
1st STATE PARTY REPORT TO THE AFRICAN UNION ON THE IMPLEMENTATION OF THE AFRICAN
CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD 2008—2011

1st STATE PARTY REPORT-KENYA

JUNE, 2013



ABBREVIATIONS AND ACRONYMS

AAC	Area Advisory Council
ACRWC	African Charter on the Rights and Welfare of the Child
ASALs	Arid and Semi-Arid Lands
AU	African Union
CBO	Community Based Organization
CCI	Charitable Children’s Institutions
CHW	Community Healthcare Workers
COTU	Central Organization of Trade Unions
CSEC	Commercial Sexual Exploitation of Children
CSHP	Comprehensive School Health Programme
DAC	Day of the African Child
DCS	Department of Children’s Services
DNA	Data Not Available (or Accessible) during reporting
FBO	Faith Based Organization
FGM	Female Genital Mutilation
FTSE	Free Tuition in Secondary Education
EAC	East African Community
ECDE	Early Childhood Development and Education
EFA	Education for All
ERS	Economic Recovery Strategy for Employment and Wealth Creation
FKE	Federation of Kenya Employers
FGM	Female Genital Mutilation
GoK	Government of Kenya
HMIS	Health Management Information Systems
IDPs	Internally Displaced Persons
ILO	International Labour Organization
KDHS	Kenya Demographic and Health Survey
KESSP	Kenya Education Sector Support Programme
KNBS	Kenya National Bureau of Statistics
KNHREC	Kenya National Human Rights and Equality Commission
OVC	Orphaned and Vulnerable Children
PEV	Post Election Violence
PTA	Parents Teachers Association
MDGs	Millennium Development Goals
MGCS	Ministry of Gender, Children and Social Development
MTP	Medium Term Plan
MUHURI	Muslims for Human Rights
NACADA	National Authority for Campaign against Alcohol and Drug Abuse
NCCS	National Council for Children’s Services
NESSP	National Education Sector Support Programme
NGO	Non-governmental Organization

NIMES	National Integrated Monitoring and Evaluation System
NPA	National Plan of Action
SITAN	Situational Analysis
TIVET	Technical Industrial Vocational and Entrepreneurship Training
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
VCO	Volunteer Children's Officer
WHO	World Health Organization

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EXECUTIVE SUMMARY

Kenya is an East African country that lies astride the equator covering a total area of 582,650km² of which 569,250km² constitutes dry land while water takes the rest of about 13,400km². Approximately 80% of the land area is arid or semi-arid and only 20% is arable. According to the 2009 national census results, Kenya has a total population of 38,610,097 people, composed of 19,417,639 women and 19,192,458 men. 67.7% of the population lives in the rural areas and the country population constitutes of a large children and youthful population. Kenya is a republic. There are three arms of the Kenya government, namely the Legislature, the Executive and the Judiciary.

Report background

The process of state reporting on the Africa Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (UNCRC) commenced in 2010 and entailed activities aimed at informing the 2nd report on the ACRWC and the 3rd, 4th and 5th state party report on UNCRC. The process of developing the two reports concurrently ensured optimal utilisation of resources in terms of time, funding and optimized the knowledge from children and informants. The reporting exercise was spearheaded and coordinated by the National Council of Children Services (NCCS) under whose mandate the responsibility for treaty reporting falls as, provided by the Children Act, 2001.

Methodology

Approaches used for the review were secondary data collection using desk review and primary data collection. The methodology adopted the following and approaches: (a) a National Reporting Steering Committee (b) 24 regional workshops with adults and children (c) key informant interviews (d) case studies (e) 4 field visits (f) focus group discussions (FGDs) with adults and children (g) training of 60 children moderators from 10 regions of the country (h) development of tools for children regional consultations (i) development and administration of specific tools for ACRWC with focus on Article 21, 22, 23, 30 and 31 and (j) two validation workshops with the children and adult stakeholders.

General Measures of Implementation

The Ministry of Gender Children and Social Development and several other relevant government ministries, state institutions and non-state organisations including Charitable Children Institutions, community based organizations (CBOs), non-governmental organizations (NGOs), faith based organizations (FBOs) and private sector agencies have all played a major role in ensuring measures are put in place to protect the rights of children in the country during the reporting period.

The Kenya government has developed legislation, policies, programs and plans relevant to children during the reporting period of 2007-2011. These included a National Children Policy in 2010, National Plan of Action for Children 2008-2012, Vision 2030, National Policy on Human Rights.

The total budget for Department of Children's Services, including grants and loans, increased from KShs.1,126,226,479 in 2007/08 to KShs.3,910,401,109 in financial year 2010/2011. The government and development partners provided additional non-financial resources signifying increased commitment to supporting children programs in Kenya.

Definition of a child

The Constitution of Kenya under Article 260 defines a child as *'an individual who has not attained the age of eighteen years'* and any other law which is in conflict with this definition as per the Constitution is null and void. Efforts are under way to address conflicting definitions under existing laws so that they are in compliance with the provisions of the Constitution.

Despite the clear definition of the child in law, persons in positions of authority including parents and guardians have continued to violate the same citing culture, religious practices, poverty and other flimsy ground and so there is need for more strict enforcement and public awareness on these provisions. In addition, some deep-rooted cultural

traditions continue to define a child differently from the legal provisions and there is a mistaken belief that culture prevails over the law. There is, therefore, a need to enforce the constitutional provisions in such communities and their leadership.

General principles of implementation

Discrimination of children in Kenya is as a result of the wider discrimination practiced in society. When adults are discriminated in regard to certain aspects of their lives children also get affected. Children get discriminated on account of their social background, parents' marital status, ethnic background, religious background among others.

There are many initiatives that aim to address and reduce discrimination that are being implemented by both government and civil society organizations (CSOs) and which need to be expanded and scaled up and to embrace emerging trends such as gender concerns, social-economic marginalisation and political trends that drive discrimination. Best interest principle continues to be elusive on matters pertaining to the child in nearly all spheres of work by duty bearers. These include in juvenile justice delivery systems and in the overall programming cycles of in the governance, development and welfare sectors.

Civil Rights and Freedoms

The Constitution guarantees every child the right to a name and nationality from birth and the National Children Policy stipulates that every child including a child with disability and /or special needs has a right to identity and registration at birth. The national coverage for birth registration was 67 % in 2012 up from 56% in 2007 but the variation from region to region and county to county is still wide.

In recent years, children in Kenya have increasingly enjoyed their right to freedom of expression, association, participation and freedom from non-discrimination due to increase in awareness which has enhanced their civil rights and freedoms.

The Department of Children Services in collaboration with various CSOs and the Area Advisory Councils facilitates the participation of children in relevant forums and events at the international, regional, national and local levels. Children Assemblies have been established and funded by the government in all the counties, Day of the African Child (DAC) activities and children voices forums continue to be held every year country wide among others.

Family Environment and Alternative Care

The Constitution, states that: *“Every child has the right, to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour”*. The constitution also guarantees every child a right *“to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.”*

Kenya has also acceded to the Hague Convention for the Protection of Children and Inter-country Adoption of May, 1993 in 2007 and has developed the necessary procedures and regulations to actualise the Convention.

According to the Kenya Demographic and Health Survey (2008–2009) 29% of adolescents between the ages of 15–19 years have experienced either physical or sexual violence and approximately 40% of the country's total child population (approximately 8 million) require special care and protection. Gender-based violence and violence against children remain serious offences in Kenya with many going unreported, or at least unpunished, and this occurs in particular with respect to sexual violence.

A Family Protection Bill has been developed and is awaiting enactment and makes provision for the protection and relief of victims of domestic violence, protection of a spouse and any children or other dependent persons, and other persons in other relationships. The bill will be fast tracked and enacted into law and measures put in place for its enforcement.

Basic Health and Welfare

The Constitution provides that everyone has a right to life, reproductive health, and other attributes of good health as well as the highest attainable standards of health. Health indicators show that there has been significant improvement in the survival of children according to the 2008 Kenya Demographic and Health Survey (KDHS).

Proportion of children under one year of age fully immunized rose from 57% to 77% between 2003/05 and 2008/09 and infant mortality rates decreased from 77 to 52 per 1,000 live births while under-five mortality decreased from 115 to 74 per 1,000 live births in the same period. Under-five mortality is still high in rural areas, which stands at 86 per 1000 live birth compared to 74 per 1,000 live births in urban areas. The infant mortality rate in Kenya fell by more than half over a five-year period, dropping from 47 to 22. Maternal mortality increased from 414 deaths per 100,000 live births in 2003 to 488 but the survey indicated that facility maternal mortality was 249 per 100,000 live births. The KDHS (2008/9) shows that thirty percent (30%) of children under five are stunted or too short for their ages. Stunting is more prevalent in rural areas (31%) compared to urban areas (22%). Malaria, HIV and AIDS and malnutrition continue to cause the deaths of millions of children and also results in high morbidity rates attributed to high HIV prevalence, malaria and tuberculosis.

The state recently launched Maternal Access and Infant Survival for Health Advancement (*Maisha*) aimed at addressing these challenges. The National School Health Policy of 2009 defines a Comprehensive School Health Programme (CSHP) which has been set up to assist the government address the health and education needs of learners, teachers and their families.

There state is committed to reduce maternal mortality and provide maternal health services, equip health facilities and provide adequate resources and personnel in order to deliver adequate MCH services..

The Constitution Article 54 provides for the rights of persons with disabilities and Persons with Disabilities (Amendment) Bill 2010 was developed to address gaps in the Persons with Disabilities Act, such as recognizing people living with albinism. According to Kenya National Housing and Population Census of 2009 it was found that 1,330,312 (647,689 males and 682,623 females) persons are living with disabilities. The challenge is that the available data was not disaggregated according to age, efforts will be made to disaggregate the data according to age so establish the number of children with disabilities.

The Persons with Disabilities Fund was launched in 2011 on a pilot basis under the Social Protection Programme for People with Disabilities, aimed at assisting families taking care of members with disability including children. Discrimination against, abuse and neglect against children with disabilities is common among many communities and the state party will continue to create awareness for sustained campaigns to create awareness to change cultural perceptions and attitudes.

Education Leisure and Cultural Activities

The Constitution, Article 53 (1) (b) states that every child has a right to free and compulsory basic education and the Basic Education Act 2013 aimed at aligning the sector to Vision 2030 and the provisions of the Constitution. Kenya is also committed, and on track, to meeting the targets of the World Declaration on Education for All (EFA) Jomtien, Thailand (1990) and the Millennium Development Goal two (MDG 2) of Achieving Universal Primary Education for all children by 2015.

The government has implemented the Free Tuition in Secondary Education (FTSE) 2008 which has extended free basic education to 12 years of learning until the child achieves the age of 18 years and as a result there has been increase in secondary school enrolment and transition. Public secondary schools have increased in number from 4,454 in 2008 to 6,188 in 2012.

Transition rate from primary to secondary school rose from 47% in 2002 to a high of 74% in 2012. Gender parity in primary education is 1.02 in favour of girls. Introduction of FTSE in 2008 shot enrolment from 800,000 to 1.9 million and secondary school completion rate improved in national secondary schools from 46% to 74%.

The government and education stakeholders have also been working together to ensure retention of girls and boys in schools with a special focus on the girl child to enhance gender parity. Interventions include providing sanitary towels and gender-friendly sanitary facilities.

The government has mainstreamed leisure and cultural activities in the Basic Education Curriculum and in the guidelines on Child Friendly Schools geared towards ensuring holistic development of the child. Also the right to play has also been recently promoted through celebrating the World Play Day and Kenya is now a member of World Play Association.

The mandate of delivery of Early Childhood Development and Education (ECDE) now lies with county government and the other components of basic education namely primary and secondary Education delivery are the mandate of national government.

Special Protection Measures

The Constitution, Section 53 (1) (d) provides that every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour. The government through the Ministry of Labour has developed the Child Labour Policy which is waiting cabinet approval. According to the findings of the 2009 Child Labour Analytical Report, child labour incidents in Kenya have been declining mainly due to the introduction of Free Basic Education in 2003.

The Constitution states that *“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”*.

Since judicial reforms started then the judicial sector including the juvenile justice sector in Kenya has witnessed a lot of positive changes and more children courts have been established in the country and all magistrates have the jurisdiction to handle child related cases. In areas where Juvenile Court Users Committees have been established they have proved useful in prompt action concerning cases of children in conflict with the law as well as those in need of care and protection.

According to KDHS (2008/2009) the national child marriage prevalence in Kenya stands at 34% for girls and 1.4% for boys. The overall prevalence of female genital mutilation (FGM) decreased over the last decade from 38% in 1998 to 27% in 2008/09. The Prohibition of Female Genital Mutilation Act, 2011 provides new opportunities for eradication of FGM.

The Constitution provides safeguards against the voluntary or forced recruitment of children into the armed forces of Kenya or to be recruited by other non-state actors or armed groups. Kenya continues to host a large population of refugee children in Dadaab and Kakuma Refugee Camps.

Internal Displacement has put children at great risk of exploitation, abuse, violence and neglect and in January 2008 the Post Election Violence (PEV) led the death of 1,300 people, displacement of 633,921 people including children and destruction of property worth billions of shillings, including homes and schools.

Sexual exploitation of children continues in Kenya and the most prevalent cases are defilement, incest and indecent assault and cases of sodomy against boys are also on the rise. Most of the incidences were perpetrated by immediate family members, neighbours and teachers.

According to national statistics from the Rapid Situation Assessment of Drug and Substance Abuse in Kenya (NACADA, 2012), 11.7% of young people aged 15-24 years are currently using alcohol, 6.2% use tobacco, 4.75% use *Miraa/Khat* while 1.5% use cannabis. In addition, among children, the median age of initiation into tobacco use is 10 years while minimum is 8 years and the mean age for alcohol use is 10 years.

Child trafficking in Kenya remains one of the child protection issues that the State Party has tried to address for many years. Child trafficking is prevalent in Kenya and trafficked end up working as domestic workers in people's homes, or in the agriculture sector where they are at risk of sexual exploitation, sex tourism and in petty trade among others. Kenya passed the International Crimes Act, 2008, has developed the National Plan of Action for Combating Trafficking in Persons (2008—2013) and the National Plan of Action on sexual exploitation of children 2013-2017.

The Constitution protects children of imprisoned mothers in the same manner as other children and the Children Law Amendment Bill also recognizes children whose parent or guardian has been imprisoned as being in need of care and protection. The state should fast-track the implementation of the Pre - Bail Bill to address and determine the suitability of vulnerable groups, including children and female offenders, for alternative bail conditions, other than fines.

Conclusion and Way Forward

The State Party recognizes that there are still challenges and constraints in ensuring that all children have the rights to survival, development, protection and participation. The underlying causes of these include high incidences of poverty, high inflation, debt burden, natural and man-made disasters, and orphan-hood.

Others challenges include climate change, global economic meltdown, increasing prices of basic commodities in the global market place, conflicts and insecurity in the neighbouring countries and the region.



KENYA - AN INTRODUCTION TO THE COUNTRY

Demographic and Social Characteristics

Kenya is an East African country that lies astride the equator covering a total area of 582,650km², of which 569,250km² constitutes dry land while water takes the rest of about 13,400km². Approximately 80% of the land area is arid or semi-arid and only 20% is arable.

Kenya is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. Kiswahili is the national language, while the official languages are English and Kiswahili — though numerous other local languages are spoken. People of African descent constitute about 90% of the population divided into 42 main ethnic groups that belong to three linguistic families: Bantu, Cushites and Nilotes and these major groups are further divided into many smaller sub-tribes and clans. Most Kenyans are bilingual speaking both English and Swahili and large percentage also speaks the mother tongue of their ethnic communities.

According to the 2009 national census results, Kenya has a total population of 38,610,097 people, composed of 19,417,639 female and 19,192,458 male. 67.7% of the population lives in the rural areas and the country population constitutes of a large children and youthful population.

The distribution of the population by broad age groups according to the 2009 census is shown in the table below.

Table 1: Population by Age Group (2009 Kenya Population and Housing Census)

AGE	0-14	15-19	20-34	35-64	65+	Total
Females	8,173,456	2,045,890	4,955,579	3,503,243	739,471	19,417,639
Males	8,398,421	2,123,653	4,540,256	3,516,240	613,888	19,192,458
Total	16,571,877	4,169,543	9,495,835	7,019,483	1,353,359	38,610,097

Kenya's Development Characteristics

The Kenya Development agenda is anchored on the Economic pillar of Vision 2030, whose overall aim is to transform Kenya into a newly industrialised, middle-income country providing a high quality life to all its citizens by the year 2030. The Vision 2030 is anchored on three key pillars namely: Economic, Social and Political pillars and a host of enabler's common to and driving the three pillars. The economic pillar aims to achieve an average economic growth rate of 10 percent per annum by 2012 and sustain the same till 2030 in order to generate more resources to meet the MDGs and the vision goals. The social pillar seeks to achieve a just, cohesive and equitable social development in a clean and secure environment, enhancing the quality of life for citizens. The political pillar aims at ensuring an issue-based, people-centred, results-oriented and accountable democratic system of governance.

Between 1997 and 2002, the economy grew by annual average rate of only 1.5% which was below the annual population growth rate for the same period estimated at 2.5% per annum leading to a decline in per capita incomes. In 2005 the economic growth rate averaged 5.8%. The post-election violence witnessed in 2007-2008 coupled with the knock-on effects of the global economic crisis resulted in reduction of economic growth to 2.2 % down from a high of 7 percent in 2007. To date the growth rate has averaged below 4 percent for the last five years. See the table below.

Table 2: Macroeconomic Indicators 2006-2011

Items	2006	2007	2008	2009	2010	2011
Real GDP growth rate %	6.3	7.0	2.2	2.6	5.6	4.4
Income per capita	1,490.41	1,592.98	1,604.95	1,616.14	1,675.92	1,700.0

(USD) /PPP						
Population growth rate (%)	2.8	3.0	3.0	2.9	2.5	2.67
Average annual inflation rate (%)	6.39	4.27	16.27	9.37	9.2	14.0
Treasury bill rates (Nominal) (%)	5.83	8.75	8.5	6.82	2.8	8.95
Public debt as % of GDP	46.8	44.6	48.5	48.1	51.0	50.7

Source: Economic Survey 2012 Kenya National Bureau of Statistics/ IMF world fact book 2013

Poverty remains a major impediment to both the fulfilment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. The population in absolute poverty was estimated at 46% — 49.1% rural and 33.7% urban in 2009, a significant decrease from the previous percentages of the poor 52.9% (rural) and 49.2% (urban) in 1997.

The Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007, had a positive impact on employment, and by 2007 Kenya reported a GDP growth of 7.1 per cent. According to the 2009 Economic Survey, there was an increase of the total employment outside small-scale farming and pastoralist activities in 2007. About 485,500 new jobs were created, but this momentum of growth dropped following the 2008 post-election violence, the global financial crisis and high fuel prices.

Constitutional, Political and Legal Structure

The Constitution of Kenya, 2010¹

The Kenya Constitution was promulgated on 27 August, 2010 and the rights of children are covered under Article 53 which provides for among others the safe guards for the rights and welfare of the child. Under this article some of these rights safeguards include: name and nationality; free and compulsory basic education; basic nutrition, shelter; health care; protection from abuse, neglect and harmful cultural practices; all forms of violence and inhuman treatment and punishment; and hazardous and exploitative labour. The article also provides that *“a child has a right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not”*.

For children in the justice system, the Constitution provides that every child has a right not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time; and separate from adults and in conditions that take account of the child’s sex and age.

The concept of the best interests of the child has also been provided for in Article 53 (2) of the Constitution which provides that *“A child’s best interests are of paramount importance in every matter concerning the child.”*

Children are also protected under other articles in the Constitution including Article 54 of the Constitution which guarantees special protection to persons with disabilities. Section 1 (b) provides access to educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests

¹ The Constitution of Kenya, 2010 is available at <http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/ConstitutionofKenya2010.pdf4>.

of the person. Persons with disabilities including children, have a right to use Sign language, Braille or other appropriate means of communication as well as access materials and devices to overcome constraints arising from the disability.

Article 44 (1) provides that every person has the right to use the language, and to participate in the cultural life of the person's choice, Article 44 (3) goes further to state that no one should compel another person to perform, observe or undergo any cultural practice or rite. This offers protection to children who may be subjected to harmful cultural practices such as child marriages or female genital mutilation.

The Government of Kenya

Kenya is a multiparty state with three arms of the government, namely the Legislature which makes the laws , the Executive implements the laws and the Judiciary interprets the law and dispenses justice.

Methodology of the 2nd State Party Reporting process for the ACRWC

The process of state reporting on the Africa Charter on the Rights and Welfare of the Child (and the UNCRC) commenced in 2010 and entailed activities aimed at informing the 2nd report on the ACRWC and the 3rd, 4th and 5th state party report on UNCRC. The reporting exercise was spearheaded and coordinated by the National Council of Children's Services (NCCS) under whose mandate the responsibility for treaty reporting falls as defined by the Children Act 2001. The methodology adopted the following nine (9) steps and approaches.

I. The Establishment of a National Reporting Steering Committee:

The responsibility was to mobilize resources for various activities, map out partners supporting the process and to validate and finalize the second state party report tools for child participation, a child participation sub-committee was also established.

II. Regional Consultations

Ten (10) regional workshops were conducted for adults and ten (10) regional workshops for children in all parts of the country. Four workshops were also conducted for children with special needs and street children.

III. Key Informant Interviews

Four (4) field visits were conducted in various parts of the country to interview key informants on the five articles unique to the ACRWC.

IV. Focus Group Discussions (FGDs)

FGDs were conducted during the field visits in the 4 areas with adults and children.

V. Training of Children Moderators.

The team trained 60 children from all 10 regions of the country to facilitate the regional children forums with the assistance of the adult moderators.

VI. a. Development of Tools for Children Regional Reporting.

The reporting team developed various tools for gathering data and interviews.

b. Development and administration of specific Tools for ACRWC

The tools for gathering specific information in the field during key informants interviews and FGDs focused on the following ACRWC Articles:

- Article 21- Protection against harmful social and cultural practices
- Article 22- Armed conflicts
- Article 23 – Refugee children
- Article 30 – Children of imprisoned mothers
- Article 31 – Responsibility of the child.

VII. Validation Workshops

Two national validation workshops were held during the process for adults and children.

I. National Technical Stakeholders Validation Workshop

One technical validation workshop was held during the process. The workshop also served as a point of dissemination and final validation, as well as a consensus-building and final validation.

CHAPTER 1: GENERAL MEASURES OF IMPLEMENTATION

Article 1: Obligation of State Parties

According to "The African Report on Child Wellbeing 2008" based on a research by the Africa Child Policy Forum on how friendly to children African governments are, Kenya was ranked among the 10 most child-friendly countries at position six in the continent .

1.1 Legislative and Policy Framework Enabling Implementation of Children Rights in Kenya

1.1.1 The Constitution of Kenya

Chapter 4 of the Kenya Constitution of 2010 constitutes the Bill of Rights. Article 53 (1) of the Constitution, safeguards the rights and welfare of the child. Among the rights safeguarded include: name and nationality, free and compulsory basic education, basic nutrition, shelter and health care. Protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour are outlawed. The right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not is upheld.

The Constitution states that: 'A child's best interests are of paramount importance in every matter concerning the child.' A child has a right not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time; and separate from adults and in conditions that take account of the child's sex and age.²

The Constitution grants special protection to persons with disability and to provide for access to educational institutions and facilities for persons with disabilities. The Constitution makes it mandatory to use sign language, Braille or other appropriate means of communication and for the persons with disability including children to access materials and devices to overcome constraints arising from the disability.

According to Article 44 (1) the Constitution states that every person has the right to use the language, and to participate in the cultural life of the person's choice. However Article 44 (3) states that a person shall not be compelled to perform, observe or undergo any cultural practice or rite and to be subjected to retrogressive cultural practices such as child marriages or Female Genital Mutilation (FGM).

The Constitution under article 2 (5 and 6) recognises that any treaty or convention ratified by the State Party as a direct and automatic source of law in Kenya. This is unlike in the previous constitution where a treaty had to be domesticated for it to be recognised as a source of law.

Article 14 (4) presumes a child under the age of 8 years found in Kenya and whose nationality or parents are unknown to be a Kenyan citizen.

As part of the implementation of the Constitution, new laws have been enacted, others are yet to be enacted and/or amended and Schedule 5 of the Constitution outlines how this process will be carried out. Some of the laws already enacted or are at various stages of enactment or review and which have a direct bearing on children include the following:

- a) Citizens and Immigration Act, 2011
- b) Treaty Making and Ratification Act, 2012
- c) Family Protection Bill, 2012

² The Constitution of Kenya, 2010,

- d) The Marriage Bill, 2012
- e) The Births and Deaths Registration Bill, 2011
- f) The Identification and Registration of Kenya Citizens Bill, 2012
- g) The Matrimonial Property Bill, 2012

1.1.2 Review of the Children Act 2001

The Children Act 2001 is currently under review to align it with the provisions of the Constitution and the changing and dynamics in the children sector since it was enacted.

1.1.3 Other Legal Developments with Relevance to Children Rights.

During the reporting period the following laws have been enacted:

- Basic Education Act, No. 14 of 2012 which was enacted to replace the Education Act and gives effect to Article 53 of the Constitution. The Act seeks to promote and regulate free and compulsory basic education; provide for accreditation, registration, governance and management of institutions of basic education.
- Sports Act, 2013 which aims at encouraging and promote drug free sports and recreation; provide for the establishment of sports institutions, facilities, administration and management of sports in the country.
- The Witness Protection Act enacted in 2008, and amended in 2010, offers protection to persons who are witnesses of crime.
- The Alcoholic Drinks Control Act 2010 protects children with regard to sale and consumption of alcohol. The Act prohibits parents and guardians from taking children to premises where alcohol is on sale as well as ensuring children do not purchase alcohol.
- The Counter-Trafficking in Persons Act, 2010 provides protection from trafficking, especially for women and children.
- The Prohibition of Female Genital Mutilation Act, 2011 outlaws the practice of female genital mutilation.
- The Kenya Citizens and Foreign Nationals Management Service Act 2011 that deals with matters relating to registration of births, citizens and immigration.
- The National Gender and Equality Commission Act 2011 which has provisions on gender and equality.
- Land Act, 2012 which seeks to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources.
- Cancer Prevention and Control Act, 2012 to provide for the prevention, treatment and control of cancer.
- Urban Areas and Cities Act, 2011 gives effect to Article 184 of the Constitution; provides for the, classification, governance and management of urban areas and cities; provides for the criteria of establishing urban areas, and the principle of governance and participation of residents in governance of cities and urban areas.
- National Police Service Act, 2011 repeals and replaces the previous laws relating to Police Service; seeks to provide for the functions, organization and discipline of the National Police Service, the powers and responsibilities of police officers; and to ensure the efficient and transparent management of the Service.

1.2. National Policies, Plans, Guidelines and Standards

1.2.1 Enabling National Policies and Plans for delivery of Child Rights and Welfare Programs

i) the National Children Policy

The Kenya government developed a National Children Policy in 2010. The aim of the policy is to create an environment where all rights of a child in the country will be fulfilled, safeguarded and protected by all sectors, and to also leverage the Children Act 2001. The policy has been informed by the main principles of and rights articulated in the UNCRC and the ACRWC namely Survival, Development, Protection and Participation.

ii) National Plan of Action for Children.

Kenya developed a National Plan of Action (NPA) for children 2008 – 2012 which identified priority interventions in line with the four pillars of Child rights. but Plans are underway to develop a subsequent National Plan of Action 2013-2022 and it is anticipated to guide the interventions in Kenya by all stakeholders for children during the period.

iii) Kenya Vision 2030³

The country has a long-term plan which envisions attainment of a middle income country status for Kenya by the year 2030. The vision has three key pillars of focus namely Economic, Political and Social pillars and under each of the pillars are sector programmes of implementation. Below are highlights of some of the key sectors that have direct impact on the achieving the Millennium Development Goals (MDGs) by 2015 and realisation of the children rights as enshrined in the ACRWC and the National Children Policy.

The focus on children is on social pillar. The key areas of investment include to:

- Provide quality education including Early Childhood and Development Education (ECDE), support community education, and discourage retrogressive cultural practices associated with low formal education.
- Provide equitable and affordable health care at the highest affordable standards, reduce maternal and infant mortality and to reduce the impact of HIV and AIDS.
- Provide water and sanitation services to all citizens and manage pollution and waste sustainably.
- Provide support for gender, youth and vulnerable groups including direct support to families caring for orphans, support to persons with disability, end gender violence and to economically empower the youth (15-35 years).
- Provide adequate and decent shelter and housing to create a socially just society without extremes of poverty.
- Utilise natural resources sustainably, adapt to climate change and desertification, and rejuvenate the arid and semi-arid (ASALs) regions.

³ Kenya Vision 2030- Towards a globally competitive and prosperous nation. GOK.

iv) National Policy on Human Rights, 2011

The development of a human rights policy was based on the need to have a comprehensive framework to operationalising the human rights guaranteed under the Constitution of Kenya, 2010.⁴ Key issues addressed by the policy include:

- promotion of a human rights-based approach in planning, implementation, monitoring and evaluation of programmes in all sectors in the country;
- mainstreaming of human rights in public policy development and allocation of resources and
- Strengthening the capacity of all state and non-state actors to provide for and ensure the fulfilment and enjoyment of human rights for all.

v) The ECDE Policy was developed in 2006.

vi) The National Policy on Disability- has specific provisions for children with disability and it is currently under review to comply with the Constitution and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

vii) The National Food and Nutrition Security Policy- informs the Agricultural Sector Development Strategy 2010-2020.

viii) The National Disaster Management Policy, 2012 - Institutionalizes Disaster Management, the negative effects of Climate Change and mainstreams disaster risk reduction and mitigation within the country's development initiatives.

1.2.2 Guidelines and Standards Relevant to Children Programming Developed During the Reporting Period

- Minimum Service Standards for Quality Improvement of Orphans and Vulnerable Children Programmes in Kenya, 2012.
- Minimum Standards for Home Based Care, 2010.
- Refugees (Reception, Registration and Adjudication) Regulations, 2009 were enacted to further give effect to the Refugee Act, 2006.
- ECD Service Guidelines were developed in 2006.
- Kenya Children Assembly Charter and Standing Orders.
- The Best Practice in child care for child care givers.

1.3 Context of Implementation.

1.3.1 Institutional Framework for Implementation of Children Services

Following is a brief profile of some of the key state and non-state agencies offering services to children and some of the initiatives they undertake.

1.3.2 Key State Actors

i) The Ministry of Gender, Children and Social Development (MGC&SD). This is the primary government ministry for children in need of care and protection through the Department of Children Services (DCS). DCS currently has offices at national, county and sub-county (District) levels under children officers who are assisted at community level by Volunteer Children Officers (VCOs) deployed at location level. By 2012/2013, there were 166 children offices and 581 children officers up from 432 officers in 2003.

⁴ The World Conference on Human Rights in Vienna, 1993, recommended that States develop a national action plan identifying steps that the state would take to improve the promotion and protection of human rights.

The DCS coordinates and supervises services aimed at promoting and protecting the wellbeing of children as well rehabilitating and reintegrating child offenders.

ii) The National Council for Children Services (NCCS). The NCCS was established under Section 30 (1) of the Children Act 2001 to exercise general supervision and control over planning, financing and coordination of child rights activities and to advise the government on all aspects relating to children. It started operating in September 2002.

Under the Children Act 2001, the NCCS is mandated to establish AACs at district, divisional and location levels to play the same role that NCCS does at the national level. Currently there are 166 established active and functional AACs in the country at all levels

iii) The Department of Civil Registration is responsible for registering births and deaths and has offices in most sub-counties in the country.

iv) The Judiciary. The judiciary has established children's courts manned by gazetted children magistrates. Areas without court infrastructure judiciary organize mobile courts.

v) The Ministry of Justice, National Cohesion and Constitutional Affairs through the National Legal Aid Programme is providing legal aid to children on a pilot basis in two projects in Nairobi and Nakuru.

vi) The Alternative Family Care Secretariat. The Ministry of Gender, Children and Social Development has established an Adoption Secretariat to handle adoption and foster care placements. There are currently five registered adoption societies in Kenya, namely Little Angels Network, Kenya Children's Home, Child Welfare Society of Kenya, Kenyan to Kenyan Peace Initiative, and Little Gems.

vii) The National Police Service. The service provides security to all citizens and has established children and gender desks and Child Protection Units (CPU) in selected police stations. CPUs and the special desks handle children's cases that come into contact with the law in a manner that takes into consideration their special needs.

viii) Child Helpline 116. This is a toll-free number that has been established by the DCS in collaboration with a mobile service providers and CSO partners to enhance protection of children from abuse and neglect. Currently, the service has call centres in three regions namely Nairobi, Eldoret in the North Rift Valley and Garissa in North Eastern Kenya.

ix) Ministry of Local Government- The ministry manages schools, health facilities and other social services through the various urban and municipal governments and the Street Families Rehabilitation Trust Fund. One such initiative is the Street Family Initiative that was set up to address issues of street families including children. The Trust Fund was set up on 11 March, 2003 after consultations between government, the private and public sectors to address the ever-rising numbers of children, including street families living and working on the streets of urban centres.

x) The National Council for Persons with Disabilities was established under the Persons with Disabilities Act, 2003 to guide policy intervention for all persons with disabilities, including children.

xi) Kenya Institute of Special Education (KISE). KISE conducts skills training at a Diploma level targeting teachers who teach children with various forms of disability.

xii) The Ministry of Public Health and Sanitation (MPHS). The ministry implements health and sanitation policies and programmes, and some of these initiatives focus specifically on child health. These initiatives include:- maternal child health, child survival strategy, child health policy, integrated management of childhood illness (IMCI) and the National School Health Policy and Guidelines.

Xiii) Probation and After Care Services- Probation and Aftercare Services is one of the key agencies/partners in the criminal justice system in Kenya. It is legally mandated to deal with the management of offenders serving non custodial sentences within the community and long term offenders released from penal institutions. This is undertaken through 3 programs namely: Probation orders, Community service orders and Aftercare.

xiv) Prisons Service. The Prisons service is a key agency in the criminal justice system and legally mandated to keep in custody and reform offenders serving custodial sentences. Youthful or juvenile offenders for whom the type of offence and home conditions are not conducive are held in borstal Institutions after pre-sentence and a report by the Probation Office. There are 2 borstal Institutions for the juvenile offenders for boys in Kenya namely Shikutsa in Western Kenya and Shimo la Tewa in the Coast region and a borstal institution for girls was recently established at Kamiti in Nairobi.

Female offenders with children below 4 years are allowed to keep/accompany them in prison. Various NGO's also supplement government assistance for imprisoned mothers through provision of support items such as baby feed and sanitary wear.

xv) Director of Public Prosecutions- Established under article 157 of the constitution is responsible for all prosecutions in the country.

xvi) Devolved Funds Management Institutions which are Semi- Autonomous organisations of government. The Constituency Development Fund (CDF), Local Authority Transfer Fund (LASDAP/LATF) target children from very poor families who are academically gifted and provide them with education bursaries for their secondary education.

