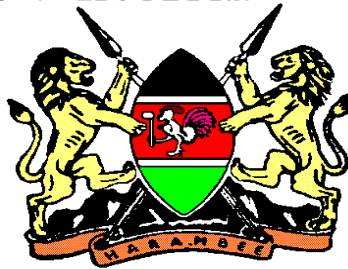
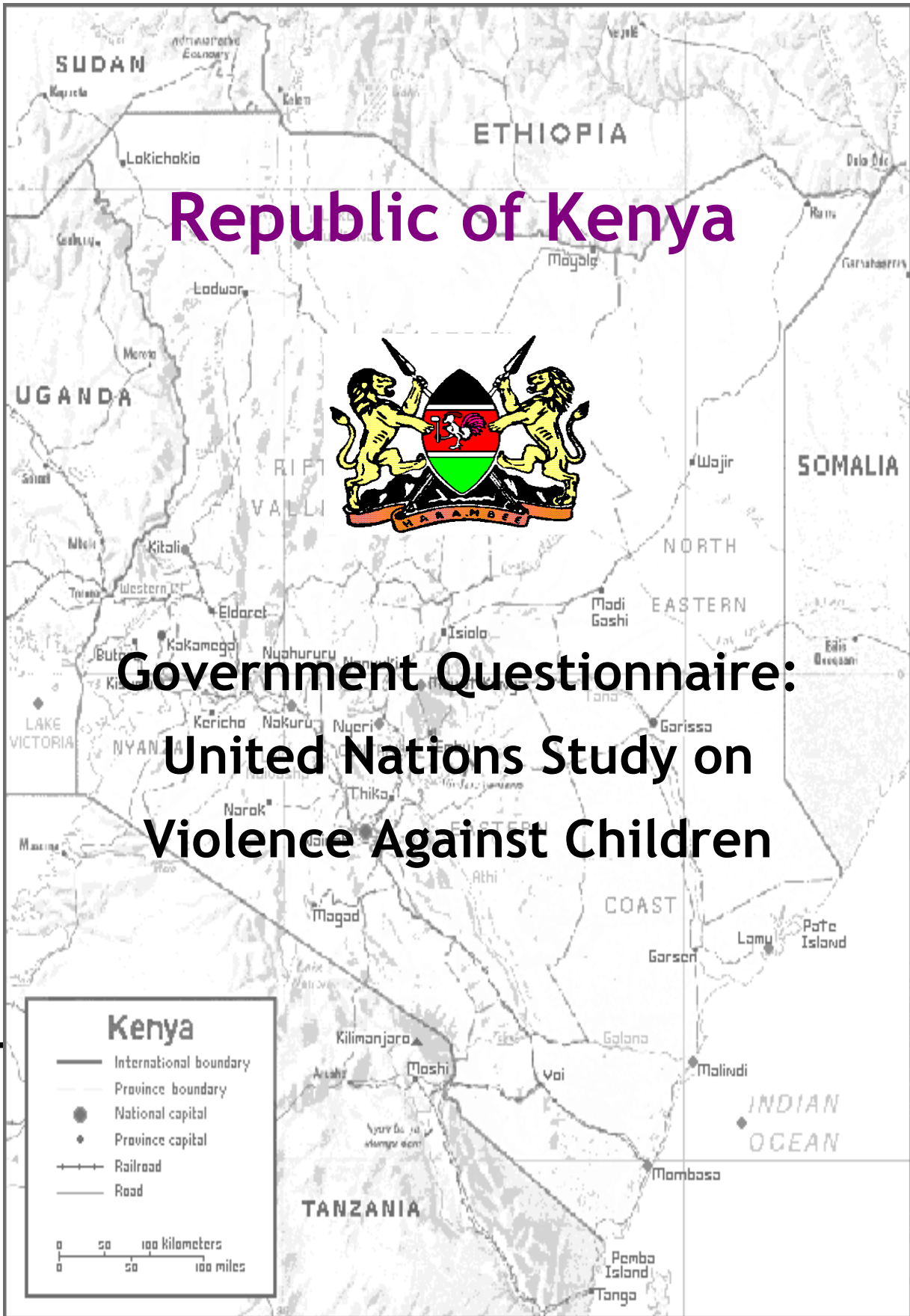


# Republic of Kenya



## Government Questionnaire: United Nations Study on Violence Against Children





## United Nations Secretary-General's Study on Violence against Children

### Questionnaire to Governments Advance Version

#### Introduction

This questionnaire is designed to obtain information from Governments for the United Nations Secretary-General's in-depth Study on the question of violence against children requested by the General Assembly in its resolution 57/190. Mr. Paulo Sergio Pinheiro has been appointed by the Secretary-General as the independent expert to direct the study, in collaboration with the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO), and he has developed a concept paper on the study (E/CN.4/2004/68, annex).

In preparing the report, the independent expert will draw on a variety of sources and available information and statistics in addition to the responses to this questionnaire. These will include reports submitted by States parties under the Convention on the Rights of the Child, as well as other human rights treaties, and information generated by United Nations conferences and summits, and their reviews, including the special sessions of the General Assembly, in particular the twenty-seventh special session of the General Assembly on children. Official statistics available from the United Nations Statistics Division and other statistical information available in the United Nations system, including UNICEF, WHO and the International Labour Organization (ILO) will be used. United Nations field presences will also be asked to provide pertinent information. Information will also be gleaned from non-governmental organizations and from regional and field-level consultations and expert group meetings which will form an integral part of the study.

The Committee on the Rights of the Child has emphasized that the study "should lead to the development of strategies aimed at effectively preventing and combating all forms of violence against children, outlining steps to be taken at the international level and by States to provide effective prevention, protection, intervention, treatment, recovery and reintegration" (A/56/488, annex). The General Assembly called for the study to put forward recommendations for consideration by Member States for appropriate action, including effective remedies and preventive and rehabilitative measures.

#### Responding to the questionnaire

In providing responses to the questionnaire, Governments are requested to consider approaches which have been adopted at national level with respect to violence generally, and towards children in particular. They are also asked to take account of the fact that responses to all forms of violence against children might not be the task of one Government department only, and depending on your Government's structure may be within the competence of the federal, state, provincial or municipal authorities.

Governments may wish to identify a **focal point** responsible for coordinating responses to the questionnaire, and make this focal point known to the secretariat of the study.

If information called for by the questionnaire has been provided by the Government in another context, for example in reporting under the Convention on the Rights of the Child, reference to that document should be provided, and information contained in that document should not be repeated. Governments are also encouraged to provide copies of relevant laws, policies, reports etc.

The questionnaire is divided into seven parts, which deal with (I) the legal framework, (II) the institutional framework and resources to address violence against children, (III) the role of civil society in addressing violence against children, (IV) children as actors in addressing violence, (v) policies and programmes to address violence against children, (VI) data collection, analysis and research, and (VII) awareness, advocacy and training. Examples of issues and questions which are to be covered under each part of the questionnaire are provided for guidance. Governments are not required to cover each of these issues, but to select those which are most relevant to their national context. Additional issues, over and above those provided as guidance, can also be raised in responses.

Governments are encouraged to provide examples of good practices and innovative approaches to addressing all forms of violence against children, in order to assist in the dissemination and sharing of positive experiences. Governments are also asked to outline obstacles encountered in addressing the issue.

## Definition of child

Governments should note that in providing information for this questionnaire, a child is defined as in article 1 of the Convention on the Rights of the Child as “[e]very human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier.” Accordingly, information on strategies to address violence against girls and boys under 18 should be provided throughout.

## Submission of responses

Responses to this questionnaire should be sent in both hard copy and electronic format in one of the six official United Nations languages no later than 31 July 2004 to:

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UNOG - OHCHR  
CH - 1211 Geneva 10  
Telefax: 41 22 917 90 22  
e-mail: [jconnors@ohchr.org](mailto:jconnors@ohchr.org)

*UNICEF A4133-7-25A\_G-Pirozzi*

*\*Please note: Photos used in this Report do not mean the children are victims or survivors of violence against children.*

## Acknowledgments

### ACKNOWLEDGEMENTS

The Office of the Vice President and Ministry of Home Affairs, would like to thank all those who participated in the preparation of this Government Questionnaire on the United Nations Study on Violence Against Children, for submission to Mr. Sergio Paulo Pinheiro (*independent expert to direct the study appointed by the United Nations Secretary General*) In particular, it would like to acknowledge the dedication and hard work of the following ministries and organisations whose input has gone along way in enriching the document:

Office of the vice President Ministry of Home Affairs Department of Children Services  
National Council of Children Services (NCCS)  
Ministry of Culture, Gender and Sports  
Ministry of Planning and National Development  
Ministry of Finance  
Ministry of Education Science and Technology  
Ministry of Information and Communication  
Office of the Attorney –General  
Ministry of Health  
Ministry of Labour  
Department of Police  
Action aid International Kenya  
ANNPCAN(R)  
ANNPCAN(K)  
Care-Kenya  
Child life Trust  
CLAN  
Girl Child Network  
GOAL (K)  
Nairobi Women’s Hospital  
National Child Participation Committee  
Plan International Kenya,  
Save the Children Canada  
Save the Children Sweden  
UNICEF Kenya Country Office  
World Vision Kenya

Special thanks go to the Director Children Services Ahmed Hussien for his personal involvement in seeing the process to its final successful conclusion, Ambassador Denis Afande, head of NCCS Secretariat Margaret Basigwa and Chief Children’s Officer at the NCCS secretariat Judy Oduor for the cooperation rendered. We also thank Jacinta Murgor Assistant Director of Children Services Mr Eliud Mulili Children’s Officer of the Department of Children’s Services for their participation. We sincerely thank all the representatives of agencies, which actively participated throughout the drafting process.

We sincerely thank UNICEF country office Kenya for the immense financial as well as logistical support it gave to ensure that the process did not stall on the way .The Child Rights Advisory Documentation and Legal Centre (CRADLE) and Kenya Alliance for the Advancement of Children Rights (KAACR) deserve special mention for providing the secretariat with the invaluable data was gathered as the national focal point responsible for the coordination of the questionnaire and the national focal agency for child participation respectively.

It is our sincere hope that all the hard work that has gone into putting together this document will bear fruit in the protection of children of Kenya and the world over against violence in the future.

Thank you all.

## ACRONYMS and ABBREVIATIONS

AAC	Area Advisory Council
AIDS	Acquired Immuno-deficiency Syndrome
AMREF	African Medical and Research Foundation
ARVs	Anti-retroviral
ASAL	Arid and Semi-Arid Lands
BEOC	Basic Essential Obstetric Care
BoG	Board of Governors
CAS	Country Assistance Strategy
CBO	Community Based Organisation
CBS	Central Bureau of Statistics
CEOC	Comprehensive Essential Obstetric Care
CIDA	Canadian International Development Agency
CNSP	Children in Need of Special Protection
CRC	(UN) Convention on the Rights of the Child
CSO	Civil Society Organisation
CWD	Children with Disability
DANIDA	Danish International Development Agency
DCS	Department of Children Services
DFID	Department for International Development
EARC	Educational Assessment Resource Centres
EARS	Education, Assessment Resource Services
EFA	Education for all
EOC	Essential Obstetric Care
ERS	Economic Recovery Strategy for Wealth and Employment Creation
FBO	Faith Based Organisation
FGM	Female Genital Mutilation
FPE	Free Primary Education
GCN	Girl Child Network
GJLOS	Governance Justice Law and Order Sector
GoK	Government of Kenya
GTZ	German Technical Cooperation
HIV	Human Immuno-deficiency Virus
ILO	International Labour Organisation
IMCI	Integrated Management of Childhood Illness
IMR	Infant Mortality Rate
IPEC	International Programme on the Elimination of Child Labour
IUCD	Intrauterine Contraceptive Device
JICA	Japan International Cooperation Agency
KAACR	Kenya Alliance for Advancement of Children
KCO	Kenya Country Office
KDHS	Kenya Demographic and Health Survey
KEMRI	Kenya Medical Research Institute
KEPI	Kenya Expanded Program on Immunization
KES	Kenya shillings (US \$ 1= Approx. Ksh 75)
KICC	Kenyatta International Conference Centre
KNCHR	Kenya National Commission on Human Rights
KSPA	Kenya Service Provision Assessment Survey
LBW	Low Birth Weight
MCH	Maternal Child Health
MDG	Millenium Development Goals
MICS	Multiple Indicator Cluster Survey
MNT	Maternal and Neonatal Tetanus
MoEST	Ministry of Education Science and Technology
MoH	Ministry of Health
MoPND	Ministry of Planning and National Development
MPET	Master Plan on Education and Training
NACADA	National Agency for the Campaign Against Drug Abuse
NCC	Nairobi City Council
NCCS	National Council for Children Services
NGO	Non-governmental Organisation
NHSSP	National Health Sector Strategic Plan
NPAN	National Plan of Action for Nutrition
NSHIF	National Social Health Insurance Fund
NSSMB	National Sports Stadium Management Board

ODA	<i>Overseas Development Assistance</i>
OPEC	<i>Organisation of Petroleum Exporting Countries</i>
OVC	<i>Orphans and Other Vulnerable Children</i>
PEPFAR	<i>President's Emergency Plan for AIDS Relief</i>
PMTCT	<i>for Prevention of Mother to Child Transmission</i>
PRSP	<i>Poverty Reduction Strategy Paper</i>
RAAAPP	<i>Rapid Assessment, Analysis and Action Planning Process</i>
SDP	<i>Service Delivery Points</i>
SID	<i>Society for International Development</i>
SIDA	<i>Swedish International Development Agency</i>
SMC	<i>School Management Committee</i>
SOWCR	<i>State of the World's Children Report</i>
SWAP	<i>Sector-wide Approach</i>
UNAFEI	<i>United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders</i>
UNCRC	<i>United Nations Convention of the Rights of the Child</i>
UNDCP	<i>United Nations Drug Control Programme</i>
UNDP	<i>United Nations Development Programme</i>
UNESCO	<i>United Nations Educational, Scientific and Cultural Organisation</i>
UNFPA	<i>United National Population Fund</i>
UNHCR	<i>United Nations High Commission for Refugees</i>
UNICEF	<i>United Nations Children's Fund</i>
UPE	<i>Universal Primary Education</i>
USAID	<i>United States Agency for International Development</i>
VCT	<i>Voluntary Counselling and Testing</i>
WHO	<i>World Health Organisation</i>

# QUESTIONNAIRE

## I. LEGAL FRAMEWORK

*This part of the questionnaire aims to determine how your country's legal framework addresses violence against children, including prevention of violence, protection of children from violence, redress for victims of violence, penalties for perpetrators and reintegration and rehabilitation of victims.*

### International human rights instruments

1. Describe any developments with respect to violence against children which have resulted from your country's acceptance of international human rights instruments, including, for example, the Convention on the Rights of the Child and its optional protocols, the Palermo Protocol or regional human rights instruments. Provide information on cases concerning violence against children in which your country's courts or tribunals have referred to international or regional human rights standards.

As a consequence of the ratification of the Convention on the Rights of the Child, (hereinafter the CRC)<sup>1</sup>, the Convention on the Elimination of all Forms of Discrimination Against Women,<sup>2</sup> (hereinafter CEDAW) and other international conventions relating to women and children, the Government of Kenya embarked on extensive reforms of laws relating to women and children. Soon after the ratification of the CRC, the Attorney General directed the Kenya Law Reform Commission (KLRC), to hasten the review of laws pertaining to children, a process which had begun in 1984 when the KLRC was established.<sup>3</sup> The Commission established a multi-disciplinary Task Force, which commenced work in 1991, preparing a draft Children's Bill by 1994.<sup>4</sup> Similarly, after ratifying CEDAW, the Government adopted the Forward Looking Strategies for the Advancement of Women in 1985 and established a gender task force to review all laws relating to women in 1993.<sup>5</sup> As a consequence of the recommendations of the Task Forces, coupled with other reform initiatives such as the Inter Parties Parliamentary Group initiative (IPPG), the government in the year 1997 amended Section 82 of the Constitution by outlawing discrimination on the basis of sex. This is important especially for girl-children in regards to harmful cultural practices that by inference could be practiced as a consequence of the provision allowing for the application of discriminatory laws on the basis of sex. Even though a proviso to the said section still provides for discrimination on matters of personal law, outlawing discrimination on the basis of sex was a significant first step that provided a broader framework for the protection of other rights in other Acts of Parliament. Other than changes to the Constitution, which is Kenya's supreme law, the government has also undertaken several amendments of laws that relate to children's rights.

The enactment of the Children Act, an initiative that sought to consolidate primary laws dealing with children, was a direct result of the ratification of the CRC. Upon ratifying the CRC, Kenya also proposed amendments of laws such as the Evidence Act, Criminal Procedure Code and the Penal Code, proposing stiffer sentences for sexual offenders.<sup>6</sup> The Government also amended the Penal Code through the Criminal Law Amendment Act, providing greater protection for children against sexual abuse. By the same Act, corporal punishment is outlawed as a form of punishment under the Penal Code. The government has also initiated a process to come up with a Sexual Offences Bill, a direct consequence of the ratification of the CRC, CEDAW, The African Charter on the Rights and Welfare of the Child, The Rome Statute on the International Criminal Court, (ICC Statute) and the African Charter on Human and People's Rights, together with their optional protocols.

The Children Act under Part II makes extensive provisions on the rights of the child as enshrined in the international instruments, including protection against physical, sexual and psychological violence. For instance, the CRC's provisions on refugee children are reflected in the Children Act, which provides for them protection

<sup>1</sup> Adopted by the United Nations General Assembly on November 20<sup>th</sup> 1989 and ratified by Kenya in 1990.

<sup>2</sup> adopted by the General Assembly of the United Nations in 1979 and ratified by Kenya in 1984

<sup>3</sup> Situation Analysis of Women and Children in Kenya, GOK & UNICEF Publication; 1998, page 43

<sup>4</sup> Ibid, Situation Analysis, page 43

<sup>5</sup> Ibid, Situation Analysis, page 8

<sup>6</sup> The Rule Of Law In Kenya – Children and their Rights: A Critical Analysis By Helen Kwamboka for The CRADLE-The Children Foundation, 2002

from abuse and rehabilitation in cases of abuse. The Children Act establishes statutory structures to facilitate the administration of and safeguard the rights of children, including the creation of the National Council for Children Services (NCCS), a body corporate whose general mandate is to exercise general supervision and control over planning, financing, and coordination of child rights and welfare activities and to advise the government on all aspects thereof. One of its specific mandates is to ensure that Kenya fulfils its international and regional obligations relating to, and to facilitate the formulation of appropriate reports under, such obligations.<sup>7</sup> The power of the NCCS is devolved to the community level through local authorities and Area Advisory Councils. The Act also provides for Children's Courts and other institutions for the reception and care of children in need of care and protection. It requires local authorities to promote the best interests of children within their respective jurisdictions and prohibits discrimination on the grounds of origin, sex, religion, creed, custom, language, opinion, conscience, birth, social, political, economic or other status, race, disability, tribe, residence or local connection. The Act also provides remedies in cases of any violation of those rights recognized by the Convention, including severe penalties such as imprisonment, fines or both. There are also severe penalties for persons who obstruct a children's officer or any other authorized officer in the execution of their duties in protecting the rights of the child. The Act confers concurrent civil and criminal jurisdiction to the courts in relation to matters arising from it and also provides for punitive and civil remedies including compensation and declaratory orders by the High Court of Kenya.

In relation to Trafficking as provided for under the Optional Protocols to the CRC, there is no comprehensive legislation on the same. However, Civil Society Organizations have developed a draft Bill on Trafficking in Persons presented to the Hon. Attorney General for enactment.

Kenya ratified ILO Convention 182 on the Worst Forms of Child Labour in 2001 and has since developed a draft child labour policy. ILO Convention 138, which Kenya has also ratified, sets out the minimum age for admission into employment. The Children Act Section 10 protects a child from economic exploitation and the worst forms of child labour. The Employment Act (although passed before Kenya ratified the said conventions), protects children under the age of 16 from employment in industrial undertakings and regulates employment of children. With the ratification of the ILO Convention No. 138 on the Minimum Age of Admission in Employment and Convention No. 182 the Worst Forms of Child Labour 7<sup>th</sup> May 2001 the Government has established a child labour division in the Ministry of Labour and Human Resource Development. The Division has the responsibility for drawing up and monitoring the implementation of an integrated program for action for elimination of child labour. This division came up with the proposed child labour policy that was an effort of all tripartite parties and stakeholders. The policy is awaiting parliamentary approval. Also National Steering Committee on Child Labour has been formed in the ministry of labour to coordinate all issues relating to child labour in the country. The committee is chaired by the Permanent Secretary from the Ministry of Labour. Its membership constitutes of relevant Government Ministries, Employers and Workers Organizations, NGOs, Civil Society and ILO/IPEC.

In March 2005, Kenya ratified the Rome Statute thereby binding itself to the instrument's provisions and decisions. The Rome Statute outlaws sexual exploitation as part of war crimes and crimes against humanity. The International Criminal Tribunal for Rwanda, in a 1996 judgment, noted the lack of an international legal definition and went on to define sexual violence as follows: "Sexual violence which includes rape, is considered to be **any act** [emphasis added] of a sexual nature which is committed on a person under circumstances which are coercive." This definition recognizes that any act of a sexual nature can amount to sexual abuse. The definition of rape, defilement and incest under the laws of Kenya presupposes that one is sexually abused only when there is carnal knowledge, which entails the use of sexual organs. However, many women and girls are violated using instruments other than the male sexual organ. The ICC Statute acknowledges the violations that women and girls suffer at the hands of the perpetrator and offers a more progressive definition of rape as follows:

"The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with **any object** [emphasis added] or any other part of the body."

There is yet no law that reflects the standards set by the Rome Statute, however, the draft Sexual Offences Bill includes this broader definition. A motion was recently brought to Parliament by Honorable Njoki Ndungu to introduce the Bill to Parliament. The Bill has not yet been introduced into Parliament.

Other Laws with positive implications in relation to violence against children include the Persons with Disabilities Act, the Domestic Violence (Family Protection) Bill,<sup>8</sup> the HIV/AIDS Prevention Bill<sup>9</sup> and the Refugee and Displaced Persons Bill.<sup>10</sup> The HIV and Aids Prevention and Control Bill (HIV/Aids Bill) was gazetted in September 2003 with the objective to provide measures for the prevention, management and control of HIV and Aids. This includes protection and promotion of public health, treatment, counselling, support and care of persons infected and other

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<sup>7</sup> Section 32 of the Children Act.

<sup>8</sup> Pending before Parliament

<sup>9</sup> Pending before Parliament

<sup>10</sup> Pending before Parliament



connected purposes. The Bill prohibits discrimination in schools and other educational institutions as well as in health institutions. It further contains provisions on HIV and Aids education and information. It is expected that the government with its various ministries, departments, authorities and other agencies, shall promote awareness among the public about causes, transmission, consequences, means of prevention and control of the disease by mainstreaming children issues in the ministries strategic plans. This shall be done through a nationwide education and information campaign with an emphasis on education in schools, workplaces, communities and healthcare centres.

