



**Convention on the  
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**COMMITTEE ON THE RIGHTS OF THE CHILD**  
**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES**  
**UNDER ARTICLE 44 OF THE CONVENTION**

**Second periodic reports of States parties due in 1997**

**KENYA\* \*\***

[20 September 2005]

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\* For the initial report submitted by the Government of Kenya, see CRC/C/3/Add.62, for its consideration by the Committee, see documents CRC/C/SR.725, 726 and CRC/C/15/Add.160.

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### **Acronyms and abbreviations**

AAC	Area Advisory Council
AIDS	Acquired Immuno-deficiency Syndrome
AMREF	African Medical and Research Foundation
ARVs	Anti-retrovirals
ASAL	Arid and Semi-Arid Lands
BEOC	Basic Essential Obstetric Care
BoG	Board of Governors
CAS	Country Assistance Strategy
CBO	Community Based Organisation
CBS	Central Bureau of Statistics
CEOC	Comprehensive Essential Obstetric Care
CIDA	Canadian International Development Agency
CNSP	Children in Need of Special Protection
CRC	(UN) Convention on the Rights of the Child
CSO	Civil Society Organisation
CWD	Children with Disability
DANIDA	Danish International Development Agency
DCS	Department of Children Services
DFID	Department for International Development
EARC	Educational Assessment Resource Centres
EARS	Education, Assessment Resource Services
EFA	Education for all
EOC	Essential Obstetric Care
ERS	Economic Recovery Strategy for Wealth and Employment Creation
FBO	Faith Based Organisation

FGM	Female Genital Mutilation
FPE	Free Primary Education
GCN	Girl Child Network
GJLOS	Governance Justice Law and Order Sector
GoK	Government of Kenya
GTZ	German Technical Cooperation
HIV	Human Immuno-deficiency Virus
ILO	International Labour Organisation
IMCI	Integrated Management of Childhood Illness
IMR	Infant Mortality Rate
IPEC	International Programme on the Elimination of Child Labour
IUCD	Intrauterine Contraceptive Device
JICA	Japan International Cooperation Agency
KAACR	Kenya Alliance for Advancement of Children
KCO	Kenya Country Office
KDHS	Kenya Demographic and Health Survey
KEMRI	Kenya Medical Research Institute
KEPI	Kenya Expanded Program on Immunization
KES	Kenya shillings (US\$ 1 = Approx. Ksh 75)
KICC	Kenyatta International Conference Centre
KNCHR	Kenya National Commission on Human Rights
KSPA	Kenya Service Provision Assessment Survey
LBW	Low Birth Weight
MCH	Maternal Child Health
MDG	Millennium Development Goals
MICS	Multiple Indicator Cluster Survey

MNT	Maternal and Neonatal Tetanus
MoEST	Ministry of Education Science and Technology
MoH	Ministry of Health
MoPND	Ministry of Planning and National Development
MPET	Master Plan on Education and Training
NACADA	National Agency for the Campaign Against Drug Abuse
NCC	Nairobi City Council
NCCS	National Council for Children Services
NGO	Non-governmental Organisation
NHSSP	National Health Sector Strategic Plan
NPAN	National Plan of Action for Nutrition
NSHIF	National Social Health Insurance Fund
NSSMB	National Sports Stadia Management Board
ODA	Overseas Development Assistance
OPEC	Organisation of Petroleum Exporting Countries
OVC	Orphans and Other Vulnerable Children
PEPFAR	President's Emergency Plan for AIDS Relief
PMTCT	for Prevention of Mother to Child Transmission
PRSP	Poverty Reduction Strategy Paper
RAAAPP	Rapid Assessment, Analysis and Action Planning Process
SDP	Service Delivery Points
SID	Society for International Development
SIDA	Swedish International Development Agency
SMC	School Management Committee
SOWCR	State of the World's Children Report
SWAP	Sector-wide Approach

UNAFEI	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
UNCRC	United Nations Convention of the Rights of the Child
UNDCP	United Nations Drug Control Programme
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United National Population Fund
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UPE	Universal Primary Education
USAID	United States Agency for International Development
VCT	Voluntary Counselling and Testing
WHO	World Health Organisation.

## Foreword

The second periodic Kenya Country Report on the implementation of the United Nations Convention on the Rights of the Child covers eight thematic areas:

- General measures of implementation;
- Definition of the child;
- General principles of implementation;
- Civil rights and freedom;
- Family environment and alternative care;
- Basic health and welfare;
- Education, leisure and cultural activities;
- Special protection measures.

The main focus of the **general measures of implementation** is the ratification of the UNCRC and its domestication through the enactment of the Children's Act (Cap 586 Laws of Kenya).

Together with this, the act establishes statutory structures such as the National Council for Children's Services (NCCS), the Children's Courts and institutions for the reception and care of children in need of care and protection.

The UNCRC reporting process commenced in 2003 and various stakeholders as well as children have been involved. The format used in the reporting describes the legal framework, implementation and the achievements made since the last reporting along with a description of constraints and recommendations.

The draft constitution of Kenya has adopted the UNCRC definition of the child as any person under the age of 18 years. Together with the new policies this will help the planning processes and the implementation of the Children's Act.

Although the general principles of implementation uphold the principles of non-discrimination, the best interests of the child, the right to development and the child's right to express an opinion, it has been observed that in some instances the Kenyan society still discriminates against the girl child on matters such as inheritance. However, an amendment to the constitution in 1997 prohibited discrimination on the basis of sex.

Poverty has been a big impediment to the achievement of the child's right to development. The Economic Recovery Strategy is an attempt by the government of Kenya to reduce poverty while raising the general standard of living of the people, attain Universal Primary Education and reduce child/maternal mortality rates among other things.

In 2003 the government of Kenya provided free primary education, thereby raising the enrolment of pupils in primary schools by 0.9 million. Although there was pressure in the beginning due to lack of adequate physical facilities and teachers, with the assistance of development partners the government has embarked on the expansion of the existing facilities and the employment of more teachers.

It is important to note that although good efforts have been made to provide basic education and health care to children, the HIV/AIDS pandemic continues to be a threat to the survival and development of the children. Intervention programs have however been put in place such as the Orphans and Vulnerable Children program (OVC) that addresses children made vulnerable by HIV/AIDS.

To help reduce violations of the rights of the child, severe penalties have been proposed by the Children's Act (Cap 586). In the past sentences and fines for offences against children have not been severe enough to deter those who would violate children's rights and welfare. Already 119 magistrates have been mandated to deal with children's issues and to ensure a speedy legal process.

In order to develop a new National Plan of Action (NPA), the country has embarked on a review of the current NPA that was developed after the first Kenya Country UNCRC report so as to ascertain the extent to which summit goals were attained. The second UNCRC report, the ruling party's Manifesto, the working paper for the Economic Recovery Strategy for Wealth and Employment and the Millennium Development Goals (MDGs) will provide the basis for the development of the new NPA.

*(Signed):* Hon. Dr. A.A. Moody Awori, EGH, MP  
Vice President and Minister for Home Affairs

## Introduction

### Kenya: Socio-economic and demographic profile

- Kenya covers a total area of 582,646 square km and lies between three and five degrees south of the equator between 33 and 42 degrees East longitude, Nairobi being its capital city.
- Kenya is home to about forty-three indigenous communities with diverse traditions and culture.
- The total Kenyan population is estimated to be 32 million, with 14.2 million males and 14.5 million females. The population is projected to reach 43 million by 2020.
- Infant mortality rate per 1000 is 71, while the under-five mortality rate per 1,000 is 105.
- The distribution of population is uneven, with the most densely populated areas being found in urban areas, around Lake Victoria, in the highlands and on the coastal strip. These areas all have fertile soil as well as well-distributed and reliable rainfall.
- Kenya has growing numbers of refugees and asylum seekers from neighbouring countries.
- Kenya's economy has undergone major reforms over the past ten years. These include removal of import, price and foreign exchange controls, actions that have opened up the country to stiff foreign competition.
- The lowest growth rate in GDP was recorded as 0.2 per cent in 1993; GDP rate was 2.8 per cent in 1992, declining to 1.8 per cent in 1998.
- The country recovered from a negative GDP growth rate of 0.2 per cent in 2000 to record a modest positive growth rate of 1.2 per cent in 2001.
- This improvement was a result of favourable weather impacting positively on agriculture and power generation. This was joined by increased demand for information and communication services, favourable tax reforms and expanded market outlets due to the American Growth and Opportunity Act (AGOA), the Common Market for Eastern and Southern Africa (COMESA), the European Union (EU) and the East African Community (EAC) economy survey 2002.
- Employment data in Kenya is classified according to three sectors: the modern or formal sector, the informal sector and rural small-scale agriculture.

- In 2003 total employment excluding employment in small-scale agriculture and pastoral activity was estimated to be 7.3 million persons. Growth in employment is attributed to an increase in the informal sector, which created 458,800 new jobs in 2003, constituting 94.3 per cent of all new jobs created outside small-scale agriculture. The informal sector is projected to account for 18.9 per cent of jobs by 2010.
- Kenya earns approximately Ksh 150,000 million annually from exports and spends approximately Ksh 250,000 million on imports.
- Kenya receives over 1.5 million visitors annually and earns approximately Ksh 25 billion annually from tourism.
- Kenya is a great sporting nation and is world famous for its long distance runners.
- Kenya is an island of peace in a region that has seen many wars and much turmoil. Kenya is active in hosting various peace initiatives geared towards bringing tranquillity to the neighbouring states.

## CHAPTER ONE: GENERAL MEASURES OF IMPLEMENTATION

### Article 4: Implementing the Children Act

#### Legal and policy framework

1. The Kenya Government ratified the Convention on the Rights of the Child (CRC) on July 30, 1990, and in a bold step towards the domestication of the CRC, launched a process that culminated in the enactment of the Children Act (Cap 586 Laws of Kenya) that came into force on March 1, 2002. The enactment of The Children Act was widely seen as a new beginning for the development and effective protection of Kenya's children. The Children's Act codified and replaced three statutes: The Children's and Young Person's Act (Cap 141), The Adoption Act (Cap 143), and The Guardianship of Infants' Act (Cap 144).
2. This statute ranks as a pioneering human rights' law in Kenya's legislative history and is currently the only legal instrument in Kenya that provides social, economic and cultural rights along with some protection of civil liberties. Among its key social welfare provisions is the guarantee of free basic education and the right to health care.
3. The Act establishes statutory structures to facilitate the administration and safeguard the rights of children, including the creation of the National Council for Children Services (NCCS), Children's Courts and institutions for the reception and care of children in need of care and protection. It requires local authorities to promote the best interests of children within their respective jurisdictions and prohibits discrimination on the grounds of origin, sex, religion, creed, custom, language, opinion, conscience, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.
4. The Act also provides remedies in cases of violation of rights recognized by the Convention including severe penalties such as imprisonment, fines or both. There are also severe penalties for persons who obstruct a children's officer or any other authorized officer in the execution of their duties in protecting the rights of the child.
5. A number of groups point to limitations inherent in the Act noting that health status should be added to this list of grounds of discrimination in the spirit of the specific interests of orphans and vulnerable children (OVC). Other omissions and limitations include the following: the Act does not specifically mention the right of vulnerable children to access free life-saving medical care, including access to emergency drugs such as anti-retroviral drugs (ARVs) even though it broadly guarantees the right to health and medical services.
6. Penalties provided under the Act are not severe enough to deter persons who target vulnerable children for purposes of abduction, trafficking and sale, sexual abuse, or other forms of exploitation. The Government initiated a free primary education program enabling many children who were out of school to enrol. To domesticate the education-for-all goals as articulated in the Jomtien Conference of 1990, and further re-emphasized by the 2000 Dakar World Conference on Education, the Government has developed and launched a national plan on education-for-all for the period 2003-2015.

7. A uniform code of conduct for children's officers and volunteer children's officers is now in place allowing standardized reporting procedures to be introduced. The children's department through the Governance, Justice, Law And Order Sector (GJLOS) reform is promoting the rights of juvenile delinquents in rehabilitation schools and also strengthening law enforcement and rehabilitation programs. A first step has been the construction of holding facilities for children in conflict with the law in selected police stations during this financial year to ensure that children are held separately from adults. The program will be expanded in subsequent years. Child-friendly transportation for child offenders will become available with the purchase of vans for transport to and from courts and remand homes. A program for diverting children in conflict with the law from the judicial system is being piloted in Nairobi, Kisumu and Nakuru districts. Adoption rules have been developed and are at the Attorney General's Chambers for drafting and publication in the Kenya Gazette.

8. Rules and regulations for the management and running of charitable children's institutions have been drafted with the involvement of all stakeholders. These are awaiting presentation to the Minister in charge of children's affairs for further action.

9. Other Acts with positive implications for the status of children have been passed since the last reporting including the Industrial Properties Act, the Persons with Disabilities Act, and the Criminal Law Amendment Act. The Domestic Violence (Family Protection) Bill and the Refugee and Displaced Persons Bill are already in Parliament for deliberation. However, The Children Act already has provisions for children in violent situations, children with disabilities, refugee and displaced children. The Labour Law Review Committee has also presented its report to the Attorney General for further consideration. The Report proposes the amendment of labour laws to protect children, inter alia.

10. At a higher level, the Government of Kenya, through the Constitution of Kenya Review Commission, is in the process of coming up with a new constitution. Three National Constitutional Conferences have been held to agree on a Draft Constitution that is now waiting to be taken to Parliament for discussion and enactment into law. The Draft Constitution addresses issues affecting children and guarantees their rights in various sections: Chapter IV addresses issues of citizenship. It guarantees citizenship by birth, registration and naturalization and includes children found (whose citizenship cannot be ascertained) and adopted in Kenya.

11. Chapter V declares fundamental rights and freedoms and makes specific reference to children as those persons aged less than 18 years. It also states that children with special needs, including girls, orphans, children with disabilities, refugee children and homeless children are entitled to special protection from the state and society.

12. On the socio-economic front, the Government of Kenya in its Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007, gives as its broad objectives the reduction of poverty and narrowing of inequality through employment, empowerment and improving access, affordability and quality of social services. Specific goals have been defined for each of the targeted sector:

**Education:** To achieve 100% primary school enrolment rate and reduction of disparity in access and quality of education.

**Health:** To ensure that fundamental concerns of equity, access, affordability and quality in the provision of basic health services are met.

**HIV/AIDS:** The Government recognizes the devastating effect that the pandemic is having on children and those who care for them and will deal with the pandemic by ensuring systematic HIV/AIDS research and control.

**Shelter and housing:** To facilitate the construction of housing units to meet the growing demand for housing; to explore the possibility of working with development partners to develop a framework for upgrading slums and informal settlements in the urban areas.

**Food and nutrition:** The Government recognizes that a large proportion of people, significantly children, still live under threat of hunger and starvation. Malnutrition in children is particularly common in certain areas or times of the year. The Government in its recovery programs has a key objective to ensure food security and proposes to eliminate Vitamin A deficiency in children less than five years.

### **Institutional framework for provision of children services**

13. The National Council for Children Services (NCCS) established under the Children Act is charged with responsibility 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.

14. The Department of Children's Services (Children's Department) in the Office of the Vice President and Minister for Home Affairs is the Government agency mandated to provide services for the welfare of children and secure their rights as stipulated in the Children's Act.

15. The objective of the Department is to:

Ensure that children placed in Government institutions are provided with basic necessities;

Promote the rehabilitation of children so that they can be re-integrated into the community as responsible citizens;

Curb and control the increasing number of children in need of special protection (CNSP) through guidance and counselling;

Register and inspect all statutory children's institutions including rehabilitation schools, voluntary children's homes and gazetted local authorities;

Investigate cases of children in need of discipline and those who offend the law and make recommendations to the courts on the best modes of intervention;

Investigate cases of children who are neglected, orphaned or abandoned and provide assistance.

## **Context and implementation**

### *Implementation of the Children Act*

#### *National Council for Children Services (NCCS)*

16. A strategic work plan running from 2005-2009 for the implementation of The Children Act is in place, effected through the creation of institutions that protect the rights of children and the establishment of a National Council for Children Services that makes rules and advises on planning, financing and coordination of child welfare interventions including monitoring. The NCCS was launched in September 2002 and is replicated in the administrative areas through Area Advisory Councils. The membership constitutes the Department of Children's Services, relevant Government ministries, non-governmental organizations, religious-based organizations and the private sector.

17. The National Council for Children Services strategic plan puts forward a monitoring and evaluation process for tracking progress, efficiency, effectiveness, outcomes and impact for implementation of various strategies aimed at meeting the rights of the child. NCCS has made progress in implementing its mandate and is working closely with line ministries, NGOs and donor agencies to pool resources to address issues affecting children at national and local levels.

#### *Access to education*

18. The Bursary fund has been relocated from the district to constituency level to ensure that children from poor families in all parts of Kenya access education.

#### *Children's Courts*

19. One hundred and nineteen (119) magistrates have been appointed to serve in the Children's Courts. Other than murder charges, they hear and try all matters concerning children including:

- Custody and maintenance matters;
- Guardianship of children;
- Granting Judicial orders for the protection of children;
- Measures for dealing with children who need special care and protection; and
- Treatment of child offenders.

#### *Focus on Children in Need of Special Protection*

20. Under the Children Act, a large number of categories of children in need of special protection are eligible for Government assistance, including: all orphans including HIV/AIDS orphans and those infected by the disease, street children, child workers, destitute children,

battered children, child mothers, handicapped children, orphaned children, juvenile delinquents, children whose parents are imprisoned, sexually abused children, neglected children, children of parents with mental disability and abandoned children. To this end, the Government has created institutions for the rehabilitation and care of children and provides rules and regulations on how to treat children who need special care and protection.

*Orphans and Other Vulnerable Children (OVC)*

21. As the Government develops a response on behalf of OVCs, a number of notable progressive steps have been made within the last year:

- The formation of a representative National OVC Steering Committee; the development of National OVC guidelines that clearly outline roles for the Ministry of Health, Ministry of Home Affairs, Ministry of Gender, Sports, Culture and Social Services, and various stakeholder groups. These guidelines uphold the CRC by providing standards for rights-based OVC programming and augment the Children Act, demonstrating Kenya's practical commitment to the rights of children, including those orphaned and made vulnerable by HIV/AIDS;
- The undertaking of a rapid assessment and action planning process outlining priority interventions and budgetary estimates;
- The undertaking of a legislative review which identified gaps in Kenya's law with regard to OVCs as a basis for drafting of an OVC Bill; and,
- The establishment of an informal Parliamentary Committee on OVCs to raise political awareness on the issue.

*Monitoring of implementation of rights*

22. The Kenya National Commission on Human Rights (KNCHR) is now in place with the mandate to monitor the violation of rights of all persons including children. It was set up in 2003 under an Act of Parliament to replace the Standing Committee on Human Rights.

23. In its 2005-2009 Strategic plan, the National Council for Children Services has in place a mechanism to monitor the implementation of The Children Act of 2001.

24. There are specific efforts by the Government to ensure that police stations have a desk to receive and investigate complaints of violation of children rights in a child friendly manner.

25. Local administrative officers are working closely with NGOs, FBOs, CBOs, and CSOs to save and protect the girl-child from forced early marriages. There are also efforts to educate communities on the harm caused by female genital mutilation and offer alternatives for the initiation ceremonies for girls. Children rescued from forced early marriages or female genital mutilation are rehabilitated and returned to school. In addition, teenage mothers are given an opportunity to continue with their schooling.

*Budgetary allocation*

26. The total budgetary allocation to the Children's Department by the Government has increased tremendously from KES. 20.2 million and KES. 197.7 million in development and recurrent expenditure respectively in financial year 2000/2001 to about KES. 74.1 million and KES. 240.8 million in development and recurrent expenditures respectively in financial year 2003/2004.

27. In addition, there has been a general increase in allocation to social services such as health and culture (it is not possible to quantify allocations specific to children). The introduction of free primary education also saw the education sector allocated KES. 3.6 billion. This was partly financed through the support of UNICEF and other bilateral donors.

*Proportion of budget allocated to social expenditure*

28. A recently published study<sup>1</sup> shows that there are marked regional, socio-economic, ethnic and gender differentials in the share of income and access to social services. In its 2003-2007 Economic Recovery Strategy for Wealth and Employment Creation, ERS, the State commits itself to reducing the unacceptable high levels of poverty, hunger and inequality through targeted initiatives.

29. This need is made clear by the fact that the high Government budget allocation to education<sup>2</sup> has not translated to better quality education since the largest portion of budget goes to paying teachers salaries. High Government expenditure on health (of which over 60% goes to recurrent costs) has not improved the health conditions of Kenyans. In fact, there has been marked deterioration in maternal and infant mortality rates among other indicators of well being.

30. It is difficult to establish the proportion of the State's budget devoted specifically for children. An analysis of trends in Government expenditure over the last six year shows that the large allocations for debt servicing, salaries and other recurrent costs in the Government budget have crowded out spending on social services. There has been a drop in the level of savings in the country; since 1995, Kenya has spent substantially more than it has saved or invested, with the single largest allocation in central Government's 2003/4 budget being the earmarking of \$254m to foreign debt servicing. Increasing poverty has been a major contributory factor to the situation with poverty rising to 56% of the population living on less that US\$ 1 a day.

31. On disbursement of funds, of the total amount of overseas development assistance absorbed in the 2003/04 financial year for both grants and loans of KES. 35.80 billion, only KES. 10.90 billion had been disbursed by end of February, 2004, reflecting a disbursement rate of 30.6% by the third quarter of the financial year.<sup>3</sup>

32. There is likelihood for exponential increases in donor funding for development priorities such as HIV/AIDS (for example the US Government's PEPFAR funds) and other targeted funding (such as the Constituency Development and Bursary Funds). Sector-Wide Approaches (SWAPs) and other innovative program implementation strategies currently being introduced

may attract considerable additional resources. In November 2003, at the first Consultative Group meeting held between donors and the Government in eight years, international donors pledged to provide up to US\$ 1.2 billion annually in budget and other support over the following three years to meet the large budget deficit and ease the pressure on borrowing from domestic banks at commercial rates.

33. With the expected increase in resource inflows, it is important to re-orient public expenditure to core social sector ministries and improve the rate of utilization of these funds. This can be possible by setting priorities at district level and entrenching social budgeting and policy discourse into financial planning.