Xvii) Ministry of Education. Is charged with responsibility of providing education some of the relevant programmes and policies for children include:- the national Free Primary Education (FPE) 2003; Free Tuition Secondary Education (FTSE) and ECD component have been incorporated as a basic education, school feeding programmes components. The Ministry has enhanced participation of girls in education through provision of gender sensitive initiatives such building of toilets for girls in schools and provision of sanitary pads.

Xviii) The Ministry of Labour. The Ministry of Labour in charge of child labour issues. The Employment Act No. 11 of 2007⁵ prohibits the worst forms of child labour programme which is implemented by the Child Labour Division in the Ministry of Labour. The Ministry is also responsible for establishment of the District Child Labour Committees.

xix) Ministry of Agriculture is responsible in regard to crop production, livestock production and fisheries and has direct impact on child survival and development in relation to food access and nutritional status of children and their families countrywide.

⁵ Employment Act 2007 Section 53, 56

1.3.4 Key Non State Actors

i) Civil Society Organisations (CSO).

These agencies include NGOs, both local and international, Community Based Organisations (CBOs), Faith Based Organisations (FBOs), Trusts and Foundations. These agencies supplement government efforts in provision of services to children.

ii) Charitable Children Institutions (CCIs). They are regulated through the Charitable (Children Institutions) Regulations of 2005. Supervision of these CCI'S in undertaken by DCS and AAC to ensure they comply with the regulations. There is an estimated of 900 CCIs countrywide.

iii) Networks and Coalitions. Networks in the children sub-sector are conglomerations of state and non-state actors formed mainly as a result of a need or emerging issue in order to exchange information, advocate or lobby for legal policy reforms.

1.4 Information and Data Management on Children.

The Kenya National Bureau of Statistics (KNBS) is a government agency charged with data management. The government has made progress in centralizing data collection and dissemination through platforms such as Kenya Info (KENINIFO). Through these efforts, useful information on children is available though Ministries of the government also maintain information on the work they do using their own information management systems such as Education Management Information System (EMIS) and the Health Management Information System (HMIS) among others.

The government through the ministry responsible for national planning “Ministry of Devolution and Planning” has a Directorate for Monitoring and Evaluation. The Directorate through the National Integrated Monitoring and Evaluation System (NIMES) comprehensively covers all public sector organisations and is expected to cover non-state actors including CSOs to ensure compliance and good governance for accountability and results measurement and reporting of all activities implemented country wide including for and with children. NIMES aims to encourage the culture of good governance through monitoring and evaluation of planned policy outcomes at both the national and devolved levels.

All the national surveys are all coordinated by the Kenya National Bureau of Statistics (KNBS) to ensure they meet the required threshold for credible information.

Most institutions of higher learning mainly the universities also generate useful information through student researches. In 2008 NCCS documented approximately 820 researches on children rights issues.

The government is currently in the process of setting up a specific national children’s database with indicators based on the four pillars of child rights.

1.4.2 Independent Monitoring

The National Gender and Equality Commission as a successor to the Kenya National Human Rights and Equality Commission pursuant to Article 59(4) of the constitution; the commission is mandated to oversee the promotion and observance of human rights in the country and to promote equality and freedom from discrimination in accordance with Article 27 of the Constitution alongside other mandates.

1.5 Financing and Budgetary Allocation by GoK for the Children Sector.

The government allocates financial resources to the ministry in charge of children affairs. This allocation has progressively increased *refer to statistical annex table 2*.

With technical assistance from UNICEF, the State Party has instituted 'Social Budgeting Framework' and published the Social Budgeting Guidelines document, with a child's rights focus on pilot basis. The pilot exercise began in three districts in 2005 and was extended to 10 districts by 2010.

Various development partners also supplement the government financial support including the World Bank, (British Government) DFID, Japanese Government among others.

1.6 Challenges and Constraints

- i) There is inadequate co-ordination and M&E system
- ii) The exclusion of children issues in key policies and protocols such as Kenya Vision 2030, EAC treaty protocols, other relevant regional programmes (such as the Nile Basin initiative).
- iii) Inadequate resource allocation such as personnel, logistical, material, expertise and finances to adequately respond to the numerous children protection and welfare needs.
- iv) Inadequate involvement of community and parental involvement in children's rights and welfare.
- v) There are numerous emerging issues threatening the rights and welfare of children.

1.7 Recommendations

- i) Develop the NPA 2013—2017 to guide all stakeholders in the children's sector at all levels.
- ii) Participate in developing frameworks to align children issues.
- iv) State party to ensure that all agencies adopt practices that meet internationally accepted standards and that they undertake actions that do not violate children rights.
- v) Strengthen the AAC's to oversee and coordinate child rights network and coalition under their areas of operation.
- vi) Put in place mechanisms to address emerging children rights threat issues such as climate change and response and mitigating strategies.
- vii) Strengthen and enforce national and county M&E system of the National Children Data Base to ensure data information and statistics of children are maintained and updated regularly.

CHAPTER 2: DEFINITION OF A CHILD

Article 2—Definition of a Child

The recommendations and observations by the African Committee of Experts on the Rights and Welfare of the Child.

The Committee specially and urgently requests the State Party to rise the age of sexual consent to 18 years, so as to comply with the definition of a child in the Charter and, consequently, promote the education of young girls. The Committee also recommends the adoption of a family code (applicable to all Kenyans) to govern and harmonize matrimonial practices in the country.

The Committee recommends, in general, that the State Party harmonize the definition of the child within the national context and conduct a campaign to sensitize and inform the population on the issue.

State Party Response

The State Party has made substantive development since the last reporting period in regard to definition of a child in matters relating to minimum age in marriage, sexual consent, criminal responsibility, employment, alcohol consumption, tobacco consumption and civil protection of a minor as highlighted in the sections below.

2.1 Legal and Policy Framework

The Constitution of Kenya under Article 260 defines a child as *'an individual who has not attained the age of eighteen years'*. The effect of this is that any other law which is in conflict with this definition as per the Constitution is null and void. Efforts are under way to address conflicting definitions under existing laws so that they are in compliance with the provisions of the Constitution. The Penal Code has been amended and all the ages mentioned amended to reflect the age of eighteen years as the definition of a child. The National Children Policy also defines a child as an individual aged less than 18 years.

2.1.1 Minimum age of marriage

The State has drafted the Marriage Bill, 2012 which seeks to address the shortcomings of the existing legislation governing marriage. The draft marriage bill repealed the following pieces of legislation, The Marriage Act, (Cap. 150), The African Christian Marriage and Divorce Act, (Cap. 151), The Matrimonial Causes Act, (Cap. 152), The Subordinate Courts (Separation and Maintenance) Act, (Cap. 153), The Mohammedan Marriage and Divorce Registration Act, (Cap. 155), The Mohammedan Marriage, Divorce and Succession Act, (Cap. 156), and The Hindu Marriage and Divorce Act, (Cap. 157). The amendment and consolidation of the marriage laws will minimize the complexity, unpredictability and inefficiency that the current laws bring. Section 4 of the Bill states that *"A person shall not marry unless that person has attained the age of eighteen years"*, clearly outlawing child marriages. According to Section 5 (2) no person under eighteen years is allowed to act as a competent witness to a marriage. The penalty for marrying a person below the minimum age is imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or to both (section 87).

2.1.2 Minimum Age of Sexual Consent

The Sexual Offences Act 2006 addresses sexual offences, including definition of what constitutes a sexual offence, protection of all persons including vulnerable persons such as children from harm, unlawful sexual acts as well as the remedies available to them. The Act defines a child as *"any human being under the age of eighteen years"*. Section

42 of the Act provides that *“For the purposes of this Act, a person consents if he/she agrees by choice, and has the freedom and capacity to make that choice.”* Section 43 (4) (f) of the Act states that children are incapable of making a choice in sexual acts.

2.1.3 Minimum Age of Criminal Responsibility

In 2010 Kenya constituted a taskforce consisting of stakeholders to review the Children Act, 2001. Amongst the recommendations proposed was the enhancement of the age of criminal responsibility from the current eight years set by the Penal Code to 12 years which is a more internationally acceptable age and is in line with the recommendations of the UN Committee on the Rights of the Child. Stakeholders in the children sector led by the Kenya Law Reform Commission are still reviewing the amendments.

2.1.4 Minimum Age for Employment

The Employment Act, No. 11 of 2007 defines a child as a person who has not attained the age of eighteen years. Section 53 of the Act prohibits the worst forms of child labour while Section 56 (1) provides that, *“No person shall employ a child who has not attained the age of thirteen years whether gainfully or otherwise in any undertaking”*. However, a child aged between thirteen years and sixteen years may be employed to perform light work as long as the work is:

- not likely to be harmful to the child’s health or development; and
- Does not prejudice the child’s attendance at school, his participation in vocational orientation or training programmes.

2.1.5 Minimum Age for Alcohol Consumption (Alcoholic Drinks and Control Act, 2010)

The sale, supply or provision of alcoholic drinks to a person under the age of eighteen years is prohibited under the Alcoholic Drinks and Control Act, 2010. Section 21 outlaws the employment of persons under the age of eighteen to sell, control or supervise the sale of alcoholic drinks or to have the custody or control of alcoholic drinks on any licensed premises. Section 24 (1) provides that *“No person holding a license to manufacture, store or consume alcoholic drinks under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed.”*

2.1.6 Minimum Age for Tobacco Consumption (Tobacco Control Act, 2007)

The Act provides for the protection of the health of persons under the age of eighteen years by limiting access to tobacco and tobacco related products by this age group. The Act also provides that the Ministry responsible for education integrates matters related to tobacco into the syllabuses. To protect the health of individuals including children in residential settings, the Act prohibits smoking in residential houses, children’s homes, educational facilities and health institutions among others. In addition, the State Party has undertaken measures which ensure the protection of the public from secondary smoke by banning smoking in public places and designating specific places for smokers.

2.1.7 Protection of Minors

Order 32 Rule 1 of the Civil Procedure Act provides that every suit by a minor shall be instituted in his name by a person who shall be called the friend of the minor.

2.2 Context of Implementation

The State Party through various structures of government administration and other has sensitised communities through public rallies of the effect of the minimum age as regards the above aspects. Courts of law have also made pronouncements when passing sentences on the consequences of violating laws in regard to the minimum age. Non state actors including faith based organizations have also conducted awareness raising workshops on the importance of protecting children in regard to the minimum age consideration. For example, in regards to age of sexual consent,

the Sexual Offences Act and the Children Act effectively criminalizes sex with children less than eighteen years. Effective implementation of this Act will result in more children retained in school, fewer adolescent pregnancies, fewer girls dropping out of school to get married and reduced risk of contracting sexually transmitted diseases including HIV and AIDS and in effect promoting and protecting the welfare and the rights of the girls and women.

2.3 Challenges and Constraints

- I. In spite of the awareness creation on the existence of these legal provisions by both state and non state actors there are many children and adults who are yet to be reached.
- II. Persons expected to protect children such as parents, guardian, and other duty bearers continue to violate these provisions.
- III. Some cultural traditions continue to define a child differently from the legal provisions and there is a mistaken belief that culture prevails over the law.
- IV. Some social cultural and religious practices and beliefs are used to justify child marriages among many communities in many parts of the country with older men marrying young girls. In the Northern part of the country many of the girls married early are divorced soon after and many are forced to bring up their children on their own.
- V. High levels of poverty force many girls into early marriage. Families also view marriage for the girls as a source of dowry particularly if the suitor is elderly and rich. Poverty also contributes to child labour with children being forced into income earning activities in different sectors such as the agricultural, fishing and commercial sex work (considered as a form of worst labour) among others.
- VI. Children and youth due to socio economic factors become addicted to drugs and alcohol and drop out of school at an early age before they are 18 years.
- VII. Inadequate capacity among implementers has slowed the process of implementation of the law in relation to definition of a child.

2.4 Recommendations

- I. Ensure sustained public awareness campaign on the existence and provisions of relevant laws. The target should include law enforcers, children, parents, guardians and entire communities.
- II. Simplification of these laws into friendly versions will appeal to wider audiences and help demystify them.
- III. To enforce the law and ensure that courts of law impose the maximum sentence in order to deter perpetrators.
- IV. Scale up social protection programmes and encourage more participation in the devolved government structures, ensure transparency and privatization of children's programmes in the community.
- V. Awareness creation on drugs and substance abuse and enhance rehabilitation and integration of those who abuse drugs.
- VI. Identify capacity gaps among the implementers and address the recommendations

CHAPTER 3: GENERAL PRINCIPLES OF IMPLEMENTATION

3.1 Article 3—Non Discrimination

3.1.1 Legal and Policy Framework

Article 27 of the Constitution outlaws discrimination based on economic status, birth, sex, religion, colour, race, tribe, disability, pregnancy, marital status, health status, ethnic or social origin, age, conscience, belief, culture, dress, or language among others. Every person is equal before the law, has equal protection and equal benefit of the law, as well as full and equal enjoyment of all rights and fundamental freedoms. In addition to the above rights children enjoy more rights under Article 53. Section (1) (e) protects children born out of wedlock by providing that both parents bear parental responsibility whether or not they were married at the time of the child's birth. The review of the Children Act has taken cognizance of this Constitutional provision and provides that parental responsibility is no longer based on the marital status of the parents.

Article 14 (1) has also extended protection to children by granting them Kenyan citizenship as long as either parent is a Kenyan citizen and regardless of whether or not the children are born in Kenya. Article 56 further provides that any unknown child found in Kenya who is or appears to be at least eight years of age is presumed to be a Kenyan citizen by birth.

The Kenya Citizens and Foreign Nationals Management Service Act, 2011, provides for a framework that protects the right to identity for every person through creation and maintenance of a national population register. It also addresses the administration of laws relating to births and deaths, identification and registration of citizens, immigration and refugees; and marriages.

The National Gender and Equality Commission Act of 2011 emphasizes gender equity and non- discrimination and sets the institutional framework to monitor and ensure compliance at all levels. The Act also provides that no child with disability shall be denied the right to education as provided for in the Children Act, 2001.

Section 5 of the Persons with Disabilities Act, 2003 outlaws' discrimination on grounds of disability, and the Persons with Disabilities (Amendment) Bill of 2010 seeks to have albinism recognized as a disability in order to address discrimination of children living with albinism.

The National Cohesion and Integration Act, 2008 was passed as part of the national healing process stemming from the post election violence of 2008. It provides for the establishment of the National Cohesion and Integration Commission with the mandate of facilitating and promoting equality of opportunity, good relations, harmony and peaceful coexistence among communities in Kenya irrespective of their ethnic and racial background.

The State Party established the HIV and AIDS Tribunal in 2011 with the authority and mandate to hear and determine complaints or appeals arising from any breach of the HIV and AIDS Prevention and Control Act, 2006 including discrimination. The Tribunal has powers to address fundamental human rights abuses as a result of an individual's HIV status and issue remedies to redress the injustices. It also has the power to award damages in respect of any proven financial loss or impairment of dignity, pain or emotional and psychological suffering as a result of discrimination based on one's HIV status or perceived status.

Context of implementation

Despite the existence of the above laws and policies there are children who are still discriminated against as a result of the wider discrimination practiced in society. When adults are discriminated in regard to certain aspects of their lives children also get affected. Children get discriminated on account of their social background, parents' marital status, ethnic background, religious background among others. Below are some of the discriminatory practices that were noted:

- Children with disabilities, particularly those with multiple disabilities are also discriminated upon amongst some communities as they are viewed as a burden or a curse. Such children are neglected and abused.
- In communities where circumcision of boys and girls is still common children who do not get circumcised are treated differently and referred to as children even when they acquire the age of majority. Boys who undergo the rite in health institutions are also discriminated on as they are referred to as cowards with some even suffering physical violence from their peers who have undergone traditional circumcision.
- Discrimination based on their orphan hood status.
- Kenya being a patriarchal society still witnesses discrimination of girls and women.
- In some families boys receive preferential treatment compared to girls in terms of education, allocation of duties at home, being married off early, and during inheritance as most cultural traditions view girls as inferior to boys.

There are many initiatives that aim to address and reduce discrimination that are being implemented by both government and CSOs and following are some of such initiatives:

- Faith Based and other non state actors to create awareness on the rights of children with disabilities in the country.
- Cases have been instituted in court to seek redress over discrimination, For instance it is now routine for courts to grant orders for DNA tests to establish paternity in child custody and maintenance cases.
- Children were involved and participated in activities aimed at addressing peace initiatives and ending the inequality in the Rift Valley after the post election violence. For instance in Molo area security peace committees involved the children were set up after it was realised that activities did not take into consideration the views of children at the onset.
- Commissions and institutions have been established with the mandate of addressing discrimination such as The National Cohesion and Integration Commission. The work of these institutions has helped create awareness on discrimination and its effect on children and families including salient forms of discrimination which may not be apparent.
- Through a high court ruling, orphans whose parents died of HIV and AIDS and who could not acquire birth certificates can now acquire them.

3.2 Article 4—Best Interests of the Child

Legal and Policy Framework

The Principle of the “Best Interests of the Child” is now enshrined in the Constitution which at Article 53 (2) states that *“a child’s best interests are of paramount importance in every matter concerning the child.”* Also, the Children Law Amendment Bill, 2010 which seeks to review the children Act 2001 proposes that *“a Children’s Court may on the application of any person or on its own motion visit any children’s institution and assess its condition and the circumstances of the children in the institution, and may arising from such assessment make any order which it considers to be in the best interests of the child”*. The amendment also proposes that children facing trial be counselled prior to trial if it appears to be in the best interests of the child.

Context of implementation

To ensure professionals working with and for children understand the concept and its application various organizations have held capacity building trainings on child rights and programming. The training has targeted members of the judiciary,⁶ law enforcement officers, teachers, children officers, school administrators, health personnel, social workers, personnel working in childcare institutions, and traditional and community leaders among others. In the Children Courts magistrates are increasingly using the best interests principle during proceedings, and this is evident from some of the rulings given in paternity and custody cases. Many cases of child neglect can be attributed to the fact that parents choose theirs and other interests while ignoring the interests of their children.

On the other hand some communities’ cases concerning children are handled out of court due to reluctance to use the established legal justice methods including for cases such as incest, defilement and other forms of child sexual exploitation for fear of stigma. Parents and guardians receive out of court settlements in such cases while community leaders who sit in “judgement” in the cases such as chiefs and local elders rely on community justice systems that are not always in the best interests of the child. In most cases the alleged perpetrators pay money or give other incentives that benefit the adults and not the child victims. Child victims of such actions normally suffer physical, psychological, emotional and health complications and as a result drop out of school. In some communities girls are married off to their abusers to endure further suffering which is clearly not in the best interest of the child.

Challenges and constraints

- i. There is inadequate awareness on best interest of the child concept is not well understood by children, adults and policy makers.
- ii. There is an assumption that the Principle of the Best Interests of the Child should only be observed by those who work in the children sector, yet it should be observed in all sectors of society.
- iii. Some cultural factors negatively influence the determination of the best interest of the child.
- iv. Inadequate participation with children with capacity to determine their best interest.

Recommendations

- i. The State Party should enhance measures to support sustained children, adults and policy makers, awareness on the best interests’ principle.
- ii. The best interests of the child principle should be mainstreamed in all sectors of governance including development of laws and policies and standards integrated on programs and actions by all stakeholders.

⁶ Training for judicial officers is mainly organized through the Judiciary Training Institute which was established in 2008 to offer education and training to staff involved in the administration of justice.

- iii. Enhance community awareness on the importance of referring children cases to court and eradicate “Kangaroo Courts” and conspiracy of silence phenomena in order to enhance child protection.
- iv. Increase of awareness on the need to involve children with capacity in determining their best interest.

3.3 Article 5—Survival and Development

Legal and policy framework

The Constitution in Article 26 guarantees every Kenyan the right to life, and emphasises that life begins at conception, and that no one shall be deprived of life intentionally, except to the extent authorized by the Constitution or other written law and abortion is not permitted under the law. Article 53 of the Constitution guarantees children the right to free and compulsory basic education, parental care and protection as a development right.

The National Children Policy states that “all children have a right to be born, nurtured and to grow in a conducive and secure environment.” The policy defines development rights as “education, play and leisure, cultural and artistic activities, access to appropriate information, social security and parental care.”

Context of implementation

Kenya has posted impressive results with regard to survival and development of children in the past few Years and the health indicators show that there has been significant improvement in the survival and early development of children. According to the 2008 Kenya Demographic and Health Survey (KDHS), there were remarkable declines in under-five and infant mortality rates. During the period 2003 to 2008/09, infant mortality rates decreased from 77 to 52 per 1,000 live births while under-five mortality decreased from 115 to 74 per 1,000 live births during the same period. These gains are largely due to intervention such as:

- increased immunization - the proportion of children under one year of age fully immunized rose from 57 percent to 77 percent between 2003/05 and 2008/09;
- The increased use of insecticide treated mosquito nets - 13.5 million bed nets were distributed, with the percentage of children sleeping under them rising rapidly from 5 percent in 2003 to 52 percent in 2006.

Despite the gains achieved over the period in relation to child survival and Development there exists many threats to survival and development such as:-

- In areas where child survival rates are high due to access to maternal and child health (MCH) services there are still pockets of marginalized children who do not benefit from these services.
- Diarrhoea and Malaria still continue to be a leading cause of children deaths.
- Adolescent pregnancy rates in Kenya are high and teenage mothers are likely to have a still birth, their children are likely to be malnourished, and to suffer neglect.
- Abortions (illegal) and concealment of births are also common among teenage mothers resulting at times in death for both mother and child and subsequent ill health and psychological stigma.
- Children across different socio-economic sectors are experiencing increased violence at home, in school and in the communities they live in.
- Insecurity in various parts of the country such as cattle rustling, terror attacks, robberies, tribal and political violence, and gang related violence etc resulting in deaths of children.
- Disasters and emergencies such as droughts and floods lead to loss of lives and displacement of children.

Challenges

- i. Prevailing high poverty levels among many families in Kenya negatively impacts on children's health and well being.
- ii. Large family sizes impact negatively on the survival and development of children due to lack of adequate food, shelter and clothing and generally good child care practices.
- iii. Food insecurity leading to stunted growth, malnutrition and starvation among others.

Recommendations

- I. Interventions to ensure development and child survival programmes such as immunization, exclusive breastfeeding use of insecticide treated nets, safe hygiene practices and family planning.
- II. Promote provision of free health care to children under 5 and to expectant mothers.
- III. Enhance collaboration between the governments, civil society, national and international agencies in efforts to work together to ensure children survive and develop at each stage of their lives through implementing comprehensive social, economic and emerging concerns.

CHAPTER 4: CIVIL RIGHTS AND FREEDOMS

4.1 Article 6—Name and Nationality

Responses to the Recommendations and Observations by the African Committee of Experts

- 1. Only 56% of the children in the rural areas had been registered at birth and the State to ensure all children are registered.*
- 2. State Party reflects on the causes of failure to register births and take appropriate steps to facilitate registration of all children at birth. The committee also encourages the government to intensify campaigns to sensitise the population on the issue of declaring births and its importance through participatory and community approach involving all national actors and local communities. It further recommends the adoption and implementation of a program to inform and sensitise the population, especially the rural and nomadic populations, on the issue of declaring births.*
- 3. The committee equally recommends that special measures be taken to declare refugee and displaced children, as well as those of nomadic communities*

State Response

It is important to note that the registration of birth takes place at the local assistant chief offices, the health centres and institutions immediately birth occurs and a notification of birth issued for free. There after a birth certificate can be applied for at the sub-county office and as long as birth was notified at the local level lack of the certificate does not imply late registration and does not attract the prescribed penalty payment.

The government has enhanced mobile registration services especially for the nomadic communities and also adopted use of schools as registration centres for children in an attempt to realise one hundred percent birth registration. However, both government and CSO partners need to provide more resources and personnel to further facilitate registration. It has been noted that in areas such as Eastern, North Rift and Coastal regions and the Dadaab and Kakuma Refugee Camps where the United Nations High Commission for Refugees (UNHCR) and some international NGOs facilitate travel and subsistence costs for mobile government registration, coverage rate has been very high.

Currently through an initiative dubbed MOVE (Monitoring vital events) the government has on a pilot basis embarked on a project aimed at applying and using information technology to document when birth occurs in the community. In this initiative the assistant chiefs are using mobile phones with a special application to send short messages to the Sub-County registrar office and the birth is registered.

Awareness on the need for birth registration is being undertaken by the government and NGOs and publications on benefits of birth registration have been developed and are widely distributed by the government in partnership with NGOs.

According to the North Eastern Kenya Regional Coordinator of Birth Registration based in Garissa town, Garissa District has a birth registration of 51.44% (2011) and most of the registered births are from the Dadaab Refugee camp. The government registration officers with the assistance of UNHCR visit the refugee camps with registration tools once every month for a period of two weeks.

In order to improve registration coverage rates, the Department of Civil Registration has undertaken sensitisation activities in arid and semi-arid districts and in some of these areas including the low income slum areas mobile registration services are provided in collaboration with CSO partners.

4.1.1 Legal and Policy Framework

Article 53 of the Constitution guarantees every child the right to a name and nationality from birth and the National Children Policy, 2008 stipulates that every child including a child with disability and /or special needs has a right to identity and registration at birth.

Registration and Identification of Persons Bill 2012 consolidates the national registration bureau and the civil registration bureau and aims at providing one stop service for the notification and registration of births, deaths, identification of persons, passports and for connected purposes.

Kenya Citizens and Foreign Nationals Management Service Act, 2011 it provides for the creation and maintenance of a national population register and the administration of the laws relating to births, deaths, identification and registration of citizens, immigrants, refugees and administration of the laws relating to marriages and for connected purposes

4.1.2 Context of Implementation.

Birth registration was first acknowledged as a human right in the 1948 Universal Declaration of Human Rights. In 1966, the UN International Covenant on Civil and Political Rights (ICCPR) ensured that birth registration became a legally binding obligation for states. In 1989, the UN Convention on the Rights of the Child (UNCRC) Articles 7 of the UNCRC states that a child shall be registered immediately after birth and shall have the right from birth to a name and nationality. The African Charter on the Rights and Welfare of the Child also highlights the importance and responsibility of the state towards birth registration.

The Department of Civil Registration is the Government Agency in Kenya charged with the responsibility of implementing the compulsory registration of Births and Deaths occurring in Kenya irrespective of nationality. It also provides optional registration services of births and deaths of Kenyan citizens occurring outside the country. The core functions of the Department of Civil Registration are: Registration of births and deaths, preservation, security and custody of births and deaths records, issuance of births and deaths certificates, production of births and deaths statistics, re-registration upon legitimization and recognition. The birth registration process is being automated and computerised and the existing manual registers are being phased out and converted to electronic registers country wide. In Kwale County in the Coast, an NGO and GOK have piloted online registration of birth through a centralized computer system. Children do not need to be endorsed in the guardian or parents' passports and can have a passport issued in their own name as opposed to such a requirement in the past. Effective April 2013 adopted children can have Birth Certificates issued without reference on the document referring to the child as Adopted and the parent as the adopter as was the case previously. The Principal Registrar of Births and Deaths shall maintain the Register of Adopted Children and Adopters for record purpose and in case of future reference by either the adopted child or the adopting parents.

The national coverage for birth registration is 67 % in 2012 up from 56% in 2007 but there is variation in regions and counties. The Department of Civil Registration has undertaken sensitisation activities in arid and semi-arid districts and informal urban settlements that have low registration rates as a way of ensuring that every child's birth is registered. It has also increased the number of civil registration offices in the country from 69 (2005) to 107 (2011) and decentralised birth notification ensuring it is done and notification card issued at sub-location level and health centres throughout the country.

In an effort to achieve universal birth registration the department of civil registration is working closely with the Ministry of Health to capture birth through the Maternal Child Health (MCH) strategy. The strategy entails registering and notifying birth of children during the immunization for children who are born at home. MCH strategy has achieved 97% immunization and so it is hoped registration riding on the model will achieve similar results in the long term. The Department of Children's Services Cash-Transfer programme for Orphans and Vulnerable Children as one of the conditions for assistance is for the beneficiary child to have a birth registration certificate and this has enhanced registration. The Ministry of Education has also made the requirement for birth registration for children sitting basic education final examinations and for children enrolling for ECDE.

The law provides for free birth registration (notification) if undertaken within six months after birth. This provision has not always been adhered to due to ignorance on the part of parents, and especially for women who deliver outside the health facilities. According to the registration office in Garissa and other areas visited, most parents and guardians seek birth registration when the children are due to start school or to sit for national examination which is when the documents are required by the schools.

4.1.3 Challenges and Constraints

- i) Ignorance and Lack of awareness in some areas on the necessity for registration of births and social-cultural and religious inhibitions in some communities to register births and deaths.
- ii) Long distances to registration centers.
- iii) The fee charged for the birth certificate of Kshs.50.00 where birth was notified and Kshs.150.00 for late registration if birth was not notified within six month at times hinders births from being registered.
- iv) Shortage of resources such as personnel and registration offices especially in remote areas or lack of logistical support for the registration officers.
- v) In the international border counties, the requirement for registration involves vetting for citizenship which makes it difficult to register births.

4.1.4 Recommendations.

- i. Sensitization of parents and community on birth registration.
- ii. Increase mobile registration services in remote areas, hard to reach populations and to use facilities such as primary and secondary schools and CCI's as registration centres
- iii. There is need evolve innovative methods and to involve and target the community health workers to assist in birth registration.
- iv. Mainstream child birth registration in all Children Programmes.

4.2. Article 7—Freedom of Expression

4.2.1 Legal and Policy Framework

The Constitution of Kenya recognises the right to expression (Chapter 4 article 33) as a key principle and value in the conduct of public affairs at all levels. Article 35 of the constitution provides for access to information by all citizens. Freedom of Information Bill, 2012 operationalizes article 35 of the Constitution.

The Media Act, 2010 provides for the realisation of the right to freedom of expression and regulation of the media industry.

Section 3 of the Basic Education Act, 2013 provides that participation of children is one of the guiding principles for effective implementation of the Act.

4.2.2 Context of Implementation

In recent years, children in Kenya have increasingly enjoyed their right to freedom of expression due to increase in awareness, opportunities for participation as well as enhanced capacity to participate.

The Department of Children Services in collaboration with various CSOs and the Area Advisory Councils, facilitates the participation of children in relevant forums and events at the international, regional, national and local levels.

DCS has established Children Assemblies in all the 47 counties (each county assembly has 40 members made up of 20 girls and 20 boys from diverse groups within the county) and a national assembly that sits at the old chambers of the Kenyan Parliament. CSOs support initiatives for child participation including setting up and facilitating the activities of Child Rights Clubs where they work.

Under the Act, the Media Council of Kenya has powers to regulate the conduct of journalists as well as discipline them. As part of their freedom of expression children in Kenya have been participating in commemorative events concerning different aspects of their lives. Some of the key events that offer opportunities for children to participate include:

- World Water Day, March 27
- World Day for Street Children, April 12
- World Orphans Day, May 7
- World Play Day, May 28
- World Environment Day, June 5
- World Day against Child labour, June 12
- Day of the African Child, June 16
- Universal Children's Day, November 12
- World Day for Prevention of Child Abuse, November 19
- World AIDS Day December 1

Children Voices Conference is held every year in Kenya and provides children with an opportunity to raise issues that affect them and forward the memorandum of the conference outcome recommendations to policy makers. The conference held for duration of 3 days also offers an opportunity for children from all over the country and diverse backgrounds to showcase their creativity and to educate each other.

Children's Assemblies, which have been held twice in Kenya, were started with the aim of instilling in children the value of participation in different aspects of their lives. The Assemblies are in place in all the regions of the country and children officials were elected and operational guidelines have been developed. The Children Assembly Charter and Standing Orders are also in the process of being finalized. Once in place these documents will help streamline child participation and ensure all aspects of the process are carried out in accordance with established laws and policies.

Guidelines developed to address pertinent issues. Children from the Assemblies participated in the first-ever East African Community Child Rights Conference in Bujumbura, Burundi and contributed towards the development of the Bujumbura Declaration and Recommendations on Child Rights and Wellbeing in the East African Community. At the local level children from the Assemblies have contributed towards the Situation Analysis of Children in Kenya (SITAN) and the development of both the UNCRC and ACRWC State Party Reports.

In 2009/10 and 2010/11 the government allocated twenty million Kenya Shillings (ksh.20M) annually to the Children Assemblies and in 2011/12 KShs.20 Million was allocated. This has resulted in more children participating in the

Assemblies and addressing important issues affecting children. Children continue to participate in different forums such as Children Rights Clubs, Debating Clubs, National Music and Drama Festivals, judicial proceedings, Student Leadership Councils, at home, in institutions and also in communities where they live. This can be attributed to empowerment of children through the forums.

To ensure meaningful participation of children at all levels, the State Party through the NCCS has formed a National Child Participation Committee. A National Children Steering Committee composed of children only has also been established to ensure children's views are taken into consideration during planning for children activities and events nationally. In addition, the State Party through NCCS has printed more than 22,000 copies of the National Child Participation Guidelines and disseminated them to stakeholders in the children sector and also to children for their own use. Child Friendly Safe Schools Guidelines have been distributed to schools through the Ministry of Education to ensure the safety of children within learning institutions.

4.2.3 Challenges and Constraints

- I. Not all children are aware of their right to expression.
- II. The right of a child to participation and freely express themselves is not fully understood by stakeholders in the children sector.
- III. Some communities fear that children's right to expression and participation makes children disrespectful to parents and elders and is in conflict with their traditions.
- IV. Even when children freely express themselves in various forums, and their views are taken into consideration they are rarely involved in follow up processes including evaluation.

4.2.4 Recommendations

- I. There is need for sustained education to rights holders and duty bearers on the right of the child to freely express themselves in all matters affecting them at all levels of society.
- II. The country children assemblies should initiate or encourage in engagement between the country children assemblies and the country government in children issues.
- III. Enhance dissemination of Child Participation Guidelines and other relevant document as well as ensuring periodic review to be in line with emerging issues.
- IV. Ensure children have success to child friendly documents on various issues to enable them participate effectively in all matters that affect them.

4.3 Article 7—Freedom of Association and Peaceful Assembly

4.3.1 Legal and Policy Framework

The Constitution of Kenya Article 36, clause (1) states that every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. Further, Article 37 guarantees every person the right, peacefully and unarmed to assemble, to demonstrate, to picket and to present petitions to public authorities.

4.3.2 Context of Implementation

Children assemblies have been set up in every County. Their establishment was preceded by democratic elections which saw children elect their peers as representatives. As recognised structures at grassroots level, the children assemblies provide a platform through which children are mobilised to participate for example during the regional consultation workshops for collection of information for state party reporting for the ACRWC as well as the combined 3rd, 4th and 5th State Party Report for the UNCRRC.

Other forums do also exist which offer opportunity for children to express themselves and to assemble which include: School Clubs, School Music and Drama festivals at local and national levels and many other forums organised mainly by the different forms of media, CSO and FBOs.

There have been instances where children have held demonstrations to demand their rights to protection from abuse, demand for reforms in the education sector and to protest against grabbing of school land and recreation areas. This shows increased awareness on the rights of the child.

4.3.3 Challenges and Constraints

- I. Outside the children sub-sector, Children Assemblies are not well known and this has limited their profile.
- II. At times children have exhibited violent tendencies during demonstrations, and also there is a risk that adults may misuse children for their own gain.
- III. Cultural and social barriers that could be a hindrance to children out of school and other categories.