Other initiatives include the Labour Law Review Committee that has presented its report to the Attorney General for further consideration. The Report proposes the amendment of labour laws to protect children, *inter alia*.

At a higher level, the Government of Kenya, through the Constitution of Kenya Review Commission, is in the process of coming up with a new constitution. Three National Constitutional Conferences have been held to agree on a Draft Constitution that is now waiting to be taken to Parliament for discussion and enactment into law. The Draft Constitution for the first time acknowledges children as a special category and devotes a whole section to the rights of the child. It incorporates the main provisions of the CRC and addresses issues affecting children, guaranteeing their rights in various sections.

Some of the *main* improvements for children and their rights under the draft Constitution as compared to the current one include:

- Section 3 a subsections (g) states that customary international law and international agreements shall, to the extent they are consistent with the Constitution, be part of the laws of Kenya. This implies that international conventions Kenya has ratified in regards to children such as the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC) will be enforceable in Kenya the same way domestic laws are enforceable. This means that the Kenya would have departed from a dualist approach where Parliament has to first pass domestic laws before a convention becomes applicable in the country. Many conventions are currently not implemented because they have not been domesticated.
- Section 12 subsection 2(l) provides that the State “shall recognize the special responsibilities that the State, society and parents owe to children and uphold the family and the institution of marriage”.
- Section 16 is a crucial improvement for children in regards to citizenship. Under the current Constitution, a child who is born abroad to a Kenyan mother and a non-Kenyan father does not acquire Kenyan citizenship. Under the draft Constitution however, a child born outside Kenya becomes a citizen if either the mother or the father is a Kenyan citizen.
- Section 19, also regarding citizenship, states that a child who is found in Kenya and who appears to be under 8 years old, with unknown nationality and parents is presumed to be a Kenyan citizen.
- Section 40 addresses children and acknowledges that they hold a special place in society. It puts the duty not only on the parents but also on society and the State to nurture, protect and educate them. A crucial improvement in the Bill is that it specifically states that children born out of wedlock shall have the same rights as children born by married parents and that they shall be equal before the law.
- The Draft Constitution also has extensive provisions that relate to the protection of the rights of the child against torture, corporal punishment and physical, sexual and emotional abuse, amongst others.

In relation to case law, there is not a rich history in Kenya of the courts referring to international conventions in their judgements or rulings. However, as the new government was elected on a pro reform agenda, there is emerging a judicial consciousness relating to the use of international instruments and hence there are cases where the courts now base their decisions on international instruments. Unfortunately though, this has not been very common in cases relating to children and worse still in cases relating to violence against children. However there are a few celebrated cases where the courts have used international instruments as a basis for their judgement. *In the High Court of Kenya Miscellaneous Application No. 10 of 2004 arising out of Criminal Case No. 236 of 2003*, in a case where a 14-year old girl had been charged with the murder of two children, the matter was dismissed for non-compliance with the Children Act and with the UN Conventions relating to juvenile justice. Some of the issues canvassed in the case were that the child had been remanded in an adult prison, had not had access to a lawyer, and had been in remand for an unduly long period (19 months). The judge in her ruling acknowledged that children are and must be considered a special class in society and are ‘indisputably’ the vulnerable members of the society. She further acknowledged that by enacting the Children Act, the Legislature had sought to give effect to the CRC and the ACRWC. She proceeded to release the child on a free bond with two sureties.<sup>11</sup>

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<sup>11</sup> The Juvenile Justice Quarterly, Volume 1 Issue 4 (October- December 2004); A publication of The CRADLE-The Children’s Foundation.

In other cases, the courts have by inference used International Convention standards. For instance in a 2004 case from the High Court of Kenya sitting in Nakuru, Justice Luka Kimaru, dealing with an Appeal against a two-year sentence meted out against a teacher from Muruaki Primary School for injuring one of the testicles of a male student while purportedly administering corporal punishment against the student, noted that “If in moulding the youth of this nation, the teacher thought that he had the carte blanche to indiscriminately administer corporal punishment including assaulting his pupils, then he was mistaken.” Although corporal punishment has been outlawed as a form of punishment, there is no specific criminal offence on corporal punishment.<sup>12</sup>

In the case of RM (A minor) Suing through Next Friend and Kin vs. The Attorney General of Kenya<sup>13</sup>, a 2-year old girl sued the Attorney General of Kenya for discrimination on the basis of birth because the new Children Act provides for discrimination of Children born out of wedlock. In the application seeking to have sections 24 and 25 struck out, it is noted that they are against the provisions of the CRC and the African Charter on the Rights and Welfare of the Child. The matter is yet to be determined but the courts have often during the proceedings raised clarifications in relation to the Convention provisions.<sup>14</sup>

List of Conventions and Ratification Status by Kenya:

No.	Instruments Ratified	Status
1.	African Charter on Human and People’s Rights	Ratified
2.	African Charter on the Rights and Welfare of the Child	Ratified
3.	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Ratified
4.	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention 182)	Ratified
5.	Convention on the Elimination of All forms of Discrimination Against Women	Ratified
6.	Convention on the Elimination of All forms of Racial Discrimination	
7.	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity	
8.	Convention on the Rights of the Child	Ratified
9.	Convention relating to the Status of Refugees - Protocol relating to the Status of Refugees	
10.	International Covenant on Civil and Political Rights	Ratified
11.	International Covenant on Economic, Social and Cultural Rights	Ratified
12.	Rome Statute on the Establishment of the International Criminal Court	Ratified
13.	The Palermo Protocol	

### Legal provisions on violence against children

**2. Describe how forms of violence against children are addressed in your country’s constitution, legislation and subsidiary legislation, and, where appropriate, customary law.**

The sources and hierarchy of Laws in Kenya are contained under Section 3 (1) of the Judicature Act and in order of superiority, the Constitution of Kenya is supreme and any Act or statute that makes any provision that is contradictory of the Constitution is to the extent of such contradiction, null and void. Written Laws or Acts of Parliament rank second including certain Acts of Parliament of the United Kingdom. The substance of the common law, doctrines of equity and statutes of general application in force in England as of the 12<sup>th</sup> of August

<sup>12</sup> The Juvenile Justice Quarterly, Volume 2 Issue 2; (January – March 2005); A publication of The CRADLE-The Children’s Foundation.

<sup>13</sup> The CRADLE is acting as an interested party in this case and is representing RM(minor).

<sup>14</sup> The Year in Profile, 2003 Annual Report of The CRADLE-The Children Foundation.

1897, apply, including the procedures and practices observed in the courts of justice of England as of that date. However these laws of England only apply to the extent that the Kenyan circumstances permit. Finally, customary laws apply in so far as they are not repugnant to justice and morality and are not inconsistent with any written laws. The laws relating to violence against children shall be examined against this backdrop.

The Constitution of Kenya has no specific provision relating to children. However, under Section 82, it provides for protection against discrimination on the basis of sex, a provision that is instrumental in protecting young girls and boys from harmful cultural practices. Unfortunately, it at the same time under subsection 4, allows for discriminatory practices when dealing with matters relating to marriage, inheritance and divorce by allowing for the application of personal law.<sup>15</sup> Part V of the Constitution on the Bill of Rights that provides for fundamental rights and freedoms of the individual is deemed to apply equally to children, hence provisions such as protection against cruel, inhuman or degrading treatment or punishment and protection of the right to life are enshrined in the Constitution. The Draft Constitution however makes special provisions relating to the rights of the child and includes extensive provisions relating to violence against children including protection against involvement in armed conflict, protection from physical abuse, torture and neglect. It is pending in Parliament.

The key statutes dealing with matters relating to violence against children include The Children Act which is currently the most comprehensive piece of legislation in terms of dealing with children's rights and covering issues relating to violence against children. It has domesticated the UNCRC and the African Charter on the Rights of Children.<sup>16</sup> Others include the Penal Code<sup>17</sup> and the Criminal Law Amendment Act. The Penal Code does not deal specifically with abuse of children's rights but deals with all forms of violence against all citizens. However, the section devoted to offences against morality addresses sexual offences, some specifically focusing on those committed against children such as defilement and infanticide. There are about 66 pieces of legislation in total that cover different aspects of children's rights. Most deal in a special way with particular issues concerning children's rights. For instance, the Employment Act protects children in the employment sector. Other than the Children Act, there is no comprehensive piece of legislation that primarily focuses on violence against children, though provisions relating to violence against children are included in several pieces of legislation.

#### Customary Law

The Judicature Acts provides that customary law may be used in Kenya so long as it is not repugnant to justice and morality or inconsistent with any written laws. It may also only be applied to civil, not criminal, matters. However as indicated earlier Section 82 (4) of the Constitution, while outlawing discrimination on the basis of sex, allows for discrimination on matters of personal law including devolution of property, marriage, burial, custody, *inter alia*. This might excuse customary practices that encourage violence against children such as female genital mutilation and early and forced marriages. While outlawed by the Children Act, the Constitution which is superior may be used to justify such practices. There is currently a case in court (RM (A minor) vs The Attorney General of Kenya), seeking interpretation as to what the provision means.

### 3. Provide details of any specific legislative provisions on:

- Prevention of all forms of physical, sexual and mental violence, injury or abuse, neglect or negligent treatment and sexual abuse;
- Protection of children from all forms of violence;
- Redress, including compensation, for child victims of violence;
- Penalties for perpetrators of violence against children;
- Reintegration and rehabilitation of child victims of violence.

### 3.1 Prevention of all forms of physical, sexual and mental violence, injury or abuse, neglect or negligent treatment, and sexual abuse;

#### The Constitution

The Constitution guarantees every citizen under the Bill of Rights, fundamental rights and freedoms including the right to life, freedom from slavery or servitude, protection against forced labour and protection from torture, cruel, inhuman or degrading punishment or treatment.<sup>18</sup> The draft Constitution provides more extensive protections for children.

<sup>15</sup> Jo Becker, Children's Rights Advocacy director for HRW - Human Rights Watch News – [www.hrw.org](http://www.hrw.org) 28-9-01  
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<sup>16</sup> Chapter 586, Laws of Kenya

<sup>17</sup> Chapter 63, Laws of Kenya

<sup>18</sup> Part V of the Constitution.

## The Draft Constitution of Kenya, 2004

The Draft Constitution substantially broadens the Bill of Rights compared to the current Constitution. The non-discrimination clause within the draft Constitution has been expanded and prohibits discrimination on the following grounds: race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

### The Children Act

Part II of the Children Act (Safeguards for the Rights and Welfare of the Child) has primarily been seen as The Children's Bill of Rights. Section 5 outlaws all forms of discrimination against children and provides that "No child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic, or other status, race, disability, tribe, residence or local connection". Section 10 (1) provides 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 or physical, mental, spiritual, moral or social development. Part 2 thereof protects children against involvement in armed conflict and subsection 3 provides that the government shall provide protection, rehabilitation, care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or natural disaster.

Section 12 provides for the protection of children with disability and acknowledges that they have a right to be treated with dignity. Section 13 provides for the protection of children against physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person. It further states that any child victim of abuse shall be accorded appropriate treatment and rehabilitation.

Sections 14 says children must be protected from harmful cultural practices such as early marriage, female genital mutilation or other cultural rites and customs that are likely to negatively affect a child's life, health, social welfare, dignity or physical and psychological development. Section 15 protects against sexual exploitation and section 16 provides for protection against drug abuse and use. Section 18 protects children against torture, cruel treatment or punishment as well as deprivation of liberty. Capital punishment and life imprisonment of children are outlawed by the same section.



In order to avoid neglect of children, the entire Part III provides for parental responsibility for children with the exception of children born out of wedlock under sections 24 and 25. To guarantee protection of children in rehabilitation centres, section 48 includes measures such as separation by sex and age and separation of children in need of care and protection from those in conflict with the law. It also provides for medical facilities for children in such institutions.<sup>19</sup> Safeguards are also given for children committed to charitable children's institutions and the Children's Department has developed draft rules for the administration of such institutions.

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Extensive protection mechanisms are provided for children in the justice system under Sections 73-80 of the same Act and include protection against adverse publicity, preservation of dignity of the child and non-victimization of child offenders. Protection is also accorded to child offenders under Part XIII and the Schedules to the Act.

Part VII protects children from neglect and abuse by making provisions for custody and maintenance, and Part VIII addresses guardianship of children, especially orphans. To give effect to the two preceding parts, the Act makes provisions for several judicial orders for the protection of children under Part IX including exclusion orders for a person who has "Used violence or threatened to use violence against a child"<sup>20</sup> and ward ship orders requiring a child to be placed under the protection and custody of the court.<sup>21</sup>

Children in need of care and protection are recognized as a special category of children, and for the first time the law specifies which category of children are in need of care and protection. This includes children who are abused and neglected, children exposed to domestic violence, and children exposed to sexual violence and other forms of violence. The Act makes special provisions for such children. For instance neglect is considered an offence under section 127, meaning the wilful failure to provide for a child, ill treatment, and cruelty directed at a child by a parent or care giver. Parental neglect is a criminal offence both under the Penal Code and the Children Act. Parts XI and XII discuss foster care and adoption for children without family or proper family care.

<sup>19</sup> Section 56

<sup>20</sup> Section 114 ©

<sup>21</sup> Section 114 (f)

The Children Act includes penalties under Part II for persons who offend that section. Such a person is liable upon summary conviction to a term of imprisonment and a fine. Other offences are also punishable under the Act, and civil remedies are provided for.

The Children Act is not the only piece of legislation that seeks to protect children from violence. The Penal Code and the Criminal Law Amendment Act protect children from sexual offences that are classified under the Penal Code as offences against morality. These are as provided below:

## Sexual Offences

### (i) Rape, defilement and related offences

This entails having carnal knowledge of a woman or girl without her consent. However this only applies to persons above 16 years. The maximum sentence for rape is life imprisonment. Attempted rape is also an offence punishable by life imprisonment. The rape of a girl who is 16 years and below is defined as defilement. Consent is not necessary in the case of defilement and hence any purported consensual sex with a girl below 16 years is considered statutory rape. This also applies in the case of a person who has a mental disability. Such a person is deemed incapable of giving consent. Conspiracy to defile a child by two or more persons is also a crime.

### (ii) Indecent assault

This is the touching of the private parts of a woman or girl without her consent. Indecent assault is punishable for up to 21 years. However a girl under 16 years is deemed legally incapable of giving consent to an act constituting indecent assault.

### (iii) Abduction

The detention of a girl or boy of any age against his or her will with the intention to have sex with him or her or make her or him have sex with someone else against her or his will or to marry her or him or have someone marry her or him against her or his will is a crime punishable for up to 7 years in prison. When a person takes an unmarried person, boy or girl under the age of 16 years from the lawful custody of the father or mother or guardian without the consent of the parents it is still considered a criminal offence whether or not the offender violates the child sexually.

### (iv) Insulting the modesty of a woman and girl

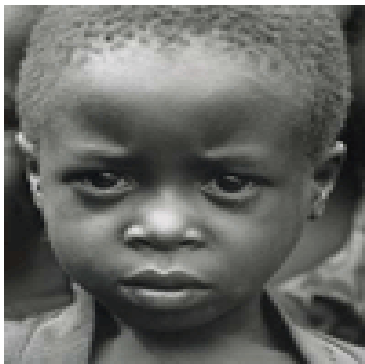
Insulting the modesty of a woman or girl by making any sound or gesture or exhibiting any object intending that such sound, gesture or word be seen or is seen to intrude upon the privacy of a woman or girl is considered a crime.

### (v) Other sexual Offences

These include using children for prostitution or immoral purposes, unnatural offences and incest (sexual relations between relatives).

## Physical and Psychological Violence.

The Penal Code provides for protection against physical violence and lists punishments for crimes such as murder, infanticide, assault, grievous harm, and other forms of assault. These provisions are generic and not specific to children. The Penal Code forbids the imposition of a death sentence on a child. The right to life is extended to



the unborn child by the law, which prohibits abortion unless the life of the mother is threatened. The death penalty cannot be passed on a pregnant woman. The Penal Code<sup>2</sup> is silent on psychological abuse as a form of abuse. However the same is provided as a form of abuse under the Children Act.

### Neglect

The Penal Code also makes it a criminal offence for a person charged with the care of a person to abandon the person, thus posing health risks to the person. This has often been used to compel parents to take care of their children.

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## Other pieces of Legislation:

Several other pieces of legislation make provisions for the protection of the child against violence either directly or indirectly. The table below gives a breakdown of the primary pieces of legislation and their provisions relating to children.

**Table 1: Table of Statutes on Laws with Implications on Violence Against Children**

1.	ACT	CHAPTER	CONTENTS/OBJECTIVES
2.	African Christian Marriage and Divorce Act	151	Provides for marriage of African Christians and their dissolution. Deals with the question of consent to marriage, status of African Christian widows especially with respect to guardianship of children of the marriage; custody and maintenance of children after divorce, nullity of marriage or judicial separation. It also deals with the age of Marriage.
3.	Age of Majority Act	33	Provides for age of Majority at 18 years. A person is considered to be of full age and ceases to be under any disability by reason of age on attaining the age of 18 years. This now coincides with the Children Act which provides that a child is a person below 18 years of age.
4.	Asian Officers' Family Pensions Act	194	Makes provision for granting of pensions to widows and children of Asian Officers appointed to the service of Government after 1942.
5.	Asian Widows and Orphans Act	193	Makes provision for granting of pension to widows and children of deceased Asian Officers.
6.	Betting, Lotteries and Gaming Act	131	Prohibits betting and gaming with young persons except under certain conditions, e.g. it takes place in a private dwelling house or in the presence of a parent or guardian of that person.
7.	Births and Deaths Registration Act	149	Provides for notification and registration of births and deaths. It is the duty of every Registrar of births and deaths to keep a register of births and deaths to enter particulars of every birth and death notified to him. Registration of children in Kenya is still a challenge especially in rural areas. This makes it difficult to ensure that programs that ensure protection of children reach them.
8.	Bills of Exchange Act	27	Provides for capacity to incur liability as a party to a bill of exchange i.e. it is co-extensive with capacity to contract. It also deals with a bill drawn or endorsed by an infant, minor or corporation having no capacity to incur liability on a bill.
9.	Borstal institutions	92	Makes provision for the establishment of Borstal institutions for youthful offenders and for the detention of such offenders and incidental purposes. It also makes provisions for the regulation of punishment of the offenders which in the past included corporal punishment .
10.	Chief's Authority Act	128 (Repressive sections of it now repealed)	Conferred authority on chiefs to prohibit or restrict the manufacture, distilling, consumption or possession of native intoxicating liquors and the supply of such liquors to young persons. The Act also exempted persons under 18 years to over 15 years of age from rendering compulsory service in connection with preservation of natural resources.
11.	Children Act	586	This is an Act of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children's institutions; to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and for connected purposes. Part II therefore makes provisions for the rights of the child including the right to life, privacy, freedom from torture, freedom from economic exploitation, sexual abuse, physical abuse, psychological abuse and harmful cultural practices. It consolidates the Guardianship of Infants Act, the Children and Young Persons Act and the Adoption Act (Now repealed.)
12.	Civil Procedure Code	21	Provides for institution of suit by and against a minor for civil cases.
13.	Constitution	Act No. 5 of 1969	Deals with the fundamental rights and freedoms of the individual and in particular, protection from discrimination except in matters of personal law e.g. adoption, marriage, divorce, burial, devolution of property on death. It makes no specific provisions relating to children. However the draft constitution makes provisions relating to children.

14.	Co-operative Societies Act	490	Disqualifies persons below 18 years from becoming members of a registered cooperative society.
15.	Contract Act	23	Applies English Common Law of contract to Kenya with certain modifications. The common law position with respect to children is that a contract is voidable at a child's option.
16.	Criminal Law Amendment Act	Kenya Gazette Supplement No. 64, Acts, No. 6, 2003	The Criminal Law Amendment Act passed into law in July 2003, established various stringent measures to curb sexual abuse; these include removal of consent by the Attorney General to prosecute in cases of incest, rising the age of consent from 14 to 16 years for girls, setting stiffer penalties for defilers from a maximum of 14 years to life imprisonment. The requirement for corroboration was removed in sexual offences cases involving children of tender years (10 and under). The Criminal Law Amendment Act, incorporated amendments from, the Criminal Procedure Act, the Penal Code and the Evidence Act. It outlaws the use of torture for purposes of obtaining confessions from suspects and accused persons. This includes children who may be in conflict with the law. It provides that confessions are only admissible in a court of law if they are made during court proceedings and not at police stations, as was the previous practice.
17.	Criminal Procedure Code	75	Empowers a court to substitute the offences of incest and defilement of a girl under 16 years of age with other specified offences against morality to ensure conviction.
18.	Disability Act	Kenya Gazette notice no.111 Act (15)	Provides for the protection of persons from disabilities from discrimination or exploitation and includes children with disabilities.
19.	Law of Domicile Act	75	Deals with domicile of origin, domicile acquired through legitimating and/or adoption of an infant; consequential change of domicile etc.
20.	Education Act	211	Provides for the regulation and progressive development of education, makes specific provisions on promotion of education, management of schools financial and miscellaneous matters. Previously provided for the regulation of corporal punishment but the same has now been outlawed. (MoEST Legal Notice LN 56/2001).
21.	Employment Act	226	Deals with employment of women and juveniles, contains provision on maternity leave, employment of children in industrial undertakings, records of juveniles in employment, powers of labour officers to cancel or prohibit contracts, etc.
22.	Evidence Act	80	Makes provision for conducive proof of legitimacy and evidence of a child of tender years. Thus evidence of a child must be corroborated by other material evidence in support thereof otherwise accused shall not be liable to conviction.
23.	Fatal Accidents Act	32	Deals with compensation for families of persons killed in accidents. Covers illegitimate children.
24.	Film and Stage Plays Act	222	Controls the making and exhibition of cinematography films, licensing of stage plays theatres and cinemas. The board of censors is empowered to rule that a cinematography film is unsuitable for children.
25.	Firearms Act	114	Restricts possession of firearms and ammunition to young persons.
26.	Geneva Conventions Act	198	Aims for enabling effect to be given to certain international Conventions concluded at Geneva on 12 <sup>th</sup> August 1949. These conventions make provisions with respect to treatment of children in situations of war.
27.	Hindu Marriage and Divorce Act	157	Deals with Hindu marriage and conditions for solemnization of such marriage. Provides minimum age of marriage at 18 years and 16 years with parental consent.
28.	Immigration Act	172	Deals with prohibited immigrants and their dependants; entry permits and passes etc. Children of accredited envoys are excluded from the requirement for entry permits and passes.
29.	Industrial Training Act	237	Deals with apprenticeship and indentured learner ship of minors etc.
30.	Judicature Act	8	Provides for the sources of law of Kenya and provides that English Common Law, Doctrines of Equity and Statutes of General Application shall apply where there is no written law, so far only as circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary. It also provides that customary law may apply so long as it is not repugnant to justice and morality or inconsistent with any written law. This may allow for the practice of harmful cultural practices against children.

