



ACERWC

African Committee of Experts on
the Rights and Welfare of the Child

Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant

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Bem-Estar da Crian as

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Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Second Periodic Report of the Republic of Kenya, on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child

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I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of the Republic of Kenya and expresses its appreciation for the submission of the second periodic report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter) which was submitted in accordance with the State Party's obligation under article 43 of the Charter. The ACERWC considered the second periodic report of the Republic of Kenya during its 35th Ordinary Session, which was held on 31 August – 08 September virtually. The Committee appreciates the constructive engagement with the Delegation of Kenya, headed by the Cabinet Secretary, Minister of Labour and Social Protection, H.E.Mr. Simon K. Chelugui. The dialogue indeed helped the Committee to better understand the measures that the State Party has undertaken towards the implementation of the Charter as well as the challenges it is facing. After a careful consideration of the facts in the Report and the information provided during the constructive dialogue, the Committee has developed and adopted the following concluding observations and recommendations which, in the Committee's view, provide guidance to better enhance the implementation of the provisions of the African Children's Charter.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

2. The Committee acknowledges and appreciates the Government of Kenya for enacting the following legislation and establishing institutions to give effect to the provisions of the Charter:
 - i. Draft Children Bill, 2019 to align the Children Act No. 8 of 2001 with the provisions of the Constitution and harmonize it with relevant legislation on Children's rights;
 - ii. Victim Protection Act, No. 17 of 2014;
 - iii. Protection against Domestic Violence Act No. 2 of 2015;
 - iv. Legal Aid Act No. 6 of 2016;
 - v. Anti-Doping Act No. 5 of 2016;
 - vi. Basic Education Act No. 14 of 2013;
 - vii. Prevention of Torture Act No. 12 of 2017;
 - viii. Draft Health Bill, 2019;
 - ix. Draft Food Security Bill, 2017;
 - x. Data Protection Act No. 24 of 2019;
 - xi. Draft Mental Health Bill, 2018;
 - xii. Draft Gaming Bill, 2019; and,
 - xiii. Prevention of Torture Act of 2012.
3. The Committee commends the State Party for developing the following guidelines, policies and plans:

- i. National Plan of Action 2015- 2022 that provides a framework to guide the process of implementation, coordination, monitoring and evaluation of programmes that promote and protect children’s rights;
- ii. Guidelines on registration of births for orphans and vulnerable children, 2017;
- iii. National Plan of Action on combating human trafficking- (2013-2017);
- iv. National Plan of Action against Commercial Sexual Exploitation of Children (2013-2017);
- v. Psychosocial Support Guidelines for orphans and vulnerable children in Kenya, 2015;
- vi. National Pre-Primary Education Policy 2017; and,
- vii. Re-entry Policy Guidelines of 2016 for young mothers.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. GENERAL MEASURES AND IMPLEMENTATION

4. The Committee notes with great concern that the Child Bill is still draft despite the recommendation of the Committee on the State Party’s initial report in 2014 to expedite the adoption of the draft. The Committee urges the State Party to expedite the enactment of the Children Bill, 2019 in the foreseeable future. The Committee would like to stress that a delay in the adoption of laws certainly results in the delay of the enjoyment of the rights contained in such draft laws and children should not be subjected to long taking law making proceedings to enforce their rights.
5. While appreciating the efforts of the State Party in setting up various institutional setups for children, the Committee notes that there are multiple organs including the National Council for Children’s Services, the Department of Children’s Services, and the office of Director of Children’s Services, among others. The Committee recommends that the State Party ensures that there is no duplication of mandates and there is clear coordination among all government organs dealing with children’s rights. In this regard, the Government of Kenya should clearly identify a lead body responsible for coordinating matters of children’s rights.
6. The Committee notes with appreciation the efforts towards developing a monitoring framework on children’s rights such as a Child Protection Information Management System (CPIMS) to capture disaggregated data which has so far been rolled in 15 counties. The Committee further encourages the State Party to increase such effort and roll out the system to the remaining 32 counties.

7. The Committee appreciates that the Kenya National Commission on Human Rights (KNCHR) has established an office and designated a senior officer within the institution to attend to children matters. However, the Committee is concerned that only one officer is seconded to deal with children's matters. The Committee recommends the State Party to allocate the necessary financial and human resources and put in place a full-fledged department within the KNCHR, the National Gender and Equality Commission (NGEC) and the Commission on Administrative Justice (CAJ) for the effective implementation of children's rights and welfare at national and county government levels.
8. The Committee applauds the development of the National Plan of Action (NPA) 2015- 2022. However, the Committee recommends for the State Party to undertake the mid-term review of the NPA 2015-2022 and provide a roadmap for implementation of children services shared between the national and county governments.
9. The Committee appreciates that the State Party plans to establish a Universal Child Grant which will cover all vulnerable children. In this regard, the Committee recommends that the State Party finalizes the planning and fully implements the Universal Child Grant to enhance the protection of children's rights in Kenya.
10. The Committee appreciates that the State Party has improved budgetary allocation for government agencies dealing with children matters for effective service delivery. Hence, the Committee encourages the State Party to ensure regular increment in budget allocated for the implementation of the African children's charter to enhance the protection of children's rights at the national and county governments' levels.
11. The Committee recognizes that the promotion and protection of the rights of the child during the COVID-19 pandemic require further attention from the Government of Kenya and its partners. To this effect, the Committee applauds the measures undertaken by the Government of Kenya to safeguard the rights of the child during the COVID-19 pandemic. However, the Committee notes with concern that information on the effects of COVID-19 on children remains minimal in the country. In this regard, the Committee recommends the State Party to take the following measures:
 - i. Develop a COVID-19 child protection information tool for villages and communities to monitor and report on the situation of children during the current pandemic;
 - ii. Ensure better coordination and monitoring of child-focused prevention and response services in the context of COVID-19;

- iii. Ensure the continued provision of essential health services for children and emergency child protection interventions and effectively address the continuing effects of COVID-19 on children; and
- iv. Undertake a comprehensive national survey on the effects of COVID-19 on children to generate data for all county governments, ministries and partners to design appropriate interventions that protect all children in Kenya from the effects of the pandemic during and beyond COVID-19.