4.3.4 Recommendations

- I. Children Assemblies need to be well publicised so that their influence and effects can be felt among both children and adults countrywide.
- II. Promote other forums of participation including rights clubs to ensure all children including those out of school participate at community, school and household level.

4.4 Article 9—Freedom of Thought, Conscience and Religion

4.4.1 Legal and Policy Framework

Article 32 of the Constitution of Kenya has guaranteed everyone, including children freedom of thought, conscience and religion. Section 3 outlaws denial of access to any institution or facility, or the enjoyment of any right on account of a person's belief or religion. Article 32 (3) states that *"a person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion"*.

The right to freedom of thought, conscience and religion is guaranteed under Article 32 (1) of the Constitution which states that "Every person has the freedom of conscience, religion, thought, belief and opinion." Section 4 further provides that "A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion." The Children Act also provides that parents have a duty to guide their children in matters related to religion.

4.4.2 Context of Implementation

There have been instances where young people have joined religious groups against the will of their parents and at other instances have been forced by parents against their will, contrary to the Constitution. Religious groups such as *Kavonokya* and *Kanitha wa Ngai* which are prevalent in certain parts of the country have been proscribed by the government due to beliefs that are considered harmful to the well being of the child such as denial of the right to health and education. Under the Constitution all recognised religions are treated equally and the government is keen to ensure that learning institutions adhere to this.

Case on wearing of *hijab* in institutions of learning

Republic of Kenya In The High Court of Kenya at Nairobi (Nairobi Law Courts), Judicial Review 318 of 2010 In the Matter of: Application by SMY (Suing Through Her Mother and Next Friend, A B) For Leave To Apply For Judicial Review Orders to allow the applicant and other muslim students to wear the hijab at Kenya High School.

The current Constitution has created an avenue for Kenyans to pursue their right to religion in all settings including institutions of learning.

The ban on the wearing of *hijabs* and other symbols of religion to school was one such way to address the issue. There were objections to this in certain learning institutions with one child suing the government on grounds of discrimination based on sections 23(3)(F) and 27,28,32,33,44 and 165 (6) of the Constitution. In upholding the decision of the school management to deny wearing of *hijabs*, the court said this was meant to “*instill a sense of inclusivity and unity of purpose, thus creating uniformity and visual equality that obscures the economic disparities and religious backgrounds of students who hail from all walks of life.*”⁷

In yet another case in the High Court, the SDA East Africa filed a case accusing 25 public schools in Kenya of violating the fundamental human rights of students in those schools who subscribe to that church’s doctrines. The court issued a directive that administrators in public schools should not prevent SDA students from worshipping during their day of Sabbath.⁸

4.4.3 Challenges and Constraints

- I. The existence of religious sects which recruit children poses a challenge to the child’s right to freedom of thought, conscience and religion as they get distorted information which may not be in their best interests.
- II. There have been some terrorist attacks targeting churches that have affected children.
- III. Whereas it is the right of every child to practice their religion in their respective institutions of learning it is difficult to accommodate the needs of all students practicing different religions. It is also important that religion does not cause segregation in school.

4.4.4 Recommendations

- I. Sensitize parent’s guardians and general public against violating the rights of children in the name of religion.
- II. Parents and guardians should give appropriate spiritual guidance to children.

4.5 Article 10—Protection of Privacy

4.5.1 Legal and Policy Framework

Article 31 of the Constitution stipulates that every person has the right to privacy, which includes the right not to have their person, home or property searched or their possessions seized. The Constitution also outlaws unnecessary revealing of information relating to family or private life and also protects the right to privacy with regard to communications with other people. Section 19 of the Children Act 2001 underscores the importance of parental guidance with regard to privacy of the child. Children in institutions have a right to privacy as provided for in the Children (Charitable Children’s Institutions) Regulations, 2005 in Section 7 (2) (a) provide that “*The administering authority shall make suitable arrangements to ensure that an institution is managed in a manner which respects the privacy and dignity of children accommodated there*”.

4.5.2 Context of Implementation

⁷ Republic of Kenya In The High Court of Kenya at Nairobi (Nairobi Law Courts), Judicial Review 318 Of 2010 In the Matter of: Application by SMY (Suing Through Her Mother and Next Friend, A B) For Leave To Apply For Judicial Review Orders to allow the applicant and other muslim students to wear the Hijab at Kenya High School

⁸ Source: Sunday Nation, 9th June, 2013. SEE KENYA LAW REPORTS FOR PROPER CASE CITATION.

The mass media plays a vital role in dissemination of information regarding the situation of children in the country including rights violations. Media has been sensitive in the way it handles and presents children issues and most media houses protect the privacy of the child by not disclosing the identity of the child or publishing photographs. Where a child's voice is captured media alters the voice and blurs the image especially on television. The Media Council of Kenya regulates the conduct of journalists and media houses.

However, sometimes when covering cases of children the media sometimes violates the children's right to privacy by revealing the identity of the child, that of the parents or guardians or the institution where the child lives. This may have implications for the security of the child especially in sensitive cases such as defilement. The child may also feel stigmatised and the focus of unwanted attention from the public thereby causing further emotional damage. In an effort to ensure that the media remains the vanguard of children, guidelines on training media on how to report children cases as well as follow up have been developed. Organizations have also engaged in media monitoring to track coverage of children issues by media houses. Media houses that consistently and accurately covers children issues while observing the laid down guidelines are recognised for their efforts. CCIs do not allow taking of photographs of the children without following the proper process. This is to protect the privacy of the child and to stop unscrupulous people from unduly benefitting from the children.

Child Protection Centres offer a child friendly environment where cases concerning children can be reported and where children can be placed after rescue and their privacy guaranteed. Records containing details of the children are kept safely and information about the children cannot be accessed by unauthorised persons. Social workers attend to the children in private and counselling rooms where children are counselled individually or in groups are situated appropriately.

4.5.3 Challenges and Constraints

- I. Most adults still believe that children have no right to privacy.
- II. There still isolated cases where the media has not embraced the rights to privacy of children.
- III. Some journalists join the workforce without any training on reporting on children cases and in the process violate children's right to privacy. This can be attributed also to competing interests in various media houses.

4.5.4 Recommendations

- I. The media Council should ensure regulations are adhered to and the journalist are continually trained.
- II. Continue to create awareness on the right to privacy especially to the cases of abuse.

4.6 Article 3—Responsibilities of the Child

4.6.1 Legal and Policy Framework

Child rights and child responsibilities are both important for the full development of a child. For a long time in Kenya stakeholders working with and for children put more emphasis on the rights of the child while the responsibility aspect was relegated to the background. Recent legal and policy development has addressed this aspect. In line with the African Charter on the Rights and Welfare of the Child more emphasis is now being out on the duties and responsibilities of the child. The Children Act section 21 has echoed provisions of the ACRWC on the importance of children playing their role at home and society by carrying out duties and responsibilities specific to their age and ability.

4.6.2 Context of Implementation

Children are taking up responsibilities such as-

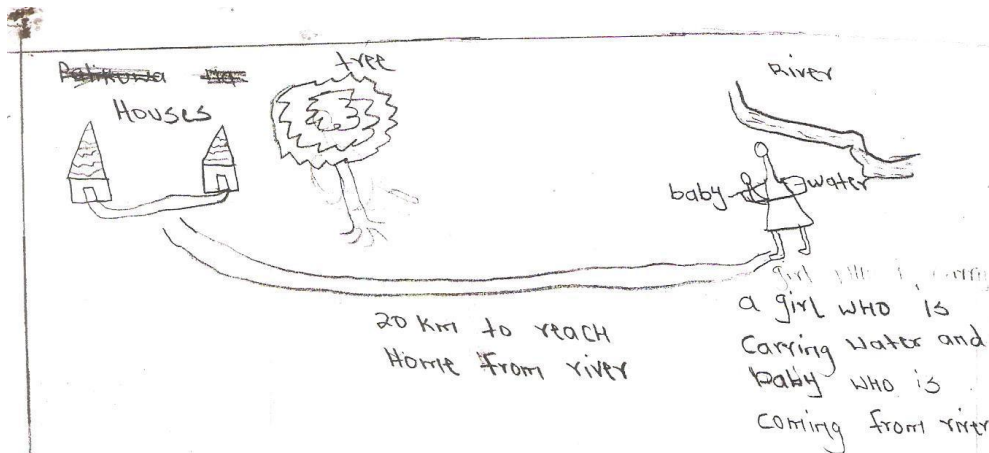
- The children Assemblies

- Management and governance in schools through the children councils
- Taking part in children events such as the Day of the African Child, World Play Day, World Orphans Day

4.6.3 Challenges and Constraints

I. Social cultural factors where the girl child is assigned more responsibilities than the boy child at home. Sometimes parents and guardians want children to carry out their responsibilities at the expense of going to school, doing homework or leisure and play. This may include doing work that is hazardous to children and violates the rights of a child under the guise of responsibilities.

A child's drawing how the girl child is exploited in the name of assigning responsibilities.



Kama mimi ni mbalja sana kuwaji watoto hasa wabicharta. Katika kijiji chetu mogil watoto wanafatwa wapewe kazi nyepezi sana kwasababu watoto wana hiaki yao kwa hivyo nikisema hivi hunaona watoto wakitesha sana picha hiki kimeandikwa kwa kingereza. kwa hapa mogil tunasema asante sana mungu wanabaviki sana

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4.6.4 Recommendations

Create awareness among children and adults on the importance of advancing the responsibilities of the child as a way of nurturing them for adult responsibilities and creating a balance between the children carrying out their responsibilities as citizens.

CHAPTER 5: FAMILY ENVIRONMENT AND ALTERNATIVE CARE

5.1 Article 16—Protection against Abuse and Torture

Recommendations and observations by the African committee of experts.

The law on the child protects him/her against physical abuse and other forms of abuse against children.

It is to be observed that the Kenyan Government has banned corporal punishment in schools, but in spite of these measures, cases of corporal punishment are observed in schools in Kenya.

Regarding sexual abuse, recent statistics (2003-2004) indicate that about 3097 rape cases were reported at national level. The number could be higher since this data only represents that mentioned by the Police. More often, sexual delinquents are acquitted by the courts because of complexities which create fear and doubt in parents or guardians who prefer arrangements to the detriment of the rights of victims.

The Committee recommends that the Kenyan Government take effective and urgent measures to combat the phenomenon of violence against children, through:

- *Actions to raise the awareness of and inform the population on the phenomenon,*
- *Training of judicial police officers and magistrates for an effective application of sanctions on perpetrators of these acts of violence,*
- *Encouragement and establishment of a denunciation mechanism,*
- *Establishment of an Institution for monitoring and assistance to victims.*

State Party Response

The Constitution protects all persons from any form of violence, torture and physical or psychological abuse including corporal punishment and the state has created a lot of awareness and civic education on the Constitution including the provisions on violence. Judicial officers and magistrates are trained through a joint initiative of the Judicial Training Institute and the Civil Society Organisations.

(Quote constitution 53)

There is currently no clear denunciation mechanisms in place but there does exist mechanisms to monitor and provide assistance to victims though the initiative is not adequate. The support is provided, including support by children offices, CSO, health providers, police among other actors as part of their routine work.

The government is in the process of establishing a National Child Protection Data Base to improve mechanisms for monitoring and documenting cases of abuse and maintaining records of abusers.

The Basic Education Act, 2013 has introduced new punishment methods for addressing cases of indiscipline among students in school including counselling as alternatives to the banned corporal punishment. However corporal punishment still is still carried out in most schools despite the ban as was reported by the children during the ACRWC reporting workshops.

Cases of children who have been maimed or have died as a result of excessive punishment, mainly at home and in school continue, to be reported even by the media and response of duty bearers is still far from adequate.

3.1.1 Legal and Policy Framework

Kenya has ratified the Convention against Torture and Other Cruel and Inhuman Treatment and has submitted the second periodic report to the UN Committee against Torture on implementation of the provisions of the convention.

The Constitution, Article 29 (e) and (f) states that *“every person has the right to freedom and security of the person, which includes the right not to be subjected to: any form of violence from either public or private sources; torture in any manner, whether physical or psychological; corporal punishment; or to be treated or punished in a cruel, inhuman or degrading manner”*. Article 25 goes further to provide for the non-limitation of the right to freedom from torture and cruel, inhuman or degrading treatment or punishment, meaning that under no circumstances are these actions justified.

Article 53 (d) of the Constitution, states that: *“Every child has the right, to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour”*.

The government has drafted the Protection against Domestic Violence Bill, 2012 in an effort to address the ever increasing cases of domestic violence but the Bill is yet to be enacted into law.

The National Police Service Act, 2011 prohibits police officers from subjecting any person to torture, cruel, inhuman or degrading treatment. Under this Act police officers convicted of committing torture, risk a prison term not exceeding 25 years and the offence of cruel, inhuman or degrading treatment is punishable with a prison term not exceeding 15 years.

There lacks a comprehensive specific legislation which defines torture and provides appropriate sanctions for it if perpetrated by persons outside the police service. However, The Prevention of Torture Bill has been drafted by the civil society spearheaded by Kenya National Commission on Human Rights (KNCHR) to offer protection against individuals including children but is yet to be introduced in parliament to be enacted into law. The Bill proposes among other provisions definition of torture and criminalisation of torture and other inhuman and degrading treatment and proposes stiff penalties for those convicted of the offences and seeks to establish institutional mechanisms for support, assistance and compensation for the victims.

The Basic Education Act, 2013 prohibits physical punishment of the learners and states no pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical or psychological and the penalty is well defined.

The Framework for National Child Protection Systems in Kenya provides that children ought to be protected from all forms of violence at all levels.

The National Plan of Action on Commercial Sexual Exploitation of Children (CSEC) is in force and seeks to protect children from sexual violence.

The National Children’s Policy of 2008 has outlawed corporal punishment of children among other forms of violence.

3.1.2 Context of Implementation.

According to the Kenya Demographic and Health Survey (2008–2009) 29% of adolescents between the age of 15–19 years have experienced either physical or sexual violence and approximately 40% of the country’s total child population (approximately 8 million) require special care and protection.

According to the *“Situational Analysis of Children, 2009 in Kenya”*, great strides have been made in establishing appropriate legal provisions to protect children against abuse and exploitation but implementation and enforcement of these legislations is wanting.

In 2008 Kenya submitted the Initial State Party report under the Convention against Torture to the UN Committee against Torture. The report acknowledged that torture, cruel and degrading punishment is still applied to children at home and in institutions. The report also detailed measures taken to address the issue which include:

- Child toll free help line, 116, for children in distress or in need of help has been established and functions 24 hours though the service is yet to be rolled out country wide.
- The government has established children and gender desks in all police stations, as well as Child Protection Units (CPUs) in some.

According to the National police Service Act a police officer who assaults or tortures a suspect will be held individually liable and will also compensate the victim. The internal Affairs Unit of police Service and the Police Oversight Authority are also supposed to investigate on alleged cases of assault and torture by the law enforcers.

A High Court Judge in June 2012 ruled that an individual police officer who had assaulted a suspect of crime should not be allowed to get away scot-free leaving the taxpayers to shoulder the burden of paying the damages to those whose rights have been violated. The Judge said that unless the law officers were made to pay for the wanton abuse of citizens fundamental rights there will be no end to acts of misconduct by the law enforcers. The Judge made the ruling in a constitutional petition where a public transport tout was allegedly attacked by police officers on the morning of June 3, 2011.⁹

Gender-based violence and violence against children remain serious offences in Kenya with many going unreported, or at least unpunished, and this occurs in particular with respect to sexual violence. Cases involving sexual abuse of boys are on the rise, with perpetrators drawn from among others teachers, religious leaders, police, strangers, parents and guardians and who are supposed to be the primary protectors of children.

5.1.3 Constraints and Challenges

- I. Cases of serious forms of abuse against children continue to be reported from all parts of the country.
- II. Perpetrators of abuse are drawn from all sectors of society and children affected are of all ages and both gender, though girls are more affected.
- III. There has been notable increase in inhumane, cruel and degrading treatment of children during state operations against organised crime, terrorism, during displacements and evictions and during tribal conflicts.
- IV. In the absence of a specific law on torture cases of torture, degrading and inhuman treatment are prosecuted under various other legislation.
- V. Low awareness among stakeholders, duty bearers, rights holders and enforcers on matters related to inhumane, cruel and degrading treatment especially of children.

5.1.4 Recommendations

- I. The state should ensure that the Independent Policing Oversight Authority takes up its monitoring role as provided in the Police Service Act and the National Police Service Commission Act particularly in relation to cases related to torture and ill-treatment of children.

Case Study: Girls rescued from forced marriages

East African Standard of 26 May 2008

Case No. 1: The girls, aged 13 and 14, who were pupils at OI Kinyei Primary School in Mukogodo in Laikipia North District of Kenya, were withdrawn from school after their parents found them suitors. After being rescued, they were taken to Nanyuki Children's Home, where the administrator confirmed that their middle-aged husbands had run off.

Case No. 2: Relates to the rescue of a six-year-old girl from a forced early marriage in Isiolo District in Kenya. The Children's Department, the Provincial Administration police and the Child Welfare Society spent five days combing the remote Kipsing Location in Isiolo District where they rescued the minor, who had been hidden by her would-be husband. The minor's father had given her to a 55-year-old man for marriage.

⁹ Source: Sunday Nation June 9, 2013.

- II. Government should take concrete steps to create widespread awareness to all stake holders on the issue and to address human rights violations concerning women and children and to protect them from all forms of violence even during police operations against organised crime, terrorism, conflicts etc.
- III. The state should addressing the widespread acceptance and tolerance of corporal punishment of children and eliminating it to ensure “Zero tolerance”, in the family, schools and other settings
- IV. The government should hasten the enactment and implementation of the provisions of Prevention of Torture Bill 2010 and implement the recommendations of the state party report on the Convention Against Torture and the optional protocol on CAT.

5.2 Article 18—Protection of the Family

5.2.1 Legal and Policy Framework

The role played by the family in society is recognized in the Constitution, which in its Preamble states that *“We the people of Kenya are committed to nurturing and protecting the well being of the individual, the family, communities and the nation.”* Article 45 (1) goes further to state that *“The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State”*. The implication of this is that children are assured of protection under the Constitution which is the highest law of the land regardless of the type of family they live in, whether nuclear, extended or single parent family. The protection of the family unit involves protection of the rights of the individuals in the family - children, parents, guardians and other caregivers. Under the Fifth Schedule of the Constitution Parliament has 5 years within which to enact legislation on protection of the family.

A Family Protection Bill has been developed and is awaiting enactment. The Bill makes provision for the protection and relief of victims of domestic violence, protection of a spouse and any children or other dependent persons, and other persons in other relationships.

The Matrimonial Property Bill, 2012 ensures clarity in the division of matrimonial and other property in polygamous marriages. The Bill provides for the rights of each wife over property acquired with her husband as against the rights of other wives. It also addresses ownership and division of ancestral land and the cultural home.

The Social Protection Act, 2012 was enacted to offer protection to vulnerable families to enable them meet their obligations including taking care of children.

5.2.2 Context of Implementation

The ministry in charge of matters related to children, gender and social development is the institution responsible for protecting matters of the family in Kenya. Currently the ministry has implemented various initiatives aimed at promoting and protecting the welfare of families with a special focus on vulnerable families. Within individual family units emphasis is placed on women and children.

Some of the initiatives being undertaken currently include:

- Development of laws to protect families and rolling out of necessary institution frameworks for delivery of related services.
- Cash transfer programmes for OVC, the elderly and persons with disabilities have provided a cushion for families to take care of vulnerable members. Currently 149,000 households are being reached through the OVC Cash Transfer Programme and it is expected that the number will reach 155, 000 by June, 2013. The total number of OVC currently reached is 0.5 million with an average of 3 children per household. The amount disbursed is Kshs.2, 000 per month which is paid bi-monthly totalling Kshs.4,000. The programme has so far registered several successes including contributing to: increase in school attendance and high

retention of children in school, ensuring children have food, clothing (uniform), and books; and has contributed in reduction of child labour as supported children no longer have to go to work and reduction in house hold levels of poverty. An impact study on OVC Cash Transfer has been carried out and the findings have supported the above noted achievements.

- The cash transfer programme has supported acquisition of birth certificates for the OVC and identification cards for caregivers for the purpose of human capital development and inheritance. Currently, over 90% of the OVC in the programme have birth certificates. In order to boost efficiency of the programme tools have been designed based on MIS and they have resulted in improved transfer of funds to beneficiaries and has resulted in improved collection of data and information management for the programme.
- The OVC Secretariat has supported several counties with computers, office supplies and vehicles in order to enhance and ensure efficient programme delivery.
- The OVC Secretariat has since 2009 been giving out scholarships for school fees to orphans to complement the cash transfer and currently 53 students from all over the country are benefitting.

5.2.3 Challenges and Constraints

- I. The pace of law reform is slow and there are concerns that deadlines for enacting legislation for protection of the family among other necessary legislation as prescribed under the Fifth Schedule may not be met.
- II. There is low public awareness on the law making process resulting in low participation of the stakeholders including children in the formulation of family protection laws.
- III. The high numbers of orphans and vulnerable children in the country who are in need of care and support despite the limited number being reached under the OVC Cash Transfer Programme. (The available resources are not enough to reach all the deserving cases currently estimated at 3 million children and there is usually a long waiting list).
- IV. Some communities seek exception from the provisions of the proposed Family Protection Bill citing cultural and religious grounds.
- V. There is general break down of family values in all parts of the country leading to growing incidents of parental neglect of duties and responsibilities resulting in among other things child neglect and family break ups.

5.2.4 Recommendations

- I. To fast track the enactment of the Family Protection Bill into law and ensure stakeholder participation in order to ensure that the forthcoming laws reflect the unique needs and best interests of children regardless of religious and socio-cultural factors.
- II. Institutions such as religious bodies should continue creating awareness on the importance of preserving the family union to ensure children are protected and to protect family values.
- III. Judicial bodies should consider the best interests of the child whenever they make pronouncements related to family issues under current laws.

5.3 Article 20—Parental Responsibility

5.3.1 Legal and Policy Framework

The Constitution at Article 53 (1)(e) guarantees every child a right *“to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not...”*. This is a departure from the previous legal provision under the Children Act where parental responsibility was pegged on the marital status of the parents, which was to the detriment of the child.

Under parental responsibility, the National Children Policy states that children whose “parent or guardian finds difficulty in parenting, or whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship” are children in need of care and protection.

5.3.2 Context of Implementation

The Department of Children Services through its outreach services countrywide, the judiciary and various on state actors address cases of parental neglect in order to enforce duties and responsibilities of parents to children. Children offices in all parts of the country report parental neglect and various forms of violation of children rights by parents and guardians as a major cause for parents facing charges in court and action by children officers. Cases of child neglect top the list of cases reported to Child Helpline Kenya (2,155 in 2009; 1,511 in 2010; 1,589 in 2011 and 2,806 in 2012).¹⁰ The organization has been holding parenting classes for parents of children who are at the rescue centre located within their premises in order to help them address challenges faced in bringing up their children as well as sensitise them on their parental rights and duties under Kenyan law.

Trainings on parental responsibility have been held targeting parents and other caregivers to create awareness and impart skills on duties and responsibilities of parents.

Maternity leave has a major influence on parenting for working mothers. Increasingly, many institutions are offering fathers with new-born babies paternity leave so they can bond with their newly born children and also help the mother around the house.

5.3.3 Challenges and Constraints

- i. Existence of cultural traditions and practices including religious beliefs in many communities in the country that is in conflict with existing legal provisions that require that both parents bear equal responsibilities in the care and protection of children. Most of these cultures place the burden of parental responsibility on the mother.
- ii. Lack of awareness by duty bearers on the legal provisions pertaining to parental responsibility, child rights and child protection.
- iii. Child care centres which offer alternative care facilities are poorly maintained and hardly ever supervised, resulting in the possibility of child abuse and neglect.
- iv. One of the leading causes of parents being arraigned in court including parents who have means yet they cite financial constraints as the cause of child neglect.
- v. High incidences of separation, divorce and single parenthood compromises parental responsibility of both parents.

5.3.4 Recommendations

- i. Fast track enactment of the Family Protection Bill into law and to put in place regulation and enforce measures to enforcing parental responsibility on unwilling and neglecting parents through the judicial system and use of forensic technology to ascertain and enforce paternity when required.
- ii. Parents ought to take personal responsibility of ensuring they know the conditions in which they leave their children and the suitability of the caregivers including regulating day care service institutions and providers.
- iii. Training and skills provision for young people, parents and other caregivers on proper parenting and parental responsibility and to introduce parenting education in schools.
- iv. Scaling up social protection services for very vulnerable families and empowering care givers struggling to meet their parental duties.

¹⁰ Child Helpline 116 data.

5.4 Article 24—Adoption

5.4.1 Legal and Policy Framework

The Children Act provides for both local and international adoption. The ongoing review of the Children Act has proposed the following changes in relation to adoption:

- The National Adoption Committee which shall be the designated central authority for the purposes of the Convention on Protection of Children and Cooperation in Respect of Inter country Adoption.
- The main functions of the Committee include formulation of governing policy in matters of adoption; acting as a liaison between adoption societies, the Government and Non-Governmental Organizations; and generally monitoring adoption activities in the country.
- Due to the extensive existence of kinship adoptions it is also proposed that the Chief Justice prescribes different Rules of Procedure to apply in cases *“where an application for adoption is made by a person who is a close relative of a child”*.

Within the reporting period Kenya has also acceded to the Hague Convention for the Protection of Children and Inter-country Adoption of May, 1993 in 2007 and has developed the necessary procedures and regulations to actualise the Convention.

The Adoption (Children) Regulations of 2005 are used to guide the process of local adoptions.

5.4.2 Context of Implementation

Since the last State Party Report the number of adoption societies in Kenya has increased from three to five. The societies handle both local and international adoptions both of which are on the rise. Charitable Children Institutions offer a supportive role as they shelter many children who end up being adopted.

The Adoption Secretariat and the adoption agencies continue to create awareness on the importance of offering children alternative care by pursuing formal adoption as opposed to customary adoptions which do not offer children full protection.

There are concerns that the adoption process in Kenya is lengthy and expensive and deters people willing to adopt children from using the service and opting for non-formal customary adoption and fostering which fuels illegal practices and child trafficking.

5.4.3 Challenges and Constraints

- I. Some adoptive parents are not fully aware of the rights of an adopted child and sometimes undertake actions that are not in the best interests of the child, such as discriminating them.
- II. There is a misconception that adoption is expensive and this deters some people from adopting.
- III. In institutions sick children and those with disabilities are often left out of the process since not many prospective adoptive parents are prepared to take care of such children.
- IV. Adoption societies are mainly located in the capital city and out of reach by rural and faraway potential clients.

5.4.4 Recommendations

- i. More awareness on the role played by adoption in protecting children rights as well as demystifying the whole process will lead to better protection for adopted children.
- ii. Establish Adoption Societies in all the Counties and decentralise the existing adoption services.
- iii. Recognise and legislate kinship adoptions and foster care to encourage more local people to adopt and foster children than is the case currently.
- iv. Combat the child trafficking fuelled partly by illegal adoption practices and cross border trafficking of children.

5.5 Article 25—Separation from Parents

The Recommendations and Observations by the African Committee of Experts.

Considering the diversity of the shelters, the Committee recommends the establishment of a follow-up mechanism to verify the standards for the establishment of these structures and the collection of data which will enable the control and management of the number of children and the services provided to children admitted into these shelters. The Committee further recommends that the State Party pay particular attention to these centres so that the welfare of these children is ensured and above all, that they are prepared for a better future.

State Party Response

The National Council for Children Services, in collaboration with the Department of Children Services, collects data and information during the CCI registration exercise as well as during periodic supervisions by NCCS and AACs at countrywide.

Some of the shelters established at the beginning of the program in 2003 are still in existence and act as shelters and drop-in centres for the street children where they benefit from feeding, hygiene services and behaviour change modification and some of the shelters do provide accommodation.

According to a report by the Street Families Rehabilitation Trust Fund .some of the rehabilitated children had been re-united with their families.

The programme is supporting street children to join vocational training institutes, secondary and primary schools. Sometimes the program seeks educational sponsorship for secondary school education from individuals and corporate sponsors.

After one year in the identified vocational training institutions, the street children are provided with a start up kit to enable them start their own businesses.

5.5.1 Legal and Policy Framework

The Constitution at Article 53 (1) (d) provides that every child has a right to be protected from neglect. The Children Act 2001 makes provision for shelters for children separated from their families, which include statutory children institutions and Charitable Children Institutions (CCIs) .

The government has established various Guidelines for management of these shelters including guidelines for enrolling and exiting the children as well as mechanisms for re-unification with their families.

5.5.2 Context of Implementation

Large numbers of children in Kenya continue to experience separation from their families due to various socio-economic and environmental factors such as:

- Escalating incidences of child neglect and abandonment where parents fail to take their parental responsibilities seriously.
- Children living in the streets who usually engage in crime and drug use and delinquency after getting into bad company.
- Domestic violence including physical and sexual abuse of children and disintegration of families mainly as a result of alcohol and substance abuse even for families that are not financially handicapped.
- poverty resulting in lack of resources which has led to disintegration of families and abandonment of children

- Community displacement as a result of emergencies and disasters such as politically instigated violence, ethnic and border conflicts, conflicts over resources, acute drought/famine and acute flooding.
- In most cultures girls are stigmatized when they give birth outside marriage and this leads them to abandon their young infants to escape the wrath of their communities or due to inability to take care of them and this compounds the phenomena of separated children and children in institutions of care.

The Children (Charitable Children's Institutions) Regulations, 2005 have been circulated and awareness created to ensure that institutions taking care of children are run in accordance with the laid down regulations. In 2010 the National Council for Children Services in collaboration with civil society organizations and stakeholders and beneficiaries developed a Children Caregivers' Manual for use in training caregivers.

5.5.3 Challenges and Constraints

- I. Some of the major causes of children leaving home include: poor parenting practices; neglect; domestic violence (physical, sexual and emotional abuse of children); poverty; weak social protection services; and drug and substance abuse within the family among other causes.
- II. Large family sizes and high population growth rate have also affected parental ability to provide for and to take care of their children resulting in separation.
- III. National and regional specific statistics and information on the magnitude of children without families is inadequate and this makes it difficult to plan, to formulate and implement proper policies programs and plans to address the problem.
- IV. Inadequate services to address the needs of children separated from parents.

5.5.4 Recommendations

- I. Establish comprehensive children rescue and care facilities in each county.
- II. Relevant state and non-state duty bearers should address the root cause of children separated from the family including domestic violence, sexual abuse, child neglect, and other forms of abuse of children rights and ensure cases of abuse and abandonment are reported to the relevant authorities for action.
- III. Empower the parent, guardian on parental responsibility through skills and knowledge.
- IV. Improve on statistics for children separated from the parent.

CHAPTER 6: BASIC HEALTH AND WELFARE

6.1 Article 13—Children with Disabilities

The recommendations and observations, by the African committee of experts.

Concerning handicapped children, the Committee observed that in spite of the efforts made, only 2% of children with special needs are in school, hence the need for the Government of Kenya to take further action to provide education to handicapped children.

The Committee recommends that special attention be given to building adequate infrastructure to rehabilitate handicapped persons, particularly children. The Committee also recommends the elaboration of special programmes for educating, building capacities and ensuring the socio-professional integration of handicapped children, as well as fostering the development of initiatives to combat marginalization and stigmatization of handicapped children.

State Party Response

The government launched a Special Needs Education Policy Framework in 2010 and since then there has been notable increase in school enrolment for children with disabilities. In primary schools enrolment rose from 207,761 in 2007 to 324,688 in 2010. In special primary schools enrolment increased from 35,211 in 2007 to 46,186 in 2010. In 2010, the government initiated a social protection programme of cash transfer for people with disabilities on a pilot basis with intention of scale-up in future including support to families taking care of children with disabilities. The allocation for tuition for free primary education per child is higher for children with disability. Funds allocated for special needs education increased from Kshs.96 Million in 2007 to Kshs.420 Million in 2010.

The government has set up the National Council for Persons with Disability to coordinate initiatives and programmes for persons with disabilities

6.1.1 Legal and Policy Framework

The Constitution Article 54 provides for the rights of persons with disabilities including the right to be treated with dignity and respect; to access educational institutions; reasonable access to all places, public transport and information; to use Sign language, Braille and other appropriate means of communication; and to access materials and devices for use by people with disabilities.

The Children Act amendments Bill proposes that the term “disabled child” be replaced with “child with disability” as the former terminology is degrading. The Act also proposes that child offenders with disability be kept in facilities that adequately cater for their special needs and that Children Remand Homes should also have facilities suitable for children with special needs.

Persons with Disabilities (Amendment) Bill 2010 was developed to address gaps in the Persons with Disabilities Act such as recognizing people living with albinism as disadvantaged persons under the Act. The term ‘albino’ was felt to be derogatory and the Bill proposes it be replaced with the term ‘persons living with albinism.’ The Bill also proposes that the term “disability” be defined as “a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation”.

Statistical Annex table 32

The Bill seeks to include a person with albinism in the membership of the National Development Fund for Persons with Disabilities and proposes establishment of a National Commission for Persons with Disabilities in Kenya to represent the interests of persons with disabilities.

In order to further implement the provisions of the Persons with Disabilities Act, 2003 and give greater effect to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) the following subsidiary legislation has been developed:

- (i) The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009.
- (ii) The Persons with Disabilities (Cost Care, Support and Maintenance) Regulations, 2009.
- (iii) The Persons with Disabilities (Registration) Regulations, 2009.
- (iv) The Persons with Disabilities (Income Tax Deductions and Exemptions) Order, 2010.
- (v) The Persons with Disabilities (National Development Fund for Persons with Disabilities) (Conduct of Business and Affairs of the Board of Trustees) Regulations, 2009.

The above legislations and regulations have a direct and positive impact on children of persons with disability.

6.1.2 Context of Implementation.

According to Kenya National Housing and Population Census of 2009 it was found that 1,330,312 (647,689 males and 682,623 females) persons are living with disabilities. However the data is not disaggregated according to age. The major types of disability are Visual, Hearing, Speech, Physical/Self Care, Mental impairments.

The National Council for Persons with Disability was formed in 2004 and continues to ensure that disability issues are mainstreamed into all aspects of national development as per its mandate. The Council has partnered with civil society organizations to conduct regular awareness programs aimed at reducing stigmatization and encourage parents to seek medical and education services for children living with disabilities. It has also lobbied government to allocate more funds for the sector and more employment opportunities for persons with disabilities to enable them take care of their children. The Council currently has a financial allocation of Kenya shillings 284 million in 2012 which includes funds for an independently managed fund under the council to provide support for income generation activities referred to as the National Fund for Persons with Disability. The Fund became operational in 2010 with a Government allocation of Kshs.200 million every year up to 2013.

The following categories of needs are supported under the Fund:

- Assistive devices and services for individual Person with Disabilities
- Educational assistance for individual Person with Disabilities
- Economic empowerment and Revolving funds for groups of Persons with Disabilities
- Infrastructure and Equipment for social care/education institutions
- Cash transfers for households that include individuals with severe disabilities.

