Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Kenya - 8th Session - 2010
6th May, 9am to 12pm

National Report


30. Kenya is a dualist state requiring domestication of international instruments in the national arena through legislation by Parliament. In this regard, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and recently the Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa have been fully domesticated by the promulgation of the Children’s Act (Chapter 586 of the Laws of Kenya) and the Refugees Act (No. 13 of 2006) respectively. The provisions of these laws are closely modeled on those of the international and regional instruments, with necessary exceptions as necessitated by the circumstances of Kenya.

46. Kenya has begun realizing some of the gains of universal free primary education (FPE). School enrolment is on the increase and the number of children joining secondary schools has increased. This has been aided by the enactment of the Children’s Act which provides for the penalizing of parents or guardians who fail to take their children to school.

47. Measures to ensure that the most vulnerable children are not left behind have been put in place including school-feeding programmes, a bursary and book funds to help retain the poor and vulnerable in schools. Under the FPE programme, additional capititation grants are provided to children with special needs enrolled in public schools, units and other institutions to ensure their effective integration.

48. The Government is also offering free tuition for secondary education.

52. In 2008, the African Report on Child Wellbeing rated Kenya as one of the top most child-friendly African Governments. This is due to putting in place appropriate legal provisions to protect children against abuse and exploitation, allocating a relatively higher share of the national budget to provide for the basic needs of children and success in achieving relatively favourable well being outcomes as reflected in the children themselves. Kenya has also fully domesticated the Convention on the Rights of the Child (CRC).

53. According to the World Bank, Kenya is one of the ten most unequal societies in the world, with the richest tenth of households controlling more than 42 percent of the country’s income while the poorest tenth survive on less than one per cent. Poverty remains a major impediment to both the fulfillment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. The population in absolute poverty is estimated at 45.9% (2007). The economy has been characterised by stagnation in economic growth in the last two decades. Currently, approximately 56% of Kenyans live below the international poverty line of less than $1 per day. According to the Kenya Economic Report 2009, the number of Kenyans depending on others is 84%.

64. Child labour continues to be one of the most serious challenges facing most children in Kenya today. It has been practiced in Kenya for a long time, although its magnitude and nature have changed over time. In the 1980s and 1990s, child labour was widespread in agricultural and fisheries sectors, but more recently, it has spread more rapidly to other sectors notably, domestic service, the informal, and commercial sexual exploitation of children. The Children’s Department, in collaboration with others, has engaged hoteliers in
signing of the international Code on Sexual Exploitation of children in the tourism sector.

65. Strategies to mainstream child labour issues in national development both downstream (direct support) interventions and upstream interventions (legislative and policy). The strategies will focus on prevention, withdrawal, rehabilitation and integration. A national child labour survey and a policy on child labour will be developed to facilitate implementation of the said interventions.

100. Despite the domestication of the Convention on the Rights of children with the passing of the Children’s Act in Kenya, children continue to be subjected to sexual violence, prostitution, trafficking, labour and other forms of violations. While critics charge that the Children Act is far from perfect in its design and its enforcement, it remains a positive step that gives Kenyan children enforceable rights against adults and the government. The Government is committed to ensuring that the Child is protected from all harmful practices and violations.

101. In a special way, the Government has taken measures to protect orphaned children since they are particularly vulnerable to the cyclical effects of HIV/AIDS. They suffer from emotional trauma and psychosocial distress, lack of parental guidance, poverty, vulnerability to hazardous labour and sexual exploitation, and lack of access to education. To mitigate against this, the Government has put in place the Cash Transfer for Orphans and Vulnerable Children (CT-OVC) Project. This uses cash transfers to strengthen the ability of vulnerable households to protect and care for OVC, ensuring that orphans stay within their communities.

104. In 2003, the government introduced the Universal Primary Education (UPE) policy which has significantly increased enrolment rates in the country. However, an estimated 1.3 million children remain out of school. Strengthening and ensuring effective implementation of policy reforms in the education sector to eliminate barriers to quality basic education remains a priority.