34. Several broad-based initiatives currently address issues relating to State Party's budget policy formulation and implementation with a view to creating systemic linkages at all levels. These initiatives will provide the environment necessary for the full implementation of Article 4 of the Convention which is echoed in Section 3 of The Children Act, requiring that budget allocation be prioritized to represent State Party's commitment to the Convention.

### Government budgetary expenditure 1999-2004

Central Government Expenditure on Social Services, 1999-2004 (KES. millions)					
	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004
Recurrent expenditure					
Education, Science and Technology	47 600	48 768	53 738	61 603	71 800
Health	9 336	14 870	10 527	14 448	16 005
Labour and Human Resources	678	825	1 048	1 465	1 483
Development, Home Affairs, National Heritage and Sports	3 220	3 882	6 581	5 235	5 992
Subtotal	60 834	68 355	71 896	82 751	95 281
Development Expenditure					
Education, Science and Technology	660	1 093	2 597	4 814	8 434
Health	865	759	3 540	4 893	5 116
Labour and Human Resources	147	334	493	389	297
Development					
Home Affairs, National Heritage and Sports	84	356	890	1 127	442
Subtotal	1 756	2 543	7 520	11 224	14 290
Total expenditure	62 590	70 889	79 416	93 975	109 570
Local Government Expenditure on Social Services, 1999-2004 (KES. millions)					
	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004
Education	631	694	718	822	835
Health	786	859	993	1 107	1 291
Other social services	100	254	231	357	443
Total expenditure	1 518	1 873	1 872	2 286	2 568

*Disaggregated data*

35. To ensure systematic gathering of data on children, a socio-economic database, KenInfo has been developed by the Central Bureau of Statistics with technical support from the UN. A national database on children in need of special protection has been launched by the Children's Department to ensure systematic gathering of data on children and their fundamental rights and assessing existing trends at national and local level.

36. In 2000, the Government of Kenya, through the Central Bureau of Statistics of the Ministry of Planning and National Development, carried out a multiple indicator cluster survey. The main objective was to monitor achievements of the World Summit on Children goals and strengthen national capacities for generating indicators for assessing progress for children and women.

37. This particular survey had a module on orphanhood for children aged 17 years or less and the results indicated that 8.3% of the children interviewed were orphaned. Of the total number of girls interviewed, 8.7% were orphaned while 7.8% of the boys interviewed were orphaned. At the Provincial level, there were disparities with Nyanza recording the highest incidence of orphan hood at 13.9% in comparison with other regions.

38. Data on immunization, education, birth registration, nutrition and child labour is now available. In the strategic plan of the Central Bureau of Statistics for the years 2003-2008, a national survey on persons with disabilities is planned.

39. The Central Bureau of Statistics has been able to map poverty to locational level, by age and gender. This additional data will enable focused allocation of resources to alleviate poverty. The UNHCR has data on refugee children but this is limited to those in the camps.

40. In 2002, the State Party initiated a campaign to raise awareness on the importance of the different dimensions of in development in relation to achievements of the MDGs. A national MDG taskforce comprising Ministry of Planning and National Development, the UN system, NGOs and the private sector was created to spearhead this process. Some of the activities undertaken under this initiative include joint sensitization workshops with NGOs, media briefings and technical seminars. The main objective of these activities was to develop consensus and promote understanding of the significance of the MDGs, their link to national planning frameworks, and the mode and frequency of country level reporting. The State party prepared its first comprehensive MDG progress report in 2003.

**Constraints and recommendations****41. Constraints**

1. The review of the Kenyan Constitution is in process, and the gains achieved in the draft such as specific reference in the Constitution to children's rights separately from those of adults must be safeguarded.
2. Children's interests are not clearly identified in the budget and so a clear analysis of the proportion spent on children is not possible.

3. While there has been a general increase in the allocation to social services such as health and culture it is not possible to identify children's interests in the budget so that a clear analysis can be done on the proportion that is spent on children.

#### 42. **Recommendations**

1. Budgetary officers must be sensitised on child rights issues so that they do not address issues affecting children on an ad hoc basis.
2. Provision of adequate resources must be made with regard to finances, personnel, office, transport and logistics.

### **Article 42: Making the CRC known widely**

#### **Legal and policy context**

43. The Government has undertaken to disseminate the CRC as widely as possible using all the structures available to it.

#### **Context and implementation**

44. The CRC has been disseminated to policy makers at national and regional levels. The Convention has been translated into Kiswahili the national language, sign language, Braille and several indigenous languages. Child rights clubs have been established in schools and have been used to educate children on the Convention and specifically on their rights. A curriculum on child rights has been introduced at the Police Training College for trainees; for those already in service there are refresher courses on child rights. In addition, a popular version of the Act is now available free of charge.

45. Information, education and communication materials have been distributed to almost all schools at all levels including informal schools. Dissemination has been in the form of posters and booklets. The mass media (both print and electronic) is being utilized to disseminate issues covered in the Convention and the Act. In addition, newspapers and radio stations have special features on children rights where children actively participate in writing articles. The number of daily newspapers has increased as indicated in the paragraph reported under Article 17.

#### **Constraints and recommendations**

##### 46. **Constraints**

1. There is still lack of awareness about children rights in some communities and efforts to defuse strongly held cultural and religious positions that infringe on the rights of the child, such as the custody and inheritance of children, have met resistance.
2. Despite tremendous efforts in publicizing The Children Act, there is need to enhance awareness about children's rights in specific sectors, including law enforcement agents and local administration through community mobilization workshops and both electronic and print media.

47. **Recommendations**

1. There is need for more training on children rights for opinion leaders and other stakeholders to address entrenched negative cultural practices against children's rights.
2. Training of law enforcement agents and policy makers must be a priority.

**Article 44. The CRC reporting process**

**Legal and policy framework**

48. When the Kenya government received the Concluding Remarks and Recommendation on Kenya's Report to the UN Committee on the Rights of the Child, the Department of Children Services in the Ministry of Home Affairs, in collaboration with UNICEF Kenya Country Office, Kenya Alliance for Advancement of Children (KAACR), Action Aid Kenya and Childlife Trust embarked on a countrywide dissemination in 2002.

49. The dissemination process targeted children agencies and children and held in all provinces of Kenya, and all stakeholders were involved in the planning, implementation and compilation of the final report. The respective Provincial Children's Officers took a lead role in this important activity. Recommendations on how to address the gaps identified in the First Kenya Country report were broadly categorized under legal and policy issues.

50. The legal issues identified include:

- The need to harmonize all laws on children to create conformity with the UNCRC and The Children Act;
- Lobbying for a new Constitution to address children issues separately from those of adults;
- Lobbying Parliament to pass the Domestic Violence (Family Protection) Bill is a continuing concern; and
- Laws that guarantee automatic citizenship to children born out of the country as long as either of the parents is Kenyan.

51. At the policy level priorities include:

- The development of tangible policies for implementation of The Children Act in areas relating to education, health and poverty eradication and discipline of students in schools are a priority;
- Strengthening sensitization programs to create awareness against harmful cultural practices is also important;

- More effort must go to involving communities in children matters;
- Ensuring that birth certificates are considered proof of nationality;
- Initiation of sensitization programs on negative effects of corruption;
- Promotion of good governance in the provinces; and
- Harness data collection in order to institute effective policies and programs.

52. The process of preparation of the Kenya country second periodic report for 1998-2003 began in July 2003 when Save the Children Canada organized a three-days workshop on Child participation for fifty (50) children agencies and government children line ministries in Machakos. The workshop prepared a workplan where one of the activities was to initiate the process for the preparation of the second country report. A Planning Committee of six persons drawn from Government and key children agencies who had participated in the first reporting process was formed to plan for the process and harness human and financial resources for the reporting. The Committee met weekly at the Department of Children's Services - which is the secretary to the newly formed National Council of Children Services, to plan for the entire reporting process.

### **Context and implementation**

53. Following this, the Planning committee together with the National Council of Children Services (NCCS) organised a workshop of 86 representatives from organizations working with children to move the process forward. The meeting, held in September 2003, was officiated over by Hon. Moody Awori, Vice President of Kenya and Minister for Home Affairs and a National Steering Committee was elected to steer the whole process. The committee developed a comprehensive workplan for data collection and compilation of the country report with a clear timeframe.

54. The first major activity to be undertaken was a national drafting workshop based by the UNCRC Reporting Guidelines. This workshop which was held in November 2003 compiled a zero draft of the report using available data from the government children line ministries and from reports from the children agencies in Kenya. The workshop also identified the gaps that needed to be filled through regional data collection.

55. In preparation for data collection, we mounted a training in February 2004 for thirty (30) moderators who guided the process in all the regions of Kenya. They also acquired skills on child participation and training child facilitators. The moderators trained sixty (60) children - six per region as facilitators for the children's process in the provinces. This was followed by the actual regional workshops between March and June 2004 for about three hundred (300) adults and four hundred (400) children being an average thirty and forty adults and children respectively in each region. This was followed by a national validation workshop held in August/September which was attended by one hundred and seven (107) child representatives and forty (40) adults representatives from all the regions who confirmed the facts in the compiled report.

56. Resources for data collection from the regional forums and the national validation conference was committed by the key stakeholders in the children's sector, as indicated in the acknowledgements, who supported activities in the program areas.

57. Under the guidance of the Steering Committee, the team of forty experts from the government and the children sector embarked on the final drafting of the report in November 2004. The report was then handled by a small editorial sub-committee who edited the report with the assistance of two editors. The finalized report was then presented to the Attorney General Chambers through a National Policy makers workshop which was attended by key government officials, NGOs and children representatives from Plan International Kenya, Save the Children Canada, Actionaid Kenya, World Vision Kenya, the Children's Department among other partners.

### **Constraints and recommendations**

#### **58. Constraints**

1. The National Council for Children Services and its replica in the districts, the Area Advisory Councils, are still in formative stages and are yet to fully network with other stakeholders.
2. Most of the organizations involved in protecting children rights are based in urban settings limiting services to those in rural settings. Although there is vast data on relevant issues, this data is not easily accessible to inform the systematic reporting required by the Convention.
3. A frequent lamentation is that Government has carried out several surveys on children's issues but no measures have been taken to implement the findings and recommendations of the surveys. Examples include the Poverty Reduction Strategy Paper and the report of the Commission of Inquiry on Education in Kenya (the Koech Report). Kenya's first country report on the Convention was not disseminated to the public.
4. Lack of resources hampered the reporting process.
5. Children were participating for the first time and all stakeholders were unfamiliar with what was expected of them in the changed context.

#### **59. Recommendations**

1. There is urgent need to avail more resources in terms of finances and personnel to enable NCCS, AACs and the Children's Department to work effectively.
2. Members of the various Area Advisory Councils need training on children's rights.

## CHAPTER TWO: DEFINITION OF A CHILD

### Article 1: Definition of a child

#### Legal and policy framework

60. The current Constitution of Kenya does not define a child and has no section under the Bill of Rights making specific reference to children. However, the Draft Constitution proposes to remedy this situation by providing an express provision on the definition of a child as any person under the age of 18 years.

61. The Children Act, Cap 586 has clearly defined a child as a person under the age of 18 years. It repealed the Adoption Act<sup>4</sup> that does not consider a person a child if they are married though they are under 18 years old. The Act also repealed the Children and Young Persons Act, Cap 141, and the Guardianship of Infants Act, (Cap 144) which had different definitions of a child.

#### *Minimum age of sexual consent*

62. The Criminal Law (Amendment) Act of 2003 by amending the Penal Code (Cap 63) has set the age of sexual consent at 16 years for girls. The previous age was 14 years. There is no minimum age set for boys even though the Penal Code states that boys under the age of 12 years are incapable of having carnal knowledge. The Children Act also provides that the state shall protect children from sexual exploitation and abuse including prostitution and involvement in pornography.

#### *Minimum age for marriage*

63. The Children Act indirectly defines the minimum age for marriage as 18 years by prohibiting the marriage of any child. However, there are other statutes in place that have different minimum ages for marriage namely, The Hindu Marriage and Divorce Act<sup>5</sup> and the Marriage Act.<sup>6</sup> These statutes provide that the minimum age for marriage for a girl is 16 and minimum age of marriage for a boy 18. Customary law and Islamic law, Sharia, allow for persons under the age of 18 to be married.

#### *Age of criminal responsibility*

64. The legal age of criminal responsibility is 8 years according to the Penal Code. Between the age of 8 and 12 years, a child is presumed not to be criminally responsible for his or her actions unless it can be proved that at the time of doing the act or making the omission, the child had the capacity to know that he or she ought not to do the act or make the omission.

#### *Minimum age of employment*

65. With regard to employment, The Children Act, at Section 10 protects a child from “child labour, economic exploitation and work that is hazardous”.

66. A Task Force on Labour Laws has come up with recommendations on children in employment in a draft Employment Bill. The Bill, which seeks to amend labour statutes in Kenya, has provisions on protection of children including protection from the Worst Forms of Child Labour. This is in line with the Optional Protocol on the CRC on children participating in Armed Conflict and the ILO Convention<sup>7</sup> and corresponding Recommendation.<sup>8</sup> The Bill defines a child as a person below the age of 18 years, in harmony with The Children Act. However it allows employment of children from the ages of 13 to 16 years for light work and defines those of 16 to 18 employable. The Bill does not clearly define the parameters for this employment. It does not define light work and does not provide protections for children in such employment.

67. The Employment Act (Cap 266) prohibits the employment of children under the age of 16 in industrial undertakings unless they are under apprenticeship or training purposes.

68. A Draft National Policy on Child Labour categorically states that persons under the age of 18 years cannot be employed.

#### *Minimum age for education*

69. Basic Education - Section 7(2) of The Children Act states that every child is entitled to free basic education, which shall be compulsory. There is no provision in The Children Act setting the minimum age for commencement and end of compulsory basic education and neither does the law set out a minimum legal age for end of compulsory education.

#### *Access to legal advice*

70. Any child of any age is allowed to access legal advice. Section 77(1) of The Children Act gives a court powers to order legal representation for any child brought before the court. In addition, Section 186 (b) makes provision for legal aid by the state for child offenders.

71. A child below the age of 18 years cannot institute proceedings on his or her own and does not have the capacity to sue or lodge complaints and seek redress before a court or other relevant authority without parental consent. They can institute such proceedings through a “next friend” who is an adult.

#### *Independent access to medical treatment*

72. There is no minimum age for independent access to medical treatment.

#### *Contractual capacity*

73. There is no minimum age for entering into a contract under the Law of Contract. Kenya has borrowed substantially from English common law and statutory law relating to contract. The following principles drawn from English law apply in Kenya:

- Contracts may be entered into with infants save where statute law states otherwise, and the consequences of such contracts may be determined by state law;

- Contracts by infants are voidable at the instance of the infant;
- Certain contracts by infants are made void *ab initio* by the Infants Relief Act 1874 of England.

74. This Act, which is treated in Kenya as a statute of general application governs the major parts of a child's contractual capacity. The Act renders void all contracts with infants for the payment of money lent or to be lent, contract for goods supplied or to be supplied and it states that any purported ratification by an infant upon attaining majority of earlier contracts shall not form a basis for action against the child.

*Legal capacity to inherit, to conduct property transactions*

75. Under the Law of Succession Act a child can inherit but cannot conduct property transactions until they are 18 years.

*To create or join associations*

76. There is no provision in the law that sets out the minimum legal age for creation of or joining associations.

*Choosing a religion or attending religious school teaching*

77. Children acquire the absolute right to change their religion once they reach 18 years but prior to that, they exercise the choice to practice religion subject to parental guidance.

*Consumption of alcohol and other controlled substances*

78. Section 16 of The Children Act protects children from hallucinogens, narcotics, alcohol, tobacco products and psychotropic drugs and related drugs. It also states that a child who is using or consuming alcohol is considered a child in need of care and protection.

79. Section 30 of the Liquor Licensing Act, (Chapter 121) of the Laws of Kenya outlaws employment of persons under the age of 18 years to sell, control, or supervise the sale of liquor. The same section prohibits the sale of alcohol to persons less than 18 years.

80. The Criminal Law (Amendment) Act of 2003 makes it an offence to supply or offer to a child petroleum distillate, glue or other related hallucinogenic products. A child here is defined as a person below the age of 18 years.

*Voluntary enlistment in the armed forces; conscription into the armed forces; participation in hostilities*

81. Section 10(2) of The Children Act states: "No child shall take part in hostilities or be recruited in armed conflict, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law". It is noteworthy that the Armed Forces Act, Chapter 199 allows the enlistment of children so long as this is done with the consent of the parents or guardians or the District Commissioner.<sup>9</sup> There is inconsistency in the laws.

82. Section 10(3) states that it shall be the responsibility of the Government to provide protection, rehabilitation care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or natural disaster. The Children Act allows children who have been involved in hostilities to be taken into protective custody.

83. Several laws have implication for children involved in hostilities. Given that the age of criminal responsibility is 8 years, this means that a child under 8 years cannot be arrested in connection with a criminal matter.

84. There is also no minimum age for placement of children in health institutions.

85. Regarding the minimum legal age for placement of children in welfare institutions, The Children Act at Section 191(1)(e) provides that if an offender is between 10 and 15 years they will be sent to rehabilitation schools. The Borstal Institutions Act sets the minimum age of admission into Borstal Institutions at 15 years. The Act states that children can stay in the Borstal institutions for a maximum of three years. The Children Act at Section 190(3) provides that no child under the age of 10 years shall be ordered sent to a rehabilitation institution.

86. The Prisons Act (Cap 90) also provides that persons aged between 17 and 21 years may be placed in corrective training institutions instead of prisons.

87. The Refugee Bill which is envisaged to be the legal framework for asylum seekers and refugees has no minimum age for deprivation of liberty of asylum seeking and refugee children only stating that there will be special protections for women and children asylum seekers and refugees.

#### *Participating in administrative and judicial proceedings affecting the child*

88. Section 4 of The Children Act requires that in all proceedings affecting children, the courts, with due regard of the child's age and maturity shall seek the child's opinion and give it the weight it merits.

89. Further, the consent of children over the age of 14 is required in adoption proceedings affecting such children.

90. According to Section 76(3)(a) of The Children Act, the Court is bound to consider the ascertainable feelings and wishes of the child with reference to the child's understanding in any proceedings.

#### *Giving testimony in court in civil and criminal cases*

91. The Criminal Law (Amendment) Act of 2003 has amended Section 124 of the Evidence Act, Cap 80 that required compulsory corroboration of the evidence of a child of tender years (10 years and under) in sexual abuse cases. There is no minimum legal age for giving testimony in court; this is left to the court's discretion.

## **Context and implementation**

92. Though a child has been defined as a person below 18 years under The Children Act, there are laws and policies that are at variance with this provision. This makes proper planning and implementation interventions difficult. In some cases, programs, which should have benefited children, end up not benefiting them at all. An example is universal primary education, through which people who do not fall under the definition of a child benefit at the expense of children.

93. In practice, different communities define children differently. Most define a child as a human being who is still dependent on his/her parent, still in school or college, not married and in some cases not yet circumcised, or one who has not passed the initiated stage to adulthood. Others just look at the body size or biological changes such as menstruation in the case of girls. A person may be above 18 years but still get care and protection from parents or guardians. Children are only considered adults when they move out of the control of their parents such as when they marry or get a job and move to their own house.

94. There is a tendency for addressing children's issues in a piecemeal manner with different policies being developed for different issues using different definitions of the child. This gives rise to a situation where children are categorized differently by different Government agencies. The Children Act sets out the legal framework for protection of children's rights, but the policies in place have the effect of weakening the protections set out in the law.

95. There is now in place a Committee under the NCCS that will advise on legal and policy developments and reform. It is envisaged that with enhanced capacity, this Committee and the NCCS in general should be able to effectively provide the required direction in the harmonization of law and policies.

### *Legal age of criminal responsibility*

96. There is already a felt need towards raising the age of criminal responsibility by developing measures and regulations to address situations where children below 18 years have committed crimes. Issues to be considered in line with this are implementing policies on diversion of children in conflict with the law and divesting Borstal institutions from the prisons system so that juvenile offenders are handled in a humane manner.

97. A joint program of Government and civil society aims to divert children in conflict with the law. This program has been carried out in Nairobi, Nakuru and Kisumu districts. The Government intends to roll out this program in all parts of the country.

### *Minimum age of sexual consent*

98. Though the minimum age for sexual consent is 16 years for girls, the different laws on marriage allowing girls under 16 years to be married will make the implementation of this provision on minimum age for sexual consent difficult. There are ongoing plans to harmonize relevant laws through constitutional review and legal reform. There are also proposals to raise the age of sexual consent to 18 years.

99. In many cases, issues on sex are not discussed between parents and children as they are considered to be “*tabia mbaya*” - bad manners. Furthermore, some children face early exposure to sexual behaviour due to parents having sex within their hearing or sight. This is largely because of the small houses many families live in and also over indulgence in alcohol by one or both parents.

100. Poverty and other factors such as the effect of HIV/AIDS have resulted in young girls entering into sexual liaisons when they are below the minimum age of sexual consent.

#### *Minimum age of marriage*

101. Early marriage is still a common occurrence in this country owing to customary laws that allow marriage of children especially after certain rites of passage such as circumcision. After circumcision, many girls are encouraged to leave school and get married. The inconsistent laws mentioned under the legal and policy frameworks compound the situation.

“I had a good friend, when we closed school in April she never came back to school. We were told she had been married.”

Amina Godana, 17 years, Moyale, Isiolo.

102. The Draft Constitution seeks to address the variations in the minimum age of marriage by having an overriding provision that laws inconsistent with the Constitution will be null and void.

#### *Employment and child labour*

103. Given the economic situation prevailing in Kenya, children find themselves subjected to work and economic exploitation. This has been compounded by the increasing incidence of child-headed households. Deaths from HIV/AIDS have left behind many orphans who have to fend for themselves. In Kenya about 12% of households consist of orphans looking after themselves. In many communities children as young as 10 years are employed as house girls, herders and workers in plantations.

“Yeye ni mdogo sana, hata hajafikisha 8 years, anabeba makaa, na amevaa uniform. Ukimuuliza kwanini hajaenda shule, anasema anafanya kazi.” (“She is so young, hardly 8 years old carrying charcoal, and in school uniform. When asked why she has not gone to school, she says she is working”).

Innocent Musa, 15 years, Form 1, Isiolo.

