

**COMMITTEE ON THE RIGHTS OF THE CHILD**

**Forty fourth session**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 44 OF THE CONVENTION**

**Concluding Observations: KENYA**

**A. Introduction**

1. The Committee considered second periodic report of Kenya (CRC/C/KEN/2) at its 1202nd and 1203rd meetings (CRC/C/SR1202 and CRC/C/SR1203), held on the 16th January 2007 and adopted at 1228th meeting, held on 2 February 2007, the following concluding observations.
2. The Committee welcomes the submission of the second periodic report as well as the written replies to its list of issues (CRC/C/KEN/Q/2) and the frank and open dialogue with a high-level, cross-sectional delegation which enabled the Committee to have a clear understanding of the situation of children in the State party.

**B. Follow-Up Measures Undertaken and Progress Achieved by the State Party**

3. The Committee notes with appreciation the enactment of legislation aimed at promoting and protecting the rights of the child, such as:
  - (a) the Children Act of 2001 (Cap 586 Laws of Kenya) and the creation of the National Council for Children Services;
  - (b) the Sexual Offences Act of 2006;
  - (c) the Refugee Act of 2006.
4. The Committee also welcomes the ratification or accession to:
  - (a) the African Charter on the Rights and Welfare of the Child on 25 July 2000;
  - (b) the International Convention on the Elimination of All Forms of Racial Discrimination on 13 September 2001;
  - (c) the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 7 May 2001;
  - (d) the Optional Protocol on the Involvement of Children in Armed Conflict on 28 January 2002;
  - (e) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 5 January 2005;

- (f) the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on 4 February 2004; and
- (g) the Rome Statute of the International Criminal Court on 15 March 2005.

### **C. Factors and difficulties impeding the implementation of the Convention**

5. The Committee acknowledges:
  - (a) the recurring droughts and floods which have affected vast parts of Kenya and the entire Horn of Africa.
  - (b) the high incidence of HIV/AIDS epidemic prevailing in the urban as well as rural areas continues to hamper further progress in the effective implementation of the provisions of the Convention.

### **D. Principal subjects of concern and recommendations**

#### **1. General measures of implementation (Articles 4, 42 and 44, paragraph 6 of the Convention)**

##### Committee's previous recommendations

6. The Committee notes with satisfaction that some concerns and recommendations (CRC/C/15/Add.160, 7 November 2001) made upon the consideration of the State party's initial report (CRC/C/3/Add.62/) have been addressed through legislative measures and policies. However, recommendations regarding, inter alia, coordination, the various inconsistent, discriminatory and often exceedingly low legal minimum ages, corporal punishment, child labour and juvenile justice, have not been given sufficient follow-up. The Committee notes that those concerns and recommendations are reiterated in the present document.
7. **The Committee urges the State party, taking into account General Comment No. 5 (CRC/GC/2003/5) on the general measures of implementation for the Convention on the Rights of the Child, to make every effort to address the recommendations contained in its concluding observations on the initial report that have not yet been implemented, and to address the list of concerns contained in the present concluding observations on the second periodic report.**

##### Legislation

8. The Committee welcomes the enactment of a Children's Act in 2001 (Cap 586 Laws of Kenya) and notes the various legislative measures undertaken by the State party listed in the second period report (CRC/C/KEN/2), however is concerned that national legislation needs further harmonisation and strengthening.
9. **The Committee urges the State party to continue the harmonisation of national legislation inter alia by completing the legislative review regarding orphans and vulnerable children, and work towards the adoption and implementation, without further delay, of the various proposed laws and policies that benefit and protect children and engage all efforts and resources necessary for the effective implementation of the Children Act, as a matter of priority. The Committee also recommends the State party to ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes are provided with the protection required**

**by the Convention and to take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).**

#### Coordination and National Plan of Action

10. While noting with appreciation the different measures and programmes to coordinate children matters, including the creation of the National Council for Children Services (NCCS) with a five year strategic work plan and the establishment of Advisory Councils at the local level, the Committee is concerned that the adoption of a National Action Plan remains pending and that additional resources are required to ensure effective coordination and implementation at the local level.
11. **The Committee recommends that the State party adopt a National Plan of Action which covers all the rights in the Convention and takes into account WFFC and continue and strengthen its efforts to establish mechanisms for coordination at the local level throughout the country and assign adequate resources to support effective inter-institutional coordination at both the national and local levels.**

#### Independent monitoring

12. The Committee welcomes the establishment of the Kenya National Commission on Human Rights in 2003, however is concerned that the State party does not provide it with sufficient human and financial resources. The Committee notes that the Kenya National Commission on Human Rights does not place specific emphasis on the rights and needs of children in discharging its mandate.
13. **The Committee recommends that the State party ensure that adequate human and financial resources be allocated to the Kenya National Commission on Human Rights to enable it to discharge all of its mandated activities in line with the Principles Relating to the Status of National Institutions (Paris Principles). Furthermore the Committee recommends the State party to take the necessary measures, in accordance with the Committee's General Comment No. 2 (CRC/GC/2002/2) on the role of independent human rights institutions in the protection and promotion of the rights of the child, to ensure that the Kenya National Commission on Human Rights pays special attention to the concerns of children, e.g. by establishing a children's rights unit in order to be easily accessible for children and to facilitate that complaints by or on behalf of children are dealt with in a child sensitive manner by well trained staff, and when cases have been referred to authorities ensure that they are followed-up by the Kenya National Commission on Human Rights.**

