HIV curriculum and age-appropriate sexual and reproductive health education in all secondary schools.6 Kenya also reported to the Committee that it has increased the availability of sexual reproductive health information to adolescents in youth friendly centers and via social media.7

1 See UNAIDS AIDSinfo database: http://aidsinfo.unaids.org/
In order to prevent mother-to-child HIV transmission among pregnant women living with HIV, such women must start ART as early as possible in the pregnancy and adhere properly to treatment through the breastfeeding period, which is an equally high-risk period for HIV transmission. The latest WHO guidelines now recommend all persons with HIV begin treatment immediately and stay on treatment for life. Yet in Kenya, only 67% of pregnant women living with HIV received antiretroviral medicines in 2014, compared with an average of 75% in sub-Saharan Africa and rates of over 90% in eight other African countries. A recent study shows very low retention of women on ART within a year of a initiation in Kenya, though poor record-keeping could also explain some of the low numbers.

Achieving eMTCT will require improving deficiencies in human resources, supply chain management, and laboratory equipment. Greater efforts are also needed to increase ante-natal care visits, which enable health-care workers to initiate women on treatment, monitor their adherence, check whether the ART is effectively suppressing the virus, and conduct further testing of HIV negative women to determine if they have become newly infected with HIV. Moreover, many women, especially poor women in rural areas, are not delivering in health institutions or with the care of skilled birth attendants. Increasing institutional birth deliveries would also help ensure the baby is immediately started on preventative treatment and would enable health-care workers to better track mother-infant pair after delivery. Some of the factors that discourage HIV-positive women from ANC visits, institutional births, and remaining on ART are long distances to health clinics, the costs associated with travel, disrespectful treatment by health care workers, and stigma and discrimination.

For those infants exposed to HIV during pregnancy or breastfeeding, it is critical to quickly test them for HIV and initiate medication. Yet progress on diagnosing children with HIV and putting them on treatment has been much slower in Kenya than for adults. HIV tests suitable for infants are usually only available in centralized laboratories. So while Kenya has made good progress in the number of infants being tested within two months of birth, EGPAF has observed that long turn-around-times on such test results continue to be a problem. As it can take weeks or even months to deliver results, it may be too late to save the baby’s life by the time results are received. As well, poor follow-up of mother-baby pairs mean that many mothers or caregivers never receive test results or linkage to treatment for the baby.

Kenya has increased the rate of children living with HIV on treatment from 16% in 2008 to 41% in 2014, but this number is still far too low, and represents a significant gap with the adult treatment rate of 57%. Without treatment, 50% of children with HIV will die by their second birthday, and 80% will die before they turn five. Keeping children on treatment over time is also a major challenge. Kenya has recognized and pledged to do more to close the treatment gap for children. This will require scaling up early infant diagnosis in decentralized clinics to reduce turnaround times for test results; improving tracking and servicing of mother-infant pairs; increasing community outreach programs to find undiagnosed children with HIV and to retain children of all ages on treatment; and training of health care workers on identifying, testing, treating and caring for children with HIV.

Kenya has shown strong political commitment at the national and international level to ending AIDS, including among children and young women. Such commitment needs to be matched with increased domestic financing for health. Kenya currently covers 16% of its AIDS response, though it has pledged to raise the amount to 50%. Under the Abuja Declaration of 2001, African Union heads of state pledged to allocate at least 15% of their domestic spending to the improvement of the health sector, with an emphasis on the fight against HIV/AIDS, tuberculosis and other infectious diseases. Kenya appears far from meeting this goal, however, with only 4.5% of spending allocated to health care in 2013, though it did note in its report to the Committee that it is “committed to scale up its financial budget in order to meet the Abuja commitment as well as increase pediatric services to children infected by HIV and AIDS.” In addition, the recent devolution of primary healthcare to the county level has put an additional strain on an already under-resourced healthcare system, with a risk of insufficient allocation of financial, human, and material resources at the county level to HIV/AIDS testing, treatment, and care.

Suggested recommendations to the Government of Kenya:

- Take all necessary measures to achieve, by 2020, elimination of mother-to-child HIV transmission, including by encouraging greater frequency and quality of ante-natal care and institutional birth deliveries and strengthening the health care system’s capacity for testing and treating all pregnant and breastfeeding women living with HIV;
- Improve access to age-appropriate and adolescent-friendly health services and education for sexual and reproductive health and HIV/AIDS, including confidential services;
- Expand early HIV testing and ART initiation and long-term retention among children;
- Increase domestic spending on healthcare, particularly on endemic diseases such as HIV/AIDS, and ensure sufficient allocation of financial, human, and material resources at the county level to HIV/AIDS testing, treatment, and care.

9 PEPFAR, USAID, HIVCare, “Secondary Analysis of Retention Across the PMTCT Cascade in Selected Countries: Rwanda, Malawi, Kenya, and Swaziland,” January 2015.
option-b-roll/.
14 PEPFAR, USAID, HIVCare, “Secondary Analysis of Retention Across the PMTCT Cascade in Selected Countries: Rwanda, Malawi, Kenya, and Swaziland,” p.2.
15 UNAIDS, How AIDS Changed Everything, p. 212 & 375.
16 WHO Global Health Observatory Data Repository: http://apps.who.int/gho/data/node.main.751/lang=en
17 Committee on the Rights of the Child, Consideration of reports submitted by states parties, Kenya, p.15.
The Right to Non-Discrimination (Article 2)

12. Stigma and discrimination seriously impact the lives of children living with or affected by HIV, including by interfering with effective HIV prevention; impeding adequate care, treatment, and psychological support; deterring children’s access to education and social services; and leading to exclusion by their family, community, or society.\(^\text{18}\) Stigma and discrimination are recognized by the government of Kenya and civil society actors as significant barriers to access to testing, treatment, and care among persons living with HIV despite a clear legal prohibition on discrimination against persons with HIV and the establishment in 2009 of an HIV and AIDS Equity Tribunal.\(^\text{19}\)

13. Children living with HIV in particular suffer from the impact of stigma as they are more sensitive than adults to negative feedback from others, especially from peers or authority figures. Children are also impacted by stigma and discrimination targeted against adults as they are dependent on parents or healthcare workers for their treatment and psychosocial support.\(^\text{20}\) Stigma against children in education settings and discrimination in the form of dismissal, suspension or prevention from attending an education institution is still far too common.\(^\text{21}\)

14. On 17 September 2015, President Kenyatta announced a new presidential campaign against stigma and discrimination, especially against children and young people. President Kenyatta had announced in February 2015 another initiative to reduce stigma against children in schools and improve access to treatment, which included a directive to collect data on the HIV status of children in school and their guardians.\(^\text{22}\) As the names and HIV status of these individuals were to be stored in centralized records, the directive could have endangered the right to privacy of children with HIV and increase the stigma and discrimination they face, prompting human rights groups to challenge the directive in court.\(^\text{23}\)

Suggested recommendations to the Government of Kenya:
- In consultation with people living with HIV, take additional steps to combat and prevent stigma and discrimination against children living with and affected by HIV/AIDS.
- Ensure that actions being taken to reduce stigma and discrimination against children in schools are carried out in a manner that also protects their right to privacy.

The Right to Survival, Life, and Development (Article 6)

15. The Marriage Act of 2014 bans underage marriage, but approximately 25% of girls are married before their 18th birthday in Kenya.\(^\text{24}\) Child marriage creates a heightened risk of HIV acquisition among girls, with ramifications for their right to survival, life, and development. Typically, such marriages occur between young girls and older men, who have already had several sexual partners and thus a higher exposure to HIV. For example, in a study in Kisumu, 33% of married girls surveyed were infected with HIV as opposed to 22% for their sexually active, unmarried counterparts.\(^\text{25}\) These marriages are also associated with higher levels of intimate partner violence and an unequal power balance that can prevent girls from exercising decisions about using protection as well as seeking HIV testing or treatment.\(^\text{26}\) Early marriage usually halts girls’ education, associated with a higher risk of HIV and a lower likelihood of seeking help in cases of intimate partner violence.\(^\text{27}\)

Suggested recommendation to the Government of Kenya:
- Ensure full implementation and enforcement of the ban on child marriage in collaboration with community and traditional leaders.

The Right to Education (Article 28)

16. In order to prevent HIV among girls, it is particularly important to protect their equal access to education, including secondary education. Studies have shown that the longer girls stay in school, the later they are likely to begin sexual relations, get married, or get pregnant; the more likely they are to engage in safe practices when they do become sexually active; and the greater the chance of achieving economic independence – all of which will help protect them from HIV infection.\(^\text{28}\) Primary education is free in Kenya, and Kenya has taken steps to make secondary education affordable to more children of poor families. Yet in 2013, only around 44% of girls attended secondary school, and in 2014, 25% of girls 18 and under had begun childbearing.\(^\text{29}\) Kenya reports that “retention and transition rates of girls [in school] has remained low compared to boys”\(^\text{30}\) due to factors such as early pregnancies and a societal preference for boys’ education over girls’. Various hidden fees for schooling also make education unaffordable to many families.\(^\text{31}\) Further steps to keep girls in secondary school as long as possible will maximize HIV prevention benefits.

Suggested recommendation to the Government of Kenya:
- Take further steps to ensure access to education by all girls and boys through secondary school, including by eliminating all direct and indirect fees.


\(^{20}\) NEPHAK, GNP+, PLHIV Stigma Index Kenyan Country Assessment.

\(^{21}\) UNAIDS, How AIDS Changed Everything, p. 158.


\(^{25}\) NEPHAK, GNP+, PLHIV Stigma Index Kenyan Country Assessment.


\(^{27}\) “Secondary education and HIV infection in Botswana,” The Lancet, Vol 3, Number 8, August 2015.


I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c) (3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples’ rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org.

II. Issue Summary: Indigenous Child Rights in Kenya

The Constitution of Kenya does not refer to children’s rights. However, Kenya has ratified ILO Conventions related to these rights, including the Convention on the Prohibition of Forced Labour and the Convention on the Rights of the Child. Influenced by globalization, climate change, and economic insecurity, some Indigenous people have had to change their traditional lifestyles. In particular, many Indigenous youth are having a hard time preserving their culture and “struggling to strike a balance between modernization and the culture they cherish”. In 2007, Kenya also abstained in voting for the UN Declaration on the Rights of Indigenous Peoples.

Education

The right to education is not included in the Kenyan Constitution, and while the country has guaranteed free and universal education, there is a lack of implementation. Schools and students often lack the resources needed to learn, including books, classrooms, and supplies. Oftentimes, secondary and higher schooling are too expensive for Indigenous people, particularly the costs of supplies. For example, 86% of Samburu families do not have the money to send their children to school or buy the necessary supplies. The Kenyan government established a Constituency Bursary Fund to help those who cannot afford school supplies, but there are not sufficient funds to truly make an impact. Even if they are able to attend schooling, a study found that Indigenous Peoples have obstacles, “such as being caned, being abused, instant physical punishment from teachers and prefects”.

Classrooms are crowded and there are a lack of available teachers- the average student-to-teacher ratio of Kenya is 47 to 1. Furthermore, the “lack of appropriate and relevant education for Indigenous children hampers the primary education as well as higher education”, particularly for hunter-gatherers and pastoralists. Indigenous students are often told in school that they should give up their language and beliefs and are ostracized for their traditional clothing. One NGO has tried to address this problem by creating a schooling system that incorporates afternoon and evening classes so as to accommodate the students’ schedules, but this is far from a comprehensive solution.

Child Labor

Child labor has been an issue across Kenya, and because Indigenous people struggle with higher poverty levels, Indigenous children are at disproportionately higher risk for becoming ensnared in child labor. In particular, Indigenous child labor has been linked to such problems as “aggravated land loss, pressures on customary livelihoods, lack of basic services...and poor governance.” Indigenous children work a range of jobs, from jobs related to tourism to private security to prostitution. Because the children are often not paid for their labor, despite the horrible working conditions, the work does not fall under the definition of child labor in the Children’s Act ratified by Kenya. This, along with the lack of officials to monitor the issue, makes it difficult to legally combat the problem of child labor. Furthermore, Indigenous children often work instead of attending school. One organization, the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) is working in Kenya to end the use of child labor. They have several ongoing projects in different regions of the country with the goal of ending child labor.

References:

2. Salau, Daniel and Grace Salau. “Maasai Culture: The changing roles of women and the resilience of young men’s efforts to preserve their endangered culture in the midst of change”, pg 2-3.
6. Ibid., pg. 56.
7. Ibid., pg 55.
Kenya and have focused on improving child labor rescue systems and providing financial support to the families of child workers. Indigenous girls are particularly vulnerable to exploitation.

Female Genital Cutting

Many international organizations have decried the practice of female genital cutting, without truly understanding the cultural significance of the practice, in that it is a rite of passage for Indigenous girls. There have been incidences of kidnapping and child exploitation of Indigenous girls ages 9-18 under the guise of saving these girls, a practice that is terrifying for both the girls and the parents. The girls are forcibly taken and brought to rescue homes. The Indigenous girls are “often later abandoned, neglected, not parented, raped, and have unwanted pregnancies.” There are studies that suggest this practice is actually a part of the sex trade and yet this “activism” continues to be funded internationally and locally. Furthermore, to avoid being persecuted by international organizations, many Maasai families are circumcising and marrying off their daughters are very early ages. Therefore, it is recommended that alternative traditions are encouraged to develop from within the communities. One organization, Maasai Education Discovery is working with Maasai communities to come up with possible alternatives to FGM and encouraging young Indigenous girls to speak up if they do not want to go through with the process.

Forced Evictions in Samburu

As it is, Indigenous communities already face higher levels of poverty and threats to their traditional lifestyle. About 90% of the Samburu population, for example, live in poverty. Many are losing their nomadic lifestyle as their lands are being taken to create wildlife reserves or national parks. The group ranches where they are relocated cannot support their livestock and are often further away from water sources. As a result, Indigenous children are more affected by malnutrition, disease, water-related deaths and illnesses, and experience higher mortality rates. To make matters worse, many Indigenous people face the threat of forced evictions, which creates even more instability for Indigenous families. Starting in 2009, 12 communities in Samburu East were attacked by police at least three times a week for two years. During that period, “hundreds were beaten, scalped, raped, castrated, and murdered and their homes were bombed and burned.” Since then, they have not been properly compensated and are threatened by poverty and starvation. In 2014, police troops were sent to the Embobut forest to evict thousands of Sengwer and Cherangany people. The report cited parents fleeing with their children and belongings to avoid any violence that may come with the eviction. Unfortunately, these evictions can often lead to the burning of schools, houses, and other buildings, which leads to a loss of belongings and greater instability for Indigenous people and children.