104. Though Kenya has ratified the CRC and the relevant ILO Conventions, there are processes that are currently in place that encourage age variations in addressing the minimum age for employment. The Draft Employment Bill, for example, proposes to allow 13-18 year old children to work. This is inconsistent with the CRC and contradicts a Draft National Policy on Child Labour that has been completed and expressly states that no person under 18 years should work.

*Independent access to legal advice, capacity to sue, lodging complaints and seeking redress before a court or other relevant authority without parental consent*

105. Though children have no *locus standi* to approach the Courts for redress and can only do so through other parties, the Children's Act Practice and Procedure Rules, which govern proceedings under The Children Act, are very technical and can only be applied by technically qualified persons such as lawyers. This makes access to justice for children difficult and puts it out of reach.

106. It is recommended that special measures be taken to facilitate children's access to other institutions that can provide them with remedies such as the Area Advisory Councils, the Kenya National Commission on Human Rights and the National Commission on Gender and Development. Children should be able to access these institutions on their own and the processes for these should be simplified.

*Independent access to medical treatment*

107. In Kenya, parents accompany their children to health institutions until such an age that the child feels uncomfortable. However, as a matter of practice, medical personnel are not allowed to attend to girl children in the absence of their parents. It is a felt need that any intervention to allow greater independence should balance children's needs for privacy against parental guidance and control.

*Contractual capacity-minimum age*

108. There is no minimum age for entering into a contract under the Law of Contract. The general practice in Kenya is that people rarely contract with children. In the area of employment there are usually no contracts between children employees and their employers. Children are unaware of the provisions of the law and cannot bargain for better terms. The application of English law on this matter can no longer be justified.

*Voluntary enlistment in the armed forces; conscription into the armed forces; participation in hostilities*

109. In line with the Armed Forces Act, there is no conscription of children into the army. The Act however allows the voluntary enlistment of children with the consent of their parent, or guardian or a District Commissioner. Children who are caught up in hostilities are treated as children in need of care and protection and taken into protective custody.

*Deprivation of liberty, including by arrest, detention, and imprisonment, inter alia in the areas of administration of justice, asylum seeking and placement of children in welfare and health institutions*

110. In terms of implementation it is usually difficult to accurately ascertain the age of persons therefore in some cases children are sent to inappropriate institutions where their needs are not addressed.

*Participating in administrative and judicial proceedings affecting the child*

111. It is left to the discretion of the Magistrate or the administrative authority to decide whether the child's wishes can be taken into consideration. The absence of guidelines hinders the effective participation of children in such proceedings.

*Giving testimony in court in civil and criminal cases*

112. Children are allowed to give evidence in court in civil and criminal cases. Despite this, children are usually intimidated by the court proceedings and atmosphere and may not be effective witnesses. Efforts are being made to make the courts child-friendly. At the Children's Court in Nairobi there is a witness protection box from which children can give testimony. There are plans to construct more children's courts with witness protection boxes.

*Giving consent to change of identity, including change of name, modification of family relations, adoption and guardianship*

113. This does not really apply to our situation. However in the case of adoption, the consent of children over the age of 14 years is required.

*Legal capacity to inherit, to conduct property transactions*

114. The HIV/AIDS pandemic has resulted into many child-headed households. Most of such children are unable to easily access the benefits of their parents' estate in order to maintain their siblings. Even where the money is held by the Public Trustee, the procedure of accessing it is quite technical and out of the reach of many children. It is also prone to abuse by guardians.

*To create or join associations*

115. Most associations for children are under the auspices of the school or youth groups under the Ministry of Gender, Culture, Sports and Social Services.

*Consumption of alcohol and other controlled substances*

116. Children are not allowed to enter establishments selling alcohol while unaccompanied. Unfortunately, many children are exposed to consumption of alcohol in their homes in cases where parents are involved in brewing alcohol. A teacher reported that a boy carried 'marua', a traditional brew to school. She noted that ...

"If the alcohol was not being prepared at home, the boy would not have accessed it."

Hellen K. Nkanda, teacher from Tharaka District

117. Children are involved in selling and consumption of alcohol, drugs and other narcotics. Laws against sale of alcohol to children ought to be enforced more stringently. "Shopkeepers do not even look at the persons they are selling the alcohol to," a parent laments.

118. Sometimes drug peddlers use children to traffic drugs since they know children are less likely suspects and if arrested, they are likely to be treated leniently.

119. **Constraints**

1. While a child is defined as a person below the age of 18 year under the Children Act, there are laws and policies that are at variance with this provision. This makes proper planning and implementation of interventions difficult. In some cases, programs, which should have benefited children end up not benefiting them at all. In practise, different communities define children differently.
2. Although the minimum age of sexual consent is 16 years for girls, the different laws on marriage allow girls less than 16 years old to be married off and make the implementation of this provision on minimum age for sexual consent difficult.
3. Although Kenya has ratified the CRC and related ILO conventions, there are processes that are currently in place that encourage age variations in addressing the minimum age for employment. The draft Employment Bill, for example, proposes to allow 13 to 18 year old children to work. This is inconsistent with the CRC contracts. A draft National Policy on Child Labour is now complete and expressly states that no person under 18 years of age should work.
4. In terms of implementation, it is difficult to accurately ascertain the age of persons therefore they are sent to inappropriate institutions.
5. The HIV/AIDS pandemic has resulted in many child headed households. Most such children are unable to easily access the benefits of their parents' estate in order to maintain siblings. Even where the money is held by the public trustee, the procedures for accessing their inheritance is quite technical and out of reach of many children interfering with their legal capacity to inherit and conduct property transactions.

**CHAPTER THREE: GENERAL PRINCIPLES OF IMPLEMENTATION**

**Article 2: Non-discrimination**

**Legal and policy framework**

120. In addition to the provisions of the current Constitution, the Draft Constitution of Kenya, makes several provisions against discrimination.

- Section 40(3) provides that all children whether born within or outside wedlock, are equal before the law and have equal rights under the Constitution.
- Section 40(7) provides that children with special needs, including girls, orphans, children with disabilities, refugee children and homeless children are entitled to special protection by the State and society.
- Section 42 2(b), (d) and (e) addresses persons with disabilities and children are included. "The State shall by legislation and policy measures - (b) educate communities and society on the causes of disability and the need for respect for

the dignity and rights of all; (d) ensure access to all places, to public transport and to information and communications to persons with disabilities, sufficient to overcome physical and other barriers to access; (e) encourage the development and use of sign language, Braille and other appropriate means of communication”.

121. The Children Act provides as follows:

- Section 5 provides that no child shall be subjected to discrimination on the grounds of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or social connection.
- Section 12 states that a child with disabilities shall have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost, whenever possible.

122. The Persons with Disabilities Act makes it illegal to discriminate against children with disabilities on any grounds.

### **Context and implementation**

123. The National Council for Children Services (NCCS) at national level and the Area Advisory Councils (AACs) at district and divisional level have been set up to address children issues.

124. The Government, with partners, is implementing the Alternative Rite of Passage Initiative with the goal of replacing, and thereby eliminating Female Genital Mutilation (FGM). People found forcing girls to undergo FGM are arrested and prosecuted by the police.

125. So far 800 former street children have been rehabilitated through the National Youth Service and 2000 reintegrated back into their communities through the Street Families Rehabilitation Trust Fund. Faith Based Organizations (FBOs) and the Nairobi City Council have also been involved. At the same time, the number of registered women groups increased from 107,080 with a membership of 4,287,701 in 1999 to 127,951 in 2003 with a total membership of 4,928,690 (Economic Survey 2004). The objective of the majority of these groups is to have community programs to help the livelihoods of their families, especially children.

126. A significant move towards catering for the educational needs of children with disabilities is the establishment of Educational Assessment Resource Centres (EARCs) in each district of Kenya. This has brought assessment services closer to children with disabilities within the community. The Report of the Proceedings of the National Disability Conference, 2004 indicates that over 10 of these EARCs have adequately trained personnel and are well equipped. The Government commissioned a Task Force on Special Education in 2003 to look into the plight of children with disabilities. The Task Force produced a report whose recommendations have been taken on board by the Ministry of Education, Science and Technology. There are now moves towards inclusive education where CWDs would attend any school of their choice.

127. Civil Society Organizations have set up sponsorship programs to cater for children with disabilities in high schools. This supplements the Constituency Bursary Fund set up by the Government in all 210 constituencies.

128. Over the last three years, the GoK and UNICEF have been working on a policy on gender and education. The GoK established two task forces, one at policy level to advise Government on issues related to gender and education and a Ministerial body to mainstream gender issues and these are now showing results. For example, in the education sector reforms, gender has been mainstreamed in the MoEST, Strategic Sector Plan, the Education Act and FPE plan, Master Plan on Education and Training (MPET, 1997-2010).

129. The Ministry of Education has developed a policy on re-admission of adolescent mothers to school.

130. Efforts to address gender disparities in education are also evident in official Government documents such as the PRSP, March 2002 and the Welfare Monitoring Survey II. The PRSP, in particular, acknowledges that women and girls are relatively disadvantaged in accessing education. Other initiatives include the MPET and the Gender and Education policy.

131. The Government set up Dagoretti Girls Rehabilitation School in March 2004 to complement Kirigiti Girls Rehabilitation School in taking care of girls in need of special protection.

### 132. **Constraints**

1. Outdated cultural practices like FGM, though outlawed, continue in some communities. In some primary schools older children are made fun of by teachers over their age and this makes them feel unwanted, unappreciated and discouraged. Some Area Advisory Councils (AACs) are weak and in some parts of the country they are yet to be formed. Some districts lack district children officers.
2. There are too few institutions to cater for children with disabilities at all levels from Early Childhood Development centers through to primary and secondary schools and tertiary institutions. This makes it difficult and very competitive for CWD to be admitted into schools.

“In our school, it is so traumatizing especially during exam time. The exam for the blind is brought long after other students have sat their exams”.

A child from Eastern province.

3. Even though the Government has allocated additional resources to cater for children with disabilities in primary schools, the amount is still inadequate.

“We did not wish to be born blind so we can pay an extra fee. We also need free education”.

Mutinda from Kitui District in Eastern Province.

4. The free primary education policy does not cater for pre-primary pupils and this has negative impact on the quality of primary education as children enroll directly to Primary one (Standard one).
5. Many OVCs are abandoned, neglected, sexually and economically exploited through child labour and disinherited by their relatives. Children from families that are infected or affected by HIV/AIDS are discriminated against and stigmatized; some people believe they are infected, other children do not play with them and they are isolated in school. Children born out of wedlock are discriminated against with regard to birth registration, inheritance of property, admission to school etc.

### **Article 3: Best interests of the child**

#### **Legal and policy framework**

133. Although the current constitution is silent on the rights of the child, the Draft Constitution of Kenya provides for the following: Section 40(4) states that a child's best interests are of paramount importance in every matter concerning the child.

134. The Children Act states in Section 4(2), that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. It further buttresses the point by requiring that in all decisions about a child undertaken by a Children's Court, the child's best interest should be paramount.

#### **Context and implementation**

135. To secure the best interests of children, a number of initiatives in different sectors, have been undertaken. A curriculum has been introduced at Kiganjo Police Training College to train police officers on child rights and child protection. Implementation of this program started in 2001 with the support of civil society organizations and the Government. Graduates of this college will be more sensitive to matters relating to children and protect their best interests.

136. In every police station there are officers handling cases relating to women and children. The police department has collaborated with civil society partners to establish child protection units in five police stations in the country; there are plans to expand them.

137. Under the Governance, Justice, Law and Order Sector program, the Children's Department plans to establish seven more children's courts in the country and five children friendly holding facilities in police stations. Improvement of children's remand homes and rehabilitation schools and strengthening of rehabilitation programs through capacity building is underway. Remand homes currently number 11 with an average annual population of 600 children while there are 12 rehabilitation centres whose average annual population is 1,510 children.

138. The Chief Justice has appointed 119 children magistrates to deal with children's issues all through the country, and set rules and regulations on matters relating to the children's courts. A separate and child friendly court has been set up in Nairobi and the process of setting up a second court in Mombasa, with support from partners, is almost complete.

139. The Government, in collaboration with partners, has developed guidelines on the setting up and management of charitable children's institutions in Kenya. It is through such collaborations, that the "Best Practice on Working with Street Children in Kenya" was completed and launched in 2001 by a Forum for Actors in Street Children Work.

140. Through the Department of Children Services, the Government is charged with the responsibility of facilitating interpretation and implementation of the joint GoK and CSOs work plan (AMREF II) of The Children Act. In addition to this, the formation of the NCCS has been designed to take on the responsibility of fundraising for children's activities across the country.

141. Sign language interpreters and Braille facilities are provided for in the courts for children with special needs. The UNCRC has also been produced in Braille.

142. The children's department with partners has established a centralised database collection system that will enhance service delivery to the children through information sharing and proper planning for children issues. So far, 249 children organizations have registered to use the database and the dissemination process is ongoing.

143. The Ministry of Gender, Sports, Culture and Social Services is planning to conduct a census on children with disabilities. However, for planning purposes, the Koech Report (1999) included indicators that will address issues of children with disabilities.

144. **Constraints**

1. Budgetary allocation to the Department of Children Services is inadequate both in comparison with other Government departments and in relation with the extent and number of the activities it has to carry out. Lack of adequately trained personnel in the various programs dealing with children hampers implementation of children rights. As a result, there have been limited efforts to ensure that the principle of "best interests of the child" is well grounded in all activities relating to children.
2. Parents, guardians, law enforcement agents and community members are compromised by child abusers especially in cases of sexual abuse against the best interests of the child; In many cases they will accept money to cover up child abuse making it difficult to take action and prosecute abusers.
3. Children with disabilities found in remand homes and rehabilitation schools are not adequately catered for since the institutions are meant to hold children of delinquent behaviour.

4. Although the Government has established EARCS in each of the 72 districts all over the country, there are still too few institutions to cater for children with disabilities at all levels.
5. Many children with disabilities continue to be locked up in their houses for long hours by their parents. Parents whose children are placed in rehabilitation schools or charitable children institutions tend to neglect their parental responsibilities. Poverty has caused an increase in the number of cases of neglect of children.

### **Article 6: Right to life, survival and development**

#### **Legal and policy framework**

145. In addition to what the Constitution of Kenya guarantees on the right to life, the Draft Constitution further affirms the right of children to adequate nutrition, shelter, basic healthcare and social services. It gives entitlement to persons with disabilities to enjoy all the rights and freedoms set out in the Bill of Rights, and to be full participants in society.

146. The Children Act also provides for the inherent right to the life, survival and development in the following ways:

- Section 4(1) states that every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.
- Section 8(1 and 2) states that every child shall have a right to religious education subject to appropriate parental guidance, and that the Minister shall make regulations giving effects to the rights of children from minority communities to give fulfilment to their culture and to practice their own language or religion.
- Section 17 states that a child shall be entitled to leisure, play and participation in cultural and artistic activities.
- Section 18(2) states that notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment.
- Section 190(2) states that no child shall be sentenced to death.

147. On the other hand, the Penal Code provides for the offences of infanticide, abortion and “killing of the unborn” for the protection of the lives of young children. The Penal Code further states that an expectant woman shall not be sentenced to death. This is for the protection of the life of the unborn child.

148. The Persons with Disabilities Act has been enacted and it provides for the rights and rehabilitation of persons with disabilities. This includes rights to life, survival and development of children with disabilities. The GoK and partners have developed a 5-year OVC plan of action.

149. If enacted, the HIV/AIDS Prevention and Control Bill, will address the prevention of the spread of HIV/AIDS and will serve to improve the lives of children affected and infected by HIV/AIDS.

### **Context and implementation**

150. There is considerable awareness amongst communities on the rights of the child. Legal service providers and law enforcers act positively on cases that are reported to the authorities.

151. The Traffic Police have initiated a programme for training young children in primary schools on how to safely cross roads and understand the different road signs. This is aimed at preventing the death of children through road traffic accidents.

152. There are Government campaigns to ensure that the life of the child is preserved including the Kenya Expanded Programme on Immunization (KEPI) to eradicate the deaths of children from immunizable diseases. About 90% of children between the ages of 12-23 months old have access to existing health infrastructure. As a result of sustaining high immunization coverage of more than 75% for all antigens in the past five years, vaccine-preventable diseases have declined steadily in incidence and prevalence. The Government is implementing a programme on Prevention of Mother to Child Transmission of HIV/AIDS. The Government and partners continue to mobilise resources through agencies such as the Global Fund Initiative to support programs that address prevention, care and support of children affected by HIV/AIDS and diseases such as malaria.

153. A policy of free treatment of under 5's in hospitals has gone a long way in prolonging and improving the quality of life of infants in this country.

154. There is a comprehensive Maternal Child Health Programme in which neo-natal and post-natal care is given to mothers free of charge in all public health facilities. Mobile clinics have been set up in arid and semi arid areas. The Government and partners have carried out campaigns on malaria, poliomyelitis and provide free mosquito nets for pregnant mothers and children under 5 to reduce infant mortality rates.

155. The proposed National Social Health Insurance Fund is a medical scheme under which all categories of children will get free treatment. Street children currently get health services from charitable organizations like the Red Cross and Red Crescent medical facilities. Goal Kenya also has a mobile clinic that serves the purpose of a health facility and as a way to reach out to street children and attract them to various centres in Nairobi. Kenyatta Hospital and other Government health facilities have a scheme for street children to receive treatment at a subsidized rate or free of charge.

156. There is a Government policy on food security as well as the Disaster Management Unit under the Office of the President.

157. Since the implementation of Free Primary Education, the enrolment rate has risen and there is provision in the school curriculum for games, hobbies, drama, etc. The school feeding

program in arid and semi-arid areas continues to play an important role in school retention in 30 districts. There are 29 ASAL districts and Nairobi region where the program is active. Records from the MoEST indicate that the number of beneficiaries as of July 2004 is 1,027,339.

158. On housing, the Government has put in place a taskforce to come up with a housing policy in collaboration with other partners.

159. **Constraints**

1. Enforcement of existing laws remains weak and there are reported cases of child battering. Children who are in the labour sector are often exploited as they are underpaid and are sometimes sexually exploited. There are few juvenile and rehabilitation institutions to handle cases of children in conflict with the law.
2. Insecurity in some areas has impacted negatively on the enrolment and retention of children in schools. Lack of proper sanitary facilities in some schools have compromised the health of the children, especially the girl child who has to stay at home during menstruation.
3. Adolescent mothers face complications during childbirth, which poses risks to the lives of both mother and child.
4. Infant mortality rates have increased from 74/1000 in 1998 to 77/1000 live births in 2003 of, while under five mortality rate has increased from 112/1000 in 1998 to 116/1000 in 2003 as a result of HIV/AIDS (Census Monograph and Mortality 2003 projection).
5. Despite the fact that abortion is illegal in Kenya, cases of illegally procured abortions continue to occur in various health facilities.
6. Information on infanticide and children pregnancies is not available as well as information on suicides by children. It is only in the case of death under suspicious circumstances that there is any kind of an investigation. Information on child pregnancies is not available.

**Article 12: Respect for the views of the child**

**Legal and policy framework**

160. Though the current constitution does not specifically provide for respect for the views of the child, the Draft Constitution 2004 provides the following:

- Section 40(4) provides that a child's best interests are of paramount importance in every matter concerning the child.
- Section 40(6)(k) states that children have the right to know of decisions affecting them, to express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.

161. The Children Act provides for the following:

- Section 4(4) states that in any matter of procedure affecting a child, the child shall be accorded an opportunity to express his/her opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity.
- Rule 6(1) of the Fourth Schedule of the Act; Foster Care Placement Rules, states that whenever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same areas in Kenya as the parents of the child.
- Section 8(1) states that every child shall have the right to religious education subject to appropriate parental guidance.
- Section 83(1(d)) states that in determining whether or not a custody order should be made in favour of the applicant, the court shall have the regard to the wishes of the child.
- Section 158(4) states that subject to section 159, an adoption application shall be accompanied by the following: written consent to the making of an adoption order in respect to any child; (f) in the case of a child who has attained the age of 14 years, with consent of the child.
- Section 186 states that every child accused of having infringed any law, shall be informed promptly and directly of the charges against him and not to be compelled to give testimony or confess guilt.

### **Context and implementation**

162. Civil Society organizations (CSOs) have continued establishing Children Rights Clubs. These Clubs provide children with the opportunity to express themselves in their different schools, societies and communities. There are also Law, Wildlife, Environment, Debating and Interact Clubs all of which support this process. Several CSOs also run Youth-to-Youth and Child-to-Child programs. In some schools children are allowed to choose their school leaders.

163. Some partners have formed a "Children's Parliament" and it is hoped this will become a representative body for children.

164. The Government, in collaboration with partners, has introduced the participatory programme for children and youth, "The Sungura Programme", which trains children and youth to participate in development programs such as formation of child rights clubs, sports and games and starting of income generating activities. The Ministry of Education, Science and Technology has developed a Teachers Handbook on child rights for primary teacher training colleges. Professionals working in the children's sector are given orientation before employment.

165. A partner has been organizing two annual events for children: “Children Voices” where children from all over the country meet and exchange information on crucial issues that affect their lives; and “The Other Side of The Street”, a forum where talent by needy children is showcased. The media runs various children programs such as “Club Kiboko” among others.

166. Magistrates, teachers, judges, social workers, children officers, police, and probation officers have received training on participatory rights of children by CSOs and the Children’s Department.

167. Child participation in the CRC reporting process provided children opportunities to express themselves. The Government, together with partners, developed standard participation guidelines that provide children the opportunity to express and protect themselves.

“... the termite is seen when its wings grow. We have now known our rights as children and so we must grow wings and fly so that people will know us ...”

Lewis, 17 years, Western Kenya.

168. In some regions children expressed that they had a good relationship with their parents and relatives to the extent that they convince them to take their views on board.

169. **Constraints**

1. Traditional attitudes towards children have hindered their full participation on issues that concern them. Most people in society fear that if children are allowed to freely express their views they will get out of control and will be unmanageable.

## **CHAPTER FOUR: CIVIL RIGHTS AND FREEDOMS**

### **Articles 7 and 8: Name, nationality and preservation of identity**

#### **Legal and policy framework**

170. Section 11 of The Children Act provides that every child has a right to a name and nationality, and that where a child has been deprived of his identity, the Government should provide appropriate assistance and protection with a view to establishing his identity.