The Fund acknowledges that in the case of children several applications may be made to accommodate the growing needs of children in regard to assistive devices. Most applications to the Fund are processed through organisations working in partnership with the Fund such as the Association for the Physically Disabled of Kenya (APDK), the Jaipur

Foot Workshop and Presbyterian Church of East Africa Kikuyu Hospital. The Fund has allocated funds for purchase of sunscreen for distribution to persons living with albinism.

The state party has established 345 sub-district disability assessment centers and 52 districts based educational assessment and resource services (EARS). However the number of children taken for assessment and placed in education programmes is still small compared to those whose parents have taken advantage of this facilities. This is partly attributed to ignorance and apathy by parents.

The National School Policy 2009 has addressed the physical environment in schools, sports and leisure facilities and all other public areas, to ensure children with disability have access to public services. On training of extra teachers to teach in special needs schools, the state party offers special training for teachers who are eventually posted to both primary and secondary schools at the Kenya institute of special Education.

In 2010 the government carried out a census of persons with albinism in Kenya and some of the challenges facing these children were identified as stigma leading to low school enrolment and socialisation, vulnerability to trafficking as their body parts are used in witchcraft. As a result of lobbying by persons living with albinism the government has allocated funds for purchase of sunscreen lotion for persons with disabilities. The government also agreed to zero rate tax on these lotions as well as other products and devices as stipulated in the Persons with Disabilities Act.

Children with disabilities have a right to education and the Ministry of Education has adopted an integration policy to enable children with physical and mental disabilities attend ordinary schools. Under the free primary education tuition programme, allocation of funds for children with disability is higher than that of children without disabilities. The launch of the Special Needs Education Policy Framework in 2010 by the government has witnessed a notable increase in school enrolment for children with disabilities.

Non-state actors have also developed programmes for children with disabilities. For instance, Rotary Clubs in Nairobi, Thika, and Machakos run annual events where a special rally for children with physical and mental disabilities is held. For instance in 2012 a total of 3,500 children with various forms of disabilities took part in the event, hosted by the Rotary Club of Nairobi.

Other initiatives to address disability include:

- Awareness creation especially during the United Nations Day for Persons with Disabilities;
- the White Cane Day;
- the Deaf Awareness week ;
- The Ministry of Health (Division of Child and Adolescent Health) developed *National Guidelines and Manual for the Identification and Referral of children with Disabilities* to help sensitize health workers and stakeholders on provision of health services to children with disabilities.
- The Expanded Safe Motherhood Programme run in health facilities was set up to carry out early identification and intervention in disability management in childhood thereby avoiding disability or reducing its impact.
- The Ministries of Health have trained local communities and (Community Health Extension Workers (CHEWs) on critical issues such as early detection and referral of children and persons with disabilities to health facilities.
- The Special Needs Education Policy of 2010 makes provisions and proposals for inclusive education for children with disabilities in Kenya.
- In April 2011 the Ministry of Gender, Children and Social Development began a cash transfer programme for persons with severe disabilities in every electoral constituency. The programme initially targeted ten households in every constituency.

- The National Council for Persons with Disabilities facilitates the exemption of persons with disabilities registered with the Council from the payment of income tax.
- The Government has prepared the initial State Report to the Committee established under on the Convention on the rights of persons with disability (CRPD).

The Kenya National Examination Council has put in place measures to have exams conducted in Braille and in large print for visually impaired candidates. The candidates are also allocated extra time to complete exams.

6.1.3 Challenges and Constraints

In spite of the above interventions persons with disability face many challenges including the following:

- I. Low awareness on the legal provisions regarding disability resulting in persons with disabilities either not claiming their rights or not knowing what action to take following rights violations.
- II. Lack of disaggregated and up to date data for children with disability.
- III. Discrimination against children with disabilities is common among many communities. They lack adequate access to education and health facilities, and derogatory language is used to refer to them.
- IV. Limited rehabilitation facilities for children with disabilities.
- V. Many families taking care of children with disability cannot afford the services and are forced to keep the children at home. Some go to the extremes of locking them up. These children are denied their right to health, education, leisure and play and participation among others.
- VI. Insufficient allocation of funds for implementation of activities under the Persons with Disabilities Act.
- VII. Low awareness and ignorance coupled with cultural beliefs about the causes of disability still exist.
- VIII. Poor access to health facilities, inadequate equipment and staff skilled in early detection of disability increases cases of children born with disabilities.
- IX. Children with disabilities continue to be at risk of sexual exploitation and abuse.

6.1.4 Recommendations

- I. Sustained campaigns for creation of awareness on the rights of children with disabilities to all duty bearers in order to change cultural perceptions and attitudes and to create awareness on the Constitution, the Persons with Disabilities Act, and the Children Act among others legal provisions.
- II. Progressively ensure that the legal provisions on persons with disabilities are fully implemented.
- III. Increase resource allocation for disability including assessment, treatment, rehabilitation and procurement of assistive devices.
- IV. Finalize the Review of Persons with Disabilities Act so that it can conform to the Constitution and the Convention on the Rights of Persons with Disabilities.
- V. Ensure disaggregation of data on persons with disability according to age, sex.

6.2 Article 14 —Health and Health Services.

Recommendations and observations by the African committee of experts.

The Committee recommends an improvement in the health indicators through the implementation of intensification programmes, and improvement in the technical platforms of existing health centers in order to enable them to provide adequate care.

State Party Response:

The health indicators show that there has been significant improvement in the survival of children according to the 2008 Kenya Demographic and Health Survey (KDHS) and following are some of the updated indicators:

- proportion of children under one year of age fully immunized rose from 57 percent to 77 percent between 2003/05 and 2008/09;
- 13.5 million Bed nets were distributed, with the percentage of children sleeping under them rising rapidly from 5 percent in 2003 to 52 percent in 2006.
- During the period 2003 to 2008/09, infant mortality rates decreased from 77 to 52 per 1,000 live births and under-five mortality decreased from 115 to 74 per 1,000 live births in the same period. The State Party, however, acknowledges that the under-five mortality is still high in rural areas, which stands at 86 per 1000 live birth compared to 74 per 1,000 live births in urban areas.
- At national level, 43 percent of the children were born in a health facility and 44 percent of the births were assisted by a health professional. The results further show that 28 percent of the births were assisted by traditional birth attendants and 21 percent by relatives/others.
- The KDHS (2008/9) shows that thirty percent (30%) of children under five are stunted or too short for their ages. Stunting is more prevalent in rural areas (31%) compared to urban areas (22%).

The above gains are attributed to public health initiatives, improved access to water and sanitation as well as increased ownership of insecticide-treated bed nets in malaria endemic zones.

The state recently launched Maternal Access and Infant Survival for Health Advancement (*Maisha*) aimed at addressing these challenges. The goal of the project is to improve the quality of health services and information available to rural parents in an effort to reduce maternal and infant mortality rates. Proposed initiatives under the programme include improving emergency obstetric training and equipping health centers and dispensaries. Community health workers will have their skills in infant and maternal health issues enhanced through a partnership with a local university.

The Committee further recommends that measures should be taken for a better health cover that will enable the population to have easy access to primary healthcare, particularly by bringing health centres closer to the population, a better distribution of healthcare workers between the urban and rural areas, and free healthcare especially for pregnant women and children below 5 years.

State Party Response:

The Bill of Rights in the Constitution in Article 43 provides that everyone has a right to life, reproductive health, and other attributes of good health as well as the highest attainable standards of health. The Bill of Rights targets special groups such as women, youth, children, persons with disabilities, minorities and marginalized groups. Section 43 (1) (2) provides that “a person shall not be denied emergency medical treatment”, this is irrespective of whether one has medical cover or not.

The National Hospital Insurance Fund has launched a program targeting the informal sector which was not previously covered.

From 2008 the economic stimulus program health facilities were constructed in all parts of the country and health workers were recruited in order to bring services closer to the population.

Healthcare services are free for children aged less than 5 years and pregnant mothers in all public hospitals. In 2013 the government started free maternity health services in public health facilities.

The Committee recommends that particular attention should be paid to the rural areas. The State Party should put in place a mechanism for community care of underprivileged children and destitute families' health.

State Party Response:

The Committee finally recommends that the State Party develop reproductive health programmes for the male and female adolescents of all backgrounds in order to reduce the rate of early pregnancies and childbirth in young girls. This could also have a beneficial repercussion on the schooling of young girls.

6.2.1 Legal and Policy Framework

The Bill of Rights at Article 43 of the Constitution provides that everyone has a right to life, reproductive health, and other attributes of good health as well as the highest attainable standards of health. The Bill of Rights targets special groups such as women, youth, children, persons with disabilities, minorities and marginalized groups. Further, every citizen has right to emergency treatment, to be free from hunger and to have food of acceptable quality, to clean, safe and adequate water and reasonable standards of sanitation and a clean healthy environment.

The Bill of Rights targets special groups such as women, youth, children, persons with disabilities, minorities and marginalized groups. They have a right to have their needs met by the health sector. Even where resources are a challenge, Article 20 of the Constitution states that it is the responsibility of the State to prove resources are not available. Further, the State is obliged, in allocation of resources to give priority to ensuring widest possible enjoyment of the right.

The Proposed Health Bill, 2012 seeks to align the provisions of the health sector in Kenya with those of the Constitution. Key issues addressed include development of a Health Information System to link health service providers in order to ensure the highest adequate standards of health. Complementary medicine, which many Kenyans resort to has also been addressed as well as the role of county governments in the provision of health.

The National Children Policy articulates that *“all children regardless of their socio-cultural, economic and political status have a right to the highest attainable standard of health and appropriate health facilities and services.”* It further adds that *“it shall be the obligation of the Kenya government to provide adequate and quality health services to all children during ante-natal and post-natal periods and throughout the child’s lifetime”.*

The Breast Milk Substitutes (Regulation and Control) Act, 2012 was enacted to provide for appropriate marketing and distribution of breast milk substitutes as a way of providing safe and adequate nutrition for infants through the promotion of breastfeeding and proper use of breast milk substitutes.

The Cancer Prevention and Control Act, 2012 has been enacted to address the prevention, treatment and control of cancer, one of the diseases that is prevalent in the country in Adults and children and whose management and treatment is out of reach for most Kenyans.

The National School Health Policy of 2009¹¹ defines a Comprehensive School Health Programme (CSHP) which has been set up to assist the government address the health and education needs of learners, teachers and their families.

¹¹ Republic of Kenya. National School Health Policy. Ministry of Public Health and Sanitation and Ministry of Education. 2009.

Context of implementation

The Ministry of Health has been focusing on attainment of the Millennium Development Goals (MDGs) in relation to the health sector. The government set up Phase 11 of the MDGs entitled *Mainstreaming, Coordinating and Accelerating Millennium Development Goals in Kenya's Development Process*, a bilateral collaboration between the Government of Kenya and the Government of Finland. The process has been funded with an estimated Kshs.700 million. The overall aim of the project is to ensure promotion of the achievement of the MDGs in Kenya at all levels. Whole progress has been made with regard to attainment of the MDGs; a lot remains to be done as the deadline of 2015 nears. Progress has been made with regard to health related goals:

- Eradicate Extreme Poverty and Hunger (Goal 1);
- Reduce Child Mortality (Goal 4);
- Improve Maternal Health (Goal 5); and
- Combat HIV/AIDS, Malaria and other diseases (Goal 6).

There has been a significant increase of primary health care facilities under the strategic plan for rationalization of health care services in level 3 and 4. To this effect, the number of health facilities increased from 5,589 to 8,006 between 2007 and 2011 as provided in statistical annex table 22.

The state has established the health policy framework which supports and encourages other health providers to set up health facilities in underserved communities and especially in rural and remote areas including the informal settlement. The state party works in partnership with FBOs NGOs and private health providers.

Children whose weight –for-age below minus two standard deviation (-2 SD) from the median of the reference population are considered underweight. The measure reflects the effects of both acute and chronic malnutrition. 20.3% of Kenyan children under five are under weight, 5.6% are classified as severely under weight, while those stunted were estimated to be 29.6%. Peak levels of low weight-for- age are found among children aged 24-35 months. Comparison of the 2008-9 KDHS results with those of 2003 KDHS indicate that there has been significant change in the proportion of children who are underweight. This illustrated by statistical annex table 28

Safe water for drinking and other household use is a fundamental human right and lack of it is a recipe for public health hazard of monumental consequences to children who are susceptible to diarrhoea and othe water borne diseases. Kenya recognises these factors and has entrenched the right to water in section 43 (1)(d) of the constitution which states that “every person has the right to clean and safe water in adequate quantities”. Access to safe drinking water in rural areas was at 43.5% in 2000, which increased to 53.1% in 2009. In urban areas it was at 89.7% in 2000, which increased to 91.0% in 2009. As illustrated in table 26.

Improving universal access to decent and safe sanitation is one of the least expensive and most effective means to improve public health and save lives. Decent sanitation minimizes exposure to excreta-related diseases which are caused by direct or indirect contact with pathogens associated with excreta and /or vectors breeding in excreta. This importance is underscored by the constitutional provision which states in section 43 (1)(b) that “every person has the right to accessible and adequate housing and reasonable standards of sanitation.’ As from 2009/9 financial year, one of the items on performance contract of the permanent secretary in the ministry of Public health and sanitation and the chief public health officer is improvement of latrine coverage by 5%. This has been communicated to all districts to ensure they increase their respective coverage by 5 % every year. In the Urban setting sanitation was at 94.8%in 2000 and increased to 95.3% in 2005/6,while in rural areas it was at 76.6% in 2000 and increased to 80.4% in 2005/6.This is captures in table 27 of the statistical annex.

Kenya has experienced an increase in incidences of Tuberculosis (TB) in the last few years. According To the World Health Organization’s Global TB Report of 2009, Kenya ranks 13th on the list of 32 high burden TB countries in the world and 5th highest in Africa. This has affected the most economically productive group of the population (15-64) years which includes children and young people. The government has responded by establishing partnerships for financial and technical support; establishing the Tuberculosis Interagency body to ensure integrated delivery of TB services.

The Constitution has designated the larger portion of delivery of health services to counties, with the rest going to national referral services. Counties have an obligation to ensure proper planning, financing, coordination and monitoring of health services as part of the fulfilment of the right to ‘*the highest attainable standard of health*’.¹²

In regard to child Mortality;

- A child is considered to be fully immunized if vaccination includes BCG (Bacillus Calmette -Guerin), measles, three doses of DPT (Diphtheria, Tetanus and Pertussis) – HepB - Hib and three doses of polio excluding Polio 0 and Polio 4.
- The results of the KDHS 2008/2009 survey indicate that 77 percent of Kenyan children of age 12-23 months were fully vaccinated.
- Pneumonia has been a leading killer of children in Kenya and the launch of the pneumococcal vaccine initiative in February 2011 was targeted at reducing child mortality occasioned by the disease. Children living in IDP camps have been severely affected by pneumonia due to the cold weather as well as the poor living conditions. The Pneumonia vaccine is administered free of charge in government run health institutions and targets children under twelve months of age
- Global Alliance for Vaccines Initiative (GAVI) has committed approximately USD 40 million for 2011 and USD 35 million for the following years. On its part the Government of Kenya had pledged to allocate USD 900,000 every year.

According to data from the 2003 and 2008-09 demographic and health surveys Maternal mortality increased from 414 deaths per 100,000 live births in 2003 to 488 in 2008-09. Leading causes of maternal morbidity and mortality among Kenyan women are obstetric complications including haemorrhage, obstructed labour and unsafe abortion, with the latter causing more than a third of maternal deaths. Although 92 percent of pregnant women receive antenatal care from a medical professional, only 43 percent of them deliver in a health facility and only 44 percent of the births are delivered under the supervision of a health professional.

To reduce the maternal and newborn morbidity and mortality rates the state launched a maternal and newborn health (MNH) road map in August 2010. The road map seeks to provide a framework for building strategic partnerships for increased investment in maternal and newborn health at both institutional and programme levels.

To ensure access and affordability of contraceptives the state has developed the contraceptive security strategy 2007 -2012 with the aim of ensuring uninterrupted and affordability supply of contraceptives.

The reproductive health communication strategy (2010-2012) identifies provision of adequate information and universal access to reproductive health services as priority issues to be addressed in order to improve the reproductive health of young people. A National Reproductive health strategy (2009-2015) has been developed with the aim of increasing equitable access to comprehensive reproductive health services at all levels of service delivery to enhance the health and wellbeing of all Kenyans.

Some measures have been taken to reduce maternal mortality and improve maternal health, including the following:

12 Ministry of Medical Services and Ministry of Public Health & Sanitation KENYA HEALTH SECTOR STRATEGIC & INVESTMENT PLAN (KHSSP) July 2012 – June 2018: *Transforming Health: Accelerating attainment of Health Goals*.

- The health care system has absorbed community mid-wives to participate in the provision of primary health care services.
- User fees for maternity services have been waived in public health facilities.
- Free insecticide treated nets are given to pregnant women during pre-natal hospital visits.

The HIV and Aids Tribunal was set up in 2009 , to address fundamental human rights abuses with regard to HIV and AIDS as provided for under the HIV and AIDS Prevention and Control Act. The Tribunal has powers to address injustices arising out of such abuses and can demand production of related documentation and evidence. To enable more people to benefit from its services, the Tribunal intends to open county offices in the future. This will ensure that children whose rights are violated on account of their own or parents/guardians HIV/AIDS status or perceived status have an avenue through which they can seek justice.

The state party developed the National HIV/AIDS strategic plan (2009/10 to 2012/13) which has a PMTC component and the National guidelines on prevention of mother to child transmission. During the reporting period children accessing ARVs increased from 13,576 in 2007 to 48,000 in 2011. (Statistical annex table 20)

The KNBS which is one of the state party institutions for data surveys and databanks, in its demographic and health survey 2008/9 extended its mandate to examine issues concerning adolescent health, teenage pregnancy and ability to access services .This information has provided an avenue for planning for adolescent health programmes and policies.(statistical annex table 21).

The implementation of the Adolescent reproductive health and development policy plan of action (2005-2015) is ongoing. The focus is on advocacy, health awareness and behaviour change communication, improved access to and utilization of youth friendly services.

Through the Ministry of Education, teachers have been designed to offer counselling in schools to prevent unwanted pregnancies. Reproductive health (sex education) is taught in primary schools as part of social studies and ethics and in secondary schools is under ethics studies .On re-admission of teenage mothers back to school, the state party has a policy in place to ensure that the rights of adolescent mothers are respected and that they are not discriminated against or stigmatised.

The Breast Milk Substitutes (Regulation and Control) Act, 2012 forbids health workers or proprietors of health facilities from accepting gifts that would constitute complementary feeding, and thus interfering with exclusive breast feeding by the mother. The advertisement and promotion of these substitutes is also forbidden. According to section 27 (1) the penalty for committing an offence under the Act for which no penalty has been specifically provided for, is a fine not exceeding one million shillings (Kshs.1M) or a term of imprisonment not exceeding three years, or to both. The Act establishes the National Committee on Infant and Young Child Feeding.

The Cancer Prevention and Control Act provide that county governments carry out educational and information campaigns on cancer prevention, treatment and control. It also establishes the National Cancer Institute of Kenya which is mandated to keep a national registry. The register should contain information regarding frequency, type and geographical location of prevalence of the disease as well as information on institutions, associations and organisations that provide care and services to cancer patients.

Guidelines have been developed to operationalize the National School Health Policy.

The Policy is supposed to be implemented alongside other policies in the education and health sectors , issues addressed by the policy include health and nutritional services; access to safe water, sanitation and hygiene; access to information; privacy and confidentiality; safety in learning institutions; equity and non – discrimination; access to education; and gender responsiveness among others.

The state party is committed to scale up its financial budget in order to meet the Abuja commitment as well as increase paediatric services to children affected by HIV/AIDS

Challenges

- i. The state of the health sector and the delivery of health services continue to experience serious challenges as a result of low budgetary allocations which affects staffing levels, equipping of facilities, procurement of essential supplies, training of health staff and community health works among others.
- ii. High morbidity and mortality rates attributed to high HIV prevalence, malaria and tuberculosis.
- iii. Inadequate access to public health care facilities.
- iv. Poverty and to some extent literacy and ignorance also impacts on women's ability to seek professional MCH services.
- v. Although 92 percent of pregnant women receive antenatal care from a medical professional, only 43 percent of them deliver in a health facility and only 44 percent of the births are delivered under the supervision of a health professional.
- vi. The KDHS (2008/9) shows that thirty percent (30%) of children under five are stunted. Stunting is more prevalent in rural areas (31%) compared to urban areas (22%)
- vii. The Adolescent Reproductive and development policy has not been implemented in its entirety.

Recommendations

- i. Continue efforts to reduce maternal mortality and provide maternal health services that include continuum of care with a focus on antenatal, safe delivery and postnatal care.
- ii. To equip health facilities and provide adequate resources and personnel in order to deliver adequate MCH services. The current allocation of budgets falls way below the stipulated 15 % as per the Abuja Declaration.
- iii. Adequately implement primary hygiene and sanitation at all levels in the community for the benefit of children and their families and enhance awareness, knowledge, attitudes and practices that promote health service seeking behaviour.
- iv. Implement the Adolescent Reproductive and Health Policy and empower parents and caregivers to address reproductive health issues with their children from an early age.
- v. Implement the Adolescent health and reproductive health policy and also review it to make it relevant to modern and emerging challenges of young people, adolescent with special needs.

CHAPTER 7: EDUCATION LEISURE AND CULTURAL ACTIVITIES

7.1 Article 11—Education

Recommendations and Observations by the African Committee of Experts.

The Committee notes with satisfaction that, within the framework of education for all, the Government of Kenya adopted a measure on free education. The efforts made to constantly increase budgetary allocations for early childhood education are commended.

However, the Committee observed that major challenges lie ahead in the education sector, notably:

- ✓ *About 65% of children aged between 3 and 6 years have no access to pre-school facilities;*
- ✓ *The level of schooling among girls remains low;*
- ✓ *The transition by children from primary to secondary school is still challenging: the Committee noted that secondary education is not free, which hampers efforts to keep children in school.*

The Committee recommends that the State Party adopt and implement a policy of integrated development for young children, with all attendant measures such as financial and human resource allocation, as well as scaling up facilities. Such a policy should be consistent with Kenya's education system, as well as child health and welfare policies.

The Committee recommends that the State Party take all necessary measures and steps to encourage the education of girls. It also recommends a review of the Law on Education with regard to defining the age bracket that should benefit from compulsory free education in a bid to give greater effect to that law and further recommends that free education be extended to the secondary level so as to provide opportunities for all children to continue their studies.

The Committee recommends, in general, that the Government of Kenya reflect on the problems which constitute obstacles to fully exercising the right to an education in a bid to find a lasting solution which will permit all Kenyan children to avail themselves of this right.

State Response

The constitution (2010), in Article 53(1) (b) states that every child has a right to free and compulsory education. Minorities and marginalized groups under article 56(b) have a right to be provided with special opportunities in the field of education.

According to the constitution (2010) the mandate of delivery of ECDE lies with county government while other components of basic education namely Primary and Secondary Education delivery is the mandate of the national government and the constitution has incorporated right to education in the Bill of Rights as a basic right that state must provide for all its citizens including the girl child.

According to the Ministry of Education, Kenya is on track towards achieving the Education for All (EFA) goals by 2015. The country has put in place the appropriate policies including a new law aimed at addressing the key concerns of the sector namely access, retention, equality, quality and relevance of education and measures to enhance girls' retention including provision of sanitary towels and improvement of Sanitary facilities with gender considerations. To confirm that girls are progressively assessing education is further illustrated in table 31 and 33 in the statistical annex.

The government has implemented the Free Tuition in Secondary Education (FTSE) 2008 which has extended free basic education to 12 years of learning until the child achieves the age of 18 Years. Provision of Free Secondary Tuition has increased enrolment in secondary schools from 934,149 in 2005 to 1,701,501 in 2010 and 1.9 million in 2012. The government has provided schools with funds to construct extra tuition blocks to accommodate the extra children in secondary schools and established centres of excellence in constituencies.

7.1.1 Legal and Policy Framework

The Constitution of Kenya: Article 53 (1) (b) states that every child has a right to free and compulsory basic education and according to Article 55 (a) the State shall take measures, including affirmative action programmes, to ensure that the youth access relevant education and training. Minorities and marginalized groups under Article 56 (b) have a right to be provided with special opportunities in the field of education.

Basic Education Act, 2013 -The act gives effect to article 53 of the Constitution and promotes and regulates free and compulsory basic education and some key provisions of the act include:

- Accreditation, registration, governance and management of institutions of basic education and for the establishment of the National Education Board.
- Parents who fail to send their children to school risk jail for one year or paying a fine of shillings 100,000.
- It is the responsibility of every parent or guardian to admit or cause to be admitted his or her child to basic education institution.
- Stipulates among other measures and provisions that Learning is also compulsory from Pre-school, primary school and secondary school,
- Prohibition against employment of a child of compulsory school age and prohibition of holding back and expulsion and Prohibition against physical punishment and mental harassment.

Teachers Service Commission Act 2012-The Teachers Service Commission hires teachers to teach in all public schools and the commission is also mandated to register trained teachers and to review the standards of teacher training and education. The TSC Act 2012 now requires that only registered teachers will be allowed to teach in both public and private schools and the TSC will now exercise disciplinary control over teachers outside TSC employment particularly in relation to registration and de-registration. The Act requires teachers who are registered to continuously undertake career progression and professional development.

Kenya Vision 2030- Education and Training sector is one of the 19 sectors under the social pillar order for Kenya to meet the human resource requirement for a rapidly changing society.

There are policies, guidelines and regulations developed to enhance delivery of education and these include:

- The Education Policy 2012 – Harmonizing all matters of education in Kenya.
- The Gender Policy in Education (2007) aims to ensure that schools are gender friendly.
- Policy for Alternative Provision of Basic Education and Training (2009)
- National School Health Policy (2009) and national school Health Guidelines
- Policy Framework for Nomadic Education in Kenya (2009).
- The National Special Needs Education Policy Framework (2009).
- Child Friendly Schools Manual (2010)
- National Education Sector Support Programme (NESSP)
- Child health policy

7.1.2 Context of Implementation.

Kenya is committed and on track to meeting the targets of the World Declaration on Education for All (EFA) Jomtien, Thailand (1990) and the Millennium Development Goal two (MDG 2) of Achieving Universal Primary Education for all children by 2015. The targets of the education sector in Kenya include increasing primary net enrolment and completion rates to 100 per cent; improving internal efficiency in education by reducing repetition/ drop-out rates, and increasing primary to secondary transition levels.

The government has under taken reforms in education Sector and passed the Basic Education Act 2013 aimed at aligning the sector to the Constitution and provisions of Vision 2030.

The Teacher Service Commission is constantly hiring teachers to fill the shortage in primary and secondary schools. For instance, in 2013 the plans are underway to hire 20,000 primary school teachers as the teacher shortage is a serious threat to the provision of quality education.

The government outlawed corporal punishment in schools. The Ministry of education, TSC and partners in the children sector influences the National school festivals of 2009 to campaign against corporal punishment with the theme “Learn without fear campaign” . During the reporting consultation with children the children reported that the practice still takes place in some schools in many parts of the country.

The Education sector has achieved the Pupil text book ratio of 1:1.

E-Government and education: The education sector has put in place mechanisms for e-Learning including making available the curriculum in CDs and KIE has made it possible to teach through the media mainly the radio even in remote areas. Head teachers and most teachers in secondary schools have been trained and have acquired computer skills to enhance use of ICT in basic education. Secondary schools are supposed to establish computer Labs and most of them have acquired computers through the school management or NGO initiatives such as Computer for schools and computer studies are also examinable in KCSE. E-learning, Science, Technology and Innovation are major component of Education sector in Vision 2030.

Quality Assurance and Standard Officers (QASO) have been recruited and are in place in some Districts. QASO are supposed to visit and supervise schools and check academic and physical facilities

Children participate in matters of school management and in decision making through the student councils in secondary schools and by the children themselves electing prefects and also guidance and counselling is entrenched in all schools and specific teachers trained to offer counselling service to pupils requiring such support and as an alternative to corporal punishment which is prohibited.

The government has continued to increase funding for secondary education in ASAL areas through issuance of bursaries and development grants to increase enrolment and completion rates for children from nomadic and pastoral communities and developed the Nomadic People’s Education Policy to enhance provision of learning opportunities for children in arid and semi-arid Lands (ASAL).

In 2008 the government introduced the Free Day Secondary Education (FDSE) in public schools under the Day Secondary Education Policy 2008. This policy aims at increasing accessibility to secondary schools in every community and increasing transition and retention of children in secondary schools. The government has also assisted in establishment of new secondary schools and centres of excellence in all constituencies using economic stimulus packages (2008) and using other devolved funds and as a result Public secondary schools increased from 3,667 in 2002 to 4,454 in 2008 and 5,311 in 2011 and 6188 in 2012 according to ministry of education recent records.

Non-Formal Education (NFE) is among the 23 Investment Programmes under NESSP and the NFE that seeks to increase access to quality basic education for children and youth who due to special circumstances are unable to attend formal schools. The government developed and enacted a policy on Alternative Provision of Basic Education Training (Non Formal Education) 2009 to guide the sub-sector in its development and ensure that quality education and training is provided through registration of non-formal schools and non-formal education centres.

The NFE follows the national primary education curriculum and enrolment increased from 105,675 in 2005 to 169,591 pupils in 2010. The government has developed Technical Industrial Vocational and Entrepreneurship Training (TIVET) which is one of the Investment Programmes under the KESSP and the enrolment in TIVETs has increased by 32.1% between 2008 and 2010.

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

The School Feeding Programme under the School Health, Nutrition and Feeding Investment Programme of the KESSP is supported by the World Food Program and the Ministry of Education. The feeding program supports 1.2 million children in 32 marginal districts mainly in the Northern part of the Kenya and the Coast Province. The feeding program also targets some schools in the informal settlements of Nairobi in-order to enhance retention (some NGO such as Feed the Children complement the government in the feeding initiative in limited localities in the informal settlement). Additionally, the MoE Home Grown School Feeding Programme (HGSFP) also supports to feed 659,249 children in 58 semi-arid districts.

The government periodically expands the school feeding programmes during times of extensive drought and famine and during emergencies to provide nutrition cushion and reduce school drop outs and the expanded school feeding program is also during famine is supplemented by the Ministry of Special Programmes and non state actors in partnership with MOE during such emergencies.

The government and education stakeholders have been working together to ensure retention of girls and boys in schools with a special focus on the girl child to enhance gender parity. Some of the measures undertaken include the implementing the Gender Policy in Education (2007) to ensure that schools are gender friendly and provide gender-sensitive services such as sanitary towels and build toilets for girls in schools. In the 2011/2012 financial year, the government set aside KSh.300 million in the national budget to purchase sanitary towels for girls. The sanitary towels are mainly targeted and distributed to girls in schools in marginal areas such as ASAL and very poor localities but as highlighted earlier the government has also zero-rated taxes on sanitary towels to make them affordable for those children who do not get them free from government.

To protect the rights of children affected by conflict in their countries of origin, the State Party in partnership with non-state actors has established education facilities in the two main refugee camps, Kakuma and Dadaab. These facilities are meant to ensure that refugee children access and continue receiving quality education .By supporting education for the refugee children the government upholds the principle of non-discrimination and equity to all children irrespective of race, country of origin, religion, sex or socio-economic status.

In 2007, the Ministry of Education established a grant programme to support the OVCs in 3,215 primary schools and this grant has further been complemented by other initiatives such as PEPFAR Scholarship Funds, Cash Transfer Funds for OVCs, LATF and the Constituency Development and Bursary Funds. Bursary and scholarship programmes

are also offered by the private sector under corporate social responsibility programmes to needy students and children who are academically gifted for secondary education. Some of the initiatives include the Wings to Fly Programme supported by Equity Bank Group Foundation and Master Card Foundation and complemented by USAID, DFID and German Development Bank (KFW), Magadi Soda Foundation, The Co-operative Bank Foundation Scholarship Program also supports children in secondary schools and higher education. Some private schools such as Starehe Boys Centre, Starehe Girls School and Kianda Girls School also do offer free education grants to the needy children who qualify for enrolment in the schools.

On inclusive education for children with special needs, the Ministry of Education increased the number of Special Needs Education (SNE) Institutions it funds from 926 in 2002 to 1,574 in 2008 and enrolment of children with special needs increased from 255,650 in 2003 to 272,911 in 2008 and 259,000 in 2011. Funds allocated for special needs education increased from KSh.96 million to KSh.420 million in 2010/2011 and the government provides KShs. 8,000 allocation for every child in these institutions for tuition per year and a top up of Ksh.2,000 for assistive devices per child. Most of the special needs education institutions are integrated in the normal primary schools. The government has undertaken training of teachers on special needs education and targets to have at least one of these trained special education teachers in all primary schools by 2015.

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

The government has established education programmes in cattle rustling and armed militia-prone areas and volatile borders such as the Kenya-Somalia, Sudan and Ethiopia borders aimed at ensuring children access quality education and protection.

The Post Election Violence (PEV) in early 2008 had a negative impact on the education sector and the government and CSO in an effort to mitigate the problems put in place efforts to ensure that children affected by PEV continued to access education. Some of the measures included establishing temporary schools within the IDP Camps and later integrating the children into schools near the IDP camps.

As families affected by the PEV were resettled, the schools that were destroyed during the violence were reconstructed. 19 schools were fully reconstructed in the affected areas such as Molo, Burnt Forest, Trans-Nzoia and Nyanza-Rift valley borders. The government also ensured that all affected pupils and students due for sitting examinations registered and sat for their National Examinations.

Situation Report: Mawingo Primary School, Nyandarua County

Mawingo Primary is a community school is located two kilometres from the Shalom Mawingo IDP camp. Prior to the PEV, the school population averaged 250 children but after the IDPs were settled in Mawingo the population of students increased to over 2,000 pupils and as a result the government renovated two old classrooms and built an extra six rooms to accommodate the extra learners. Additional sanitation facilities were constructed, water tanks to harvest rain water were provided and various organisations provided donations for the IDP children to settle in the new school.

Currently after the relocation of most IDP families from the camp, the school population has reduced to 347. The management intends to use the extra classrooms as boarding facilities. It was noted that more boys are dropping out from school than girls in the area to engage in child labour. IDP children in the school required counselling following the violence they had witnessed and were not subjected to requirement of uniforms and levies and such costs were waived as the parents were unable to pay enhancing retention.

'BUILDING A WORKING AND CARING NATION: MWAI KIBAKI AND THE TRANSFORMATION OF KENYA'.

Daily Nation December 30 2012 (Advertiser's Announcement)

Quick wins sustained for ten years 2003-2012.

In 2003, the government introduced the free primary school (FPE) that saw close to 2 million children who had dropped out of school due to lack of fees enrolled in public primary schools, growing total enrolment from 6.1 million in 2002 to 8.6 million in 20,306 primary schools.

Transition rate from primary to secondary school rose from 47% in 2002 to a high of 74% in 2012. Gender parity in Primary education is 1.02 in favour of girls.

Introduction of free secondary education (FSE) in 2008 shot enrolment from 800,000 to 1.9 million and secondary school completion rate improved in national secondary schools from 46% to 74%. In 2008 using the Economic Stimulus Package 30 million shillings was set aside for every constituency in the country to set up at least one model school in all the 200 constituencies in the country.