#### Allocation of resources

14. The Committee welcomes the general increase in the budgetary allocation to social services such as health and culture, but is concerned that it is not possible to identify the funds spent on children and have a clear understanding of the proportion of the budget that is spent on children. Furthermore, the Committee regrets the regional disparities and the lack of prioritisation of children's economic, social and cultural rights, especially for marginalised children, and the lack of budget allocations with a view of alleviating disparities.
15. **The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention, by increasing and prioritizing**

**budgetary allocations to ensure at all levels the implementation of the rights of the child and that in the budget allocation particular attention is paid to the protection of the rights of children belonging to vulnerable or disadvantaged groups, including children with disabilities; children infected and/or affected by HIV/AIDS; orphans; children living in poverty and children in remote or marginalized areas. The Committee urges prioritisation of children's economic, social and cultural rights, especially for marginalised children, and adequate budget allocations with a view of alleviating disparities. The Committee encourages the State party to start budget tracking from a child right's perspective with a view to monitor budget allocations for children and seek technical assistance for this purpose from inter alia UNICEF. Furthermore, the Committee encourages the State party to negotiate debt relief in favour of resources for child protection.**

#### Data collection

16. While taking note of the efforts made to provide disaggregated data in the State party's Reply to the List of Issues (CRC/C/KEN/Q/2/Add.1) in improving the data collection system and the development of a national database on children in need of special protection, the Committee remains concerned at the lack of a centralised data collection system and a disaggregated representation of specific categories of children.
- 17. The Committee recommends that the State party strengthen its system of collecting data as a basis to assess progress achieved in the realisation of children's rights and to help design policies to implement the Convention, specifically with regard to the financial and human allocation of resources made in respect of children.**

#### Cooperation with civil society

18. The Committee notes with appreciation the efforts made by the State party to ensure and enhance cooperation between the State institutions and civil society organisations in the implementation of projects related to children's rights. Nevertheless, the Committee notes that there is a need to further improve and formalise this cooperation in order to enhance sustainability and continuity.
- 19. The Committee encourages the State party to continue and to strengthen its cooperation with NGOs and other sectors of civil society working for and with children throughout all stages of implementation of the Convention.**

#### Dissemination and training

20. The Committee notes with appreciation the efforts made by the State party, including the translation of the Convention into Kiswahili and other indigenous languages as well as programmes aimed at promoting children's rights. However, the Committee concurs with the State Party's conclusion that additional progress needs to be made with regard to raising awareness of the principles and provisions of the Convention, particularly in rural and marginalised communities.
- 21. The Committee recommends that the State party;**
  - (a) strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children in the various minority communities of Kenya;**
  - (b) develop and disseminate child-friendly versions of key documents, plans and policies that affect children; and**
  - (c) provide and reinforce adequate and systematic training for all professional groups working for and with children, in particular law-enforcement**

**officials; teachers, including teachers in rural and remote areas; health-service personnel; social workers; and personnel in childcare institutions.**

## **2. Definition of the child (Article 1 of the Convention)**

22. The Committee notes with concern that there are various minimum ages for marriage under different laws and that they are not the same for boys and girls and welcomes the information that this concern will be addressed in a review of the Children's Act.
23. **The Committee recommends the State party to expedite the review of the Children's Act inter alia with a view to establish a minimum age for marriage that is the same for both boys and girls and is set at the intended age of 18.**

## **3. General principles (Articles 2, 3, 6 and 12 of the Convention)**

### Non-discrimination

24. While welcoming the information that the State party has reviewed certain discriminatory legislation to ensure that children's rights are not breached, the Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly with regard to the girl child, children of certain minorities such as pastoralists and hunter gatherers, children with disabilities, refugee children and the children of asylum-seekers. The Committee also expresses concern at the de facto discrimination faced by children born out of wedlock, children infected with and/or affected by HIV/AIDS, orphans, street children and children born of Kenyan mothers and non Kenyan fathers.
25. **The Committee urges the State party to:**
- (a) continue revising all its legislation in order to bring it in full compliance with article 2 of the Convention, and to ensure full implementation in practice of all legal provisions;**
  - (b) combat discrimination by ensuring equal access to education, health care facilities and poverty alleviation programmes and pay special attention in this regard to the rights of girls;**
  - (c) carry out comprehensive public education campaigns to prevent and combat all forms of discrimination;**
  - (d) include specific information in the State party's next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow-up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account the Committee's General Comment No. 1 (CRC/GC/2001/1) on the aims of education.**

### Best interests of the child

26. The Committee welcomes that the principle of the best interests of the child is reflected in the Children's Act. However, the use of this principle depends on the understanding and sensitivity of officials and others who make decisions concerning children and the

Committee is concerned that the best interest of the child is not systematically taken into account due to e.g. the lack of adequate training.