171. Section 35(a) of the Draft Constitution further provides that every child has a right to a name and nationality from birth and to have their birth registered.

172. Births and Deaths Registration Act (Cap 149) Laws of Kenya provides in the L.N 184/1971 that registration of births and deaths of all inhabitants within the republic is compulsory. Registration of births is free if done within the first 6 months of such occurrence.

173. Section 8 of the Act states; a registrar shall not register a birth or death after the expiration of six months from the date of such birth or death except upon receiving the written authority of the Registrar General issues in accordance with the rules and upon payment of the prescribed fee.

174. Section 12 provides that no person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the register of such evidence as he may require that the father and mother were married according to law or, in case of Africans in accordance with some recognized custom.

175. It is the duty of any person who finds a new born child or in whose charge such a child may be placed, to give to the registrar of the registration area in which such child is found within seven days of finding of such child, such information required for registration concerning the birth of such a child as the informant may possess.

### **Context and implementation**

176. The Department of Civil Registration has designed and implemented social mobilization and training strategies to increase the level of awareness on the importance of birth registration. The strategies target community and opinion leaders and the registration agents. The community leaders then sensitize the public, influence positive change in attitudes towards birth registration and help in notification of births. The registration agents sensitize the public during *barazas* (public meetings), community functions and antenatal clinics. At times both the print and electronic media are used in awareness campaigns.

177. Birth registration activities are monitored at the head office, districts, divisions and locations through Districts registration services at the head quarters, District Civil Registration Monitoring committees, Division Civil Registration Committee and Location Action Committees.

178. Members to these committees include the Provincial Administration, Ministries of Health and Education, Central Bureau of Statistics, Department of Children Services, Non-Governmental Organizations operating at the division and location levels, women and youth groups, village elders and Traditional Birth Attendants.

179. The use of assistant chiefs to register births occurring at home has greatly improved registration coverage. Though still far from the expected levels, this strategy has nonetheless increased the volume of births captured. The training mobilization for community members and leaders has greatly improved the level of awareness on birth registration.

180. Information communication booklets have been produced for use by:

- District heads and officers in Government;
- Health personnel;
- Community based organizations and leaders;
- Schools, colleges and adult educators;
- Chiefs and assistant chiefs;
- Members of public.

181. These booklets are distributed free of charge during social mobilization workshops and to registrars in each district for distribution to the various groups.

182. The Government with financial assistance from UNICEF undertook an impact evaluation survey on civil registration improvement initiatives in Nyanza and Western provinces.

183. The Government is in the process of reviewing the Birth and Death Registration Act to harmonize it with current best practices. The process has so far got support from the expanded legal sector reforms.

184. The Government is in the process of computerizing the registration process countrywide between 2004 and 2008 plan period.

185. The Government has embarked on intensive training of the provincial administration at all levels with human rights approach to service delivery. Since this is the network used to register births occurring at home, the training is expected to result in expanded coverage of these births.

### **Constraints**

1. There is no proper mechanism to ensure registrations of births are done within the stipulated 6 months after birth. Cultural beliefs in some communities are a barrier to immediate registration of births. In some communities, mothers are confined up to nine months after delivery. This constraint will be addressed once the Act is reviewed.

### **Article 13: Freedom of expression**

#### **Legal and policy framework**

186. The current Constitution under Section 79 protects the freedom to receive ideas and information without interference.

187. Section 44 of the Draft Constitution of Kenya provides all Kenyans with the freedom of conscience, religion, thought, belief and opinion. It also provides for the right to either individually or collectively, in public or in private, to manifest any religion or belief through worship, observance, practice or teaching.

188. The Children Act in Section 8 states that every child shall have a right to religious education subject to appropriate parental guidance and further that the Minister shall make regulations giving effect to the rights of children from minority communities to give fulfilment to their culture and to practice their own language or religion.

189. The Act further states that in any matters of procedure affecting the child, the child shall be accorded the opportunity to express his opinion and that opinion shall be taken into account as may be appropriate taking into account the child's age and degree of maturity.

## **Context and implementation**

190. To some extent, children have been involved in making decisions concerning family resources including sale of land; career development especially in those institutions that have developed Career Guidance Departments; some schools have suggestion boxes for children to express their views and opinions; in some schools children select their prefects; some schools allow children to participate in formulation of school rules; children can join Clubs of their choice where these exist; and children participate in drama and music festivals.

191. Children have also been facilitated to participate in national and international celebrations like the Day of the African Child, the Universal Children's Day, International AIDS day, reporting on the CRC, Children's Voices and others. A significant number of children have also been enabled to participate in international meetings, conferences and similar forums focusing on issues affecting them.

### **192. Constraints**

1. Child participation is a new concept that has not been ingrained in the society. The Government and partners are sensitising the society and persons in touch with children on child participation.

## **Article 14: Freedom of thought, conscience and religion**

### **Legal and policy framework**

193. Both the current and the Draft Constitution provide that every person has the right to freedom of conscience, religion, thought, belief and opinion. Section 44 of the draft constitution and Section 8 of The Children Act affords freedom of thought, conscience and religion to children.

194. Section 158(f) of The Children Act provides that in cases of adoption where the child to be adopted is above the age of 14 years, the consent of the child shall be sought.

195. Section 83(1) of The Children Act provides that in determining whether or not a custody order should be made in favour of the applicant, the court shall have regard to: "the ascertainable wishes of the child; the customs of the community to which the child belongs; and the religious persuasion of the child".

196. In cases of foster care placement, The Children Act provides that where a child's religion is known, the child shall be placed with a foster parent who either is of the same religious persuasion as the foster child or who gives an undertaking that the child will be brought up in that religious persuasion.

197. Rule 6(1) of The Children Act's Fourth Schedule provides that whenever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same area in Kenya as the parents of the child.

198. The Act also provides that parents have the right to provide parental guidance in religious, moral, cultural and other values.

### **Context and implementation**

199. The courts extensively recognize the rights of the child to religious persuasions in matters of adoption and custody. Where the child is above the age of 14 the consent of the child is mandatory, before an adoption or custody or any decision regarding the child is made.

200. Campaigns have been intensified to create awareness against harmful cultural practices that violate a child rights to freedom of thought and conscience such as FGM.

### **201. Constraints**

1. Some religious groups have beliefs and practices that infringe on the rights of children. For example there are religious sects that prohibit their adherents from seeking medical attention from hospitals whenever they fall sick. Some communities still perpetuate harmful practices such as Female Genital Mutilation, child marriages, sniffing of tobacco and violence.
2. In some children's institutions, the distinction between religious instruction and indoctrination is not very clear, and thus many children fall victims of the latter, while the law provides for the former.
3. In some cases, girls are forced to adopt a particular dress code that conforms to the norms of the sponsoring religion.

### **Article 15: Freedom of association and peaceful assembly**

#### **Legal and policy framework**

202. The Constitution of Kenya guarantees the right of all in Kenya to freely associate and to assemble peacefully.

203. Section 48 of the Draft Constitution provides for the freedom of association, including the formation, operation and continued existence of organizations. It also provides for the freedom of individuals to join any association of their choice.

204. Section 49 of the Draft Constitution also provides that every person has the right, peaceably and unarmed without the requirement of prior permission, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

205. Article 8 of the African Charter on the Rights and Welfare of the Child provides that every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

## **Context and implementation**

206. Government departments and CSOs have facilitated the creation of structures and forums for children to assemble, associate and express their opinions at local, national and international levels. Examples of such initiatives are mentioned under Article 13.

207. Children in learning and religious institutions are generally encouraged to engage in co-curricular activities such as sports and a variety of clubs and groups. Time is also set aside for the various clubs and groups to meet and initiate their activities, and to a large extent, contribute to the decisions affecting them in the society.

208. Over 10 children centred non-governmental organizations have developed manuals, which caregivers and other workers in the children's sector employ in the implementation of child participation approaches in their work stations and communities.

### **209. Constraints**

1. Involving children, especially from rural and poor sectors of the society remains a challenge. There still exist religious beliefs and cultural practices that frustrate the implementation of the right to freedom to association and peaceful assembly due to the prohibition of interaction, especially between boys and girls.

## **Article 16: Protection of privacy**

### **Legal and policy framework**

210. Section 43 of the Draft Constitution provides that every person has the right to privacy, which includes the right not to have their person, home or property searched, seizure of possessions, and the unnecessary revelation of information about their family or private affairs or the infringement of the privacy of their communication. Section 19 of The Children Act provides that every child shall have a right to privacy subject to parental guidance.

211. Section 74 of The Children Act provides that a Children's Court shall sit in a different building or room or at different times from those in which sittings of courts other than Children Courts are held and no person shall be present at any sitting of a Children's Court except: members and officers of the court; parties to the case before the court, their advocates and witnesses or other persons directly concerned in the case; parents or guardians of any child brought before court; registered representatives of newspapers or news agencies; or such other persons as the court may specially authorize to be present.

212. Section 76(5) of The Children Act provides that in any proceedings concerning a child, whether instituted under this Act or under any written law, the child's name, identity, home or last place of residence or school, shall not, nor shall the particulars of the child's parents or relatives, any photograph, or depiction or caricature of the child be published or revealed, whether in any publication or report including any law report or otherwise.

### **Context and implementation**

213. The Kenya Demographic Housing Survey 2004 reveals that 62.1 per cent of households have an average of 2.6 persons per room in urban areas. The Government has developed guidelines for children's institutions setting minimum standards on accommodation and sanitation facilities of children.

214. The "Economic Survey 2004" shows that the approved expenditure on GoK housing doubled from KES. 48.6 million in 2002/2003 fiscal year to KES. 81.2 million in 2003/2004 fiscal year. Approved expenditure as a percentage of development expenditure went up marginally by 0.4 percent in 2003/2004 financial year as compared to 0.29 per cent in 2002/2003 financial year.

### **215. Constraints**

1. There is difficulty in distinguishing the boundary between the protection of privacy and actions that parents and other caregivers may need to take in the context of the provision of parental guidance.
2. Children lack privacy in family and schools due to inadequate toilets and rooms.
3. In some schools the practice of opening and reading mail meant for students continues, and in some girls schools, the students undergo the dehumanizing experience of frequent forced pregnancy tests conducted by the administration.

### **Article 17: Access to appropriate information**

#### **Legal and policy framework**

216. Section 79 of the Kenya Constitution protects the freedom to receive ideas and information without interference but not pornography.

217. The Draft Constitution of Kenya states that every one has the right of freedom of expression, which include: (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research.

218. The introduction of the Communication Commission of Kenya Act (1998) has resulted in the liberalization of the media providing the opportunity for media companies outside of the control of the state to enter the market. Section 15 of The Children Act provides that a child shall be protected from obscene materials. The Film Censorship Board is responsible for censoring to ensure children do not access obscene materials. However they cannot censor TV programs from international sources delivered through satellite and cable service.

219. To strengthen regulation of information reaching the public media owners have set up the Media Council as a self-regulatory mechanism.

220. The Provincial Administration, especially in rural areas, monitors the access of information to children especially in regard to video kiosks.

### **Context and implementation**

221. There are eight TV stations broadcasting from Kenya. Cable and satellite TV channels are also generally available, with the exception of a few areas where the signal cannot reach. Most stations have children's programs run by children presenters and offer a variety of programs including documentaries about wildlife, comedies, cartoons and sports.

222. There are twenty-three local and several international radio stations on air. Radio also has children programs run by children presenters and includes programming varying from programs on children rights and HIV/AIDS to a broad range of educative, informative and entertaining offerings. Most radio stations broadcast in English and Kiswahili. An increasing number including the state-owned KBC use vernacular language in their broadcasts.

223. The Kenya Institute of Education (KIE) had distributed 11,000 World Space radios to primary schools as at 30<sup>th</sup> November 2004. The schools have an 8-hour broadcast timetable used by trained teachers to transmit educational programs to schools where teachers are few.

224. There are five national dailies in Kenya, one of which is printed in Kiswahili. The two main dailies the Nation and the Standard provide coverage of children's issues and produce Saturday supplements for children.

### **Local daily/weekly average newspapers in circulation 1999-2003 (1,000 copies)**

*(Economic Survey 2004)*

	1999	2000	2001	2002	2003
Daily Newspapers					
English	82 372	78 844	78 335	82 067	86 508
Swahili	10 387	10 007	9 622	9 255	8 686
Weekly Newspapers					
English	1 312	1 297	1 283	1 311	1 505

225. Few children have access to and read newspapers. They like sports, pull outs that highlight children issues, cartoons, comics and word puzzles. They get the newspapers from parents, relatives, neighbours, friends and libraries.

226. Children's Publications: A few publications that are published specifically for children exist. These are "Maneno", "Sarah", "Binti" and "Insyder". They provide children with educational material and entertainment.

227. The Ministry of Information and Communication publishes 11 rural newspapers covering all the regions. Kenya News Agency also under the Ministry of Information is mandated to

collect and disseminate news from rural areas; produce electronic and print features on social, economic issues; and operate Mobile cinema units - disseminating HIV/AIDS and other documentaries.

228. Many educational institutions also air films for entertainment and educational purposes. There are 10 static cinema halls in Nairobi and Mombasa.

229. Privately owned video kiosks in densely populated areas of towns and rural shopping centres are a popular source of local entertainment.

230. Government departments use the Kenya Film Production Department to produce documentary films, which are disseminated through existing TV stations.

231. Some schools in urban centres have introduced computer courses in primary and secondary schools that enable the children to get access to the Internet.

232. The number of non-governmental organizations working with and for children who produce films, videos documentaries programs and publications on child rights and adolescent health has increased substantially. Children's views were presented to the delegates to the National Constitutional Conference. Some NGOs publish regional and national newspapers, magazines and newsletters with some specific ones in local languages.

233. The Kenya National Library Services operates public libraries in all major towns in Kenya and mobile libraries in a few remote rural areas.

234. Other sources of information for children include parents, teachers peer clubs, guidance and counselling sessions and public awareness campaigns and seminars and workshops.

235. **Constraints**

1. Open-air films are screened in most areas but not many girls attend due to the long distances involved and lack of security.
2. Most children in rural areas do not have access to the Internet and some do not even know about computers.
3. There continue to be difficulties in regulating private avenues of communication especially public broadcasting of pirated video tapes and DVDs, unfiltered Internet access and computer networks showing sexually explicit and or violent materials. The distorted explicit nature of the media messages on sexual issues, drugs and violence affects children's development.
4. Language is a barrier to traditional and cultural modes of communication.
5. Profit driven private media ownership makes it difficult to control what programs are aired.
6. Special categories of the population such as the disabled (blind, deaf) are not generally catered for by the media.

## **Article 37: Torture**

### **Legal and policy framework**

236. Section 74(1) of the Constitution of the Republic of Kenya outlaws torture.
237. The Draft Constitution of Kenya also outlaws torture in Chapter Five.
238. Section 37(5)(g) of the Draft Constitution protects every child from corporal punishment, other forms of violence, cruel and inhumane treatment in schools and other institutions responsible for the care of children. Section 18(1) of The Children Act states that no child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Capital punishment or life imprisonment is also outlawed in Subsection (2) in line with Article 37(a) of the CRC.
239. The Kenya Police Act outlaws the use of torture or any unreasonable force by police officers.
240. The Criminal Law Amendment Act, incorporated amendments from, the Criminal Procedure Act, the Penal Code and the Evidence Act. It outlaws the use of torture for purposes of obtaining confessions from suspects and accused persons. This includes children who may be in conflict with the law. The Children Act in Section 186(d) provides that “every child accused of having infringed any law shall not be compelled to give testimony or to confess guilt”.
241. According to the Criminal Law Amendment Act, confessions will only be admissible in a court of law if they are made during court proceedings and not at police stations, as was the previous practice. The Children Act further provides that no child shall be interrogated in the absence of a parent/guardian, social worker or children officer. This is to ensure that the best interests of the child are taken care of.
242. The Government has also ratified the UN Convention Against Torture and is in the currency preparing its first report to the UN Committee on Human Rights on its efforts thus far in elimination of torture.

### **Context and implementation**

243. The Government of Kenya has put measures in place to address torture, which include establishment of Rehabilitation Schools, Children Remand Homes, Children Courts and the Diversion Programme for Children in Conflict with the Law. The aim of the Diversion Programme is to provide a practical and a child friendly approach to cases of children and support efforts to divert larger numbers of children in conflict with the law away from the formal juvenile justice system and back to their communities and society. The Programme targets police stations. Records with the Children’s Department indicate that the number of children found in conflict with the law has fluctuated without any particular trends over the past 5 years; in 2000 they numbered 416; in 2001 there were 676; in 2002 466; in 2003 there were 674 falling to 662 in 2004.

244. The Kenya Police Services strategic plan has been designed with a human rights approach to address service delivery. NGOs and Government institutions have been set up to investigate cases of torture such as Kenya National Commission on Human Rights. With the training offered to police officers, they now handle cases of children in a more humane manner.

245. The Government, through the department of Children Services, at district level continues to intervene on child abuse cases including those of torture and other forms of degrading and inhuman treatment. Specifically, the Department of Children Services has set up a crisis desk that operates telephone hotlines to rescue children in need of protection.

246. Given the overwhelming need of children services, the partner organizations and institutions provide assistance to children whose rights are violated. The services range from legal aid, provision of shelter, counselling and referrals among others.

247. **Constraints**

1. Lack of adequate access to legal assistance and cultural beliefs and attitudes make children vulnerable to torture, cruel, inhuman and degrading treatment.
2. Awareness campaigns targeted at law enforcement officers and security organs have centred on police officers leaving out others who handle security matters such as security guards, watchmen and local authorities.
3. Even after the enactment of The Children Act, cases of torture, cruel and inhuman treatment of children continue to be witnessed in the country. In extreme cases, deaths occur. Some of the children are maimed for life. Those responsible include parents, care givers or teachers and others.
4. The categories of children who continue to be tortured as indicated by formal reports include those born out of wedlock and who are tortured by stepparents and in certain cases even biological parents. HIV/AIDS orphans were singled out as being mistreated a lot by relatives who feel they are forced to take care of them.
5. Children on the streets continue to face cruel and inhuman treatment especially at the hands of law enforcement agencies usually on allegations of having committed crimes. Some die and others sustain serious injuries. Prosecution of such cases remains low due to reluctance by parents and guardians to seek legal redress, or inability to access the justice system. The court process remains slow and unaffordable to most Kenyans.
6. Even with the outlawing of corporal punishment by The Children Act this continues to take place in learning institutions. The forms of punishment carried out at schools include caning, abuse by teachers cutting grass from 6.00 a.m. to 7.00 p.m., collecting cow dung, sitting in the sun for a long period with a blanket

over the head, being beaten with a pipe with your head under a table, being slapped, fencing the school compound, uprooting a tree trunk, digging trenches, cleaning ablution facilities and toilets, being made to walk on one's knees, splitting firewood, and unreasonable suspensions. Caning remains the most common form of punishment mentioned by children.

## **CHAPTER FIVE: FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **Article 5: Parental guidance**

#### **Legal and policy framework**

248. Children have a right to know and be cared for by their parents. This is provided in the Children's Act. The Children Act has put in place provisions that recognize parental responsibility in several sections: Section 23(2)(c)(1) recognizes a parent's right to give guidance to a child. It further gives parents the duty to provide guidance in religious, moral, social, cultural and other values to children. This is echoed in the provisions of the Act that give children the rights to religious education and privacy; where these are to be exercised with parental guidance.

249. Section 114 (e) states that the court may provide for a Family Assistance Order. This Order assists parents to access services such as counselling which ensures that they can eventually exercise proper parental guidance to their child(ren).

#### **Context and implementation**

250. The Government departments, faith-based organizations, NGO's and community-based organizations have started programs in family counselling and parental education. However such programs are limited in scope and not accessible to a large proportion of the population.

251. Through Area Advisory Councils, the Government has also initiated integrated programs that bring on board, the private sector, Government departments and NGO's involved in the children sector. Representatives of the 63 Area Advisory Councils formed so far in the country have been trained on the rights of the child and child protection with a long term goal of improving the welfare of children.

252. In every case the rights of parents have been respected except in cases where the interest of the child is violated, for instance in cases of Early Marriages or Female Genital Mutilation.

253. Legal measures are now in place as stipulated in The Children Act Cap 586 and the Draft Constitution of Kenya Chapter 6 section 40 (Bill of Rights) that also defines the role of parents, community and the Government in bringing up children.

254. The number of NGOs targeting categories of children in need of care and protection and their families has increased. So far the Children's Department has recorded over 400 charitable children institutions from all over the country, although the majority are not registered.

## 255. Constraints

1. Increasingly, there is a decline in provision of guidance to children and youth by parents. This has happened due to the increase in divorce cases; parents relinquishing their socialisation role to the electronic and print media, and the Internet; and HIV/AIDS has left many young people orphaned. Overall, the State has not sensitised parents and the community on their roles and responsibilities in parental guidance. Government effort to punish parents who negate their parental responsibilities is minimal and as a result many children end up in the streets.
2. There are very few organizations that provide counselling services for the family. Those organizations that do provide these services lack mechanisms for monitoring and evaluation to ensure they are effective. There are no institutional structures to implement Section 114 (e) of The Children Act which allows the court to require a court appointed person to give counselling to a child, parent, guardian or a family.
3. High levels of poverty also contribute to the increase in the number of children in need of care and protection. Many such children have moved to the streets to fend for themselves.
4. There is lack of coordination in the registration of institutions that provide care and protection for children. They are registered under various Government departments making it hard to monitor and regulate their operations.

## Article 9: Separation from parents

### Legal and policy framework

256. Section 6(1) of The Children Act gives the child a right to live with and be cared for by the parents. It further provides that children can only be separated from their parents if this is in their best interests; for instance where a parent is abusing a child. This is done through the courts and the Government is charged with the responsibility of providing for alternative care.

257. In undertaking the above, the court can grant an Exclusion order which ensures that a parent who has been abusive to a child is kept away from the child.

258. Where a child is separated from his/her parents through extra-judicial means, the Government is again charged with the responsibility of providing assistance for reunification of the child with his family.

### Context and implementation

259. CBS Multiple Indicator Cluster Survey (MICS) report for the year 2000 indicates that for children aged 0-14 years 65.7% live with both parents. A gender comparison showed that 66.5% of boys were living with their parents compared to 64.9% of girls. A much higher 72% of urban children live with both parents compared 64.1% in the rural areas.