10,400 classrooms and 4,200 Secondary schools have been constructed using CDF funds to accommodate the increased numbers of pupils and constituency bursary funds have been provided to needy students.

Higher Education has moved to new heights with university enrolment in 2002 at 75,000 increased to 252,554 in 2012 with girl's enrolment at 23% in 2002 increasing to 42.9% in 2012. Public universities and constituent colleges established in the last 10 years stand at 24. Of the 62 both private and public universities and constituent colleges in the country 32 of them have been established in the last 10 years. Substantial government financial support amounting to 17.4 Billion shillings to expand the universities has been provided over the period and in 2012/2013 financial year 5.1 billion development allocation was provided.

17.1 Billion shillings has been disbursed as university loans and bursaries for needy students.

7.1.3 Challenges and Constraints

- I. There is still incidence of sexual abuse in schools by the teachers.
- II. Disruption of learning due unplanned disturbances,(man- made and natural) community conflicts and teachers strikes,
- III. Inadequate infrastructure and resources are compromising access to quality education
- IV. Retrogressive religious and cultural practices in some communities such as FGM/C, early marriages, and early pregnancies affect the health and education of girls leading to high dropout and low transition rates.
- V. the government provides free primary and day secondary education and the tuition fees are waived, schools still levy charges for other services posing a hindrance to the participation of girls and boys particularly those from poor households,
- VI. There is still misconception about free education making some parents careless and negligent about the education of their children.
- VII. Education facilities for children with serious disabilities are inadequate
- VIII. Loss of Public schools land to private developers and land grabbers is prevalent resulting in lack of play areas and land for school development.

Daily Nation January 5, 2013

"More than 5,000 pupils in Baringo County might stay at home when the schools open next week after their classrooms were washed away by heavy rains. Seven schools might not open for the first term as Perkerra and Molok Rivers are at the brink of bursting their banks. In the past 10 days 3,000 people have abandoned their homes which are in danger of being submerged. Rampant cases of insecurity in the area have worsened the situation.

In Keiyo South District of Elgeyo Marakwet County about 12 people including 3 pupils were recently buried alive and more than 500 families made homeless after landslides. The education officer in the area said there was need to offer counseling to pupils who are traumatized and may have lost parents relatives and loved ones."

7.1.4 Recommendations

- I. Implement and enforce the Basic Education Act, 2013.
- II. Increase support to education in emergency settings such as conflicts, natural and man-made disasters guided by the (INEE) Inter-agency Network on Education in Emergencies) and to strengthen Education in Emergency Cluster of the government. There is also need to strengthen the education sector capacity to address the effects of climate change including preparedness, adaptation and mitigation. There is also need to ensure implementation of the National Policy for Sustainable Development of ASAL 2006 component on Human Capital Development and National Disaster Management policy 2004 on Disaster risk reduction on education and children
- III. The government should continue to recruit and increase the number of teachers in every school and ensure rational and equitable deployment of teachers in order to comply with the MOE regulations on ratio of pupils to teachers (40:1)
- IV. continuous awareness by the State Party and non-state actors on retrogressive cultural practices that undermine the rights of children and especially the girl child and special enforcement of the Prohibition of FGM Act (2011) and other laws including those addressing child marriages and practices such as beading of girls.
- V. Prohibit hidden costs imposed by school management and Parents Teachers Associations, publishers of books
- VI. Establish at least one managed institution for children with serious, multiple and diverse disabilities in every county and ensure the institutions are adequately resourced and fully functional.
- VII. Protection and securing of school land.
- VIII. Sensitize parents on the constitution and other legislation on the importance of education and the role of parents, guardians and caregivers.

Children from Western province said *“Although the government says that it (primary education) is free, in our school we pay money for games, examinations, development, to buy desks etc. it is not compulsory since many children are not going to school and nothing is done”*

Children in North Rift said *“We pay for exam fee, P.T.A fee, Electricity money, remedial money, and development money.”*

7.2 Article 12—Leisure, Recreation and Cultural Activities

7.2.1 Legal and Policy Framework

Article 11 (1) of the constitution recognises culture as a foundation of the nation and as cumulative civilization of the Kenyan people and nation. Part (2) (a) stipulates that the State shall promote all forms of national and cultural expression through literature, arts, traditional celebrations, science, communication, information, mass media, publications ,libraries and other cultural heritage. Further to this in Article 56 (d) stipulates that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups develop their cultural values, languages and practices.

7.2.2 Context of Implementation

Government outlawed holiday tuition as part of its effort to ensure children rest and engage in leisure activities. In addition, some of the requirements an education institution has to comply with before registration are to have a designated area that is safe for children to play and engage in recreational activities.

Child-friendly school manual is in place and emphasizes physical education for primary school for 35 minutes a week and 40 minutes for secondary schools; the School curriculum has been made easy for the learners to allow time for leisure, play and extracurricular activities.

Local Authorities have by-laws that require all neighbourhoods and suburbs to set aside designated areas and space for children and the public to use for leisure, recreation and cultural activities.

The government has mainstreamed leisure and cultural activities in the Basic Education Curriculum and in the guidelines on Child Friendly Schools geared towards ensuring holistic development of the child. The activities normally undertaken for leisure and recreation include the physical education (PE), drama, music, sports, clubs, school educational tours and trips, exchange programs and site visits.

Programmes and activities such as school sports tournaments, drama and music festivals at the local to the national level are held on periodic basis and funded under the Ministry of Education. Time is also allocated for extra-curricular activities and student membership associations in schools such as the young farmers clubs, peer clubs, child rights clubs, debating clubs, boy scouts; girl guides clubs, health clubs, disaster prevention clubs, and first aid clubs among many others.

The government is working closely with some non-state actors to establish "Talent Academies" that will facilitate, promote and nurture talents and skills amongst the young people. The talent academies are based at Maseno School, Kakamega High School, Cheptil Mixed Girls and Boys, Mokwo Girls, Shimba Hills, Kerugoya Girls, Matuu Girls, Upper Hill and Garissa Boys Secondary School.

The Ministry of Sports and Youth Affairs has developed sports programmes targeting children in and out of schools from a young age such as the soccer "*Ligi Ndogo*" and Athletic Programmes with an aim of coaching and developing children and young people to become professional sports men and women.

An NGO Centre for Research in Early Childhood Education (CRECHE), working closely with the government and non state agencies have recently embarked on initiative to promote the right to play countrywide. The World Play Day was commemorated through this initiative in 2011 in various parts of the country and Kenya is a member of International Play Association (IPA)

7.2.3 Challenges and Constraints

- i. Many recreation and play areas in urban areas have been grabbed leaving no space for play and leisure.
- ii. Despite the ban on tuition, some schools still practice it under teachers-parents arrangements.
- iii. Family chores and assigned school home work sometimes deny children time for leisure and play.
- iv. In most urban settlements, there are inadequate facilities and spaces for play due to poor planning and congested housing development zoning.

7.2.3 Recommendations

- i. Make play affordable and Play facilities accessible to the public and promote making of dolls and play items made from locally available materials and including using appropriate technologies like timber, old tyres, card boards etc.
- ii. Enforce the Local Government Act, Cap 265 Laws of Kenya that provides for children play areas in neighbourhoods, suburbs and other developed settlements.
- iii. Implement the Land Policy in order to protect school land and recreation areas and endeavour to enhance utility of existing school plays facilities during holidays by children from the proximate areas.
- iv. Enforce the ban on tuition.



CHAPTER 8: SPECIAL PROTECTION MEASURES

8.1 Article 15—Child Labour

The Recommendations and Observations by the African Committee of Experts

It is to be indicated that even if Kenya has adopted a law which fixes the minimum age for admission to employment and stipulates that nobody can employ a person below 18 years of age, it has not adopted stringent measures to enforce this law. The texts on this issue are still in a draft form and many children under 18 years of age work as domestic servants.

The Committee recommends that the Government of Kenya speeds up the process of adopting texts and measures for effective implementation. Particularly, the government needs to develop information programmes on the consequences of using child labour with a view to combating the worst forms of child labour. The Committee recommends the elaboration of a list of dangerous jobs for children in the Kenyan context and the implementation of alternative training programmes for children who work in order to ensure their economic integration.

State Party Response

The government through the ministry of Labour has developed the Child Labour Policy which is waiting cabinet approval. The Employment Act No 11 of 2007 prohibits the worst form of child labour and defines what is classified as worst form of child labour as work which denies and deprives the child of their basic rights and also the Constitution of Kenya, Article 53, 1 (d) out laws child labour.

In December 2012 the Ministry of labour and International Labour Organization (ILO) in collaboration with stakeholders finalized the development of a document titled “*LIST OF HAZARDOUS WORK AND LIGHT WORK BY CHILDREN IN KENYA*”. Following are the forms and types of hazardous work identified that children in Kenya should not be exposed to

- Work involving use of electrically powered tools and equipments.
- Work in rock and stone cutting, crushing and shaping.
- Work in processes involving hot temperatures as in furnaces and glass making.
- Work in processes involving extremely cold temperatures.
- Any work where there is likely exposure to dangerous chemicals.
- Fishing and diving offshore in deep sea or lake or dam
- Work in slaughter houses.
- Operating of power driven industrial machinery.
- Work at elevation /heights of more than 2 meters.
- Certain kinds of domestic work or any other work in any sector, involving long hours or strenuous work.
- Lifting and carrying of heavy loads.
- Work in public transport.
- Underground work and work in mines, quarries and confined places.
- Work in security services as guards or watchmen.
- Work in noisy places.

Light work is considered as chores that children may perform on condition that:

- i. It will not affect the school attendance of the child
- ii. It does not affect their participation in training programs approved by the government
- iii. It is done during the daytime, between 6.30am and 6.30pm
- iv. It is properly and adequately supervised
- v. The hours are controlled: 2 hours per day or 14 hours per week.

Some of these forms of work are undertaken with moderation and without risks defined in hazard work and include:

- Household work - including cleaning, dusting and gardening but not applying chemicals.
- Herding of animals- Herding domestic animals in enclosed areas, around homesteads but not spraying chemicals.
- Fetching water and firewood- Not for long distances, not heavy and not from dangerous and risky sources.
- Agricultural work- Subsistence farming and not commercial farms, not using machinery and chemicals and allowed time for rest.
- Small shops and small scale enterprises- Assisting in packaging, cleaning, dusting selling, selling groceries and not selling alcohol or drugs.

8.1.1 Legal and Policy Framework.

Kenya has ratified ILO Convention No. 138 of 1973 on the Minimum Age of admission into employment and Convention No. 182 of 1999 on the worst forms of child labour and the United Nations Convention on the Rights of the Child (UNCRC). These conventions have been domesticated by the Kenyan government into laws and guide regulations and policies to address child labour in the country.

The Constitution Section 53 (1) (d) provides that every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.

The Employment Act No. 11 of 2007 prohibits the worst forms of child labour and defines a child as any person who has not attained the age of eighteen years. The Act states that no person shall employ a child who has not attained the age of thirteen years, whether gainfully or otherwise, in any form of labour. The Penalty for employing children under 18 years to do harmful work or worst forms of child labour make one liable to a fine not exceeding 200,000 Kenya shillings.

The Labour Relations Act, 2007, under the protection of children clause prohibits the employment of children.

The Industrial Training Act (Cap 237) 2009 prohibits the employment of a minor and anyone who has not completed any period of compulsory education as required by law.

Other Acts of Parliament relating to hazardous forms of child labour include the Occupational Safety and Health Act (OSHA) 2007 revised in 2010, the Agriculture Act Cap. 318, the Pest Control Act Cap. 346 and the Mining Act Cap. 306. These laws define labour conditions under which children should not be exposed.

The Children Act, 2001 emphasises that every child shall be protected from economic exploitation and any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health, physical, mental, spiritual, moral or social development.

The Sexual Offences Act, 2006 (Revised 2009) prohibits sex with persons below 18 years. The Act prohibits all acts that expose children to pornography, trafficking, sexual exploitation and overall sexual abuse and violence.

The Basic Education Act, (2013) in Article 38 prohibits employment of a child of compulsory school going age.

The draft Child Labour Policy aims to protect all children in Kenya from all forms of child labour and promote the holistic development of the children. The National Children Policy stipulates that all children have the right to be protected from work that threatens their wellbeing.

8.1.2 Context of Implementation

In Kenya the term 'child labour' refers to work undertaken by children that does not conform to existing laws and policies and to the international instruments Kenya has ratified.

In 2005/2006, the Kenya National Bureau of Statistics (KNBS) included a module on child labour in the Kenya Integrated Household Budget Survey (KIHBS) which produced *The Child Labour Analytical Report* (KNBS 2009). The report indicates that in Kenya overall, 8% of children aged 5-17 (1.01 million children) are child labourers and that 90% of child labour is in rural areas and 10% are in urban areas. The report indicated that the proportion of working children in Nairobi is 2%, which is low compared to 10% in Rift Valley and Central provinces and Eastern records 9%. Child labour is rampant in the agricultural sector.

According to the report findings, child labour incidents in Kenya have been declining since the government, in partnership with international and local organisations embarked on a systematic approach in dealing with the problem and also due to the introduction of Free Basic Education in 2003. In 1999, the number of children that were found to be working was 1.9 million and the number declined to 1.01 million in 2009 according to *the Child Labour Analytical Report*. The majority of child labourers are employed in the agricultural sector all across the country, fisheries, mining and quarrying, domestic services and working in the street. The report also goes further to analyse the character, nature, size and other vital characteristics of child labour in the country.

The study findings and recommendations facilitated the establishment of some specific national programmes to remove and protect children from the worst forms of child labour and the development of a National Plan of Action (NAP). Below are highlights of NAP and some significant programs currently ongoing addressing child labour issues.

National Action Plan (NAP) to Eradicate Child Labour. The National Action plan on Elimination of Child Labour (2004-2015) was developed to prevent and respond to worst forms of child labour in the country. NAP is being implemented as an integral part of the Vision 2030. The NAP design is also underpinned and guided by the government's commitment to key national and international legal and policy instruments, among them the UNCRC, ACRWC, ILO Conventions 138, 182, 29, 105, 81 as well as the Millennium Development Goals (MDGs) and Education for All (EFA) initiatives.

The NAP also takes into consideration the Constitution of Kenya 2010 which prohibits all forms of exploitative labour, the Children Act 2001, the Employment Act 2007 and the Education Policy and in all NAP programme interventions the principle of the best interest of the child is paramount.

The NAP implementation is based on a comprehensive and multi-sector approach requiring the commitment and contribution by a broad range of partners and stakeholders, including state and non state actors, parents, guardians and beneficiaries. NAP calls for decentralization, capacity building, community involvement, and effective coordination of the program initiatives.

The Ministry of Labour is the government ministry responsible for labour issues and it coordinates all national efforts on Elimination of child labour through the Child Labour Division in the Ministry. The Child Labour Division is the secretariat for the National Steering Committee which serves as the focal point on working children issues in the country. Other institutional organs enabling actions on child labour in the country constituting of state and non-state agencies are:

- The Inter-ministerial coordination committee which is the top policy making organ on labour issues
- National Steering Committee on Child Labour coordinating child labour issues country wide.
- District Child Labour Committees (DCLCs) play the key role in implementing the NAP in the Districts/Sub-counties.
- Area Advisory Councils (AACs) established under the Children Act 2001 to coordinate the Implementation of child rights activities in Districts, Divisions and Locations including child labour issues.

MIRAA/KHAT IS A THREAT TO LITERACY

County Weekly, 18-23 February 2013

There is high dropout of boys from school to cultivate, harvest or market *miraa* "khat" in lower parts of Embu County which amounts to child labour. Boys involved in the trade rarely complete primary education and the few who transit to secondary or tertiary colleges rarely complete their studies. In one of the local mixed secondary Schools according to the head teacher they host 200 girls against 60 boys and this is replicated in other schools in the area as many families value *miraa* farming at the expense of their son's education and if this continues the boy child is doomed according to the article. The head teacher decries the trend which he says leads the school dropouts to irresponsible behaviors including alcohol consumption irresponsible sex and early marriages which in most cases do not last long. Single poor and helpless motherhood has become common in the community and case of rape and defilement has been on the increase due to *khat* chewing. Some pupils both girls and boys also start chewing the *khat* at a very early age without knowing the health risk they are subjecting themselves to.

Since 1992 Kenya, in collaboration with the ILO, has been running Action Programmes for the Elimination of Child Labour such as:

The Time Bound Programme on the Elimination of detrimental effects of child labour, TACKLE (Tackling Child Labour through Education) which strengthens the national institutions and structures for sustainable implementation of policies and coordination of programs on elimination of child labour and some of the accomplishments include:

- ILO Convention 182 has been translated into the national language (Kiswahili) making it more accessible to both children and adults.
- Labour inspectors have been trained to monitor child labour activities in the country.
- The government through the Steering Committee on Child Labour and NCCS is working with the ILO to develop a national children's database.

Some of the other institutions undertaking activities to address child labour in Kenya are:

Central Organisation of Trade Unions (COTU)- The umbrella labour organisation in Kenya has been active in addressing child labour. ILO-IPEC has supported a series of surveys, conducted by COTU, to identify the extent of child labour in the Kenyan economy and the development of a child labour unit within COTU.

Child Helpline 116- Kenya's only 24-hour, toll-free telephone and web-based helpline for children receives and responds to calls on child right violation including child labour and refers them to various stakeholders for support including rescue and reintegration.

Federation of Kenyan Employers (FKE) launched efforts to eliminate child labour, and with ILO-IPEC's support and has conducted surveys to assess the use of child labour, awareness raising programme and has issued guidelines on the employment of children to all of its members.

The Kenya Institute of curriculum development (KICD) has incorporated child labour information in the existing school curriculum.

UNICEF has been working closely with the **World Bank** and **ILO** in a project called '*Understanding Children's Work*' an inter-agency programme aims to address the crucial need for more and better data on child labour.

Faith Based Organisations and CSOs also play role at local level to address child labour

Findings from stakeholder consultations during the State Party reporting pointed to prevalence of various forms of child labour and gender dimensions of child labour in all parts of the country and some of these forms of labour include:

- There was a high incidence of boys working in Eastern Kenya in the *miraa* trade (khat - a narcotic shrub commonly chewed as a stimulant) and these boys do not attend school regularly.
- In the lower eastern region of Kenya, many girls are trafficked for domestic work in towns and cities mainly out of the belief that they make 'good' house helps and boys as farms and herding workers.
- In the many regions out-of-school boys work in construction, sand, salt or quarry stone mining and hawking at the expense of schooling.
- Along the Kenyan coast and the Lake Victoria region, boys are employed in deep sea fishing which is hazardous.
- Parents and guardians sometimes encourage young girls to engage in the commercial sex trade to earn income for the family
- Hawking, waste materials gathering and scavenging by children in construction and dump sites is also common in urban areas.

8.1.3 Challenges and Constraints

- I. The ILO Conventions, Constitutional provisions, the Employment Act (2007) and the Children Act 2001 are in some aspects contradicting each other and require harmonisation especially when it comes to minimum age of entry into employment and link to free and compulsory education in line with provisions of the Basic Education Act 2013.
- II. 46% of the population live on a dollar a day forcing some children to work to contribute to family income , exposing them to harmful work and abandoning of school.
- III. HIV/AIDS as resulted in orphaned children, who fend for themselves or for their siblings by working.
- IV. Inadequate data to inform planning.

- V. Large household strains incomes, resulting in lower school attendance and children working.
- VI. Irresponsible and poor parenting and alcohol abuse has resulted in child neglect which often forces children to work.
- VII. Cultural and social beliefs and practices that work prepares the child for adult roles and responsibilities create a justification for child labour.
- VIII. Inadequate enforcement of labour laws.
- IX. Natural and man- made disasters and conflicts have resulted in displacement of families, putting children at risk and May perpetuates child labour.

8.1.4 Recommendations

1. Harmonization of relevant laws to minimum age of entry into employment.
2. Enforce Basic Education Act 2013 to ensure children stay in school.
3. Implement NAP to eradicate child labour.
4. Promote family planning
5. Regional EAC protocol joint initiative on cross border child labour intervention.
6. Finalise and implement the child labour policy.
7. Generate child labour data to inform planning.
8. Promote peace building incentives among communities

8.2 Article 17—Administration of Juvenile Justice

Children in the justice system in Kenya who come into contact with the law include children in conflict with the law, children victims of offences, children witnesses of crime and children placed in protective custody. Child justice issues in Kenya are addressed through the criminal, civil and administrative justice systems. Institutions in the justice system include courts of law, the police, prisons, the State Law Office, Probation and After Care, Remand Homes, Children Offices and institutions offering legal aid.

8.2.1 Legal and Policy Framework

Article 48 of the Constitution states that *“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”*. Sections 18 and 77 of the Children Act also entitle children in the justice system to access legal aid.

The Constitution at Article 53 (1) (f) (i) provides that *“Every child has the right not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time; and separate from adults and in conditions that take account of the child’s sex and age”*.

The Children Law Amendment Bill, 2011 recommends diversion of children from the formal justice system under certain conditions. Section 183A.(1) provides that ... *“Notwithstanding any provisions of this Act or any other written law, every person dealing with any matter in which a child is suspected of or charged with, the commission of an offence shall where the child is eligible for diversion under this section, in the first instance, consider that child for diversion”*.

The Probation and After Care Department has developed the Pre Bail Bill to ensure greater access to justice by children who have matters in court.

8.2.2 Context of Implementation

The judicial sector including the child justice sector in Kenya has witnessed a lot of positive changes within the reporting period. Some of the initiatives carried out in the justice sector and which have an impact on the child justice sector include the following:

- Appointment of more magistrates and judges to help ease the backlog of cases;
 - Establishment of the Judiciary Training Institute in 2008 to train judicial officers on better methods of service delivery and use of computers and information technology. It is hoped that this will enhance service delivery and excellence in the application of law through research and more effective remedies.
 - Establishment of the Judiciary Ombudsperson office in 2011 to receive and process complaints and grievances by the public against employees of the judiciary; publish quarterly reports on complaints received and action taken; and appraise the administration on significant trends and recommend changes in policies and procedures, among others.
 - The National Council on Administration of Justice established under Section 34 of the Judicial Service Act with representation from, among others, the Principal Secretary for the time being responsible for matters relating to gender, women and children's affairs. The Council has the mandate to ensure a co-ordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.
 - Establishment of the Judicial Service Commission whose main functions are to promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice.
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- Formulation of Bills of Parliament by both State and Non State Actors to further enhance access to justice and streamline juvenile justice issues for children. Such Bills include the Child Justice Bill; the Pre Bail Bill and the Children Law Amendment Bill.
 - The government, in collaboration with stakeholders in the children sector has developed a Framework for National Child Protection Systems in Kenya which outlines the role of stakeholders in the child protection system.
 - More children courts have been established in the country and all magistrates have the jurisdiction to handle child related cases. In Dadaab Refugee Camp a mobile court has been established to address cases and enable greater access to justice for marginalized communities. A High Court was been established in Garissa in 2012 to serve the northern part of the country, In order to address access to justice by children and adults including refugees.
 - The Child care and Protection Officers Programme was initiated in 2010 to build the capacity of officers in the five juvenile agencies namely Judiciary, Prisons, Police, probation and Children's Department. The aim is to have a collaborative approach to juvenile justice matters as this is crucial to the success of the system.

Case study: *A 7 year old girl with a visual problem was defiled by her step father after he beat her mother who then ran away leaving the girl behind. The girl was rescued and placed at the Garissa Child Rescue Centre. The step father was jailed for life and the girl later re-united with her mother. (Source: visit to Garissa Child Rescue Centre – January, 2013)*

- In some areas where Juvenile Justice Sub-Committees have formed Court Users Committees to take prompt action in cases of children in conflict with the law as well as those in need of care and protection.
- The government has established The Witness Protection Agency under a special Witness Protection to protect the safety and welfare of witnesses of crime. Children victims and witnesses of crime will benefit from this initiative particularly when they testify in sensitive matters involving sexual assault by close family members and influential persons and where there is threat or risk associated with sensitive security matters.

8.2.2 Challenges and Constraints

- i. Legal aid is not available to all children in contact with the child justice system.
- ii. Most of the Child Protection Units (CPUs) remained mainly incomplete and semi- functional. As a result some care and protection cases end up in the justice system as opposed to the children benefiting from diversion.
- iii. Children in contact with the child justice system in some police stations share cells with adults before being transferred to care institutions.

8.2.3 Recommendations

- i. Education and awareness on the rights of children in the child justice sector to be sustained for the rights holders and duty bearers.
- ii. Enact and implement pending bills to enable greater protection of children in the justice sector.
- iii. Provide legal aid to children in the child justice system.
- iv. Child Protection Units need to be established and equipped to enable police provide adequate care for children in conflict with the law.
- v. Promote court users committees.

8.3 Article 21—Protection against Harmful Social and Cultural Practices

The Recommendations and Observations by the African Committee of Experts.

The law on the child, in conformity with international norms, severely punishes mutilation, forced marriage and other harmful cultural rites which affect the integrated development of the child. However, the prevalence of female genital mutilation is high particularly among the Somali community (90%). Approximately 53% of Kenyans undergo forced marriages.

The Committee recommends that the State Party:

- *Develops awareness raising and information programmes for the most affected communities in order to change their mentalities. This will bring about a change of behaviour conducive to the abandonment of Female Genital Mutilation and forced marriages;*
- *develop mechanisms for the denunciation of perpetrators of these acts;*
- *Train magistrates and judicial police officers for effective application of the law against these practices.*

State Response

The National prevalence of child marriage reduced from 53% in 2005 to 34% for girls and 1.4% for boys according to the KDHS, 2008/2009.

The Prohibition of Female Genital Mutilation Act, 2011 was passed to address the offence of female genital cutting. This provides prohibitive jail sentences and fines for those who are involved in FGM.

Special Report

The People Sunday February 3 2013

A traditional circumciser in Kisii confessed that after graduating with a certificate in nursing from a neighboring country, she has circumcised over 1,000 girls in Kitutu Chache and other neighboring constituencies. Today together with 56 other former circumcisers have formed an association in Mosocho to fight FGM and she regrets that many girls who went through her barbaric act hate her and ran away from her as if she is a monster.

She says the local culture was so engrained in her that she could not have spared even a three-year old girl. Most of the circumcised girls are aged only five years these days because parents want to reduce trauma on their children and they also want to avoid government interference and also resistance from the children as they grow older and form their own opinion. She says that some of the girls suffered from anaemia due to excessive bleeding, some were admitted to hospital and some developed lifelong complications after the crude surgery. They used a razor for up to 20 girls at times oblivious of the exposure to diseases. Another circumciser became an anti FGM crusader after the death of a neighbour's daughter who bled to death and now sensitizes local communities of the dangers of the crude operation.

The Government through the Ministry of Gender, children and Social development carried out awareness raising campaigns in communities with high prevalence. This has resulted in signing MOUs between Government and these communities through their council of elders to eradicate the practice.

Numerous civil society organisations also undertake FGM eradication, awareness rising, rescue for victims and potential victims in areas where the practice is prevalent.

CBOs and Some FBOs also promote and undertake alternative rites of passage and rescue girls from the resultant child marriages.

The Constitution of Kenya 2010 in Section 53 prohibits harmful cultural practices and all forms of violence against children including child marriages where a child is defined as persons below 18 years of age.

Children rights issues have been incorporated in the training curriculum for police officers in the police training colleges.

There are no established mechanisms for denunciation of perpetrators of FGM and child marriages.

The practice of child marriage is also closely linked with FGM as a rite of passage to maturity and it is a normal practice when girls undergo FGM they become eligible for marriage. The consequences of FGM and child marriage include denial of education, early pregnancies, and birth complications among other dangers to the child mothers.

The Sexual Offences Act 2006 defines defilement as any sexual act with a child (less than 18 years of age) and even categorises the offence of attempted defilement and prohibits sex with a child below 18 whether purporting to be married to the offender or not and this in effect outlaws child marriages.

8.3.1 Legal and Policy Framework

The Constitution in Article 53 states that every child has a right to be protected from abuse, neglect and harmful cultural practices such as child marriages, FGM and violence. Harmful cultural practices are also outlawed under Article 43 of the Bill of Rights; The Constitution Article 45 (2) stipulates that marriage should not be forced and should only take place between two consenting adults of the opposite sex.

The Children's Act 2001 offers protection for all children from harmful social and cultural practices and proscribes penalties for offenders. The Sexual Offences Act 2006 outlaws any form of sexual act with a child. The Prohibition of Female Genital Mutilation Act 2011 outlaws the practice of female genital mutilation and makes it punishable.

The Prohibition of Female Genital Mutilation Act 2011

According to the Act, Female Genital Mutilation (FGM) entails all procedures involving partial or total removal of the female external genitalia or any other deliberate injury to the female organs for non medical reasons. The Act defines various forms of Female Genital Mutilation namely clitoridectomy, excision and infibulations.

The offences proscribed in the act are: aiding and abetting FGM; procuring a person to perform FGM in another country; use of premises to perform FGM; possession of tools and equipment to perform FGM; failure to report commission of offence of FGM; the use of derogatory or abusive language on those who have not undergone FGM.

The Act establishes a board to be known as the Anti-Female Genital Mutilation Board which is a body corporate composed of key government representative ministries and three independent appointed members and a chair person appointed by the president. The Board and requisite secretariat are funded primarily by the government

The Act empowers authorised law enforcement officers to take action on offenders. The authorised officers include police officers, members of provincial administration, children officers, probation officers and gender and social development officers.

The Act requires the government to provide support services to victims of FGM apart from protection and also requires the government to undertake public education and sensitization to the people of Kenya on the dangers and adverse effect of FGM.

The Act proscribes for any person committing an offence under this act liability on conviction to imprisonment for and/ or to fines depending on the nature of the offence under the Act.

Kenya Government has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and is bound by the provisions relating to harmful cultural practices affecting girls.

8.3.2 Context of Implementation

The practice is still prevalent among certain ethnic communities, like Somali (97%) Kisii (96%) Kuria (96%) Maasai (93%) Meru , Tharaka, Samburu . It's relatively low among the Kikuyu, Kamba and Turkana, rarely practiced among the Luo and Luhya communities (KDHS 2008/2009).

Programmes to address FGM eradication currently being implemented mainly focus on awareness and sensitization on the dangers of FGM, promoting alternative rites of passage and providing alternative source of livelihood for circumcisers. Other areas of focus are provision of legal support, training of paralegals and law enforcement agencies to take up FGM cases and rescue of girls who are victims or those who are at risk.

The Prohibition of Female Genital Mutilation Act, 2011 provides new opportunities for eradication of FGM. The Act empowers chiefs and Children's Officers to enter into places without warrant to ascertain whether such a crime has been or is about to be committed. It further stipulates that culture and religion cannot be used as an excuse to perform the procedure.

The Act distinguishes Female Circumcision from medical, surgical procures connected to child birth, and surgery that is essential for the physical or mental health of a woman as well as surgical procedures performed for therapeutic purposes. The Act criminalizes:

- a) Aiding and abetting the circumcision of women and girls and procuring of a person to perform the cut.
- b) Taking a Kenyan to another country for and bringing another person to Kenya for circumcision.
- c) Allowing premises including medical facilities to be used for circumcision.
- d) Being found in possession of tools or equipment for the cut.
- e) Knowing that someone has the intention of performing the cut and falling to report to the authorities.
- f) Any Kenya citizen who undergoes FGM outside the country is also liable for prosecution.
- g) Use of derogatory abusive language against those who have not undergone the practice or a man for marrying or supporting a woman who has not undergone the practice.

The Act creates the Anti Female Genital Mutilation Board which has the specific mandate for policy and coordination of anti FGM initiatives.

The National School Health Policy (2009) addresses issues relating to FGM and early/forced marriages to students in schools.

The Ministry of Gender, Children and Social Development has conducted public awareness forums as well as facilitated community dialogue on FGM in five pilot districts where the practice is rampant. Additionally the Ministry has conducted training for district gender and social development committee members on gender based violence and other harmful cultural practices.

UN Agencies, development partners, NGOs and FBOs have supported advocacy campaigns against FGM among communities which practice FGM and through these campaign initiatives, the practice is slowly dying. However, it must be noted that deep rooted cultural practices take long time to eradicate.

According to KDHS (2008/2009) the national child marriage prevalence stands at 34% for girls and 1.4% for boys in Kenya.

According to the latest report (2011) on State of the World's Children the prevalence of child marriage in Kenya is 25% and is higher in rural areas at 27% and 17% in urban areas. These two reports despite the varied statistics do point to a serious and worrying trend and a violation of children rights to survival and development especially for girls and calls for urgent action.

the National Council for Children Services in 2011 under took a study titled *A study of child marriage in Kenya*, to establish the situation and prevalence of child marriage among two communities. The study was done among the Kuria and Rendille communities that are known to practice child marriages and the findings were summarized as follows:

- Child marriage is still alarming in these communities at 24%. The Rendille had higher incidences of child marriage at 34% than the Kuria at 19%.
- Majority of the child marriages occur between ages 14-18 Years.
- More girls are married early at 33% compared to boys at 10%.
- Child marriage had more adverse effects on girls than boys as the girls have to endure early pregnancies, perform household chores and child care.
- 76% of the child marriages were formalised in the cultural way and sometimes local leaders were involved.
- Child marriages accounted for more divorces later than mature marriages.
- Child marriages are mostly forced and arranged than voluntary.

Harmful Cultural Practices in Garissa County

Garissa County constitutes of 8 Sub-Counties which includes the Dadaab Sub-County with 4 refugee camps home to 600,000 refugees and 50 % of these are children.

According to information from the various agencies working in Garissa County including governmental, NGOs and UNICEF, there are various cultural practices in the communities which are harmful to children. A large portion of girls in Northern Kenya undergo genital cutting, and in Garissa the girls undergo the cut at an early age of 3-5 years and so it does not have a link to early marriage. Among the dominant Somali community girls who are not cut are sometimes rejected in marriage and are even shunned by their peers. UNICEF, Womankind, other agencies and religious leaders have supported anti-FGM campaigns and it is noted that the rate is declining. In 2011, two cases against circumcisers were successfully prosecuted in court and they were jailed for 7 years each.

Early marriages happen during school holidays or when school close due to teacher strikes are common and mostly the girls are married at the age of 16 years without being forced. Some of these girls even take identity cards falsely and claim they are 18 years. Such girls believe they have to get married and refuse to be rescued when rescue attempts are made. Sometimes the girls claim it is their right to be married and look forward to the presents including jewellery they receive as brides. In most cases after the marriage and giving birth these underage brides are normally divorced by the husbands who claim they are immature as wives. Such girls later keep getting married but future marriages are not accorded the same level of respect. According to one of the girls during the FGD in Garrisa men only want to marry the girl get her pregnant and then divorce her.”

- The local traditions and cultures allowed for sexual activity for boys after circumcision particularly among the Rendille where “Moranism and Beading” fuels premature sex, child marriages and bondage for sex of underage girls.
- Most of the community respondents indicated awareness of laws that prohibit child marriage but lack of deterrent action against perpetrators and adherence to traditional practices perpetuates the vice.
- There was a correlation between the low level of education and the practices that support child marriage. The higher the level of education the higher the appreciation that the practice is unacceptable.