**UN Compilation**

1. In 2007, the Committee on the Rights of the Child (CRC) urged Kenya to ratify the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.10 The Committee on Economic, Social and Cultural Rights (CESCR) recommended that the State withdraw its reservation to article 10, paragraph 2, of ICESCR.11 In 2008, the Committee Against Torture (CAT) encouraged Kenya to consider making the declaration under article 22 of the Convention.12

10. UNCT reported that the policy environment aimed at advancing human rights has been enhanced over the past three years.25 CRC was concerned that the adoption of a national plan of action on children remained pending.26

17. CEDAW was concerned that the Constitution does not provide equal citizenship rights for women.43 CRC expressed concern at the de facto discrimination faced by children born out of wedlock, children infected with HIV and/or affected by HIV/AIDS, orphans, street children and children born of Kenyan mothers and non-Kenyan fathers.44

22. The HR Committee was concerned that there is a large but unspecified number of individuals under sentence of death and that the death penalty applies to crimes not qualifying as “most serious crimes” within the meaning of ICCPR.51 CRC was particularly concerned that although the death penalty is outlawed for children, according to some reports children are still being sentenced to death.52 The HR Committee77 and CRC78 noted with concern allegations of trafficking of children and instances of child prostitution. The HR Committee was concerned about Kenya’s failure to prosecute and punish trafficking offences and to afford adequate protection to victims.79 CRC urged Kenya to establish a comprehensive national policy and guidelines governing adoption in compliance with the Convention.80

33. CRC expressed deep concern at the large number of street children, the denial of their right to education and health care, and their vulnerability to various forms of violence, including sexual abuse, exploitation and arbitrary and abusive arrest.81

35. CRC was concerned that in certain instances children are treated as adult offenders and that limited progress has been achieved in establishing a functioning juvenile justice system outside the capital.86 CAT87 and CRC88 were concerned that the age of criminal responsibility is set at 8 years of age. CAT recommended raising it as a matter of urgency in order to bring it in line with international standards.89

50. CRC noted with concern the absence of domestic regulations or policies concerning child labour.114 It noted reports of consistent and serious problems regarding the economic exploitation of children and of the number of children involved in hazardous work.115 In 2003, the ILO Committee of Experts recalled the importance of establishing the minimum age for admission to employment or work in all sectors, including agriculture.116

74. CRC urged Kenya to seek technical assistance from a number of international bodies regarding intercountry adoption, violence against children and child labour.159

**Stakeholder Information**

8. KSC recommended that Kenya finalize the Policy on Child labour and enhance programmes preventing children from joining the labour market and rescuing and rehabilitating children who are engaged in labour.16

24. Global Initiative to End All Corporal Punishment on Children (GIEACPC) noted that corporal punishment is legal at home but that the current draft review of the Children’s Act 2001 may repeal this provision. Corporal punishment is prohibited in schools and in the penal system while there is no explicit prohibition in alternative care settings.50 GIEACPC recommended that Kenya enact prohibition of all corporal punishment, including through the repeal of article 127 of the Children Act.51

30. KSC recommended that Kenya amend the Constitution and the Children Act to provide safeguards for children in conflict with the...
law, introduce Child Protection Units in all police stations and introduce proper police accountability.  

58. EPN reported that free primary education was introduced in 2003 and free secondary education in 2008. JS4 reported that this resulted in overstretched facilities, overcrowding in schools, scarcity of schools in some regions and other costs for families. EPN mentioned similar issues in lower Eastern Province.

59. EPN recommended that Kenya develop an educational policy that ensures that the quality of education is guaranteed. KSC further recommended that Kenya establish a legal framework to regulate and ensure that quality education is compulsory and accessible to all, especially poor, marginalized and vulnerable groups; recruit more teachers to meet the demand or alternatively employs a multi-shift programme in schools; establish stricter measures, proper accountability, transparency mechanisms and greater public participation in the administration of bursary and education funds. KSC also recommended that Kenya finalise the Special Needs Education Policy to ensure that all children with disabilities receive necessary support.

**Final Report and Conclusion - To follow after the review**