31.	Kadhi's Court Act	11	Deals with the jurisdiction of Kadhi's courts i.e. determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion. The High Court and any subordinate court have concurrent jurisdiction.
32.	Kenya Boy Scouts Act	219	Establishes the Kenya Boy Scouts Association, a movement for young boys that allows for participation in community and other social-economic activities.
33.	Kenya Girl Guides Act	220	Protects the activities and interests of the Girl Guides Association incorporated under the Royal Charter granted on 14/2/22
34.	Kenya Citizenship Act	170	Provides for registration of minors as citizens of Kenya upon application made by a parent or guardian. Minor means a person who has not attained the age of 21 years.
35.	Legitimacy Act	145	Deals with children born out of wedlock; the registration of their birth after their legitimation i.e. after marriage of the parents, their right to take interest in property etc. This Act allows for discrimination of children born out of wedlock.
36.	Limitation of Actions Act	22	Prescribes periods for the limitation of legal actions and arbitration but excludes matrimonial proceedings from its application.
37.	Liquor Licensing Act	121	Prohibits grant of license or transfer to any person who is under 18 years of age to sell, control or supervise sale of liquor to or have custody, or control of liquor on licensed premises and sale of liquor to a person under 18 years.
38.	Marriage Act	150	Makes provision for civil marriages and especially deals with consent of marriage of minor, minimum age of marriage (16 years). This provision conflicts with the Children Act that outlaws marriage to children (under 18).
39.	Magistrate's Courts Act	Cap No 10 of 1967	Deals with the jurisdiction of magistrate's courts in proceedings of a civil nature where proceedings concern a claim under customary law i.e. a claim concerning marriage, divorce, maintenance, dowry, seduction, pregnancy of an unmarried woman or girl, issues of status of children including guardianship, custody, adoption, legitimacy etc.
40.	Maintenance Orders Enforcement Act	154	Aims at facilitating enforcement in Kenya of maintenance orders made in the United Kingdom of Eire in certain British possessions and vice versa.
41.	Matrimonial Causes Act	152	Deals with powers of courts to make orders for maintenance of infant children or marriage where the husband is guilty of wilful neglect or after decree of divorce or nullity or separation. Also deals with settlement of wife's property for the benefit of the children of the marriage in a case in which decree for divorce or judicial separation by reason of adultery, desertion or cruelty of wife is pronounced. While it is recognized that early childhood marriages are detrimental to the development of girls, the Matrimonial Causes Act defines "children" to mean in the case of Africans, a male who has not attained the age of 18 years and females who have not attained the age of 13 years and in the case of all other persons, unmarried children who have not attained the age of majority. What this means is that for the purposes of marriage the Act allows for childhood marriages. This conflicts with the provisions of the Children Act.
42.	Merchant Shipping Act	389	Deals with apprenticeship and learnership of persons above the age of 16 years; employment of children and young persons etc. Prohibits employment in any vessel of persons less than 14 years and provides restrictions on employment of children below 18 years of age e.g. no young person under 18 years shall be employed or work on any vessel as skimmer or striker.
43.	Mohammedan Marriage, Divorce and Registration Act	155	Deals with registration of Mohammedan marriages and divorce. Marriage or divorce of minors where one of the parties is a minor must be registered by their lawful guardian with an assistant registrar within seven days from celebration of the marriage or the pronouncement of divorce. This again contradicts the Children Act.
44.	National Commission on Gender and Development Act.	Cap No. 13 of 2003	The main aim of the Act is to establish an autonomous National Commission on Gender and Development to facilitate gender mainstreaming in national development. This is critical especially for girl-children who do not have equal access to resources such as land and education due to cultural inhibitions.
45.	National Hospital	255	Deals with contributions and benefits of the fund. No benefits are paid in respect of any maternity expenses incurred within six months of a



	Insurance Act		person's becoming a contributor.
46.	National Social Security Fund	258	Makes provision for contributions to the fund, the payment of benefits out of the fund and related matters. Children covered include stepchildren; illegitimate children and adopted children. The term dependant covers parents, grandparents, grandchild, brother, sister or such other relatives as may be prescribed.
47.	National Youth Service Act	208	Provides for the establishment of a National Youth Service (NYS), the functions of the NYS and related matters. Its functions are the training of young citizens to serve the nation and employment of its members in tasks of national importance. Eligibility to the service starts at 16 years. This program was used to rehabilitate street children from the year 2003.
48.	Penal Code	63	Has extensive provisions on criminal offences and includes mainly offences related to physical violence such as murder, maim, grievous bodily harm, assault and also has provisions on sexual offences under the section classified as offences against morality. These include rape, defilement, indecent assault, assaulting the modesty of a woman, false pretence of marriage, abduction, amongst others. It also has punitive provisions for neglect of children.
49.	Perpetuities and Accumulations Act	161	An Act of Parliament to consolidate and modify the law in Kenya relating to the avoidance of future interests in property on grounds of remoteness and governing accumulations of income from property. Makes provision for the protection of the rights of children to property under certain circumstances.
50.	Police Act	84.	Makes provision against torture by the Police.
51.	Public Trustee Act	168	Provides for the administration of the estate of a deceased person and protects orphans from being disinherited by unscrupulous relatives.
52.	Public Officers Code of Ethics	Cap 145	

#### Table of Pending Bills of Relevance

	Bill	No	Provision
1.	Domestic Violence, (Family Protection Bill)	Kenya Gazette Supplement No. 77 (Bills No. 20) 2000	An Act of Parliament to provide for the intervention of courts in cases of domestic violence, to provide for the grant, enforcement and variation of court orders for protection from such violence, and for connected purposes.
2.	HIV/AIDS Prevention and Control Bill	Kenya Gazette Supplement No.76 (Bills No. 22) 2003	Protects children who are HIV positive from discrimination and provides measures against testing of children without authorization.
3	Refugee and Displaced Persons Bill		Makes provision for refugees and displaced persons including protection of women and children against sexual abuse and exploitation.
4.	Sexual Offences Bill	Not introduced to Parliament yet.	Makes provisions for the protection primarily of women and children against sexual abuse. Seeks to bring into realization the provisions of international treaties on sexual violence against women and children. The motion has been introduced in Parliament and a taskforce created to work on it.
5.	Trafficking in Persons Bill	Presented to the Hon. The Attorney General by CSOs.	The Bill makes provision for the protection of children against trafficking and includes hefty fines and penalties for offenders. It establishes a fund for victims of trafficking and provides for rehabilitative services.

#### 3.2 Protection of Children from all forms of Violence

The Children Act is the one piece of legislation that most comprehensively seeks to protect children from violence. However, as indicated in 3.1 above, there are several other pieces of legislation with the same

objective. There are also related Bills pending in Parliament. Most of these seek broader protection of children and women against violence, such as the Domestic Violence (Family Protection) Bill and the Sexual Violence Bill.

The Children Act contains several provisions dealing with different categories of children. For instance, it makes special provisions in relation to Orphans and Vulnerable Children (OVCs).

- Section 4 (1) states that every Kenyan child has the right to life and requires the government and the family to ensure their survival and development. Read together with section 9, which makes health and medical care a right for each child, this section can be relied upon to seek special interventions critical for the survival and development of OVCs. Such measures could include providing life/saving drugs like Anti-Retro-Viral (ARVs) for those living with HIV and AIDS and fee waivers in public hospitals for those seeking medical care.
- Section 5 provides for freedom from discrimination, which means that orphans and other children rendered vulnerable by HIV and AIDS shall be treated in exactly the same manner as other children. It outlaws all discriminatory practices, including those in learning institutions and recreation spots.
- Section 7 provides for free and compulsory education for each Kenyan child, notwithstanding their circumstances, including health status. This guarantees access to basic education for OVCs and makes it illegal to bar these children from accessing learning institutions for whatever reason.

Other sections that prohibit violence against children include provisions on protection from child labour (section 10), abuse (section 13), harmful cultural rites (section 14) and sexual exploitation (section 15). The Act also provides for alternative parentage through guardianship (part VIII), foster care placement (part XI) and adoption (part XII). Moreover, through provisions on institutional care, particularly affecting charitable children's institutions (part V), and the Act makes it possible to provide temporary shelter for vulnerable children. Part XI of the Act addresses "children in need of care and protection". Among these are children who have no parents, and children who are terminally ill or whose parents are terminally ill.

The Children Act outlaws child trafficking in all its forms as it is a violation of children's rights. In addition to the legislative provisions, there have been efforts made by the Government to address the issue of trafficking. Immigration officials do receive brief training on the issue of trafficking, and a human trafficking unit has been established within the police services. In the office of the Vice President Ministry of Home affairs, a committee on child trafficking was formed in April 2005 to address national and international issues of child trafficking with a view to finally curb the vice. The ultimate goal of the committee is to bring together key players in this field to share ideas and chart a way forward. According to the Ministry of Tourism & Information<sup>22</sup>, the following measures have also been taken by the Government:

- The Mombasa and Coast Tourism Association normally carries out awareness campaigns among its member hotels and tour operators to educate them on the right of the child.
- The Government has directed all hotels that no minors should be accommodated unless accompanied by adults who have a good or justifiable reason to be with the minor. It is also illegal for night spots to admit minors.
- A child sex tourism conference for staff from the Children's Department, the Minister of Tourism, and the hotel industry was held at the Coast in July 2005.
- The MOEST have a counselling program where by some teachers are specifically trained to give counselling and quick support instances of abuse in schools.

### 3.3 Redress, including compensation, for child victims of violence

There are civil remedies for the violation of children's rights, which may be recoverable as general and special damages especially where a child suffers harm as a consequence of the violence. The High Court may also give declaratory orders especially where there are human rights violations. The Children Act provides novel provisions by providing concurrently for penal sanctions and civil remedies. This is unlike most pieces of legislation in Kenya. It means that if someone violates the rights of the child as enshrined under Part II of the Act then the child or the child's guardian has the option to take punitive and compensative measures using the same piece of legislation. Also positive is the fact that there are several gazetted Children's Magistrates now staffing Children's Courts countrywide who are meant to dispose of matters relating to children speedily and efficiently. The initial number of gazetted magistrates totalled 119 but many have since left the judicial services. It has been recommended that all magistrates be trained in the children Act. Gazetting children magistrates is a new development, which is yet to be properly institutionalised nationwide. Most of the pending Bills in Parliament relating to violence such as the Domestic Violence (Family Protection) Bill and the Sexual Violence Bill have provisions related to setting up a Trust Fund for victims and survivors of violence. The Ministry of Labour greatly relies on its labour officers and the Industrial Court to address violations reported to them concerning children and labour. Penalties include mainly fines but rarely imprisonment.

<sup>22</sup> *Elijah Kasati in his report on protecting children against sexual exploitation in tourism, workshop in Dakar, Senegal 30<sup>th</sup> September - 1<sup>st</sup> October 2003*

### 3.4 Penalties for perpetrators of violence against children

All pieces of legislation addressing offences against children include punitive measures for violations. For instance, a person who defiles or murders a child may be jailed for life. The sentences for meting out violence against children vary according to the severity or gravity of the crime. For example for the crime of assault, the Penal Code provides that any one who unlawfully assaults another is guilty of a misdemeanour and if the assault is not committed in circumstances for which a greater punishment is provided, in the Code, is liable to imprisonment for one year.<sup>23</sup> Section 251 states that any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and liable to five years imprisonment.

Neglect of children is criminalized under section 239 of the Penal Code which provides that “any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is, or is likely to be endangered is or is likely to be permanently injured is guilty of a felony and is liable to imprisonment for 3 years”.

The offence of rape may attract a maximum life sentence whereas the penalty for abduction is seven years.<sup>24</sup> The punishment for indecent assault is imprisonment with hard labour for 5 years.<sup>25</sup> Other penalties include one year for insulting the modesty of a woman and a life sentence for defilement.

### 3.5 Reintegration and rehabilitation of child victims of violence.

The Children Act makes specific provision for the rehabilitation of children who have suffered various forms of violence including participation in armed conflict, abuse and abandonment or neglect as per the regulations made by the Minister under section 13(2). It places responsibility on the Government to provide protection, rehabilitation care, recovery and re-integration into normal social life for any child who may become a victim of armed conflict or natural disaster.<sup>26</sup>

The Children Act includes measures to address the rehabilitation of children in conflict with the law, including the establishment of Rehabilitation Schools and Children Remand Homes. Programs such as Diversion Programme for Children in Conflict with the Law have also been established. The aim of the Diversion Programme is to provide a practical and child friendly approach to cases involving child offenders, and support efforts to divert larger numbers of children in conflict with the law away from the formal juvenile justice system and back into their communities and society. An analysis done in 2000 by Save the Children UK of the Juvenile, Justice system in Kenya revealed a number of concerns including the lack of appropriate legislative and policy frameworks, lack of policy and practice guidelines, lack of coordination and collaboration with, welfare cases being treated as criminal cases and inadequate resources. It was therefore seen that there was need to divert children from the justice system as a matter of priority (especially welfare cases). A diversion framework was developed and implemented in three areas Nairobi, Nakuru and Kisumu districts.

The Kenya Police Services strategic plan has been designed with a human rights approach to address service delivery. NGOs and Government institutions have been set up to investigate cases of torture, such as the Kenya National Commission on Human Rights (KNCHR) and the Independent Medical Legal Unit (IMLU). Because of training offered to police officers, they can now handle cases involving children in a more humane manner.

The Government, through the Department of Children Services, at district level continues to intervene on child abuse cases including those of torture and other forms of degrading and inhuman treatment. Specifically, the Department of Children Services has set up a crisis desk at the Provincial Children office Nyayo house. ANPPCAN (k) also has a crisis desk. Other organisations include Family Life Counselling Association in Kenya, Child Welfare Society of Kenya that operates telephone hotlines to rescue children in need of protection. Several NGOs provide rehabilitative services for children, including Rescue Dada, Undugu Society of Kenya and Pendekezo Letu.

## 4. Indicate whether any specific legislative provisions address all forms of violence including physical, sexual and psychological violence, injury or abuse, neglect or negligent treatment and sexual exploitation against children which take place in:

- The family/ home;
- Schools and pre-school care and education (both formal and non-formal, state and Private);
- Military schools;
- Institutions including care, residential, health and mental health;

<sup>23</sup> Section 250

<sup>24</sup> Section 142 of the Penal Code

<sup>25</sup> Section 144, Penal Code

<sup>26</sup> Part II of the Act.

- The context of law and public order enforcement including in detention facilities Or prisons;
- The neighbourhood, street and the community, including in rural areas;
- The workplace (informal and formal);
- Sports and sporting facilities.

- The family/ home

There is no comprehensive piece of legislation on violence in the family. However there was a Bill introduced in Parliament, The Domestic Violence (Family Protection Bill), which sought to address this problem. It has not yet been passed into law. However, several articles under the Children Act and the Penal Code address violence in the family or home set up. These include provisions relating to parental neglect, physical abuse under the guise of 'discipline', incest, and so on. Section 164 of the Penal Code seeks to prevent the indecent assault of young boys by either male relatives or strangers by providing as follows: "Any person who unlawfully and indecently assaults a boy under the age of 14 years is guilty of a felony and is liable to imprisonment for seven years". The provisions that relate to incest also seek to protect children from sexual abuse within the context of the family by providing as follows: "Any person who has carnal knowledge of a female person who is to his knowledge his daughter, grand daughter, sister or mother is guilty of a felony and is liable to imprisonment for five years".<sup>27</sup> On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of 21 years, it shall be in the power of the court to divest the offender of authority over such female, and if the offender is the guardian of such female, to remove the offender from such guardianship and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or less period.

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Further to the above, the neglect of children is criminalized under section 239 of the Penal Code which provides that: "Any person who, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is, or is likely to be endangered is or is likely to be permanently injured is guilty of a felony and is liable to imprisonment for 3 years". The Children Act provides for the offence of neglect, which prohibits wilful neglect, ill treatment and cruelty towards children by their parents and other caregivers. The offence attracts imprisonment for a maximum of two years and a fine of up to 200,000 Kenya shillings (700 USD) or both. The Children Act also lists a child who is exposed to domestic violence as a child in need of care and protection. Section 120 provides for the reporting of a case where there is reasonable cause to believe that a child is in danger. The child can also be committed to a place of safety.

The Children Act contains regulations on adoption that act as pre-requisites and guidelines to prevent the exploitation of and violence against children. The section on adoption lists stringent requirements on who can adopt, under what conditions one can adopt a child, and other orders the court can give in relation to a child who is to be adopted. The court can not for instance allow the following to adopt a child unless there are special circumstances so warranting:<sup>28</sup>

- a sole male applicant in respect of a female child;
  - a sole female applicant in respect of a male child;
  - an applicant or joint applicants who has or both have attained the age of sixty-five years;
  - a sole foreign female applicant
- Under section 158 (3), an adoption order shall not be made if the applicant or, in the case of joint applicants, both or any of them -
    - a) is not of sound mind within the meaning of the Mental Health Act;
    - b) has been charged and convicted by a court of competent jurisdiction for or any of the offences set out in the Third Schedule to Act or similar offences (Offences relating to sexual violence);
    - c) is a homosexual;
    - d) in the case of joint applicants, if they are not married to each other;
    - e) is a sole foreign male applicant;

The Adoption Rules and Regulations have been developed and launched.

Other offences that are often committed within the home or family set up include harmful cultural practices such as female genital mutilation, (FGM) and early marriage. These are outlawed under the Children Act.

- Schools and pre-school care and education (both formal and non-formal, state and private);

<sup>27</sup> Section 166 (1)

<sup>28</sup> Section 158 (2) of the Children Act

Corporal punishment was outlawed in schools through Legal Notice No.56 of 2001 and a circular was sent to all head teachers regarding the ban. The Ministry is also strengthening its guidance and counselling division both at headquarters and the school level, and has developed alternatives to corporal punishment through research in conjunction with ANPPCAN (K). Guidelines on alternative forms of punishment were launched in March 2005 to be used in schools and facilities where children are cared for. In the meantime a few cases of corporal punishment have been reported in the local dailies and the District Education Office has dealt with each case. The courts are also becoming sensitive to this ban and have made some positive decisions in relation to corporal punishment and as indicated herein above, a teacher was jailed for caning children as a disciplinary measure. However the challenge is that in many places teachers have not internalised this, and thus many cases of violence continue.

In regards to the protection of children, the Ministry of Education has developed a Child Rights Curriculum at pre-school (ECD) and teacher training colleges. Life skills have been included in this curriculum for the last 3 to 4 years. The Ministry has also in collaboration with the NGO, Kenya Human Rights Commission, (KHRC), developed and disseminated a Human Rights Handbook for primary schools.

- **Military schools;**

There is no military school for juveniles in Kenya.

- **Institutions including care, residential, health and mental health;**

The Children Act Section 48 provides for separate facilities for boys and girls in rehabilitation schools. Section 58 establishes the charitable children's institutions and section 67 requires inspection of these institutions especially by interviewing any child in the institution and allowing treatment and family contact.

There is a Mental Health Act, the principal legislation on this subject. It does not however focus specifically on children. The Act seeks to regulate the care of persons who are suffering from a mental disorder or mental sub normality with mental disorder, the custody of their persons and the management of their estates, and the management and control of mental hospitals. Part II details reception of persons with mental disorders into mental hospitals. Part V gives powers to mental hospitals to receive voluntary patients who have attained the apparent age of 16 years, for treatment of mental disorders. Part VI provides for temporary treatment, of persons with mental disorders, without certificates. Part VII deals with emergencies, and transfers of patients. Part XI describes procedures for the removal of patients to foreign countries. Part XII provides for judicial power over persons suffering from mental disorder.

The relevant articles on violence against children are sections 51 & 53, which proscribe ill treatment of a person in a mental hospital and offer penalties for any breach thereof. Section 51 provides that " any person in charge of, or any person employed at, a mental hospital who strikes, ill treats, abuses or wilfully neglects any patient in the mental hospital shall be guilty of an offence; but nothing in this section shall be deemed to make it an offence for the person in charge of, or any person employed at, a mental hospital to take steps he considers necessary in the interest of a patient to prevent the patient from causing physical injury to himself or to others."

Section 53 provides that any person who is guilty of an offence under the Act, or who contravenes any of the provisions of the Act or of any regulations made under the Act shall, where no other penalty is expressly provided, be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding 12 months or to both.

Other than the legislative framework, there exists The National Standard for Management of Children's Department (NS), a document that standardises the operation of the departments' management in the field, the institutions and at the department headquarters. The Rules and Regulations Governing Charitable Children Institutions in Kenya is a policy framework to manage institutions and ensure that children's rights are protected fully and not abused. Part of what the Rules and Regulations Governing Charitable Children Institutions in Kenya are supposed to do is help enforce the provisions of the Children Act which clearly state that charitable institutions must be registered by the Government and that the National Council for Children's Services must approve all child welfare programmes and monitor their progress. However a study<sup>29</sup> undertaken revealed that some homes have different registration status; 18.2 percent were registered as non-governmental organisations, 9.1 percent as community based organisations, 4.8 percent who do not have any registration status at all, and over 50 percent failing to specify their registration status. This indicates that either there is laxity on following up the registration status of these institutions or that most of the homes do not seek registration for whatever reason. - Judy kindly put in some information on regulations to manage charitable children's institutions and the National Standards.

- **The context of law and public order enforcement including in detention facilities or prisons;**

<sup>29</sup> ibid 23.



Under Section 77 (2) (a) - (b) of the Constitution of Kenya, every person, including a child, who is charged with a criminal offence, shall be presumed to be innocent until proven guilty and shall be informed as soon as possible in a language that he/she understands and in detail the nature of the offence.

There are comprehensive provisions relating to children in conflict with the law under Part XII of the Children Act and the Schedule to the Act. The Child Offender provisions and the subsidiary rules thereof (Child Offender Rules) as contained in The Children Act provide a legal framework for the administration of juvenile justice.

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

- (i) The right to innocence until proven guilty;
- (ii) The right to be informed immediately of reason of arrest;
- (iii) The right to expeditious resolution of matters;
- (iv) The right to legal assistance and representation; and UNICEF 94-0989\_Betty-Press
- (v) The right not to be compelled to give testimony or to confess to guilt.

In determining matters the courts are directed to take due regard to the best interests of the child. Matters concerning children, apart from murder charges or where a child is charged jointly with an adult, are to be heard in a Children's Court by a Children's Magistrate. The court should be child friendly and the child's privacy protected at all times.

The Child Offender Rules call for the following *inter alia*:

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

These laws and rules are relatively new and the challenge is the capacity to implement the laws.