Geothermal Development and Threats to Livelihoods

With support of the World Bank, Kenya has engaged in extensive geothermal extraction on Maasai Indigenous territory in Kenya. The projects that have been implemented have raised major concerns of lack of proper protocols for community involvement, irregular and skewed compensation for communities and forceful evictions of local communities that live within project sites. These issues have been confirmed through an initial investigative report by the World Bank Inspection Panel which visited the general area to validate complaints that were lodged by the Maasai community. According to one community leader in Lagonot, Kenya:

“This company is in Kenya and dealing with geothermal Development. It has been a threat to our existence. We have experienced evictions, threats, loss of land and other human rights. Now, their activities has turned to destroy our livelihood. This is follows a continuous flow of sludge into a valley which is the only source of water for both human and livestock.”

The community has independently tested their water, which they report as having turned into a smelly black sludge, and found that the levels of suspended Biochemical Oxygen Demand (BOD) are above the National Environmental Management (NEMA) standards of 30.0mg/l for effluent discharge to the particular environment. The contaminated water has been associated with the death of several livestock which are the main source of livelihoods for the local Maasai community. As a pastoralist community, Maasai livelihoods are deeply dependent on their livestock. Threats to their livestock present immediate threat to the survival of Maasai Indigenous children and families.

In Narasha, a Maasai child drowned in one of the industrial wastewater disposal ponds that was left unprotected. The Maasai are requesting that safeguard protocols are observed before any funding of such projects is done. They are equally appealing that authentic participation is undertaken with approaches that will ensure for sustainable livelihoods of the affected people.

III. CRC Concluding Observations

Forty-fourth session Consideration of Reports submitted by States Parties under Article 44 of the Convention. “Constitutionally recognize the rights of Indigenous pastoralist and hunter-gatherer and other marginalized communities to their lands and resources, to effective political participation and to cultural identity, and enact specific legislation accordingly; Consider ratifying the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries; Put into place affirmative-action measures and the corresponding resources to ensure free universal primary education

10  http://www.a.nnppcankenya.co.ke/index.php/labour-free
11  Samburu Watch
15  Ibid. pg. 4.
18  Koissaba, Ben.(2015) “Geothermal Extraction Causing Livestock Deaths and is a Real Threat to Human Survival in Kenya,” Cultural Survival
and basic health care for children belonging to Indigenous Peoples and minority communities. These measures should include further efforts to establish clinics and mobile schools, and conduct birth-registration campaigns, as well as specific incentives and training for health workers and teachers. Such measures should be developed in consultation with and with the participation of the communities concerned;

Implement culturally appropriate measures to eliminate harmful traditional practices and provide material and psychological support to children who are victims of these practices; Pay particular attention to the recommendations presented by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, based on his mission to Kenya in December 2006 ( A/HRC/4/32/Add.3).”

IV. Kenyan Report

Kenya included a section in the state report for Indigenous and pastoralist children. Article 63 of the Kenyan Constitution recognizes ancestral land, and the Kenyan government plans on creating laws on protecting it. Kenya has also created a quota system for Indigenous children in schools.

V. Legal Framework

CRC Articles 17(d), Article 24, Article 29(d), Article 30.

VI. The CRC General Comments


Health

“49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-Indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties’ reports, that this applies both to developing and developed countries.

51. States parties should take the necessary steps to ensure ease of access to health-care services for Indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned. Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in Indigenous languages. Particular attention should be given to ensuring access to health care for Indigenous Peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of Indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.”

VII. Other UN Body

Recommendations Human Rights Committee Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012 : “The Committee recommends that, in planning its development and natural resource conservation projects, the State party respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected. In this regard, the State party should ensure that the inventory being undertaken by the Interim Coordinating agency with a view to obtaining a clear assessment of the status and land rights of the Ogiek community be participatory and that decisions be based on free and informed consent by this community”.19

Universal Periodic Review Recommendation during the second cycle: “101.114. Implement the recommendations and decisions of its own judicial institutions and of the African Commission on Human and Peoples’ Rights, particularly those relating to the rights of Indigenous Peoples (Bolivia);” 20

VII. Questions

1. What steps is the Kenyan government taking to address the specific and unique needs of Indigenous children?

2. How is the Kenyan government ensuring that Indigenous children’s rights are protected, respected and fulfilled via large scale development projects?

IX. Recommendations

Cultural Survival urges the government of Kenya to:

1. Ensure that companies operating in Kenya put in place good environmental practices and management to water and soil contamination, and avert livestock infection.

2. Ensure the Free, Prior, Informed Consent of affected Indigenous people like the Maasai and Samburu before and during any Geothermal or other large scale projects that affect their traditional grazing lands. Ensure all safeguard protocols are observed, including proper water treatment and management with periodic testing preferably on a bi-annual basis.

3. Ensure the participation of young Indigenous women in any policy or project planning around Female Genital Cutting.

4. Ensure funding is available for Indigenous children to access education.

5. Take steps to eliminate all forms of discrimination against Indigenous children in school settings.

6. Engage with indigenous community leaders to ensure compensation to families for the forced evictions from their homes.

19 http://docstore.ochhr.org/SelfServices/FilesHandler.ashx?enc=6GKGltd12%PPRICAqkhKy7yhsju22L2bcW8Er06xtOYNishm1ABMyp8XJ9K9E2qA-qqTmp67kqWWhKCI4c3vym952CEmgp93TT1d52dNO64HImMjMIX02gCpcfUI

NHRI submissions
SUBMITTED TO THE COMMITTEE ON THE RIGHTS OF THE CHILD

INTRODUCTION

1.1 COUNTRY CONTEXT

Kenya is an East African country covering a total area of 582,650km², of which 560,250km² constitutes dry land while water takes the rest of about 13,400km². Approximately 80% of the land area is arid or semi-arid and only 20% is arable. The Kenyan population census carried out in 2009 indicates a population of 38,610,097 out of whom 10.9 million school-going children were identified. Whereas no figure was given for the overall population of children, it is estimated that children constitute close to 53% of the entire population. The enactment of a new Constitution by Kenyans in August 2010 ushered in a new dispensation where the country is governed at two levels- the national government and 47 county governments. The two tiers of government are distinct and interrelated, conducting their respective functions on the basis of consultation and cooperation.

GENERAL MEASURES OF IMPLEMENTATION

2.1 Law Reform and Enforcement

The Constitution of Kenya 2010 has broken new grounds by making provision for socio-economic rights including guaranteeing every person the right to the highest attainable standard of health, accessible and adequate housing, and adequate food of acceptable quality, clean and safe water, social security and education. If properly implemented, children will immensely benefit from the progressive realization of socio-economic rights.1 Granted, the country has a very strong and elaborate legal infrastructure, the biggest challenge remains the proper implementation of the laws and policies.

Before the end of 2015 the country is expected to have the following legislations in place: the Persons Deprived of Liberty Bill 2012; Right to a Fair Trial, Promotion of Representation of Marginalized Groups Bill and the Community Land Bill. Currently, several legislations are under discussions including amendments to the Children Act and the Child Justice Bill.

Recommendation to the state:

- Ensure full and proper implementation of Chapter four of the Constitution to enable children to optimally enjoy their rights.
- Ensure that the proposed legislations are child friendly.

2.2 Child Impact Assessment of New Laws, Policies and Programmes

Whereas it is important for child impact assessments of new laws, policies and programmes, to be conducted, there is no clear mechanism for doing this. The country has very notable legislations and policies, for which it is difficult to ascertain with exactitude how much it would cost to fully implement. The independent institutions and Commissions ought to use their respective mandates to conduct impact assessments to effectively advise the government.

Recommendations to the state:

- Ensure that child impact assessments are done in respect to new laws, policies and programmes

2.3 Comprehensive National Strategy/Agenda for Children

A comprehensive national agenda for children is still work in progress. The National Plan of Action for Children 2013-2017 is in draft form and is thus yet to be completed. It is expected that the NPA will be linked to the Medium Term Expenditure Framework (MTEF) which outlines a breakdown of flagship projects to be implemented within a specified time frame for realization of Kenya’s development blueprint, Vision 2030. Kenya is currently implementing the 2nd MTEF which runs from 2013-2017. Though the National Plan of Action for Children 2013-2017 is being developed behind schedule, the process has been consultative and the views of children have been taken into account.

Recommendation to the state:

- Expedite the finalization and the costing of the National Plan of Action and align it to the Medium Term Expenditure Framework (MTEF)

2.4 Coordination, Monitoring and Evaluation Mechanisms

In the last periodic report to the CRC Committee, the government noted that Kenya does not have a comprehensive mechanism for monitoring implementation of the Convention on the Rights of the Child2. However, the National council of children services which has the duty to effect the above recommendation is not fully supported by the state to carry out its mandate.

Recommendation to the state:

- Expedite the proposed amendments to the Children Act, which amendments propose to strengthen the National Council for Children Services to coordinate the implementation of child rights in Kenya.

2.5 Capacity Building of Duty Bearers and Rights Holders

The Government and CSOs have been very instrumental in conducting trainings for law enforcement officers, teachers, health workers, social workers and childcare institution workers. However, the trainings have not been based on a standard curriculum, thus leaving it open for whoever is training to decide on how the training would be conducted.

1 Article 43 of the Constitution of Kenya
2 3rd, 4th and 5th State Report to the UNCRC Committee, Paragraph 67
Recommendation to the state:

- Develop standard manuals for training different cadres of duty bearers responsible for the promotion and protection of child rights.
- Infuse child rights modules in the training of different professionals including police, judicial officers, teachers and health workers.

2.6 Visibility of Children in the Budget

Under the 4th schedule of the Constitution Provision of health services, Pre-primary education, childcare facilities, public works and services, including water and sanitation, firefighting services disaster management, control of drugs and pornography are some critical functions entrusted to county governments that directly impact children. County governments have the liberty to plan and prioritize how the envisaged county functions will be resourced. Members of the public, including children, are expected to meaningfully participate in the budget making process at both the national and county levels. It is in this regard that it becomes imperative for them to be equipped with a proper understanding of the budgeting process to enable them effectively advocate for a child responsive budget.

Recommendation to the state:

- Increase allocations to child specific sectors including education, health and social assistance, and put in place measures to ensure that the allocated funds are used in an accountable and transparent manner.
- Ensure that children through, the Children Assemblies at the county and national levels are optimally involved in the budget making process.

2.7 Independent Institutions for Monitoring Child Rights

The chapter on the Bill of Rights in the Constitution creates an institutional framework for monitoring the implementation of human rights in the country. Article 59(4) of the Constitution mandates parliament to restructure the Kenya National Commission on Human Rights into two or more separate Commissions. As such, Parliament has established 3 separate Commissions, namely: the Kenya National Commission on Human Rights, the National Gender and equality Commission and the Commission on Administrative Justice (The office of the Ombudsman). Out of the 3, the National Commission on Human Rights and National Gender and equality commission have designated an officer to take charge of children issues.

Recommendation to the state:

- Ensure that the independent Commissions establish a unit/ department to take charge of matters related to the promotion and protection of child rights in Kenya.

2.8 Cooperation with Stakeholders

The Child rights committee’s concluding observations on the 2nd periodic report urged the Government of Kenya to strengthen cooperation with non-governmental organizations working for and with children in the implementation of the CRC.3

Recommendation to the state:

- Implement the 2013 Public Benefits Organisations (PBO) Act, and ensure that any PBO amendments are undertaken in consultation with the CSOs, to guarantee the continued promotion and protection of child rights in Kenya.

PROGRESS ON IMPLEMENTATION AND RECOMMENDATIONS TO THE STATE

3.1 Legal and Policy Framework

Kenya domesticated the UN Convention on the Rights of the Child (UNCRC) in 2001 by enacting a Children’s Act, 2001. The amendment of the Children Act, 2001 has been ongoing since 2006 and has not yet been completed. Kenya also developed a National Plan of Action for Children (NPA) 2008-2012 which made little contribution to strengthening coordination within the children sector because due to the failure to develop an action plan thus leading to it not being fully implemented. The development of a comprehensive NPA 2013-2017 has also commenced but the same has not been completed to date.

On the Optional Protocols to the UNCRC, the State signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2008 but has not ratified the same. It is also of great importance that Kenya signs and ratifies the third Optional Protocol on a Communications Procedure.

There is no Ministry that deals specifically with children matters since the Children’s Department was placed under the Ministry of Labour, Social Security and Services in 2013. This decision may have been advised by the fact that children need social protection. However, children matters are very complex and go just beyond just social protection. Further, the National Council for Children Services (NCCS) has had varied success in putting children issues within the public domain. This could be due to the lack of clarity of roles between the NCCS and the department of children services.

Whereas the Basic Education Act, No. 14 of 2012 seeks to promote and regulate free and compulsory basic education; provide for accreditation, registration, governance and management of institutions of basic education, all aspects that are welcome and well-intentioned, there is need for wholesome implementation of the provisions of the Basic Education Act especially the management of basic education institutions. There should also be special provisions for children with disabilities under the promotion of special needs education clause.

3 3rd, 4th and 5th Periodic Report, pg. 21
In 2013, the Government proposed amendments to the Public Benefits Organizations Act that governs Civil Society Organization (CSOs), which included a proposal to place a cap on Public Benefits Organizations on international/foreign funding at Fifteen (15%) of total funding. This threatens to roll back the gains made on CSOs in the promotion and protection of children’s rights. Under the new Constitutional dispensation, health care has been devolved to the County Governments. A majority of health workers whose employment were transferred from the National government to County governments have since resigned from public service, bringing with it an almost paralysis in County health services, including the management of hospitals. The health workers have cited interference from Members of County Assembly (MCA); delayed salaries; removal of allowances and lack of essential health supplies—such as drugs and equipment as some of the reasons of their mass resignation. The State needs to urgently address the challenge of devolving health services and the impact on provision of quality health care to children.

Recommendation to the state:

- Ratify the Second Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography; and sign and ratify the third Optional Protocol on the Communications Procedure.
- Move the department of Children services from the Ministry of Labour Social Security and Services to the Office of the Deputy President.
- Establish the office of a children’s ombudsman or appoint a commissioner that deals specifically with children or a children’s desk within one of the already existing commissions such as the Kenya National Commission on Human Rights (KNCHR)
- Ensure that since health care service provision has essentially been devolved, county governments should prioritize and increase the allocation to health services to a minimum of fifteen percent (15%) of the entire budget so as to be in line with the commitments made under the Abuja Declaration.
- Conduct an assessment on the efficacy of leaving the management of health services to County governments or if this should revert back to the National government.
- Stop the push to amend the Public Benefit Organizations Act which seeks among others, propose a cap on the funding from international/foreign donors to Public Benefits Organizations at fifteen percent (15%) of the entire organizational funding.

DEFINITION OF A CHILD

The Children Act⁴ of 2001 defines a child to be any person under the age of eighteen years old; the Act however makes a distinction between a child and a child of tender years and states that a child of tender years refers to a child under the age of ten years old⁵.

