

**REPUBLIC OF KENYA**

**SUBMISSIONS ON THE GENERAL COMMENT ON**

**CHILDREN’S RIGHTS AND THE ENVIRONMENT WITH A**

**SPECIAL FOCUS ON CLIMATE CHANGE**

**DECEMBER 2021**

**ACRONYMS**

ACRWC African Charter on the Rights and Welfare of the Child

ASAL Arid and semi-arid land

CCD Climate Change Directorate

CCU Climate Change Units

CESCR United Nations Committee on Economic, Social and Cultural Rights

GDP Gross Domestic Product

MTP Medium-Term Plans

NDC Nationally Determined Contribution

NCCAP National Climate Change Action Plan

NCCLS National Climate Change Learning Strategy

NCCRS National Climate Change Response Strategy

NCCS National Council for Children’s Services

UNCRC United Nations Convention on the Rights of the Child

UNFCCC The United Nations Framework Convention on Climate Change

1. **BACKGROUND**

Kenya is a lower middle-income country with an estimated national Gross Domestic Product (GDP) of US$ 82.0 billion in 2017, and aspires to be "a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030. It has a population of about 47,564,296 according to the 2019 National Housing and Population Census Report. Children constitute 48% of this population with 11,060,063 boys, 10,862,532 girls and 592 inter sex.

Climate change, global warming, environmental hazards and compounding resultant shocks are having devastating impacts on the entire facets of life posing threat to the survival, well-being and future of humanity with children being the most vulnerable. In many parts of the world, people are facing multiple climate-related impacts including less or failure of rainfall, severe drought, food insecurity, urban displacements, famine, strife, flooding, destruction of infrastructure, conflict, air pollution and water scarcity, and adverse effects on health. Almost every child on earth is exposed to at least one of these climate and environmental hazards among others. Globally, approximately one (1 billion) children are at 'extremely high risk' of the impacts of the climate crisis. These children experience multiple climate shocks combined with poor essential services such as water, sanitation and health care. As climate change disrupts the environment, children are being forced to grow up in an increasingly dangerous world without which an urgent action to slow down its adverse effects, there is an eminent environmental disaster. The aftermath is a crisis that threatens health, nutrition, education, development, survival, future generational thrift of humanity and all life.

Despite Kenya’s negligible contribution to global greenhouse gas (GHG) emissions (less than 0.1% in 2018), Kenya seeks to undertake an ambitious mitigation contribution towards the Paris Agreement. The case of Kenya is however, as bleak as that of the global scenario with serious interrelated environmental problems; including deforestation, soil erosion, desertification, water shortage, invasive flora species, degraded water quality, overfishing, loss of biodiversity, poaching, domestic and industrial pollution. Water resources are under pressure from agricultural, chemical, urban and industrial wastes, as well as from use for hydroelectric power. Shortage of water is expected to pose a problem in the coming years. Invasive plant species in lakes such as water hyacinth menace infestation in Lake Victoria, have contributed to a substantial decline in fishing outputs. Output from forestry has also declined because of resource degradation. Over the past three decades, overexploitation has reduced the country’s timber resources by one-half. At present only three (3) percent of the land remains forested and an estimated 5,000 hectares of forest are lost each year. This loss of forest aggravates erosion, the silting of dam, flooding and the loss of biodiversity. These prevailing realties eventually impact greatest on children owing to their high vulnerability and children in Kenya share the same predicament with their counterparts globally.

Children represent a key segment of the society thus attracting government consistent efforts to promote human rights and with particular attention to children. Kenya became a signatory to the United Nations Convention of the Child (UNCRC) on 30th July 1990 becoming 20th member state to ratify the instrument. All international and regional treaties and Conventions further appreciated as integral in the Constitution. The UNCRC was domesticated by enacting children Act in 2001, this was a major milestone in the promotion and protection of children’s rights and welfare in Kenya. To address emerging issues brought about by technological, socio-cultural, economic, and political changes and advancements to the children’s environment and align the Children Act of 2001 to the Constitution, the state party has put in place **the Children Bill No.38 of 2021,** which **is** being considered in Parliament. The enactment and implementation of this new law will go a long way in scaling up the progressive realization of the rights of all children in Kenya. There are numerous appropriate child rights specific laws, regulations, policies, procedures and guidelines to further safeguard the rights and welfare of children. There is as well a strong child protection framework with additionally greatly representative multi-disciplinary state structures to implement these laws and policies strengthened through support from non-state partners. With all these efforts in place however, children in Kenya continue to experience many challenges including those brought about by effects of climate change that has the impact to directly or indirectly put almost every child at risk. The country has put in place many other laws and policies to further safeguard the rights and welfare of children. Additionally, it has established institutions and created structures to implement these laws and policies. With all these efforts in place however, children in Kenya continue to experience numerous challenges including those brought about by effects of climate change. The impacts of climate change put almost every child in Kenya at risk.