There are specific pieces of law that deal with detainees within detention facilities such as the Borstal Institutions Act for older children. It regulates how children are treated within those facilities, for instance excluding denial of food as a means of punishment. It provides for the use of corporal punishment but with the amendments of the Penal Code through the Criminal Law Act, 2003 and the passing of the Children Act, 2003, the said provisions relating to corporal punishment no longer apply. However, the same have yet to be formally deleted from the statutes. The Children Act also has extensive provisions for children who are committed to rehabilitation centres and remand homes. It makes guidelines for inspection of the institutions to ensure that there are no human rights violations. There are however children who are detained in adult prisons. The relevant piece of legislation is the Prison's Act that regulates how prisoners are treated.

- **The neighbourhood, street and the community, including in rural areas;**

There is no specific legislation that focuses on children in the neighborhood, street, community or rural areas. However the Children Act identifies some children as being in "need of care and protection." These include children who live on the streets, children without parental care, children who are subjected to domestic violence, and children who are subjected to harmful cultural practices such as FGM and early marriages, amongst others. The law makes special provision for the protection of children in need of care and protection under the Act, which includes placing the child in a place of safety or making orders enforceable by the parents. It may also include making a child a ward of the court. One of the most vulnerable groups in this category include street children who are frequently arrested by police and brought before courts where they are mainly charged with

status or petty offences. Without legal representation or the presence of a parent or legal guardian, these children are subjected to brief hearings whereby they may be deprived of their liberty and committed for years to juvenile correctional institutions known as approved schools or Borstal institutions.<sup>30</sup> Before they are committed to these institutions, children sometimes spend periods in temporary detention centers, called juvenile remand homes or remand prisons, pending adjudication of their cases. Some have complained of harassment and abuse by the police while on the streets and at their time of arrest.

• **The workplace (informal and formal);**

The two primary pieces of legislation that deal with child labour include the Children Act and the Employment Act. They both intend to comply with those international instruments related to child labour to which Kenya is party. Kenya ratified ILO Convention 182 on the worst forms of child labour in 2001 and has since developed a draft child labour policy. ILO Convention 138, which Kenya has also ratified, sets out the minimum age for admission into employment. Section 10 of the Children Act protects a child from economic exploitation and the worst forms of child labour. Work in the domestic context is deemed an integral part of the normal training and development of a child and is not seen as a form of abuse. Work is distinguished from labour, which is seen as exploitative.

The Children Act does not define the minimum age for child labour but makes provisions for the regulation of work for children over 16 years. On the other hand, the Employment Act protects children under the age of 16 from employment in industrial undertakings. The Children Act by inference provides that only children above the age of 16 can work by regulating work for children who are 16 years and above.<sup>31</sup> It states that the minister shall make regulations in respect of records of work and legitimate establishments for such work by children above the age of 16 years. There is also a further safeguard in the definition of child labour which is defined as follows: "In this Act, child labour refers to any situation where a child provides labour in exchange for payment and includes:

- a) Any situation where a child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for purpose of payments.
- b) Any situation where a child's labour is used for gain by any individual or institution whether or not the child benefits directly or indirectly
- c) Any situation where there is an existence of a contract for services where the party providing the services is a child whether the person using the service does so directly or by agent.

This comprehensive definition provides adequate legal protection of children from child labour. The challenge is bringing the provisions of these pieces of legislation into reality.

The Employment Act defines a child in Section 2 as an individual male or female who has not attained the age of sixteen years. The Act makes it a crime for anyone to employ a child whether gainfully or otherwise in an industrial undertaking. Children may however be employed in family businesses, including agriculture. Specific provision is made however to prohibit employment of a child in any open cast workings which are entered by means of a shaft or lift and therefore in a quarry or mine. The Act empowers enforcement officers to withdraw a child from employment if that employment is by an undesirable person (i.e. an employer whose behaviour is known to be unbecoming and unacceptable in society) or the employment is dangerous and immoral, or if the employment is likely to be injurious to the health of the child. It also requires an employer of children to maintain a register indicating the date of entry and exit from employment and to ensure regular medical examination of the child.<sup>32</sup> Some cases involving children have necessitated court intervention either to withdraw



a child from hazardous labour or to seek legal redress for children whose rights have been violated while working. The Ministry of Labour has also put in place several interventions to effectively deal with child labour issues. The Child Labour Division coordinates child labour activities in the country.<sup>33</sup> The Ministry has formulated a Draft Child Labour Policy and created a department of child labour to effectively implement the said policy. The Ministry has also helped to harmonize laws regulating child labour and put in place mechanisms to ensure these laws are enforced. It also works to improve the conditions under which children work, trains child labour inspectors, and has developed guidelines on child labour inspection. The Ministry of Labour has trained its officers in the Children's Department and the District Children's Advisory Committees on the need to eliminate child labour. The Ministry has also worked out modalities of

<sup>30</sup> Juvenile Injustice – Police Abuse and detention of Street Children in Kenya, HRW tch1 Cap226 Laws of Kenya

<sup>31</sup> Section 10 (4)

<sup>32</sup> The 1999 Child Labour Report, Central Bureau of Statistics Ministry of Finance an Planning, September 2001, Pg

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<sup>33</sup> The Law Society of Kenya report on the Status of the Children Act 2001, 6<sup>th</sup> March 2003, pg 17

integrating child labour issues into all sectors and has updated and developed a directory of NGO'S dealing with child labour. It has mounted awareness campaigns and developed educational materials on child labour. The Ministry is also in the process of creating a database on the worst forms of child labour in at least 50 districts in Kenya.

The Employment Children Rules L.N 155 is issued under Employment Act to reinforce welfare. It provides that no child shall be employed without prior written authority/ permission of an authorized officer; no permission shall be given to employ a child without the approval of a parent/guardian in writing if the child is going to reside away from them.; It is an offence to employ a child without written permission, which must be renewed annually; Children should not work in bars, hotels, restaurants or clubs where intoxication liquor is sold or as tourist guides unless the Labour Commissioner consents in writing; Where a person authorized to employ more than 10 children a welfare person should be designated to attend to the children; the penalty for breach of rules is a fine not exceeding Kshs 4,000.

The Regulations of Wages and Conditions of Employment Act Cap 229 provide that Children below the age of 16 should not work for more than 6 hours in a day; Children should not work between 6.00pm and 6.00am. Also Section 7(ii) weekly rest days of a person below the age of 16 years shall not be differed. The basic minimum wage and minimum daily and hourly rates are provided for all (same for adults and children).

The Factories and other Places of Work Act Cap 514 ensures safety and health of workers at work places by providing conditions to that effect. Part VII sets out special proviso and Rules on health, safety and welfare, which are applicable to both children and adults. Though Kenya has not ratified any off the 33 ILO conventions on occupations safety, health and welfare, it has incorporated most of their principles into the legislations. The Industrial Training Act Cap 237 puts provision up which a child is allowed to work as an indentured learner or under a need of apprenticeship.

The Ministry of Education has also been working to sensitise actors in the education sector on child labour. To this end the Ministry has come up with projects to raise awareness of school going inspectors, teachers, parents and the community in general to build their capacity to address the problem of child labour. The ministry has also conducted media workshops to sensitise the media to increase advocacy on elimination of child labour to enhance enrolment and retention on schools. A curriculum to integrate child labour into the normal learning content has also been developed.

In the concluding remarks by the UN Committee on the Rights of the Child in 2001, after Kenya's initial report, it was observed that there is not enough information or adequate data on the situation of Child Labour and Economic Exploitation in Kenya. A comprehensive survey was carried out by CBS and a report was prepared and launched in December 2002.<sup>34</sup> It reported that most of the work children engage in is hazardous and exploitative, and prevents them from attending school. The survey report indicated that there are 1.9 million children aged 5-17 years working for pay, profit or family gain.

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

The Ministry of Education, Science and Technology with support from ILO/IPEC developed a programme for withdrawing children from child work and placing them in schools. The introduction of free primary education has also seen many children leave child labour activities and register in schools. Other than the governmental initiatives, several organizations deal with child labour issues. These empower families of domestic workers to enable the children to go to school. In addition, schools have been assisted by non-governmental organizations to start income generating activities as a way of keeping children in school. This has benefited over 12,000 children.

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

- **Sports and sporting facilities.**

*Although there is no specific legislation that deals with sports or sporting activities related to children, The Children Act under section 17 provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. The Education Act provides for the inclusion of extra curricular activities in the education curriculum e.g. physical education.*

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<sup>34</sup> Child Labour Survey Report 1998/999



**5. Indicate if corporal punishment of children, in any setting, including in the family, is explicitly prohibited in your legal system. Provide details of any legal defences available to those who administer corporal punishment to children, including in the family. Provide information on penalties applicable to those who administer corporal punishment to children, including in the family.**

Corporal punishment in Kenya had in the past been sanctioned by several pieces of legislation as a form of discipline in institutions including penal institutions. These included the Penal Code, Prisons Act and Borstal Institutions Act. However the children Act outlaws corporal punishment to be administered to children.

The Prisons Act provides “that where corporal punishment is awarded the number of strokes shall be limited to a maximum of ten strokes in the case of persons of or under the apparent age of 16 years and in all other cases to 18 strokes, and shall be inflicted with such type of cane as may be prescribed.”<sup>35</sup> The mode of administering corporal punishment is also provided. Rule 77(3) of the Prisons Rules states that “corporal punishment shall be inflicted on the buttocks of the offender, in the case of adults with a cane which is not more than half an inch in diameter, and in the case of juveniles with a light cane”.

The Borstal Institutions Act provides for the establishment of Borstal Institutions as rehabilitation centres for the detention of youthful offenders. These offenders are usually between 15 and 18 years. They offer vocational training, and work at reforming the individuals as well. Section 33(5) (f) states that the “Commissioner may award an inmate corporal punishment not exceeding 10 strokes of the cane”. Section 36 (1) also provides that no sentence of corporal punishment shall be carried out until a period of 24 hours has elapsed from the time of the order thereof and a medical officer has certified that the offender is physically fit to undergo the punishment. Section 2 says that a medical officer may give such orders for the prevention of injury to the health of the offender ordered to receive corporal punishment as he may deem necessary, and such orders shall be carried out before the punishment is inflicted; and if, during the course of the infliction of the punishment, the medical officer orders it to be discontinued it shall be discontinued accordingly. Section 3 precludes the administration of corporal punishment upon female inmates.

The Borstal Institutions Rules state that corporal punishment shall be inflicted in the presence of the superintendent and the medical officer. The superintendent shall enter in the corporal punishment book the order for corporal punishment, the hour at which the punishment was inflicted, the number of strokes inflicted, recommendations of the medical officer, and any order which he may have given as to remission. It maintains that corporal punishment shall be inflicted with a light cane on the buttocks.<sup>36</sup> The rules disallow the infliction of corporal punishment by instalments.

The Penal Code also had several sections that allowed for corporal punishment as a form of penal sanction. For instance, section 27(3) said that whenever a male person under the age of 18 years is convicted of an offence for which he is liable to imprisonment, the court may, in its discretion, sentence him to corporal punishment in addition to or in substitution for any other punishment to which he is liable - provided that no sentence of corporal punishment shall be imposed in default of payment of a fine.

However, in the last two years, numerous reforms and initiatives have been undertaken to outlaw corporal punishment. It was for instance formally banned in schools in April 2001 as a matter of policy. Unfortunately, however, it still continues to be practiced both in schools and institutions for children e.g. in schools and sometimes remand homes as a form of discipline. There have been reported cases in the print and electronic media of permanent injury or death of children caused by parents and other persons.<sup>37</sup> It has also been prohibited in law as a form of sentencing for crimes in penal institutions. This is expressly provided for in the Children Act and the Criminal Law Amendment Act. Section 191(2) of the Children Act provides as follows: “**No child offender shall be subjected to corporal punishment**”. Section 18(1) further states that “no child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty.” No specific punishment is included for a person who commits corporal punishment against a child. However, under the Children Act, any person who offends the provisions of Part II (which includes subjecting a child to torture), shall be liable upon summary conviction to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine.<sup>38</sup> The Criminal Law Amendment Act has also made extensive reforms by deleting the word “corporal punishment” as a form of punishment for crimes under the Penal Code. There is no express provision for a person who does not comply with this provision but one may use offences under the Penal Code such as assault or occasioning grievous bodily harm to charge a person who commits corporal punishment against a child. This is often what has been used.<sup>39</sup>

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<sup>35</sup> Section 55 (1)

<sup>36</sup> Rule 53 (3-6)

<sup>37</sup> An Outside Chance Street Children and Juvenile Justice – An International Perspective by Marie Wernham, Pg 120

<sup>38</sup> Section 20.

<sup>39</sup> For instance in the case of Grace Oendo Nyangarisa who lost one eye as a consequence of corporal punishment by the teacher. The teacher was charged with assault occasioning actual bodily harm. (See After the Promise;

This ban on corporal punishment is said to only apply to institutions and not at home. Though there are no direct legislative provisions allowing or disapproving corporal punishment in the home, it is presumed that reasonable chastisement is acceptable for parents. Parents are only prosecuted if the assault is excessive and causes actual bodily harm. In such a case, what may be used are provisions such as Section 13 (1) of the Children Act that prohibits physical abuse of children. It says that “every child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation”. In sub-section 2 thereof, it states that any one who becomes a victim of abuse in terms of sub-section 1 shall be accorded appropriate treatment and rehabilitation in accordance with such regulations as the Minister may make.

The law does not provide for any defence or any penalties for those who practice corporal punishment save as indicated above.

## **6. Provide information on whether the penal code permits corporal punishment and/or capital punishment as a sentence for crimes committed by under 18 year olds.**

The Government has sought to rid all institutions of corporal punishment through the Criminal Law Amendment Act, 2003. Most of the amendments touching on corporal punishment only amended parts of those sections that prescribed corporal punishment. Chapter IV of the Penal Code deals with punishments, encompassing Section 24 through to Section 39. Section 24 talks of the different kinds of punishments that may be inflicted by a court. By amending Section 24 of the Penal Code, which falls under Chapter IV, Section 3 of Criminal Law Amendment Act did away with paragraph (d) of the aforesaid section, which included corporal punishment as a kind of punishment. Thus, all other sections in the Code, which contained corporal punishment, were subsequently amended accordingly. Section 26 of the Penal Code deals with imprisonment. Section 4 of Criminal Law Amendment Act amended Section 26 (3) (ii) of the Penal Code, which provided for imprisonment along with corporal punishment. Section 27 of the Penal Code dealt exclusively with ‘rules’ of corporal punishment, who may pass the sentence, who may receive corporal punishment, and how it may be inflicted. A repeal of this whole section is contained in Section 5 of the Criminal Law Amendment Act. Section 7 of Criminal Law Amendment Act deleted the words “or corporal punishment” contained in Section 37 of the Penal Code. Section 8 of Criminal Law Amendment Act amended Section 38 (a) of the Penal Code by replacing the words “fine or corporal punishment” with the words “or fine”. Thus corporal punishment is outlawed as a form of punishment under the Penal Code. It is also outlawed under the Children Act as indicated herein.

Capital punishment is outlawed against persons below 18 years old both under the Penal Code and the Children Act.

## **7. Provide details on whether bullying/hazing and sexual harassment are explicitly addressed by legislation.**

In regard to bullying the MOEST deals with this through the Board of Governors recognized in the Education Act and School committee who take disciplinary action against the errant student(s) by either suspending or expelling the child. Bullying of the new or younger students by older students and harsh treatment of some children is very common in schools, especially if the targeted child has special circumstances such as a disability. These forms of exploitation are prevalent at the primary school level and in Form I, where due to age, fear and lack of knowledge about their rights, new and younger children are bullied by older children. Teachers may also at times bully children. Bullying can take the form of revenge, personality disorder or learned behavior.<sup>40</sup> Unfortunately, there is no specific legislation against bullying. There are only administrative actions against bullying in some schools. For instance a student found bullying another may be suspended or expelled from school. No punitive or penal action may be taken unless there is proof of harm in which event it will be treated as assault under the Penal Code.

Sexual harassment in schools is one of the most prevalent yet most hidden forms of violence, affecting especially female students.<sup>41</sup> While this problem has been the subject of extensive research and legislation in the western world, by contrast, there is little documentation of the nature, extent or handling of this insidious phenomenon in most sub-Saharan African countries. In Kenya, sexual harassment in the work place has only recently received legislative recognition in the Public Officers Code of Ethics and the Public Service and Teachers Code, which prohibits all forms of sexual harassment. This piece of legislation is new and not yet widely used. Commonly, administrative action is taken in cases of sexual harassment in schools. The Kenyan Teachers' Services Commission has the power to suspend, transfer, or fire teachers where proven that they are involved in a case of sexual harassment. Though there are many cases of sexual abuse (such as rape, defilement or indecent assault) that have resulted in the arrest of teachers, there are not as many cases of sexual harassment. In Kenyan law,

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Situational Analysis of Child Rights Protection under the Children Act. The CRADLE-The Children Foundation, 2003).

<sup>40</sup> Daily Nation, July 8 2002 – Why Bullying Thrives in Schools by Clay Muganda

<sup>41</sup> Making Schools a Safe Horizon for Girls; A Training Manual for Teachers on Preventing Sexual Violence Against Girls In Schools: By Action Aid International and The CRADLE-The Children Foundation, 2004.

one could also use the offence of insulting the modesty of a woman or indecent assault to institute a charge on an action related to sexual harassment that may include sexual intimidation and pressure, unsolicited and unwelcome touching or fondling, sexually loaded comments and gestures, staring, and streaking. The law provides that, "Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment ..."<sup>42</sup> The law does not however state what constitutes indecent assault save for making it an offence. Unfortunately, the Kenyan courts have given very limited interpretations to what does constitute indecent assault and have for instance indicated that a woman's buttocks are not private and hence any one who touches a woman's buttocks without her consent commits no offence. The courts have inferred that sexual assault can only mean touching a woman's genitalia. Thus many actions that would constitute sexual harassment under the said laws are excluded. For instance in the case of *Stephen Muendo Koti v Republic*, the appellant had been charged with, *inter alia*, indecently assaulting one Susan Muteti the complainant by touching her private parts. It emerged in evidence that Muendo, who was drunk, went to Muteti's house and touched her underpants. The Resident Magistrate at Yatta convicted him for the offence and jailed him for three years but on appeal the High Court overturned the decision and argued that touching a woman's underpants does not constitute indecent assault. Citing the case of *Omambia v R*,<sup>43</sup> as authority, the court made a narrow interpretation of indecent assault. In the *Omambia case*, the court noted that:

"These particulars that the appellant touched the private parts of the complainant mean and can mean nothing else, than that the appellant touched with his hand the 'private parts' of the complainant which, to give the well known and ordinary meaning of the phrase, means genitalia of the complainant and no other part of her body, or as defined in the Shorter Oxford English Dictionary, the 'pudenda' or external genital organs."

## **8. Provide information on the way in which harmful or violent traditional practices, including but not limited to female genital mutilation, child marriage or honour crimes are addressed in your country.**

The most prevalent forms of harmful cultural practices in Kenya include FGM and early and forced marriages. Honour crimes are not prevalent in Kenya. It is suspected that these may be some of the hidden forms of violence in Kenya, and may only be practiced by few communities e.g. killing of taboo children i.e. children conceived as a result of incest or by HIV positive parents. There is only one case that has been reported relating to honour killings where a man and his son were charged with murdering the wife and mother respectively for committing adultery. They were charged with murder since honour crime is not only unknown but not criminalized in Kenya.<sup>44</sup> However, honour crimes are not on the whole common in Kenya.

The law outlaws all forms of harmful cultural practices. The Children Act in Section 14 protects children from female genital mutilation (FGM), early marriages and other forms of harmful cultural practices and expressly states that "No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development." However, a person who practices any harmful cultural practice may also be charged with offences against the person under the Penal Code.<sup>45</sup> For instance, a person may be charged with grievous harm for performing FGM. Section 234 of the Penal Code provides that: "Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life." Some parents have been charged under this section for forcing their daughters to undergo FGM. The Ministry of Home Affairs has instituted a national campaign against FGM and developed a National Action Plan against FGM.<sup>46</sup> The Ministry of Gender, Sport, Culture and Social Services, Gender Department is in the process of creating a steering committee and developing an action plan to be used in collaboration with other organizations dealing with FGM so as to have a well-coordinated plan on how to combat the barbaric practice. Further the Ministry is in the process of printing its Sessional Paper Number 5 of 2005 that will outline its policies and strategies for implementation and monitoring.

## **9. Provide information on the applicability of specific provisions to address all forms of violence against children to non-citizens and stateless children, including asylum seekers and displaced children. If specific provisions do not apply to such children, provide details of protection offered to them.**

There is no single law in Kenya that specifically strives to protect or promote the rights of non-citizens, stateless children, asylum seekers or displaced children. They are all subject to the general laws of Kenya to the extent applicable or possible under the law. However, the Children Act identifies refugee children who as those in need of care and protection. It places the responsibility of their care and protection with the Government, which is

<sup>42</sup> Section .... of the Penal Code

<sup>43</sup> Criminal Appeal No 47/95

<sup>44</sup> FIDA Annual Report on the Status of Women's Rights in Kenya, 1999

<sup>45</sup> Chapter 63, Laws of Kenya

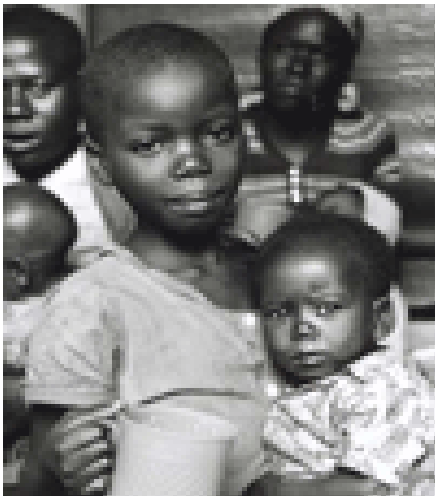
<sup>46</sup> 1999-2019

also mandated with the duty of assisting them in being reunified with their parents or families. Section 10 of the Children Act also provides that no child shall take part in hostilities or armed conflict and where such conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law. Further, it is the responsibility of the Government to provide protection, rehabilitation care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or national disaster. Refugees are also protected under the guidelines provided by the United Nations High Commission for Refugees (hereinafter referred to as UNHCR). In keeping with the CRC<sup>47</sup> UNHCR considers a child to be a person: "Below the age of 18 years, unless under the law applicable to the child, majority is attained earlier". Unless otherwise specified, the term "refugee child" when used in conjunction with the UNHCR Policy on the rights of Refugees may be understood to mean any child of concern to the High Commissioner, including those children who are refugees, returnees, asylum seekers and displaced persons of concern to UNHCR.<sup>48</sup>

Kenya has undertaken policy and administrative action to protect the rights of refugees as defined under UNHCR policies. For instance, a residential facility in the Kilimani neighbourhood of Nairobi was set up by the office of the UNHCR to shelter refugees whose lives are in danger.