The Children's Act was enacted to give effect to the Convention on the Rights of the Child given that Kenya was a dualist state prior to the promulgation of the constitution. With the enactment of the Constitution, Kenya changed from being a dualist state to a monist state by dint of Article 2(5) and Article 2(6) of the Constitution; this has an effect on the application of the Convention on the Rights of the Child given that Kenya has ratified the Convention.

Article 260⁶ of the Convention defines a child anyone below the age of 18 years, whilst Article 53⁷ provides safeguards for the rights that are to be enjoyed by children, it sets out the rights in a positive manner which ensures that the rights of the child are promoted and protected.

GENERAL PRINCIPLES

5.1 Article 2: Non-discrimination

Article 27 of the Constitution makes provisions that every person is equal before law and has the right to equal protection and equal benefit of the law; it further states that the state shall not discriminate directly or indirectly against any person on any ground, including⁸ race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religious conscience, belief, culture, dress, language or birth.

Whereas the constitution prohibits discrimination the state has been seen to discriminate against the Nubian children who are not registered at birth because the state deems them to be aliens and continue to have uncertain citizenship status. The Nubian children are treated differently due to their ethnic and religious background for which there is no legitimate justification. Despite the fact that the African Committee of Experts on the Rights and Welfare of the Child found the state to have violated the rights of the Nubian children the state is yet to comply with the decision.

Recommendation to the state:

- Eradicate all forms of discrimination in practice and implement the recommendations made to it by the African Committee of Experts on the Rights and Welfare of the Child to ensure that the children especially Nubian children have access to birth registration and that they acquire a Kenyan nationality.

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⁴ https://www.icr.org/applic/lh/lh-nat.nsf/a24d1cf3144e99934125673e0050842/95b8cf642e7784b63c1257b4a004f9568/$FILE/Children’s%20Act.pdf
⁵ Ibid section 2
5.2 Article 3: Best interests of the child

We would like to commend the state for enshrining the best interest of the child in the Constitution. Nevertheless, the practicality of this provision has not been properly effected in some cases. This is more so in sexual offences cases, especially in areas where they rely on the informal justice systems, a child who has been defiled may be forced to marry the perpetrator. In addition when two children are found having sexual relations mostly, the boy child will be charged with defilement and the girl child will not be charged.

Recommendation to the state:

- Infuse and enforce the principle of the best interest of the child in informal justice systems.

CIVIL RIGHTS AND FREEDOMS

6.1 Article 7: Birth Registration, Name and Nationality

The child shall be registered immediately after birth and shall have the right to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

The Committee recommended that, in the light of article 7 of the Convention,

a) The State Party implements an efficient birth-registration system that fully covers its territory and all the children in Kenya, including through:

b) Ensuring free-of-charge birth registration at all stages of the registration process;

c) Taking appropriate measures to register those who have not been registered at birth;

d) Introducing mobile birth-registration units in order to reach the remote areas;

e) Reviewing existing discriminatory legislation on birth registration, including legislation that prohibits the registration of children born to foreign fathers

f) Formalizing links between various service-delivery structures and promoting awareness and appreciation of the importance of birth registration through mass campaigns that provide information on the procedure of birth registration, including the rights and entitlements derived from the registration, through, inter alia, television, radio and printed materials.

Follow up Actions

Following the recommendations of the committee, the government of Kenya increased number of civil registration offices; reviewed the Births and Deaths Registration Act and made provisions for free birth registration undertaken within six months after birth.

Situation Analysis

A report by PLAN international indicates that only about half of the children in Kenya have birth certificates. Sadly registering for a birth certificate is not so simple, especially in the more remote areas of the country. According to UNICEF's factsheet 2015, only 57% of births in rural areas are registered compared to an overwhelming 87% in urban areas.

The Births and Deaths Registration Act, has put in place policy and administrative procedures to make the registration of children easily accessible to parents and guardians of children. The State has gone a step further by making it mandatory that any child in Kenya registering to join Class 1 in public school must have a birth certificate presented to the school. This in effect has increased the number of children with birth certificates. More so, there are now mobile civil registration centres in place which has in effect increased the number of registration centres throughout the country. Previously civil registration was only conducted in former Provincial headquarters and these were only eight (8) in number. But with mobile civil registration offices, the services have been brought much closer to people.

However, Section 12 of the Births and Deaths Registration Act still contains an archaic provision that for any child born out of wedlock, the child’s mother must first obtain consent from the child’s father before the father’s name can be included in the birth certificate, otherwise, the section for including the father’s name will be marked blank with xxxxxxxx written across. Such a proviso goes against the spirit of Article 27(4) and Article 53 (1) (a) of the Constitution of Kenya, 2010.

Recommendation to the state:

- The state should create more awareness on the registration of births, especially in remote areas. Families and communities need to be made aware of the importance of birth registration, and registration should be compulsory.
- Local registration facilities need to have adequate capacity to meet needs. They need to be decentralized and accessible to communities.

6.2 Article 8: Preservation of Identity

The intersex have finally been defined and protected under The Persons Deprived of Liberty Act of Kenya. Previously, the Kenyan laws have been silent on intersex persons/children. Whereas the Registration of Births and Deaths prescribed particulars for registration to means any name, sex, date [...] and nationality of the parents”. The term “sex” has neither been defined in the Births and Deaths Registration Act nor in the Interpretation and General Provisions Act Cap 2 (Laws of Kenya). Form 1, of

10 PLAN International: Boosting Birth Registration in Kenya 11 UNICEF factsheet
11 The Law Society of Kenya has enjoined Petition 484/14 at the Constitutional and Human Rights Division of the High Court, as an interested party. This Petition is challenging Section 12 of the Births and Deaths Registration Act
12 “intersex” means a person certified by a competent medical practitioner to have both male and female reproductive organs;
the Register of Births in the Schedule to the Registration of Births and Deaths Act only indicates that the sex of a child is either male or female which in itself is discriminatory as it fails to categorize children that are born with both male and female genitalia. Petition 266/13 of the Constitutional and Human Rights Division of the High Court therefore challenged this position as a baby (Baby A) who had been born at Kenyatta National Hospital could not be registered due to the narrow definition of sex being limited to only male and female genders. One of the orders that were issued in this Petition was directed to the Registrar of Births and Deaths to register baby A and categorize Baby A as an intersex.

Recommendations to the state:
- The state should put in place measures to recognise and register intersex persons and other vulnerable groups.
- The state should also put in place measures to register Nubian Children as directed by the African Committee of Experts on the Rights and the Welfare of the Child.

6.3 Article 15: Freedom of Association and Peaceful Assembly (together with 37 on torture specifically on the)
Despite the express provision of the Freedom of Association and peaceful assembly being expressly provided for in the Kenyan Constitution, there was a clear violation of this right on 19th January, 2015 at the Lang’ata Road Primary School. This violation was recorded when policemen lobbed teargas canisters at children demonstrating against the grabbing of their playing field by a private developer. The presence of heavily armed police men with anti riot gear, firearms and police dogs greatly traumatized the Children. The Children who inhaled the teargas were severely affected by one in particular has since been taken ill suffering from nosebleeds and fainting spells which has interrupted her Right to Education as she no longer goes to school due to the medical condition.

Recommendation to the state:
- Enact and implement the Child Justice Bill which stipulates how the law enforcement agencies deal with children suspected to be conflict with the Law.
- Train police officers on measures and procedures to be employed in riots where children are involved.

6.4 Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The Committee previously urged Kenya to:
a) Ensure its effective implementation of the Laws in order to provide children with better protection against torture and ill-treatment;
b) Investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings and that the child’s privacy is protected;
c) Ensure that child victims are provided with appropriate services for care, recovery and reintegration, including psychosocial support for those affected by torture and other cruel, inhuman and degrading experiences, and provide them with adequate legal assistance in this regard;
d) Continue its efforts to train professionals working with and for children, including teachers, law-enforcement officials, social workers, judges, magistrates and health personnel in the identification, reporting and management of cases of ill-treatment.

State Report-Follow Up
It is of importance to note that the government has enacted Laws to deal with the same. The National Police Service Act provides that no person shall be subjected to torture or other cruel and degrading treatment. Article 20(1) states “The Bill of Rights applies to all law and binds all State organs and all persons.” Article 53(1) re-affirms that every child “has the right ... (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour”.

The state reported that it has provided child/gender recovery desks at Police Stations and has also gazetted many Magistrates to deal with children matters.

Situation on the ground
Despite the enactment of various Laws by the Kenyan government, cases of child abuse in the country are still rampant due to lack of effective implementation of the legislation. Child protection measures in Kenya are currently not implemented effectively and fully. Compliance with such legislation would increase if the magnitude of the problem and better knowledge about the factors that put children at risk was available. Nonetheless, there are still a number of problems to surmount. Kenya’s severe economic and social difficulties have prevented the full realization of children’s rights and there is concern over the inadequate enforcement of legislation to ensure the “physical and mental integrity” of all children.

14 Article 95(1) National Police Service Act
15 Constitution of Kenya
16 https://www.crowdrise.com/africachildabuseprevention
Rights and advocacy groups are alarmed about the physical and sexual abuse of Kenyan children, including commercial sexual exploitation; the increasing burden of HIV/AIDS on orphans that prematurely forces them into adult roles; continuing incidences of FGM; and the inadequate access to education, especially for girls.

Further, there have been various reports where the gender desks are not manned or the officers not trained on inter alia how to deal with children. It is key to note however, that the Government implemented child protection centers that provide counseling and reintegration services for children in Malindi, Mombasa, Garissa, and Eldoret. In 2013, four additional centers were built in Siaya, Kakamega, Nairobi, and Nakuru¹⁷.

In 2013, the Government approved the National Plan of Action against Sexual Exploitation of Children in Kenya. However, the plan did not include a corresponding budget meaning that the cost of implementing the same was not put into consideration by the state.

Recommendation to the state:

- Increase funding for the Court Users Committees, the legal aid scheme and fast-track the enactment and implementation of the Legal Aid Bill.
- The state should take up on itself to educate the public on using the 999 and the 116 child hotline.
- Further, not all police stations have gender/children desks re a need for the government to ensure that the same is done.
- The state should establish a centralized system of gathering data, documenting, coordinating, investigating, responding to and following up on cases of child abuse in its various forms.
- Develop a Monitoring and Evaluation framework on child protection.
- Increase the gender recovery centres and ensure the same are not only limited to major towns but are spread across the country.

Finalize on the pending Response Plan on the findings of the 2010 Violence against Children Survey and ensure engagement of the devolved structures to prioritize the same.

VIOLENCE AGAINST CHILDREN

7.1 Article 19 and 39: Abuse and neglect, including physical and psychological recovery and social integration

Article 19 provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegation of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Previously the committee urged the State Party to:

a) Review its legislation and ensure its effective implementation in order to provide children with better protection against torture and ill-treatment;
b) Investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings and that the child’s privacy is protected;
c) Ensure that child victims are provided with appropriate services for care, recovery and reintegration, including psychosocial support for those affected by torture and other cruel, inhuman and degrading experiences, and provide them with adequate legal assistance in this regard;
d) Continue its efforts to train professionals working with and for children, including teachers, law-enforcement officials, social workers, judges, magistrates and health personnel in the identification, reporting and management of cases of ill-treatment.

State Report-Follow Up

The state has enacted laws that domesticated the provisions of Article 39. The National Police Service Act provides that no person shall be subjected to torture or other cruel and degrading treatment¹⁸. Article 20(1) states¹⁹: “The Bill of Rights applies to all law and binds all State organs and all persons.” Article 53(1) re-affirms that every child “has the right ... (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour”.

¹⁷ http://www.dol.gov/ilab/reports/child-labor/kenya.htm
¹⁸ Article 95(1) National Police Service Act
¹⁹ Constitution of Kenya
Situation on the ground:

Despite the enactment of various Laws by the Kenyan government, cases of child abuse in the country are still rampant due to lack of effective implementation of the legislation. Child protection measures in Kenya are currently not implemented effectively and fully. Kenya’s severe economic and social difficulties have prevented the full realization of children’s rights and there is concern over the inadequate enforcement of legislation to ensure the “physical and psychological integrity” of all children.

Rights and advocacy groups are alarmed about the physical and sexual abuse of Kenyan children, including commercial sexual exploitation; the increasing burden of HIV/AIDS on orphans that prematurely forces them into adult roles; continuing incidences of FGM; and the inadequate access to education, especially for girls.

7.2 Art 37(a) & 28(2): Torture, Cruel, Degrading Treatment & Corporal Punishment:

Art 37(a) States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

Art 28(2) - States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention

Concluding Remarks

The Committee urges the State party, taking into account General Comment No. 8 (CRC/C/GC/8) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, to do the following:

a) Introduce legislation explicitly prohibiting corporal punishment in the home and in all public and private alternative care and employment settings;

b) Conduct public education and awareness raising campaigns on children’s rights to protection from all forms of violence and promotion of alternative, participatory, non-violent forms of discipline;

c) Improve the effectiveness of the monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions

State Follow Up-State Report

The National Children’s Policy (NCP), 2008 Section 53 (f) prohibits corporal punishment for children in all settings. Corporal punishment has been outlawed in schools through a circular from Ministry of Education (MoE), Legal Notice No. 56 of 2001. In addition, Article 29 (e) and (f) of the Constitution of Kenya prohibits corporal punishment and cruel, inhuman or degrading treatment.

Article 11 of the Education (School Discipline) Regulations, which allows corporal punishment in certain circumstances, is now void under Article 2(4) of the Constitution as above, but is yet to be formally repealed. The Basic Education Act also prohibits subjecting children to degrading or cruel or inhuman treatment and prescribes a punishment of fine not exceeding Kshs 100,000 of imprisonment of 6 months.

Situation on the ground

In a national survey carried out in 2010, nearly half of the 13-17 year olds involved (48.7% of girls and 47.6% of boys) reported having been slapped, pushed, punched, kicked, whipped, beaten or threatened or attacked with a weapon in the past year. Two thirds (66%) of females and 73% of males aged 18-24 reported experiencing this before they were 18. Perpetrators included authority figures, parents and adult relatives. The survey involved 1,306 females and 1,622 males aged 13-24. A recent study by Action Aid found that in 2013 the use of some forms of corporal punishment had reduced since the baseline survey carried out in 2009. In Kenya in 2013, 55% of girls had been beaten in the past year, compared to 80% in 2009, although the proportion of girls who had been whipped increased from 50% in 2009 to 70% in 2013. Girls’ last experiences of corporal punishment usually took place in school. However, regardless of the reduced cases, 50% + is still a high number and clear that corporal punishment is still ongoing in Kenya.