- 27. The Committee recommends that the State party ensure that the principle of the best interests of the child is systematically taken into account in all programmes, policies and decisions that concern children, and especially aiming at addressing vulnerable and disadvantaged children, inter alia by sensitising and training all involved officials and other professionals.**

Respect for the views of the child

- 28.** The Committee appreciates the State party's efforts to promote and respect children's right to freely express their views and the process of drafting National Guidelines for Child Participation aimed at facilitating participation of children at all levels. However, it is concerned that the prevailing socio-cultural and traditional attitudes and practices are serious obstacles in guaranteeing this right and the full consideration of children's views in administrative and judicial decision making processes at local or national levels.
- 29. The Committee recommends that the State party-:**
- (a) promote, facilitate and implement in practice, within the family, schools, the community level, in institutions as well as in judicial and administrative procedures, the principle of respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention, while taking into account the recommendations adopted by the Committee after the Day of General Discussion on the right of the child to be heard in 2006; and**
  - (b) make efforts to widely disseminate the National Guidelines on Child Participation and develop strategies to reach the most marginalised groups of children and involve them in public debates, particularly at local level.**

**4. Civil rights and freedoms**  
**(Articles 7, 8, 13-17, 19 and 37(a) of the Convention)**

Birth registration

- 30.** The Committee welcomes the enshrinement of every child's right to a name and nationality in the Children's Act and the measures taken to ensure registration, but is deeply concerned by the high percentage of children not registered at birth, especially in rural areas, and the restrictive measures around birth registration, the discrimination with regard to the registration of children born out of wedlock and of non Kenyan fathers, as well as the lack of mechanisms and infrastructure to facilitate birth registrations.
- 31. The Committee recommends that, in the light of article 7 of the Convention, the State party implement an efficient birth registration system that covers its territory and all the children in Kenya fully, including through;**
- (a) ensuring birth registration free of charge at all stages of the registration process;**
  - (b) taking appropriate measures to register those who have not been registered at birth;**
  - (c) introducing mobile birth registration units in order to reach the remote areas;**
  - (d) reviewing existing discriminatory legislation on birth registration, including legislation that prohibits the registration of children born to foreign fathers; and**

- (e) **formalising links between various service delivery structures and promoting awareness and appreciation of the importance of birth registration through mass campaigns that provide information on the procedure of birth registration, including the rights and entitlements derived from the registration, through, inter alia, television, radio and printed materials.**

#### Torture or other cruel, inhuman or degrading treatment or punishment

32. The Committee notes that, despite a clear prohibition in the legislation, reports of torture, cruel, inhuman and degrading treatment indicate that it still occurs in practice. The Committee is concerned over the excessive use of force and shooting at children in Kisumu in October 2005 and is further concerned at reports indicating that rapes of girls by law enforcement agents have not been investigated. The Committee also regrets the lack of comprehensive measures to address the causes and effects of torture, cruel, inhuman and degrading treatment.

33. **The Committee urges the State party to:**

- (a) **review its legislation and ensure its effective implementation in order to provide children with better protection against torture and ill-treatment;**
- (b) **investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected;**
- (c) **ensure that child victims are provided with appropriate services for care, recovery and reintegration, including the provision of psychosocial support for children affected by torture and other cruel, inhuman and degrading experiences, and provide adequate legal assistance to children in this regard; and**
- (d) **continue its efforts to train professionals working with and for children, including teachers, law enforcement officials, social workers, judges, magistrates and health personnel in the identification, reporting and management of cases of ill-treatment.**

#### Corporal punishment

34. The Committee welcomes the legislative prohibition of corporal punishment in schools and institutions under the Children Act of 2001 but continues to be concerned about corporal punishment in the context of the home, the penal system, alternative care settings as well as employment settings. The Committee is also concerned by the continued use of corporal punishment in practice by certain schools and the lack of measures to enforce the prohibition of this practice.

35. **The Committee urges the State party, taking into account General Comment No. 8 (CRC/C/GC/8) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, to;**

- (a) **introduce legislation explicitly prohibiting corporal punishment in the home and in all public and private alternative care and employment settings;**
- (b) **conduct public education and awareness raising campaigns on children's rights to protection from all forms of violence and promotion of alternative, participatory, non-violent forms of discipline; and**
- (c) **improve the effectiveness of the monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions.**

## 5. Family environment and alternative care

(Articles 5, 18 (Paragraphs 1-2), 9-11, 19-21, 25, 27 (Paragraph 4) and 39 of the Convention

### Family Support

36. The Committee welcomes the initiatives taken to focus on the family as part of social policy, in particular programs in family counselling and parental education. The Committee however notes with concern;
- (a) the constraints existing with regard to limited availability and accessibility of services, the high levels of poverty and compounded by the effects of the HIV/AIDS pandemic and negative social trends and attitudes; and
  - (b) the reservation made by the Government of Kenya to paragraph 2 of Article 10 of the International Covenant on Economic, Social and Cultural Rights of 1966 as it limits the family support available to women in employment before and after childbirth;
  - (c) that maternity legislation is inadequate and fails to comply with the recommended 14 weeks of maternity paid in accordance with the ILO Maternal Protection Convention No. 138.
37. **The Committee recommends that the State party;**
- (a) provide further support to families in the form of family counselling, parenting education, social workers at the local level and financial allowances as well as conduct public awareness campaigns in this regard;**
  - (b) strengthen the support available to women before and after childbirth by taking appropriate measures including the removal of the reservation to paragraph 2 of Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; and**
  - (c) review maternity legislation in order to support women working in the formal and informal sector by providing the recommended 14 weeks of paid maternity leave in accordance with the ILO Maternal Protection Convention No. 183.**