260. The death of one or both parent's results in a child becoming an orphan. The MICS showed that 8.3% of children are orphaned. Girls registered a higher proportion at 8.7% compared to boys at 7.8%. Regionally Nyanza province had the highest incidence of orphan hood at 13.9% compared to other regions.

261. The GoK/UNICEF report 2004 on The Rapid Assessment, Analysis and Action Planning Process (RAAAPP) for Orphans and other Children Made Vulnerable by HIV/AIDS in Kenya shows that the total number of orphans (aged 0-14) is estimated to be approximately 1,700,000 or 12 % of all children. Children orphaned by AIDS as a percentage of total orphans are 54-60%. Those between 10-14 years form 55% of this group while those aged 0-4 years make up 14.5 %.

262. The Government has initiated reforms in the prison department that targets to provide a child friendly environment for children of imprisoned mothers. Children below 4 years may not be separated from their mothers; those above are put in alternative care.

263. To improve service delivery in institutions, the children's department has put minimum requirements and standards that guide their operation and management. In addition, some non-governmental organizations have researched and documented guidelines and interventions in professional practice - "Best Practices in Working with Street Children in Kenya", 2001.

264. A child who has attained the age of 14 years shall give consent in adoption - (Children Act Cap 586 Section 158 (4) (f)). Under revised custody laws, the ascertainable wishes of the child must be considered.

265. In 2003, the Government, private sector and non-governmental organizations working with children launched the Street Families Rehabilitation Fund that has already made some milestones in rehabilitation of former street families. About 2000 youth (boys and girls) benefited from the National Youth Service and Vocational Training Centres placements. This initiative started in Nairobi and now there are pilot projects in Mombasa, Kisii and Nyeri districts. Many street children have been reunited with their families through this initiative.

#### 266. **Constraints**

1. Separation from parents, for whatever duration of time, has negative effects on children who need love, care and role models. Such children are never psychologically prepared to cope with this separation occasioned by lack of psychosocial support. Keeping them together with their parents is not an easy option as, for example children who accompany their mothers to prison are also exposed to abuse and neglect. If left behind by imprisoned mothers, they are more often than not, left to fend for themselves, drop out of school or are ostracized.
2. In spite of the Government commitment to promote community based care, communities have limited capacity to take care of children separated from their parents. In addition there are inadequate institutions to cater for the rising number of children in need of care. Where available, the institutions lack adequate resources.

3. Officers from local authorities mandated under Section 40 of The Children Act Cap 586 to deal with children's issues have not fully taken up their responsibilities in the country.
4. There are no comprehensive rules and regulations to guide the stakeholders in the implementation of The Children Act on matters pertaining to guardianship, custody and maintenance.

### **Article 10: Family reunification**

#### **Legal and policy framework**

267. The Children Act provides that, where children are separated from their parents or families through extra-judicial means, the Government is charged with the responsibility of providing assistance to the child towards reunification with his parent or family.

268. The Government also carries a similar responsibility of ensuring that children who have been separated from their parents as a result of armed conflict or a natural disaster, are rehabilitated and reintegrated. (Section 10 [3]). The Act also provides for Access Orders, which a parent can apply for in a court of law, to ensure that they have contact with their child(ren).

269. The Government has developed the Refugees and Displaced Persons Bill that when passed into law will assist in reunification of refugee children with their families or parents.

#### **Context and implementation**

270. The situation regarding citizenship has not changed from that detailed in the initial report.

271. The Children Act requires the Government to provide assistance for reunification of a child with his family. This has been provided for within the National Standards on Environmental Adjustment Procedures that ensure the child settles as comfortably as possible.

272. The Government appointed the Commission of Inquiry on land and ethnic clashes (Njonjo Commission) with a view of resettling the internally displaced persons. It is hoped that affected families will be resettled.

#### **273. Constraint**

1. The Government has been slow to facilitate reunification of internally displaced children with their families.
2. Implementing agencies have no clear information on how to facilitate the resettlement of Kenyan refugees abroad seeking reunification and those granted amnesty.

## **Article 11: Illicit transfer and non-return**

### **Legal and policy framework**

274. Kenya has signed the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography.

275. The Children Act Section 13(1) states that a child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale and abduction by any person. Section 22 provides for the enforcement of the rights.

276. The Immigration Act provides that any Kenyan travelling out of the country should have valid travel documents. A ward-ship order under The Children Act requires that a child be placed under the protection and custody of the court (Section 114 (f)).

277. The draft constitution proposes to create a citizenship board to deal with matters of citizenship.

### **278. Constraints**

1. The lack of proper mechanisms to enforce the return of children is a constraint as is the lack of adequate immigration controls to guard against illicit removal of children from the country.
2. There are also weaknesses in the adoption procedures especially in regards to international adoptions. However, the draft Adoption Regulations seek to seal the loopholes in the practice of international adoptions.

## **Article 18: Parental responsibilities**

### **Legal and policy framework**

279. The Children Act sets out parental responsibilities. It gives parents the responsibility of providing education, guidance, medical care, immunization, adequate diet, shelter and clothing. It is elaborate on custody and rights of access. It gives both parents equal rights. Neither the mother nor the father has a superior right or claim against the other in the exercise of parental responsibility.

280. Where parents cause their children to be in need of care and protection, if prosecuted in a court of law, the court may:

- Order them to exercise proper parental control;
- Issue a family Assistance Order.

281. The above orders are meant to ensure that parents who do not undertake their responsibilities over their children are compelled and assisted to do so.

282. The Act also provides for the offence of neglect, which prohibits willful neglect, ill treatment and cruelty towards children by their parents and other caregivers. The offence attracts imprisonment for a maximum of two years and a fine of up to 200,000 Kenya shillings (c. 2,700 US\$) or both.

### **Context and implementation**

283. The Government and partners have made efforts to sensitize communities on parental responsibilities through different public forums.

#### **284. Constraints**

1. Poverty, low income for the employed, illiteracy, HIV/AIDS, alcohol abuse and domestic violence have contributed to the inability by parents to remain fully responsible. These compromise the parents' ability to be good role models for their children.
2. The failure to formalise marriages puts children born out of such unions in jeopardy. It denies them rights such as the right to family name and inheritance.
3. The Children Act Cap 586 Section 24(3) a and b and Section 25(1) (a) and (b) fails to harmonise the diverse cultural practices on parental responsibility. In communities that follow paternal lineage fathers enjoy an upper hand on parental responsibility.
4. Legal backing for DNA testing as provided for by the Criminal Law Amendment Act is for criminal evidence and not for civil evidence under which disputes over paternity arise. In cases where the court demands for the test the costs are prohibitive. It costs KES. 36,000 (c. US\$ 450) for two samples to be tested. The Children Act Cap 586 does not provide for DNA testing for cases of disputed paternity.

### **Article 19: Protection from abuse and neglect**

#### **Legal and policy framework**

285. The key statutes that deal with matters relating to violence against children, abuse and neglect are The Children Act (Cap 586 Laws of Kenya) and the Penal Code (Cap 63 Laws of Kenya).

286. The Children Act under Part II (Safeguards for the Rights and Welfare of the Child) Section 14, 15 and 16 provide for the child to be protected from physical and psychological abuse, neglect and other exploitation including sale, trafficking or abduction by any person.

287. The Children Act also places a penalty upon summary conviction of a term of imprisonment and a fine for offenders who have committed offences under Section 20.

288. The Children Act bars any person to subject a female child to circumcision and provides for protection of all children from early marriage, cultural rites, customs and traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity, physical, psychological development, exploitation and use in prostitution, inducement coercion to engage in any sexual activity, exposure to obscene material, protection from use of hallucinogens, narcotics, alcohol, tobacco products or psychotropic drugs and any drugs that may be declared harmful by the Minister for Health, torture, cruel treatment or punishment, unlawful arrest and deprivation of liberty. (Sections 14, 15, 16, 17, 18.) Section 127 provides for the offence of Neglect, which is defined as the willful failure to provide, ill treatment, cruelty on a child by a parent or care giver.

289. The Section 73-80 of the same Act provides machinery (Children's Courts) for intervention for children who are in need of care and protection. Abused children shall be placed in places of safety by authorized officers, administrative officers, children officers, voluntary agencies and the community.

290. The Kenya Government has banned corporal punishment in schools (MoEST Legal Notice LN 56/2001). Further to the above, the Penal Code provides for offences which amount to child abuse including rape, defilement, indecent assault and common assault.

### **Context and implementation**

291. The Government has opened children's desks in selected police stations. Corroboration statements of a child in defilement cases are no longer needed. Under the Criminal Law Amendment Act, the Government has increased sentence on defilers from 14 years to life imprisonment. Institutions are in place (Borstal, rehabilitation schools and hostels) where child offenders are committed for training. The diversion programme addresses children in police stations.

292. The Government and partners have trained children in child rights through child rights clubs in schools. Children in these clubs are aware of their rights and report cases of abuse. In addition, both the electronic and print media groups have highlighted the abuse of children with resulting action from the relevant authorities.

293. NGOs are running programs to counter Female Genital Mutilation by promoting Alternative Rites of Initiation.

294. Recent statistics (2003-2004) indicate that about 3,097 cases of rape were reported countrywide. The actual numbers could be higher since these figures represent only those reported to the police. To respond to this, the Government has strengthened community policing, appointed female police officers to be in charge of gender desks, and established a fully-fledged police division in Nairobi to specifically deal with such cases. The Attorney General is handling additional reforms. (Daily Nation Newspaper, 9 December 2004).

295. Various NGOs have formed coalitions and networks to enhance their service delivery for children in need of special protection. Establishment of the Family Division of the High Court, Children's Court, and training of juvenile justice personnel has created a more child friendly judicial system.

296. **Constraints**

1. There are insufficient programs addressing cases of abuse and neglect. Observation shows that many children are engaged in child labour, drug trafficking, commercial sex work and in criminal activities. Some families are ready to negotiate and reach a settlement with the abusers in total disregard of the welfare of a child. This is largely due to ignorance of the effect of abuse on the victim.
2. Inadequate resources are another constraint on efforts to address cases of child abuse. In some parts of North Eastern Province there are no legal aid services for children.
3. Overall, the personnel dealing with children's affairs are not conversant with children's issues. The number of intervention programs to help both the victim and perpetrator once a case is reported is limited.
4. Due to legal complexities some sexual abusers are acquitted by courts causing fear and uncertainty among parents or guardians who seek redress for their abused children.

Two girls aged 4 and 5 years walking alone in a coffee plantation were raped by a 21 year-old man. The mother of the man who had raped them took him away so that he would not be arrested. The girls were taken to hospital. Police are still looking for him.

Mary Muthoni, Standard 5, Urban Primary School, Embu.

**Article 20: Protection of children without families**

**Legal and policy framework**

297. The Children Act provides for foster care, guardianship and adoption. The court may appoint a guardian for a child whose parent(s) is no longer living or cannot be found and the child has no guardian or other person having parental responsibility for him. The court may also appoint a guardian for a CNSP who is displaced.

298. Where a child by virtue of a care order has been committed to a rehabilitation school or a charitable institution, the Director in conjunction with the manager of the institution may place the child for foster care for such a period as the Director may from time to time authorize (Section 147 (1)). The manager of the institution where the child was first

committed under a care order shall supervise and assess the condition of the child periodically and take such steps as shall be necessary to safeguard the welfare of the child (Section 147(2)).

299. The Act provides for adoption of children both locally and internationally.

### **Context and implementation**

300. The Government declared HIV/AIDS a national pandemic in 1999. Estimates indicate that 1.5 million Kenyans have died leaving behind 1.7 million orphans under 18 years of age. UNICEF projects the figure to reach 1.8 million by 2005.

301. The Government and its partners have developed national standards and guidelines on alternative family care.

“In Isiolo, children living on the streets are unhealthy, do not go to school, and carry passengers' goods on their shoulders from buses. They live in a dirty environment where they often get sick. They live together with prostitutes and '*chang'aa*' brewers who pollute the environment with a lot of garbage.”

Lucy Wamuyu, 12 yrs. Standard 6, Little Angels Primary School, Isiolo. (*'Chang'aa'* is a local alcoholic drink).

### **302. Constraints**

1. There is scattered information on available services and programs that support orphaned and vulnerable children.
2. While the Government has come up with draft regulations for the registration and management of charitable children's institutions, registration of these institutions is not centralized.
3. The Department of Children Services has limited human and financial resources making it difficult to deal with cases of children without families expeditiously.
4. Independent complaint mechanisms for children in alternative care institutions are not yet in place.
5. Kenya's economy has taken a long time to turn around and still remains a major setback in providing adequate care to needy children within the community though some relatives are coming forward to accommodate orphaned children in extended family structures.

## **Article 21: Adoption**

### **Legal and policy framework**

303. The Children Act provides for adoption of children resident in Kenya either locally or internationally. Previously, international adoption of children was not allowed in Kenya.

304. Even though Kenya is yet to ratify the Hague Convention on Inter-Country Adoptions, the provisions of the Convention have been captured in the Children's Act.

305. The Government has also drawn up draft subsidiary regulations that seek to ensure that adoption of children is undertaken with the best interests of children as paramount. The Act empowers the Minister to establish an adoption committee which shall formulate the governing policy in matters of adoption, effect liaison between adoption societies, Government and NGOs, consider and propose names of guardians' *ad litem*, monitor adoption activities in the country and such other functions as conferred on the committee by the Act. The Committee oversees adoption issues in the country.

306. Any child who is resident in Kenya whether or not the child is a Kenyan citizen or was born in Kenya may be adopted (Section 157(1)). Any person who contravenes the provisions of the adoption section shall be guilty of an offence and liable to imprisonment and, or a fine (Section 179(b) (ii)).

307. No application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic of Kenya for a period of three consecutive months preceding the filling of the application (Section 157(1)).

308. The Act gives jurisdiction only to the High Court to make adoption orders (Section 154).

309. The adoption order shall not be made if the applicant is of unsound mind, has been charged or convicted of an offence by a court of competent jurisdiction, or is a homosexual. Joint applicants should be married to each other. A sole male foreign applicant is not allowed to adopt (Section 158 (3) (a) and (b)). However under special circumstances a sole female foreign applicant may adopt.

310. The Act also allows for international adoptions upon a joint application of 2 spouses who are not Kenyan residents and are not Kenyan citizens provided that the applicants have obtained the consents from a court of competent jurisdiction in the country where both or one of them ordinarily resides (Section 162).

### **Context and implementation**

311. The Adoption Committee has been constituted, draft regulations are in place and there is fast, efficient handling of cases at the High Court after the establishment of the Family Division in 2002.

312. Consultations have begun towards ensuring that the Country ratifies the Hague Convention on International adoption.

**313. Constraints**

1. Most people within communities opt for foster care or locally agreements to support children left orphaned. They cite expenses and lack of clear information as hindrances to adoption. From the perspective of implementation, adoption regulations are yet to be given the force of law. The Chief Justice has not developed the rules for adoption.
2. Many children's organizations are ignorant of the fact that they can be registered as adoption agencies hence leading to a situation of monopoly and subjecting the adoption process to abuse.

**Article 25: Periodic review of placements**

**Legal and policy framework**

314. Section 130 of The Children Act provides for a supervision order placing the child under a children's officer or authorized officer while the child remains in the care and possession of his parents or guardian.

315. Under Section 131(2) the court may from time to time review, vary, suspend or discharge any order made under the act or revive an order after it has been suspended or discharged.

316. The Act requires the manager of an institution where a child has been placed in foster care to supervise and assess the condition of the child periodically and take such steps as shall be necessary to safeguard the welfare of the child.

317. In international adoptions, the High Court can order for periodic reports from the receiving country to monitor progress of the adopted child (Section 163(2)(f)).

**Context and implementation**

318. The Department of Children's Services with support from JICA/UNAFEI has developed national standards on "through care" which details steps towards proper resettlement into society of children leaving rehabilitation schools. Having these national standards in place makes reviews possible. The Government periodically inspects the situation in institutions for the welfare of the child although this is not adequately done. The Government has also initiated community rehabilitation through volunteer children's officers.

**319. Constraints**

1. Resources and trained personnel remain a big constraint in effecting periodic reviews. The current number of children's officers cannot meet the demand for services. In addition to this, some officers have no expertise in dealing with review of placements. Training on periodic reviews has not been made an integral part of rehabilitation.

2. Transport is a problem for children and children's officers who are required to monitor child welfare issues and the resettlement of children in society once they leave Government institutions.
3. Besides constraints to do with personnel, after care services for children released from Government institutions are also inadequate.
4. Institutions that handle placements have no capacity to address children with special needs. For instance, the education system does not adequately provide for placement and review. In some cases mentally retarded children are placed in the Mathare Hospital for people with mental disability alongside adults.
5. There is no stated policy to guide non-governmental organizations on periodic review of children placed under their care.
6. Sustainability of the volunteer children's officer initiative is a challenge.

## **CHAPTER SIX: HEALTH AND BASIC WELFARE**

### **Article 6: Right to life, survival and development**

#### **Legal and policy framework**

320. Section 9 of The Children Act, provides that a child shall have a right to health and medical care. The Kenya Health Policy Framework is the main policy body giving direction to the sector. This has now been translated into the National Health Sector Strategic Plan 1999-2004. Other policy declarations and documents include:

- National Reproductive Health Strategy (1997-2010);
- The National Reproductive Health Implementation Plan (1998-2003);
- National Reproductive Health Curricula for Service Providers (2003);
- Contraceptives Commodities and Procurement Plan (2003-2006);
- Essential Obstetric Care (EOC) Manual for Health Service Providers in Kenya (March 2002);
- Standards for Maternal Care in Kenya (December 2002);
- Postpartum Care in Kenya (1999);
- Effective Clinical Audit Manual (2003);
- Protocols and Guidelines for Quality Obstetric and Peri-natal care (2002);

- National Implementation Plan for the Integrated Management of Childhood Illness (IMCI) Strategy (2000-2004);
- National Plan of Action for Nutrition (NPAN);
- Community Nutrition and Care Plan of Action, 1999;
- Adolescent Reproductive Health and Development Policy (May 2003);
- National HIV/AIDS Strategic Plan (2000 - 2005);
- National Guidelines on Management of Opportunistic Infections;
- National guidelines on Prevention of mother To Child HIV/AIDS Transmission (PMTCT);
- National Programs Guidelines on Orphans and Other Children made Vulnerable by HIV/AIDS;
- National Social Health Insurance Bill;
- Economic Recovery Strategy for Employment and Wealth Creation.

### **Context and implementation**

321. The Penal Code forbids the imposition of a death sentence on a child. The right to life is extended to the unborn child by the law, which prohibits abortion unless the life of the mother is threatened. A death sentence cannot be passed on a pregnant woman. The Penal Code further creates the offence of infanticide to protect the lives of the infants.

322. Kenya has declared the goal of eliminating neonatal tetanus by 2005. The Government made this declaration jointly with UNICEF, WHO/UNFPA and also established a global fund for it. Subsequently the elimination of maternal tetanus was added as a priority in acknowledgement of the fact that death from maternal tetanus is as important to the baby as neonatal tetanus. The Kenya Expanded Program on Immunization (KEPI) offers Tetanus Toxoid to pregnant women starting from about 4 months of pregnancy. Following renewed efforts to eliminate maternal and neonatal tetanus (MNT), the Government developed a five-year plan to eliminate MNT using the high-risk approach. The program has covered 7 districts in the Coast Province, with coverage of 30%, 54% and 78.9% for the first, second and third rounds, respectively. Two rounds of the campaign have been carried out in Kisumu, Rachuonyo and Busia districts with coverage of 91% and 59% for the first and second rounds respectively.

323. For safe motherhood, key interventions focus on antenatal care, safe delivery, family planning, essential obstetric care, post-partum, newborn and post-abortion care.

324. The Integrated Management of Childhood Illness (IMCI) Strategy has been incorporated into all district work plans and 24 districts have already had district level training of the

first level health workers. So far 1238 clinical health workers have been trained on the IMCI case management. The Government has also put in place measures to provide free medical care to children under 5 years.

325. The State has intensified control measures on HIV/AIDS, which has had some impact in reducing the national prevalence from 13.5% in 2000 to 9.4% in 2003.

326. To reduce mother to child transmission of HIV, the Programme for Prevention of Mother to Child Transmission (PMTCT) was started. The full implementation of PMTCT was realized in the late 1990's and national strategies to intervene started in Kenya in 2000. There are now 450 sites that provide PMTCT services in both public and private health facilities. Strategies include improving antenatal care and delivery services and infrastructure. A PMTCT Technical working group is in place to oversee the scaling up of the PMTCT programs. The Government has registered 401 integrated and stand-alone Voluntary Counselling and Testing (VCTs) centres.

327. Anti-drug campaigns have been carried out through the National Campaign against Drug Abuse (NACADA). There is great participation by civil society in advocacy programs that promote survival and development of children such as Voluntary Counselling and Testing Centres (VCTs) and programs to discourage child abuse and neglect.

#### 328. **Constraints**

1. Poverty level is still very high with 56% of Kenyans living below poverty line.
2. The HIV prevalence of 9.4% still remains a big challenge to the country and families with devastating effects including the increased number of orphans and its direct impact on socio-economic development.
3. The delivery of quality reproductive and child health services in Kenya is hampered by lack of equitable distribution of facilities leaving a majority of Kenyans to walk long distances to access them, poor management, the lack of adequate trained personnel, medical equipment and essential drugs, and some negative cultural and religious practices. Constraints in the delivery of reproductive and child health services seriously impacts on youth who are not ready for parenthood yet fear ridicule from parents if they do not conform to the practices of their people.
4. Existing social structures are insufficient and inadequately funded. This hampers the provision of the child's right to life, survival and development especially those from poor families.
5. Malnutrition remains a big problem for the majority of Kenyans with over 56% of the people living below the poverty line. Most can only afford a meal a day. Poor climatic conditions experienced in the last five years have seen food prices rise making food unaffordable for many Kenyans and compounding the situation.

Scaling up of malnutrition control programs is difficult as data is insufficient and does not indicate the nutritional status of children in need of special protection, street children and children with disability.

6. Child mortality is also high in some areas due to lack of proper antenatal and postnatal care that compromises the life of the new born. In some cases this is due to lack of access to medical care or lack of knowledge in childcare. In cases where mothers have to resume work in 60 days after maternity leave it means introducing other foods to the infant in place of breast-feeding. This in turn exposes newborn babies to infection and subsequent death.
7. The lack of effective mechanisms for birth registration hinders effective planning for children.