Over half of adult Kenyans believe that their religion allows them to slap their children if they do not behave. Sometime in February 2015, a case was reported about a girl who was severely beaten by her mother on allegations that she had reported in school that her mother was a witch.

Recommendations to the state

- Hasten the enactment of the Amended Children’s Act as it prohibits unreasonable punishment at home and schools.
- Conduct public awareness on the alternative forms of discipline and also on the prohibition of corporal punishment.

References:

20 https://www.crowdrise.com/africachildabuseprevention
21 Basic Education Act S 37
22 http://www.endcorporalpunishment.org/pages/frame.html
23 (Action Aid International (2013), Stop Violence Against Girls in School: A cross-country analysis of change in Ghana, Kenya and Mozambique, Johannesburg: Action Aid)
FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Introduction and conceptual framework

The Convention on the Rights of the Child (CRC) recognizes that children have the best chance of developing their full potential in a family environment. The primary responsibility for their care rests upon their parents and legal guardians, who are entitled to support from the government in raising their children.

When parents are not able or willing to fulfill this responsibility, kinship and community resources may be relied upon to provide care for the children. However, the ultimate responsibility falls on the government to ensure that children are placed in appropriate alternative care, provision of family environment and parental guidance in a manner consistent with evolving capabilities.

8.1 Family Environment and Alternative Care

The state to this extent in the 3rd, 4th and 5th State party report, in Chapter 7 detailed action points mean to be achieved, it would be noteworthy to indicate that majority of the follow up actions have been implemented with other partially being executed.

8.2 Article 9: Separation from Parents

Article 9 which details on the prevention of children from separation of parents need to be focused on. There is still a high number of children and in particular OVC’s that are living outside their family settings and communities in institutions.

8.3 Article 20: Children Deprived of family environment

Article 20 asserts that if the child is temporarily or permanently deprived of his/her family environment then they should be provided with a range of alternative care services in line with the child’s upbringing, situation and cultural background.

Recommendation to the state

- restrict the number of upcoming Charitable Children’s Institutions and instead redirect and obligate a paradigm shift by CCIs and the organizations that fund them to concentrate on the provision of outreach support to orphans and vulnerable children (OVC), their families and communities rather than that of residential care would bring inestimable benefits to children.
- The State should ensure that all staff working with temporary forms of shelter and CCI’s should have the qualifications to effectively carry out these activities, which includes: social work, counselling, psychosocial support and so forth.
- Conversely section 173 of the Children Act indicates that there should be CCI regulations established for children to voice out complaints. The same is currently not being practiced and hence there is need to have regulations on complaints from Children in alternative care to state protection systems

8.4 Article 18: Parents’ common responsibilities, assistance to parents and the provision of childcare services.

On the recognition of the principle of both parents having a common responsibility for the upbringing and development of the child and how the State compliments this requirement has been an achievement that the State can articulate to having made strides in social protection However the ultimate provision of assistance to parents and supporting caregiver relationship is still an unmet need by the state. This is owing to the large populations of vulnerable societies in Kenya vis a vie available financial capability of the State

However the Vision 2030 Social Protection Sector Review 2012 signposts great strides in Kenya’s Social protection programmes. The report indicates statistics of support given to communities in collaboration with development partners and Government agencies. The cash transfer for orphans and vulnerable children (CT-OVC) was at 412,470 children as at 2010.

The revised National Plan of Action for OVCs, 2008, draws for the first 5 of its 7 strategic areas on The Framework for the Protection, Care and Support of OVCs Living in a World with HIV and AIDS which are:

1. Strengthen the capacity of families to protect and care for orphans and vulnerable children by prolonging the lives of parents and providing economic, psychological and other support,
2. Mobilize and support community-based responses
3. Ensure access for orphans and vulnerable children to essential services, including education, health care, birth registration and others,
4. Ensure that the government protects the most vulnerable children through improved policy and legislation and by channelling resources to families and communities
5. Raise awareness at all levels through advocacy and social mobilization to create a supportive environment for children and families affected by HIV and Aids

Recommendations to the state

- Implement and validate support of community- based responses as well as ensure the access of healthcare of orphans.
- Initiate Parenting Programmes for caregivers and communities, to enhance the overall responsibilities and services. Child care services should be introduced as an obligatory mandate to institutions to foster promotion, growth and development of the child.

26 3rd, 4th and 5th State party report to the UNCRC committee, Kenya 2005-2011
27 http://wwwvision2030.go.ke/cms/vds/Kenya_Social_Protection_Review_Final_Table_11
8.5 Article 21: Adoption, National and Inter-Country Adoptions

The state stopped all inter-country and resident adoptions following a moratorium by the Cabinet Secretary Ministry of Labour, Social Security and Services directing that no new applications on inter country adoptions or resident adoptions shall be accepted and that no child shall be placed under inter-country or resident adoptions. The effect commenced on 26th November, 2014. This is a contravention of the right to family under Article 45 of the Constitution and deprives abandoned children the right to family. The moratorium is also in contravention of the provisions of the Children Act which was passed by parliament in 2001 and came into effect on 1st March 2002. The cabinet directive clearly contravenes the principle of Best Interest of the child as enunciated in article 53 of the constitution.

By virtue of Legal Notice 1092/2015 dated 20th February, 2015 Cabinet also disbanded the adoption committee un procedurally and this has effectively frustrated and disrupted efficient adoption processes. The constitution of a steering committee is illegal as it does not have all the constituent representatives from the organizations as prescribed in statute.

Recommendation to the state:

- Revoke the directives by the Cabinet Secretary for Labour, Social Security and Services and the legal notice 1092/2015 and return the former status.

8.6 Maintenance for Children Art 27(4)

Art 27(4) - States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child. States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Art 53 provides that maintenance is the responsibility of both parents. Courts have enforced the same Child Magistrates have been gazetted and the cases are treated on a priority basis. The Department has employed several strategies such as mediation, to get the parents to agree. This has borne fruit in some cases where parents have mutually agreed on negotiated terms of child support and entered into a parental responsibility agreement. Only where mediation has failed, the department sought judicial services to reinforce parental obligation to the child.

Most of the cases reported to the DCS were connected to parents seeking support for their children and especially where one of the parents has neglected/failed or refused to discharge parental duties and responsibilities with respect to their children as defined under the law.

CSOs such as the Cradle have also taken an active role in ensuring that children are provided for by both parents as provided by the Constitution.

Recommendations to the state:

- Deal with a gap that exists in enforcing the maintenance orders abroad.
- Provide legal aid to parents seeking maintenance for their children as most of these is done by the CSOs.

DISABILITY, BASIC HEALTH AND WELFARE

9.1 Article 24: Health and Health Services, in particular primary health care

The commencement of free healthcare for children aged less than 5 years has contributed towards reduced child mortality rates. However, it must be noted that the State has not provided for free medical services for children aged between 5 years to 18 years. The free maternity health service only caters for normal delivery and does not include Caesarean births or complications that may arise during delivery. In some hospitals like Pumwani Maternity Hospital, patients are still required to buy items such as gloves, cotton wool and water. There have also been reported cases of alleged child trafficking at the said Pumwani Maternity Hospital where parents of new born children are shown dead foetuses while their alive children are taken away by the health workers in that institution.

The National Hospital Insurance Fund (NHIF) only caters for treatment costs incurred as an in-patient and does not include treatment costs incurred as an out-patient. It is commendable that NHIF has been engaged in active campaigns to encourage members of the public to take up subscription. However, this still remains beyond many who live below the poverty line which means that thereby making it impossible for them to benefit from the scheme.

The devolution of county health services through the County Government Act, 2011 without clear guidelines undermines the delivery of quality healthcare given to children and the general public at large. The Health Bill, 2012, which was meant to make provisions for regulating the health sector, is yet to be enacted. Further the 2014/2015 budget only allocates 4.2% of the national budget to provision of healthcare services. This significantly falls below the State's commitment under the Abuja declaration to allocate Fifteen percent (15%) of the entire national budget to healthcare services.

According to the regional cancer registry at Kenya Medical Research Institute (KEMRI), about Eighty percent (80%) of reported cases of cancer are diagnosed when the disease is at an advanced stage and therefore little can be achieved in terms of curative treatment. This is largely due to the low levels of awareness of cancer signs and symptoms; inadequate screening services; inadequate diagnostic facilities; and poorly structured referral facilities. The country has few Oncologists who are mainly based

http://data.worldbank.org/indicator/SH.DYN.MORT accessed on 27/03/2014

30 ibid
private hospitals in Nairobi which makes it difficult for a great majority of the population to access cancer treatment services. Also, cancer treatment infrastructure in Kenya is inadequate and some cancer management options are not readily available. This has necessitated some Kenyans to seek cancer treatment abroad which is very expensive. Effective cancer treatment requires that all the modes of treatment be available in the same setting to avoid distant referral and delays in treatment administration. The essential drugs list does not include chemotherapy for cancer while some of the very essential drugs for pain management are rare to find in most public hospitals.

**Recommendations to the state:-**

a) Fast track the implementation of the free maternity health service in collaboration with the County governments..

b) Provide free health care for every child under the age of 18 years and not just focus on children below 5 years since they are potentially vulnerable.

c) Fully investigate the alleged cases of child trafficking at the Pumwani Maternity Hospital.

d) Equip hospitals with the capacity to make early diagnosis of cancer and enforce the Kenya National Cancer Control Strategy 2011-2016.

e) Enact and operationalize the Health Act, 2012 and also increase the allocation to health services to a minimum of Fifteen percent (15%) of the entire budget on the subsequent budgets-to be in line with the commitments made under the Abuja Declaration.

**9.2 Article 24(3): Measures to prohibit and eliminate all forms of harmful traditional practices, including, but not limited to, female genital mutilation and early and forced marriages**

To effect the above provision, the committee recommended to the state as follows:

a) Strengthen its measures regarding female genital mutilation and early marriages and ensure that the prohibition is strictly enforced;

b) Conduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls;

c) Introduce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes, and engage the extended family and the community.

**SITUATION ANALYSIS**

The practice has been illegal in Kenya since 2001 under the Children’s Act. In 2011, Prohibition of Female Genital Mutilation (FGM) Act was passed that specifically criminalises FGM. The state has not done enough to strengthen the measures it has put in place to curb FGM. More awareness campaigns need to be done in the areas where FGM is prevalent.

**Recommendations to the state:**

- Fully implement FGM Act and ensure that there is Coordination among national and international actors working on FGM
- Conduct more trainings for all the Actors in the Criminal Justice System.

**9.3 Social security and child care services and facilities (Article 26 and 18(3))**

Article 43(1) (e) states that ‘every person has the right to social security’. Article 43(3) further states that ‘the state shall provide appropriate social security to persons who are unable to support themselves and their dependants’. Article 53 of the constitution further states the rights of children and the need for their protection.

The cash transfer programme for orphans and vulnerable children was launched in 2004 and provides regular support to poor households, with special concern for children with or affected by HIV/AIDS. Kenya’s OVC programme started as a pre-pilot project covering 500 OVC households in 3 districts with an allocation of USD800, 000. By 2009, the government funding to the program increased to US $9 million and coverage increased to 47 districts. In 2011/2012 the program was allocated Kshs.2.8 billion, in 2012/2013 Kshs.4.4 billion and in 2013/2014, the program received Kshs.8 billion.31

Through this programme households receive payments of Ksh.4, 000 in cash, every two months via a Payments Service Provider. The program places developmental responsibilities to care givers of the beneficiaries that include; ensuring OVC aged 0-5 years receive immunization and growth monitoring, OVC aged 6-7 regularly attend basic education; OVC acquire birth certificates and care givers attend awareness sessions.

However, most of the beneficiaries have over the years learnt about the components of the programs through community social meetings (barazas) and through the heads of villages and chiefs. This means that only few beneficiaries have information about the OVC cash transfer and in most cases they hold inaccurate information. In most hardship counties beneficiaries have little or incorrect information about the cash transfer and are not aware of the program agent officers.

In some instances the beneficiaries have experienced delays in receiving this cash transfer without being informed by the program agents. These delays extend from 1 month to 4 months from the expected payment date. This interferes with the budget and planning for most of the households and children from these households drop out of school and seek short term employment to earn money for food.

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31 National Gender and Equality Commission report on ‘Participation of vulnerable populations in their own programmes: The cash transfers in Kenya 2014’
The OVC-cash transfer allocates Kshs.2000 to each household despite other households having more than one child. Such households spend more than Kshs.2000 in a month to pay for education, food, water, lighting facilities and health care. The situation is more complicated for such households living in the market centers due to costs of house rent.32

9.4 Article 18:

The OVC-CT programme only caters for the health of children between the ages of 0-5 years, by receiving immunization and monitoring their growth. The medical care for children aged between the ages of 5-18 years is to be inclusive of the Kshs.2000 allocated monthly under the OVC cash transfer.

The Kenya National Social Protection Policy 2011 does not mention any measures to protect the health care of OVCs and in particular children with disabilities from poor households. Whereas children from well off families have access to medical care through insurance as dependants of their parents, OVCs have to rely on the cash transfer which does not meet their basic needs let alone medical care. NHIF was to initiate a national social health insurance scheme to protect both formal and informal sector workers as well as the unemployed from the economic liability of health shocks.

Recommendations to State:

- The OVC cash transfer program should be designed to include children with disabilities as beneficiaries.
- The National Council on Persons with Disabilities should conduct a country wide audit of children with disabilities and in particular those from poor households to enable them be given top priority on the cash transfer and
- A proper and well-coordinated promotional education for the community about the program should be implemented because most beneficiaries have in adequate information about the cash transfer program
- More funding should be put for administration matters to cater for public education and information activities that include community mobilization, sensitization, training of beneficiaries and monitoring and evaluation of the intervention.
- There is need to link the OVC-CT program with other social safety and empowerment programs such as school retention, feeding program, sanitary towels program, among others to aid the OVC-CT program. The monthly transfer should be reviewed and increased to cater for each dependant in the households.33
- A health insurance scheme should be initiated by NHIF to include OVCs and in particular Children with Disabilities who come from poor households

9.5 Article 27(1-3) Standard of living and measures, including material assistance and support programmes with regard to nutrition, clothing and housing, to ensure the child's physical, mental, spiritual, moral and social development and reduce poverty and inequality

Although the government has initiated programs that seek to improve the standards of living for children; living standards of children from slum areas and poor families are still low: 72% of the population in Kenya is of lower class [World Bank Report] in the move to ensure support, the government introduced school feeding program to ensure the vulnerable children are not left behind. This has not only enabled many children access education but also act as a source of food provision for the children from the poorest families.

The government has also under the FPE program provided additional capitation grants to children with special needs.

The cash transfer program for OVCs - a program that delivers financial and social support directly to the poorest households containing OVCs with special concern to those with or affected by HIV/AIDS. The program has lifted many children from deprivation and desperation: the money that they receive after every two months [4000] help them buy their essential basic needs and upkeep.