### Alternative care

38. The Committee welcomes the creation of the National Council for Children Services (NCCS) and the 2005 – 2009 Strategic Plan and Area Advisory Councils (AAC). The Committee also welcomes the efforts of the State party to regulate and register all charitable institutions for the care of children, including a review of the registration every three years and to improve the support for foster care. The Committee however remains concerned that these measures are inadequate to meet the varied needs of orphaned and other vulnerable children in Kenya.
39. **With regard to the alternative care for orphans and other vulnerable children, the Committee recommends the State party to;**
- a) continue and strengthen its efforts to fully implement the National Guidelines for the care and protection of orphans and vulnerable children;**
  - b) continue and strengthen the measures for support of foster care, through inter alia its cash transfer programme, in order to achieve as soon as possible the intended expansion of this programme to cover 300 000 orphans and vulnerable children;**



- c) **take the necessary measures to prevent and combat exploitation of children in foster care and ensure protection of property of orphans and their inheritance rights, provide communities with civic education in this regard and strengthen the capacity of chiefs and local leaders to deal with these matters;**
- d) **continue and complete the registration, including regular reviews and inspections, of all available institutions for alternative care.**
- e) **develop effective measures to improve alternative care, including through the allocation of adequate financial and human resources;**
- f) **provide additional training, including in children rights, for social and welfare workers, ensure the periodic review of placements in institutions in accordance with article 25 and establish an independent complaints mechanism for children in alternative care institutions.**

#### Adoption

40. The Committee welcomes the intended accession to the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Inter-country Adoption, the enactment of the Children (Adoption) Regulations in 2005 and the formation of the National Adoption Committee both of which have strengthened the procedures and structures for conducting adoption. The Committee is concerned by reports indicating that irregular inter-country adoptions and possible trafficking of children for that purpose still exist.
41. **The Committee urges the State party to:**
- (a) **ensure the compliance of the legislation regarding adoption with article 21 of the Convention;**
  - (b) **establish a comprehensive national policy and guidelines governing adoption in order to ensure that domestic and inter-country adoption are performed in full compliance with the best interests of the child and the appropriate legal guarantees in accordance with the Convention;**
  - (c) **strengthen its monitoring of inter-country adoptions, in particular by ratifying and implementing the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Inter-country Adoption.**
  - (d) **seek technical assistance from the Hague Conference on Private International Law for the above mentioned purpose.**

#### Abuse and neglect, ill-treatment, violence

42. The Committee welcomes the awareness raising campaigns conducted to counteract violence and abuse of children, however is concerned that prevention measures and appropriate mechanisms for responding to abuse of children remain inadequate. The Committee regrets the lack of updated statistics on victims of reported cases of violence, especially sexual and intra-family, the limited number of investigations and sanctions in relation to such cases and the lack of available physical and psychological recovery and social reintegration measures.
43. **The Committee recommends that the State party:**
- (a) **strengthen its existing measures to prevent child abuse and neglect;**
  - (b) **strengthen the capacity inter alia by systematic training of the Children's Officers and Volunteer children's officers and other law enforcement agencies such as the police within the Provincial Administration to investigate, review and respond to child rights complaints;**

- (c) provide support for the operation of a 24 hours three digit toll-free, nationwide telephone helpline for children, resourced with well-trained professionals and volunteers;
- (d) stimulate the creation of networks and partnerships, with the involvement of Local Advisory Councils, aimed at eliminating violence against children;
- (e) consider establishing a centralized system of gathering data, documenting, coordinating, investigating, responding to and following up on cases of child abuse in its various forms.

44. With reference to the United Nations Secretary General's Study on Violence against Children, the Committee recommends the State party to;

- a.) take all necessary measures for the implementation of the overarching and setting specific recommendations contained in the Report of the Independent expert of the United Nations Study on Violence against Children (A/61/299) while taking into account the outcome and recommendations of the Regional Consultations for Eastern and Southern Africa (held in South Africa 18-20 July 2005)
- b.) use these recommendations as a tool for action in partnership with civil society and in particular with the involvement of children to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse.
- c.) seek technical assistance from UNICEF, OHCHR and WHO for the above mentioned purposes.