### **Article 23: Children with disabilities**

#### **Legal and policy framework**

329. The Draft Constitution recognizes that the issue of persons with disability is a human rights issue and addresses it by providing for the rights of persons with disability. Key to this is the protection of their inherent dignity as human beings.

330. The Persons with Disability Act of 2003, has been enacted to provide for the rights, rehabilitation and equal opportunities for persons with disabilities.

331. The Children Act Cap 586 Section 12 states that a disabled child has the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible.

#### **Context and implementation**

332. The Ministry of Gender, Sports, Culture and Social Services has the overall mandate of uplifting the living standards of Kenyan's through mobilization of resources for socio-economic development. The Ministry also plays a leading role in advocacy, rights and rehabilitation of persons with disabilities.

333. The National Council for Persons with Disability was established to oversee the implementation of Persons with Disability Act 2003.

334. Equipment and assistive devices for children and persons with disability are exempted from taxes when imported through organizations of or for the disabled persons. Plans are at an advanced stage to carry out a national survey on the population of persons with disabilities.

335. It is estimated that about 25% (750,000) children of school going age have disabilities. Ninety thousand (90,000) of these have been identified and assessed. However only 14,614 were enrolled in education programs for children with disabilities in 1999. A similar number was either at home or in regular schools with little or no special assistance.

336. The current Education Act is being reviewed to address the special needs of children with disabilities. Programs have been developed to integrate children with disabilities in regular schools. Following the implementation of free primary education policy, the Government set up a task force for special needs education whose findings stipulated allocation of funds as follows:

- Regular schools with special units have been allocated KES. 17,000 per school per year for infrastructure to enable accessibility;
- Children with disabilities are allocated KES. 2000 per child per year compared to KES. 1020 for able bodied children;
- Schools catering for children with special needs get an additional KES. 153,000 per school per year.

337. The Government intends to have at least one trained teacher in special education in every primary school. This will be achieved through the ongoing distant learning programme for special education. Meanwhile, the Government has established 62 education, assessment resource service centers (EARSC) throughout the country to offer services for early detection and placement of disabled children.

338. **Constraints**

1. Infrastructure in most public places such as schools, hospitals, recreational places and public transport are not disability friendly.
2. Most health institutions still lack means to detect disabilities early in life. The fact that people with disabilities are among the poorest in society and cannot therefore afford to pay for services and equipment does not help matters.
3. While the Government has improved budgetary allocation for this sector, it is still inadequate to meet the increasing numbers of people with disabilities resulting from road accidents, drug abuse and natural catastrophes.
4. Inadequate facilities, information, expertise and personnel to deal with issues of disability especially at grassroots level inhibit the full development of children with disability.
5. Communication also remains a big set back in reaching out to people with disabilities. Most communication channels assume a non-disabled person with hearing and seeing abilities and there are few interventions to address those using sign language, Braille or audiocassettes. A case in point is the tools targeting behaviour change in the war against HIV/AIDS where none of the tools has specifically been made to suit people with disabilities. The lack of statistics on the status of children with disabilities makes it difficult for the Government to plan adequately for them.

6. Ignorance and lack of awareness on the part of some parents has allowed the continued mistreatment of children with disabilities. Some cultural practices and beliefs also perpetuate discrimination of CWDs in some communities where such children are considered taboo or bad omens.
7. Institutions for CWDs, however well intended, isolate children from the rest of society. Currently there is no proper plan for mainstreaming them. For instance, in standard schools, teachers and pupils are not sensitised to support and co-exist with CWDs.

## **Article 24: Health and health services**

### **Legal and policy framework**

339. The Children Act provides the right to health care and access to medical services for all children in Kenya.

340. The National Social Health Insurance Fund seeks to ensure that all Kenyans, including can have access to free medical and health services.

341. A number of policy directives are in place to respond to the main health challenges in Kenya. Significant policy directives include the National Health Sector Strategic Plan (1999-2004), the National Reproductive Health Strategy (1997-2010) and the National Reproductive Health Implementation Plan (1998-2003). Others include National Cervical Cancer Screening Programme Draft (Sept 2003), National Implementation Plan for the Integrated Management of Childhood Illness (IMCI) Strategy (2000-2004), the National Malaria Strategy (2001-2010), the National Plan of Action of the elimination of FGM in Kenya (1999-2019) the National Condom Policy and Strategy 2001-2005 and the National Programs Guidelines on Orphans and Other Children Made Vulnerable by HIV/AIDS, the National Plan of Action on OVC and Kenya Demographic and Health Survey (KDHS) 2003.

### **Context and implementation**

#### *Right to health and access to health services*

342. Health Sector Reforms outlined in the ERS aim to reduce the disparity in health resources and ensure they are affordable and accessible to Kenyans. The Ministry of Health has continued to train more health personnel and this is confirmed by a 3.2 per cent increase in the number of registered medical personnel from 57,208 in 2001 to 59,049 in 2002. The Government has also made efforts to improve the remuneration of doctors in order to fight the brain drain. The remuneration of GoK doctors was increased by 200% in 2002 and that has resulted in the re-entry of about 1100 doctors who had emigrated owing to poor terms of service.

343. Traditional Birth Attendants (TBA) are being trained with support from UNICEF, WHO and AMREF among others. About 3000 had been trained by the year 2000. Their role is being redefined to enable them to act as community resource persons (CORPs) providing a linkage between the community and health facilities.

344. The Government recognises the role that traditional healers play in the health system. Research on herbal medicine is being undertaken by the Kenya Medical Research Institute (KEMRI) and Kenyatta University also has a research department dealing with traditional medicine. The Ministry of Health Department of Standards and Regulatory Services is also working towards the integration of traditional medicine with modern medicine. Distribution of health institutions and hospitals, beds and cots has recorded marginal increase over the years. There were 4,421 health institutions in Kenya in 2001 compared to 4499 in 2002. The total number of hospital beds and cots also rose from 58,080 in 2001 to 60,657 in 2002, representing a marginal increase of 4.4 per cent. Overall, the ratio of beds and cots per 100,000 population improved marginally in all provinces.

345. The Government has taken measures to increase access to primary health care by rationalising cost sharing in dispensaries (KES. 10) and health centers (KES. 20). The National Social Health Insurance Fund (NHSIF) Bill will further improve access to health care at all levels of health care.

346. The Infant Mortality Rate (IMR) is currently estimated at 77/1,000 live births while under five-mortality rate is 115/1,000 live births (KDHS 2003). The maternal mortality ratio was 590/100,000 live births in 1998 and 414 per 100,000 in 2003. Fifty-seven (57%) of children between 12-23 months are fully immunised (KDHS 2003) with minimal difference between rural (56%) and urban (59%) coverage. Regional coverage varies from between 9% to 79%.

347. The nutritional status of under fives did not improve in the 5 years preceding the KDHS 2003 that revealed the following; stunting of 30% (11% severe), wasting of 6%, underweight of 22% and 2.6% exclusive breastfeeding rate at 4 to 6 months. Hospital data estimates 20% of pregnancies are complicated while 20% of women develop complications during birth.

348. An estimated 1.08 million children are born in Kenya every year (State of the World's Children Report 2003). The high-risk period around birth presents various conditions that are responsible for up to 40% of infant mortality (NHSSP, 1999). Neonatal mortality is often underreported because a majority of the deaths occur at home. An estimated 9% of infants in Kenya are born with low birth weight (SOWCR, 2003). Low birth weight is probably the single most important factor in neonatal mortality. Malaria in pregnancy is believed to account for 5-10% of infant deaths associated with LBW.

349. By 2000, Kenya had yet to eliminate Neonatal Tetanus (NNT) (see UNICEF: Elimination of Maternal Neonatal tetanus, 2000). The goal of elimination of MNT by 2005 was consequently declared jointly by UNICEF, WHO/UNFPA along with the establishment of a global fund for it.

350. During pregnancy, about 90% of women are seen by a professional health provider at least once but at delivery a much lower figure is recorded for those attended to by skilled personnel (in 1998, 45%, 1990, 51%, 41% in 2000 and 42% in 2003). Only about 42% of births took place in a health facility in 1998 and 58% at home in the hands of unskilled attendants. The 2003 KDHS showed no improvement with only 40% delivering at a health facility. As part

of the effort to improve safe-motherhood in Kenya, key interventions focus on the main pillars of the safe-motherhood initiative namely: ante-natal care, safe delivery, family planning, essential obstetric care, post-partum, newborn and post-abortion care.

351. Only 15% and 9% of facilities were equipped to provide Basic Essential Obstetric Care (BEOC) and Comprehensive Essential Obstetric Care (CEOC) respectively in 1999 (KSPA, 1999). Currently 40% of hospitals, 30% of maternity units, 3% of health centers and 5% of clinics are able to provide BEOC services. About 28% of hospitals, 15% maternity units, 3% health centers are able to provide CEOC. A quarter of all hospitals and 15 per cent of maternity units have been assessed as ready to provide CEOC. Some 2/5 hospitals and less than 1/3 of maternity units have been assessed to have all the elements necessary to perform the functions of the basic EOC.

352. Most of the designated Service Delivery Points (SDPs) for family planning services are unevenly distributed (MoH, 1996). About 88% of the facilities providing family planning services offered at least three methods but with marked provincial variations. For example, about a third of the facilities in Coast and Nyanza provinces offered IUCD compared with 60% in Central province and 77% in Nairobi.

353. Between 1993 and 1998, use of contraceptives for all methods increased minimally from 33% to 39%. This situation had not changed in 2003 (39%). In 1988, the highest user rate of 55% was recorded in Central Province and lowest user rate of 20% was recorded in Coast Province with a national unmet need of 24% (KDHS, 1993; KDHS, 1998).

354. To contribute to the reduction of infant and under 5 mortality rates the Government adopted the Integrated Management of Childhood Illnesses (IMCI) Strategy in 1997. This has since been implemented in collaboration with WHO, UNICEF and other partners including USAID, SIDA, DANIDA and World Bank. IMCI strategy is one of the National Public Health and Clinical high priority packages in the National Health Sector Strategy Plan 1999-2004. Other essential packages include Reproductive Health, Malaria Control, KEPI HIV/AIDS and STD Control and prevention of major environmental health related communicable diseases control such as cholera, typhoid and dysentery as well as food safety. IMCI is also a component of The Poverty Reduction Strategy and the ERS. Health workers have already been trained in IMCI. So far 24 districts (35%) have initiated IMCI. A total of 1238 (7%) clinical health workers have been trained in IMCI case management while 22% of pre-service medical institutions are teaching IMCI. IMCI drugs have been incorporated into the essential drug kits making available pre-referral drugs at primary level facilities. A strategic document on implementation of IMCI in the community is at an advanced stage of development.

355. The Polio vaccine continued to be administered to children in order to eliminate the disease. On the National Plan of Action for Nutrition (NPAN) there are advanced plans to remove the Kenyan code of marketing breast milk substitutes from the Kenya Bureau of Standards and replace it with provisions in the Public Health Act as a safety measure for safeguarding the health of the child. Several interventions have been taken to reduce the high malnutrition rates. These include assessment of the Baby Friendly Hospital Initiative and training of health workers on infant feeding in the context of HIV, growth monitoring and promotion, micronutrient deficiency control and nutrition management in emergency situations.

*Water and sanitation*

356. Almost 25% of Kenyans draw their drinking water from rivers or streams. About 21% have piped water connected to their dwellings, compound or plot while 11% use a public tap, almost one in 5 households use wells as a source of drinking water the majority of which are covered or protected. Less than 5% of households use other types of water supply sources. The majority of households (53%) are within 15 minutes of their water sources (KDHS 2003). Eighty three percent (83%) of households have access to decent sanitary facilities such as a main sewer and pit latrine (1999 Census). In rural areas 21% are exposed to poor sanitary conditions as compared to 2% in urban areas.

357. A major development in this regard is the coming into force of the Water Act 2002.

358. The Kenya Government in collaboration with partners is implementing an integrated programme on water and environmental sanitation in schools and communities. The objective is to contribute to child survival, protection and development by supporting efforts to achieve universal access to safe water supply and environmental sanitation services.

*Adolescent health*

359. According to the KDHS 2003-2004, adolescents constitute 45% of the Kenyan population. With implementation of free primary education a large population of adolescents are in school. Adolescents are faced with various problems including drug abuse, early pregnancies and abortions, early marriages and mental problems including suicidal tendencies.

360. "Adolescence in Kenya - the Facts" a report by the Centre for Adolescent Health and Development indicates that 55 percent of Kenya's population is less than 19 years of age with one third of the entire population being between 13 and 19 years old. About 29 percent of children work to support their families, 13 percent to cover school fees and 10 percent to buy food. Of adolescents without education, 46 percent have begun child bearing; 1 out of 5 children in primary school and 2 out of 5 in secondary school have consumed alcohol; 4 out of 10 women who die of unsafe abortion complications are below the age of 20 with adolescents being more susceptible to pregnancy related complications; and 3 out of 10 women in Kenya have been circumcised marking a 10 percent decline from 1998.

361. The KDHS reveals that adolescents are engaging in delinquent behaviour early and in greater numbers than ever before. A survey by UNICEF and CAS 2003 shows 58 percent of youth had been involved in general theft and 30 percent did so due to idleness. Poverty, unemployment and drug abuse are some of the factors contributing to the increase in criminal activity among the youth.

362. In May 2003, the Government launched the Adolescent Reproductive Health and Development Policy to address the challenges faced by the adolescents. Youth friendly health services have been established in some health facilities. The services provided for the youth include, reproductive health services, information, counselling on drug use and early pregnancy and its effects.

363. The Government is also in the process of developing School Health Policy Guidelines for a safe and healthy environment. Forty percent (40%) of primary and 77.7% of secondary schools provide guidance and counselling services.

364. Smoking in public places has been prohibited. Moreover a Tobacco Bill is in parliament. The Criminal Law Amendment Act 2003 makes it an offence to supply and offer to children petroleum, distillates, glue and other related hallucinogens. Packaging of alcohol in sachets has been outlawed to reduce the increasing sale of alcohol to children.

365. The Government and private agencies offer health services to street children and street families. A programme of the Ministry of Local Government and Home Affairs targeting street families within Nairobi, took children through training at rehabilitation centers and the National Youth Service (NYS). Subsequently they were provided with health services within those institutions.

“We have nurses in our rehabilitation centre and the hospital is only 500 meters away. We are happy because when we fall sick we get prompt treatment”.

Osiako, 15 years old, from Kakamega.

366. On harmful cultural practices the Government is advocating for a rise in the legal age of marriage from 16 to 18 years to protect this age group from such practices. Measures are being put in place to protect girls from early marriages through encouragement of communities to adopt alternative rites of passage and providing the practitioners with alternative sources of income.

### **HIV and AIDS**

367. HIV/AIDS prevalence in Kenya stands at 9.4% representing a decline from 13% in 1999.

368. It is estimated that there were 1.02 million births in 2002. In a population of 30 million this generally reflects the large number of women in the sexually reproductive age bracket. With an HIV transmission rate of 10% during pregnancy estimates suggest 13,300 children were born with HIV in Kenya in 2002.

369. About 10% of reported AIDS cases occur in children under the age of five years. Most of these cases are due to mother-to-child transmission of HIV. An estimated 50,000 to 60,000 children under five years of age are infected with HIV per annum. Around 100,000 infants and children under the age of five are living with HIV in Kenya, and many more have died of AIDS. There are close to 1 million HIV orphans in the country and numerous child headed households. The total number of orphans in the 0 to 14 age group was estimated at 1.7 million in 2004. The number is projected to rise to 1.8 million in 2005. Out of this population 54 - 60% have been orphaned by HIV/AIDS.

370. Responding to the challenges posed by the HIV/AIDS scourge the Government declared HIV/AIDS a national disaster and instituted the National AIDS Control Council NACC in 1999 to coordinate AIDS control activities. A notable achievement of NACC is the recent publishing

of the Draft Bill on HIV /AIDS 2003 and the development and distribution of various HIV guidelines such as the National Program Guidelines on Orphans and Other Children made Vulnerable by HIV/AIDS, Guidelines for Prevention of Mother to Child Transmission (PMCTC), Guidelines for Voluntary Counselling and Testing and Guidelines on Home Based Care among others. Annual Sentinel Surveillance of the disease Progression and the 2003 KHDS have been carried out and a National HIV/AIDS Strategic Plan for 2000-2005 made. An annual Joint AIDS Program Review (JAPR) is carried out together with implementing partners.

371. In collaboration with NGOs the Government has intensified efforts to fight the spread of HIV/AIDS through a host of Programs including setting up of 401 Voluntary Counselling and Testing Centers and 450 PMTCT sites across the country, formation of a Cabinet Committee on HIV/AIDS which the President chairs and launch of the National AIDS and Sexually Transmitted Infections Control Program (NASCOP) in addition to various advocacy and awareness programs.

372. Several organizations offer HIV services and most people are now aware of the existence of the disease. ARV therapy is being promoted in Kenya with treatment centers in two national teaching and referral hospitals and 8 provincial general hospitals, 16 district hospitals and 6 mission hospitals. All these facilities also have CD4 machines. About 24,000 people are on ARV therapy with a government target of 95,000 through the “3” by “5” initiative. However limited children formulation of ARVs has hampered access to treatment by children. Though the prices have been reduced to KES. 500 per month, most Kenyans may not afford this. About 1100 health care workers have been trained on ARVs. Treatment of tuberculosis, TB is free in public hospitals. AIDS control units have been established in all Government ministries and departments with development sector specific plans and policies.

373. Through the Kenya Disaster Response Project of the National AIDS Control Council, 10% of about KES. 1.4 billion has been allocated for the support of Orphans and Vulnerable Children.

## **Malaria**

374. Malaria remains the most common cause of mortality in children aged under five in Kenya. Twenty million Kenyans are affected annually and 26,000 children under five years of age (72 per day) die every year. In addition pregnant women suffer severe anaemia and are likely to deliver infants of low birth rate as a result of contracting malaria. It is estimated that 170 million workdays are lost every year due to malarial illness thus adversely affecting the country's economic development.

375. About 15% of children sleep under a net while 5% sleep under insecticide treated nets, ITN. The proportion of pregnant women sleeping under a net is 13% while 4% sleep under ITN. About 24 % pregnant women taken appropriate anti-malarial (SP) for intermittent treatment twice in pregnancy. Only 6% of children under five take appropriate anti-malarial within 48 hours.

376. The Government has put malaria control measures as indicated in the National Malaria Strategy (20002- 2005). Intervention areas include management of malarial illness, vector control, control of malaria in pregnancy and control of malarial epidemics. Tax on imported mosquito nets has been waived and prices subsidised. Various ways of increasing ITN coverage and targeting the poor have been implemented including highly subsidised or free ITNs.

377. The country has benefited from the Global Fund for Malaria, HIV/AIDS and TB.

378. **Constraints**

1. Rural areas experience a problem of insufficient health personnel most with more than 80% of the doctors based in urban areas where they care for 20% of the population. There is an acute shortage of Public Health Officers, Public Health Technicians, Nutrition Technicians and Medical Social Workers who are supposed to spearhead the crusade of preventive as opposed to curative medical care.
2. Available health facilities cannot meet the demands of health care. The few hospitals available are normally overpopulated with patients sharing beds. The recent reduction in rationalisation of cost sharing in dispensaries and health centers resulted in a 300% workload increase in the facilities. Some facilities lack even basic drugs and equipment to meet the high demand.
3. Some of the regions are inaccessible with impassable roads especially during rains. Poor infrastructure hampers access even where health care services are free.
4. The “2004/2005 Estimates of Recurrent Expenditure”, June 2004 shows the net estimate of the Ministry of Health for financial year 2004/2005 amounts to KES. 15,900,389,280 (Approximately US \$212,000,000) compared to the net provision of KES. 15,936,440,460 for 2003/2004 financial year reflecting a decrease of KES. 36,051,180 (About US \$481,000).
5. A large population of Kenyans still encounters food shortage due to food insecurity. About 56% of Kenyans still live below the poverty line. This is compounded by the recurrent natural disasters such as floods and drought in various parts of the country.
6. The multi ethnic status of the country makes it difficult to promote primary health care and to eliminate harmful cultural beliefs and practices.
7. The HIV/AIDS pandemic remains a threat to the provision of quality health care to children. Moreover, paediatric formulation of ARVs is not readily available for children in public facilities. Children orphaned children by HIV/AIDS are still stigmatized.

## **Article 26: Social security and child care services and facilities**

### **Legal and policy framework**

379. The Pension Act (Cap 189.), the National Social Security Fund (NSSF Cap 268) the National Health Insurance Fund (NHIF), and the National Social Hospital Health Insurance Fund (NSHIF Bill), provide the framework for social security in Kenya.

### **Context and implementation**

380. Currently, public servants reaching retirement age (55 years) receive a pension if Government employs them on permanent terms.

381. The National Social Security Fund is also in place for contributors who are on temporary and probationary terms. The pension benefits are, however, inadequate, and in most cases insufficient to maintain the children of the retired worker. There are practically no social security benefit schemes for the aged, disabled, single mothers and child-headed families, or for those who have not contributed to the National Social Security Fund. Health insurance benefits are available for in-patients who have contributed to the National Health Insurance Fund. This is extended to benefit the children of these families. The informal sector participates in this fund on a voluntary basis.

382. Currently the Government's new policy is to convert the NHIF into a National Social Health Insurance Fund (NSHIF) which will cover both in-patient and outpatient medical needs and introduce sharing of costs between the Exchequer, employers and employees, the informal sector and other productive segments of society. As part of the NSHIF implementation process, the Government will set up a special health care endowment fund to target vulnerable groups such as the aged, displaced persons and other deserving categories. A draft bill is due to be debated in Parliament that will effect operationalise this process.

### **383. Constraints**

1. There is no welfare scheme to cater for the very poor, aged, persons with disabilities or children in special circumstances. The current social security scheme requires payment of premiums in order to benefit from it at retirement. But even for those who contribute, the returns are not adequate to cater for the needs the families.
2. The process through which benefits are accessed is extremely lengthy. In cases where contributors die, there is no mechanism of ensuring the estate goes to the rightful beneficiaries. Many times, the children of deceased contributors are disinherited.