There has been concerted action towards coming up with legislative standards on refugees. A Refugee and Displaced Persons Bill has already been drafted and tabled in parliament. The Bill provides standards and procedures for asylum seekers and un-accompanied refugee children. It sets out their rights and responsibilities while in the country and makes provision for their protection against violence, especially sexual and gender-based violence.

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The UNHCR has also developed a policy on refugee children, which was presented to UNHCR Executive Committee in October 1993 as Document EC/SCP/82. This paper presents the policy framework that UNHCR will use to guide its action on behalf of refugee children. Although the policy implies, first and foremost the duty of UNHCR staff to act, it is hoped that it will also guide the endeavours of others concerned with refugee children such as governments, other UN bodies, international and national NGO's as well as refugee groups. This is the key manner in which the policy is intended to promote appropriate collaborative action among all parties to ensure the protection and care of refugee children.

Some of the key provisions of the policy include those relating to sexual violence. It provides that the government on whose territory the sexual attack has occurred is responsible for taking diligent remedial measures, including conducting a thorough investigation into the crime, identifying and prosecuting those responsible and protecting victims from reprisals.<sup>49</sup> The government is also expected to take measures to prevent further similar incidents from occurring.<sup>50</sup> The Refugee Bill seeks to address some of these concerns.

Refugee women and children are entitled<sup>51</sup> to special protection, starting at the point of entry, during the process of determination of refugee status, and throughout their sojourn because of their particular vulnerability to sexual abuse, gender-based violence, including FGM, forced or early marriage, domestic violence and other forms of abuse. The needs of unaccompanied refugee children, including tracing of parents or relatives, should be assessed at the earliest possible stage according to the Special Protection Measure for Vulnerable Refugee Groups: Women, Children and Elderly Draft Framework. In addition it provides that:

- Refugee children should also be protected from military recruitment
- The psychological trauma suffered by child soldiers should be assessed and addressed as soon as possible by trained professionals
- Also training and awareness raising on Action on the Rights of the Child should continue to be carried out

There are programmes run in the camps that try to educate refugees about the negative effects of practices such as FGM, early marriages, child abduction, spouse inheritance, and about women and child rights in general.

<sup>47</sup> General Assembly Res. 44/25

<sup>48</sup> UNHCR Policy on the rights of Refugees, pg.164

<sup>49</sup> Sexual Violence Against Refugees, Guidelines on Prevention and Response Geneva 1995, UNHCR, Pg 34

<sup>50</sup> Refugee Children, Guidelines on the Protection and care UNHCR Geneva 1994, Pg 45

<sup>51</sup> Special Protection Measure for Vulnerable Refugee Groups: Women, Children and Elderly (Section 5.3 and 5.4 of the DIP draft Framework) pp. 45-62

Kenyan police and other officers around the camps are also periodically involved in training events meant to sensitize this particular type of crime. These have been strengthened by “clubs” where refugees educate each other.

Children are more vulnerable to abuse. The SGBV program takes into account the special needs of the abused child, as well as the type and extent of the harm suffered by the child. Children’s Rights Clubs have been formed, and working groups on sexual exploitation, and commercial sex workers, have been re-established. These address specific intervention measures to protect children. There has been more involvement with the Children’s Department, which has helped include refugee children’s issues. These children have been invited for meetings, etc, leading to greater participation. Since restructuring of Community Services Sector in 2003, there’s been a more focused approach to child protection issues.

Without refugee legislation, there is no clear legal framework for family reunion of refugees in Kenya. In Dadaab, almost half of the total population is composed of children. In Kenya, violence against refugee children includes sexual violence, domestic abuse especially for the girl child, early and forced marriages, early pregnancies, and forced drop-out from school (again, for girls). Preventative measures are being taken through the use of sports and poetry clubs, etc. Education of the girl child has been high on the list of programmatic interventions. Response measures include child interviewing by trained workers who act as their advocate, joint family counselling, medical examinations in the presence of parents, and special attention for children born out of rape, child perpetrators, boys as victims/survivors, and sexual abuse within family.

Special programmes are in place to target children with special needs, i.e. orphans, disabled children. Provision of basic education has so far been one of the most valued services refugees receive in camps. About 200 refugee children with special needs have been integrated into the schools.

**10. Provide information on any difference in the definition of violence and the applicable legal framework according to:**

- **The sex or sexual orientation of the victim and/or of the perpetrator;**
- **The age of the victim and /or of the perpetrator;**
- **The relationship between the victim and the perpetrator, including, but not limited to infanticide, sexual violence in marriage, incest and sexual abuse within the family, and physical chastisement.**
- **The sex or sexual orientation of the victim and/or of the perpetrator**

The Constitution does not distinguish the definition of violence on the basis of sex or sexual orientation. For example in relation to murder and torture it is provided as follows: “No person shall be deprived of his life intentionally except on the conditions listed under section 71 (2)”.<sup>52</sup> These exceptions do not include sexual orientation. At section 74 the constitution also uses the word ‘No person’ shall be subject to torture or to inhuman or degrading punishment or other treatment unless, as provided under s. 74 (2). The only provision that relates to sexual orientation addresses homosexuality which is outlawed between males under the Penal Code. This applies to males who have attained the age of criminal culpability.

**• The age of the victim and /or of the perpetrator**

Different ages apply for different offences. For instance under the Penal Code as amended by the Criminal Law Amendment Act, a girl of 16 years and below can not consent to rape. For details, see table below. However, it is important to note that all provisions in the Penal Code should be looked at in light of the provision of s. 14 which provides that:“(1) A person under the age of eight years is not criminally responsible for any act or omission; (2) A person under the age of 12 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission; (3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.”

**• The relationship between the victim and the perpetrator, including, but not limited to infanticide, sexual violence in marriage, incest and sexual abuse within the family, and physical chastisement.**

Sexual violence in marriage is not expressly provided for as a crime. Infanticide is a crime under the Penal Code but is not treated as severely as other murder cases. Incest is a crime in law. Domestic violence is not defined as a crime but any woman or man facing domestic violence may use the provisions of the Penal Code on assault to deal with cases of domestic violence. There are some instances of specific age or sex differentiations in crime as provided for in the table below. The table focuses on criminal offences relating to violence.

<sup>52</sup> Section 71

Table 2: Gender and Age Differentiations under the Penal Code

Section	Offence	Distinction on Sex		Distinction On Age		Distinction between relation of Offender & Victim
		Victim	Perpetrator	Victim	Perpetrator	
112A	Malicious information leading to actual bodily harm	None	None	None	None	None
122	Rescue from lawful custody	None	None	None	None	None
139	Rape	<b>Female</b>	Male	None	None	None
142	Abduction	<b>Female</b>	None	None	None	None
143	Abduction of persons under 16 years.	None	None	<b>Below 16 years</b>	None	None
144	Indecent Assault on females	<b>Female</b>	Male	None	None	None
145	Defilement of girls under 16 years	<b>Female</b>	Male	<b>Below 16 years</b>	None	None
146	Defilement of Idiots and Imbeciles	Female	Male	None	None	None
147	Procuration	None	None	None	None	None
148	Procuring defilement by threats or fraud or administering drugs	Female	None	None	None	None
149	Householder, e.t.c, permitting defilement of girls under 13 years of age	Female	None	<b>Below 16 years</b>	None	None
151	Detention for persons for immoral purposes	None	None	None	None	None
152 (4)	Unlawful detention for immoral purposes	None	None	None	None	None
153	Male person living on earnings of prostitution or soliciting	None	<b>Male</b>	None	None	None
154	Woman living on earnings of prostitution or aiding, etc., prostitution	None	<b>Female</b>	None	None	None
162	Unnatural offences	None	None	None	None	None

164	Indecent assault of boys under fourteen years of age.	Male	None	Below 18 years	None	None
165	Indecent practices between males	Male	Male	None	None	None
166	Incest by males	Female	Male	Yes, if the victim is under the age of 13 years, punishment is life imprisonment as opposed to the 5 years if the victim is above 13. If the victim is under 21yrs then the court has power to divest the convict of all authority over the victim.	None	Victim is perpetrator's; granddaughter; daughter; sister (including half sister); or mother
167	Incest by females	Male	Female	None	Of or above 16 years	Victim is perpetrator's Grandfather; Father; Brother (including half brother); Son
174	Child stealing	None	None	Below 14 years	None	None
202	Manslaughter	None	None	None	None	None
203	Murder	None	None	None	None	None
209	Suicide pact	None	None	None	None	None
210	Infanticide	None	Female	Below 12 months	None	Mother (Perpetrator) and Child (Victim)
220	Attempt to murder	None	None	None	None	None
221	Attempt to murder by convict	None	None	None	None	Perpetrator is a convict under sentence of imprisonment for 3 years or more
226	Attempted suicide	None	None	None	None	None
228	Killing unborn child	None	None	Unborn	None	None
231	Acts intended to cause grievous harm or to prevent arrest	None	None	None	None	None
232	Preventing escape from wreck	None	None	None	None	None
234	Grievous harm	None	None	None	None	None
235	Attempting to injure by explosive substance	None	None	None	None	None
237	Unlawful wounding or poisoning	None	None	None	None	None
238	Intimidation and molestation	None	None	None	None	None

241	Excess of Force	None	None	None	None	None
250	Common Assault	None	None	None	None	None
251	Assaults causing actual bodily harm	None	None	None	None	None
252	Assaults on persons protecting wreck	None	None	None	None	None
253	Other Assaults	None	None	None	None	None
298	Assault with intent to steal	None	None	None	None	None

### 11. Provide information on any recent comprehensive review of the legal framework to address violence against children.

The Children Act of 2001 is the single most comprehensive legal review addressing the problem of violence against children. The Act received President assent on the 31<sup>st</sup> of December 2001. On coming into force, it consolidated three main pieces of legislation that previously dealt with matters relating to the rights and welfare of children e.g. the Adoption Act, The Children and Young Persons Act and the Guardianship of Infants Act. The Children Act prohibits the subjection of children to any form of abuse with abuse described as anything that is harmful to their development or well being.

Examples of specific safeguards for children against forms of abuse:

- A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.
- Any child who becomes the victim of abuse in the terms of subsection (1) shall be accorded appropriate treatment and rehabilitation in accordance with such regulations as the minister may make.
- Sec 14. Provides protection against harmful cultural practices and provides that no person shall subject a child to female genital mutilation, early marriage or other cultural rite, customs or traditional practices that are likely to negatively affect the child's life health, social welfare, dignity or physical/ psychological development.
- Sec 15 provides protection from sexual exploitation. It provides that a child shall be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity and exposure to obscene materials. The inclusion of visual exposure to certain material could be construed as protection against psychological/mental violence.
- Sec 16. provides protection from drug abuse. It provides that every child shall be entitled to protection from the use of hallucinogens, narcotics, alcohol, tobacco products or psychotropic drugs and any other drugs that may be declared harmful by the minister responsible for health and from being involved in their production, trafficking or distribution.
- Section 18 provides for protection from torture and deprivation of liberty by providing that no child shall be subjected to torture, and treatment or punishment, unlawful arrest or deprivation of liberty.
- It also outlaws capital punishment or life imprisonment against children.

There is a pending Sexual Offences Bill which was presented to the Hon. Attorney General by members of the Juvenile Justice Network on the 15<sup>th</sup> of September 2005. A motion to introduce a Private Members Bill in relation to the same issue has also been presented to Parliament.

### 12. Provide information on any studies and surveys which have been undertaken to assess the impact of legal measures to address violence against children.

The following studies have been undertaken in relation to violence against children:

- i) "Borrowing Utensils" (Childhood Poverty: Mukuru Kwa Ruben An Informal Settlement, Nairobi, Kenya) Save the Children[2003]
- ii) "Kenya Country Programme, Child poverty briefing paper - Bitter coffee: wrecking livelihoods and increasing child poverty" by Save the Children, 2004
- iii) A critical analysis of Laws, Policies and Judicial Practices on Sale of Children, Child Prostitution and Pornography in Kenya, Kenya Alliance for Advancement of Children
- iv) A Situational Analysis of Sexual exploitation of Children in the Eastern and Southern Africa Region, Published in 2001 through collaboration between the African Network for the Prevention & Protection against Child Abuse and Neglect (ANPPCAN, Regional Office) and the United Nations Children's Fund, East and Southern Africa Regional Office (UNICEF ESARO)
- v) After the Promise: Situation Analysis on Child Rights Protection Under the Children Act; The CRADLE-The Children Foundation, 2003.
- vi) Amnesty International, Kenya: Rape - The invisible Crime (International Secretariat, Peter Benson House, 1 Easton Street, London WC1X 0DW, UK 2002)
- vii) Case Trends Monitor, The CRADLE-The Children Foundation, 2002, Nairobi, Kenya



- viii) Child Labour and Economic Exploitation. A comprehensive survey carried out by CBS and Report launched in December 2002 (Child Labour Survey Report 1998/1999).
- ix) From Physical Punishment to Positive Discipline - Alternatives to Physical/Corporal Punishment in Kenya by ANPPCAN Kenya 2005
- x) Human Rights Watch, In the Shadow of Death HIV/AIDS and Children's Rights in Kenya New York, Human Rights Watch 2001
- xi) Human Rights Watch, Prison Bound: Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya, New York, Human Rights Watch, 1997
- xii) Human Rights Watch, Spare the Child: Corporal Punishment in Kenyan Schools, New York: Human Rights Watch, 1999
- xiii) Juvenile Justice Quarterly; Volume 1 Issue 1 to 4 and Volume 2 Issues 1; the CRADLE-The Children Foundation, 2004 and 2005.
- xiv) Kenya Alliance for Advancement of Children (KAACR), the Impact of Domestic Violence on Children in Kenya, (KAACR 2003).
- xv) Media Reporting on Sexual Abuse of Children in Kenya: Care Kenya and the CRADLE-The Children Foundation, Nairobi, Kenya, 2005.
- xvi) Review of Children's homes and orphanages - UNICEF study, Kenya 2002).
- xvii) Review Of Policy, Legislation & Practice With Regard To The Institutionalisation Of Children In Kenya Study commissioned by SC (UK) in collaboration with the Department of Children Services , March 2004
- xviii) Situational Analysis of children in Conflict with the Law, Children's department and Save Children Sweden.
- xix) Status of Gender Equity and Equality in Primary schools in Kenya, Girl Child Network, 2004.
- xx) The Child Rights Monitor, Chambers of Justice, Nairobi, Kenya, 2003.
- xxi) The World Organization against Torture (OMCT), Rights of the Child in Kenya,
- xxii) Tony Johnstone, Violence and Abuse of Women and Girls in Kenya, Population Communication Africa in Association with Ford Foundation, NCWK and CIDA/GESP, April 2002
- xxiii) Trafficking in Human Beings especially Women and Children in Africa - UNICEF Innocenti Research Centre.
- xxiv) UNHCR Report 1998
- xxv) Women and Law in East Africa: Gender Dimension of Politics, Law and Violence in Kenya a research conducted by Women and Law in East Africa (WLEA), the International Federation of Women Lawyers of Kenya (FIDA) & International Commission of Jurists, (ICJ), with the support of the United Nations Development Programme (UNDP) and the Government of Kenya (GOK); published in October 2001

### **Courts tasked with addressing violence against children**

**13. Identify those parts of the court structure in your country tasked with addressing violence against children. Indicate if your family or juvenile courts have specific responsibility for this issue.**

In line with provisions of The Children Act, the Government has set up Children's Courts in all provinces, and as of 2003, 119 magistrates had been gazetted to handle matters relating to children throughout the country. Through the GJLOS programme, the Government plans to put up specific courts for children in all eight provinces in the country as a first step and move down wards to the districts in the long run. The courts are to be designed to be child friendly in all aspects as opposed to the adult courts that their cases are currently conducted in. The Children's Court is required to deal with criminal matters quickly - within 3 months for ordinary offences and 6 months for capital offences. They have wide jurisdiction on both civil and criminal matters. The courts are tasked with handling matters of:

- (i) Custody and maintenance;
- (ii) Guardianship of children;
- (iii) Granting Judicial orders for the protection of children;
- (iv) Measures for dealing with children who need special care and protection;
- (v) Treatment of child offenders; and
- (vi) Children in Need of Special Protection.

Under the Children Act, children in need of care and protection have been stipulated by law to include: orphans including HIV/AIDS orphans, street children, child workers, destitute children, battered children, child mothers, handicapped children, juvenile delinquents, children whose parents are imprisoned, sexually abused children, neglected children, children of parents with mental disability and abandoned children. To this end, the Government has created institutions for the rehabilitation and care of children and provides rules and regulations on how to treat children requiring special care and protection. Part VI of the Act establishes Children's Courts under Section 73. It is however useful to note that Children's Courts do not have exclusive Jurisdiction over matters involving children's cases. Other courts have concurrent jurisdiction over matters involving violence

against children e.g. assault, defilement etc. In some matters the High court has exclusive jurisdiction e.g. in murder cases.

Although over 119 children's magistrates have been gazetted, many have since left the judiciary as a consequence of the judicial purge. Thus the numbers have reduced and not all areas have children's courts, leaving many children to be tried in adult courts.

The government also established a special division of the High Court: Family Division Court. It deals with matters of succession and inheritance, divorce, custody, adoption, maintenance of children etc. There is only one such court so far in the country.

#### **Minimum age for sexual activity**

#### **14. Provide information on any legislatively defined minimum age required for valid consent to sexual activity. Is this age different for girls and boys? Is this age different in respect of heterosexual and homosexual activities?**

The Criminal Law Amendment Act of 2003, by amending the Penal Code, has set the age of sexual consent at 16 years for girls.<sup>53</sup> The previous age was 14 years.<sup>54</sup> The same age applies for boys even though the Penal Code states that boys under the age of 12 years are incapable of having carnal knowledge. The Children Act also provides that the state shall protect children from sexual exploitation and abuse including prostitution and involvement in pornography. Section 145 (1) now reads "Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment with hard labour for life".

Section 145(2) now reads "Any person who attempts to have unlawful carnal knowledge of a girl under the age of sixteen years is guilty of a felony and is liable to imprisonment with hard labour for life". The proviso was also replaced and now reads as follows: "Provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was above the age of sixteen years or was his wife." (b) (What's this???) in addition the person shall be deemed to be unlawfully detained for immoral purposes if the person is detained for the purpose of having unlawful sexual connection with any person, whether any particular person or generally; and if the person:

- Is under the age of sixteen years; or
- Being of or over the age of sixteen years and under the age of eighteen years, is so detained against his or her will or against the will of his or her father or mother or any person having the lawful care or charge of him or her;
- Being of or over the age of eighteen years, is so detained against his or her own will.

The age of consent is set at 16 and is the same for both boys and girls as Section 17 of Criminal Law Amendment Act has amended Section 143 of the Penal Code by inserting the words in bold as indicated:

"Any person who unlawfully takes an unmarried **boy or girl** under the age of sixteen years out of the custody or protection of **his or her father or mother**, or other person having the lawful care or charge of **him or her**, and against the will of her father or mother or other person, is guilty of a misdemeanour".

#### **Is this age different in respect of heterosexual and homosexual activities?**

Kenya is one of the African countries where homosexuality is criminalized.<sup>55</sup> Since homosexual activities are outlawed in the Penal Code, the age of consent doesn't apply.

#### **15. Provide information on the minimum age of marriage for women and men.**

The Children Act by inference defines the minimum age for marriage as 18 years thereby prohibiting the marriage of any child. However, there are other statutes in place stating different minimum ages for marriage, namely the Hindu Marriage and Divorce Act, the Marriage Act, the African Marriage and Divorce Act, and the Mohammedan Marriage and Divorce Act and Customary law. All of these laws provide different ages for marriages.<sup>56</sup> Islamic Law allows for a minor to be married once she/he enters puberty; the law of marriage under the Hindu custom puts the age of marriage at 18 years and 16 with parental consent, the Marriage Act has similar provisions. African Customary law allows for marriage after the initiation rites have been performed as the child is now considered an adult. The Children Act attempted to consolidate all laws that dealing with children and provided the definition of a child as a person below 18 years. It further outlaws child marriages meaning it places the age

<sup>53</sup> Section 19

<sup>54</sup> Gilbert Onyango, Audit of the Criminal Law Amendment Act, The CRADLE The Children Foundation & Juvenile Justice Network, 2003

<sup>55</sup> BEHIND THE MASK a website on gay and lesbian affairs in Africa <http://www.mask.org.za/July 2003>

<sup>56</sup> A Woman's Guide to Law, Federation of Women's Lawyers, Nairobi, Kenya, 1997

of marriage at 18 years. Even though the other pieces of legislation have not amended the sections that provide for different ages and capacities for marriage, given that the Children's Act is the later legislation, it is held to take precedence over the other pieces of legislation.

### **Sexual exploitation of children**

**16. Provide information on legislation and other measures to prevent the commercial sexual exploitation of children, including through prostitution and other unlawful sexual activities. Provide details on means to ensure that child victims of such exploitation are not criminalized. Provide information on legislation or other measures to prohibit all forms of sale or trafficking in children, including by their parents.**

Kenyan law prohibits commercial sexual exploitation of children, including prostitution and other unlawful sexual activities. There are also related provisions, which prohibit activities promoting the aforementioned ills. These include abduction, kidnapping, child theft, procurement for immoral purposes and indecent exposure. Most provisions in Kenyan law prohibit the procurement or inducement of children into the trade of prostitution by third parties as well as living off the earnings of such dealings. This is provided for under the Penal Code.<sup>57</sup> The Penal Code in Sections 153 and 154 makes it an offence to live off the earnings of prostitution or to solicit. Although not specific to children, it offers protection for them nonetheless. Under the Children Act, children involved in prostitution are not considered criminals, they are recognized as children in need of care and protection.

Section 13 of the Children Act provides that "A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by a person." Any child who is subject to such abuse is to be accorded appropriate treatment and rehabilitation consistent with regulations to be made by the minister in charge of children affairs. Section 15 of the said Act further provides that "A child shall be protected from sexual exploitation and use in prostitution, inducement, coercion to engage in any sexual activity and exposure to obscene materials." The Children Act, recognizing children's vulnerability to be a major contributing factor in prostitution and other forms of child exploitation, in Section 114 defines a child in need of care and protection to include one who has been sexually abused or is likely to be exposed to sexual abuse and exploitation, including prostitution.

The Constitution of Kenya also provides a broad framework for the protection of all against such abuses and hence guarantees freedom from slavery or servitude.

There is a National Plan of Action on Commercial Sexual Exploitation of Children.<sup>58</sup> It contains a critical analysis of the laws and policies and judicial practices on child prostitution in Kenya. This document is the closest stakeholders have come to developing an intervention strategy targeting children who have been sexually exploited including those exposed to prostitution. The production of this document is still in its formative stages.