## **6. Basic health and welfare**

**(Articles 6, 18 (Paragraph 3), 23, 24, 26, 27 (Paragraphs. 1-3) of the Convention**

### Children with disabilities

45. While welcoming the establishment of the National Council for Persons with Disability, the Committee remains concerned at the limited capacities for early detection and treatment of children with disabilities, the lack of governmental institutions and infrastructure to provide for the needs of disabled children, the inaccessibility of buildings and transportation to children with disabilities, and the absence of an inclusive policy with regard to children with disabilities.
46. **The Committee recommends the State party to take fully into account its General Comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9) and more specifically to:**
- (a) further encourage the inclusion of children with disabilities into the regular educational system and their inclusion into society;
  - (b) pay more attention to special training for teachers and making the physical environment, including schools, sports and leisure facilities and all other public areas, accessible for children with disabilities;
  - (c) improve and strengthen early detection and treatment services through the health and education sector;
  - (d) initiate programmes for public education on children with disabilities. The programmes should aim at addressing the stigmatization and discrimination meted on children with special needs. Similarly, community based

- programmes to support families and parents with children with special needs should be initiated;**
- (e) increase the financial allocation given to children with disabilities in schools. The allocation of resources should take into consideration the specific needs of each child, and;**
  - (f) ensure the effective implementation of the Persons with Disabilities Act of 2003 so as to enable the National Persons with Disabilities Council to operationalise the necessary programmes.**

#### Health and health services

47. The Committee notes the efforts of the State party at policy and practical levels to give effect to the right to health and health services, including the National Infant Feeding Policy and the distribution of impregnated nets for the prevention of malaria. The Committee however, remains deeply concerned at the state of health of children in Kenya, in particular by the;
- (a) disparity in distribution and allocation of health care and services between rural and urban areas;
  - (b) high infant and under-five mortality rates and the inadequacies of the existing measures and their inaccessibility to the children living in poverty;
  - (c) lack of access to sanitation and clean, sufficient, reliable and affordable drinking water as well as the threat to the right to health and survival of children posed by malaria; and
  - (d) high percentage of children under 5 who are chronically malnourished, underweight or stunted as well as the limited enjoyment of the right to health by children, particularly with regard to access to generic medicine.
48. **The Committee recommends that the State party:**
- (a) allocate more financial and human resources to health services, in particular with a view to rationalizing their distribution to ensure availability in all parts of the country;**
  - (b) undertake all necessary measures to reduce infant and under-five mortality rates and take into account General Comment No. 7 on implementing child rights in early childhood (CRC/C/GC/7/Rev.1 paragraph 27), including by improving prenatal care and preventing malaria and communicable diseases;**
  - (c) establish more child health clinics in order to reduce distances for mothers and pregnant mothers;**
  - (d) improve access, to safe drinking water and sanitation facilities and ensure sustainability, availability, sufficiency and affordability to all particularly children;**
  - (e) develop appropriate national strategies to address the critical nutritional needs of children, particularly among the most vulnerable groups, through a holistic and intersectoral approach;**
  - (f) ensure that regional and other free-trade agreements do not have a negative impact on the enjoyment of the right to health by children, in particular with regard to access to generic medicine;**
  - (g) step up on anti-corruption measures relating to the management of funds for the health sector.**

#### Adolescent health

49. The Committee, while acknowledging that some measures have been taken to address mental and other health problems of adolescents, is concerned over the high rates of teenage pregnancies, the criminalisation of the termination of pregnancies in cases of

rape and incest, the lack of adequate and accessible sex education and reproductive health services and the difficulties pregnant girls face in order to continue their education. These factors all contribute to the elevated incidence of maternal mortality among adolescent girls. The Committee is further concerned over drug usage, the rate of adolescent suicides and lacking mental health services.

- 50. The Committee recommends that the State party;**
- (a) undertake a comprehensive study to assess the nature and the extent of adolescent health problems and, with the full participation of adolescents, use this as a basis to formulate adolescent health policies and programmes in the school curriculum with particular focus on the prevention of teenage pregnancies, unsafe abortions and sexually transmitted diseases including HIV/AIDS, taking into account the Committee's General Comment No. 4 (CRC/GC/2003/4) on adolescent health and development;**
  - (b) strengthen developmental and mental health counselling services, as well as reproductive counselling, and make them known and accessible to adolescents;**
  - (c) continue to provide support to pregnant teenagers and ensure the continuation of their education.**

#### HIV/AIDS

51. The Committee welcomes that Kenya has a National Strategic Plan on HIV/AIDS (2005-2010), as well as Guidelines on infant and young child feeding in the context of HIV/AIDS. The Committee notes as positive that infection rates have declined in recent years, however is concerned at the particularly high infection rates among adolescent girls and children under the age of five years. The Committee is further concerned over the extremely high number of HIV/AIDS orphans and child-headed households. The Committee regrets that government funding for antiretroviral medication appears to be insufficient. Finally, the Committee regrets that insufficient resources are allocated to prevention through sex education among adolescents.