The Constitution of Kenya creates two levels of Government, namely: The National Government and 47 County Governments that have defined mandates and functions. The National Government has the responsibility of formulating policies on environmental management and resilience. One of the policies on resilience is the National Climate Change Policy Framework 2015 that ensures that the country transforms to a low carbon climate resilient development pathway, and of ensuring that programmes are put in place to deliver its obligations under the United Nations Framework Convention on Climate Change (UNFCCC).

## 2.0 MAJOR CLIMATE HAZARDS IN KENYA

Drought and floods are the main climate hazards in Kenya, negatively impacting lives and livelihoods, with human health increasingly being at risk. Extreme climate events cause significant loss of life, and adversely affect the national economy. They are a threat to Kenya's security. Adverse climate effects, particularly floods and droughts, have catastrophic and increasing impacts across the country. In 2018, floods led to loss of human lives in Kenya displacing more than 230,000 people including 150,000 children, and closed over 700 schools, while wiping out billions of shillings’ worth of Roads and infrastructure, 8,500 hectares of crop and drowning over 20,000 head of livestock. People lost their homes and most of their belongings and had to move into a temporary shelter.

Droughts cause large-scale disasters destroying livelihoods, triggering local conflicts over scarce resources, and eroding the ability of communities to cope. The 2011 drought caused over $11 USD billion in damage, with hundreds of thousands of refugees streaming in from affected neighboring countries. The 2014-18 drought affected 23 counties, 3.4 million Kenyans were severely food insecure and 500,000 people did not have access to water. Droughts or delayed onset of rain continue to greatly impact farming communities, resulting in food insecurity for children and families due to death or stunted growth in crops and loss of livestock.

According to Kenya’s Metrological Department State of Climate Report (2020), the impacts of climate change in Kenya in 2020 included; heavier than usual rainfall, leading to floods or drier than normal conditions leading to severe droughts consequently affecting human activities. Rainfall received over most parts of the country exceeded the annual long-term means. Other observed extreme events during the year included flash floods, floods, landslides, rising lake levels and strong winds. This resulted in loss of lives, property livelihoods and damage and destruction to infrastructure and the environment. Sea level rise is already affecting coastal towns and communities and is expected to impact up to 86,000 people a year and lead to coastal erosion and wetlands loss at an annual cost of about KES 6 billion by 2030. Rising sea temperatures off the coast of Kenya have triggered mass coral bleaching and mortality on coral reef systems over the past two decades. This impacts the abundance and composition of fish species and negatively impacts coastal fisheries. The key water tower, Mount Kenya's glaciers have shrunk to only 17% of their size and are expected to disappear in the next 30 years, threatening Kenya's largest river that carries more than 60% of the country's hydropower and that has many cities and critical portions of Kenya's agricultural land.

Kenya was among the first countries in Africa to enact a comprehensive law and policy to guide national and subnational climate action. The Climate Change Act and the National Climate Change Policy Framework provide guidance for low-carbon and climate resilient development. Kenya is also among the top eight global leaders in geothermal power development and home to the largest wind power project in Africa. Kenya has instituted a plan to progressively provide clean domestic energy for the majority of her households that rely largely on biomass for cooking. Kenya is the first country in the world to pioneer new geothermal wellhead technology, which ensures immediate power supply at low cost. Kenya’s 310.25 MW Lake Turkana Wind Power is one of the largest such installations in Africa, and that the country is actively leveraging technology to serve clean energy to rural communities. This is achieved by using an innovative “pay-as-you-go” mobile money credit facility, better known as “Mkopa”, these communities have switched from kerosene to solar for lighting, and to power appliances such as televisions and fridges.” Nearly 90% of the electricity used by Kenyans is from renewable energy sources, with plans to achieve 100% renewable energy use by 2030.