### **Pornography and harmful information**

**17. Provide information on legislation and other measures to prohibit the production, possession and dissemination of child pornography. In particular, please provide information on any controls on pornography produced and/or disseminated via the internet.**

Existing domestic laws do not contain specific provisions on the offence of child pornography. The current emphasis has been on the exposure of persons, especially children, to pornographic materials with no direct reference to use of children in the production of such materials. Section 14 of The Children Act requires children to be protected from any exposure to obscene materials. This section can be interpreted to cover the whole spectrum of obscenities, including child pornography and other forms of profane exposure. The penalty for this offence is imprisonment for a term of up to twelve months or a fine not exceeding fifty thousand or both. Section 114 of the Children Act extends the definition of children in need of care and protection to children exposed to pornography.

Section 181 of The Penal Code outlaws dealings in obscene matter. It prohibits the trade in distribution, public exhibition, production, possession, importation, conveyance, exportation, undertaking business in, and advertising or assisting in the circulation of or traffic in any one or more obscene objects tending to corrupt public morals. Notwithstanding the statutes mentioned hereinabove containing certain provisions addressing exposure to obscene materials, Kenya lacks clear cut legislation specifically dealing with issues surrounding internet pornography.

<sup>57</sup> Sections 147 and 148

<sup>58</sup> A critical analysis of Laws, Policies and Judicial Practices on Sale of Children, Child Prostitution and Pornography in Kenya, Kenya Alliance for Advancement of Children (KAACR), Pg 15

The Sexual Offences Bill recognises the increasing sophistication of crimes targeting children and prohibits paedophilia and internet-based sex crimes by providing for imprisonment and a fine for the perpetrator. It however has not yet been introduced into Parliament. On the other hand, the draft Child Media Policy fails to address the issues surrounding internet pornography and other contents that can corrupt children's morality. While it calls for the regulation and control of mass media to ensure protection of children against harmful and destructive information, its narrow description of the instruments of communication falls short by not incorporating the internet. The draft further urges protection of the rights of privacy of children, respect and the upholding of their fundamental rights and freedoms. However it neither suggests any ways of protecting children from internet-based vice nor does it make an indication of the danger that is increasingly being posed by the perversion peddled on line.

With increasing cases of children accessing pornography on the internet, Africa Online Business Development ,an internet service provider, launched an interactive web-based solution that enables internet users to block potentially harmful content from being accessed through their computers. The Internet Parental Guidance (IPG)

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has been designed to filter sites with undesirable content, such as pornography. It mainly targets schools, cyber cafes and all internet users in need of a guided approach to the internet. This new solution is available to Africa Online customers only, but other Internet Service Providers (ISP) is invited to adopt it and pass it on to their consumers.

The introduction of the Communication Commission of Kenya Act (1998) has resulted in the liberalization of the media providing the opportunity for media companies outside of the control of the state to enter the market. The Film Censorship Board is responsible for censorship to ensure children do not access obscene materials. However they cannot censor TV programs from international sources delivered through satellite and cable service. To strengthen regulation of information reaching the public, media owners have set up the Media Council of Kenya as a self-regulatory mechanism. It has not yet developed guidelines relating to children.

The Provincial Administration, especially in rural areas, monitors the access of information to children especially

in regard to video kiosks.

The Films and Stage Plays Act,<sup>59</sup> provides for controlling the making and exhibition of cinematograph films for licensing of stage plays, theatres and cinemas and for related purposes. Section 17 empowers the Film Licensing Board to segregate any particular cinematograph film as being unsuitable for children and a film so declared shall not be shown or advertised for viewer ship by children. Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding Kshs 2000/= (25 USD) or imprisonment for a term not exceeding 2 months or both. The court may in addition to such a penalty order the confiscation and destruction of the film, and/or revoke any certificate of approval or permission granted under the Films Act. However it has been noted that the regulations under Cap 222 are grossly inadequate and largely ineffective in their enforcement. These provisions do not extend to TV programming, advertisements and the Internet, each of which are becoming channels for communicating morally profane images and materials. Regulation of video libraries and private video viewers hip is virtually non-existent.

**18. Provide information on any legislation or guidelines to protect children from injurious information and material transmitted through the media, Internet, videos, electronic games, etc.**

Please refer to answer 17 above.

**Reporting obligations relating to violence against children**

**19. Provide information on legislation, regulations or administrative directives requiring reporting of all forms of violence against and abuse of children in all settings to appropriate bodies. If reporting legislation, regulations or administrative directives exist, please indicate whether all citizens are required to report, or whether the**

<sup>59</sup> Chapter 222, Laws of Kenya

**obligation falls on certain professional groups only. Provide details of any sanctions for non-reporting.**

Sec 22 of the Children Act states that if any person alleges that the provisions of section 4-19 outlining the rights of a child has been or is likely to be contravened in relation to a child, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High court for redress on behalf of the child. The High Court may hear and determine an application made by a person in pursuance of this subsection (1) and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the provisions of section 4-19 (inclusive). The law requires all citizens to report any form of crime they may witness otherwise the person may be deemed to be aiding or abetting the crime. There is however no specific legislation requiring a person or any professional category to report cases of violence. Such provisions are contained in the draft Sexual Offences Bill that places an obligation on certain categories of people to report violence against children.

**Complaints procedures**

**20. Provide information on any complaints procedures relating to all forms of violence against children perpetrated in:**

- The family/ home;
- Schools and pre-school care and education (both formal and non-formal, state and private);
- Military schools;
- Institutions, state and private, including care, residential, health and mental health;
- The context of law and public order enforcement including in detention facilities or prisons;
- The neighbourhood, street and the community, including in rural areas;
- The workplace (informal and formal);
- Sports and sporting facilities.

There is no different complaint procedures for the categories listed above. The only difference relates to the military schools and system, which has a court martial that is different from ordinary courts. However, children are not accepted to the military thus it does not apply to them. For violence in the settings indicated above, the procedure is to report to the police so that the perpetrator can then be arrested and charged in court. One can then sue the person for recovery of civil damages. If it is a government agent, one has to sue by first giving the government notice under Section 13 (A) of the Government Proceedings Act. There is also a Kenya National Commission on Human Rights that investigates cases of human rights abuses. They however do not have any prosecutorial powers.

There is no specific complaint procedure relating to violence in the home. The complaint procedure is the same as other cases. In the past, cases of incest had to receive the approval of the Attorney General before they could commence. This was repealed by the Criminal Law Amendment Act.

**21. Indicate whether children or persons acting on their behalf can access these procedures. Indicate whether legal aid is available to facilitate submission of complaints, and the circumstances in which legal aid will be available.**

These measures are widely available however there are certain areas in the country that are inaccessible to the justice system. This means that they do not have courts near them (e.g. the nearest being over hundreds of kilometres away). These include areas such as Lodwar (that has only a court with criminal jurisdiction, therefore civil matters must be heard in Kitale, over 400 kms away) and Suba District, which has no court. The Government is however in the process of establishing mobile courts in some of those areas.

A child cannot institute civil proceedings on his or her own and does not have the capacity to sue or lodge complaints and seek redress before a court or other relevant authority without support by an adult. They can institute such proceedings through a “next friend” or kin who is an adult. However under the Children Act, a child may approach the court with any complaint. A child may also directly report to the police if there is any criminal violation of the child.

Accessing legal aid is not easy. The Children Act gives conflicting standards relating to legal aid. Section 18 makes it mandatory for the Government to accord a child who has been arrested and detained legal aid and other assistance, as well as allow him to contact his family.<sup>60</sup> Section 77(1) of the Children Act on the other hand makes the provision of legal aid discretionary while Section 186 (b) says that the State must provide legal aid for child offenders. It is therefore not clear whether legal aid should be availed for children. In a case arising out of a traffic offence where a child was charged with causing an accident, the High Court sitting in Bungoma refused to make a finding as to whether a child was entitled to legal aid as a matter of right.<sup>61</sup>

The Constitution says legal aid must be provided, especially in human rights cases. This is to come into effect once the Chief Justice makes rules on this. Kenya National Commission on Human Rights also receives complaints on human rights abuses in the country.

There are several non-governmental organizations that offer legal aid to children including The CRADLE, CLAN, ANPPCAN, FIDA, COVAW, Law Society of Kenya (Rift Valley Branch), CHILAC, Kituo Cha Sheria and Pendekezo Letu.

## **22. Describe steps which have been taken to raise awareness of possibilities to submit complaints about violence against children.**

The Children's Department and some NGOs e.g. ANPPCAN, have set up Child Crisis Desks. This desk is regularly advertised in the media so that the public know where to go to in case they need help. All the police stations have children's desks, however only 9 are functional i.e. 3 in Nairobi, 2 in the Rift Valley province, 3 in Nyanza and 1 in Western. All police officers are also trained on child rights, therefore allowing them to provide the necessary support when case of violence is reported. .

The Government and partners including NGOs have trained children on child rights, as well as areas of safety to go to in case of abuse, through child rights clubs in schools. Several advocacy campaigns on violence against children have been undertaken and they usually highlight organizations offering legal aid and other forms of support to children. The 16 Days of Activism Campaign on Gender-Based Violence included daily excerpts in the media on violence against women and children and included information on areas where people could go to for redress. As a consequence, the number of people seeking assistance from NGOs has increased immensely. The media has been very instrumental in ensuring this is done and has given information on areas that people can go to in case of abuse. The media intermittently runs special programs on violence against children.

NGOs run several programs through which they inform the public of different forms of violence and remedies available to children who are violated. For instance, Maendeleo Ya Wanawake runs Alternative Rites of Passage In Relation to FGM; KAACR and GCN runs clubs in schools and Actionaid and The CRADLE run Girls Forums and the Letter Link Program respectively through which children have access to complaints mechanisms.

Recent statistics (2003-2004) indicate that about 3,097 cases of rape were reported countrywide<sup>62</sup> the numbers could be higher since these figures represent only those reported to the police. In response, the Government has strengthened community policing, appointed female police officers to be in charge of gender desks, and established a fully-fledged police division in Nairobi to specifically deal with such cases.<sup>63</sup>

## **23. Provide information on any special procedural or evidentiary rules which may apply in proceedings with respect to violence against children.**

There are special courts known as Children's Courts that are constituted in accordance with the provisions of the Children Act, whose purpose includes hearing charges against any person accused of an offence under the Act.<sup>64</sup> The Act lists special procedures for whenever a matter relating to children is heard in that court. Section 74 provides that a Children's Court shall sit in a different building or room or at different times from those in which sittings of courts other than Children Courts are held and no person shall be present at any sitting of a Children's Court except:

- (a) Members and officers of the court;
- (b) Parties to the case before the court, their advocates and witnesses or other persons directly concerned in the case;

<sup>60</sup> Section 18 (4)

<sup>61</sup> The Year in Profile, 2003 Annual Report of The CRADLE-The Children Foundation

<sup>62</sup> Statistics as published by Police Annual Reports 2003/2004.

<sup>63</sup> Daily Nation Newspaper, 9 December 2004

<sup>64</sup> Children Act, Part VI, Section 73 ©

- (c) Parents or guardians of any child brought before court;
- (d) Registered and *bona fide* representatives of newspapers or news agencies; or
- (e) Such other persons as the court may specially authorize to be present.

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

In cases of violence against children where a person under the age of 18 is called as a witness, the court may direct that the persons who are not members/officers of the court, party or advocates be excluded from the court at the time when the child’s testimony is being given.<sup>65</sup> A court may only consider making an order where it is beneficial to the welfare of the child. It is obligated to consider the feelings of the child, but this depends on the evolving capacity of the child (in reference to his/her age and understanding, their emotional, physical and educational needs). Where the child has a disability, the court will consider any person or institution that may provide the needed care. The court in such an event considers the likely effect on the child of any change of circumstance, the child’s age, sex, religion and culture; any harm the child may have suffered or is at risk of suffering; the ability of the parent or any person whom the court considers to be relevant to provide for and care for the child; the customs and practices of the community to which the child belongs; the child’s exposure to or use of drugs; and any particular addiction that may need to be specially addressed by a person or an institution.<sup>66</sup> These factors must be considered before the court shall make an order in respect of the child.

Any proceedings concerning a child shall not be published (including in law reports). This includes the child’s identity, home, school, the particulars of the child’s parents or relatives, or any photograph or depiction/caricature of the child. Any person who contravenes this provision is liable to a fine not exceeding Ksh 100,000 or to no more than 3 months imprisonment or both.

Section 124 of the Evidence Act provides that the evidence of a child of tender years must be corroborated in material substance by other evidence in order to ensure conviction. The court is informed to warn itself of the dangers of convicting a person on the sole evidence of a child. This therefore means that a court can convict on the sole evidence of a child but the court has to be satisfied with it and aware of the dangers of so convicting. This section was amended by Section 103 of the Criminal Law Amendment Act by inserting a proviso that where the evidence of a child of tender years (who is the victim of the alleged offence) is concerned in a criminal case involving a sexual offence, the court shall receive the evidence of the child and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the child is telling the truth.

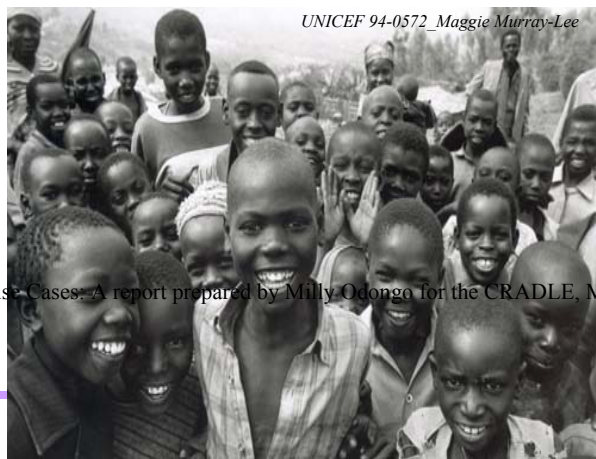
The court must also first inquire into whether a child understands the nature and purpose of an oath before a child is sworn to give evidence under the Oaths and Statutory Declarations Act.<sup>67</sup>

**24. Provide information on the usual outcome of complaints of violence against children (e.g. compensation, punishment of perpetrators, perpetrator rehabilitation, family therapy).**

Punishment for violence against children may include a fine, imprisonment or both. There may also be civil remedies such as damages for any form of violence against children. The later is rarely used as it is at the instance of the child or the family whereas criminal proceedings are at the instance of the State. It is very expensive to institute civil proceedings and therefore most people do not do so.

There is no proper data in relation to cases of violence against children in the courts. However conviction rates for violations of children are extremely low due to capacity challenges by the government. There are few investigators, which compromises those cases taken to court. Therefore many cases, for instance of sexual abuse, do not translate to convictions. The highest number of cases of violence against children involves sexual violence. A study<sup>68</sup> undertaken by The CRADLE looking at cases reported to its offices found that only 29% of rape cases were actually prosecuted in court. Of the cases that were prosecuted, only 25 % realized convictions, even after interventions by The CRADLE.

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<sup>65</sup> Section 75, The Children Act

<sup>66</sup> Section 76, The Children Act

<sup>67</sup> Chapter 15 Laws of Kenya

<sup>68</sup> Case Trends Monitor: Analysis of Trends in Child Abuse Cases: A report prepared by Milly Odongo for the CRADLE, May 2003

## 25. Provide information on the usual outcome of legal proceedings in which children and juveniles are found guilty of perpetrating violence (e.g. imprisonment, corporal punishment, community service, perpetrator rehabilitation, family therapy).

The Children Act includes certain restrictions on the punishment of juvenile offenders found guilty of committing an offence. These state, for example, that no child can be sentenced to imprisonment save as a measure of last resort. Also, no child shall be subject to capital punishment.<sup>69</sup> However the court may deal with the child in any of the following ways:

- The child may be discharged under section 35(1) of the Penal Code
- By discharging the offender on his entering into recognizance with or without sureties
- By making a probation order against the child under the provisions of the Probation of Offenders Act
- By committing the offender to the care of a fit person whether a relative or not, or a charitable children's institution willing to undertake his care
- If the offender is above 10 years and under 15 years by ordering him to be sent to a rehabilitation school suitable to his needs
- A fine, compensation or costs can be imposed on the child to be paid by the child's parent or guardian where the court feels that the parent contributed to the commission of the offence by neglecting to exercise a duty of care towards the child
- A child cannot be sentenced to death or to a detention camp
- In the case of a child who has attained the age of sixteen years, he can be sent to a borstal institution. The government runs 12 borstal institutions countrywide and these are divided in to junior and senior categories with the former providing formal school education with the latter teaching technical skills<sup>70</sup>
- The juvenile offender can also be placed under the care of a qualified counsellor

The Children Court works together with a number of children's homes, and visits them regularly.<sup>71</sup> One of the Magistrates said that she visits the children placed in these homes every three months to check how they are doing.<sup>72</sup> The courts often use non-custodial sentences especially for petty offences. The diversion system is also taking root in the Kenyan court system. It seeks to divert children away from the justice system and tries to find alternative methods of dispute settlement such as mediation, arbitration and repatriation. One of the prerequisites of entry into the diversion system is a 'guilty' plea. Such a diversion programme was set up in Kenya in three pilot districts. The diversion teams are made of NGOs, police officers, social workers, and children officers. The diversion programme contacts the family of the juvenile offender in order to set up a time and date for a meeting with the young offender, their family, the victim, the police, a member of the diversion team (if appointed) and any other family member the family may wish to invite. The diversion group then describes the offence to the minor's parents and proceeds to allow the child to state what happened and his/her feelings of what she/he has done. Views are shared on the best way forward for the child, who is allowed to participate fully in the process. More often than not the child is allowed back into the family with a follow up visit made by a member of the diversion team to ensure that the child and the family are advancing well. Otherwise where a solution cannot be reached and the child doesn't wish to remain with his family, he is taken to a children's home to await placement in a foster family. Unfortunately, many children in the system are children in need of care and protection so the diversion system tends to deal primarily with repatriation.

## II. INSTITUTIONAL FRAMEWORK AND RESOURCES TO ADDRESS VIOLENCE AGAINST CHILDREN

*The aim of this section is to establish if your country has an institution coordinating multi-sectoral activities concerning violence against children, which include prevention, protection, redress, reintegration and rehabilitation.*

## 26. Are there any Governmental authorities, structures and mechanisms, including at federal, state/provincial, municipal and local level which are currently responsible for addressing violence against children?

Yes

**If YES, identify these authorities, structures and mechanisms and describe how coordination is ensured.**

One of the main bodies dealing with violence against children is the National Council of Children Services. NCCS, as constituted under the Children Act, is responsible for, *inter alia*, planning, supervising and coordinating public education programs on the welfare of children, ensuring the enhancement of the best interests of the child among

<sup>69</sup> Children Act, Section 190

<sup>70</sup> Daily Nation May 21 2003, pg 2 The Family Magazine – Protection and Care for Children in need by Joseph Ouma

<sup>71</sup> Daily Nation May 21 2003, pg 2 The Family Magazine – How Children Face The Court by Kwamboka Oyaró

<sup>72</sup> Senior Resident Magistrate at the Children's Court, Judith Ragot.



displaced or unaccompanied children held in care (whether in refugee camps or in any other institutions), and designing programs for the alleviation of the plight of children with special needs or requiring special attention. This is done through the ACCs and the children's officers. In its 2005-2009 Strategic Plan, the NCCS aimed to establish a mechanism by which to monitor the implementation of The Children Act of 2001.

The Children's Department deals with cases of abuse and violence against children. The Kenya National Commission on Human Rights' mandate is to monitor the violation of rights of all persons including children. It was set up in 2003 under an Act of Parliament to replace the Standing Committee on Human Rights, and has a specific commissioner responsible for children's rights.

The police department has also set up Children's Desks in police stations to deal with cases of violence against children. One such desk is available at Kilimani Police Station. Each is staffed by two policemen and two policewomen in order to create a child friendly environment. The officers have access to computers. They hope to expand the number of desks to 14. Four Child Protection Officers were hired in 2004, and by 2005... (Can't read the note)

The Local administration also works very closely with NGOs, FBOs, CBOs, and CSOs to save and protect the girl-child from early and forced marriages. There are efforts to educate communities on the harm caused by FGM and offer alternatives rites of passage for girls. Children rescued from early and forced marriages or FGM are rehabilitated and returned to school. In addition, teenage mothers are given an opportunity to continue with their schooling. Under the Ministry of Local Government, the Government embarked on a rehabilitation program for street children under the NYS Training program, in order to provide them with vocational skills. Reception centres have also been set up in all provinces, including four in Nairobi. At these centres, street children are received, assessed and given appropriate support and assistance.

The Street Families Trust Fund initiative started in January 2003 returns children to their families while supporting their re-integration into the community. The Trust has moved from emergency response and immediate needs such as food, clothing, shelter, health and psychological problems to long-term programs including support for these children's education. An inter-ministerial committee was formed to identify and address the issue of street children and street families. The committee sourced for experts from different line ministries and key organizations. This team is tasked with conducting a needs assessment to be presented to stakeholders in order to develop a joint plan of action for street children and street families.

There are other long-term programs managed by NGOs such as the Undugu Society of Kenya, GTZ, Shangilia Mtoto Wa Africa and Rescue Dada, which offers rehabilitation for street children.

**27. Is there a lead Government authority tasked with responsibility for addressing violence against children?**

Yes

If YES, provide details.

The Children's Department under the Ministry of Home Affairs is tasked with this duty.

**28. Are specific financial and/or human resources allocated by your country to address violence generally?**

Yes.

Such allocations are directed to the Children's Department; however, there are also allocations given to various ministries such as the Office of the Vice President and Ministry of Home Affairs under the Governance, Justice, Law and Order Sector Reform Program (GJLOS), the Ministries of Health, Education, Labour, Social Services, Gender and Sports, the KNCHR, Department of Probation, local government, Department of Police and Prisons and the Attorney General's Department. Desegregated figures cannot be provided but generally these ministries deal with VAC e.g. Children's Department and GJLOS funds for children. Under GJLOS, headed by the Ministry of Justice and Constitutional Affairs, the Government is planning to expand and strengthen the diversion program. The intention is to set up facilities for children who are deprived of liberty. The Children's Department, through the GJLOS reform, is promoting the rights of juvenile delinquents in rehabilitation schools and also strengthening law enforcement and rehabilitation programs. A first step has been the construction of holding facilities for children in conflict with the law in selected police stations during this financial year to ensure that children are held separately from adults. The program will be expanded in subsequent years. Child-friendly transportation for child offenders will become available with the purchase of vans for transport to and from courts and remand homes. A program for diverting children in conflict with the law from the judicial system is being piloted in Nairobi, Kisumu and Nakuru districts. Resources allocated to the prisons were for rehabilitation of convicts, and it could be inferred that these will be used to protect against violence in the prison parameters.