“Because I am A Girl: A Study on Child Marriage” a research by Plan International in Kenya that was conducted in 2012 in five areas in the country namely, Bondo, Homa Bay , Kwale , Kilifi and Tharaka to inform the campaign *Because I am a Girl* . According to the findings of the study, the prevalence of child marriage stands at 35.5% across the five areas with girls bearing the bigger burden at 43.3% compared to boys (11.6%). Kilifi recorded the highest prevalence at 47.7% followed by Homa Bay (38.9%), Kwale (37.9%), followed by Bondo at 29.5% and finally Tharaka at 25.3%.

The main causes of child marriage across the five areas were listed as poverty, orphan-hood and cultural beliefs. Girls are seen as an economic assets to the family or valued as capital for their exchange value in terms of goods, money or livestock as bride wealth. It was thus apparent that a combination of cultural, traditional and religious arguments is used to justify child marriage. The fear and stigma attached to premarital sex and girls bearing children outside marriage and the associated loss of family honour were also cited in some of the areas as reasons for pushing girls to early marriage. In Homa Bay, girls also cited the many responsibilities at home, lack of parental and guardian care and lack of support at home as a reason making them to opt for marriage.

Evidence from the research also pointed to trends that girls who married before they turn 18 yrs were less educated, tended to have more children, came from poor rural families, and are married to men who are significantly older. The study revealed that the more education a girl receives, the less likely she is to be married as a child.

The study recommended:

- Improving access to education for both girls and boys and eliminating gender gaps in education as important strategies in ending the practice of child marriage.
- Scaling up of efforts to protect girls who are already in unions.
- Advocacy and community education on the dangers of early motherhood to also target men and boys.

Other harmful Social, religious and cultural practices affecting children.

- Girl child Beading among the Samburu community by the” Morans “youthful warriors for girls as young as 8 years with resultant very harmful consequences for the children victims. The practice results in sexual enslavement, physical violence, forced abortions and infanticide.
- Neglect and even some times killing of children born with disability; including albinism among some communities.
- *Some religious groups and sects have beliefs and practices that are harmful to children such as denying them education and health rights. Some such groups identified by participants including the children during the reporting process in the various parts of the country include among others:*
 - *Kanitha wa Ngai in Elburgon, Molo, Turi, Njoro.*
 - *Friends Bolafu in Kakamega “Abaushi”.*
 - *Mai Maingi in Muranga, Nyeri and other parts of Central Kenya.*

- *Kavonokya in Eastern Kenya.*
- *Akorino Sect in some areas.*
- *In Mariakani, Miracle Church.*

8.3.3 Challenges and Constraints

- I. Despite existence of an enabling legislative environment, community workers and the law enforcement officers face a shortage of resources to respond to FGM and child marriages.
- II. Lack of rescue centres for the child victims in most areas including lack of child protection units in local police stations and lack of counselling services for the victims.
- III. FGM is still practiced very secretly in communities such as the Kikuyu and Kamba and in pockets of Nairobi and other major towns among migrant communities and interventions in such areas is limited.
- IV. Among border communities in Kenya such as the Kuria, perpetrators sometimes cross border to Tanzania where FGM is still openly practiced.
- V. The increase OVCs and children without adequate care and support multiplies the number of children who are married off by guardians especially girls to ease the family 'burden.' During emergencies such as drought, famine and conflicts make children particularly girls more vulnerable to harmful cultural practices and child marriage.
- VI. Religious groups and sects promoting negative beliefs and practices which are in violation of children rights.

8.3.4 Recommendations

- I. Ensure full implementation and enforcement of the laws that offer protection for children.
- II. Implement the Adolescent Reproductive and Health policy 2003 and the School Health policy.
- III. Enhance public awareness and civic education at all levels about harmful practices and the laws.
- IV. The government and non-state actors should allocate adequate resources for programs on rehabilitation, Mitigation programmes, counselling, legal, social support , medical care and rescue services for the victims.
- V. Enact EAC cross border laws and enforcement mechanisms and procedures that address common cross border negative social and cultural practices.
- VI. Scale up social protection programmes.

Childs view on FGM, substance abuse and child labour

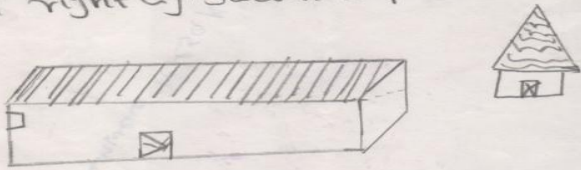
In our village many ~~children~~ had been circumcised because they had been told that if you have been circumcised you will grow from childhood to adulthood.

They had been told that if you will be circumcised you will not be chased away by your husband after getting marriage.

In our village many children live school and drink alcohol, while others go and burn charcoal.

Our villages do not follow the rights of child - eg

- ✓ Survival rights eg food, shelter, clothing, etc
- ✓ Development rights eg education, rest, leisure, etc.
- ✓ Protection right eg. sexual exploitation.



NAME: Abigail Jemutai Kipchumba.
SCHOOL: Kumbulul P.S.
CLASS: STD 8.
Year: 12 years.

Childs view on harmful cultural practices

BEARDS OF BONDAGE IN SAMBURU COUNTY

- Here is a story of a young samburu girl who became a Beards of Bondage Victim.

Naserian was born in a place called Archers post. She was the only girl and the only ~~girl~~ ^{child} of Lenairosu family. In her village, there was what people proudly called "out beards, out girls."

This was a cultural practice whereby, a girl was taken in a house built by her mother. Later all, a young man would come in the house and force the girl to put on beards which were too heavy for her carry. Don't forget that this was a girl of probably twelve to fifteen years old. Then the young man would always come into the house and queerly his lust for sex!

The very same thing happened to Naserian, believe it or not. Her parents were more than happy about this - since they believed this as their culture. The young man who did this evil thing to Naserian became too frequent in the house. Finally, she became pregnant and the ^{young} man took her as his wife. To date, she is the wife of the man.

Other harmful cultural practices

HARMFUL CULTURAL PRACTICES

(i) FGM

This cultural practice is still taking place in my area, Kitui county, Mwingi North Constituency, Tseikuru District. The traditionalists believe that if a girl is not circumcised she automatically smells bad. Rather than knowing the reality is that it depend with one's hygiene. There was a man who had circumcised his daughter was arrested and taken to court but he was acquitted of the crime. He said that his mother (grandmother to child) said that his daughter was to be circumcised because she was called the same name with the grandmother before she died (grandmother)

(ii) Sect

One of the sect found in my area is Kavombya. This is type of church which believes that God has power to heal so they don't see any need of taking their children to hospitals. They don't even take their children to be vaccinated, which is against the African charter.

By

Marvin Musyoka

Kitui County

Mwingi North Constituency

Tseikuru District



Childs View on boy child preference to girl child in some communities

YASMIN MOHAMMED ALI

We have to be allowed to speak out. Usually we are girls. our community take our word worthless and meaning. We have to stop child abuse. Tukomeshe hivi vitu. Love the girls like boy. We will learn to respected you if you respect us. As they say respect is earned but not bought with money



Love me like love you
respect me like I respect you
and we will be friend.

Give me
my freedom
give me
love
and I will
love you.
If you
do me harm
I will tell
you goodbye
for now
and see
you another
time.

I As a girl
I have been neglected
as a girl
~~pleading for help~~
~~Stop child abuse~~
we have cried for long
we said enough
Hear us out

If you really love us
Please please please
I AM pleading for help
Help me if you can
And a reward awaits for
you

If you love me do the best
and forget the worst
stop FGM, child labour
neglection and early marriage
We are successful mothers
of tomorrow

We are the leaders
Love me if you can
Hate me if you must
If you care my God
Help and protect you

Yasmin Mohamed Ali
STD Fight

8.4 Article 22—Children in armed conflict

8.4.1 Legal and Policy Framework

The Kenya government ratified the Optional Protocol on the Involvement of Children in Armed Conflict on 28th January 2002 and produced the initial state party report on the optional protocol in 2012.

ILO Convention 182 on Worst Forms of Child Labour which Kenya has signed also prohibits forced or compulsory recruitment of children for use in armed conflict and has been domesticated through the Employment Act 2007.

The Prevention of Organised Crimes Act 2010 outlaws organized criminal groups. The state laws governing the police, military and other security forces also prohibit recruitment of children into the uniformed forces.

8.4.2 Context of Implementation

The existing legal framework in Kenya does not allow children to be recruited in the armed forces or to engage in active combat directly or indirectly. However, some children are being recruited by outlawed armed groups and criminal networks.

The state party has put in place initiatives to protect children in areas prone to cattle rustling, tribal and ethnic violence and in volatile border areas such as the Kenya/Somalia, Kenya/Sudan and Kenya/Ethiopia. Some of these initiatives include increasing security, disarmament programmes in cattle rustling areas, and peace and reconciliation initiatives.

The Prevention of Organized Crime Act 2010 imposes punitive actions and stiff fines, penalties and imprisonment including life imprisonment for being a member or supporting organised crime or where death occurs as a result of action by organized groups.

The country has in place a National Policy on Peace Building and Conflict Management to promote sustainable peace and development.

8.4.3 Challenges and Constraints.

1. There has been an increase in conflicts and strife over natural resources, politically instigated conflicts and conflicts being fuelled by the effects of climate change.

Peace between the Marakwet and the Pokot Communities: A Success Story

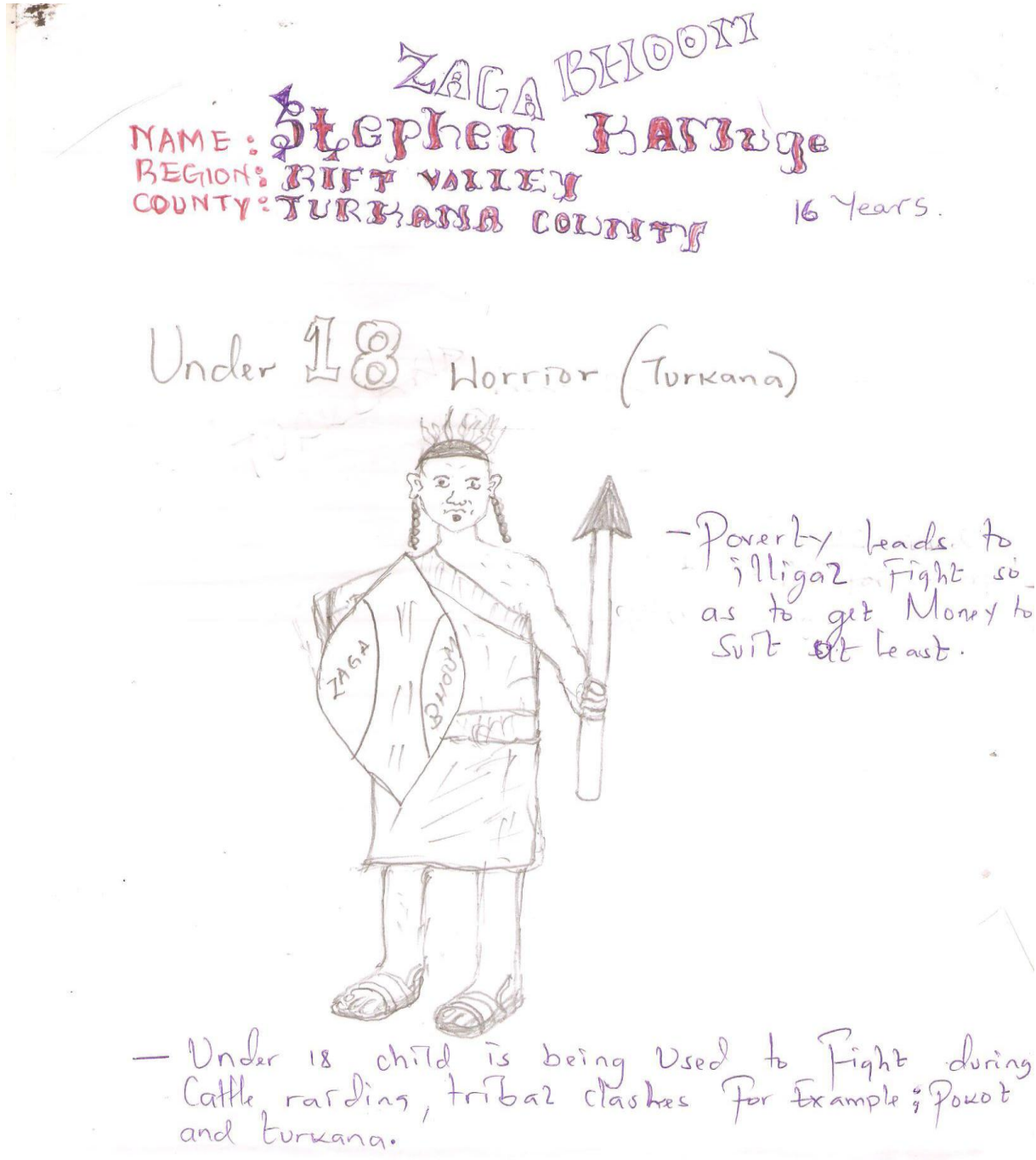
In the 1980s and 1990s the Marakwet and Pokot communities used to have serious conflicts over resources and cattle rustling. As result of these conflicts the Marakwet fled from lowlands close to the Pokot border to the highlands. Lives were always lost; livelihoods and homes destroyed and schools abandoned due to conflict. Overtime the combatants adopted the more sophisticated weapons mainly guns smuggled from the neighboring countries. The period between 2002 to date has been a period of relative peace for the Marakwet community as a result of intercommunity peace initiatives between the two ethnic communities involving the political leaders, community elders and the government officials. Most of the schools re-opened in Marakwet county and some of the families have since gone back to their ancestral homes. Today, the Pokot and the Marakwet trade well together and on regular basis hold joint peace meetings, no longer referring to each other by their ethnic background but refer to each other as “Ndugu Yetu wa Ngambo ile” or brother from across the valley.

In case of an incident, the elders and government officials from both areas meet and agree on how to resolve the matter. At times they use customary law to resolve the matter like paying a fine of livestock for a wrong done.

As a result of prevailing peace, alternative to cattle rearing are also being promoted among the two communities where they both benefit by the government and NGOs including irrigation of vegetables fruits and arable farming. Today they agree on how to share the water which was initially a source of conflict.

- II. Cattle raiding have become an economic venture attracting sophisticated local and external interests. The practice of livestock raiding is becoming more militant, destructive and harmful to the local communities where the practise is sophisticated in nature is also making security interventions less effective.
- III. Unemployment among the youth and poverty may result in them joining criminal groups.
- IV. There are still cultural practices that allow children to be involved in cattle raiding.

DRAWING OF A CHILD ON A CATTLE RUSTLING WARRIOR



Recommendations

- i) Awareness creation and peace building initiatives need to be enhanced in conflict areas.
- ii) The state to undertake scaling up of the Youth fund to create employment thus avoiding them from joining criminal gangs.
- iii) Implement the provisions of the Optional Protocol on the Involvement of Children in Armed Conflict.

8.5 Article 23 Refugee Children

8.5.1 Legal and Policy Framework

Refugee children in Kenya have the same social, economic and cultural rights as other children in Kenya as provided for in the Constitution, specifically under the Bill of Rights as well as other laws. This includes the right to privacy, family life and non- discrimination. They also have a right to free primary education under the Free Primary Education.

In 2011 the Refugee Act of 2006 was amended through the Refuge Bill, 2011 to address some challenges that had been identified by stakeholders as well as to ensure it conformed to the provisions of the Constitution and other laws. Under the Kenya Citizens and Foreign Nationals Management Service Act 2011 *“the Cabinet Secretary shall be responsible for all administrative matters concerning refugees and asylum seekers in Kenya, and shall, in that capacity, co-ordinate activities and programmes relating to refugees and asylum seekers”*.

8.5.2 Context of Implementation

Kenya continues to host a large population of refugee children in Dadaab and Kakuma Refugee Camps. In 2010 Kenya hosted 151,454 refugee children and 61,232 child asylum seekers (Table 47 and 48). Different organisations offer services addressing violation of refugee rights including sexual and gender based violence. The Department of Refugee Affairs has maintained a presence in Refugee Camp and supported camp activities.

In refugee camps registration of birth is carried out within the camp through a collaboration of the Department of Civil Registration and the United Nations High Commission for Refugees (UNHCR) and the children issued with birth certificates.

The State Party through the department of refugees’ affairs in collaboration with UNHCR keeps records of refugees and asylum seekers at all points to entries into Kenya.

Comprehensive data on asylum seekers and refugees is kept by Department of Immigration and UNHCR.

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

The UNHCR continues to raise funds through various partners to assist refugees in Kenya.

The State Party has provided land to expand Dadaab camp as part of its contribution of resources for refugees in Kenya.

A memorandum of Understanding between the UNHCR and the Judiciary was signed to ensure there is a systematic organized capacity building programme for Magistrates and Judges on the understanding of the International Refugees Law, and the Convention of the Rights of the children. In the MOU, the magistrates and judges also commit to expeditiously attend to issues concerning violation of Child Rights. In this regard, the State Party has established a mobile magistrate's court and deployed children's officers in the camps to attend to cases involving refugees

8.5.3 Challenges and Constraints

- i. Some refugee service providers are not aware of the provisions of the Refugee Act as well as the other laws that protect refugees.
- ii. Inadequate facilities to cater for increasing incidences of sexual and gender based violence.

8.5.4 Recommendations

- i. Ensure that stakeholders are conversant with the legal provisions addressing the rights of refugees in order to facilitate the children access their rights.
- ii. Improve security and protection of children.
- iii. Continue addressing cases of gender based violence particularly within the refugee camps in order to protect children and equipping children with knowledge and skills on how to protect them is important.
- iv. Ensure that repatriation of refugee families takes into consideration the best interests of the child.

8.5.5 Legal and Policy Framework (Internally Displaced Persons)

The constitution: The Bill of Rights in the Constitution provides for the right to own property, the right to housing, the right to be free from hunger among other rights which IDPs are deprived of. Article 67 of the constitution establishes the National Land Commission with the mandate of undertaking reforms and managing land as a national resource including investigating and addressing historical land injustices and to recommend appropriate redress. A task force has also been established to develop Bills on Community land, Evictions and Resettlement.

Kenya has ratified **The African Union convention for the protection and assistance of internally displaced persons (IDPs) 2009, (the Kampala Convention)**- the convention establishes a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa. Kenya has also ratified the Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons has also been ratified by Kenya.

Prevention Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 which came into operation on 15th January 2013 domesticated the Kampala convention and to make provision for the prevention, protection and provision of assistance to internally displaced persons and affected communities. The Act also gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement and for connected purposes.

The Draft National Policy on IDPs-The policy recognizes that displacement in Kenya is a complex historic issue that has multiple causes: the major ones being; political instigation, resource based conflicts, natural disasters and climate change and displacement due to development and environmental conservation and preservation projects. The policy is meant to provide a durable solution to the IDP problem by providing an institutional framework to protect the displaced and restores them to their normal life.

8.5.6 Context of Implementation (Internally Displaced Children)

Displacement in Kenya dates back to the colonial period and the recent development of the IDP policy is a major milestone in addressing the plight of displaced persons. Internal Displacement has put children at great risk of various forms of abuse especially during the Political General Elections which take place after every five years.

The 2007 political General Elections was followed post election violence which lasted up to early 2008, as a result, 1,300 people were killed, 633,921 people displaced including children and property destroyed. Children in the affected areas witnessed and were victims of the violence and killing, they lost their parents, and others became separated from families and were no longer able to enjoy their childhood.

Some families have also been displaced due to extreme weather patterns like acute drought inter-communal and resource based conflict. The government resettled IDP's through *Operation Rudi Nyumbani* followed by peace initiatives such as *Operation Ujirani Mwema* and *Operation Tujenge Pamoja*.

Examples of Resettlement initiatives undertaken:

- i) 236 families who were displaced due to clan violence in Mt Elgon District were finally resettled on a 700 acre Patakwa farm in Trans Nzoia County in 2013 and each family received 2.5 acres of land to build a house and farm.*
- ii) 3,000 families from Mawingo IDP camp, mostly victims of the post-election violence have been resettled on land acquired by the Government in Subukia and Nyandarua, Nyeri and Nakuru counties.*

The government has employed a number of strategies during these operations and support programme including:

- a. IDPs profiling to get the accurate number of the affected;
- b. Assistance to IDPs returning to their homes and farms;
- c. Start-up funds of Kshs. 10,000 to each IDPs household;
- d. Provision of Kshs. 25,000 for reconstruction of houses;
- e. Provision of food to IDPs until they harvest their crops;
- f. Provision of farm inputs;
- g. Reconstruction of infrastructural facilities e.g. schools;
- h. Peace building and reconciliation to create harmony amongst communities;
- i. Psychological counseling of IDPs to heal post-election traumas;
- j. Relief food provision by Government of Kenya and World Food Programme.

None state actors from UN agencies, NGO'S, CBO's, FBO's etc have continued to assist and support IDP's .

8.5.7 Challenges and Constraints (Internally Displaced Children)

- I. Inadequate legal and institutional framework to protect IDP's.
- II. Undeserving people have attempted to benefit from IDP crises.
- III. Inadequate and disaggregated data and information on IDC's.
- IV. Local communities oppose resettling of 'foreigners' in their area, thus causing delay in resettlement. There are also IDPs who have refused land where they are allocated citing climatic conditions or cultural displacement and some are asking for cash compensation instead of land.
- V. Global Climate Change posing a new challenge and more people getting displaced from their homes as a result of frequent and recurrent cycles of drought and floods. Those who have suffered most from these effects of climate are women and children.

8.5.8 Recommendations (Internally Displaced Children)

- I. Implement the Prevention Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 to ensure all genuine IDP families are resettled.
- II. Relocate vulnerable communities including IDPs settled in emergency and disaster prone areas such as steep slopes, escarpments, flood plains and human-wildlife conflict areas to safer settlements.
- III. Create awareness on living in disaster prone areas and on climate change such as the UN Framework on Climate Change, Green Climate Fund and Environmental conservation initiatives and environmental education.

8.6 Article 27—Sexual Exploitation

8.6.1 Legal and Policy Framework

Article 53 of the Constitution protects children from all forms of violence and abuse, including sexual exploitation. The Sexual Offences Act, 2006 and the Children Act, 2001 have also outlawed all forms of sexual exploitation targeting children.

The Counter Trafficking in Persons Act, 2010 also addresses trafficking of children for sexual purposes.

The Children Law Amendment Bill provides that a child who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography should be considered a child in need of care and protection.

According to the National Children Policy *“all children are vulnerable to sexual violence although girls are more affected.”*

ILO Convention 182 on the Worst forms of child labour (WFCL) categorizes child prostitution and use of children in pornography as a worst form of child labour.

The Teachers Service Commission circular No. 3/2010 addresses physical, psychological and sexual forms of violence against pupils and students by teachers.

8.6.2 Context of Implementation

According to Child help line 948 cases of sexual abuse were reported in 2011 and 804 in 2012. Some of the cases go un-reported.

Reports reveal that perpetrators of sexual violence against children are parents, guardians, teachers, police officers, relatives, and strangers. Homes have been identified as one of the places where most sexual abuse takes place with girls being more vulnerable than boys.

In 2009 the State Party in collaboration with UNICEF initiated a project to domesticate the International Code of Conduct on Sexual Exploitation of Children by developing a National Code of Conduct for the hotel industry. Trainings on the Code of Conduct have been conducted targeting hotel workers and to date over 60 hotels and 1200 hotel workers have been reached with information.

Children and family courts have created a better atmosphere for the handling of sexual abuse cases. The maximum sentence under the Sexual Offences Act is life imprisonment for defilement, and courts are now regularly handing down the sentence

In 2009, the National Guidelines on Sexual Violence in Kenya were developed to give general information about management of sexual violence in Kenya and focus on the necessity to avail services that address all the needs of a sexual violence survivor, whether medical, psycho-social, humanitarian or legal. The guidelines recognise the fact that children form a significant proportion of survivors of sexual violence and make special provisions for them that address their unique aspects, distinct from those of adults.

Another development with regard to protection of children from sexual exploitation has been the deleting of Section 38 in the Sexual Offences Act in 2011. This was as a result of the reluctance by victims and their families to report cases especially when it was felt that there may not be enough evidence to prove the offence, yet the penalty for 'giving false information' was the same penalty as the alleged offender would have received.

The state has developing a National Plan of Action against Sexual Exploitation of Children in Kenya 2013 – 2017. It is hoped that the Plan of Action will provide a coordinated and comprehensive approach to address sexual exploitation of children countrywide.

Other initiatives that have been carried out by the State Party include the setting up of a National Data Base of Sexual Offenders, which was launched in April, 2012. The database provides vital information such as names and the national identity card numbers of the offender's date of conviction, nature of offence committed, age of the victim and information on whether the convict has undergone rehabilitation, among others.

A Reference Manual on the Sexual Offences Act for Prosecutors has been developed. The office of the Director of Public Prosecutions is increasingly relying on prosecutors from the legal profession to work together with the police prosecutors in order to speed up the hearing of cases as well as infuse more professionalism in the work due to the legal technicalities involved.

The health sector has also sought to address the health of sexual offence victims both before and after the commission of the act. The development of the Post Rape Care Forms will help to monitor progress made with regard to treatment of sexual assault victims. The forms are supposed to be kept in medical facilities. The Kenya Women Judges Association (KWJA) has developed a handbook on sexual offences and a compendium on judgments based on the Sexual Offences Act.

8.6.3 Challenges and Constraints

- I. In many communities there are mistaken beliefs that boys can take care of themselves and this has led to situations where many boys have been sodomised. Others have fallen prey to commercial sexual exploitation.
- II. There are cases of religious and cultural beliefs which have been reported in certain communities where parents or guardians refuse to take children who have been defiled for medical treatment as it is against their beliefs or due to shame or to protect the "honour" of the family.
- III. Most children victims of abuse or gender based violence are unable to access the required services.
- IV. Due to insufficient awareness of their rights or threats from the perpetrators, many victims do not report and by the time the crime is discovered it is often too late to make a successful prosecution.
- V. Challenges associated with implementation of the Code of Conduct for the tourism industry which include the following:
 - Not all hotel and entertainment facilities and clubs are signatories
 - Guests check into the hotels that are signatories to the code, yet they may spend time in premises that are not signatories to the code such as privately owned villas and other establishments that may be practicing commercial exploitation of children.
 - Insufficient monitoring of hotels who have signed the code of contact.

V1. Inadequate skills and resources for health professionals and prosecuting staff.

V11. Parental irresponsibility and guardians to protect and care for their children, parents who encourage their children to engage in sexual activities as a source of income for the family and cases of parents who themselves conspire with the perpetrators to defeat the cause of justice are a challenge to successful prosecution of sexual and defilement cases against children.

8.6.4 Recommendations

- i. Continues awareness creation for the public, parents, teachers, children and policy makers.
- ii. The state to provide adequate resources and build the capacity of health personnel to ensure that health centres throughout the country have the capacity to provide comprehensive sexual violence medical management services .
- iii. Ensure enactment of The Family Protection Bill to address cases of sexual abuse within families.
- iv. Implement the National Code of Conduct in the service industry
- v. Ensure implementation of the proposed National Child Protection System and the National Plan of Action against Sexual Exploitation of Children in Kenya.
- vi. Establish children rescue centres and shelters for victims of gender based violence and sexual exploitation including children who have been sexually abused.

8.7 Article 28— Drug Abuse

Recommendations and Observations by the African committee of experts,

Regarding the consumption of alcohol and other substances by children, the report indicates that the Kenyan Government has adopted a law to punish any activity which tends to provide narcotics and psychotropic substances. The government has put in place a national Agency responsible for combating drugs in 2001, but it should be observed that although the legislation bans this practice, children have easy access to alcohol and this indicates the weakness in the implementation of this measure.

The Committee recommends that the State Party take the necessary steps so that the application of this law is effective and that a campaign is waged to raise the awareness of families, and particularly the educational environment on the dangers faced by exposed children.

The State Response

In all learning institutions in the country there is a government regulation for the school management to ensure measures are in place making facilities drug-free areas and to train children on the dangers of drugs and the institutions are required to print and post on the walls anti-drug messages.

The education curriculum has integrated education on harmful effects of drugs at all levels from primary to tertiary education levels and in the teacher training colleges. Teachers trained on counselling including drug and substance abuse counselling skills have been deployed to schools.

Drug and substance abuse has been mainstreamed into all Government ministries or departments.

Under NACADA, a 24-hour toll free phone number 1192 was established to assist persons who abuse drugs and or affected by drug and substance abuse. The toll free number provides children with a forum where they can access information, guidance and counselling on substance abuse. Children can also use the Child Helpline 116 to seek assistance.

NACADA has also started to partner with CSO to create awareness on dangers of drug abuse in the wider community in all counties in the country including in the schools and at local community levels.

8.7.1 Legal and Policy Framework

Various legislations that have been enacted to address the concerns of substance abuse among these are:

- **The Alcoholic Drinks Control Act, 2010** which prohibits sale, supply and consumption of alcohol for persons less than 18 years. The Act outlaws the employment of persons under the age of eighteen to sell, control or

supervises the sale of alcoholic drinks or to have the custody or control of alcoholic drinks on licensed premises. The Act provides that “No person holding a license to manufacture, store or consume alcoholic drinks shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed.” The Act prohibits parents and guardians from taking children to premises where alcohol is on sale as well as ensuring children do not buy alcohol and in addition the Alcoholic Drinks Sale Licensing Regulations have been developed.

- **The Alcoholic Drinks Control (Amendment) Bill, 2011** has been developed to seal loopholes identified during the implementation of the Act such as minors accompanying family members to entertainment premises where alcohol is on sale .
- **Tobacco Control Act 2007** provides for the protection of the health of persons under the age of eighteen years by preventing their access to tobacco products. The Act also provides that the Ministry responsible for education to integrate tobacco matters into syllabuses and this has been done by KIE. The Act prohibits smoking in residential houses, children homes, educational facilities and health institutions among others. In addition, the government has undertaken measures which ensure public protection from secondary smoking. A draft Tobacco Control Policy has also been developed.
- **The Mental Health Care Bill, 2012** recognises mental illness to include any disorder, impairment, disability or handicap of the mind, including mental impairment as a result of alcohol, drugs or substance abuse.
- **The Children Act 2001 section 16**, Gives provisions for protection of children against drugs.

8.7.2 Context of Implementation.

The Ministry of Interior and Coordination of National Government is the government body responsible for policy interpretation and dissemination of matters of drug and substance abuse and to oversee implementation of interventions up to the grassroots level in Kenya. Through the National Authority for the Campaign against Drug and Alcohol Abuse (NACADA) the ministry implements a multi-sectoral campaign against alcohol and drug abuse in Kenya. Other partners in the national campaign against drug and substance abuse in the country include United Nations Office on Drugs and Crime (UNODC), institutions of learning, CSOs and FBOs.

According to national statistics from the Rapid Situation Assessment of Drug and Substance Abuse in Kenya (NACADA 2012), 11.7% of young people aged 15-24 years are currently using alcohol, 6.2% use tobacco, 4.75% use *Miraa/Khat* while 1.5% use cannabis. In addition the median age of initiation into tobacco use is 10 years while minimum is 8 years and the mean age for alcohol use is 10 years. The above statistics are an indication of the grave situation faced by children and youth who are already faced with other numerous socio-economic challenges such as unemployment, neglect, violence, sexual abuse and poverty related social problems.

It was noted during the reporting process that in most parts of the country, substance abuse has resulted in the most active and energetic members of the community mainly the youth, becoming unproductive and adversely affecting the entire economies of the concerned regions. In an attempt to address the problem of drug and substance abuse the government created the National Agency for the Campaign against Drug Abuse Authority (NACADA) in 2001 to coordinate and harmonize drug abuse prevention, education and awareness. NACADA in collaboration with relevant authorities licences and supervises drug and substance abuse rehabilitation centres and certifies persons working in the centres. The agency advises the existing rehabilitation facilities in case they admit children to have policies for children including separate areas , child friendly services and to link the children in the facilities to education services. NACADA trains teachers of primary and secondary schools as drug counsellors on prevention, identification and early intervention.

In 2013 the agency set aside 100m to fund 150 NGOs countrywide in all 47 counties in Kenya to support a countrywide campaign on drug and alcohol abuse which will target the general population, colleges, schools and other institutions. NACADA organises a National Annual Conference on Alcohol and Drug Abuse for all stake holders which offers an opportunity for information sharing on knowledge, skills and good practices with a specific theme and focus every year.

The government has also set up a specialised Anti-Narcotic enforcement Unit within the police force.

8.7.3 Challenges and Constraints

- I. According to NACADA, drug and substance abuse among children and youth is on the increase in Kenya resulting in young people addiction. Abuse is attributed to easy access to drugs and alcohol even in the homes, due to peer pressure, access to the substances in the community where they live and as a result reckless and risky behaviours.
- II. Insufficient enforcement of laws on drug and substance abuse.
- III. There are inadequate services and institutions in the country specialising in drug abuse.
- IV. Lack of skills and information by family units, caregivers, parents and other duty bearers to detect, deal and prohibit drug and substance abuse among children under their care.
- V. Children are sometimes used to traffic drugs.
- VI. Ensure establishment of rehabilitation services at the county level according to schedule 4 of the constitution. Ensure establishment of rehabilitation services at the county level according to schedule 4 of the constitution.

8.7.4 Recommendations

- I. Ensure enforcement of laws on drugs
- II. Ensure establishment of rehabilitation services at the county level according to schedule 4 of the constitution.
- III. Establish multifaceted and multi sector mechanism to fight drugs and substance abuse by county governments.
- IV. Put in place comprehensive programmes aimed at educating parents and guardians on issues of prevention, early detection, interventions and general parenting skills to deal with the vice.
- V. Encourage other key players in the community in the fight against drugs i.e Civil Society, faith based groups, women groups, youth groups, farmers association, trade unions and CBOs need to act in more proactive way to address the vice of alcohol and drug abuse in the society with a special focus on children and young people.
- VI. Awareness creation on the drug and substance abuse targeting the public, children, parents and care givers.
- VII. Involvement of cross border policing and Interpol to address the drugs supply chain.
- VIII. The NACADA helpline 1192 and the child helpline 116 should be inter-linked.

8.8 Article 29—Sale, Trafficking and Abduction

8.8.1 Legal and Policy Framework

The Constitution Article 53 (1) (d) protects children from all forms of abuse, violence, inhuman treatment and exploitative labour. This includes children at risk of being sold, trafficked or abducted. Article 2 (5) and (6) of the Constitution makes provision for the application of international law in Kenya.

The children Act 2001, section 13 (1) protects children against all forms of sale, trafficking and abduction.

The counter trafficking Act 2010 was enacted to protect children and others against trafficking.

Kenya has also ratified the United Nations Trafficking in Persons Protocol.

8.8.2 Context of Implementation

Kenya has been identified as a source, transit, and destination country for children, men and women who are forced to work under difficult circumstances. Child trafficking remains one of the child protection issues that the state party has tried to address, given that some children are trafficked and forced to work as domestic workers, in sex tourism, Agriculture sector and petty trade among others.