### **Article 27: Standard of living**

384. “Our biggest problem is scarcity of food. We don’t get food donations from agencies and well-wishers as was the case in the past. The food crisis has forced even old people into house helps! This has also contributed to child labour as children opt to work to eat”.

Kimathi from Isiolo.

### **Legal and policy framework**

385. Through the Economic Recovery Strategy for Wealth and Employment Creation, ERS the Government has planned to construct affordable houses for all slum dwellers in urban areas so that more children can have improved shelter.

386. The Draft Kenya Social Development Policy proposes to raise national awareness on the need for an integrated framework for social development with emphasis on the vulnerable and marginalized; the very poor, the landless, persons with disabilities, elderly citizens and children will be recognized by the Government and their rights and needs fulfilled through a deliberate and comprehensive programme. The aim is to ensure access to opportunity and quality social services.

### **Context and implementation**

387. A head count carried out in 2002 with the support of GTZ and other development partners revealed that there were up to 10,000 street children in Nairobi. A similar survey is necessary for all urban centers countrywide. The Ministry of Gender, Sports, Culture and Social Services has 14 community-based nutrition centers catering for malnourished children under 5 years of age and plans are underway to increase the number of such centers nationwide. The Government has rehabilitated 300 street children/youth through the National Youth Service, NYS and is now in the process of recruiting 1500 for NYS to equip them with skills to enable them be self-reliant.

388. A number of CBOs and NGOs have encouraged communities to start income generating activities through provision of loans. The Ministry of Planning supports such initiatives by channelling funds to CBOs for development of communities.

### **389. Constraints**

1. With more than 50 percent of Kenyans living below the poverty line, it goes without saying that the standard of living is low for the majority. This has been occasioned by rising unemployment, large family sizes, increasing divorce and separation.
2. Housing is expensive especially for urban dwellers pushing a majority into informal settlements that lack the basic facilities and expose children to abuse.

3. In cases of disputed paternity, there are no proper mechanisms to hold parents accountable for the children's needs, especially those living outside the country.
4. Enforcement of the rights of the child as provided for in Section 22 of The Children Act is a constraint where the child is born out of wedlock.
5. Most social amenities are concentrated within the urban areas and away from rural areas. This includes non-governmental organizations that duplicate services in the urban areas while rural areas go without.

## **CHAPTER SEVEN: EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

### **Article 28: Right to education**

#### **Legal and policy framework**

390. Education and training in Kenya is governed by the Education Act Cap 211 and other related Acts of Parliament, including the Teachers Service Commission (TSC) Act, Kenya National Examinations Council (KNEC) Act, Adult Education Act and various Acts and Charters governing Universities. Currently, the Education Act is under review in order to harmonize all related Acts and to address emerging and reform issues such as Free Primary Education (FPE), HIV/AIDS, food and nutrition, and drug abuse.

391. In view of the above the Government has developed a new policy with appropriate national philosophy, vision, and mission of education and training. The Draft Sessional Paper on a Policy Framework for the Education Sector for Meeting the Challenges of Education and Training in Kenya in the 21st Century contains policy proposals for moving the sector's development agenda forward.

392. The Children Act, Cap 586 provides that every child shall be entitled to education, the provision of which shall be the responsibility of the Government and parents while Section 7(2), entitles every child to free basic education, which shall be compulsory in accordance with Article 28 of the UNCRC. Under Section 5, no child can be discriminated against on any ground including disability. The Disability Act, 2003 provides that no child with disability will be denied the right to education as provided for in The Children Act and the UNCRC. The Children Act Cap 586 Section 13(1) and 18(1) protects children from physical and psychological abuse (Section 12, Children Act). The Persons with Disability Act (Section 76(3) (b)) provides that any person or institution providing any special care or medical attention to children with disabilities must have regard to the child's physical, emotional and educational needs.

393. A policy guideline on child mothers is in place. Children who get pregnant while in school are now being re-admitted back to school after delivery of the baby to complete their education. This ensures that the girl child is not denied the right to education and upholds the principle of non-discrimination.

394. In the year 2003, FPE was introduced with the objective of enhancing access, retention, and equity in education. The goal was and still is to attain Universal Primary Education (UPE) and Education for All (EFA), which is a Millennium Development Goal (MDG).

## Context and implementation

395. Corporal punishment was outlawed in schools through Legal Notice No.56 of 2001 and a circular sent to all head teachers regarding the ban. The Ministry is also strengthening its guidance and counselling division both at headquarters and school level and is also developing guidelines on alternatives to corporal punishment. In the meantime a few cases of corporal punishment have been reported in the local dailies and the District Education Office has dealt with each case.

396. The right to education starts at 0-6 years with access to pre-school. In Kenya there are 28,176 preschools, which charge a minimal fee.

397. On protection of children, the Ministry of Education has developed a Child Rights Curriculum at pre-school (ECD) and teacher training colleges. In addition, the Ministry of Education in collaboration with the NGO Kenya Human Rights Commission has developed and disseminated a Human Rights Handbook for primary schools.

398. During the reporting period there has been accelerated co-operation between the GoK and a large number of partners who are engaged in strengthening Education Sector activities. Key partners include the World Bank, ODA/DFID, JICA, the European Union, USAID, CIDA, SIDA, UNESCO, UNFPA, UNDP, UNDCP, ILO/IPEC, UNICEF and OPEC fund.

399. Furthermore there are a large number of international and local NGOs, FBOs and CBOs who have been rendering invaluable support for enhancing access to formal and non-formal education.

400. Under FPE the pupil to text book ratio is 1:3 while the toilets to pupil ratio has improved from 1:100 to 1:70. The on-going teacher recruitment exercise is intended to improve teacher pupil ratio which currently varies from 1:35 to 1:70 depending on regions.

401. The total number of primary schools in the country in 2003 was 17,832 with an enrolment of 6.8 million for school ages 6-13 while in 2002 enrolment was 5.9 million. There was an upsurge in enrolment by 0.9 million as indicated below.

### Enrolment in primary schools by province for 2002 and 2003

Province	2002			2003		
	Boys	Girls	Total	Boys	Girls	Total
Coast	204 071	169 485	373 556	242 336	204 540	446 876
Central	397 152	398 335	795 487	425 034	423 654	848 688
Eastern	577 956	578 977	1 156 933	641 562	625 840	1 267 401
Nairobi	72 436	72 439	144 929	134 782	88 783	205 362
Rift Valley	798 881	744 704	1 543 585	875 002	838 162	1 713 241
Western	384 393	383 787	768 180	509 883	508 739	1 018 662
Nyanza	560 654	534 885	1 095 539	649 455	622 786	1 272 241
North Eastern	34 626	15 406	50 032	41 688	19 129	60 817
Grand Total	3 030 169	2 898 072	5 928 241	3 519 742	3 331 634	6 851 376

Source: Ministry of Education, 2003.

402. **Gender:** In the year 2002 there was a near gender parity of boys to girls at 51.1% to 48.8%; the situation remained the same in the year 2003 at 51.3% to 48.6%.

403. **Special education:** A number of special education institutions for all categories of children with disabilities have been established. These range from primary to post-school vocational training centers. The integration of children with disabilities within regular schools has increased their educational opportunities and alleviated the threat of isolation. This has created a sense of dignity and promoted self-reliance. The Government policy is to encourage the integration of children with disabilities into regular schools in order to ensure their full participation in the learning process. Under the free primary education the children with disabilities receive double the funding allocation from the Government.

404. Unfortunately, a large number of children with disabilities cannot access education due to a shortage of relevant institutions and facilities, limited trained personnel and even ignorance of the parents. District education and training boards are encouraged to establish special schools for children with disabilities. They are required to take into account the special needs of these children when putting up physical facilities. There is an established process of identifying children with disabilities and encouraging families to enrol them in school. The Government is also addressing the curriculum needs for children with disabilities who cannot fully fit within the existing education system. Within the Ministry of Education, a Special Education Unit (Quality Assurance and Directorate of Basic Education) was created in 1972, followed by Education Assessment and Resource Centers countrywide. These changes were necessary in order to manage the provision of education to special needs children. To cater for education delivery, Kenya Institute of Special Education was established to train teachers. Children with less severe disabilities learn with other children under the Kenya Integrated Programme.

405. There are no centers of excellence to tap the highly talented children. Policy recommendations exist but a process of identifying gifted and talented children and the necessary curriculum as well as placement for them has to be developed.

406. **Secondary education:** Although secondary school education is not free, there are bursaries for needy children to make it accessible to all. The awarding process needs to be streamlined and coordinated. Enrolment in secondary schools has been steadily increasing, for example in 2002 enrolment went up by 5% from 804,510 in 2001 to 847,287 with girls comprising 47.2% of total enrolment. The slow growth of secondary school institutions has also contributed to the limited number of children transiting from primary to secondary school. The proportion of male and female children progressing from Form 1 to 4 has declined from 95% in 1996 to 80.7% in 2000. The transition rate from primary to secondary schools in 2003 was 42.3% indicating that only a few pupils from primary move to secondary school. This low transition rate has been attributed to high poverty levels among the households, which stands at 56%.

407. The decline in completion rate at secondary school is attributed to poverty, early marriages, child labour and repugnant cultural practices. The implementation of free primary education provides a future challenge with regard to higher enrolment requiring access to secondary education. The quality of education in secondary schools has greatly improved

following recent reforms which include: appointment of a Director for Quality Assurance and Standards; and the purchase of 72 vehicles and 200 motor cycles for enhancing inspection services.

408. On gender, there is near parity at secondary school at 50.06%: 49.93%. Differences emerge among regions: in North Eastern it is 55: 45 (boys to girls) whereas Nairobi at 42.2:57.7 (boys to girls). The country is set to achieve the Millennium Development Goal (MDG) No. 3 on gender.

409. **University education:** University education forms the apex of Kenya's education and training. Access to University education is hampered by lack of adequate funding and facilities. The annual intake into public universities is 10,000 students while private universities take in about 6,000 and another 4,000 are self-sponsored, about 5,000 go to foreign universities for undergraduate studies. Only 25,000 out of 45,000 with minimum admission grade of C+ gain admission into the universities.

410. The number of female students is still low standing at 32.9 percent in the year 2003/2004. There has been an increase in enrolment of students in the six public Universities by 18.8 percent from 52,906 students in 2001/2002 to 62,876 in 2003/2004 academic years. Undergraduates form 94.9 percent of the total student population, while the female population comprises 35 percent, representing an increase of 1.2 percent compared to the 2001/2002 academic year. The Government has licensed 15 private universities besides the existing 6 public universities. Gender parity has yet to be realized. Efforts towards attainment of gender parity are being made through admission of girls at a cut-off point which is lower than for boys. For 2003 candidates cut-off points for girls was 65 while for boys was 66 up from 65 and 64 in 2002 for boys and girls respectively. Middle level colleges, such as national polytechnics and teacher training colleges, also provide post-secondary education.

411. **Guidance and counselling:** Currently, 75 percent of schools and teacher training colleges have guidance and counselling programs. At secondary school level, the Teachers Service Commission has appointed teachers to head guidance and counselling departments in 75 percent of schools. Various educational institutions training teachers have also included guidance and counselling as a major subject and certificates offered at diploma, bachelor and master's level. Effective guidance and counselling services minimize cases of indiscipline. Professionally trained guidance and counselling personnel are required in order to strengthen such services to learners.

412. **Encouraging regular attendance:** On measures to encourage regular attendance at school and reduction of drop out rates, the strategies being implemented are: bursaries in secondary schools to cater for poor children; provision of text books in all primary schools; school feeding programme in arid and semi-arid regions; and re-entry of the child-mother back to school.

413. **School discipline:** The Government has taken measures to ensure that children are disciplined in a humane manner and in accordance with the provisions of the CRC. In this regard, the Government issued a Legal Notice No. 56 of 2001 banning corporal punishment in

schools. Further to this, The Children Act Cap 586 sec. 18(1) states that no child shall be subjected to torture, cruel punishment, or treatment. The concerns of the CRC and Education Act have been incorporated in The Children Act.

414. Despite the existing legal provisions outlawing discrimination against any child, some categories of children still find it difficult to access education. One such category is HIV/AIDS affected and infected children who are at times discriminated against on the basis of their status. There have been reported instances of denial of admittance to certain institutions of learning. The Ministry has issued a directive to all schools on admissions of children stressing that there should be no discrimination.

415. In order to ensure that the education of children in conflict with the law is not disrupted, The Children Act provides that their cases shall be handled expeditiously and without unnecessary delay. Where the case is not completed within 3 months after the plea has been taken, the case shall be dismissed. (Children Act, 5th Schedule, Child Offender Rules). In the event that such children are found guilty they are committed to Rehabilitation Schools, probation hostels and Borstal institutions, and are provided with education in those institutions. Any child who is aggrieved on matters concerning the education system has been afforded an opportunity to seek redress from the Children's Court as established under Part 6 of The Children Act.

#### 416. **Constraints**

1. Harmful cultural practices such as early marriages, FGM, widow inheritance and cattle herding and discrimination against the girl-child, are still rampant, hindering retention of children in schools.
2. HIV/AIDS has left many children without care givers and led to child-headed families who have to balance being in school and providing for their siblings.
3. In ASAL areas, distances to school are vast and children have to cover long distances often endangering their lives and discouraging them from remaining in school.
4. The challenges of ensuring that discipline is administered in conformity with the provisions contained in CRC and The Children Act include, inadequate skills of teachers to apply alternative forms of discipline, bad influence from television programming, drug use, internet access and publication, and a high number of pupils per class and in this environment many teachers to resort to corporal punishment to instil discipline.

“There is a lot of caning and pupils are abused by teachers. Other forms of punishment include cutting grass from 6 am-7 pm, collecting cow dug, sitting in the sun for a long period with a blanket over the head, being beaten with a pipe with your head under a table, being slapped and canned, fencing the school, uprooting a tree trunk, unreasonable suspensions and abuse from teachers”.

Innocent Musa, 15 years - Isiolo.

417. In many parts of Kenya, a high proportion of unqualified and untrained teachers adversely affects the quality of pre-primary school education. The provision of early childhood education remains a challenge as fees and levies are charged in ECD centers.

418. The furniture provided in many pre-schools is generally unsuitable for young children while teaching, learning and playing materials are inadequate. ECD teachers are demoralized due to poor pay. The Government is now funding non-formal education centers that meet specified laid down criteria. Further, to streamline service delivery in the sub sector the Government is finalizing a policy on Non-Formal Education in Kenya.

419. There is no legal framework to enforce the principle of non-discrimination as far as education is concerned for the girl-child.

420. The net effect of introducing Free Primary Education, although not yet compulsory, has been to increase pupil enrolment by 1.3 million in 2003 and by 0.2m in 2004. The high enrolment led to a big teacher shortage, which has been addressed by way of recent recruitment. In addition, the Government still has the problem of inadequate infrastructure such as classrooms and toilets to cater for the large pupil enrolments in schools.

421. Many rural schools are generally sub-standard in terms of buildings and furniture, making it difficult for them to provide suitable learning environments. Some schools do not have adequate classrooms and conduct some of their classes under trees.

## **Article 29: Aims of education**

### **Legal and policy framework**

422. Recent policy initiatives have focused on the attainment of EFA and UPE. The initiatives are contained in the 1999 Report by the Commission Of Inquiry on The Education System (Koech Commission), Education Sector Review 2002/03 and the 2004 Draft Sessional Paper. Key concerns are access, retention, equity, quality and relevance, and internal and external efficiency within the education system.

423. The Government is committed to the provision of quality education and training as a human right for all Kenyans in accordance with international conventions, such as the EFA goal, and is developing strategies for moving the country towards the attainment of this goal.

424. The implementation of Free Primary Education (FPE) is a step towards the attainment of UPE and a key milestone towards the realization of the EFA goal.

### *Aims and objectives*

425. The overall aim is to achieve EFA by 2015 as indicated above in line with the national and international commitments and obligation. The following objectives have been set based on national and international aims and goals.

426. Pre-primary/Early Childhood Development:

- To lay a foundation for self confidence and free expression, and develop an appreciation of other people's needs and views to help them appreciate their own culture;
- To provide an all round development of the child in ages 0-6 yrs.

427. Objectives (2) to (5) relate to primary schooling:

- To ensure that all children, including girls, children with disabilities, children in difficult circumstances, and those from marginalized/vulnerable groups, have access to and complete free and compulsory primary education by 2010;
- To enhance access, equity and quality at all levels of education and training by 2010;
- To eliminate gender and regional disparities in primary and secondary education by 2015;
- To ensure that the learning needs of all, young people and adults are met through equitable access to appropriate learning and life-skills programs by 2015;
- To assist persons with disability to develop towards realization of full participation in social life, development and equality;
- To inculcate the vocational and entrepreneur skills necessary for self-employment;
- To educate and train high level manpower needed for alleviating development through industrialization of the economy.

### **Context and implementation**

428. The effectiveness of the current 8-4-4 structure and system has also come under increasing scrutiny in light of the decline in enrolment and retention particularly at the primary and secondary school levels in the last decade.

429. To realize the objectives above, the Ministry has identified and is using the following indicators to monitor education delivery:

- Attainment of UPE and EFA by 2015;
- Achievement of a transition rate of 70 percent from primary to secondary school level from the current rate of 47 percent, paying special attention to girls' education by 2008;
- Enhance access, gender, equity and quality in primary and secondary education through capacity building for 45,000 education managers by 2005. On capacity building for education managers, by November 2004, a total of 19,000 head teachers,

1100 zonal inspectors of schools and 150 district education officers had been trained in financial management. The remaining 24,750 will have been trained by end of 2005;

- Construct/renovate physical facilities/equipment in public learning institutions in disadvantaged areas, particularly in ASALS and urban slums by 2008. A grant of KES. 50,000 has been given to each primary school for water harvesting and sanitation. The grant is to be reviewed annually.

430. Using the indicators, Ministry of Education has been able to follow up on its programs. The curriculum was reviewed and rationalized in 2002 and became operational in year 2003 with Class 1, Class 5 and Form 1. It will take 4 years to phase out the old curriculum.

431. MoEST has a directorate responsible for implementation, quality assurance and standards. Children are taught practical subjects such as home science, agriculture, arts and crafts in order to inculcate vocational and entrepreneurial skills. They are taught to appreciate and respect the environment through clubs and societies and competitive festivals.

432. The Government recruits highly trained teachers for all levels as assurance to children's rights to quality education, retention, security, safety and health guarantee. However, there is a shortage of school inspectors and teachers at all levels an issue that is being addressed through annual recruitments.

433. On religious guidance in schools, individuals and educational management boards (school management committees, SMC and board of governors, BoGs) respect all rights of children including the freedom of worship. Religious education is also incorporated within the school curriculum.

434. Curriculum is developed at the Kenya Institute of Education, KIE through the National Centre for Early Childhood Education, NACECE in collaboration with other stakeholders with funding from World Bank. It addresses the child's environment with the aim of developing effective cognitive and physical abilities. It is, however, greatly influenced by the competitive nature of the primary school curriculum where Standard 1 children are required to have a certain level of mastery of linguistic and numerical and literacy skills.

435. Teachers are trained on the curriculum facilitated by Early Childhood Development, ECD officers at designated District Centers for Early Childhood development, DICECE.

436. In ASAL districts, the school feeding programme has been extended to pre-schools in 29 districts and also runs in Nairobi slum areas.

437. **Constraints**

1. There is a shortage of school inspectors and although the Government recruits fully trained teachers for all school levels the assurance of children's right to quality education, school retention, security, safety and health in education is affected by the shortage.

2. The lack of adequate physical facilities hampers efforts to secure the right to education for every child.
3. There is inadequate budgetary allocation.

### Number of pre-primary schools and teachers 1999 - September 2003

Year	No. of schools	Boys	Girls	Total	Trained	Untrained	Total
2003	28 176	720 144	721 724	1 441 868	24 414	39 285	63 699
2001	27 573	590 816	572 716	1 163 532	22 311	24 808	47 119
2000	26 294	558 130	538 499	1 096 629	19 408	23 201	42 609
1999	24 429	544 644	519 239	1 063 883	17 541	22 750	40 291

### Article 31: Leisure, recreation and cultural activities

#### Legislative and policy framework

438. The Children Act emphasises the responsibilities and duties of a child {Section 21(b), (d) and (e)}. These provisions recognize that children have a role to play in preserving and strengthening social and national solidarity and to support the development of positive cultural values of their communities through their relationship with other members of that community.

439. The Children Act, Section 17 provides leisure, play and participation in cultural and artistic activities for the child and also spells out the penalties for those who infringe on this right. The Educational Act requires schools to provide an enabling environment to ensure that children have time to play and participate in leisure activities.

440. A Draft Cultural Policy addresses the culture-based conflicts that affect the welfare of children. Such conflicts take the form of ethnic and religious differences, inheritance of property and succession. The Draft Policy also recognizes, provides for and supports those cultural practices that do not violate the rights of children.

441. The right to leisure, recreation and cultural activities cannot be enjoyed independently or in isolation. For example the right to education provides an opportunity for the enjoyment right in Article 31 with children being allowed time to participate in recreational and cultural activities. The Industrial Property Act of 2001 protects art galleries, books, innovation sites and monuments for children's leisure and learning.

442. The Ministry of Gender, Sports, Culture and Social Services has a policy to establish national arts galleries to, protect and promote art and creative talents of children and youth.

#### Context and implementation

443. The Government funds institutions at different levels to ensure the conservation and promotion of Kenya's immovable heritage for the benefit of children and future generations.

444. The Government has created and sustained an enabling environment in which performing arts such as, music, drama, dance, recitals, narratives, story-telling, film and poetry thrive for the benefit of children and the general public.

445. Clubs and societies in schools provide children with an avenue for rest, leisure and participation in cultural rights and arts.

446. Through grants and capacity building the Department of Culture supports creative expression as an effort to revive and revitalize dying languages, traditions and practices that served to promote the dignity of children in the African family. The Government supports and promotes the use of music and language in all learning institutions as a means of transmitting and promoting positive culture and at the same time discouraging and eradicating retrogressive cultural practices that negatively affect children.

447. Games, sports, recreation and entertainment are important for intellectual, emotional, physical development and relaxation of the mind and body of the growing children and youth. The Government has constructed sports stadia at district's headquarters and makes them available for use by youth and school children within their localities at a minimal cost or free of charge. The stadia are maintained and equipped by the National Sports Stadia Management Board (NSSMB).