Though the DCH has no direct budgetary allocation for violence against children, the division uses funds falling within Reproductive Health Activities to address community practices such as Female Genital Mutilation (FGM) and child abuse on the ground. The funds allocated for these activities are not sufficient for effective results. To address violence against children the DCH embarked on a programme of creating a Children's Desk in all the district hospitals. The desks have already been set up in hospitals such as Kenyatta National Hospital, Mbagathi District Hospital, and Nyeri District Hospital, to mention but a few. The Children's Desks provide treatment and advice on violence against children. Due to lack of funds not all district hospitals have the facility.

The Community Development Fund was set up to provide funds for community based projects. it has a budgetary for education bursaries 5% of which is allocated specifically to girls.

## **29. Does your country allocate specific financial and/or human resources to activities to address violence against children?**

There is no specific government vote on this but it is done as stated in Number 28. .

If YES, provide details.

N/A

## **30. Do international or bilateral donors provide resources to your country for activities to address violence against children?**

Yes

If YES, indicate the extent of these resources and the way in which they are used.

Bilateral donors provide varying support for activities to address violence against children. It has been established that children, especially child offenders and those in need of care and protection, experience different forms of violence while in custody or rehabilitation centres. To address this, the Japan International Cooperation Agency (JICA) and Save the Children UK, in collaboration with the Children's Department, started a diversion program in January 2000. This program was piloted in four regions, including two in Kamkunji in Nairobi, and the Kilimani Police Station. The aim of the diversion programme is to provide a practical and a child friendly approach to cases of children who require rehabilitation, repatriation and diversion from the formal juvenile justice system. The program plays a vital role in ensuring that children in need of care and protection and those who have committed lesser offences are diverted away from the justice system. This then protects many children from staying in police cells for a long duration and/or any possible stay in remand or rehabilitation centres. Through technical cooperation between the GoK and JICA, judicial officers, prosecutors, lawyers, law enforcement officials, and immigration officers have been trained by various organizations on the juvenile delinquent treatment system. National Standards and Training Manuals have also been developed in line with international standards. Training on child rights has been incorporated in the police curriculum, teacher-training curriculum and in the Faculty of Law at the University of Nairobi. There is increased collaboration between various actors and the Children's Department. Other initiatives include the following:

- GOK/JICA,) has come up with national standards of operation of field services.
- In collaboration with GTZ, the national children database has been established.
- CARE Kenya, GCP is currently assisting in the production and dissemination of draft regulations on registration and management of charitable institutions.
- GJLOS - has 17 donors and through this initiative, the Children's Department has a work plan focusing on training of chiefs, police officers and other stakeholders on the Children Act. They currently have 50 computers to capture data on children's officers and institutions.

In January 2003 the Government introduced compulsory Free Primary Education (FPE), with funding from the British Government. This saw school enrolment shoot up from 5.9 million to 7.2 million. This was a step forward in addressing violence against children, especially in combating the issue of domestic child workers. A majority of children who dropped out of school due to lack of fees, and were forced to work on plantations and as domestic servants were able to go back to school and benefit from the free primary education. To ensure promotion of education the government has started Constituency Funds to support children from poor families to access higher education. The Ministry of Education has also created a bursary scheme for OVCs in secondary schools to ensure that they continue with their education despite their circumstances.

GJLOS is a state led program, and part of its Economic Recovery Strategy for Wealth and Employment Creation 2003 - 2007. It was launched in 2003 and will be in place until 2009. The vision of the program is a safe, secure, democratic, just and corruption-free Kenya for all, achieved by strengthening sectors for efficient and accountable administration of justice. In order to respond effectively to the needs of the society, especially by the police, judiciary and prisons service, the program will support the development and operationalisation of laws, policies, regulations and initiatives that seek to enhance democracy, human rights and governance. These will include a child justice and penal reform emphasising offender rehabilitation and a national master plan to combat

drugs<sup>73</sup>. In addition, due to the fact that a number of GJLOS institutions are weak e.g. Children's Department, Probation Department, Social Services Department, the Program will support reforms concerning service delivery and sensitisation to the poor, marginalised and vulnerable. The primary focus will be access to justice that is affordable, speedy, relevant and effective in relation to both state and non-state justice systems.

Under the GJLOS Program, the Government is planning to expand and strengthen the diversion program. The intention is to set up facilities for children who are deprived of liberty. The Children's Department through the GJLOS reform is promoting the rights of juvenile delinquents in rehabilitation schools and also strengthening law enforcement and rehabilitation programs. A first step has been the construction of holding facilities for children in conflict with the law in selected police stations during this financial year to ensure that children are held separately from adults. The program will be expanded in subsequent years. Child-friendly transportation for child offenders will become available with the purchase of vans for transport to and from courts and remand homes. A program for diverting children in conflict with the law from the judicial system is being piloted in Nairobi, Kisumu and Nakuru districts.

In collaboration with other stakeholders, the Government has, through funding from ILO/IPEC program, initiated projects targeting the elimination of the worst forms of child labour. They are mostly found in commercial agriculture, fisheries and domestic labour.

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

The UNHCR has increased its funding and strengthened its cooperation with the government through the relevant department in the Ministry of Home Affairs. UNHCR has developed a policy on refugee children, which was presented to UNHCR Executive Committee in October 1993 as Document EC/SCP/82. This paper presents the policy framework that UNHCR will use to guide its action on behalf of the refugee children.

UNICEF, the key UN agency dealing with children continues to provide substantial support to GoK on different programs relating to violence against children. It is difficult to provide estimates of the listed support.

### **31. Does your country provide any assistance to other countries' efforts to respond to the problem of violence against children?**

Yes.

If YES, provide details.

Kenya has several peacekeeping personnel through the UN in war ton countries e.g. Sierra Leone, DRC, Sudan etc where they are tasked with the protection of the vulnerable especially women and children. In addition through the initiative of the East African Community whose members are Kenya, Tanzania and Uganda, one country can inquire about the status of children in another member country in case violations are reported. Kenya has also undertaken policy and administrative action to protect the rights of refugees in the refugee camps in North of Kenya i.e. Kakuma and Dadaab, where schools have been opened and are run by the refugees with quality control from the Kenyan MOEST.

### **32. If your country has a national human rights institution, such as a human rights commission or ombudsman, or a child-specific human rights institution, does it have any role or competence in the area of violence against children, including receiving complaints?**

Yes

If YES, provide details.

The Kenya National Commission on Human Rights (KNCHR) was established in the year 2002 under an Act of Parliament. Its primary responsibility is to receive and monitor violations of rights of all persons including children. The KNCHR replaced the Standing Committee on Human Rights. The Commission has commissioners gazetted to undertake their tasks for a period of 3 years. There is a commissioner responsible for addressing children's rights issues, and dealing with all areas of child rights including violence against children. There is no specific ombudsman for children, however the CSOs and NGOs that work to promote and protect children's rights undertake a similar role to the ombudsman.

### **33. Are there any particular parliamentary structures (for example special committees) to address violence against children?**

Yes

<sup>73</sup> GJLOS Medium Term Strategy 2005/06 to 2008/09 Working Draft pg 32.

If YES, provide details.

There is a Parliamentary Committee on Orphans and Vulnerable Children and an Inter-ministerial Committee on Trafficking.

### 34. Have there been any recent parliamentary initiatives to address violence against children?

Yes

If YES, please give details.

There has been the development of the National Plan of Action for Elimination of FGM in Kenya, a 20 year plan expected to run from 1999 - 2019; the National Plan of Action to Prevent and Combat the Commercial Sexual Exploitation of Children; the National Plan of Action on Education for All; the introduction of a Motion on Sexual Offences Bill in April 2005; amendments to the penal laws by the Criminal Law Amendment Act that provides for stiffer penalties for offences involving violence; the Draft Constitution; the OVC Bill that has been worked on by the Parliamentary Health Committee and Children's Committee; amendment by the Minister of Health in 2003 criminalising the selling and sniffing of glue; Legal Notice No 56 from the MOEST banning corporal punishment in schools.

## III. ROLE OF CIVIL SOCIETY IN ADDRESSING VIOLENCE AGAINST CHILDREN

*The aim of this section is to elicit information on civil society activities relating to violence against children.*

35. Describe significant civil society initiatives addressing violence against children in your country, including the types of institutions involved (such as academic institutions, professional associations, women's associations, student associations, community-based groups, faith-based groups, child and youth-led groups, trade unions, employer's organizations, national non-governmental organizations, international non-governmental organizations) and the major activities engaged in (including advocacy, awareness raising, research, prevention, rehabilitation and treatment of children harmed by violence, provision of services, provision of resources).

Civil Society Organizations (CSOs) have undertaken several activities to address violence against children. The categories of such organizations are diverse and include non-governmental organizations<sup>74</sup>, research institutions, FBOs, academic institutions, health institutions and professional associations. They have formulated different activities and initiatives to deal with violence against children. The examples of such activities are as per the schedule herein below:

Table 4: Work of CSOs of Violence Against Children

Nature of Activity	Organizations undertaking Activity	Particulars
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<sup>74</sup> (Loosely defined to include those registered under the NGO Coordination Act, Trusts under the Trustees (Perpetual Successions Act), Societies, Community-Based Organizations registered under the Ministry of Social Services and Companies registered by Guarantee under the Companies Act)

Awareness and capacity enhancement	KAACR, The CRADLE, Action Aid, LRF, GCN, UNICEF, ANPPCAN (R), Pendekezo Letu, CLAN, , Care International, PLAN, UNICEF, Compassion International	School Child Rights Clubs, Letter Link Program in Schools, Girls Forums, Law Clubs in Schools. ANPPCAN trained in several districts to come up with child protection teams. Several clinics have also done legal bazaars and legal clinics to create awareness on child rights.  Paralegal Training, Training for Community Resource Persons, Training of Law Enforcement Agencies and Lawyers, Mainstreaming child rights in GoK programs. For instance, The CRADLE has worked to mainstream child rights in the departments of Roads, Water, NALEP, Urban Planning, Justice, amongst others. CLAN has undertaken training of paralegals in Kibera Community in Nairobi.
Policy and Legislative Advocacy	The CRADLE, FIDA, COVAW, Chambers, ANPPCAN, KAACR, CREAM, Child Welfare, COCESCI, KWPC, WRAP, UNICEF etc.	Working on Laws and Polices such as Sexual offences Bill, HIV/AIDs Bill, Refugee Protection Bill ( <i>These Bills have been expounded on in other questions in the questionnaire</i> )
	Chambers, KAACR, The CRADLE, UNICEF	Policies such as policy on HIV/AIDs, Land Policy, Media Policy etc.
	The CRADLE, Chambers of Justice	Impact litigation e.g. for children born out of wedlock or affected by HIV/AIDS.
Research, Monitoring and Documentation	The CRADLE, Chambers of Justice, KAACR, ANPPCAN (K), GCN	Studies and Reports done as answered in question 12 page 32.
	ECPIK	The organization End Child Prostitution in Kenya (ECPIK) has conducted a baseline situational survey in Nairobi, Mombasa and Suba on commercial sexual exploitation of children. In the study, phenomena like house help bureaus, massage parlors, brothels, child trafficking and prostitution from/at the beaches, “lover boys” and child marriages are reported on.
Legal Aid and Juvenile Justice	CLAN,,ANPPCAN, Pendekezo Letu, Save the Children Sweden, Canada and UK, Centre for Human Rights and Democracy, (CHRD), CHILAC, FIDA, COVAW, CREAM, LSK and The CRADLE	Direct Legal Aid and Mobile Clinics, Diversion, <i>Pro bono</i> Schemes, Self-Representation schemes, Diversion etc. JICA and Save the Children, UK in collaboration with the Children’s Department started a diversion program in January 2000. This program was piloted in five (5) regions, two of the regions being in Nairobi at Kamukunji and Kilimani Police Stations. The aim of the diversion programme is to provide a practical and a child friendly approach to cases of children who require be rehabilitating, repatriating and diverting from formal juvenile justice system.  Mobile Legal Aid clinics: offered by FIDA, The CRADLE, etc.
Rescue, Placement and Rehabilitation	Undugu Society of Kenya, Rescue Dada, Goal Kenya, SOS villages, WRAP, Ukweli, Pandpierrri Street Children’s Program, Sons of Abraham, Solwodi and AIC Girls Kajiado, SDA Kajiado Primary School	Temporary Shelter, Vocational Skills and Rehabilitation Programs for child commercial sex workers, street children, rescue of children who are abused or vulnerable to abuse e.g. from FGM etc.

	and Tasaru Ntomonik Initiative	
General Advocacy and IEC development	World Vision, GTZ, Maendeleo Ya Wanawake, ANNPCAN, KAACR, The CRADLE, CREAM, CLAN	Alternative Rites of Passage, IEC development including the development of brochures, posters, stickers, billboards, T-shirts, videos, booklets, training manuals and booklets
Service Provision such as Counselling, Medical Assistance etc	Nairobi Women's Hospital, The CRADLE, ANPPCAN	NWH has a Gender Violence Recovery Centre which provides medical treatment and psychological and trauma counselling for victims of rape and defilement who are admitted within 72 hours of the attack. The centre provides medical assistance to prevent HIV/AIDS infection, Hepatitis B infection, venereal diseases and pregnancies. The hospital also treats injuries sustained during attack. Since its inception the centre has treated over 3,500 children and women and 45% of those cases are related to child abuse especially defilement some as young as 5 months. The NWH has already set up a centre in Kibera and plans to expand its services to Mathare, Kisumu and Mombasa. There is provision of Medical services including PEP to victims of rape; Counselling of victims of abuse etc.
Catering for Refugee Children and Internally Displaced Persons	Catholic Justice and Peace Commission, Refugee Consortium of Kenya, UNHCR.	Provision of accommodation for children and families which had been displaced due to the 1997 ethnic clashes and policy initiatives relating to refugees.

**36. Describe the support provided by your Government for these activities and the efforts made to coordinate civil society and government initiatives.**

The government provides the legal and policy framework to guide the operations of organizations and children institutions. Its role is to provide a suitable and enabling legal environment for the activities of CSOs. The Children Act also puts in place an administrative structure to deal with child matters. This was achieved through the establishment of the NCCS. Under the NCCS, it plays the role of the facilitator in bringing together different programmes dealing with disadvantaged and violated children with important partners and donors.<sup>75</sup> Under the Act, the role of the Director of Children Services and responsibilities of children officers is spelt out. Further the Act prescribes essential duties of local authorities with regard to children. Through these structures, the government has effectively worked with NGOs, for instance through the NCCS, the GoK together with CSOs are preparing the second country report on the implementation of the UNCRC.

The Government has also produced an environment conducive to donor support for development programs. For example, ANNPCAN (K) rehabilitated the Children's Court in Nairobi and with the support of Royal Netherlands Embassy in collaboration with the judiciary; KAACR is renovating an old government structure into a Children's Court in Mombasa. This is an initiative that will see many children access justice. It is also replicable in other parts of the country.

Children's affairs are handled by the Ministry of Home Affairs under the Office of the Vice President. The Ministry has set up the Department of Children Services (herein after referred to as the Department), which is the institutional mechanism responsible for promoting the advancement of children. Many NGOs work with the Department in protecting children against violations. The GoK officers, through the Department, assist NGOs in processing court committals for children. The Government, again through the Department, contributes to the sustainability of children's institutions by helping to maintain the acceptable standards of treatment, service provided, health status, hygiene and discipline, and by advising their management in the best interests of the child.

The Department has also established Rapid Response Units (crisis desks) for child protection and a hotline service to receive reports from child victims of abuse and neglect. This is meant to provide rapid assistance to those who

<sup>75</sup> The Children Act

call or fax the hotline. The National Crisis Centre at the Department was provided with a vehicle, a computer and photocopier to facilitate operations.

The Government, through the Department, has established the Children Area Advisory Councils (AAC's) which have the responsibility of coordinating children's programs and activities at the district level, and paying attention to the general welfare of the child. The AAC's bring together representatives from Government ministries and departments, NGO's, CBO's, community leaders, religious organizations and grassroots structures to coordinate the promotion and protection of the rights of the child and develop comprehensive approaches to the implementation of the CRC. The AAC's in Coast province for example, are working to end the sexual exploitation of children, especially the girl-child. Their overall objective is to strengthen community participation and involvement in identification of problems facing children, planning, prioritisation and implementation of programmes.

At the Children's Department and NCCS, the GoK also provides an inter-agency committee on issues relating to violence against children such as the Child Participation Committee.

As the Government is the only body that can effectively deliver human rights education to all school going youth due to the national network of public schools and policies, it collaborated with the LRF to incorporate human rights and democracy education in the educational curriculum from 2002. However the programme has been affected by the transfer of teachers to different schools, therefore some of those trained are no longer able to manage human rights clubs as directed.

### **37. Describe the role played by the media in addressing violence against children.**

The media has played a significant role in highlighting cases of violence against children. Although there is no legislative provision necessitating them to do so, they have provided the public with information on such violations. Unfortunately, though, the media often reports sensationally and hence may sometimes lose key issues in their reporting.<sup>76</sup> The statistics<sup>77</sup> for 2004 for instance show that in the Daily Nation and Standard newspapers, a total of 182 articles on child sexual abuse were recorded. As a percentage of children's issues covered as a whole, child sexual abuse constituted 24%, totally one in four articles about children's vulnerability or his/her succumbing to sexual abuse. The media's higher levels of child sexual abuse reporting as opposed to other child rights abuse could be attributed to a general increase in reporting of such cases to the police and the public at large. NGOs working with child rights have noted substantive increases in mothers and children willing to come forward to report incidents of sexual abuse. This is commendable especially given that the child is often abused by a person known to him or her, meaning there is a possibility of considerable social and communal repercussions if criminal proceedings are instigated. The media have confirmed this theory - fathers, uncles, cousins, neighbours, pastors and teachers all having been accused and convicted of child sexual abuse.

Examples of positive initiatives by the media include 2004 special serialization of violence against women and children by the Standard Group to mark the 16 days of Activism Against gender violence. The campaign which ran from 25<sup>th</sup> November - 10<sup>th</sup> December was dubbed '16 days of Peace: Create a World Without Violence or AIDS.' The supplement highlighted the incidence of gender violence and was organized in partnership with a number of women's and children's organizations.

In addition, the media plays a clear advocacy role in issues of child marriage and female genital mutilation. It tries to include children among their readers by designing pullouts for children, programmes on radio and television on issues related to violence against children, and what to do and where to get help in the event that it occurs.

It has been estimated that 50 - 70% of the Kenyan population has access to a radio. This has been a mode of communicating children's issues and educating the public on the same. Several organizations working in collaboration with the media have organized programmes to sensitise the public on the rights of the child through the national radio and television station, Kenya Broadcasting Corporation (KBC). They produce and air children's programmes targeting children aged 13 - 18 years. The radio specifically produces and airs weekly Child Survival (English) and Maisha ya Mtoto (Kiswahili) programmes. Music and drama has also been used on radio and Television for advocacy and educational purposes.

The Kenya dailies carry relatively few stories about children compared to other events. They report on developments in society and the rest of the world, and how they affect adults, without highlighting the impact on children. They chooses to focus on pieces they consider prominent, while neglecting many categories of child abuse, neglect cases and children's issues. Even where such cases have been reported, there are no discernible

<sup>76</sup> Speaking the Unspeakable – The Realities of Child Sexual Abuse in Kenya: What Kenya's Media Said in 2004 by The CRADLE (2005)

<sup>77</sup> Ibid pg 6

efforts to discuss or explain the context or causes surrounding the events, or to relate the events to any larger social, economic, political or legal issues. Usually, these stories are very short and give the bare facts of the case. Such stories usually appear once and follow up stories are rare.<sup>78</sup>

The media has also served to impact on children negatively by publishing and airing articles and programs that have images of sex and violence on impressionable children. This includes placing of billboards having messages that negatively affect children next to institutions of learning and airing programs that are sexually explicit without regard to regulations relating to viewer ship. Despite the fact that the Children Act prohibits the publishing of information concerning children by exposing their names or identity, the media has on several occasions shown or published stories exposing the pictures of these children, their names or that of their parents and the schools they attend. It has failed to uphold the child's right to privacy.<sup>79</sup>

#### **IV. CHILDREN AS ACTORS IN ADDRESSING VIOLENCE**

*This section is designed to extract information on Children Activities to address violence.*

#### **38. Provide information on the involvement and consultation of children in designing activities, and in implementation and monitoring of programmes and policies to address violence against them. Provide details, including ages and other details of the children involved.**

Children have been involved in initiatives to end violence against children. These efforts have been mainly spearheaded by CSOs, though the Government also runs a few programs that involve child participation such as debating clubs in schools. However, their main focus is not on violence. Examples of initiatives that have dealt with violence include moot courts and law clubs run by LRF and COVAW; Letter Link and Safe Horizon Programs for Girls in Schools by The CRADLE with a Letter Link Magazine, and Haki Zetu Sheets ( Programs that target primarily children in primary schools and also provides safe space for the children to discuss issues of concern to them), project for street children done jointly between Undugu, The CRADLE and CSC-UK; ECIPIK workshops on combating child prostitution; KAACR's project in Kuria on FGM and early marriages working with children and their communities; Pendekezo Letu PLAN working with children in schools; Children's Forums by CLAN, and democracy clubs and forums by GCN. The Salvation Army runs OVC clubs bringing young people together to discuss issues affecting them (i.e. child rights, child abuse, HIV/AIDS, child counselling). This is done through games, home visits, children on mission process (comps), camps and behaviour change in order for them to know and make informed choices in life, geared towards an AIDS free Africa, and training of Peer Educators in this field. Child participation in policy formulation, implementation and monitoring has been lacking. It is only this year that the Ministry considered involving children in commemorating International Labour Day celebrations.

Children were involved in the UNVAC study. A children's workshop was held to incorporate children's views on violence and create awareness surrounding the study. Children were also interviewed for the study by ANPPCAN on corporal punishment and were also extensively involved in the preparation for state reporting to the CRC committee in 2005. Through the National Child Participation Committee convened by the NCCS, children have been involved in the development of child participation guidelines, and during the Day of the African Child celebrations children were involved in the main event by giving speeches, and planning and designing of programs for the day.

The Government and its partners in 2004 developed a programme on creative learning in schools and leaning institutions called *Sungura*, in addition to Guidelines on Child Participation and Protection emphasising role of child participation in issues relating to policy making, planning and implementation.

#### **39. Describe the involvement, if any, of children in designing special procedural or evidentiary rules applying in court proceedings with respect to hearings concerning violence against children. Provide details including ages and other details of the children involved.**

Children are normally not involved in this process but NGOs are making an effort to involve children, for instance in the Constitutional Review. KLRC policies are not directly concerned with violence against children; however, it should be noted that they do consider input submitted by children in relation to law reform. Earlier this year the KLRC requested opinions on the amendments of various provisions of the Children Act. During this period views from children were received along with those of various other stakeholders. The views are currently being harmonized for further action.