A National Steering Committee on Counter Trafficking in Persons was established in 2007 with the role of coordinating national efforts towards combating human trafficking in Kenya. The Committee was instrumental in the development of the National Plan of Action for Combating Trafficking in Persons (2008—2013) which focuses on prevention, awareness raising, legislative reform, victim protection, law enforcement co-operation, training and exchange of information on trafficking. Members of the committee include government ministries and departments and civil society organizations. The Steering Committee is currently hosted by the ministry in charge of children.

In October 2010, the Counter-trafficking in Persons Act was passed into law and came into operation in 2012 to address the cases of human trafficking. The Act defines various trafficking offences (including child trafficking) and provides sanctions. It establishes a National Advisory Committee against Trafficking in Persons and a National Assistance Trust Fund for Victims of Trafficking in Persons. A manual to train stakeholders including members of parliament, lawyers, religious leaders, the police, trade unionists and members of civil society organizations on child trafficking has been developed.

The media has also been instrumental in creating awareness on the salient features of child trafficking. Information, education and communication materials on trafficking have been developed including a children's comic book, Info-packs for members of parliament and desk calendars.

8.8.3 Challenges and Constraints

- I. Most of the initiatives in place to address trafficking in persons and knowledge on counter trafficking Act are not widely known.
- II. Most trafficking acts are perpetrated by close family members making it difficult to detect and act upon.
- III. Inadequate services for victims of trafficking.
- IV. Weak enforcement of laws protecting children from being trafficked, sold or abducted.
- V. There is lack of adequate and comprehensive data about offenders and victims.

8.8.4 Recommendations

- I. Ensure the public is sensitisation on issues of trafficking including the Counter Trafficking in Persons Act
- II. Child victims of human trafficking should be assisted to overcome the trauma associated with the practice.
- III. Ensure National and Regional regulatory framework is put in place to monitor in- country and cross border movements of goods, services and people to curb the hidden practices of human trafficking including children.
- IV. Ensure data is maintained on children who are trafficked.
- V. Ensure enforcement of laws on human trafficking.

8.9 Article 30—Children of Imprisoned Mothers

8.9.1 Legal and Policy Framework

Children of imprisoned mothers refers to those children accompanying their mothers to prison or those left behind when their mothers are remanded or convicted. Under the Prisons Act, a child aged 4 years and below may remain with the mother in prison.

The Constitution protects children of imprisoned mothers in the same manner as other children. Article 53 underscores the fact that *'a child's best interests are of paramount importance in every matter concerning the child'*. Based on this legal provision, prison authorities are obliged to ensure these children access their rights within the limits set by subsidiary legislation including the Prisons Act.

The Children Act 2001, section 119 (1) (c) states that a child is in need of care and protection who has no parent or the parent has been imprisoned.

Case Study (11th January 2011)

Machakos Women's Prison has 47 women inmates, of who 11 are convicted and 36 are in remand. Most of these inmates reported to have families including husbands and children.

Once a year the 'remote parenting day' is held where they meet with their families who are allowed to visit them in prison, eat together and interact for the whole day. The day is supposed to provide 'therapy' but sometimes it is not held due to lack of funds as the prison has to fund raise for this day from well wishers for there is no allocation of funds from the state government.

Convicted prisoners are also allowed visitors once a month and women can receive visitors any time of the day. Expectant inmates attend ante-natal and post-natal clinics and after birth the child is provided with special care including health and nutrition. Under prison laws the children are allowed to live with the mother until they reach four years of age.

8.9.2 Context of Implementation

According to Kenya Prison Service, female prisoners are remanded and convicted for offences ranging from child neglect, theft by servant, hawking, murder and robbery among others. The majority of the women are not able to meet the bail conditions and as a result end up in remand. Others may have no one to take care of their children when they go to prison and as a result such children of imprisoned mothers suffer and require special care and protection. Society also attaches stigma to women offenders and particularly those who are jailed and this extends to the children left behind. Relatives and neighbours view these children negatively and

it is not unusual for the children to end up in the streets after being abandoned which exposes the children to multiple risks.

Remote parenting was introduced in Kenya over 10 years ago, mothers in prison have the opportunity to interact with their children and other family members on a regular basis. This helps maintain the child–parent bond, particularly for mothers facing long jail sentences, or who end up remaining in prison longer due to the slow justice system. The concept has been introduced in most prisons and prison authorities attest to the fact that many mothers in prison look forward to these visits from family, and as a result are also likely to behave well.

Other improvements as a result of the prison reforms include visits by professionals including journalists, therapists, lawyers, priests and imams and well wishers. Legal aid agencies and juvenile justice committees in parts of the country have assisted mothers with legal representation in order to speed up their cases while others have intervened for mothers with young children to get a free bond, thereby ensuring that the mothers remain at home with their children while the cases proceed.

Other interventions include installing recreational facilities such as swings in prisons for use by children of imprisoned mothers. Charitable organizations have also donated play material for children.

As part of the Rapid Results Initiative the Kenya Prisons Service has been offering Early Childhood Development training course to interested personnel.

8.9.3 Challenges and Constraints

- I. Children accompanying their mothers to prison, particularly where there is a high population face many challenges. These include inadequate diet, space and material for play, improper sanitation facilities, inadequate clothing, improper sleeping space and limited interaction with their mothers.
- II. The ongoing prison reforms have not given priority to children accompanying their mothers to prison.
- III. Cases involving some women take long to be concluded, so they will stay with the children in the renamd.
- IV. The family networks to take care of children of imprisoned mothers are lacking.

8.9.4 Recommendations

- i. Ensure Mothers in prison with their children are protected in accordance with the United Nations Minimum Rules for Treatment of Prisoners. Article 23 (1) states that in *“women’s institutions there shall be special accommodation for all necessary pre-natal and post natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate”*.
- ii. *The state party to ensure that children accompanying their mothers to prison enjoy their right like other children*
- iii. Enhance interventions by The Prisons Department to foster relationships with families or extended families while in prison.
- iv. The state to ensure regular monitoring of Children of imprisoned mothers living with caregivers outside prison in order to ensure their well being for the period the parents are in prison.

- v. Increase budgetary allocations to prisons to cater to the needs of the mothers and the children.
- vi. Fast track the implementation of the Pre - Bail Bill to address and determine the suitability of vulnerable groups (including children and female offenders) for alternative bail conditions other than fines.
- vii. Continuous sensitization of judicial officers on none custodial sentencing of mothers.
- viii. Formulate a policy on children accompanying their mothers to prison to ensure equal treatment of children.

9.0 GENERAL OBSERVATION AND COMMENTS

The African Committee of Experts on the Rights and Welfare of the Child observes that the Government of Kenya has adopted several texts and taken measures for the protection and promotion of the Rights and Welfare of the Child.

However, it is to be observed that certain texts are not in harmony with the Charter and the majority of these texts and measures have remained ineffective due to lack of implementation strategies or because of the inadequate resources allocated for their implementation.

The Committee also recommends that the State Party should harmonize texts with the African Charter on the Rights and Welfare of the Child and adopt strategies for better implementation of these texts.

The Committee further recommends that the State Party conduct research on the situation of children in Kenya and make proposals on the measures to be taken for better implementation of the provisions of the Charter.

The Committee finally recommends that the State Party allocate adequate funds to the various programmes and sectors relating to the implementation of the African Charter on the Rights and Welfare of the Child.

The African Committee of Experts on the Rights and Welfare of the Child avails itself of this opportunity to renew to the Government of the Republic of Kenya the assurance of its highest consideration

State Response

The government of Kenya continues to increase budget allocations to programmes and sectors relating to the African charter on the rights and welfare of the child. Over the Years allocation in actual figures has increased and also additional budget items have been created for new child rights related programmes in the national budget. In the 2012/2013 budget, the social safety nets have received added budgets compared to 2011/2012 as shown in Tables in the Statistical Annex.(61-63)

In 2012/2013 budget items were set aside to hire additional teachers, to provide bursaries for needy bright children and to improve physical facilities in schools. Other form of support were to school feeding programme for Arid and Semi Arid areas, urban food subsidy such as “gunny bags” to grow vegetables and ECDE special allocation. (Source: *Citizen’s Guide 2012/2013 Budget*)(Table 29 &30)

The state party, with UNICEF support, conducted and published a situation analysis of children and young people in Kenya (SITAN) in 2009 and will continuously update it annually. In the process of developing, the SITAN a right based approach, causality analysis and gap analysis model was adopted. Some of the findings of the SITAN have informed the ACRWC reporting process including information and data that was gathered.

10.0 CONCLUSION AND WAY FORWARD

The State Party notes that there are still many challenges and constraints experienced in providing all children their rights to survival, development, protection and participation. The underlying causes for non-fulfilment of rights to children include prevailing internal factors in the country such as high incidences of poverty, high inflation, natural and manmade disasters and orphan hood, while some of the external factors including climate change, global economic meltdown, increasing prices of basic commodities in the global market place and conflicts and insecurity . Nevertheless the State Party is committed in advancing the rights of children and will continue to;

- I. Increase resource allocation and budgets to the children sector.
- II. Enforce laws and policies protecting children against abuse, neglect and exploitation.
- III. Minimizing child poverty through the expanded child focused development and social protection programmes.
- IV. Develop a National Plan of Action (NPA) for Children 2013-2017 in line with vision 2030.
- V. Enhance coordination of programs implementation, monitoring and reporting.
- VI. Enhance the capacity development of all people working to advance the welfare of children.
- VII. Create more awareness on child rights and welfare to the public.
- VIII. Enhance child participation through Strengthen the children assemblies.
- IX. Promote family based alternative care for children without parents.
- X. Continue to collect and collate disaggregated data on children for better planning especially children with disability.
- XI. Build the capacity of parents and enforce parental responsibility provisions in the children Act and other legislations.
- XII. Reduce maternal mortality and child mortality to reach the MDG goals and Vision 2030 goals in the long term.
- XIII. Implement the National School Health Policy of 2009.
- XIV. Ensure all children out of school due to poverty, orphan hood and other social problems are in school to benefit from free Basic Education and to implement the provisions of the Basic Education Act 2013.
- XV. Put in place measures to eradicate harmful and retrogressive social, cultural practices and harmful religious beliefs.
- XVI. Strengthen the child protection system.
- XVII. Popularize the ACRWC to children, stakeholders and the general public.

STATISTICAL ANNEX AND TABLES- ACRWC REPORTING

I. GENERAL MEASURES OF IMPLEMENTATION -Article 1

Table 1: Resources Deployment for Children Work, 2007/2008 and 2012/2013.

	2007/2008 Benchmark	2012/2013 Total Status	Remarks			
Technical personnel (Children officers)	160	385				
Support personnel	DNA	610				
AACs established and Registered	DNA	165	In every Sub-County with a children office			
CCIs registered.	117	646	Renewal of registration done every 3 years.			
DCS vehicles numbers	8	101	Includes GOK and Donor support for projects.			
DCS Motor cycles	DNA	52	Mainly for field outreach work.			
New Offices opened in Sub-counties and children office buildings constructed.	30	30	DCS Opens on average 20 Sub County offices every year and constructs on average 10 Children offices per year. (E.g. 19 New offices opened and 10 office buildings constructed in 2011/2012)			
Staff Training – Numbers trained (Major Trainings over 2 weeks duration).	2007/8 254	2008/9 129	2009/10 156	2010/11 122	2011/12 99	2012/13 137
County offices operational out of 47 counties	None	47	Deployment in line with Devolution to implement the constitution provisions of 2010.			
Sub-county offices operational out of 290 Sub-Counties.	Districts offices at the time.	165	There are 290 Sub-Counties and roll-out of new offices is ongoing based on resources and alignment of District Children offices.			

Source: Department of Children's Service

DNA stands for data not available or accessible at the time of preparation of the report.

Table 2: Budget Allocation for Department of Children's Services

	2007/08	2008/09	2009/10	2010/2011
Recurrent expenditure	563,682,019	1,037,163,562	1,324,348,055	1,379,890,455
Development expenditure	109,500,000	153,000,072	234,325,000	241,900,000
Total Expenditure	673,182,019	1,190,163,634	1,558,673,055	1,621,790,455
EXTERNAL RECEIPTS(Grants and Loans)	453,044,460	464,720,380	1,957,493,272	2,288,610,654
Grand total	1,126,226,479	1,654,884,014	3,516,166,327	3,910,401,109

Source: Department of Children's Services

II. DEFINITION OF THE CHILD -Article 2

Table 3: Number and proportion of children under 18 living in Kenya by sex

	2007		2008		2009		2010*	
	F	M	F	M	F	M	F	M
No of children under 18 yrs	8,632,147	9,158,576	8,891,112	9,433,333	9,157,845	9,716,333	9,432,580	10,007,823
Total	17,790,723		18,324,445		18,874,178		19,440,403	

Source: KNBS 2009 Population Census

* Projected estimate.

IV. GENERAL PRINCIPLES OF IMPLEMENTATION

Article 3: Survival and Development.

Table 4: Causes and Frequency of Death of Children and Youth in the Country (2011)

DEATHS BY SEX, AGE AND CAUSE OF DEATH												
MONTH JANUARY - DECEMBER 2011												
CAUSE OF DEATH	AGE		NATIONALS						TOTAL			
	SEX		under 1		1 - 4 YRS		5-14YRS		15-24YRS		TOTAL	
	M	F	M	F	M	F	M	F	M	F	M	F
DIARHOEA	129	132	83	97	69	35	31	39	312	303	615	
TUBERCULOSIS	75	63	108	81	185	124	396	502	764	770	1534	
CANCER	39	30	50	57	83	80	175	162	347	329	676	
MALARIA	2325	2011	2342	1998	1449	1188	773	865	6889	6062	12951	
MENINGITIS	271	232	143	155	211	180	208	275	833	842	1675	
TETENUS	28	25	18	19	56	24	29	33	131	101	232	
ASTHMA	47	47	66	41	77	79	88	61	278	228	506	
MEASLES	173	203	194	176	55	53	12	11	434	443	877	
PREMATURITY	1201	1088	32	33	8	7	5	4	1246	1132	2378	
MALNUTRITION	343	330	346	304	116	84	29	28	834	746	1580	
ANAEMIA	356	370	473	366	332	318	257	431	1418	1485	2903	
HEART DISEASE	182	149	91	80	108	93	156	189	537	511	1048	
PNEUMONIA	3437	3227	1324	1120	659	533	507	523	5927	5403	11330	
AIDS	76	75	106	87	129	147	250	587	561	896	1457	
ROAD TRFC. ACC.	18	9	48	39	184	128	495	244	745	420	1165	
OTHER ACCIDENTS	92	76	121	99	163	101	544	150	920	426	1346	
GASTRO ENTERITIS	286	246	124	99	51	74	46	82	507	501	1008	
ALCOHOLISM	2	4	1	4	6	3	34	24	43	35	78	
BRONCHITIS	62	69	20	25	13	16	20	32	115	142	257	
HEPATITIS	8	6	6	7	13	10	59	45	86	68	154	
CHEST PAIN	13	22	10	8	6	22	47	27	76	79	155	
DIABETES	11	5	8	9	12	13	29	43	60	70	130	
EMBOLISM	0	1	2	0	10	1	16	25	28	27	55	
EPILEPSY	2	1	5	4	35	28	85	52	127	85	212	
RENAL FAILURE	17	36	15	8	30	40	89	68	151	152	303	
HAEMORRHAGE	27	11	9	13	48	45	154	143	238	212	450	
HEADACHE	5	5	4	16	7	35	30	19	46	75	121	
LIVER CIRRHOSIS	7	8	6	7	18	19	36	37	67	71	138	
HYPERTENSION	8	7	7	3	11	9	33	51	59	70	129	
JAUNDICE	57	60	16	13	28	15	34	21	135	109	244	
KIDNEY PROBLEM	14	5	9	7	8	17	31	20	62	49	111	
ABORTION	1	1	1	1	0	10	7	63	9	75	84	
RESPIRATORY DISEASE	502	457	113	110	119	102	128	128	862	797	1659	
SEPSIS	672	597	56	51	28	17	33	97	789	762	1551	
DEHYDRATION	297	289	147	136	57	63	33	45	534	533	1067	
POISONING	15	20	38	22	28	29	158	65	239	136	375	
ASPHYXIA	660	565	60	47	51	27	90	52	861	691	1552	
PREGNANCY	49	37	3	2	2	25	17	183	71	247	318	
SEPTIC GROWTH	26	13	19	15	24	20	19	31	88	79	167	
SEPTICAMIA	54	51	27	28	27	29	21	54	129	162	291	
STOMACH ACHE	6	5	5	7	31	25	18	20	60	57	117	
STROKE	12	8	8	4	14	8	23	22	57	42	99	
SUDDEN DEATH	482	384	191	149	191	167	321	202	1185	902	2087	
TYPHOID	14	9	10	11	23	37	47	41	94	98	192	
URINARY OBSTRUCTION	14	7	14	15	11	11	18	21	57	54	111	
OTHER CAUSES	378	402	354	274	358	306	787	459	1877	1441	3318	
TOTAL	12,493	11,398	6,833	5,847	5,144	4,397	6,418	6,276	30,888	27,918	58,806	

Source: Department of Civil Registration

Article 7: Freedom of Expression and**Article 8: Freedom of Association****Table 5: Children Assemblies established in the Regions (2012)**

Regions	Number of Assemblies per Region	Membership
Nyanza	6	240
Western	4	160
Rift Valley	14	560
Nairobi	1	40
Central	5	200
Eastern	8	320
Coast	6	240
North Eastern	3	120
Total	47	1,880

Source: Department of Children's Services

Note: Every children assembly has a membership of 40 children equal number of girls and boys and also includes children with special needs. From the above statistic there is a children assembly in place in every county in the country and the government allocates a specific budget every year to Department for Children Services (DCS) for supporting the activities of children Assemblies.

IV. CIVIL RIGHTS AND FREEDOMS**Article 6: Birth Registration****Table 6: Percentage Coverage of Birth Registration in the country**

		2007	2008	2009	2010	2011
Children registered at birth.	Region /Province					
	Nairobi	76.4	85.4	85.6	86.8	93.3
	Coast	66.2	55.6	39.0	55.5	49.3
	North Eastern	24.6	25.3	25.3	20.2	21.8
	Eastern	45.0	47.4	38.9	55.5	39.1
	Central	74.6	72.6	63.7	69.0	58.0
	Western	40.9	43.3	34.5	45.9	26.2
	Nyanza	30.8	37.8	30.9	71.2	38.5
	Rift Valley	32.9	34.2	32.9	71.2	55.8
Total	44.9	46.7	51.5	55.1	52.6	

Source: Economic Survey, 2012, KNBS

Note: The year 2010 recorded a major increase as a result of a requirement by the Ministry of Education for all children to produce birth certificates during enrolment and before sitting for national examinations.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Article 20: Parental Responsibilities

Table 7: Number of services and programmes aimed at rendering appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.

		2007/08	2008/09	2009/10	2010/11
Program/Services	Number of Households/families	33,105	45,911	82,371	124,991
Beneficiaries	Number of OVC supported	115,868	160,689	288,299	437,469

Source: Department of Children's Services Cash Transfer Programme for Orphans and Vulnerable Children supported by GOK, World Bank, UNICEF and DFID

Table 8: Number of Children Separated from their Parents as Result of Court Decisions (inter alia, in relation to situations of detention, imprisonment, exile or deportation)

	2007/08	2008/09	2009/10	2010/11
Imprisonment (children accompanying mothers to prisons) ¹³	224	243	289	293
Negligence	37,082	33,622	46,463	49,057

Source: Department of Children's Services

Article 16: Protection from Abuse and Torture.

Table 9: Children in Statutory Institutions and Rescue Centres

	2007/8	2008/9	2009/10	2010/11
Number of children in the institutions of government.	91,309	251,399	205,457	251,522

Source: Department of Children's Services

Table 10: Abuse Cases reported through Child Helpline 116 between 2009 and 2012

Abuse Cases	2009	2010	2011	2012	Total
Child Abduction	0	0	45	55	100
Child Labour	470	314	497	646	1,927
Child Neglect	2,155	1,511	1,589	2,008	8,061
Child Prostitution	16	16	19	21	72
Child Trafficking	21	85	46	59	211
Early/Forced Marriage	224	163	219	302	908
Physical Abuse	769	748	1,251	1,609	4,377
Sexual Abuse	465	696	948	1,253	3,362
Female Genital Mutilation	14	30	92	19	154
Emotional Abuse	119	140	147	204	610

Source: DCS-Child Helpline/Childline

During the period the Helpline received and analysed calls for assistance by province and Rift valley had the highest at 84,393, Nairobi 53,492, Western 57,492, Eastern 43,189, Nyanza 44,218, Central 36,606, Coast 24,933 and North Eastern 24,582. The Helpline made attempts to provide counselling for some of these cases.

Table 11: Data on Violence against Children.

		2007/08	2008/09	2009/10	2010/11	Total
Number of children reported as victims of	Torture	DNA	30	42	38	110
	Forced marriage/early marriage	402	479	333	269	1,599

Source: Department of Children's Services

Table 12: Indicative figures on various forms of Violence against Children in Kenya

Nature of abuse on Children below 18 years of age , findings and facts	Males %	Females %
Children who reported at least one experience of sexual violence,	17.5	31.9
Children who have experienced forced sexual intercourse	1.4	7.1
Children who have unwillingly or been pressured , coerced or threatened to have sex	8.6	24.3
Children who have experienced physical violence (Slapped, pushed, punched, kicked, whipped, beaten with a weapon)	73.9	66.0
Children who have experienced emotional violence (humiliated, felt un-wanted, threatened with abandonment)	33.0	25.0
Children experiencing sexual violence who told someone about it such as friend or relative.	36.0	46.0
Children experiencing sexual violence who knew where to seek services	13.0	25.3
Children experiencing sexual violence who received services	0.4	3.0
Children who experienced physical violence who knew where to seek service	20.0	16.0
Children who experienced physical violence who received service	2.0	1.0
Children who did not seek service because they never thought physical violence was a problem	38.7	25.3
Children who did not service because they were afraid to get into more trouble	13.8	20.6
Children who knew where to seek services for emotional violence	27.0	24.0
Children who received services for emotional violence	8.0	3.0

Source: Violence against Children in Kenya: Findings from a 2010 National Survey/ GOK, UNICEF, CDC.

Table 13: Number of Child Care Institutions for Separated Children without Parents including Rescue Facilities and Foster Homes.

Number of institutions						
Year	CCI 's		Probation hostels	Remand home	Rehabilitation schools	Children rescue centers
	Total number of registered CCI's	Cumulative total of CCI's				
2011/12	110	646	6	12	9	4
2010/11	77	536	5	12	9	4
2009/10	112	459	5	12	9	4
2008/09	45	347	5	12	9	4
2007/08	117	302	5	12	9	4

Source: Department of Children's Services

Table 14: Rehabilitated Street Children/Youth

Details	2007	2008	2009	2010	Total
Placed in charitable institution	200	300	300	200	4,000
Back to primary school	105	298	265	395	1,200
Back to secondary school	19	23	36	31	120
Vocational skills training	600	160	200	240	3,500
Total	924	781	801	866	8,820

Source: Street Families Rehabilitation Trust Fund

Table 15: Number and percentage of children Separated from Parents living in Institutions or with Foster Families and Duration of Placement and Frequency of Review

		2007		2008		2009		2010	
		F	M	F	M	F	M	F	M
Number of children separated from their parents	Institutions								
	Remand homes	1,227	5,025	1,293	3,740	1,447	4,819	DNA	DNA
	CCI's ¹⁴	13,023	20,986	17,141	26,868	19,263	27,210	23,917	16,628
	Probation hostels	91	159	69	145	34	124	70	119
	Borstal institutions	0	651	0	774	0	709	0	678
	Rehabilitation school	382	2,137	335	1,412	446	3,580	DNA	DNA
	Children rescue centres ¹⁵	69	125	237	487	265	210	DNA	DNA
	Total	14,792	29,083	19,075	33,426	21,455	36,652	23,987	17,425

Source: Feed Back Probation Service

Note: Average duration of stay in institutions is 3 years and cases are reviewed annually.

Article 24: Adoption

Table 16: Number of Children in local and Inter-country Adoption Programmes

	2007	2008	2009	2010
Number of children in domestic adoption	69	94	136	145
Numbers of children in inter country adoption.	31	52	74	65
Total	100	146	210	210

Source: Department of Children's Services

VI. BASIC HEALTH AND WELFARE

Article 13 Children with Disability

¹⁴ Department of Children's Services

¹⁵ Department of Children's Services

Table 17: Population of Persons with Disabilities by Sex and Type of Disability in Kenya, 2009

TYPES	MALE	FEMALE	TOTAL	% FEMALE
Visual	153,783	177,811	331,594	53.6
Hearing	89,840	97,978	187,818	52.2
Speech	86,783	75,020	161,803	46.4
Physical/Self Care	198,071	215,627	413,698	52.1
Mental	75,139	60,954	136,093	44.8
Others	44,073	55,233	99,306	55.6
Total	647,689	682,623	1,330,312	51.3

Source: Kenya Population Census, 2009, Volume 2

Table 18: Population of Persons with Disabilities in Kenya by Province and Sex, 2009.

PROVINCE	MALE	FEMALE	TOTAL	% FEMALE
Nairobi	34,293	32,077	66,370	48.3
Central	54,625	60,338	114,963	52.5
Coast	49,313	49,435	98,748	50.1
Eastern	98,681	105,819	204,500	51.7
North Eastern	37,231	30,225	67,456	44.8
Nyanza	139,172	163,338	302,510	54.0
Rift Valley	132,168	131,343	263,591	49.8
Western	102,206	110,048	212,254	51.8
Total	647,689	682,623	1,330,312	51.3

Source: Kenya Population Census, 2009, Volume 2

Note: There is need to gather information specific on children with disabilities such as numbers and nature of disability; number of families receiving special material and assistance to care for their children with disabilities; and number of children with disability living in specialized care institutions.

Article 14: Health and Health Services.

Table 19: Health and health services

	2007		2008		2009		2010		2011
	F	M	F	M	F	M	F	M	
Rates of infant and under-five child mortality;	IMR 77/1000 U5MR 115/000		MR 52/1000 U5FM 74/1000		IMR 52/1000 U5FM 74/1000		IMR 52/1000 U5FM 74/1000 (KDHS does not desegregate male and female)		DNA
Proportion of children with moderate and severe underweight, wasting and stunting;	Children under 5 years who are underweight – 20%, Children under 5 years who are stunted – 30%, Children under 5 years who are wasted – 6%,		35% of U5 stunted 16% of children underweight 7% U5 wasted		35% of U5 stunted 16% of children underweight 7% U5 wasted		35% of U5 stunted 16% of children underweight 7% U5 wasted		DNA
	2007		2008		2009		2010		DNA

	F	M	F	M	DNA	M	F	M	
Percentage of households without access to hygienic sanitation facilities and access to safe drinking water;	access to drinking water Urban is 74% Rural is 32%		access improved water source Urban is 91% rural is 54%		access improved water source Urban is 91% rural is 54%		access improved water source Urban is 91% rural is 54%		DNA
Percentage of one-year-olds fully immunized for tuberculosis, diphtheria, pertussis, tetanus, polio and measles;	12 -23 months fully immunized - 60%		Children 12 -23 months fully immunized -77%		-		Children 12 -23 months fully immunized -77%		DNA
Rates of maternal mortality, including its main causes;	MMR 414/100,000 Main Causes: Haemorrhage, Eclampsia, Sepsis		MMR 488/100,000 Associated with: pregnancy Main Causes: Haemorrhage, Eclampsia, Sepsis childbearing		MMR 488/100,000 Main Causes: Haemorrhage, Eclampsia, Sepsis		MMR 488/100,000 Main Causes: Haemorrhage, Eclampsia, Sepsis		DNA
	2007		2008		2009		2010		DNA
	F	M	F	M	DNA	M	F	M	
Proportion of pregnant women who have access to, and benefit from, prenatal and post-natal health care;	90% of mothers received professional ANC (18 percent from a doctor, 70 percent from a nurse or midwife). Professional assisted births – 42% HF delivery-40%		92% of mothers received professional ANC. Professional assisted births – 44%		92% of mothers received professional ANC. Professional assisted births – 44%		92% of mothers received professional ANC. Professional assisted births – 44%		DNA
Proportion of children born in hospitals;	Health facility Delivery 40%		Health Facility delivery-43%		Health Facility delivery-43%		Health Facility delivery-43%		DNA
Proportion of personnel trained in hospital care and delivery;			100% (all nurses are trained in midwifery before leaving college)		100% (all nurses are trained in midwifery before leaving college)		100% (all nurses are trained in midwifery before leaving college)		DNA
Proportion of mothers who practice exclusive breastfeeding and for how long.	13% of children< 6 months exclusively breastfed		32% of children <6 months exclusively breastfed		32% of children < 6 months exclusively breastfed		32% of children< 6 months exclusively breastfed		DNA

Source: Ministry of Public Health and Sanitation and KDHS 2003 and 2008/09- DNA 2011 information to be available soon after KDHS study currently ongoing

Table 20: HIV and AIDS

	2007		2008		2009		2010		2011		
	F	M	F	M	F	M	F	M	F	M	
Children infected by HIV and AIDS ¹⁶ ;	Number	123,183	125,070	121,143	122,971	118,388	120,155	114,138	115,815	107,655	109,199
	Total Infected	248,253		244,114		238,543		229,953		216,854	
Number of children on ARV ¹⁷	6,737	6,839	9,634	9,775	12,577	12,759	16,591	16,826	48,000		
Orphans due to HIV and AIDS ¹⁸	1,192,999		1,181,459		1,152,016		1,106,331		DNA		

Source: National Aids Control Council

Note: The number of children infected by HIV decreased during the period due to increased services of Prevention of Mother to Child Transmission (PMTCT) services. The number of children on ARV's is increased due to availability and affordability of paediatric ARV treatment. HIV and AIDS initiatives and treatment is 80% Donor dependent and externally supported which is a concern for sustainability of the on-going initiatives.

Adolescent Health

Table 21: Indicative Data on Teenage Pregnancy Based on Selected Sample Populations

Percentage of women age 15-19 who have had a live birth or who are pregnant with their first child and percentage who have begun childbearing, by background characteristics, KDHS 2008-09				
Background Characteristic	Percentage who:			No. of women
	Have had a live birth	Are pregnant with first child	Have begun child-bearing	
Age				
15	1.0	1.1	2.1	317
16	8.2	1.3	9.4	437
17	13.0	3.4	16.5	332
18	21.6	4.6	26.2	353
19	30.0	6.2	36.2	321
Residence				
Urban	16.1	2.3	18.5	329
Rural	14.1	3.4	17.5	1,431
Education				
No education	26.4	5.7	32.1	71
Primary incomplete	15.9	3.2	19.1	725
Primary complete	17.3	5.9	23.3	403
Secondary+	9.0	0.9	10.0	561
Wealth quintile				
Lowest	18.9	4.8	23.7	322
Second	14.4	3.5	17.9	363
Middle	9.9	3.7	13.6	387
Fourth	16.5	1.1	17.6	369
Highest	13.2	3.2	16.4	319
Total	14.5	3.2	17.7	1,760

Source: KDHS 2008/09

¹⁶ NACC Spectrum Estimates 2010

¹⁷ NASCOP

¹⁸ NACC Spectrum Estimates 2010

Table 22: Number of Health Institutions by Province 2007-2011¹⁹

Province	2007	2008	2009	2010	2011
Nairobi	347	387	406	423	505
Central	556	1,199	1,251	1,345	1,413
Coast	717	723	770	754	852
Eastern	1,079	942	1,106	1,256	1,441
North Eastern	164	198	232	264	278
Nyanza	761	716	773	745	932
Rift Valley	1,573	1,648	1,732	1,867	2,076
Western	392	377	426	457	509
Total	5,589	6,190	6,696	7,111	8,006

Source: Economic Survey 2012, KNBS

Note:

These health institutions are categorized as hospitals, health centers, dispensaries, maternity and nursing homes and clinics with most being health centers, dispensaries and clinics which offer services close to where the people live at community level. The health institutions in the country are managed and run by public and private institutions mainly the Ministry of Health (about 50%) and the others by FBOs, NGOs, Private Medical practitioners and other public institutions.

The number of health institutions increased from 5,589 in 2007 to 8,006 in 2011 an increase of 43.2% due to construction of public health facilities using devolved funds and Economic Stimulus Package in 2008. However, of concern is that some of the newly constructed facilities at community level lack health personnel and are not functional.

The distribution of health facilities in Kenya is still major concern in some remote areas despite the government's stated aim of taking health facilities closer to the communities. The health policy framework supports and encourages other health providers to set up health facilities in underserved and especially in such rural and remote areas and also to avoid building them too close together or where others exist operated by different stakeholders and health providers.

Table 23: Immunization /Vaccination Coverage % of Children aged 12-23 Months by Background Characteristics 2008-09

Background characteristic	BCG	DPT 1	DPT 2	DPT 3	Polio 0	Polio 1	Polio 2	Polio 3	Measles	All	Lack /Zero vaccinations	% with a vaccination card seen
Sex												
Male	95	95	91.	83	58	96	93	85	84	75	4	69
Female	97	97	95	90	60	97	95	90	86	80	2	72
Residence												
Urban	96	97	95	88	62	97	96	89	90	81	2	55
Rural	95	96	93	86	59	96	94	87	83	76	4	75
Province												
Nairobi	94	95	89	82	65	95	90	83	88	73	4	42
Central	91	93	93	92	74	93	93	92	88	86	7	76
Coast	97	97	95	87	51	97	95	87	85	76	3	78
Eastern	98	97	96	92	76	97	97	92	89	84	3	87
Nyanza	93	94	88	77	55	95	91	81	78	65	4	62
Rift valley	99	99	97	93	63	99	97	93	89	85	1	69
Western	93	94	90	82	38	96	94	84	78	73	4	75
North Eastern	85	86	74	57	31	87	75	66	79	48	13	48

Source KNBS, KDHS 2008-09

Note:

Polio 0 is the polio vaccination given at birth. "All" means all the following antigens; BCG, measles and three doses each of DPT and polio vaccine (excluding the polio vaccine given at birth.) The proportion of children aged 12-23 months who are fully immunized increased from 56.8% in 2003 to 77.4% in 2008/09.

The proportion of children who have never received any of the recommended vaccinations reduced from 7.4% in 2003 to 3.2% in 2008/09 The proportion of children who are immunized against measles from 12-23 months rose from 73. % to 85. % from 2003 to 2008/09. The highest

¹⁹ Economic Survey 2012, KNBS, Pg 55

proportion of children fully vaccinated was in Central province (86%) followed by Rift Valley (85%). Nyanza and North Eastern have the lowest proportion of children fully vaccinated with figures of 65% and 48.3% respectively. This differential is due to different challenges faced by provinces in accessing health services. However, there has been an increase in the proportion of children in North Eastern province who are fully immunized from 8.8% in 2003 to 48.3% in 2008/09. There is no significant difference between immunization coverage for boys and girls in 2008/09 (75.3% and 79.5% respectively).