- 52. The Committee recommends that the State party, taking into account its General Comment No. 3 on HIV/AIDS and the rights of children (CRC/GC/2003/3) and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37);**
- (a) strengthen its efforts in combating the spread and effects of HIV/AIDS, in particular by effectively implementing the its National Strategic Plan, policies and guidelines on HIV/AIDS, infant and child feeding and the programme for preventing mother-to-child transmission of HIV/AIDS;**
  - (b) provide all pregnant women with adequate health and social services free of charge, and by ensuring the provision of antiretroviral drugs and formula-feeding for infants;**
  - (c) systematically include comprehensive information about HIV/AIDS and sex education to youth, including confidential counselling and testing and the promotion of contraceptive use, and provide training to health workers, teachers and education personnel on teaching about HIV/AIDS and sex education;**
  - (d) integrate respect for the rights of the child into, and involve children in the development and implementation of its HIV/AIDS policies and strategies;**
  - (e) expand assistance to children orphaned and made vulnerable by HIV/AIDS;**
  - (f) ensure that public awareness campaigns seek to prevent discrimination against children infected with and affected by HIV/AIDS;**

### Harmful Traditional Practices

53. The Committee acknowledges the endeavours made by local administrative officers in collaboration with civil society to protect the girl child from forced and early marriages and/or female genital mutilation, particularly the prohibition of Female Genital Mutilation (FGM) under the Children's Act of 2001 and the implementation of the Alternative Rite of Passage Initiative with the goal of eliminating FGM. However, the Committee reiterates its concern that FGM is still widely practiced, especially among certain indigenous and minority groups.
54. **The Committee recommends that the State party;**
- (a) strengthen its measures regarding FGM and early marriages and ensure that the prohibition is strictly enforced;**
  - (b) conduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls; and**
  - (c) introduce sensitisation programmes for practitioners and the general public to encourage change in traditional attitudes, and engage the extended family and the traditional and religious leaders in these actions.**

### Standard of living

55. The Committee remains deeply concerned over the widespread poverty and the increasingly high number of children who do not enjoy the right to an adequate standard of living, including access to food, clean drinking water, adequate housing and latrines. The Committee is particularly concerned over the situation of children belonging to disadvantaged families, rural communities, orphans, children infected with and/or affected by HIV/AIDS, and street children. The Committee regrets that children, specifically children in need of protection and working children, are not addressed in the Poverty Reduction strategy.
56. **The Committee;**
- (a) reiterates its recommendation (CRC/C/15/Add.160, paragraph 5) urging the State party, in accordance with article 27 of the Convention, to reinforce its efforts to provide support and material assistance to marginalised and disadvantaged families and to guarantee the right of children to an adequate standard of living;**
  - (b) urges the State party, to pay particular attention to the rights and needs of children in implementation of the Poverty Eradication Plan, the Poverty Reduction Strategy, the Constituency Development Fund (CDF) under the CDF Act of 2003, the Local Authorities Transfer Fund (LATF), the Local Authority Service Delivery Action Plan (LASDAP) and all other programmes intended to improve the standard of living in the country, including coordinated efforts with civil societies and local communities; and**
  - (c) recommends that the State party, taking into account General Comment No. 7 on implementing child rights in early childhood (CRC/C/GC/7/Rev.1 paragraph 26), urgently develop a comprehensive social protection framework with the highest priority given to the most vulnerable children, particularly children belonging to disadvantaged families, rural communities, orphans, children infected with and/or affected by HIV/AIDS, and street children.**

## **7. Education, leisure and cultural activities (Articles 28, 29 and 31 of the Convention)**

### Education, including vocational training and guidance

57. The Committee notes with appreciation the introduction of a policy of free primary education in 2003, which despite prevailing high rates of children unable to access education, has resulted in a significant increase of school enrolment. The Committee is concerned about the low enrolment in early childhood care and education institutions and the disparities in the access to quality education, which particularly disadvantages girls and pastoralist and hunter-gatherer children. The Committee also notes that the rapid increase in school enrolment places significant challenges to the sufficient allocation of financial resources, commonly resulting in a poor physical school environment lacking adequate infrastructure, trained teachers, and appropriate water and sanitation facilities. The Committee regrets that enrolment in secondary schools is not free and may impede higher attendance. Also the Committee is concerned about the low level of vocational training that qualifies adolescents for non-academic occupations.

**58. The Committee further recommends that the State party, taking into account its General Comment No. 1 (CRC/GC/2001/1) on the Aims of Education:**

- a) **ensure that all children complete 8 years of free primary compulsory education;**
- b) **undertake measures to provide secondary education free of cost;**
- c) **increase public expenditure in education, in particular in pre-primary, primary and secondary education;**
- d) **increase enrolment in primary and secondary education, reducing social-economic, gender, ethnic and regional disparities in the access and full enjoyment of the right to education;**
- e) **undertake additional efforts to ensure access to informal education to vulnerable groups, including in particular pastoralist and hunter-gatherer children, as well as, street children, orphans, children with disabilities, child domestic workers, children living in conflict risk areas and refugee camps by, for example, introducing mobile schools, evening classes and eliminating indirect costs of school education;**
- f) **strengthen vocational trainings, including for children who have left school before completion; and**
- g) **provide detailed information on the implementation of the Early Childhood Education Policy in its next periodic report.**

## **8. Special protection measures (Articles 22, 30, 38, 39, 40, 37(b)-(d), 32-36 of the Convention)**

### Refugee children

59. The Committee notes with appreciation the State party's long-standing generous approach to receiving refugees from the neighbouring countries and the information

provided by the delegation that a Refugee Act was adopted in December 2006. However, the Committee is concerned by;

- (a) the lack of disaggregated information on refugee, displaced and asylum seeking children in the State party report;
- (b) the existence of gaps in implementation and the negative consequences of the long-term refugee encampment policy which results in children only having limited access to education and health services and restrictions on freedoms of movement, expression and association; and
- (c) reports of police brutality and harassment of refugee children.