Improved health care services- child mortality rate has by far reduced. Many mothers attend maternal and neonatal care extensively. 53.9% of children are delivered at health care facilities. The provision of mosquito nets has seen the reduction of children death caused by malaria. At least 65.9% of children aged 12-23 months are immunized.

Supplementary food program- mainly provided by NGOs to health care centres to children especially the malnourished. Although this program is essential for child growth and development, not many children have access to this program. Many mothers are not aware of the program especially those from the interior places. The quantity of the food supplied by this program is also low thus not many children benefit.

Recommendations to the state:

- There is need for a clear definition of who are the vulnerable and statistics of the vulnerable country wide so as to have all children falling in this cluster taken care of. Most of the vulnerable in rural areas are not aware of the OVCs support program.
- The government to coordinate with the NGOs proving SFP to ensure the exercise is continuous and benefits many children.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

10.1 Article 28 and 29: The Right to Education

There are several barriers to access to free and compulsory basic education in Kenya. These include low teacher to student...
ratio, the shortage of teachers due to the massive enrolment of pupils, insufficient learning facilities, poor learning environment particularly in arid and semi-arid areas and urban slums. Further, it is estimated that there are approximately over One million children who are still out of school, the majority of whom, are in ASAL areas, pockets of poverty and urban slums.\textsuperscript{34}

Though the Education Sector receives the highest budgetary allocation in the country in terms of percentage, there is concern that approximately Ninety percent (90%) of the allocated budget goes to recurrent expenditure. In 2011/2012 the recurrent budgetary expenditure was at Kenya Shillings One Hundred and Forty Nine Billion (Kshs. 149 Billion) while only Kenya Shillings Seven Billion (Kshs. 7 Billion) went to Development Budgetary Expenditure.\textsuperscript{35}

There has also been an increased incidence of children unable to access education due to extra fee levies and charges in public schools despite Basic Education being articulated as free and compulsory as provided for under Article 53(1) (b) of the Constitution and the Basic Education Act, 2013. This has particularly affected children from poor backgrounds who have performed well but are unable to transit from primary to secondary education as they cannot afford the school fees. It has been reported in the media that for a Form One student to access a national public secondary school, he or she has to pay 1st term fees of an average of Kenya Shillings Sixty Thousand (Kshs. 60,000/-) or the equivalent to approximately US Dollars Six Hundred and Seventy (USD 670), an amount that is very high considering that almost Fifty percent (50%) of the entire population lives below the poverty line.

A national research conducted by Girl Child Network (GCN) established that the participation of girls in education was hindered by difficulty in managing their menstruation. Indeed, it emerged that a girl would miss school for an average of 3 to 5 days a month due to lack of sanitary towels, resulting to missing 12 to 15 days a term, a total of 39 to 45 days a year. In response thereto, the State introduced the National Schools Sanitary Towel Program in 2011 to among other things, deal with gender disparities in education and particularly girl child education in ASAL and other marginalized regions. It has been established that the budgetary allocation needed to reach the 2.5 million adolescent girls needing sanitary towels in both primary and secondary schools was estimated at Kenya Shilling Two Billion, Four Hundred Million (Kshs. 2.4 Billion) a year. However the amount allocated in 2011/2012 was a paltry Kenya Shillings Three Hundred Million (Kshs. 300 Million), a shortfall of nearly Kenya Shillings Two Billion (Kshs. 2 Billion). The budgetary allocation for the Ministry of Education for this programme under in the 2013/2014 budget was reduced by Kenya Shillings Ninety Nine Million (Kshs. 99 Million) to Kenya Shillings Two Hundred and One Million (Kshs. 201 Million). This has resulted to only 568,925 adolescent girls in primary education benefitting from the programme. Finally, the national programme for the provision of sanitary pads has been rolled out country wide and is still yet to reach all the deserving and poorest sections of the community.\textsuperscript{36}

According to a study by UWEZO, a National NGO, a typical Standard 8 pupil could not do basic mathematics that is meant for Standard 3 pupil. This brought into sharp focus the issue of the quality of education in Kenya and in particular, the question of teacher attendance, monitoring and their quality of delivery, implementation of school curriculum and syllabus and the assessments of the children. Though the Ministry of Education is mandated to monitor the quality of education offered in schools including the implementation of the school curriculum, there is lack of effective and regular monitoring on the implementation of the curriculum including delivery of quality education by the Ministry.

Children with special needs lack sufficient, adequate, accessible and quality special schools or schools that can integrate children with special needs. Educational facilities do not adequately cater for children with disabilities including having sufficient teachers who have been trained on Special Needs Education. Most of the educational facilities offering Free Primary Education are also not easily accessible to students with physical disabilities. In response, the Government launched a Special Needs Education (SNE) Policy Framework that seeks to address how the Government will work with stakeholders to transition to an inclusive education approach in line with Education for All by 2015. Though the plight of children with special needs is included in the Basic Education Act, integration of children with special needs into the regular school system is still a challenge at both primary and secondary education levels. Transition levels for children with special needs to the secondary schools is still a challenge as they are required to have the same pass marks as other children.

Furthermore national, provision and district schools do not have the capacity to integrate children with special needs.

The on-going debate about the State’s plan to introduce laptops as a teaching and learning tool in public primary schools highlights the misplaced priorities of Government for the education sector. There are many schools that lack basic infrastructure such as adequate teachers, classrooms, desks, books, electricity, etc. Meanwhile the Capitation Grants of Kenya Shillings One Thousand and Twenty (Kshs. 1,020) provided per pupil to cater for learning materials, operational costs and other school improvement activities remain wholly insufficient to provide even for the most basic supplies and facilities.\textsuperscript{37}

As much as the Ministry of Education has provided activities in schools to cater for play, leisure and cultural activities, many of the schools do not fully provide for them as they place more emphasis on academic performance. Further, grabbing of school land by private developers has been on the rise thus hindering children’s right to play.\textsuperscript{38}

**Recommendation to the State:**

- Enforce of the implementation of the Basic Education Act (2013) to ensure access to quality learning environment and attainment of quality Education by All children with focus on public and non-formal schools.

\textsuperscript{34} See http://www.education.go.ke/ShowPage.aspx?departmentContentId=1168 accessed 19/03/2014

\textsuperscript{35} Economic Survey 2012, KNBS, P.43

\textsuperscript{36} Even though the State did at some point partner with Royal Media under the Inua Dada Campaign which was launched by the First Lady, the MoE and Citizen in Marigat, Baringo County to complement the National Schools Sanitary Towel Program for an increased budgetary allocation to the program, not all schools in the country have benefitted

\textsuperscript{37} Education Sector Report 2013/14-2015/16 Medium Term Expenditure Framework, October 2012

\textsuperscript{38} The Standard January 30th 2015
The Nubian community has lived in Kenya for over 100 years, and has historically been marginalized. Since Kenya’s independence, refugees and asylum seekers are by definition vulnerable, but refugee children are especially so. There is a total of 149,387 registered refugee children and children seeking refugee status. In Dadaab refugee camp there is an estimated 72,561, while in Kakuma there is an estimated number of 76,826 and in Nairobi 16,207.

SPECIAL PROTECTION MEASURES

10.2 Article 30: Children belonging to a minority or an indigenous group

The Nubian community has lived in Kenya for over 100 years, and has historically been marginalized. Since Kenya’s independence, they have been denied many social, civil, and economic rights. Kenya today does not have official figures of Nubians and does not include them in census reports. There is no official recognition of the community; the Kenyan government had classified the community as ‘other Kenyans’ or just ‘others’ and has only recently started a process of recording Nubians as a named clan of other Kenyans.

According to the Concluding Observations from the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on Kenya’s 1st periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child (ACCRWC), there is a huge gap in the implementation of decisions concerning the Nubian children and their access to birth registration and the necessary documentation. This is in violation of Article 53 of the Constitution which states that every child has a right to a name and nationality from birth and also have a right to free and compulsory basic education.

According to the Kenya education policy, for a student to be enrolled in school, they must have a birth certificate. Therefore, the Nubian children cannot access schools since they do not get registered by the government. The Constitution of Kenya, 2010 under article 43 (1) (f) states that every person has a right to education.

Recommendation to the state:

- To urgently take measures to comply with the decision of the African Committee on the welfare and rights of the child.

10.3 Article 31- Rest, play, leisure, recreation and cultural and artistic activities

Article 11 of the Kenya Constitution 2010 recognizes culture as the foundation of the nation and obliges the State to promote all forms of cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage. The State is also obliged to recognize the role of indigenous technologies in the development of the nation. Not only shall the State promote the intellectual property rights of the people of Kenya, Parliament is also required to enact legislation that will ensure communities receive compensation or royalties for the use of their cultures and cultural heritage, and legislation that will also recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by communities. Under the Bill of Rights, Article 44 gives every person a right to use the language and participate in the cultural life of his/her choice.

SPECIAL PROTECTION MEASURES

111 Article 22- Children outside their country of origin seeking refugee protection, unaccompanied asylum-seeking children, internally displaced children, migrant children and children affected by migration

Refugees and asylum seekers are by definition vulnerable, but refugee children are especially so. There is a total of 149,387 registered refugee children and children seeking refugee status. In Dadaab refugee camp there is an estimated 72,561 while in Kakuma there is an estimated number of 76,826 and in Nairobi 16,207.

- Ensure that Free Primary and Secondary Education funds cater for the extra school levies being charged by schools.
- Through the Treasury increase budgetary allocation to the provision of sanitary towels under the Ministry of Education National Schools Sanitary Towels Program, in a bid to ensure that all girls in ASAL, pockets of poverty and urban slums are able to access the sanitary towels. This will enhance girl child education which has been a growing concern in these areas.
- Ensure that there are adequate incentives for teachers working in ASAL areas, particularly for female teachers as a retention mechanism.
- Adopt inclusive education as a critical approach towards implementing Education in the country so as to ensure that all children including those with special needs and in particular children with disability access quality education.
- Provide adequate funding to the Education Assessment Resource Centres to facilitate early identification and school placement of learners with disabilities.
- Incorporate a compulsory unit on Special Needs Education in the Teacher Training Curriculum. This will ensure every teacher has basic skills on special needs education and therefore able to articulate inclusive education.
- Strengthen vocational training centers and other programs that would facilitate acquisition of skills by children who are out of school including those unable to transit to higher levels of education.
- Hold planning officers responsible for land that is sold to private developers and also that also ensure that land is set aside for recreation facilities.
- Incorporate the right to play as a critical approach to Early Childhood Development Programs.
- The Ministry of Education should ensure full implementation of co-curricular activities which should be enjoyed by all children including those in upper primary and secondary schools.

40 http://www.opensocietyfoundations.org/moving-walls/19/kenyas-nubians-then-now
41 http://acerwc.org/
42 UNHCR Akinjru/Dadaab - Kenya, Population Statistics by Country of Origin, Sex and Age Group, as at 28 Feb 2014
43 UNHCR Kakuma, Population Statistics by Country of Origin, Sex and Age Group, as at 28th Feb 2014
44 UNHCR Nairobi, Population Statistics by Country of Origin, Sex and Age Group, as at 11th Feb 2014
The high influx of South Sudanese asylum seekers into Kakuma refugee camp has revealed several protection gaps such as lack of adequate protection services available for children, including inadequate number of case workers, foster parents, weak referral pathways among agencies, lack of education services and satellite field officers and logistics to enable efficient and effective case management.

Despite parents tracing being recognized as a right for unaccompanied minors and separated children in The Refugee Act and Children Act, the process is not taking place thus exacerbating the protection challenges for these vulnerable children in refugee and displacement situation.

Women and children comprise the largest population in Kenya’s refugee camps and are also notably susceptible to sexual violence, human trafficking, as well as maternal and reproductive health difficulties.

Lifting tuition fees for primary education for Kenyan citizens but not for foreigners, as provided in The Basic Education Act 2013, may potentially make education inaccessible for refugee children in the urban areas, thus denying them their right to education.

Despite the decision and recommendations given by the African Committee of Experts on the Rights and Welfare of the Child in the Nubian Case, Kenya has not fulfilled its obligations in ensuring that it recognizes the right to Kenyan nationality, property rights and provision of equal access to education and health care to children of Nubian descent.

There is lack of sufficient data to fully understand the challenges that internally displaced children face after the enactment of The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Persons and Affected Communities Act, 2012.

**Recommendation to the state:**

- The Government of Kenya in partnership with refugee agencies should establish Safe spaces and playgrounds in each of the reception centres and in the new camp site in Kakuma. Training and incentive provision for local teachers to meet the education needs following the influx of children.
- An amendment of the Basic Education Act should be done so that refugee children are not discriminated in the provision of free tuition in public schools.
- That Kenya takes all necessary administrative, legislative and other measures to ensure that children of Nubian descent in Kenya who are stateless acquire Kenyan nationality and the proof of such nationality at birth.
- The Commissioner of Refugee Affairs should take up its role under The Refugee Act to assist children trace their parents or other member of the family for information necessary to reunify them. In case where reunification is not achieved, the children shall be accorded the same protection as any other children deprived of their family whether permanently or temporarily.
- Full implementation of the functions of the National Consultative Coordination Committee on Internally Displaced Persons (IDPs) and especially conduction of a national profile exercise designed to identify the needs for children in IDP camp or integrated settings.

**11.2 Article 32: Economic exploitation, including child labour, with specific reference to applicable minimum ages**

The Children’s Act guarantees protection of children from exploitation, including trafficking, hazardous child labor, prostitution, illicit activities; however, child labour as defined by the Children’s Act only applies to labor in exchange for payment. Unpaid child workers do not benefit from these protections.

The Employment Act sets the minimum age for employment at 16 and the minimum age for hazardous work at 18, also prohibits the employment of children under the age of 18 in the worst forms of child labor. Children between the ages of 13 and 15 may perform light work. In addition, the Industrial Training Act allows minors under age 15 to apprentice in an industrial undertaking without setting a minimum age.

The Basic Education Act prohibits the employment of school going age and prescribes a punishment in contravention of the same. There are an estimated three to four million child laborers in Kenya, many whom work in hard conditions, negatively affecting their health, education and development. In some sectors of the Kenyan economy, children comprise 70 percent of the labor force, many working in violation of national and international laws.

The Government also drafted, but did not adopt, the National Policy on Child Labor, which seeks to eliminate child labour by 2015.

Children in Kenya continue to engage in child labour in agriculture and fishing. Moreover, gaps in legislation persist, including the lack of protection for children performing non contractual work. Kenya also has not yet adopted its draft list of hazardous work prohibited to children or committed sufficient resources to enforcement efforts.