**3.0 CHILD RIGHTS DEPRIVATIONS RESULTING FROM CLIMATE CHANGE**

Children are the largest and most vulnerable group to the effects of climate change. As temperatures increase and water becomes scarcer, it is children who will feel the deadliest impact of water-borne diseases and malnutrition with thousands made sick by polluted water. Up to two-thirds of preventable illness and death from environmental hazards is experienced by children, with the burden predominantly in those aged under five years. When water is scarce it is the children who bear the brunt, often walking long distances in search of water sources. This puts all children at risk from different environmental threats, girls are especially at high risk of sexual abuse. Scarcity of water is a source of conflicts in arid and semi-arid land (ASAL) counties and leads to displacement of children and their families hence infringing on their rights and welfare. The long hour’s children spend walking and collecting water, deprives them of the right to education because they waste a lot of time in water points. At the same time, developmental gains in education are offset due to damage or destruction of school facilities, extended disruption of education, and limited access to schooling.

As a coping mechanism in some parts of the coast, children engage in transactional sex which is detrimental to their wellbeing. Data shows an increase in cases of child marriage escalate during drought seasons as a coping mechanism in exchange for dowry to feed the rest of the siblings. Climate change drives inequality and creates and prolongs poverty traps, with children and adolescents particularly exposed to risk. As a result, there is an increase in child labour and dropping out of school.

Environmental hazards such as floods completely destroy livelihoods, livestock, fisheries especially breeding ground and food stocks are washed away leaving children and their families in dire need of humanitarian aid. Schools are shut and the risk of waterborne diseases like cholera and food insecurity increases in affected communities. The floods damage and destroy farmland, vital infrastructure and thousands of homes, which is a big blow to families. In most cases many displaced families lose everything and they arrive at higher ground where they run for safety with only the clothing they were wearing. Drought makes men and boys to go out in search of water and pasture for their animals leading to separation of families which is detrimental to children.

Air pollution in Kenya is an environmental hazard affecting communities living in both rural and town. It is contributing to health complications like asthma, dust allergy, heart disease and lung cancer in children. Children remain at increased risk of respiratory infections including pneumonia, from the burning of fossil fuels and other environmental contaminants.

**I)Provide authoritative guidance to State Parties to undertake all appropriate legislative, administrative and other measures of a child-rights approach to environmental issues with a special focus on climate change.**

The Constitution of Kenya (2010) provides the foundation for implementation of climate change actions through its Bill of Rights provisions, especially the right to a clean and healthy environment. To provide a legal framework for climate change, the Climate Change Act was enacted in 2016. The Act provides for a regulatory framework for enhanced response to climate change and mechanisms and measures to achieve low carbon climate development. The Act establishes governance structures for climate change management in the country with the National Climate Change Council being responsible for oversight and coordination. In addition, the Act defines the roles of both national and county governments in mainstreaming and implementation of climate change actions in the country. It also defines the role of non-state actors in the reporting and management of emissions.

The Act obligates the Cabinet Secretary responsible for climate change affairs every five years to formulate an economy-wide National Climate Change Action Plan (NCCAP) that prescribe measures and mechanisms, inter alia to guide the county toward the achievement of low carbon climate resilient sustainable development and mainstreaming climate change into national and sectoral development planning and the County Integrated Development Plans (CIDPs).

Vision 2030 identified climate change as a risk that could slow the country's development. Climate change actions have been incorporated into the Medium-Term Plans (MTP), starting from the second MTP (2013-2017). In the Third Medium-Term Plan (2018-2022), climate change was mainstreamed across sector plans. The Kenya Vision 2030, the long-term national development blueprint encapsulates flagship programmes and projects with aspects of adaptation and mitigation.