**60. The Committee recommends that the State party;**

- (a) take all necessary measures to guarantee the full implementation of the Refugee Act of 2006, in line with international human rights and refugee law, while taking into account the Committee's General Comment No. 6 (CRC/GC/2005/6) on the treatment of unaccompanied and separated children outside their country of origin;**
- (b) collect comprehensive and disaggregated information on refugee and asylum seeking children;**
- (c) provide adequate resources to the Refugee Department to enable it to gradually assume a greater role in the protection and assistance of refugees, including children refugees, in coordination with the Children's Department;**
- (d) take all necessary measures to prevent and investigate reports of police brutality in order to make sure that refugee children are well protected and that perpetrators are brought to justice;**
- (e) revise the policy on long-term encampment of refugees and provide new regulations to allow greater opportunities for refugees to reside outside designated areas, particularly to pursue medical treatment, education, to engage in self-employment, to reunite with other family members and secure adequate physical and legal protection; and**
- (f) continue pursuing international cooperation with the United Nations High Commissioner for Refugees (UNHCR).**

Economic exploitation

61. The Committee notes with concern the absence of domestic regulations or policies concerning child labour, and the high number of children engaged in economic activities compounded by high poverty levels and the effects of HIV/AIDS. The Committee further notes reports of consistent and serious problems regarding the economic exploitation and of the number of children involved in work that is hazardous and negatively impacts on their rights to health, education and development.

**62. The Committee urges the State party to;**

- (a) develop and enact legislation as well as policies to protect children from the worst forms of child labour, including measures to address the root causes of this problem;**
- (b) strengthen the capacity of the institutions responsible for the control and protection of child labour; and**
- (c) seek the support and technical assistance of the ILO, UNICEF, and national and international NGOs, in order to develop a comprehensive programme to prevent and combat child labour, in full compliance with ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and ILO Convention No.**

**138 (1973) concerning Minimum Age for Admission to Employment, which the State party has ratified.**

Street Children

63. The Committee expresses deep concern at;
- (a) the significant number of street children, the denial of their right to education and health care and the vulnerability of these children to various forms of violence, including sexual abuse and exploitation and arrests that are arbitrary and abusive;
  - (b) the lack of a systematic and comprehensive strategy to protect and to address the situation of these children; and
  - (c) the negative views and attitudes of society towards street children.
64. **The Committee recommends that the State party:**
- (a) **identify and address the root causes that result in children living in the streets;**
  - (b) **develop a comprehensive strategy to address the high number of street children, with the aims of reducing and preventing this situation;**
  - (c) **ensure that street children are provided with adequate nutrition and shelter, as well as with health care, educational opportunities, protection and recourse to the justice system, in order to support their full development;**
  - (d) **raise awareness of the issue of street children in order to change stigma and negative public attitudes, particularly among law-enforcement officers; and**
  - (e) **ensure that these children are provided with recovery and reintegration services, including psychosocial assistance for physical, sexual and substance abuse, and where possible and when in the best interests of the child, services for reconciliation with a view to reintegration with their families.**

Sexual exploitation and trafficking

65. The Committee, while recognising certain efforts to take preventive action, expresses concern over the rising number of children internally trafficked and engaged in prostitution as part of sex tourism, particularly in the coastal regions of Kenya. In this regard it is a matter of concern that a minimum age for sexual consent for boys is not clearly established. The Committee is concerned that preventive measures, including those to address child pornography, remain insufficient. The Committee also regrets that the Counter-Trafficking Bill has yet to be enacted and that despite the legislative provision in the Children Act, for the protection of children against sale, trafficking and abduction, effective protection remains weak and rarely results in investigations and sanctions.
66. **The Committee recommends that the State party:**
- (a) **strengthen its legislative measures and develop an effective and comprehensive policy that addresses the sexual exploitation of children, including the factors that place children at risk of such exploitation and areas where such exploitation has been identified as most prevalent;**
  - (b) **prevent the criminalisation of child victims of sexual exploitation;**
  - (c) **implement appropriate policies and programmes for the prevention, recovery and reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congress Against Commercial Sexual Exploitation of Children;**



- (d) ratify the **Optional Protocol on the sale of children, child prostitution and child pornography**;
- (e) provide the Committee with further information on efforts to address **child pornography**;
- (f) enact the **Counter Trafficking in Persons Bill**, taking into account **international legal obligations**;
- (g) dedicate further resources to prevention and awareness raising, paying particular attention to the **tourism sector**;
- (h) train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute cases, in a **child-sensitive manner that respects the privacy of the victim**;
- (i) ensure enforcement of the law to avoid impunity; and
- (j) seek further technical assistance from among others, **UNICEF and ILO-IPEC (International Programme for the Elimination of Child Labour)**.