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45 pediatric counselors and social workers
46 The Refugee Act, 2006 Section 23
47 The Children Act 2001 Section 6 (3)
50 Section 10 Children Act
52 S 38 Basic Education Act
53 https://www.crowdrise.com/africachildabuseprevention
Recommendation to the state:

- To harmonize all child labour laws and align them to the constitution and all the provisions of the ILO conventions that Kenya has ratified.
- To finalize and implement the child labour policy.
- To make provisions for definition of light work and hazardous work.
- Ratify the CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography
- Ensure that relevant child labour laws and regulations apply equally to children working in no contractual employment and contractual employment

11.3 Article 37(a): Sentencing of children, in particular the prohibition of capital punishment and life imprisonment and the existence of alternative sanctions based on a restorative approach

The Children Act, 2001 prohibits capital punishment on children and this is in practice too. Often the Courts will pass a supervised non-custodial sentences on child offender(s), particular where they were in remand during the adjudication of their matter.

11.4 Children deprived off their liberty, and measures to ensure that any arrest, detention or imprisonment of a child shall be used as a measure of last resort and for the shortest appropriate time and that legal and other assistance is promptly provided: Article 37(b)-(d)

Article 77 of the Children Act, 2001 provides that the court ‘may’ where the child is unrepresented order that the child be given

Recommendations to the state:

- There is need for organized and coordinated efforts by the state, community members, alternative care providers and civil society organizations that are responsible for the care and protection of separated and lost children. All organizations and authorities involved in family tracing and reintegration should use the same approach that should be developed and sanctioned by the State. This will ensure appropriate cooperation and information sharing and minimize duplication of activities and resources.56

11.6 Article 39: Children in armed conflicts

The state has not extensively prepared its citizenry for emergency situations. Article 39.4 gives states the mandate in line with their humanitarian law, to protect civilian population in armed conflict.

Chapter 16 of the Guidelines57 also details specifications and regulations for unaccompanied and separated minors but gives a close reference to the ICRC guidelines58. There is therefore an enormous need for the State to have its own set of guidelines in this regard. Section 10.3 of the Children Act, Kenya indicates that no child should take part or be recruited in armed conflict, Section 10.4 also indicates that it is the responsibility of the State to provide protection, rehabilitation care, recovery, and integration into normal social life for any child

who may become a victim of armed conflict or natural disaster. The act is silent on the measures that should be used in ensuring protection of the children exposed to armed conflict and emergency situations.

54 Law Society of Kenya; The CRADLE – The Children Foundation; Pendekezo Letu
55 Cap 141 Laws of Kenya
56 Guidelines for the Alternative Family Care of Children in Kenya, Government document to be launched by the NCCS on 16th March 2016
57 Guidelines for the Alternative Family Care of Children in Kenya
Recommendation to the state:

- Make special provision in legislation and or a national policy for the care of all children, and give a special focus disabled children, during emergency situations\textsuperscript{59}.
- Create awareness and training of the communities on childcare and protection during emergencies.
- There is need to improve individualized care solutions through the government support\textsuperscript{60}

11.6 Article 40-Administration of juvenile justice

Administration of Justice, the existence of specialized and separate courts and the applicable Minimum age of Criminal Responsibility-In Kenya specialized children courts have been created with specialized magistrates gazetted to deal with children matters. The prosecutors however need to be trained on how to handle children on conflict with the law and those that are brought to court in need of care and protection. The age of criminal responsibility remains at 8 years below the accepted international minimum of 12 years old.

The state has in the past received the recommendation on the need to raise the age of criminal responsibility to 12 years but has not done so since the Children Amendment Act that aims at inter alia raising the criminal responsibility has been pending before the National assembly for awhile.

Recommendations to the State:

- Enact and pass into law the Children Amendment bill
- Raise the age of criminal responsibility from 8 years to 12 years
- Put in place a Legal aid scheme to protect the rights of children who are in conflict with the law
- Train all prosecutors dealing with cases of children in conflict with the law.

\textsuperscript{59} There are currently no laws on the same. Current practice is the reliance of manuals and guidelines from NGO’s
\textsuperscript{60} http://www.sos-childrensvillages.org/getmedia/e69d1d87-6e6d-4978-b566-f45e9f6db8d0/Kenya-small.pdf Assessment report for the Alternative care system for children in Kenya 2014
Concluding Recommendation
I. Introduction

1. The Committee considered the combined third to fifth periodic reports of Kenya (CRC/C/KEN/3-5) at its 2085th and 2087th meetings (see CRC/C/SR.2085 and 2087), held on 21 January 2016, and adopted the following concluding observations at its 2104th meeting (see CRC/C/SR.2104), held on 29 January 2016.

2. The Committee welcomes the submission of the combined third to fifth periodic reports of the State party and the written replies to the list of issues (CRC/C/KEN/Q/3-5/Add.1), which allowed for a better understanding of the situation of children’s rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the ratification of or accession to:

4. The Committee also notes with appreciation the adoption of the following legislative measures:
   (a) The Protection Against Domestic Violence Act (No. 2 of 2015);
   (b) The Victim Protection Act (No. 17 of 2014);
   (c) The Marriage Act (No. 4 of 2014), setting the minimum age for marriage at 18 years for all types of marriages;
   (d) The Persons Deprived of Liberty Act (No. 23 of 2014), which obliges the authorities to notify within 48 hours a parent or guardian of a child who is detained or deprived of liberty;
   (e) The Basic Education Act, in 2013;
   (f) The Citizenship and Immigration Act, in 2011, which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children;
   (g) The Prohibition of Female Genital Mutilation Act, in 2011;
   (h) The Constitution of Kenya, revised in 2010, which stipulates the right of the child to have his or her best interests taken as a primary consideration.

5. The Committee also welcomes the following policy measures:
   (a) The National Plan of Action for Children, 2015-2022;
   (b) The National Plan of Action for Children, 2008-2012;

III. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44 (6)

The Committee’s previous recommendations

6. The Committee recommends that the State party take all necessary measures to address its previous recommendations of 2007 (CRC/C/KEN/CO/2) that have not been implemented or sufficiently implemented, in particular those related to non-discrimination (para. 25), corporal punishment (para. 35), harmful traditional practices (para. 54) and administration of juvenile justice (para. 68).

Legislation

7. The Committee welcomes the adoption in 2010 of the revised Constitution, which explicitly recognizes certain rights of the child. However, the Committee remains concerned that the harmonization of national legislation, including the Children Act (2001), with the Convention and the Constitution has not been completed.

8. The Committee urges the State party to expedite the completion of the harmonization of national legislation and
regulations with the Convention, including by adopting new legislation to replace the Children Act (2001), and to ensure the active and meaningful participation of children and civil society organizations in elaborating the new legislation.

**Comprehensive policy and strategy**

9. The Committee welcomes the adoption and implementation of the National Plan of Action for Children, 2008-2012, and its positive outcomes, in particular in the areas of health and education. However, the Committee is concerned that substantial information on the National Plan of Action for Children, 2015-2022, was not provided, including how the Plan will be financed, how the service delivery gap caused in the process of devolution will be addressed, and the persistent inequality in the enjoyment of the rights of the child.

10. The Committee recommends that the State party allocate adequate resources for the implementation of the National Plan of Action for Children, 2015-2022, that it ensure coordination between the national and county levels to minimize the service delivery gap in transitioning to the devolved system of governance and that it place greater focus on reducing inequality in the enjoyment of the rights of the child.

**Allocation of resources**

11. The Committee notes that the amount of budget allocation to the social sectors has increased during the period under review. However, the Committee is concerned that:

   (a) Increased budget allocations in certain areas, including education and social protection, still do not match the overwhelming needs in these sectors;

   (b) No measures have been taken on budget tracking from a child rights perspective, either at the national level or at the level of devolved governments;

   (c) Despite the efforts made to eradicate corruption, it remains pervasive in the State party and continues to divert resources that are necessary for implementation of the rights of the child.

12. In the light of its day of general discussion in 2007 on resources for the rights of the child and the responsibility of States, the Committee recommends that the State party:

   (a) Increase and prioritize allocations to ensure the implementation of the rights of the child at all levels, including at devolved counties’ level, in order to fully implement article 4 of the Convention;

   (b) Apply budget tracking from a child-rights perspective, both at the national and devolved counties’ levels, with a view to monitoring the adequacy, efficacy and equity of the distribution of resources allocated for children;

   (c) Build the capacity of devolved counties to deliver services for children, including by developing standards and guidance on management of human and financial resources;

   (d) Take immediate and more effective measures to combat corruption and strengthen institutional capacities to effectively detect, investigate and prosecute corruption, including in the health-care, education, justice and law enforcement sectors;

   (e) Seek technical assistance from, inter alia, the United Nations Children’s Fund (UNICEF) in this regard.

**Data collection**

13. The Committee notes that a number of information management systems on several aspects of the rights of the child are being developed. However, the Committee remains concerned that there is neither a comprehensive system to monitor and track the realization of all rights of the child at the national and county levels, nor a sufficient disaggregation of the data on children to enable planning and resource allocation.

14. With reference to the Committee’s general comment No. 5 (2003) on general measures of implementation, the Committee recommends that the State party:

   (a) Expedite establishment of a comprehensive data collection system that covers all areas of the Convention, including those relevant to child poverty, both at the national and county levels;

   (b) Ensure disaggregation of data by age, sex, disability, geographic location, ethnic origin and socioeconomic background in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability and children in conflict with the law, and actively use such analysis for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention;

   (c) Take into account the conceptual and methodological framework set out in the Office of the United Nations High Commissioner for Human Rights (OHCHR) publication entitled Human Rights Indicators: A Guide to Measurement and Implementation when defining, collecting and disseminating statistical information;

   (d) Seek technical cooperation with, among others, UNICEF, the International Labour Organization (ILO), OHCHR and regional mechanisms in this regard.

**Independent monitoring**

15. The Committee welcomes the re-establishment of the Kenya National Commission on Human Rights in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). However the Committee remains concerned that the Commission continues not to place specific emphasis on the rights of children in discharging its mandate.
With reference to the Committee’s general comment No. 2 (2002) on the role of independent human rights institutions in the promotion and protection of the rights of the child, the Committee reiterates its recommendations that the State party:

(a) Ensure that the Kenya National Commission on Human Rights pays special attention to the concerns of children, for example by establishing a children’s rights unit which is in charge of promotion and protection of the rights of the child;

(b) Allocate adequate human and financial resources to the Kenya National Commission on Human Rights to enable it to discharge all of its mandated activities in line with the Paris Principles.

Cooperation with civil society

The Committee notes as positive the participation of civil society organizations in the monitoring of the implementation of the Convention through the National Council for Children’s Services. However, the Committee is concerned that the Public Benefits Organizations Act (2013) which prescribes the governance of civil society organizations has not been implemented and notes that there is concern that it may be amended with provisions that could undermine the activities of civil society organizations.

The Committee recommends that the State party expedite the implementation of the Public Benefits Organizations Act (2013) and that it foster a conducive environment for, and the independence of, civil society organizations working on children’s rights.

Children’s rights and the business sector

The Committee is concerned that the weak regulation of activities of business enterprises results in:

(a) Illegal acquisition of public lands, including the premises of public schools, by private individuals and business enterprises;

(b) Illegal dumping of toxic wastes and other forms of environmental pollution, which have a serious impact on children’s health;

(c) Wide prevalence of child labour, including the commercial sexual exploitation of children, and human trafficking for child labour.

With reference to the Committee’s general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, the Committee recommends that the State party:

(a) Establish a clear regulatory framework for business enterprises operating in the State party to ensure that their activities do not negatively affect child rights or breach environmental, health or labour standards, especially those relating to children;

(b) Monitor the compliance of business enterprises with such regulations, as well as with international and national environmental, health and labour standards, and sanction appropriately and provide remedies when violations occur;

(c) Be guided by the United Nations Guiding Principles on Business and Human Rights (see A/HRC/17/31, annex).

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

The Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly in respect of girls, children with disabilities, children with HIV/AIDS, refugee children, indigenous children, Nubian children, children in street situations and children from disadvantaged or marginalized families.

The Committee urges the State party to:

(a) Revise all its legislation and policies in order to bring them into full compliance with article 2 of the Convention, and ensure full implementation of all legal provisions and policies;

(b) Intensify efforts to eliminate discrimination, particularly patriarchal attitudes and gender stereotypes, and ensure that a wide range of stakeholders, including girls and all sectors of society, are involved in such efforts so as to facilitate social and cultural change and to create an environment that promotes equality.

Best interests of the child

The Committee welcomes recognition in the Constitution of the right of the child to have his or her best interests taken as a primary consideration. However, the Committee is concerned that this right is often not respected in informal justice systems or in dispute resolution outside of courts of justice, in particular with regard to cases of sexual offences.

With reference to the Committee’s general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is consistently applied in all judicial proceedings and decisions, including formal and informal justice systems and other forms of dispute resolution, such as mediation, that are relevant to and have an impact on children. The Committee further recommends that the State party ensure that this right is also consistently applied in all legislative and administrative proceedings and decisions, as well as in all policies, programmes and projects that are relevant to or have an impact on children. The State party is therefore encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving this due weight as a primary consideration.
Right to life, survival and development

25. The Committee is seriously concerned about killings of, and trafficking of, children with albinism for body parts, including about such acts that are committed by family members.

26. The Committee urges the State party to:
   (a) Adopt a comprehensive strategy, including awareness-raising, to fully ensure the immediate and long-term protection of children with albinism and to address the root causes of the violence they suffer;
   (b) Strengthen awareness-raising campaigns against superstitious beliefs concerning children with albinism;
   (c) Expedite the investigation and prosecution of all cases involving children with albinism so that no perpetrator can escape with impunity, and provide the victims with rehabilitation and redress.

Respect for the views of the child

27. The Committee welcomes the establishment of the Kenya Children's Assembly at national, county and sub-county levels. Nevertheless, the Committee is concerned that the Children's Assembly is not open or accessible to certain groups of children, such as refugee children and children with disabilities.

28. With reference to the Committee's general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:
   (a) Make the Children's Assembly at national, county and sub-county levels open and accessible to all children in the State party without discrimination, including refugee children and children with disabilities;
   (b) Actively involve children at national and county levels, including through the Children's Assemblies, in the development of law, policy and budget relevant to children's issues and in the monitoring of their implementation.

C. Civil rights and freedoms (arts. 7, 8 and 13-17)

Birth registration and nationality

29. The Committee welcomes the adoption of the Citizenship and Immigration Act (2011) which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children, as well as the substantial increase in the number of birth registrations. Nevertheless, the Committee is concerned that:
   (a) Free and universal birth registration has not been achieved;
   (b) The proportion of births registered has been stagnating in recent years, with substantially lower rates of birth registration in rural and remote areas;
   (c) Some groups of children, such as refugee children, children of Nubian descent, Makonde children, indigenous Somali children in Kenya, children with mothers in custody and intersex children, face difficulty in obtaining birth registration;
   (d) Children of stateless persons and migrants aged between 8 and 18, including those who belong to the Nubian, Pemba, Galj'el and Makonde communities, may not have obtained Kenyan nationality despite the measures introduced in the Citizenship and Immigration Act (2011).