Kenya developed a National Climate Change Response Strategy (NCCRS) in 2010, the first National Climate Change Action Plan (NCCAP) aimed to advance the integration of climate change adaptation and mitigation into all government planning, budgeting and development objectives in 2013, and a National Adaptation Plan (NAP) in 2015. Kenya has operationalized these policies and plans through the implementation of climate change actions in various sectoral plans, programmes and projects such as afforestation and reforestation, geothermal and other clean energy development, energy efficiency, climate smart agriculture, and drought management, amongst others. The second NCCAP (2018-2022) was developed in 2018. Kenya has also developed its National Adaptation Plan (NAP) (2015-2030) which was submitted to the UNFCCC in 2017. The NAP provides a climate hazard and vulnerability assessment and set out priority adaptation actions.

In addition to the Kenya Vision 2030 and climate change-related policies, the country has put in place several sectoral policies to support implementation of climate change adaptation and mitigation actions. Some of the key policies include: the National Policy on Climate Finance; Climate Risk Management framework; the National Livestock Policy 2015; National Oceans and Fisheries Policy 2008; Fisheries Management and Development Act 2016; the Agricultural Sector Transformation and Growth Strategy (ASTGS) (2019 — 2029); the Kenya Climate Smart Agriculture Strategy 2017-2026; the Kenya Climate Smart Agriculture Implementation Framework 2018-2027); the Reducing Emissions from Deforestation and Forest Degradation (REDD+)•, the National Drought Management Authority Management Authority (NDMA) Act (2016); the Water Act, (2016); Forest Conservation and Management Act (2016) among others.

**II) Clarify the extent of States’ obligations relating to climate change and children’s rights, including with regard to mitigation, and adaptation**

Kenya seeks to undertake an ambitious mitigation contribution towards the Paris Agreement. Kenya therefore seeks to abate her GHG emissions by 32% by 2030 relative to the BAU scenario of 143 MtCOzeq; and in line with her sustainable development agenda. Subject to national circumstances, Kenya intends to bear 21% of the mitigation cost from domestic sources, while 79% of this is subject to international support in the form of finance, technology development and transfer, and capacity building.

Kenya aims to achieve her Vision 2030 through a low carbon, climate resilient development pathway. Kenya will implement and periodically update the National Climate Change Action Plans (NCCAPs) to achieve this target. This will include (but not limited to) the promotion and implementation of the following priority mitigation activities:

* Increasing of renewables in the electricity generation mix of the national grid.
* Enhancement of energy and resource efficiency across the different sectors.
* Making progress towards achieving a tree cover of at least 10% of the land area of Kenya.
* Make efforts towards achieving land degradation neutrality.
* Scaling up Nature Based Solutions (NBS) for mitigation
* Enhancement of REDD+ activities
* Clean, efficient and sustainable energy technologies to reduce over-reliance on fossil and non-sustainable biomass fuels.
* Low carbon and efficient transportation systems.
* Climate smart agriculture (CSA) in line with the Kenya CSA Strategy with emphasis to efficient crop, livestock management systems and sustainable management of fisheries ,
* Sustainable waste management systems.
* Harness the mitigation benefits of the sustainable blue economy, including coastal carbon Payment for Ecosystem Services (PES)

All sectors of the Kenyan economy are vulnerable to climate change. Kenya's GDP relies on climate sensitive sectors such as agriculture, tourism, industry and manufacturing. Adaptation thus is the highest priority for Kenya, not only through preventing further losses and damage, but underpinning infrastructure and economic development, while safeguarding lives, livelihoods and social development in line with Kenya Vision 2030, MTP Ill (2018-2022), the NCCAP 11 (2018-2022) and the NAP (2015-2030). Effective adaptation action will catalyze mitigation activity across sectors.