#### Administration of juvenile justice

67. The Committee welcomes the piloting of a diversion programme for children in conflict with the law and the construction of facilities to house children in conflict with the law, as well as plans to avail child friendly transportation to child offenders. While recognising the efforts made, the Committee reiterates its previous concern that the minimum age of criminal responsibility, still set at 8 years of age, is too low. The Committee is further concerned that in certain instances children are treated as adults and that only limited progress has been achieved in establishing a functioning juvenile justice system outside the capital. The Committee is particularly concerned over information that although the death penalty is outlawed for children, it still happens according to some reports that children are sentenced to death. The Committee regrets that data on the number of children in conflict with the law is lacking. The Committee is concerned that children in need of care are kept in the same institutions as children in conflict with the law and that detention facilities are overcrowded. The Committee also regrets that free legal aid for children is not systematised and that assistance for child victims is inadequate. Finally, the Committee is concerned that street children are detained on the basis on their social condition.
68. **The Committee recommends that the State party fully bring the system of juvenile justice in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty; (the Havana Rules), and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee's General Comment no. 10 (CRC/C/GC/10) on children's rights in juvenile justice. In this regard, the Committee recommends that the State party;**
- (a) raise the age of criminal responsibility at least to the age of 12 years, and consider increasing it,
  - (b) ensure that all minors, including those who have committed serious offences, are treated under the rules of juvenile justice and not in adult criminal courts;
  - (c) establish children's courts in different places throughout the country, drawing on the experience in Nairobi;
  - (d) guarantee that no children be sentenced to the death penalty;

- (e) collect data on the number of children in conflict with the law and ensure that this information is taken into account in policy design and reform;
- (f) take all necessary measures to ensure that persons under the age of 18 are only deprived of liberty as a last resort, and that children, if detained, remain separated from adults;
- (g) ensure that children in need of care are separated from children in conflict with the law;
- (h) implement alternative measures to deprivation of liberty, such as diversion, probation, counselling and community services;
- (i) ensure that persons under 18 years of age in conflict with the law have access to free legal aid as well as to independent and effective complaints mechanisms;
- (j) make sure that street children are not systematically treated as children in conflict with the law;
- (k) ensure that both sentenced and released persons under the age of 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development; and
- (l) continue to seek technical assistance and cooperation from, inter alia, the United Nations Inter-Agency Panel on Juvenile Justice which is composed of representatives of OHCHR, UNODS, UNICEF and NGOs.

#### Minority and indigenous children

69. The Committee acknowledges the efforts deployed by the Government to provide special treatment to children belonging to indigenous peoples, including pastoralist and hunter-gatherer communities, as well as to other minority groups in Kenya. The Committee notes with concern the elevated poverty rates among these groups and the limited access of their children to basic health, sanitation and education. Despite the government's effort to ensure free universal primary education, enrolment and literacy rates among children from minority and indigenous peoples' communities continuously fare below the national average, especially in the case of girls. The Committee notes that in addition to cultural practices, such as early marriages and child labour, poverty and the lack of education adapted to the life style of these communities are major reasons for their low enrolment rates. The Committee also notes the low quality and lack of access to schools in remote pastoralist areas. Finally, the Committee is very concerned over the wide-spread continuation of harmful traditional practices and their impact on girls, despite the formally outlawing of some of these practices such as female genital mutilation.

**70. In light of the recommendations adopted during its Day of General Discussion on the rights of indigenous children (CRC/C/133, paragraphs 624), the Committee recommends that the State Party:**

- a) constitutionally recognize the rights of indigenous pastoralist and hunter-gatherer and other marginalized communities to their lands and resources, effective political participation and cultural identity. Specific legislation should be enacted accordingly;
- b) consider ratifying the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries;
- c) put into place affirmative action measures and the corresponding resources to ensure the free universal primary education and the basic health care of children belonging to indigenous peoples and minorities' communities. These measures should further efforts to establish mobile schools, clinics and birth

registration campaigns, as well as specific incentives and training for health workers and teachers. Such measures should be developed in consultation and with the participation of the communities concerned.

- d) implement culturally appropriate measures to eliminate harmful traditional practices and provide material and psychological support to children victims of these practices.
- e) pay particular attention to the recommendations presented by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, based on his mission to Kenya in December 2006 (A/HRC/4/32/Add.3).

## 9. Optional Protocols to the Convention on the Rights of the Child

71. The Committee welcomes the statement of the State party delegation of the intention to ratify within 12 months the Optional Protocol on the sale of children, child prostitution and child pornography and urges the State party to submit the initial report to the Optional Protocol on the involvement of children in armed conflict.

## 10. Follow-up and dissemination

### Follow-up

72. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the Cabinet, the Parliament, and to district and local administrators, when applicable, for appropriate consideration and further action.

### Dissemination

73. The Committee further recommends that the second periodic report and written replies submitted by the State party, and related recommendations (concluding observations) it adopted, be made widely available in the languages of the country, including (but not exclusively) through internet, to the public at large, civil society organizations, youth groups, professional groups, and children, in order to generate debate and awareness of the Convention, its implementation and monitoring.

## 11. Next report

74. The Committee invites the State party to submit a consolidated third, fourth and fifth report by 1 September 2012, the due date for submission of the 5<sup>th</sup> periodic report. This is an exceptional measure due to the large number of reports received by the Committee every year. This report should not exceed 120 pages (CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.
75. The Committee also invites the State party to submit a core document in accordance with the requirements of the Common Core Document in the Harmonised Guidelines on Reporting, approved by the 5th Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

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