30. The Committee urges the State party to:
   (a) Expedite the adoption of a law that provides for universal and free birth registration at all stages of the registration process;
   (b) Further strengthen various efforts to ensure the birth registration of all children, in particular in rural and remote areas, including through mapping out and registering those who have not been registered at birth;
   (c) Implement effectively the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012), and finalize the draft policy on internally displaced persons and a set of regulations to operationalize the Act;
   (d) Consider acceding to the Convention relating to the Status of Stateless Persons, of 1954, and to the Convention on the Reduction of Statelessness, of 1961;
   (e) Fully implement the decision of the African Committee of Experts on the Rights and Welfare of the Child in the case entitled “Institute for Human Rights and Development in Africa and Open Society Justice Initiative on behalf of children of Nubian descent in Kenya v. the Government of Kenya” (decision No. 002/Com/002/2009);
   (f) Seek technical assistance from the Office of the United Nations High Commissioner for Refugees and UNICEF, among others, for the implementation of these recommendations.

Freedom of expression, association and peaceful assembly

31. The Committee notes that the Constitution (2010) guarantees freedoms of expression, association and peaceful assembly to all Kenyans. Nevertheless, it is concerned that the exercise of these freedoms by children is not always fully respected in practice, such as in cultural activities in which children may express their political view or in demonstrations organized by children.

32. The Committee recommends that the State party take all measures to fully guarantee freedoms of expression, association and peaceful assembly for boys, girls and adolescents, as provided under the Constitution and the Convention, including through raising the awareness and building the capacity of families, teachers and government officials to respect these freedoms of children.
D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Freedom of the child from all forms of violence

33. The Committee welcomes the enactment of the National Police Service Act (2011) which prohibits torture and degrading treatment by the police, the Basic Education Act (2013) which outlaws corporal punishment at schools, the Protection Against Domestic Violence Act (2015) and the Prevention of Female Genital Mutilation Act (2011). The Committee also welcomes the establishment of toll-free, 24-hour child helplines. Nevertheless, the Committee is concerned at:

(a) Repeated reports of police violence against children, including at Langa’ata Road primary school and Dadaab refugee camp;
(b) The high prevalence of domestic violence against boys and girls, and of gender-based violence against girls, including sexual and physical violence in both the public and domestic spheres;
(c) The persistent practice of corporal punishment at home and in schools despite its prohibition under the Constitution, and some legislation authorizing corporal punishment that is still pending for revision;
(d) Lack of access to justice for child victims of violence, particularly in cases of sexual violence and harmful practices, due to social stigma, pressure from family members, low rates of investigation and prosecution, frequent delays in court proceedings, lenient sanctions imposed, the risk of revictimization in the justice system and the lack of legal aid and other supports;
(e) The limited support available for child victims of violence and girls escaping from harmful practices, including the provision of safe accommodation and support for access to education.

34. With reference to the Committee’s general comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence, and/or general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:

(a) Develop a comprehensive national strategy and a national coordinating framework to prevent and address all forms of violence against children;
(b) Enforce effectively the National Police Service Act (2011) to prevent and prohibit ill-treatment of children by the police and investigate thoroughly and promptly all allegations so as to ensure that perpetrators are held accountable;
(c) Revise all laws and regulations authorizing corporal punishment, promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment, and raise the awareness of parents, guardians, teachers and the general public about the negative impact of corporal punishment on children;
(d) Promptly investigate, prosecute and punish perpetrators of all forms of violence against children in accordance with the severity of the violation, and actively discourage the use of mediation in cases of sexual violence and domestic violence;
(e) Provide legal aid to child victims of violence and children who need protection;
(f) Reinforce sustainable public education and awareness-raising on the harmful effects of violence against children, including corporal punishment, harmful practices and domestic violence;
(g) Establish more child protection centres for child victims of violence and children in need of care and protection, including those fleeing from harmful practices, and allocate adequate human, technical and financial resources to the provision of protection and support services.

Harmful practices

35. The Committee is concerned that despite its legal prohibition, harmful practices such as female genital mutilation, child marriage and “beading” of girls are still persistent. The Committee is also concerned that the medicalization of female genital mutilation has reportedly increased.

36. The Committee urges the State party to:

(a) Enforce effectively the prohibition of female genital mutilation, including that practised by health practitioners, child marriage, and other forms of harmful practices;
(b) Continue efforts to address the root causes of such practices and implement culturally appropriate measures to eliminate them;
(c) Prohibit any out-of-court settlements in cases of harmful practices.

Sexual exploitation and abuse

37. The Committee is concerned about the high level of child prostitution and child pornography, particularly in the tourism and travel sector.


E. Family environment and alternative care (arts. 5, 9-11, 18 (1 and 2), 20, 21, 25 and 27 (4))

39. The Committee welcomes the recognition under the Constitution (2010) of the equal rights of children born within and out of wedlock. However, the Committee is concerned that:
(a) The Marriage Act (2014) legally recognizes polygamous marriage concluded under Islamic or customary law as well as other discriminatory practices which undermine equal parenting rights and responsibilities between women and men and have adverse effects on children, especially girls;
(b) There is still a large unmet need among parents, including teenage parents, for parenting skills and education;
(c) There is weak enforcement of court orders on child maintenance within the State party and abroad.

40. The Committee recommends that the State party:
   (a) Repeal all provisions in family laws, including the Marriage Act (2014), that discriminate against women and have a negative impact on their children, such as those that authorize polygamy, and prohibit other discriminatory practices that have an adverse impact on women and children, such as “wife inheritance”;
   (b) Provide further support to families, including teenage parents, in the form of family counselling, parenting education and the provision of financial allowances;
   (c) Take effective measures to enforce child maintenance orders both within the State party and abroad, including by providing public legal aid to parents and caregivers seeking maintenance for children under their responsibility, and consider ratifying or acceding to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

Children deprived of a family environment

41. The Committee is concerned that:
   (a) The State party still has a large number of orphans and vulnerable children who are deprived of a family environment, and a large number of children are living in care institutions despite the Government’s policy to prioritize family-based care for children;
   (b) The majority of childcare institutions, such as the Charitable Children’s Institutions, are not yet registered, the inspection and monitoring of the care provided at childcare institutions are weak, and there is no complaints mechanism through which children can denounce violence in care institutions.

42. Drawing the State party’s attention to the Guidelines for the Alternative Care of children (General Assembly resolution 64/142, annex), the Committee recommends that the State party:
   (a) Ensure adequate safeguards and clear criteria, based on the needs as well as best interests of the child, for determining whether a child should be placed in alternative care;
   (b) Support and facilitate family-based care for children wherever possible and establish a system of foster care for children who cannot stay with their families, with a view to reducing the institutionalization of children;
   (c) Expedite the registration of all Charitable Children’s Institutions, ensure thorough and transparent periodic reviews of the placement of children in foster care and institutions, and monitor the quality of the care therein, including by providing accessible channels for reporting, monitoring and remedying maltreatment of children.

Adoption

43. While the Committee notes the information provided by the State party that it will lift a moratorium on national adoption shortly, the Committee is concerned that the amendment of laws and regulations on adoption, including relevant provisions under the Children Act (2001), is still pending.

44. The Committee urges the State party to expedite the amendment of the Children Act (2001) and other regulations on adoption in line with article 21 of the Convention. The Committee also recommends that the State party accelerate the harmonization of national legislation with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and ensure that all safeguards provided in the said Hague Convention are met when children are adopted to countries that are not parties to the said Hague Convention.

F. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1-3) and 33)

Children with disabilities

45. The Committee notes that progress has been made in relation to early detection, prevention and mitigation of disabilities. However, the Committee is concerned that:
   (a) Children with disabilities, in particular those living in rural areas, are often stigmatized, confined at home, denied opportunities for development or abandoned;
   (b) There is a lack of the disaggregated data that are necessary for designing a comprehensive strategy for the inclusion of children with disabilities;
   (c) Many mainstream schools are not equipped for inclusive education, some refuse admission to children with disabilities, and specialized schools are not available, accessible or affordable;
   (d) Health care and reasonable accommodation for children with disabilities are mainly unaffordable.

46. With reference to the Committee’s general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to adopt a human rights-based approach to set up a comprehensive strategy, based on disaggregated statistical data, for the adoption of children with disabilities. It also recommends that the State party:
(a) Intensify measures, including awareness-raising, to combat stigma against children with disabilities, including children with psychosocial or intellectual disabilities, and to encourage parents of children with disabilities to support the fullest possible social integration and individual development of their children, in particular in rural areas;

(b) Give priority to inclusive education at mainstream schools over special schooling and allocate adequate human, financial and technical resources for schools to provide inclusive education in an effective way, including for refugee children with disabilities;

(c) Fully implement the Persons with Disabilities Act (2003) in line with article 23 of the Convention and the Convention on the Rights of the Persons with Disabilities and ensure that children with disabilities have effective access to health services, including rehabilitation services, free of charge whenever possible.

**Health and health services**

47. The Committee notes the reduction in under-five mortality and the initiatives for making health care for children under five and maternity health free of charge. Nevertheless, the Committee remains concerned that:

(a) Devolution reform has negatively affected the provision of health services around the country;

(b) Financing for the provision of health-care services relies heavily on external sources, including funding for HIV/AIDS, which undermines the sustainability of service deliveries;

(c) Costs for health-care services remain a barrier for accessing basic health-care services;

(d) Regional disparities have increased regarding newborn mortality and under-five mortality, with significantly higher mortality in the arid, semi-arid and rural areas;

(e) As noted during the constructive dialogue, child immunization coverage is declining, partly due to objections against child vaccination campaigns by some members of the Catholic Church.

48. With reference to the Committee’s general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the State party:

(a) Take measures to ensure that there will be no disparities among counties in providing quality and timely health services;

(b) Progressively expand the coverage of free health care for children to children above 5 years of age and expand the free maternity health care to outpatient care, with a focus on eliminating geographical disparities;

(c) Increase the overall national and county budget allocations to the health sector to move progressively towards the target in the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases of 15 per cent, in order to strengthen the sustainability of the national health system;

(d) Reinforce its effort to reduce child mortality, focusing on reducing child mortality in arid and semi-arid and rural areas. Take guidance from the OHCHR technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age (A/HRC/27/31) in this regard;

(e) Intensify efforts to vaccinate all children under the age of 1, in line with international standards, with a focus on children belonging to pastoral and other mobile communities;

(f) Seek financial and technical assistance from UNICEF and the World Health Organization, among others, in this regard.

**Adolescent health**

49. The Committee is concerned that:

(a) The rates of early pregnancy and of maternal mortality among adolescents, including due to unsafe abortions, remain high, with a restrictive and inconsistent legal framework on abortion undermining adolescents’ access to safe and legal abortion and post-abortion care. Pregnant girls face discrimination in accessing maternity health care, due to its cost as well as to the negative attitude of health-care workers against them, and the lack of quality health-care services tailored to them;

(b) The level of drug and substance abuse among young people is high.

50. With reference to the Committee’s general comment No. 4 (2003) on adolescent health and development, the Committee recommends that the State party:

(a) Reinforce its efforts to prevent teenage pregnancies, unsafe abortions and sexually transmitted diseases, including HIV/AIDS, and provide care for those affected. In this regard, pay particular attention to the underlying factors, such as gender inequality, sexual violence, harmful practices, not finishing education, limited social protection, and lack of access to age-appropriate and quality sexual and reproductive health education and information and supportive health services;

(b) Decriminalize abortion in all circumstances and review its legislation with a view to ensuring that girls have access to safe abortion and post-abortion care services and that their views are always heard and respected in abortion decisions, and provide clear guidance to health practitioners and information to adolescents on safe abortion and post-abortion care;

(c) Fully implement free maternity health care and combat discrimination against pregnant teenagers, adolescent mothers and their children;
(d) Take guidance from the OHCHR technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22);
(e) Implement education programmes and campaigns to promote healthy lifestyles and to prevent drug and substance abuse by children, monitor the use of drugs and other substances at schools with the participation of children, and develop accessible and youth-friendly drug and substance dependence treatment and harm reduction services as well as life skills education.

**HIV/AIDS**

51. The Committee notes the intensive policy and programmatic efforts made by the State party on prevention and care with regard to HIV/AIDS during the period under review. However, it is concerned that:
   (a) Prevalence and new infections of HIV/AIDS among children remain high, with high levels of mortality among adolescents, limited access to antiretroviral therapy, and a stagnation of progress in reducing mother-to-child transmission;
   (b) Stigma and discrimination against children living with HIV/AIDS remain persistent, leading to neglect and abandonment of children.

52. With reference to the Committee’s general comment No. 3 (2003) on HIV/AIDS and the rights of the child, it recommends that the State party:
   (a) Strengthen its efforts to combat the spread and effects of HIV/AIDS by effectively implementing relevant national policies, strategies, guidelines and programmes on HIV/AIDS, and scale up efforts to prevent new HIV infections in children, including through mother-to-child transmission;
   (b) Systematically provide comprehensive information about HIV/AIDS and sex education to youth, including confidential counselling and testing and the promotion of modern contraceptive use;
   (c) Take effective measures to combat stigma and discrimination against children living with or affected by HIV/AIDS, including in access to health care and education, inheritance and the family environment;
   (d) Ensure active participation by children and adolescents living with or affected by HIV in the development and implementation of relevant programmes and strategies.

**Breastfeeding**

53. The Committee is concerned about the lack of systematic follow-up regarding the nourishment of infants and breastfeeding, which has brought down the exclusive breastfeeding rate of children under 6 months to 33 per cent. It is also concerned about partial application of the regulation on breast milk substitutes. The Committee also notes that women working in the informal sector are not covered by the maternity leave regulation.

54. The Committee recommends that the State party establish measures to accelerate adequate nourishment of children and breastfeeding, by sensitizing society through awareness-raising campaigns, building the capacity of health sector professionals, supporting breastfeeding mothers with specialists, revitalizing the “Child-Friendly Hospitals” initiative, and fully implementing the International Code of Marketing of Breast-milk Substitutes.