Kenya is committed to enhancing its adaptation ambition by committing to bridging the implementation gaps which include: enhancing the adaptive capacity and climate resilience across all the sectors of the economy and at the two levels of government — National and County Governments; exploring innovative livelihood strategies for enhancing climate resilience of local communities through financing of locally led climate change actions; enhancing risk-based approach to climate change adaptation through development and application of comprehensive climate risk management tools that would help in addressing and adaptively managing climate risks; addressing residual climate change impacts, loss and damage especially in the productive sectors of the economy; enhance generation, packaging and widespread uptake and use of climate information in decision making and planning across sectors and counties with robust early warning systems (EM/S); Enhance uptake of adaptation technology especially of women, youth and other vulnerable groups, incorporating scientific and indigenous knowledge; Enhancing investment in ocean and blue economy; Institutional strengthening of the CCD, the Climate Change Units and related institutions across sectors and counties as well as non-state actor institutions; and strengthening tools for adaptation monitoring, evaluation and learning (MEL) at the national and county levels, Including non-state actors. To achieve the above, Kenya intends to implement various priority actions, to attain the Triple Adaptation Dividend namely; avoided losses, economic benefits, social and environmental benefits. Some of these interventions may result in mitigation co-benefits.

**III) Emphasize the urgent need to address the adverse effects of environmental harm and climate change on children;**

In the latest devolution conference in Kenya held on 7th -9th November,2021, focus was on urgent Climate Action to Slow Down the Effects of Climate Change; it as resolved that;

National and County Governments to allocate more resources towards climate Change in the next budget cycle Partnerships of both levels of Government in the spirit of; cooperation, coordination, and collaboration to design and implement practical policies, strategies, laws, regulations and action plans to address climate change.

Declaration of committed political good will from the senate to act as protectors of devolution by playing its effective role in ensuring climate change action

Smart agriculture, afforestation, boosting transition to clean energy to replace firewood, greater corporate responsibility in climate action, climate change integration in strategic plans, structures and governance, capacity building, inclusive participation and engagement in business that promote resilience and climate change effects crisis.

**IV) Clarify the relationship between children’s rights and the protection of ecosystems, biodiversity and management of and access to natural resources, and States’ child rights obligations pertaining to policies on these matters; and**

Children are especially vulnerable to the harm brought by climate change. Kenya recognizes that the harm from climate change places the realization of other rights enshrined in the UNCRC. As climate change is a cross-cutting issue, it threatens the realization of many, if not all, of their rights as stated in the UNCRC, including the right of a child to have his or her best interests be a primary consideration in all actions concerning him or her (Article 3), the right to survival and development (Article 6), the right to the enjoyment of the highest attainable standard of health (Article 24), and the right to education (Article 27), among others.

It is incumbent on States to ensure that its actions and decisions do not adversely discriminate against children, specific groups of children, as well as future generations. Article 42 in the constitution of Kenya 2010, states that, " Every person has right to clean and healthy environment, which includes the right- a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69 and b) to have the obligations relating to the environment fulfilled under Article 70. Lack of protection and preservation of the environment directly affect families through diseases, chemical poisoning and low food production thus leaving children and their families vulnerable. Sensitization of children and their families on safe water, sanitation and health practices; the promotion of social risk assessment during infrastructural development and tree growing and environmental stewardship to combat the negative effects of climate change.

**V) Clarify how children should be able to exercise their rights to information, participation, and access to justice to protect against environmental harm**

In the coming years, Kenya seeks to enhance the National Climate Change Resource Centre which is a one stop shop for climate change information relevant to Kenya.

In Kenya the Ministry of Education in line with the demands of Vision 2030, for example, instituted curriculum reforms in the country. The Ministry through its agency, Kenya Institute of Curriculum Development developed the National Curriculum Policy and Basic Education Curriculum Framework to guide the process. The curriculum has so far been implemented from Pre-Primary 1 to Grade 4, with Grade 5 scheduled to be rolled out in 2021. Development of Curriculum designs for Junior Secondary (Grade 7 to 9) is complete and work is ongoing for Senior Secondary (Grade 10 to 12). Kenya’s Education for Sustainable Development (ESD) Policy for the Education Sector, 2017 has largely informed the reforms with the environment and its components such as climate change being a key focus.

States should develop relevant strategies and implement actions to ensure that children are able to exercise their rights to information**.** To this end, Kenya has developed the National Climate Change Learning Strategy 2021-2031 (NCCLS 2021-2031) which identifies the following priority actions for climate education:

1. Integrate climate change into curricula at all levels of education and training;
2. Enhance the capacities of teachers and facilitators to teach and assess climate change all levels of education and training;
3. Develop appropriate supporting supplementary teaching and learning climate change materials for all levels of education and training;
4. Leverage on non-formal and informal education to promote climate change learning; and
5. Link research, innovation and academic/research institutions and industry to climate change policy processes for knowledge and evidence generation and provide scientific basis in promotion of climate change learning.

