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**AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE
OF THE CHILD**

**Recommendations and Observations to the Government of Kenya by
the African Committee of Experts on the Rights and Welfare of the
Child concerning the Initial Report on 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 presents its compliments to the Government of the Republic of Kenya and thanks the latter for submitting its initial report on the implementation status of the African Charter on the Rights and Welfare of the Child.

The Committee congratulates the State Party for sending an important high-level, inter-ministerial delegation led by the Minister for Gender, Children and Social Development to discuss the Report during its fourteenth session held in Addis Ababa, Ethiopia, from 16 to 19 November 2009.

After considering the report from Kenya, the Committee has the honour to forward to the Government of Kenya the following observations and recommendations:

Article 2: Definition of a Child

A child is defined as any human being below the age of 18 years. However, in Kenya, multiple definitions of a child based on socio-cultural considerations do not allow for enhanced child protection.

Consequently, the report indicates that the legal age for criminal liability is 8 years. According to the penal code, from 8 to 12 years, a child is deemed not to be criminally liable for his actions, unless it is proven that, at the time of commission or omission of an act, the child had the capacity to know that he/she should not have committed or omitted that act. This would mean that a child aged between 8 and 12 years could be prosecuted criminally, provided there is proof that he had the capacity to judge whether or not to commit an offence. The issue is how to prove that an 8-year old child had the capacity to know that he was committing an act punished by the law. In that case, it should be acknowledged that the judge can only rely solely on his firm conviction to sentence that child, which shows there could be cases of abuse. It is thus imperative and urgent to raise the criminal liability age to 12 years.

The report also indicates that, in accordance with the amendment of the 2003 law, the minimum age of sexual consent is 16 years. However, various statutes on marriage authorize girls below 16 years to contract marriages, which makes it difficult to enforce the law on sexual consent. The Committee specially and urgently requests the State Party to raise 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.

Article 6: Name and Nationality

The Committee congratulates the Government of Kenya for the efforts made in this area; however, it notes that, in spite of the policy of free birth registration from the time of delivery to the age of 6 months, only 56% of the children in rural areas had been registered at birth. This shows that although the measure is favourable, it appears not to yield the expected results in rural as well as urban areas.

The Committee recommends that the State Party reflect 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 sensitize the population on the issue of declaring births and its importance, through a participatory and community approach involving all national actors and local communities. It further recommends the adoption and implementation of a programme to inform and sensitize the population, especially the rural and nomadic populations, on the issue of declaring births.

The Committee equally recommends that special measures be taken to declare refugee and displaced children, as well as those of nomadic communities.

Article 11: Education

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

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a bid to find a lasting solution which will permit all Kenyan children to avail themselves of this right.

Article 13: Handicapped Children

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

Article 14: Health and Medical Services

The Committee noted with satisfaction that budgetary allocations in this sector were rising constantly and that there had been appreciable efforts to standardize health management and the provision of healthcare services through the adoption of some reference instruments as well as the elaboration of plans of action and strategies. The establishment of a national health insurance fund should be commended.

However, it should be noted that indicators in the field of health were not positive, notably:

- immunization coverage (56%);
- malnutrition with the nutritional status of children aged below 5 years which has not improved in five years;
- stunted growth rate of 30%;
- 22% of the children are underweight;
- low full-time breastfeeding rate;
- only 9-15% of health centres are equipped to provide obstetric care;
- HIV/AIDS prevalence rate remains high even though it was observed to have dropped from 13.5 to 9.4%.

Unwanted pregnancies have, in some cases, caused adolescents to interrupt their schooling. Data indicates that 21% of adolescents had early pregnancies in 2005 and 46% of those who were uneducated had begun to have babies. As for women in general, 4 out of 10 who die as a result of high-risk abortion complications are aged below 20 years. Adolescents in general are more exposed to risky pregnancies.

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

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 populations, a better distribution of healthcare workers between the urban and rural areas, and free healthcare especially for pregnant women and children below 5 years.

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 as regards health.

The Committee finally recommends that the State Party develop reproductive health programmes for 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.

Article 15: Child Labour

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 is observed that Kenya has not yet adopted stringent measures in this area. The texts on this issue are still in a draft form and many children of 8 years of age work as domestic servants in families in order to survive.

The Committee recommends that the Government of Kenya speed up the process of adopting texts and measures for effective implementation in order to protect the child in the area of work and employment, and particularly, 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 at an early age in order to ensure their economic integration.

Article 16: Protection against Child Abuse and Torture

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.

Article 21: Protection against Harmful Social and Cultural Practices

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 in the Somali community (90%), and 53% of Kenyans undergo forced marriage.

The Committee recommends that the State Party:

- develop awareness raising and information programmes for the populations 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.

Article 25: Separation from Parents

Noteworthy is the establishment by the Kenyan Government of structures that cater for children from broken homes who are living in the streets.

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.

Article 28: Drug Abuse

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 and 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.

Observations and General 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.