**Standard of living**

55. The Committee welcomes the explicit recognition of the rights to housing, sanitation, food, water and social security in the Constitution (2010), the decrease in the proportion of malnourished children, and the significant increase in the number of children covered by the Cash Transfer Programme for Orphans and Vulnerable Children. Nevertheless, the Committee is concerned that:
   (a) Many of the laws, policies and strategies to operationalize constitutional rights to housing, sanitation, food, water and social security have not been adopted and implemented;
   (b) Major geographical disparity exists in the enjoyment of the rights to housing, sanitation, food, water and social security, with worse conditions particularly in arid and semi-arid lands and in informal settlements in peri-urban and urban areas;
   (c) Forced evictions and displacements of people, including children, have taken place due to development projects and environmental conservation;
   (d) Lack of access to sanitation and safe drinking water, as well as persistent child malnutrition, including micronutrient deficiencies, pose a serious public health concern in respect of children, and contribute to recurring outbreaks of diseases such as cholera and to high child mortality;
   (e) The negative impact of climate change, combined with population growth and unsustainable development projects, is adding further pressure on children’s access to water and sanitation and on their food and nutrition security in arid and semi-arid lands;
   (f) The Cash Transfer Programme for Orphans and Vulnerable Children does not cover the cost of health care except in respect of children under 5 years of age, and allocates benefits by household regardless of the number of children in each household. Its coverage has not been extended to children with disabilities, children in street situations, children in care institutions and refugee children. Information on the programme is not well disseminated among beneficiaries.

56. The Committee recommends that the State party:
   (a) Enact legislation to operationalize constitutional rights to housing, sanitation, food, water and social security, including the Water Bill (2012) and the Social Protection Bill (2014);
The Committee commends the State party’s efforts to accept a large number of asylum seekers and refugees from neighboring countries. However, the Committee is concerned that the State party’s long-term encampment policy and certain proposals and responses to the heightened security situation in the State party do not fully respect and protect the rights of asylum-seeking and refugee children, including:

(a) Proposals on encampment of all asylum seekers and refugees in refugee camps and suspension of registration of asylum seekers in urban areas;

(b) Proposals on the closure of refugee camps;

(c) The relocation and deportation of refugees without due process, which has caused family separation and has left refugee children unaccompanied and has disrupted their education.

With reference to the Committee’s general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee urges the State party to:

(b) Strengthen focus on the above-mentioned rights in national development plans, in particular the rights to sanitation and water, and adopt and implement national policies and strategies to implement these rights, with an emphasis on eliminating geographic inequalities;

(c) Ensure that the policies, projects and practices on development and the governance of land, including those which may entail relocation, are in line with relevant international standards, including the basic principles and guidelines on development-based evictions and displacement (see A/HRC/4/18, annex 1) and with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, adopted by the Committee on World Food Security of the Food and Agriculture Organization of the United Nations in 2012;

(d) Build capacity of county governments and allocate sufficient human, technical and financial resources to strengthen the response and accountability of county governments to facilitate access to water and sanitation at the community level;

(e) Adopt policies and institutional arrangements to enhance a comprehensive, multisectoral and participatory approach to food and nutrition security addressing root causes of malnutrition, and reduce overreliance on external funding for food and nutrition security programmes at the national and county levels in order to strengthen their sustainability;

(f) In developing policies or programmes to address the issues of climate change and disaster risk management, including the National Adaptation Plan, integrate measures to protect children’s rights to housing, sanitation, food, water and health and ensure the full and meaningful participation of communities at risk, including children, at both the national and the county levels;

(g) Develop a social health insurance scheme covering all children living in poverty, including those with disabilities;

(h) Progressively expand, with a clear timeline, the Cash Transfer Programme for Orphans and Vulnerable Children in order to cover the costs for the health care of all beneficiaries and to cover a wider scope of vulnerable children, including children with disabilities, children in street situations, children in care institutions and refugee children.

G. Education, leisure and cultural activities (arts. 28-31)

Education, including vocational training and guidance

57. The Committee welcomes the increase in enrolment and completion rates in respect of primary and secondary education. However, the Committee is concerned about:

(a) The very low school enrolment and completion rates in the arid and semi-arid areas and in urban informal settlements, as well as the low retention rate of teachers in these areas which undermines the quality of education;

(b) Higher barriers faced by girls, compared to boys, in obtaining education, due to heavy domestic workloads, adolescent marriages and pregnancies, and negative societal attitudes towards the importance of educating the girl child, as well as unaffordable menstrual protection and sanitary wear and the lack of sanitation facilities in schools;

(c) The Basic Education Act (2013) allowing schools to charge tuition fees to non-Kenyan citizens;

(d) The low quality of education, and the rapid increase in private and informal schools, including those funded by foreign development aid, providing substandard education and deepening inequalities.

58. With reference to the Committee’s general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party:

(a) Prioritize the elimination of geographical and gender disparities through targeted programmes and resource allocations that improve primary access, completion rates, retention, and transition to secondary school;

(b) Guarantee the legal right to free compulsory education for all, without direct or hidden costs, including for non-Kenyan citizens such as, in particular, refugee children. In doing so, prioritize the provision of quality, free primary education at public schools over the provision of education at private schools, including informal low-cost schools, and regulate and monitor the quality of education provided by private schools in line with the Convention;

(c) Address the root causes of the low educational attainment of girls, including stereotypes that are discriminatory against girls, and harmful practices.

H. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40)

Asylum-seeking and refugee children

59. The Committee commends the State party’s efforts to accept a large number of asylum seekers and refugees from neighbouring countries. However, the Committee is concerned that the State party’s long-term encampment policy and certain proposals and responses to the heightened security situation in the State party do not fully respect and protect the rights of asylum-seeking and refugee children, including:

(a) Proposals on encampment of all asylum seekers and refugees in refugee camps and suspension of registration of asylum seekers in urban areas;

(b) Proposals on the closure of refugee camps;

(c) The relocation and deportation of refugees without due process, which has caused family separation and has left refugee children unaccompanied and has disrupted their education.

60. With reference to the Committee’s general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee urges the State party to:
(a) Ensure all security operations and policies relevant to asylum seekers and refugees comply fully with international human rights and refugee law which the State party has ratified, in particular the rights of the child;

(b) Ensure that returns of refugees, including refugee children, will not occur unless their returns are voluntary and carried out in safety and dignity;

(c) Revise the policy on long-term encampment of refugees and allow greater opportunities for refugees to reside outside designated areas;

(d) Uphold the rights of the child to family unification and to have his or her best interests taken as a primary consideration in all policies and procedures on refugees and asylum seekers.

61. The Committee welcomes the issuance of “refugee identity passes” to refugee children. However, the Committee is also concerned that individual identification cards, which are used as a basis for accessing social services such as education or health care, are issued only to those who are living in urban areas and are over 16 years old or recognized as unaccompanied or separated children.

62. The Committee recommends that the State party issue individual identity documentation to all refugee and asylum-seeking children regardless of their age, residence or status of family unification in order to guarantee their refugee or asylum-seeking status and their access to essential services.

Internally displaced children

63. The Committee welcomes the adoption of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012) to resettle people displaced by the 2007-2008 post-election violence. Nevertheless, the Committee is concerned that:

(a) Some internally displaced persons in Rift Valley, including children, remain in need of durable solutions and legal protection;

(b) Reconstruction of houses and public facilities has reportedly not commenced for persons displaced prior to 2007-2008 violence, such as those in Moyale and Marsabit.

64. The Committee recommends that the State party:

(a) Implement effectively the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012), finalize the draft policy on internally displaced persons, and issue regulations to operationalize the Act;

(b) Facilitate conflict resolution, peacebuilding, resettlement and reconstruction for persons displaced prior to the 2007-2008 violence, in accordance with the peace declaration of February 2014;

(c) Accede to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009).

Children in armed conflicts

65. The Committee is concerned about the “radicalization” of children and their recruitment into non-State armed groups, mainly due to the social and economic marginalization of certain religious or ethnic groups. The Committee is also concerned about:

(a) Certain counter-terrorism and security measures, such as mass raids, which do not comply with international human rights standards, including the Convention, and which have caused family separation, arbitrary detentions of children, and negative psychological impacts on children affected by the measures, such as fear and feelings of collective punishment;

(b) Increased attacks on educational institutions and teachers by non-State armed groups, leading to mass deserting by teachers and the closing down of schools in the affected areas.

66. The Committee urges the State party to:

(a) Enhance its efforts to prevent radicalization of children by prioritizing efforts to eliminate the social, economic and political marginalization of certain groups, in particular children and youth who belong to Muslim communities or to the Somali ethnic group;

(b) Ensure that counter-terrorism and security measures fully respect the rights of the child provided under the Convention and are sensitive to the potential negative impact on children who are affected by such measures. The Committee wishes to underline that measures that do not fully comply with human rights standards would be counterproductive and may contribute further to the radicalization of children;

(c) Implement the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, as the State party pledged under the Safe Schools Declaration (2015).

Children belonging to indigenous groups

67. The Committee is concerned about evictions of indigenous peoples from their lands under the pretext of national development and resource conservation, which have resulted in serious violations of the rights of indigenous children, aggravated by poverty, insecurity and conflict among indigenous communities.

68. With reference to the Committee’s general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to:
(a) Enact law to operationalize article 63 of the Constitution (2010) which recognizes community land, including ancestral lands and lands traditionally occupied by hunter-gatherer communities;

(b) Prevent evictions and displacement of indigenous peoples, including pastoralists, hunger-gatherers and forest people, and provide redress to those evicted or displaced from their lands;

(c) Put in place measures for early detection and timely interventions in cases of conflict in areas occupied by indigenous peoples, through peaceful dispute resolution measures and addressing the root causes of these conflicts;

(d) Consult and cooperate in good faith with the indigenous peoples concerned, including indigenous children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights;

(e) Consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and formally endorse the United Nations Declaration on the Rights of Indigenous Peoples.

Children in street situations

69. The Committee is concerned about the increasing number of children in street situations and about the apparent lack of adequate protection measures in place in the State party. The Committee therefore recommends that the State party:

(a) Undertake a systematic assessment of the situation of children in street situations in order to obtain an accurate picture of the root causes and magnitude;

(b) Develop and implement, with the active involvement of the children themselves, a comprehensive policy which should address the root causes, in order to prevent and reduce this phenomenon;

(c) In coordination with non-governmental organizations (NGOs), provide children in street situations with the necessary protection, including a family environment, adequate health-care services, the possibility to attend school and other social services;

(d) Support family reunification programmes, when that is in the best interests of the child.

Economic exploitation, including child labour, and trafficking

71. The Committee is concerned about the high level of economic exploitation of children in the State party, including:

(a) Worst forms of child labour, such as illicit drug trafficking, begging and scavenging;

(b) Reports of the increasing employment of children as domestic workers.

72. The Committee recommends that the State party:

(a) Harmonize all legislation on child labour with the Convention and with the ILO conventions that the State party has ratified;

(b) Expand the application of legal protection from child labour to children working in non-contractual employment;

(c) Amend the Employment Act so that children participating in apprenticeships are prohibited from engaging in unsafe industrial undertakings;

(d) Pay special attention to combating the use of children as domestic workers;

(e) Adopt and implement the Child Labour Policy and the List of Hazardous Occupations Prohibited for Children;

(f) Consider ratifying the ILO Domestic Workers Convention, 2011 (No. 189);

(g) Seek technical assistance from ILO in this regard.

Sale, trafficking and abduction

73. The Committee notes the statement of the State party, made at the dialogue, that trafficking of children for various purposes is a serious concern in the State party. The Committee recommends that the State party implement effectively the Counter Trafficking in Persons Act (2010).

Administration of juvenile justice

75. The Committee welcomes the efforts made to increase the number of and to rehabilitate courtrooms, and to increase the number of magistrates to adjudicate on matters concerning children. However, the Committee is alarmed that the minimum age of criminal responsibility is still set at 8 years of age, which is well below acceptable international standards. The Committee is also concerned about the following:

(a) Only limited progress has been achieved in establishing a functioning juvenile justice system;

(b) Children are still treated as adults and held together with adults;

(c) There is insufficient information on personnel with specialized training in juvenile justice, including lawyers, judges, prosecutors and public defenders, and correctional officers;

(d) There is insufficient information on legal assistance provided to children in conflict with the law, diversion programmes, and alternatives to detention such as community service and probation.

76. With reference to the Committee’s general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system into line with the Convention, and, in particular, it recommends that the State party:
(a) Raise the minimum age of criminal responsibility to an internationally acceptable level, and ensure that all children, by
definition persons under 18 years of age, are protected by the juvenile justice system;
(b) Adopt a holistic and preventative approach to addressing the problem of children in conflict with the law and the
underlying social factors, with a view to supporting children who are vulnerable due to poverty and social exclusion,
including by expanding intervention programmes, vocational training and other outreach activities;
(c) Systematically build the capacity and enhance the skills and specialization of Children’s Court magistrates and
prosecutors and all relevant actors in the juvenile justice system, including law enforcement personnel and social
workers, on national and international standards on juvenile justice;
(d) Expedite the enactment of the National Legal Aid Bill (2014) and provide qualified and independent legal aid to
children in conflict with the law at an early stage of the procedure and throughout the legal proceedings;
(e) Promote restorative justice and alternative measures to detention such as diversion, probation, mediation, counselling,
or community service, wherever possible, and ensure that detention is used as a last resort and for the shortest
possible period of time and that it is reviewed on a regular basis with a view to withdrawing it;
(f) In cases where detention is unavoidable, ensure that adequate facilities exist for children in conflict with the law, and
that detention conditions are compliant with international standards, including with regard to access to education
and health services;
(g) Make use of the technical assistance tools developed by the Inter-agency Panel on Juvenile Justice and its members,
including the United Nations Office on Drugs and Crime, UNICEF, OHCHR and NGOs, and seek technical assistance in
the area of juvenile justice from members of the Panel.

I. Ratification of the Optional Protocols to the Convention on the Rights of the Child
77. The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights,
ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child
pornography and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

J. Ratification of international human rights instruments
78. The Committee recommends that the State party, in order to further strengthen the fulfilment of children’s rights, ratify
the core human rights instruments to which it is not yet a party, namely the International Convention for the Protection of All
Persons from Enforced Disappearance.
79. The Committee urges the State party to fulfil its reporting obligations under the Optional Protocol to the Convention
on the Rights of the Child on the involvement of children in armed conflict, the report of which is overdue as of 28 February
2004.

K. Cooperation with regional bodies
80. The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and
Welfare of the Child, of the African Union, on the implementation of the Convention and of other human rights instruments, both
in the State party and in other African Union member States.

IV. Implementation and reporting
A. Follow-up and dissemination
81. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations
contained in the present concluding observations are fully implemented. The Committee also recommends that the combined
to fifth periodic reports, the written replies to the list of issues of the State party and the present concluding observations
be made widely available in the languages of the country.

B. Next report
82. The Committee invites the State party to submit its combined sixth and seventh periodic reports by 1 September 2021
and to include therein information on the follow-up to the present concluding observations. The report should be in compliance
with the Committee’s harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should
not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established
word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution.
If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by
the treaty body cannot be guaranteed.
83. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words,
in accordance with the requirements for the common core document in the harmonized guidelines on reporting under the
international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/
GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.