448. The Government has also encouraged the revival, development, research and popularization of traditional games and sports that enhance the quality of recreational activities and entertainment locally and internationally.

449. The Government has undertaken to encourage the protection of family values and the rights of the children within the family. Conflicts that are culture-based and directly affect the welfare of the child, such as ethnic and religious differences, inheritance of property, succession, and disputes over land burial and marriage have been tackled through various mechanisms outlined in the Draft Cultural Policy.

450. Through the Department of Culture the Government encourages the existence of faiths and beliefs that teach respect for life, personal liberty and peaceful co-existence among Kenyans. At the same time it will discourage and fight retrogressive cultural practices, beliefs, faiths and manipulations that work negatively, are injurious, or infringe on individuals and children's rights. Such practices include female circumcision, early marriage, child mothers, wife battering, widow inheritance, some death taboos and ceremonies and extreme religious philosophies.

451. **Constraints**

1. Play and leisure are not given adequate time by parents and teachers. Some private schools are located in unhygienic places with minimal or no play grounds.
2. Negative or retrogressive cultural practices are so entrenched to some cultures and traditions that it may take a long time to eradicate them, for example FGM, widow inheritance, and childhood marriages.

“Some girls do not go to school at all and if they do, the drop out rate is high due to female circumcision leading to pregnancy and then marriage”.

Child from Eastern Province.

## **CHAPTER EIGHT: SPECIAL PROTECTION MEASURES**

### **Article 22: Refugee children**

#### **Legislative and policy framework**

452. The Children Act identifies children who are refugees as children in need of care and protection. The Act places responsibility for their care and protection with the Government which, is also mandated with assisting them in being reunified with their parents or families.

453. A Refugee and Displaced Persons Bill has been drafted and tabled in parliament. The Bill makes provisions on standards and procedures for asylum seekers and un-accompanied refugee children. It sets out their rights and responsibilities while in the country.

#### **Context and implementation**

454. Kenya continues to host thousands of refugees from neighbouring countries. Education, health care and nutrition services are provided to refugees through collaboration between the Government and partners like UNHCR.

455. According to the Office of the Vice President and Ministry of Home Affairs which deals with issues affecting refugees, women and children affairs, which deals with issues affecting refugees, women and children are classified as vulnerable groups in refugee camps and therefore get special attention. Issues affecting the girl-child like sanitation have been addressed through provision of separate toilets. Women and girls get priority in issues of food and education. The workload for children has been reduced with special emphasis on the girl child. Schools have been introduced and the 8-4-4 curriculum is taught.

456. The UNCRC committee expressed concern over the reduced funding and cooperation by Government. The UNHCR has increased its funding and strengthened its cooperation with the State party through the relevant department in the Ministry of Home Affairs.

#### **457. Constraints**

1. Language barriers and stigmatization of refugees by local communities are a constraint to securing the rights of refugee children. There are few interpreters in the refugee camps and in schools for the refugees, which limits communication and thereby access to other rights.
2. Some refugee children exhibit mental and emotional scars from the impacts of trauma experienced while fleeing their homes. Some refugee camps have become conduits for infiltration of small arms and trafficking of drugs and refugee children have been dragged into these criminal activities creating a predicament for the host country.

3. There are difficulties in tracing family members and relatives of un-accompanied refugee children. This is further compounded by lack of cooperation from some foreign embassies in assisting in re-location and reunion with parents.

### **Article 30: Children belonging to a minority**

#### **Legal and policy framework**

458. Section 5 of The Children Act provides that no child shall be subjected to any form of discrimination on any ground. Section 8(2) further calls upon the Minister to make regulations giving effect to the rights of children from minority communities to give fulfilment to their culture and the practice of their own religion or language. The Regulations are not yet in place.

459. The Act allows the Minister responsible to exclude children of a particular race, tribe, religious group or sect from the application of certain provisions, sections or parts of the Act upon application by interested parties.

460. Section 63.A(2) of the Draft Constitution states that a person belonging to a cultural, religious or linguistic community may not be denied the right with other members of that community to: enjoy their culture, practice their religion and use of their language; form, join and maintain cultural, religious and linguistic association and other organs of civic society.

#### **Context and implementation**

461. Some of the minority groups in Kenya are the Rendille, Ogiek, Dorobo, El-molo, Sabaot/Sebei, Burji, Gabbra and others.

462. Decentralization within the Local Authority Reform Program and devolution of powers as proposed in the Draft Constitution are some of the measures being employed to address the special needs of minorities.

463. Measures adopted to ensure the preservation of the identity of the minority to which the child belongs include a school system that allows children to practice their religion so long as it is not repugnant to justice and morality. The quota system and affirmative action in education enables children from minority groups to access higher education.

464. Several children from this group are benefiting from free primary education and in addition schools in arid and semi-arid areas have implemented feeding programs to keep children in school. Basic items like uniform are not compulsory. The school system accommodates the people's way of life and some pupils attend school in the morning and others in the afternoon after herding cattle. Mobile schools have also been started to cater for the nomadic lifestyles of many minority groups. In addition, every child in primary school receives a grant for his or her instructional materials and general purposes.

465. The Government has started a programme that addresses the needs of minorities in general through a program called the Arid Lands Resource Management Programme.

466. **Constraints**

1. There is need for more mobile schools.
2. Structures for juvenile justice are non-existent.
3. The life style of many of these minorities makes it difficult for the Government to develop suitable support programs for them. Most are nomadic from pastoral communities while others are hunter-gatherers.

**Article 32: Street children**

**Legislative and policy framework**

467. The Children Act recognizes street children as children in need of care and protection and gives the Government the primary responsibility of rehabilitating and reintegrating them back into society.

**Context and implementation**

468. Under the Ministry of Local Government, the Government has a policy to withdraw children from the streets and place them in rehabilitation programs such as the National Youth Service Training, which provides them with vocational skills. Reception centers have also been set up in all provinces, with Nairobi having four, to serve as transit centers for the street children rehabilitation programme. At these centers, street children are received, assessed and given appropriate support and assistance.

469. The Government and partners have also developed a program of assistance for street children who numbered 250,000 in 2001. The Street Families Trust Fund initiative started in January 2003 returns children to their families and supports their re-integration into the community as well as other programmes. The Trust has moved from emergency response and immediate needs such as food, clothing, shelter, health and psychological problems to long-term programs including support for these children's education.

470. An inter-ministerial committee has been formed to identify and address the issue of street children and street families. The Committee sourced for experts from different line ministries and key organizations. This team is tasked with conducting a needs assessment to be presented to stakeholders in order to develop a joint plan of action for street children and street families.

471. NGOs and the private sector play a key role in the provision of financial and material resources. Members of Parliament on their part are also leading initiatives through the constituency committees to define the root cause of children migrating to the streets.

472. The development of guidelines on the protection of orphans and vulnerable children has contributed to the prevention of orphaned children from invading the streets.

473. **Constraints**

1. The human and financial resources are inadequate to deal with the scale of the problem.
2. The labour market is unable to absorb these children after rehabilitation.
3. There is no policy framework for withdrawal of children and families from the streets.

**Article 32: Child labour**

**Legal and policy framework**

474. The Children Act Section 10 protects children from economic exploitation and the worst forms of child labour.

475. The Employment Act protects children under the age of 16 from employment in industrial undertakings.

476. Kenya ratified ILO Convention 182 on the worst forms of child labour in 2001 and has since developed a draft child labour policy. ILO Convention 138, which Kenya has also ratified, sets out the minimum age for admission into employment.

**Context and implementation**

477. The worst forms of child labour have the effect of interfering with a child's education, and health and are harmful to the child's physical, mental, spiritual, moral and social development.

478. In the concluding remarks by UNCRC committee it was observed that there is lack of information and adequate data on the situation of Child Labour and Economic Exploitation. A comprehensive survey was carried out by CBS and a report was prepared and launched in December 2002 (Child Labour Survey Report 1998/1999).

479. It was also found that most of the work children engage in is hazardous, exploitative and prevents them from attending school.

480. The child labour survey report 1998/1999 indicated that there are 1.9 million children aged 5-17 years working for pay, profit or family gain.

481. The Government in collaboration with other stakeholders have through funding from International Labour Organisation/International Program on the Elimination of Child Labour (IPEC) program initiated projects targeting the elimination of the worst forms of child labour. They are mostly found in commercial agriculture, fisheries and domestic labour.

482. The Ministry of Education, Science and Technology with support from ILO/IPEC developed a programme for withdrawing children from child work and placing them in schools. The introduction of free primary education has seen many children leave child labour activities and register in schools.

483. Several organizations deal with child labour issues. These empower families of domestic workers.

484. In addition, schools have been assisted by non-governmental organizations to start income generating activities as a way of keeping children in school. This has benefited over 12,000 children.

485. The Ministry of Labour has a child labour division and coordinates the activities of a child labour national steering committee.

486. As required by Convention 182 Article 7(2) the Government has established a time bound program (2005-2010) for the elimination of the worst forms of child labour and developed a national plan of action. A child labour project and child labour monitoring system has also been developed.

487. **Constraints**

1. Child labour is a problem caused by poverty and a material culture. Many children are employed in order to earn money to cater for ailing parents and siblings while some do it for the love of it. Employers who make them work long hours and pay them poorly exploit such children.
2. Due to HIV/AIDS and poverty there is an increase in the number of child headed families who seek employment to cater for themselves. Child exploitation has largely been attributed to the breakdown of cultural values and poverty.
3. There is no collaboration between the Ministry of Labour, civil society and the Ministry of Home Affairs under whom children issues fall.
4. The National Child Labour Policy and the Employment Bill are still in draft form.
5. There are inadequate enforcement officers and resources to deal with cases of child labour.

**Article 33: Drug abuse**

**Legal and policy framework**

488. In Kenya the term drug abuse embraces both drug and substance use and abuse.

489. The Children Act protects children from use of hallucinogens, narcotic and psychotropic drugs or from being involved in their production, trafficking or distribution. A child found under such circumstances is considered to be in need of special care and protection and is not considered a criminal.

490. The Criminal Law Amendment Act (Section 242A) prohibits the supply and use of substances, which the Minister responsible for health has declared as a drug.

491. Sale of glue to children has been outlawed. Also banned is the sale of alcoholic drinks and spirits in sachets. The Narcotic Drugs and Psychotropic Substances Control Act prohibits dealing in drugs.

### **Context and implementation**

492. Before The Children Act came into being in 2001, drug and substance use and abuse had reached crisis levels in Kenya, especially in secondary schools. The National Agency for the Campaign Against Drug Abuse (NACADA) was established in 2001. The Agency has senior officers seconded to it from various Government ministries and departments dealing with children and youth. There are three officers from the Ministry of Education, three officers from the Provincial Administration, one from the Ministry of Finance, one from the Ministry of Information and Communication, one from health and one from Social Services. Their main task is to develop suitable strategies to fight drug abuse and implement them with funding from the central Government.

493. Since school going youth are most vulnerable, NACADA has conducted many education and sensitization campaigns in schools, and also uses the media. Drug abuse has been incorporated in the primary and secondary school curriculum by infusion into mainstream subjects.

494. The Government has also established Anti-Narcotics Police Units at all the eight provincial headquarters. Their role is to arrest and prosecute persons involved in growing bhang or trading and trafficking in narcotics. Many faith based organizations (FBO), the private sector and NGO's are involved in preventive and rehabilitative activities for drug and substance users and abusers.

### **495. Constraints**

1. There are inadequate facilities, manpower and resources to effectively fight drug abuse.
2. Most of the films children watch encourage drug abuse.
3. There are inadequate border controls to check the trafficking of drugs.
4. Most organizations addressing drug abuse are based in Nairobi Province including NACADA and so there is little or no activity at provincial and district levels.

### **Article 34: Child sexual exploitation**

#### **Legal and policy framework**

496. The Criminal Law Amendment Act, passed into law in July 2003, came with various stringent measures to curb sexual abuse; these include removal of consent by the Attorney General to prosecute in cases of incest, raising the age of consent from 14 to 16 years for girls, setting stiffer penalties for defilers from a maximum of 14 years to life imprisonment. The requirement for corroboration was removed in sexual offences cases involving children of tender years 10 and under.

497. Section 15 of The Children Act provides that a child shall be protected from sexual exploitation and defines this to include child prostitution and child pornography, possession of child pornography and use of children in other unlawful sexual practices.

#### **Context and implementation**

498. Available information points to an increase in commercial sexual exploitation of children as part of sex tourism and child pornography, particularly in the coastal region of Kenya. Both boys and girls are involved in this trade.

499. Child sexual exploitation has been linked to poverty, and the devastation caused by HIV/Aids. Through the international programme on child labour, Kenya has targeted the child commercial sexual workers as a category at risk.

500. Drug and alcohol abuse are also believed to contribute heavily to child sexual exploitation.

#### **501. Constraints**

1. Child sexual exploitation is fuelled by retrogressive cultural practices, poverty especially due to HIV/AIDS that has resulted in many child-headed families, broken families, and lack of sensitization among community members, including children on issues of sexual abuse.
2. There are inadequate efforts in place to rehabilitate child survivors of sexual abuse.
3. The age of consent allows persons who are defined as children (between 16 years and less than 18 years) to consent to sexual intercourse.

### **Article 35: Sale, trafficking and abduction of children**

#### **Legal and policy framework**

502. The Penal Code states abduction as; “Any person who by force compels, or by deceitful means induces any person to go from any place is said to abduct that person.” Offences such as kidnapping and child stealing are also provided for.

503. Section 13 of The Children Act protects children from sale, trafficking and abduction and defines these as forms of abuse.

### **Context and implementation**

504. The Government, through the Immigration Department, maintains close supervision on all children leaving the country. The Children's Department must issue a no objection letter before a child can be allowed to travel out of the country.

505. The Government recently set up a Task Force to investigate reports of children who upon birth disappeared from a public hospital in Nairobi. The Task Force reports to the Minister of State for Provincial Administration and National Security for appropriate action.

506. Investigations are on-going into allegations of child trafficking involving a Kenyan church evangelist based in the United Kingdom after he was found to be holding several children born less than 9 months apart in his home and claiming them to be his own. It is believed that these children were in his home in preparation for trafficking abroad. The case is the subject of court proceedings.

### **507. Constraints**

1. Kenya has no law that expressly and specifically deals with child trafficking and abduction.
2. Legislation in place that mentions trafficking fails to cover the range of ways through which trafficking occurs and does not include all persons that actually may be involved in trafficking especially as regards transnational trafficking.
3. The combination of unemployment, gender inequality, inadequate legislation and poor law enforcement enables child trafficking to thrive in Kenya.
4. The legal process of adoption is lengthy and complicated and may be a contributing factor to abductions.

### **Article 37: Children deprived of liberty**

#### **Legal and policy framework**

508. The Children Act states that no child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. The law outlaws capital punishment or life imprisonment for children. Where a child offender is deprived of liberty, then they shall be separated from adults in custody and accorded legal and other assistance by the Government as well as contact with their family.

### **Context and implementation**

509. A programme has been initiated to ensure that children in need of care and protection and those who have committed lesser offences are diverted away from the justice system. The programme is referred to as the diversion project and has been piloted in 5 regions. This protects many children from staying in police cells for long duration and any possible stay in remand or rehabilitation centers. The project has served to decongest Government institutions with children repatriated to their families at the point they come into contact with the law.

510. Under GJLOS, in the Ministry of Justice and Constitutional Affairs, the Government is planning to expand and strengthen the diversion program. The intention is to set up facilities for children who are deprived of liberty. In the past, the public reported cases relating to children to crime divisions in police stations. The police department has now introduced child protection desks at police stations.

511. The Ministry of Home Affairs in collaboration with stakeholders has come up with regulations governing children's institutions. The rules address the complaints procedure in institutions, inspection of institutions and disciplinary measures for children among other things. Corporal punishment has been outlawed as a mode of discipline in institutions.

512. Rehabilitation centers have greatly improved and children are classified according to age and needs. Both formal and non-formal education and vocational training is provided in children's institutions.

513. Children of imprisoned mothers are able to access education and health facilities within the prison set-up.

### **514. Constraints**

1. There is inadequate funding for facilities holding children deprived of liberty, lack of knowledge on issues concerning children deprived of liberty, and lack of adequate manpower to address the plight of children who have been deprived of liberty.
2. The number of rehabilitation centers and rescue homes is inadequate and those that exist are poorly funded.
3. There are not enough personnel trained in juvenile justice to run and manage institutions.
4. Record keeping in the juvenile justice system is not up to date.
5. The Government has made provision for legal aid but it is not mandatory.

## **Article 38: Children in armed conflict**

### **Legal and policy framework**

515. Section 10 of The Children Act provides that no child shall take part in hostilities or armed conflict and where such conflict occurs respect for and protection and care of children shall be maintained in accordance with the law. Further, it is the responsibility of the Government to provide protection, rehabilitation care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or national disaster.

### **Context and implementation**

516. The ethnic clashes, which resulted in internal displacement of over 195,671 children, could largely be attributed to the 1992 and 1997 multi-party elections. During the 2002 general elections, clashes along tribal and other lines were absent. Indeed very few incidents of clashes have been reported since the last reporting period. In such cases these have been contained at the earliest stage and therefore minimal displacement has occurred since then.

517. After the land clashes of the 1990s, the Government appointed the Commission of Inquiry into Tribal Clashes (Akiwumi Commission) to look into the causes and effects. The Akiwumi Report was subsequently released naming the perpetrators of the clashes together with the adverse effects, which included loss of lives and property and internal displacement among other things. Recommendations were made for resettlement of clash victims but implementation has not happened.

518. There are cases of emerging organized armed groups in urban centers. Out of school children and youth are increasingly finding their way into such illegal groups. The groups use children and youth to ferry arms. In 2003, the Government outlawed such groups and has taken stringent measures including arrest and prosecution of people involved.

### **519. Constraints**

1. There are no rehabilitation programs for children affected by internal conflicts. Commissions have been set up which have proposed resettlement of internally displaced people but this has not been implemented.

## **Article 40: Administration of juvenile justice system**

### **Legal and policy framework**

520. Under the Constitution of Kenya Section 77 (2) (a) - (b) every person, including a child, who is charged with a criminal offence, shall be presumed to be innocent until proved guilty and shall be informed as soon as possible in a language that he/she understands and in detail the nature of the offence. The Child Offender provisions and the subsidiary rules thereof (Child Offender Rules) as provided for in The Children Act provide for the legal framework for the administration of juvenile justice.

The due process rights of children are listed and protected. They include:

- The right to innocence until proven guilty;
- The right to be informed immediately of reason of arrest;
- The right to expeditious resolution of matters;
- The right to legal assistance and representation;
- The right not to be compelled to give testimony or to confess to guilt; and
- In determining matters the courts are directed to take due regard to the best interests of the child.

521. Matters concerning children apart from those concerning a murder charge or where a child is charged jointly with an adult are to be heard in a Children's Court by a Children's Magistrate. The court should be child friendly and the child's privacy protected at all times.

522. The Child Offender Rules call for the following inter alia:

- Children are to be kept in custody only as a last resort or when it is in their interest;
- They should not be kept in a police station for longer than 24 hours without the leave of court;
- Children are to be held separately from adults and female children separately from male ones;
- Female children are to be escorted to court by female officers;
- If a child held in remand is being tried for a minor offence, the child must be released on bail if the matter has not been determined after 3 months since taking of plea and for it to be dismissed altogether after six months if not finalized; and
- If the child is being tried for an offence that attracts the death penalty, then remand should not exceed six months and the matter should be dismissed altogether if it is not determined after 12 months after taking of plea.

### **Context and implementation**

523. In line with the provisions of The Children Act, the Government has set up Children's Courts in all provinces, and 119 magistrates have been appointed and sensitized to handle

matters relating to children throughout the country. The Children's Court is required to deal with matters quickly in criminal cases - within 3 months in ordinary offences and 6 months in capital offences.

524. Through the technical cooperation between the Government of Kenya and Japan International Cooperation Agency JICA, judicial officers, prosecutors, lawyers, law enforcement officials, and immigration officers have been trained by various organizations on the juvenile delinquent treatment system. National Standards and Training Manuals have also been developed in line with international standards. Training on child rights has been incorporated in the police curriculum, teacher-training curriculum and in the Faculty of Law at the University of Nairobi. There is increased collaboration between various actors and the Children's Department.

525. Legal Aid is provided by various non-governmental organizations and private advocates though to a very minimal extent.

#### 526. **Constraints**

1. There is lack of proper support in terms of legal aid and counselling has not been provided for in law. This makes support unavailable at the time of recording statements and giving evidence.
2. Due to financial constraints, it is only at Nairobi Children's Court where there is a model protected witness box. In other places, courts are cleared if children have to face their abusers or complainants while giving evidence. This can be very intimidating.
3. The number of Children's Courts and magistrates in the country is inadequate leading to holding of children in police cells and remand homes.
4. Community justice systems are prevalent in areas where culture is deeply rooted and where elders settle disputes. In cases of child abuse, the case is usually settled without the consideration of the child. Offenders tend to find favour in the hands of the elders, and where punishment is meted, it is in the form of paying penalties, which go directly to the parents of the child. This compromises justice for the child.

“Acha nikupapase au nikufagilie ndio nikupe special meals. Private parts of boys especially the anus and testicles/penis are squeezed. Sometimes wakubwa wakinyua halafu ufunge macha unapigwa mbaya.”

Crispin, a child from Coast region.

### Notes

- <sup>1</sup> 2004, SID/SIDA/GoK-MoPND, Pulling Apart - Facts and Figures on Inequality in Kenya.
- <sup>2</sup> The Government's expenditure on education in 2002/3 accounted for 71% of its budgetary allocation to social services.
- <sup>3</sup> Statement by the Permanent Secretary, Ministry of Finance during a GOK/Donor meeting held on 12<sup>th</sup> March 2004 at the KICC, Nairobi.
- <sup>4</sup> Chapter 143 of the Laws of Kenya.
- <sup>5</sup> Chapter of the Laws of Kenya.
- <sup>6</sup> Chapter of the Laws of Kenya.
- <sup>7</sup> Worst Forms of Child Labour Convention, 1999. ILO Convention No. 182.
- <sup>8</sup> ILO Recommendation No. 190.
- <sup>9</sup> Check the relevant Section of the Armed Forces Act.

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