Engaging children, their families and communities on the role of forestry conservation and management in climate change adaptation and mitigation is key. This can be achieved by sensitizing families and communities on adopting appropriate and safe agricultural practices. States should create awareness, learning and promote sustainable waste management towards reduction of GHG emissions. Capacity of children and households should be built in relation to renewable and clean cooking techniques as well as on water use efficiency to enhance climate resilience. A clean, healthy and sustainable environment is critical for families to thrive and provide a safe and nurturing environment for children to grow and realize their full potential.

As a complement to formal education curriculum and learning, children should also be able to exercise their rights to information through non-formal and informal educational learning for both learners and the general public. Informal learning includes intergenerational lifelong learning taking place within the community, and provides learners with critical opportunities to relate to realities that concern them and influence them to take the necessary action. Examples of non-formal learning activities in schools include clubs such as; environmental, music, drama and journalism among many others. Others include visits to museums, resource centers such as National Climate Change Resource Centre and participation in art competitions such as the Kenya Climate Change Art and Essay Competition. Young learners in schools and universities also learn through participation in hands-on experiential learning like the World Climate Simulation events.

The participation of children may take various forms, but should be conducted in a child-friendly manner, adapted to children’s capacities according to their age and evolving capacities. Every child, however, has the right not to exercise this right. Where children choose to exercise their right, adequate time and resources should be made available to ensure that children are prepared so that they can meaningfully contribute their views on climate change. States should foster an environment conducive to participation, including by raising awareness of the roles of children in promoting accountability and transparency in national climate action.

It is key for States to carve out specific roles and opportunities for youth participation in decision-making in climate change governance and actions. Efforts should be made by all States to strengthen national and sub-national government capacity to engage children in planning and decision making related to climate change. Kenya recognizes the key role that children and young people play in tackling climate change. In Kenya, the State Department for Social Protection, Senior Citizens and Special Programmes initiated the Kenya Children Assembly (KCA), a platform whereby children have the opportunity to air their views and interact with policymakers. Meaningful child participation also occurs through the Kenya Children’s Parliament and Children’s Councils, taking place in schools. Children should be given the necessary skills and training necessary to contribute creatively to address the climate crisis.

**VI) Shed light on the societal, legal, and other implications of concepts such as “international cooperation” “extraterritorial obligations” “future generations” “intergenerational equity” etc. with a view to improve the legislative, administrative and other measures that States as well as other stakeholders undertake to uphold the rights of the child in the context of the environment and climate change**

Intergenerational equity refers to equity among present and future generations and equity in the present generation. There are grave consequences to future generations of continuing on a high-emission development path. Undertaking a child rights perspective requires broadening the perspective from the immediate present to the distant future. Children’s rights should be read by States in line with environmental principles of sustainable development as well as inter and intra-generational equity.

States should consider intergenerational equity in law, policy, and government actions affecting climate change and legislative and policy frameworks should recognize the right of future generations to exercise their rights related to a clean and healthy environment. In Kenya, for example, the Climate Change Act 2016 recognizes this important role and in Section 3(2)(e) mandates the national and county governments to mainstream intergenerational and gender equity in all aspects of climate change response.

The Committee on Economic, Social and Cultural Rights (CESCR) has emphasized that certain specified rights protected under the International Covenant on Economic, Social and Cultural Rights must be protected not only for present but also for future generations. Such rights include, for example, the right to adequate food and food security (General Comment No. 12) and the right to water (General Comment No. 15).

As recognized in the NCCLS 2021-2031, intergenerational learning presents a great opportunity because children have unique perspectives on climate change, they represent an audience that is easily reached through schools, and are arguably best equipped to navigate the ideologically fraught topic of climate change with older generations in ways that inspire action. Intergenerational learning describes the way people of all ages can learn together and from each other and is an important part of lifelong learning, where the generations work together to gain skills, values and knowledge. This includes building on the positive resources that both the younger and older generations, including the elderly have to offer each other and those around them.