Table 24: Full Immunization Coverage (FIC) Rate for Children under One Year by Province 2007-2011²⁰

Province	2007		2008		2009		2010		2011	
	No.	%	No.	%	No.	%	No.	%	No.	%
Nairobi	82,176	78	85,866	74	78,294	83	100,813	96	101,055	99
Central	104,878	85	104,194	86	101,419	92	113,729	96	99,213	86
Coast	94,340	78	90,773	75	81,761	71	103,914	87	97,781	80
Eastern	151,324	78	126,302	64	128,887	80	135,593	83	151,459	91
North Eastern	29,593	81	33,454	89	30,080	67	31,213	64	44,142	76
Nyanza	135,194	66	149,465	75	158,206	79	161,212	79	158,570	76
Rift Valley	251,319	70	228,243	64	240,943	71	254,228	72	261,478	71
Western	129,593	68	129,308	66	132,622	85	143,419	90	136,609	84
National coverage	978,417	73	947,605	71	952,212	78	1,044,121	83	1,050,307	80

Source: Economic Survey 2011, KNBS and Economic Survey 2012.

Table 25: Breastfeeding Status by Age²¹

Percent distribution of youngest children under three years who are living with their mother by breastfeeding status and the percentage currently breastfeeding and the age percentage of all children under three years using a bottle with a nipple according to age in 2008-09											
Breastfeeding and consuming							Total	Percentage currently breastfeeding	Number of youngest child under three years	Percentage using a bottle with a nipple	Number of children
Age in months	Not breastfeeding	Exclusively breastfed	Plain water only	Non-milk, liquids/juice	Other milk	Complementary foods					
0-1	1.1	51.8	22.7	3.7	10.5	10.2	100.0	98.9	159	17.1	161
2-3	0.9	34.8	12.3	0.1	20.4	31.5	100.0	99.1	173	21.5	174
4-5	0.7	13.2	10.4	0.3	15.6	59.9	100.0	99.3	195	33.1	200
6-8	1.2	3.6	3.5	0.0	7.9	83.9	100.0	98.8	324	28.9	327
9-11	6.6	0.1	0.6	1.0	6.2	85.5	100.0	93.4	272	26.1	279
12-17	16.0	0.0	0.8	0.5	1.3	81.4	100.0	84.0	514	14.7	530
18-23	40.7	0.4	0.4	0.1	0.5	57.9	100.0	59.3	501	8.8	566
24-35	77.9	0.0	0.2	0.0	1.0	20.9	100.0	22.1	765	5.9	1,132
0-3	1.0	42.9	17.3	1.8	15.7	21.3	100.0	99.0	332	19.4	335
0-5	0.9	31.9	14.7	1.2	15.6	35.6	100.0	99.1	527	24.5	535
6-9	2.0	27.8	2.9	0.4	9.0	82.8	100.0	98.0	416	29.9	419
12-15	14.0	0.0	1.0	0.6	1.6	82.7	100.0	86.0	333	16.9	341
12-23	28.2	0.2	0.6	0.3	0.9	69.8	100.0	71.8	1,015	11.6	1,096
20-23	46.4	0.6	0.4	0.1	0.3	52.3	100.0	53.6	320	6.7	366

Source: KDHS 2008/09

²⁰ Economic Survey 2011, and Economic survey 2012, KNBS

²¹ KDHS 2009 Pg 149

Table 26: Trends in Access to safe drinking water (%)

	2000	2003	2005/2006	2007	2009	2015
Safe drinking water						
Urban	89.7	83.2	82.8	91.6	91.0	96*
Rural	43.5	50.6	50.1	51.9	53.1	76*
Kenyan population (millions)	30.2*	32.1*	33.4*	35.6*	40*	42*

Source: Millennium Development Report; Status Report for Kenya 2009

Figures with asterisks are estimates

Table 27: Trends in safe sanitation (%)

	2000	2005/2006	2015
Urban	94.8	95.3	98*
Improved sanitation: Rural	76.6	80.4	88*

Source: Millennium Development Report; Status Report for Kenya 2009

Figures with asterisks are estimates

Table 28: Trends in Child Nutrition Status by Province 1998-2009

REGION	Percent underweight (<2SD)			Percent stunting (<2SD)		
	1998	2003	2008/09	1998	2003	2008/09
Nairobi	11.4	6.3	10.0	25.7	18.7	22.7
Central	14.3	14.6	16/7	27.5	27.0	25.7
Coast	27.4	25.4	28.5	39.1	34.9	34.0
Eastern	25.7	21.4	25.2	36.8	32.7	32.8
North eastern	DNA	DNA	31.1	DNA	DNA	31.1
Nyanza	22.2	15.6	13.7	30.8	31.1	26.9
Rift Valley	24.9	24.0	23.7	33.1	32.0	30.9
Western	19.1	19.0	14.8	35.0	30.2	28.4
Total rural	23.9	20.6	21.8	34.7	32.0	31.2
Total urban	13.3	4.7	12.6	24.7	23.5	21.6
Total nation	22.1	19.1	20.3	33.0	30.6	29.6

Source KDHS 1998, 2003, 2008-09

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES INCLUDING VOCATIONAL TRAINING (article.28)

Article 11: Right to Education.

Table 29: 2007-2012 Recurrent Budgetary Expenditure to Ministry of Education in Millions²²

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
General administration and planning	78,338.92	81,841.73	91,520.23	103,875.5	117,408.8
Pre-primary education	28.90	182.43	198.24	397.4	383.8
Primary	7,871.04	7,298.79	8,480.48	9,861.7	9,903.8
Secondary	8,009.71	14,622.35	15,380.43	17,840.5	19,109.1
Special education	441.07	506.33	279.3	551.4	444.2
Teacher education	187.69	210.63	210.00	197.1	215.2
Adult education	554.01	739.79	613.59	956.6	1,047.3
Quality assurance and standards	149.37	171.07	209.63	253.2	270.0
Policy and planning	164.96	161.40	177.93	182.0	253.0
TOTAL	95,745.67	105,734.52	116,877.71	134,111.4	149,035.2

Source: Economic Survey 2010, KNBS

²² Economic Survey 2010, KNBS, Pg 43

Note: The government has continued to increase its budgetary expenditure for Education as illustrated below

Table 30: Development budgetary expenditure to Ministry of Education in millions²³

	2007/2008	2008/2009	2009/2010	2010/2011 ²⁴	2011/2012
General Admin & Planning	471.84	626.59	9,987.79	4,219.4	4,234.3
Pre-primary education	DNA	23.46	50.08	52.1	25.5
Primary	5,453.51	7,284.67	1,844.24	2,524.8	1,603.7
Secondary	165.00	750.19	823.76	2,876.8	1,020.8
Special education	DNA	DNA	DNA	DNA	10.0
Teacher education	19.00	180.00	50.00	99.4	93.2
Adult education	DNA	5.77	20.00	20.0	268.0
Quality A & Standards	DNA	DNA	57.9	94.6	187.3
Policy and planning	2,985.56	150.45	134.49	26.7	187.0
TOTAL	9,094.91	9,021.13	13,049.24	9,913.8	7,829.8

Source: Economic Survey 2010, Kenya National Bureau of Statistics

Table 31: Pre-Primary Enrolment, Schools and Number of ECDE Teachers 2007 -2012.

Enrolment	2007	2008	2009	2010	2011
Boys	876,163	885,320	967,544	1,100,890	1,175,530
Girls	814,930	834,925	946,678	1,092,181	1,194,518
TOTAL	1,691,093	1,720,245	1,914,222	2,193,071	2,370,049
Pre Primary Schools	37,263	37,954	38,247	38,523	39,500
ECDE Teachers	76,324	78,230	92,955	94,429	97,146

Source: Ministry of Education, / Economic survey 2012.

Table 32: Enrolment of Pre-school Orphans in 2009.

	Number of Orphans			% of enrolled
	Total	Male	Female	
TOTAL	166,464	85,857	80,607	7.4
Residence				
Rural	120,954	62,827	58,127	7.0
Urban	45,510	23,030	22,480	8.9
Province				
Nairobi	7,514	3,660	3,854	4.8
Central	16,574	8,529	8,045	7.5
Coast	14,959	7,790	7,169	6.0
Eastern	18,154	9,534	8,620	7.0
North Eastern	1,355	681	674	5.6
Nyanza	54,384	27,840	26,544	12.8
Rift Valley	37,369	19,523	17,846	5.8
Western	16,155	8,300	7,855	5.9

Source: Analysis of 2009 census data

²³ Economic Survey 2010, KNBS, Pg 43

²⁴ Economic Survey 2011, KNBS, Pg 41

Table 33: Primary School Enrolment by Standard and Sex (in Thousands)

Standard and sex	2007		2008		2009		2010		2011	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Standard 1	667.9	644.2	663.9	652.2	670.9	655.7	736.7	731.8	754.5	749.4
Standard 2	622.4	593.9	632.7	595.8	651.8	638.1	679.9	656.1	691.1	688.8
Standard 3	603.7	584.6	596.4	584.2	624.8	588.2	643.3	607.5	665.1	647.0
Standard 4	552.8	541.0	591.4	580.0	586.4	563.3	633.0	608.8	674.1	648.4
Standard 5	519.0	480.2	543.0	539.0	577.4	558.6	582.8	584.8	620.7	622.9
Standard 6	464.0	444.4	510.1	469.4	523.6	511.5	558.0	562.1	594.3	588.7
Standard 7	420.9	410.1	458.2	445.7	497.5	456.6	531.3	523.4	565.8	557.4
Standard 8	372.1	332.7	366.8	335.1	377.1	350.0	386.8	354.7	411.9	377.7
TOTAL	4,222.8	4,031.0	4,362.5	4,201.3	4,509.4	4,322.0	4,751.9	4,629.3	4,977.7	4,880.2
GRAND TOTAL	8,253.8		8,563.8		8,831.4		9,381.2		9,857.9	

Source: Economic Survey, 2012, KNBS

Table 34: Non-Formal Schools Enrolment by Sex 2007-2011

Year	2007	2008	2009	2010	2011
Boys	59,830	65,824	76,324	81,024	85,441
Girls	58,555	77,585	87,016	88,567	85,441
TOTAL	121,385	143,409	163,340	169,591	177,837

Source: Economic Survey 2012, KNBS.

Note:

Enrolment in NFE education is mostly in Nairobi slum areas and the ASAL regions.

A majority of Non Formal schools offer the formal Primary School Curriculum and in some areas integrate (Islamic/Koran) education.

Table 35: Primary School Gross Enrolment Rate (GER) and Net Enrolment Rate (NER)

Year	2007	2008	2009	2010	2011
GER %	108.9	109.8	110.0	109.8	115.0
NER%	91.6	92.5	92.9	91.4	95.7

Source: Economic Survey 2012, KNBS

Table 36: Primary School Pupil Completion Rate and Transition Rate from Primary to Secondary school in Percentages

Year	2007	2008	2009	2010	2011
Primary School completion Rate %	81.0	79.8	83.2	76.8	74.6
Primary to Secondary School Transition %	59.9	64.1	66.9	72.5	73.3

Source: Economic Survey 2012, KNBS

Note:

The transition rate from primary to secondary school has been steadily improved from 56.0% in 2004-2005 to 73.3% in 2011-2012. This can be attributed to Free Primary Education and Free Tuition Day Secondary Education implemented by the Government, more secondary schools constructed and more classrooms in secondary schools constructed using stimulus funds and devolved funds to upgrade and expand existing secondary schools.

Table 37: Number of Public Primary School Teachers (sex disaggregated)

	2007			2008			2009			2010			2011		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
Trained teachers	93,056	78,587	171,643	91,758	78,301	170,059	92,374	78,927	171,301	90,186	83,202	173,388	90,624	83,643	174,267
Untrained teachers	1,208	306	1,514	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA
Grand total	94,264	78,893	173,157	91,758	78,301	170,059	92,374	78,927	171,301	90,186	83,202	173,388	90,624	83,643	174,267

Source: Economic Survey, 2012, KNBS

Note:

Schools without adequate teachers sometimes employ PTA teachers and their numbers are not captured in the statistics. There has also been recent employment of teachers and figures may change slightly with additional numbers for the years 2009-2011.

Table 38: Public Primary Schools- Pupils Teacher Ratio (PTR), 2007-2011²⁵

Province	2007	2008	2009	2010	2011
Total	44	45	45	45.09	41.1

Source: Ministry of Education, Education facts and figures 2002-2008, EMIS and 2009-2011 cumulative data from Teacher Service Commission(TSC).

Note:

North Eastern Province recorded the highest Pupil -Teacher ratios throughout the period (2005-2008). Coast and Western provinces recorded Pupil-Teacher ratios of over 50 and Central and Eastern provinces recorded Pupil-Teacher ratios of between 38 and 43 during the period. PTR-For 2011 reduced drastically after the government employed contract teachers to supplement TSC teachers. In that year there were 174,422 TSC teachers on duty and 14,731 contract teachers making a total of 189,153 teachers against an establishment requirement of 223,177 in 2011 for a population of 7,787,192(3,958,221 boys and 3,828, 971 girls) pupils enrolled in the public primary schools in Kenya in 18,751 primary schools in 217,773 classrooms.(90,182 male and 84,240 female Teachers under TSC employment 2011).

Table 39: Enrolment in Secondary Schools by Form and Sex 2007-2011

Form	2007		2008		2009		2010		2011	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Form 1	170,650	143,045	207,212	180,461	232,854	212,467	266,707	232,226	276,965	244,636
Form 2	173,165	149,840	196,500	163,164	202,045	175,098	232,145	211,799	240,552	219,469
Form 3	157,572	134,793	181,775	155,798	190,987	156,785	216,786	181,823	224,637	188,408
Form 4	137,304	113,899	161,026	136,275	182,764	154,546	199,333	160,682	206,552	166,501
TOTAL	638,690	541,577	746,513	635,698	808,650	698,896	914,971	786,530	948,786	819,014
GRAND TOTAL	1,180,267		1,382,211		1,507,546		1,701,501		1,767,720	

Source: Economic Survey, 2012, KNBS

Note:

There has been a steady increase in enrolment over the period attributed to implementation of Free Day Secondary Education (FDSE) in 2008 whose objective is in line with the policy of having 12 years basic education as well as meeting the new constitutional provision of providing rights of education to all the citizens

Table 40: Number of Public Secondary Schools Teachers by Sex, 2007-2011

	2007			2008			2009			2010			2011		
	M	F	Total	M	M	F	Total	F	Total	M	F	Total	M	F	Total
Trained Teachers	28,357	15,719	44,076	27,716	33,126	19,809	52,935	15,151	42,867	29,794	18,164	47,958	35,245	21,317	56,562
Untrained Teachers	187	42	229	122	96	16	112	27	149	107	22	129	158	15	173
Grand Total	28,544	15,761	44,305	27,838	33,222	19,825	53,047	15,178	43,016	29,901	18,186	48,087	35,403	21,332	56,735

²⁵ Ministry of Education, Education facts and figures 2002-2008, EMIS, Pg 15

Note: Recruitment of contract teachers took place during the period and 4,200 contract teachers were recruited in 2010. Graduate contract teachers form the bulk of the secondary school teachers at about 90%. The Teachers Service Commission has continued to encourage teachers to pursue higher education. Nearly all FDSE institutions and some boarding schools do periodically employ temporary PTA teachers to cope with teacher deficits.

Table 41: Enrolment in Technical Industrial Vocational and Entrepreneurship Training (TIVET), 2007-2011

Institution	2007		2008		2009		2010		2011	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
National polytechnics	13,189	8,095	13,822	9,098	9,743	6,224	4,225	2,774	11,040	9,387
Technical training institutes	10,818	9,517	12,132	9,876	12,908	9,970	12,514	9,923	16,719	13,255
Institutes of technology	5,407	4,473	5,807	4,768	6,035	4,858	5,920	4,813	10,179	8,607
Youth polytechnics	9,528	15,489	12,154	17,543	14,384	18,720	13,222	18,122	15,648	19,338
Total	38,942	37,574	43,915	41,285	43,070	39,772	35,881	35,632	53,586	19,338
Grand total	76,516		85,200		71,513		82,842		104,173	

Source: Economic Survey 2012, KNBS.

Note: Some of the TIVET institutions, such as Mombasa Polytechnic, are being upgraded to universities so reducing opportunities for TIVET.

Table 42: Enrolment in Special Needs Education Institutions by category 2007-2010²⁶

Category	2007			2008			2009			2010		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
Special primary	19,562	15,649	35,211	20,654	16,548	37,202	DNA	DNA	DNA	DNA	DNA	46,186
Special secondary	5,571	4,457	10,028	5,654	5,015	10,669	DNA	DNA	DNA	DNA	DNA	15,366
Special Technical /Vocational	1,468	1,182	2,650	1,524	1,521	3,045	DNA	DNA	DNA	DNA	DNA	4,136
Primary School/Integrated	66,614	93,258	207,761	105,566	116,429	221,995	DNA	DNA	DNA	DNA	DNA	259,000
Total	93,215	114,546	255,650	133,398	139,513	272,911	DNA	DNA	DNA	DNA	DNA	324,688

Source: MOE-Special Needs unit.

Table 43: Population Enrolled in Youth Polytechnic by Sex and Residence 2009²⁷

Province	Total	Male	Female	% of enrollment
Kenya	34,757	18,910	15,847	100.0
Residence				
Rural	24,029	13,028	11,001	69.1
Urban	10,728	5,882	4,846	30.9

Source: KNBS 2009 Population Census

Table 44: Population of Enrolled in University Education by Sex

Category of University	2007/08		2008/09		2009/10		2010/11		2011 /12	
	Male	Female	M	F	M	F	M	F	M	F
Public	60,504	36,603	62,753	37,896	89,611	52,945	85,931	53,389	94,358	63,558
Private	10,271	10,861	10,790	11,408	20,717	14,462	21,793	16,055	23,342	17,002
Total	118,239		122,847		177,735		177,618		198,260	

Source: Economic Survey 2012, KNBS /Commission for Higher Education.

²⁶ Ministry of Education, Education facts and figures 2002-2008, EMIS, Pg 13

²⁷ Analysis of Census 2009

Table 45: Number of Educational Institutions 2007-2011

Category		2007	2008	2009	2010 ²⁸	2011
Pre-primary	Public	23,100	23,783	23,823	23,980	24,588
	Private	14,163	14,171	14,424	14,543	14,912
	Total	37,263	37,954	38,247	38,523	39,500
Primary	Public	18,063	18,130	18,543	19,059	19,848
	Private	8,041	8,076	8,124	8,430	8,719
	Total	26,104	26,206	26,667	27,489	28,567
Secondary	Public	4,245	4,454	5,019	5,296	5,311
	Private	2,240	2,112	1,952	2,012	1,986
	Total	6,485	6,566	6,971	7,308	7,297
Teacher training colleges	Pre- Primary	33	34	71	121	122
	Primary	33	96	105	110	112
	Secondary	3	2	3	3	3
TIVET Institutions	Youth polytechnics	574	576	579	582	585
	Institutes of Technology	22	23	17	14	14
	Technical Training Institutes	23	24	19	26	26
	National polytechnics	4	4	2	2	2
	Polytechnic University Colleges	DNA	DNA	2	2	2
Universities	Public	7	7	7	7	7
	Private	21	21	24	25	27
	Total	28	28	31	32	34

Source: Economic Survey, 2012, KNBS/ Ministry of Education and Ministry of Youth Affairs

Note:

The number of educational institutions rose from 65,487 in 2005 to 76,264 in 2011. There was marginal rise in the total number of pre-primary institutions from 34,043 in 2005 to 39,500 in 2011. The number of primary schools increased from 25,353 in 2005 to 28,567 in 2011 with most of the new schools attributed to public infrastructure construction using devolved funds and economic stimulus support. The number of teacher training colleges for pre-primary, primary and secondary education increased from 69 in 2007 to 237 in 2010. The total number of TIVET institutions increased from 592 in 2005 to 629 in 2011.

Table 46: Number of Special Needs Education Institutions by category 2003-2010²⁹

Category 2011	2003	2008	2009	2010	2011
Primary special schools	97	109	143	145	145
SNE-Units/Integrated	1,100	1,340	1,574	1,680	1,970
Secondary special schools	7	7	8	8	8
Vocational/technical	5	5	6	6	6
Integrated Teachers Training Colleges	DNA	DNA	3	3	3
Total	1,209	1,461	1,734	1,842	2,132

Source: Ministry of Education, Education facts and figures 2002-2008, EMI

VIII. SPECIAL PROTECTION MEASURES**Article 23: Refugee Children****Table 47: Refugee Children**

	2007		2008		2009		2010	
	F	M	F	M	F	M	F	M
Total number of refugee children living in Kenya	55,425	63,045	71,680	79,843	85,526	93,279	75,180	82,274
Total number of asylum seekers in Kenya	971	1,096	1,624	1,937	3,669	4,059	29,237	31,995

Source: UNHCR, ASR 2005-2009

²⁸ Economic Survey, 2011, KNBS, Pg 421e3

²⁹ Ministry of Education, Education facts and figures 2002-2008, EMIS, Pg 12

Table 48: Refugee Children other Relevant Information

		2007		2008		2009		2010	
		F	M	F	M	F	M	F	M
Number and percentage of such children attending school and covered by health services	Dadaab camp school enrollment ³⁰	14,268	22,589	15,117	24,827	17,596	27,956	16,944	27,127
	Percentage in school –Dadaab camp	37.2%	53.6%	27.3%	40.2%	27.2%	39.6%	29.4%	42.6%
	Kakuma camp	5,920	12,928	DNA	DNA	DNA	6	DNA	DNA

Source: UNHCR, ASR 2005-2010

ARTICLE 23 (Cont.) INTERNALLY DISPLACED CHILDREN

Table 49: Number of Internally Displaced Children, Unaccompanied Children and Children Re-united with their Families

	2006/07		2007/08		2008/09		2009/10		2010/11	
	F	M	F	M	F	M	F	M	F	M
Number of internally displaced children	12		2,127		4,478		32		5	
Number of unaccompanied children	3		8		50		39		22	
Number of children reunited with their parents.	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA
Total	15		2,135		4,528		71		27	

Source Department of Children's Services

Article 22 Children in Armed Conflict.

Table 50: Children Affected and or Involved in Armed Conflicts.

	2007	2008	2009	2010	2011
Number of persons under 18 recruited or enlist voluntarily in the armed forces (police and the army)	N/A	N/A	N/A	N/A	N/A
Number of persons under age of 18 participating in hostility;	DNA	DNA	DNA	DNA	DNA
Number of children demobilized and reintegrated into their communities; with the proportion of those who have returned to school and been reunified with their families	DNA	DNA	DNA	DNA	DNA
Number and percentage of child casualties due to armed conflict	DNA	DNA	DNA	DNA	DNA
Number of children who receive humanitarian assistance	DNA	DNA	DNA	DNA	DNA
Number of children who receive medical and/or psychological treatment as a consequence of armed conflict	DNA	DNA	DNA	DNA	DNA

Source: Ministry of State for Special Programs.

Note: The Kenyan constitution and the law does not allow for children to be recruited into the armed forces. There is need to compile data on affected children and casualties in areas of conflict including minor skirmishes as this information is currently lacking.

³⁰ The numbers are based on statistics provided by CARE on number of children in school and total number out of school for 2005-2010 (UNHCR)

Article 17: The Administration of Juvenile Justice.

Table 51: Administration of Juvenile Justice-Police.

	2007		2008		2009		2010		2011	
	F	M	F	M	F	M	F	M		
Number of persons under 18 who have been arrested by the police.	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA
Percentage where legal or other assistance has been provided;	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA	DNA
Persons under 18 who have been found guilty of an offence by a court.	311	1,435	281	1,251	255	1,134	246	1,198	DNA	DNA

Source: Feedback Probation Service

Table 52: Children Deprived of their Liberty, Including Any Form of Detention, Imprisonment or Placement in Custodial Settings.

	2007	2008	2009	2010	2011
Number of institutions specifically for persons under 18 alleged to, or accused as having infringed the penal law;	21	21	21	21	DNA
Number of persons under 18 in these institutions and average length of stay;	Number	7,576	8,771	6,780	DNA
	Length of stay	3 years	3 years	3 years	DNA

Source: Department of Children's Services

Article 15: Child Labour.

Table 53: Distribution of Working Children by Occupation .

Occupation	Boys			Girls			Total
	5-9	10-14	5-17	5-9	10-14	15-17	
Middle level managers	DNA	DNA	978	DNA	DNA	920	1,898
Service workers, shop and market sales workers	DNA	1,729	7,854	301	2,933	15,989	28,806
Skilled farm, fishery, wildlife and related worker	63,590	138,032	151,061	53,314	122,977	137,159	666,133
Craft and related trades workers	DNA	626	17,269	DNA	2,282	5,124	25,301
Elementary occupations	24,072	46,825	71,001	11,165	42,021	68,392	263,476
Not specified occupations	2,252	3,129	3,797	2,847	4,739	2,013	18,777
Total	89,914	190,341	251,960	67,627	174,952	229,597	1,004,391

Source: Kenya Integrated Household Budget Survey 2005/2006, Child labour, analytical report, KNBS and ILO/IPEC

Note: A total number of 666,133 children were found working in skilled farming, fishery, wildlife and related occupations.

Table 54: Distribution of children by Schooling and Work Status -2005-2006³¹

	Schooling			Out of school			
	Working and in school	In school Not working	Total	Working	Not working	Not stated	Total
Sex							
Boys	276,819	5,294,688	5,571,507	257,311	481,750	39,493	778,554
Girls	215,047	5,281,998	5,497,045	255,492	532,468	90,898	878,858
Total	491,866	10,576,686	11,068,552	512,803	1,014,218	130,391	1,657,412
Rural/urban							
Rural	469,519	8,341,251	8,810,770	433,071	830,119	99,360	1,362,550
Urban	22,347	2,235,435	2,257,782	79,732	184,099	31,031	294,862
Total	491,866	10,576,686	11,068,552	512,803	1,014,218	130,391	1,657,412
Broad age groups							
5-9	104,343	4,433,763	4,538,107	54,935	650,592	44,100	749,627
10-14	234,577	4,105,608	4,340,184	131,611	137,219	34,469	303,299
15-17	152,946	2,037,315	2,190,261	326,527	226,407	51,822	604,486
Total	491,866	10,576,686	11,068,552	512,803	1,014,218	130,391	1,657,412

Source: Kenya Integrated Household Budget Survey 2005/2006, Child labour, analytical report, KNBS and ILO/IPEC

Note:

From the Kenya Demographic and Health Survey (KDHS) of the total population of 12.8 million children, about 11.1 million were in school while about 1.7 million were out of school.

Out of 11,068,552 children in school 491,866 were working while in school of the 1,657,412 children out of school, 512,803 were working. Rift Valley province has the highest number of children in school and working (128,589) while North Eastern had the lowest number of children working while in school. Rift Valley Province recorded the highest number of children out of school and working (204,295)

Article 28: Drug Abuse.

Table 55: Budgetary Allocation for NACADA by GOK.

Year	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Amount Ksh.	60,000,000	210,000,000	210,000,000	310,000,000	330,000,000

Source: NACADA during validation.

Table 56: Report from NACADAA on Drug and Substance Abuse a summary.

	2006-2007	2010-2011
The percentages of child victims of substance abuse	NACADAA 2007 Situational Analysis 60% of drug users are 10-19 years, Median age of packaged alcohol use – 11 years, 50% of 10-14 years have used bhanga or cigarettes or 13% substances	52.5% of children use inhalants 20% use glue mixed with petroleum (NACADAA, March 2011- Research workshop)
The percentages of children receiving treatment, assistance and recovery services.	Sought treatment by use type; Heroin – 28% Cocaine -12%, Bhanga – 14%, Cigarettes – 10%	DNA

Source: NACADA

Article 27: Child Sexual Exploitation.

³¹ Kenya Integrated Household Budget Survey 2005/2006, Child labour, analytical report, KNBS and ILO/IPEC, Pg 25

Table 57: Child Sexual Exploitation and Abuse.

	Type of Abuse	Source	2007/08		2008/09		2009/10		2010/11		Total
			F	M	F	M	F	M	F	M	
Number of children victims	Child prostitution	DCS	39		65		205		23		566
	Defilement	DCS	0		207		263		182		1,005
		POLICE	1,984		1,849		2,621		3,273		12,239
		CRADLE	1,984		1,849		2,242		2,660		10,180
	Sexual abuse	DCS	646		826		1,028		541		3,350
	Rape	POLICE	876		735		847		922		6,036
		CRADLE	876		735		729		785		4,416
	Sodomy	DCS	0		10		14		0		44
		POLICE	198		163		162		154		1,053
	Trafficking	DCS	70		121		236		76		667
	Incest	POLICE	181		123		193		220		993
		CRADLE	181		123		157		192		787
	Bestiality	POLICE	64		26		23		25		230
		CRADLE	64		26		18		23		160
	Bigamy	POLICE	6		12		6		8		39
Total			7,169		6,870		8,744		9,084		41,765
Abduction			308		800		647		581		2,855

Source: Department of Children's Services (DCS), Cradle: Healing the Scars' Milestones, Lessons and Prospects; Case and Media Trends Report on Violence against Children, 2010.

Table 58: Children Survivors of Sexual and Physical Abuse proxy indicators from one institution

	Sexual violence 5,911 (94%)			Physical violence 392 (6%)		
	Female	Male	Total	Female	Male	Total
2010-2011	1,170	185	1,355	56	26	82
2009-2010	938	103	1,041	51	33	84
2008-2009	1,048	117	1,165	48	20	68
2007-2008	896	132	1,028	64	33	97
Total	5,200	711	5,911	248	144	392

Source: Nairobi Women Hospital /Gender Violence Recovery Centre

Article 17: Administration of Juvenile Justice System.**Table 59: Number of Children's Magistrates per Province 2011.**

Province/Region	No. of magistrates	No. of specialized Children Courts
Rift Valley	21	DNA
Nyanza	19	DNA
Western	9	DNA
Coast	12	DNA
Eastern	22	DNA
North Eastern	6	DNA
Nairobi	DNA	5
Central	DNA	DNA
TOTAL	89	DNA

Source: The Judiciary

Note: The ongoing judicial reforms have had an impact in the juvenile justice sector with regard to increase in the number of court stations, judicial officers and ensuring that children cases are no longer heard exclusively by gazetted magistrates.

Table 60: Number of Crimes Reported to Police Stations 2007-2011

Crimes	2007	2008	2009	2010	2011
Homicide	1,912	2,037	2,214	2,239	2,641
Offences against morality	3,673	3,116	4,068	4,817	4,703
Other offences against persons	17,831	16,496	20,539	20,012	20,144
Robbery	3,492	3,401	2,938	2,843	3,262
Breaking	6,337	6,626	7,053	6,453	7,325
Theft of stock	1,568	2,269	2,876	2,244	2,269
Stealing	10,749	11,435	11,972	11,986	13,797
Theft by servant	2,169	2,387	2,732	2,591	2,889
Vehicles and other thefts	1,221	1,387	1,439	1,365	1,768
Dangerous drugs	5,401	4,407	5,541	5,081	4,649
Traffic offences*	46	120	59	103	100
Criminal damage	2,770	3,760	3,417	3,327	3,345
Economic crimes	1,908	1,898	2,324	2,662	3,036
Corruption	177	133	158	62	52
Offences involving police officers	32	33	56	37	27
Offences involving tourists	10	6	5	1	0
Other penal code offences	3,732	3,994	4,864	4,956	5,726
Sub total	63,028	63,476	72,255	70,956	75,733

Source: Economic Survey 2012, KNBS

Table 61: Budget for children Rehabilitation and Care Institutions (in Kenya Shillings)

	2007/2008	2008/2009	2009/2010	2010/2011
Borstal Institutions ³²	86,737,701	106,124,913	110,158,548	143,377,632
Rehabilitation Schools ³³	Recurrent	106,984,800	123,417,732	148,352,443
	Development	72,500,000	50,000,000	26,000,000
Remand Homes ³⁴	Recurrent	52,395,613	57,970,651	79,180,222
	Development	22,000,000	55,500,000	53,000,000
Probation Hostels ³⁵	24,952,508	23,835,054	25,257,238	31,160,330
Aftercare services ³⁶	15,714,297	11,507,108	11,523,044	10,873,554
Community service orders Implementation ³⁷	23,910,000	68,544,531	70,938,993	77,312,168
Community service orders coordination ³⁸	12,174,905	9,499,715	10,434,194	15,279,326
TOTAL	417,369,824	506,399,704	534,844,682	595,698,741

Source: Department of children services.

Table 62: Adoption Secretariat Budget

	2007/2008	2008/2009	2009/2010	2010/2011
Amount ³⁹	DNA	5,452,000	7,200,000	5,914,000

³² Department of Prisons

³³ Department of Children's Services Expenditures 2005-2010

³⁴ Department of Children's Services Expenditures 2005-2010

³⁵ Feedback probation service 2005-2010 Pg 49

³⁶ Feedback probation service 2005-2010 Pg 49

³⁷ Feedback probation service 2005-2010 Pg 49

³⁸ Feedback probation service 2005-2010 Pg 49

³⁹ Department of Children's Services Expenditures 2005-2010

Table 63: Central Government Expenditure on Social Protection Services 2007-2011 KSh. (millions)

Ministry - component of social protection funded.	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Medical Services Ministry - Antiretroviral Drugs	DNA	DNA	903	903	903
Local Government Ministry -Street Families Rehabilitation Trust Fund	DNA	DNA	100	100	120
Ministry of Gender Children and Social Development					
National Council for Persons with Disability (Additional Dev funding 2010/13)	80	32	232	282	284
Orphans and Vulnerable Children	546	2,284	2,724	3,316	3,957
Child Welfare Society (CSO/NGO)	DNA	DNA	100	100	275
Urban Poor	DNA	DNA	DNA	1,230	385
Older Persons cash Transfer	80	430	530	1,000	1,479
Women Enterprise Fund	315	440	390	440	440
Ministry of Education					
School Milk/Feeding Program	1,802	1,293	2,715	1,666	2,067
-Free Primary Education	13,077	7,317	8,518	8,299	9,270
-Free Secondary Education	20,131	15,387	17,021	16,530	19,799
-Early Childhood Development Education	243	248	445	388	1,620
Ministry of Special Programmes Emergency Relief and Refugee Assistance	3,449	3,295	2,987	1,075	2,500
Ministry of Youth Enterprise Development Fund	500	550	550	550	550
Ministry of Higher Education Bursaries/Scholarships	412	462	452	308	308
Ministry of Public Health					
Family Planning and Maternal Child Health	2,235	1,289	1,216	2,351	743
OBA (Output Based Approaches) on Reproductive Health (RH) & Gender Based Violence (GBV)	DNA	10	9	370	370
Total expenditure	41,959	43,105	46,759	44,235	44,699

Source: Ministry of Finance.

Table 64: Central Government Public Debt and Servicing Charges: KSh. Millions

	2007	2008	2009	2010	2011
External Debt	381,962.81	423,335.20	517,037.64	548,680.26	697,846.28
Internal Debt	318,402.12	334,996.13	401,741.09	533,971.94	624,752.00
Total Unfunded Debt	700,364.93	759,331.33	918,778.73	1,082,652.20	1,322,598.28
Debt Servicing Charges					
External Debt	17,894.09	23,831.82	23,871.16	24,317.18	32,620.77
Internal Debt	111,393.09	117,581.71	101,483.21	122,258.10	157,878.73
TOTAL SERVICING CHARGES	129,287.18	141,413.53	125,354.37	146,575.28	190,499.50

Source: Economic Survey 2012, KNBS.