#### **40. Describe the amount and type of resources made available to support children's participation in activities to address violence against children.**

<sup>78</sup> Speaking the Unspeakable – The Realities of Child Sexual Abuse in Kenya: What Kenya's Media Said in 2004 by The CRADLE (2005)

<sup>79</sup> *The Esther Pasari's Case* on Custody of Children, her photo and that of her child was prominently displayed in the media.



The State doesn't provide any funds specifically for child participation. However, in its provision of free primary education to children, there is the component of child participation included which facilitates the mobilization of clubs for children to actively interact in both within the schools and also inter schools. Clubs such as wild life club, scouts, girl guides, athletics, drama and music are facilitated by the government indirectly through the trained teaching staff. Local NGOs have incorporated child participation policy into their programmes and there have been training sessions for Participatory Action Research (PAR) managers, social workers and street educators who are directly involved in work with children. PAR aims to enhance the involvement of children in planning, implementation and evaluation of programmes that focus on them.

Training in research with children results in research becoming a key structural element in interventions, thus enabling the projects to know where they start, determine the effects of their work, and make adjustments where necessary. PAR methodology incorporates the child-centered notion. The child participation policy is best highlighted in the diversion programme where views are shared on the best way forward for the child (during the rehabilitation and reintegration process). The child is allowed to participate fully in the process, and if he or she doesn't wish to return to his community he or she can be placed in an institution of safety.

## V. POLICIES AND PROGRAMMES TO ADDRESS VIOLENCE AGAINST CHILDREN

***A comprehensive policy for dealing with violence against children is one that addresses multiple forms of violence against children, that works across the different settings in which violence occurs, and which includes components for prevention, protection, victim medical, psychological, legal and social assistance, victim rehabilitation and reintegration, and perpetrator interventions. Such policy is distinguished from specific programmes that address selected sub-types of violence against children or its effects in specific populations and settings.***

### 41. Does your Government have a comprehensive policy concerning violence against children?

No

If YES, provide details and describe any gender-specific provisions included in the policy.

Whereas there is no such comprehensive policy, the Government has however developed Plans of Action to address different issues relating to children. Examples include the National Plan of Action for the Elimination of FGM in Kenya which is a 20 year plan expected to run from 1999 - 2019, the National Plan of Action to prevent and Combat the Commercial Sexual exploitation of Children; and the National Plan of Action on Education for All. A National Plan of Action on commercial sexual exploitation of children was developed in 1997 but is not yet fully adopted. This Plan of Action identifies clear goals and assigns them to responsible actors. It also provides a time frame for when the goals should be met.

The Prisons Department does not have a policy concerning violence against children generally, or for children being held in custody. However the Department has guidelines on how to handle children in custody. It stipulates that children and adults must be held in separate facilities while in prison so as to reduce incidences of violence against children.

Although it is not gender specific, the Ministry of Health has in place a program that allows children below the age of 5 years to receive free treatment and medication in national hospitals. Whereby the child is above the age of five and is an orphan and cannot afford medical costs the child can be granted a waiver on all expenses incurred in the hospital. Under the Ministry of Labour, planning documents have been developed namely the National Development Plans, the Poverty Reduction Strategy Paper (PRSP) 2001 - 2004 and Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) outlining policy measures that are intended to protect all children especially those in need of special protection. The Ministry of Local Government has a program for street children where some street children have been absorbed in school, the older ones taken to National Youth Service to pursue Craft Programmes and others taken back to their homes. In regard to child labour, a Task Force Reviewing Labour Laws was formed in 2004 to address the issue of child employment and tried to fill the loopholes in the National Labour Standards by harmonizing the definition of a child with that of the Children Act to mean a person below the age of 18; providing a definition of worst forms of child labour as per ILO Convention No. 182; making it an offence to engage a child in any activity constituting worst of forms of child labour or in an industrial undertaking. If offence constitutes worst forms of child labour the offender is liable to a fine of Kshs 50,000 or maximum imprisonment of 12 months or both and in any other case a fine of Kshs 20,000 provided that it shall be the defense of the accused person to prove that he/she genuinely believed that they had reason to believe the juvenile was above the age limit subject to the charge. In case of death or injury, the penalty is a fine not exceeding Kshs 200, 000.

**42. Does your Government deliver, or provide direct support for delivery by other agencies, of specific programmes aimed at preventing and responding to violence against children?**

Yes

If YES, please provide available summary reports, or URLs, of these programmes, and indicate, using the table below, which settings and types of violence are addressed by these programmes:

**Table 4: Programs supported by the Government aimed at combating violence against children**

Set up	Nature of Violence	Nature of Activity and other details
Family/Home	Sexual	<p>The Technical Working Group of the National AIDS Control Council (NACC) set up a task force, to address issues of orphans and other children made vulnerable by the HIV/AIDS epidemic in Kenya. Members of the task force were drawn from GoK Ministries, NGOs, CBOs, donor agencies and members of the National HIV/AIDS Technical Working Group. The main assignment for this task force was to develop appropriate guidelines on the care and support of OVCs.</p> <p>The task force held several meetings in which members were sensitized on the need to develop National Guidelines for Care and Support of OVCs. The Task Force, therefore coordinated by NACC identified the need to establish clear program and service guidelines for OVC projects "that will ensure project quality control and maximum impact in Kenya." To advance the development of the program guidelines the OVC Task Force planned and coordinated a three-day workshop that was held in Matuu in Machakos district, from December 16-19, 2001.</p> <p>This was to advance the development of national program guidelines on the care and support of orphans and other children made vulnerable by HIV/AIDS in Kenya.</p> <p>The government has set up a task force to work on the Sexual Offences Bill and has representatives from the NGO sector, KLRC and Parliament.</p> <p>The development of the National Guidelines for the Medical Management of Sexual Violence setting standards for comprehensive care of survivors of sexual violence. it provides all health workers coming in contact with survivors of sexual abuse a practical reference source for service delivery.</p>

Neighbourhood/ Community	Physical	<p>The Street Children Capacity Building Project has aimed to enhance the capacity of organizations that are addressing the plight of both actual &amp; potential street children in Kenya. The project has been based in Nairobi with a national out-reach, and working in partnership with voluntary organizations and governmental institutions in key urban centres in different districts, including Nairobi, Mombasa, Nakuru, Kitale Kisumu, Eldoret, Lodwar, Maralal and Marsabit.</p> <p><b>Its objectives are:</b></p> <ul style="list-style-type: none"> <li>• To develop and implement effective approaches in working with children in difficulty, with an emphasis on increasing children's participation in addressing their own problems.</li> <li>• To promote communication and cooperation between organizations working with street children through exchange of ideas, experiences, resources, and coordination of activities.</li> <li>• To enhance good management of children's organizations by encouraging professional managerial practice for individuals heading street children's organization, to build effective organizations that are alive and responsive to the needs of children.</li> <li>• To support organizations to create mechanisms that enhance the rights of the child, including evolving internal policies that are child friendly, child centered and child sensitive.</li> <li>• To empower staff in street children projects and government institutions to develop proactive approaches that encourages child rights both at the organization and community level.</li> <li>• To address street children issues at policy level (national &amp; international), e.g. inheritance laws, child rights, sexual abuse of children, and education of girls.</li> </ul> <p>Based on these key objectives the project developed training modules which address three thematic areas namely: management of street children organizations, Participatory Action Research (PAR), and Paralegal and child Rights. The project has reached a total of eighty-two organizations with various capacity-building activities.</p>
	Other	<p>The Government and partners have also developed a program of assistance for street children. The Street Families Trust Fund initiative started in January 2003 returns children to their families and supports their re-integration into the community as well as other programmes. The Trust has moved from emergency response and immediate needs such as food, clothing, shelter, health and psychological problems to long-term programs including support for these children's education</p>
Workplace	Physical	<p>The Government in collaboration with other stakeholders have through funding from ILO/IPEC Program initiated projects targeting the elimination of the worst forms of child labour. They are mostly found in commercial agriculture, fisheries and domestic labour. Kenya is one of the first countries selected for the implementation of the ILO/IPEC activities whose overall purpose is to facilities and consolidate sustained action leading to prevention and abolition of child labour in line with ILO Conventions. There are several programs Coma-Agric (Commercial Agriculture Program) contributes to the elimination of Worst Forms of Child Labour in commercial agriculture in Kenya including the withdrawal of 1500 children in hazardous working conditions and verify that they are benefiting, protection of 30000 children from entering child labour, build capacity of sector partners, verify places where children are withdrawn do not engage children anymore, continually assess that</p>

		<p>child labour situation in areas covered by Coma-Agric. It covers 7 districts, 66 primary schools, 24 work places and Local Labour Committees, 10 Vocational Training Institutions. The government is preparing a Comprehensive National Time Bound Program (TBP) on Elimination of Child Labour that will target eliminating the worst forms of child labour as a priority and progressively eliminate all forms of child labour. Preparations have been made for this program with the drawing of a national plan of action on TBP that was launched in June 2005, the Vice President has accepted to chair the Inter-ministerial Coordination Committee, Chief Technical Advisor has been appointed at ILO/IPEC. The programme targets the domestic labour, street labour, commercial sex exploitation, commercial and subsistence agriculture, construction, quarry &amp; mining and labour sectors.</p> <p>MoEST with support from ILO/IPEC developed a programme for withdrawing children from child work and placing them in schools. The introduction of free primary education has seen many children leave child labour activities and register in schools</p> <p>World Vision launched its Kenya, Uganda, Rwanda, Ethiopia Together (KURET) recently, focusing on combating child labour in the four countries. The activities climaxed on Friday with the official launch of the Time Bound Programme on the Elimination of the Worst Forms of Child Labour by Kenya's Vice President, Mr. Moody Awori.</p> <p>The DCH has together with the children department, the police benefited from a training on child rights which was conducted by ANNPCAN an NGO dealing in violation against children. This has built the capacity and increased knowledge on various forms of violence against children.</p>
Other (Refugees)	Physical and Sexual	<p>Kenya/Sudan program by LWF's uses rights-based interventions at the Kakuma Refugee Camp in northern Kenya on issues of violence against refugees especially women and children. The camp was established in 1992 to accommodate Sudanese fleeing fighting between the Government of Sudan and Sudanese People's Liberation Army (SPLA)</p> <p><a href="http://www.lutheranworld.org/News/LWI/EN/1437.EN.html">http://www.lutheranworld.org/News/LWI/EN/1437.EN.html</a></p>
Schools		
Institutions		
Law Enforcement	Physical and Sexual	<p>The government has set up a task force to develop rules under the Children Act. The government has also set up a committee consisting of NGOs on community policing</p> <p>Together with the Komesha Unajisi Network, the government has developed draft national policy guidelines on Sexual Violence.</p>

#### 43. Does your Government monitor the impact of these policies and programmes directed towards violence against children?

Yes

If YES, describe the monitoring systems and provide a URL or other reference where the system and outcomes are described in greater details.

The Children's Department has set up a databank to document cases of child abuse. It has proven effective in compiling data especially from Nairobi province. Below is a sample of cases reported to the Department:

Nature of Cases	Year: 2003/2004					
	Western Province	Nyanza Province	Nairobi Province	Central Province	Coast Province	Total
Neglected	4222	3538	50	3519	3124	14453
Abandoned	132	185	107	494	42	960
Unwanted	-	-	8	-	-	8
Orphans	315	505	15	453	858	2146
Destitute	41	-	10	140	2	193
Foster Care	-	-	-	120	-	120
Abused	54	-	-	-	25	79
Endangered	55	-	-	-	3	58
Battered/Assaulted	64	-	22	23	45	154
Child Mothers	9	-	-	9	-	18
Child Brides	2	-	1	Combined with child mothers	64	67
Physically Handicapped	2	-	2	30	-	34
Mental Cases	-	-	-	2	-	2
Drug Users	0	-	-	108	-	108
Delinquent	108	115	2	402	-	627
In disciplined	-	-	-	-	40	40
Child Labour	23	-	8	183	Combined with street children	214
Abduction	15	-	-	-	-	15
Street Children	30	-	-	-	157	187
P & C Custody	1262	-	-	108	-	1370
Maintained and Others	-	-	-	-	132	132
Sexual Abuse	59	-	6	64	-	129
Taboo Children	139	-	-	-	-	139
Foster Parents	16	-	-	-	-	16
Lost	0	-	6	-	-	6
Shelter	-	-	2	-	-	2
Children of Imprisoned Mothers	-	-	-	-	15	15
Unresolved Custody	-	-	42	-	-	42
Custody Dispute	-	-	12	-	-	12
Referrals	-	-	-	-	308	308
Others	126	1921	7	9	-	2063
<b>Total</b>	<b>6674</b>	<b>6264</b>	<b>300</b>	<b>5664</b>	<b>4815</b>	<b>23717</b>

#### 44. Does your Government participate in any internationally coordinated activities concerning violence against children?

Yes

If YES, please provide details.

The Kenyan government hosted the International Conference on FGM in November 2004 to raise awareness on the Cairo and Maputo Declarations, in addition to advocating for a ban on FGM by creating awareness concerning its disadvantages. The government also participates in several international activities on violence against children such as attending the Yokohama Conference on Sexual Exploitation of Children, 1st and 2<sup>nd</sup> Afro Arab Regional conference on sexual exploitation of children, and the UN Special Session on Children. There is also the current ongoing UN Study on Violence Against Children.

*This section aims to provide an overview of information systems and information about violence against children that may be used to inform, plan and monitor policy, legal and programmatic interventions concerning violence against children.*

**45. Over the past five years, has there been any victimization, epidemiological or other population-based surveys of any forms of violence against children in your country?**

If YES, provide details or references, or attach.

A survey conducted in 2003 by the Center for Adolescent Health and Development (CAHD) and UNICEF revealed that 20% of the country's youth (10-24) have been sexually abused.

According to the 2003 Kenya Demographic and Health Survey (KDHS), 30% of adolescents aged 15-19 years are reported to have experienced either physical or sexual violence. Of the children who suffer from sexual abuse, 1 in 10 is sexually abused by members of their family, such as uncles, cousins and siblings.<sup>80</sup> According to the KDHS survey, only 14% of the estimated 16,482 cases of rape that occur annually in Kenya are reported to police. This has often been attributed to lack of awareness and largely negligence on the part of the parents and guardians. The study showed high rates of sexual abuse among the Luo, Kikuyu, Luhya and Meru tribes. Sexual violence was lowest among the Somalis. This could be attributed to strict religious taboos, as most Somalis are Muslims. It could have to do with the stigma attached to sexual abuse, which might dissuade people from reporting. These statistics coincide with regional and socio-economic variations in the incidence and prevalence of violence.<sup>81</sup> NGOs also undertake surveys and monitor trends in violence against children. The CRADLE's Case Trends Monitor (2003) found sexual violence to be the most prevalent form of abuse against children. It also found that girls were more likely to experience to abuse, and that the age group between 12 to 14 years was more vulnerable to sexual violence.<sup>82</sup>



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**46. Over the past five years, has your Government conducted or commissioned any scientific research projects on the problem of violence against children?**

According to the Central Bureau of Statistics, none has been commissioned.

If YES, indicate the subject of this research and where the findings of these projects may be consulted in more detail.

N/A

**47. Have studies or surveys been undertaken into the impact of legal measures to address violence against children?**

Yes

If YES, provide details or references, or attach.

FIDA undertook a baseline survey in 2002 of domestic violence in Kenya and touched on children as victims of this crime. The Domestic Violence and Protection Bill arose from a similar study and aims to provide protection in the family unit. KAACR has also done a study on domestic violence and its impact on children, as well as on sexual exploitation of children. ANPPCAN has also undertaken a study on sexual exploitation of children. The CRADLE undertakes an annual situational analysis of the justice system and its impact on justice for children. ANNPCAN did a study on corporal punishment and its effects.

**48. Does your Government have a system for formal inquiries into all child deaths in which it is known or suspected that violence may have played any part?**

Yes

<sup>80</sup> Article by Ubah Hassan on Minors too are victims [www.awcfs.org](http://www.awcfs.org) 2003

<sup>81</sup> Article by Ubah Hassan on Minors too are victims [www.awcfs.org](http://www.awcfs.org) 2003

<sup>82</sup> Case Trends Monitor, 2003, The CRADLE-The Children Foundation, Nairobi, Kenya

**Provide details.**

Where it is suspected that a child has died as a consequence of violence, the Government may order an inquest into the circumstances surrounding the death and if evidence shows culpability on the part of any person, he or she may be charged in a court of law with murder or infanticide depending on the age of the child. However if it is clear that a person has wilfully or negligently caused the death of a child, or has accidentally caused the death of the child, the person will be charged with murder and manslaughter respectively. Unfortunately, most places are not close to justice centres and hence many cases of child mortality go unsolved. Apart from post-mortem investigations and inquests, there are no any other methods for inquiry into deaths occurring in prisons as a result of violence. Within the Ministry of Health a Division of Child Health (DCH) was created to look into child mortality rates. With the enactment of the Children Act, Cap. 586 the responsibility of this division has widened to include child rights issues. This is still a new area. The DCH works in collaboration the Ministry of Home Affairs, Children Council and NGOs to address violence against children.

**49. Are regular (e.g. annual) reports published describing the statistical profile of the known or suspected violent deaths investigated by the system?**

No.

If YES, what proportion of all homicide deaths are under the age 18?

**50. If reports on the national profile of known and suspected violent deaths are published by your Government, indicate how the data is broken down for the purpose of reporting (check all that apply):**

The police have data on certain forms of violence but they are not desegregated. It is not easy to extract this information due to the way information is stored for most offices do not have electronic records.

**Table 5: National Profile on Deaths through violence**

Sex	
Age	
Ethnicity	
Manner of death (homicide, suicide, undetermined)	
External causes of death (firearm, strangulation, etc.)	
Geographical location of incident (address)	
Scene of occurrence (home, school, etc.)	
Time and date of incident	
Victim-perpetrator relationship	
Other:	

**51. Provide the total number of reported cases of violence against children in 2000, 2001, 2002 and 2003.**

Data not easily available due to none computerized storage of information. However efforts are being made to compile the relevant data to be made available for the completion of the process.

**52. Provide the total number of convictions and reported cases for the various categories of crimes of violence recorded against children in 2000, 2001, 2002 and 2003.**

Data not easily available due to none computerized storage of information. However efforts are being made to compile the relevant to be made available for the completion of the process.

**VII. AWARENESS, ADVOCACY AND TRAINING**

*This section is aimed at gathering information on any awareness-raising, advocacy and training activities relating to violence against children which may have been conducted by your Government.*

**53. Over the last five years has your Government conducted or commissioned any campaigns for raising awareness of and preventing violence against children?**

The Government has not conducted campaigns of significant magnitude for raising awareness on and preventing violence against children in the last five years. However, in the year 2004 there was an international conference on FGM organized by the Ministry of Home Affairs under which the Children’s Department falls.

If YES, please describe any recent campaigns, including the settings and types of violence that were the subjects of the campaigns and the target audience (general public, caregivers, teachers, etc.).

Other than the international conference on FGM, “Pocket” campaigns have been done in collaboration with CSOs. For instance, over the last five years, the Kenya Police Department and FIDA (K), in collaboration with the British Council, have conducted nationwide campaigns to increase public awareness about domestic violence, and to provide women with information about where to report domestic violence. In collaboration with the Children’s Department, ANNPCAN (K) undertook a study on corporal punishment in schools and produced a report on “From Physical Punishment to Positive Discipline - Alternatives to Physical/Corporal Punishment in Kenya 2004’. From this they have now began a series of campaigns in print media including a “No *Kiboko* day’ which involved a series of talks and a march to create awareness on the ills of corporal punishment.

**54. How were the campaign messages and information disseminated (check all that applies)?**

Table :6 Campaigns on Violence Against Children by the Government.

<b>Print media</b>	-ANNPCAN (K) has run a series of print campaigns against corporal punishment and advocating for alternative positive forms of discipline. -Campaign on elimination of child labour with the assistance of ILO/IPEC. Through this assistance the Directorate of Occupational Health and Safety conducted surveys on child labour and several others baseline survey.
<b>Radio</b>	The Police Department have shows on three radio stations three times a week.
<b>Television</b>	-The government supports the program “Child Survival” under KBC media. -KAACR has a series or shows on rights of children under the new Draft Constitution.
<b>Theatre</b>	The 1999 National School Drama and Music festivals contained numerous plays and dances on child abuse, domestic violence. In 2001 it included such diverse themes on contemporary issues like gender violence, the plight of the girl child, greed, and drug abuse being presented. In 2002 the themes included Female Genital Mutilation, indiscipline in schools, drug abuse, domestic violence, children’s rights, incest, HIV/Aids and traditional myths. The National School Drama festivals were devoted to drug abuse in the year 2004.
<b>Schools</b>	
<b>Others</b>	

**55. Over the last five years, has your Government provided, commissioned or sponsored training programmes in the area of violence against children?**

Yes  
If YES, indicate which of the following areas were addressed by the last such training programmes and which provider groups received training (check all that applies).

If YES, indicate which of the following areas were addressed by the last such training programmes and which provider groups received training (check all that applies).

Table 7: Trainings Commissioned on Violence Against Children



<b>Trainees</b>	<b>Focus of Training</b>	<b>Details</b>
Medical Professionals (including paediatricians, nurses, psychiatrists and dentists)	Prevention	The training sessions are intended to ensure that law enforcement officers recognize gender -based violence as a violation of women and girls human rights and that they offer women reporting such an abuse the necessary support. A standard course was introduced in 2004 and is used to train new and serving nurses.
Teachers and other educators	Prevention	National Standards and Training Manuals have been developed in line with international standards. Training on child rights has been incorporated in the police curriculum, teacher training curriculum and in the Faculty of Law at the University of Nairobi.
Court officials (Including Judges)	Prevention	Through the technical cooperation between the GoK and JICA, judicial officers, prosecutors, lawyers, law enforcement officials, and immigration officers have been trained by various organizations on the juvenile delinquent treatment system.
Police	Prevention	Collaborative training between government and CSOs has translated to Police Training on gender-based violence at Kiganjo, Criminal Investigation Department Training School and the Administration Police Training programme. FIDA(K) and the Kenya Police Department initiated the said training in 1996. The training sessions are intended to ensure that law enforcement officers recognize gender- based violence as a violation of women and girls human rights and that they offer women reporting such an abuse the necessary support. A standard course has been introduced and is used to train new and serving police officers.
Juvenile offenders personnel Institution personnel	Protection, Redress and Rehabilitation	These have been trained in collaboration with CSOs such as PASUNE and CLAN.
Prison Officers		
Social Workers and Psychologists		
Parents/Guardians		
Others		Training for government officials concerned with child labour issues especially with inspection and law enforcement. The government deleted the salary schedule relating to employment of children. Capacities building under the Coma-Agric programme with ILO/IPEC whose objectives are to progressively eliminate worst forms of child labour by strengthening capacity of ministry of labour, strengthen the resource center of the Child labour division to develop a networking system with other partners to generate effective system of data collection, analysis and dissemination.

Please provide details.

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