B. DEFINITION OF THE CHILD

12. The Committee appreciates that the minimum age of criminal responsibility has been raised to 12 years under the proposed Children Bill, 2019. However, the Committee notes with concerns that the Children Bill is not yet enacted into law. Hence, the Committee urges the State Party to enact the Children Bill, 2019 to give effect to the raise of the age of criminal responsibility at least to 12 years as recommended by the 2014 Committee's concluding observations.

C. GENERAL PRINCIPLES

Non-discrimination

13. The Committee notes with appreciation that article 27 of the Constitution outlaws both direct and indirect discrimination against any person on any ground. Noting that the National Equality Policy of 2016 remains a draft, the Committee encourages to fast-track the adoption of the Policy.
14. The Committee is concerned that children with disabilities are still facing discrimination and hindrance in accessing basic services such as education, health and justice. The Committee recommends that the State Party increases the availability of braille and other appropriate means of communication in schools, hospitals and courts of law to significantly enhance access to services for children with disabilities.
15. The Committee is informed that during COVID-19 basic hygiene measures were not considering the various obstacles faced by peoples living with disabilities as public washing points were physically inaccessible to peoples with disabilities. The Committee recommends the State Party to improve infrastructure and provide special public washing points that accommodate children living with disabilities.
16. The Committee notes with appreciation that the State Party has reviewed the Special Needs Education (SNE) Policy to accommodate the needs of all learners with various disabilities including those with autism and albinism. However, the Committee is informed that children living with albinism are still facing issues related to the right to life and security of person; abandonment and displacement; discrimination, stigma and exclusion and lack of psychological and social wellness.

To this effect, the Committee recommends for the State Party to undertake the following measures:

- i. Develop national institutional mechanisms for the protection and promotion of the rights of persons with albinism, including by ensuring that the Kenyan National Human Rights Commission (KNHRC) effectively address the human rights situation of persons with albinism;
- ii. Put in place a national action plan and strengthen a close collaboration and cooperation with relevant stakeholders to effectively address the protection of persons with albinism;
- iii. Sensitize the communities on raising alarm and immediately reporting attacks to the police by ensuring the security and anonymity of whistleblowers;
- iv. Put in place policies relating to eliminating harmful practices that violate the rights to life and security for children with albinism and strengthen the legal response to such crimes and bring perpetrators to justice through prompt and impartial investigations;
- v. Conduct a situational analysis on the security situation faced by persons with albinism including children; and
- vi. Strengthen international, regional and bilateral cooperation for the prevention of cross-border crimes affecting persons with albinism.

17. The Committee is informed that there are cultural practices that discriminate against children, particularly girls in matters of inheritance. The Committee, therefore, recommends the State Party to take concrete measures to eliminate such discriminatory customary practices by sensitizing communities and attach accountability against the perpetrators.

The best interests of the child

18. The Committee notes with appreciation that the State Party has enshrined the principle of the best interest of the child in the Constitution under Article 53 (2) by providing that the best interest of the child is of paramount importance. In this regard, the Committee recommends the State Party to supervise and monitor the full application of this principle as a paramount principle during the adoption and implementation of all laws and policies in Kenya.

19. The Committee notes with appreciation that the State Party has increased special infrastructure for children such as Child Protection Units (CPUs) to accommodate children who are in contact or conflict with the law. The Committee notes from the State Party in its response to the list of issues that currently there are 33 CPU's countrywide. The Committee further applauds the efforts exerted by the State Party for establishing six Child Protection Centres (CPCs) which are one-stop shop for rescue, legal, counselling, psychosocial and referrals for medical care services. The Committee, therefore, recommends that the State Party builds more CPUs and CPCs to ensure accessibility and increase their efficiency; ensures that the

CPUs and CPCs operate with prescribed standards; and provides the necessary facilities and personnel to the CPUs and CPCs.

20. The Committee notes with appreciation that the State Party has put in place a Court annexed mediation as an alternative dispute resolution mechanism to address children's matters. In this regard, the Committee recommends that the State Party invests in building the capacity of all stakeholders involved in the mediation on the best interest, especially in matters related to sexual violence against children involving family members in all 47 counties both in urban and rural areas.
21. The Committee recommends that while taking measures to mitigate the spread of the pandemic in the country, the State Party should ensure that such measures respect and take into account the best interests of the child.

The right to life, survival and development

22. The Committee appreciates that children under 5 years of age are treated for free in all Government-run facilities and the Government pays medical insurance (NHIF) for children in secondary schools. The Committee recommends for the State Party to make health care free for all children including the most marginalized and out-of-school children.
23. The Committee welcomes the National Social Protection Strategy 2018/19–2022/23 for all vulnerable children. The Committee further appreciates that there are plans in the strategy that all recipients of the Social Assistance Scheme will eventually become members of the National Hospital Insurance Fund (NHIF). The Committee recommends that the State Party fully implements the National Social Protection Strategy.
24. The Committee notes from various studies child mortality remains to be high despite the previous recommendation of the Committee which raised concerns and recommendations on the issue. Studies indicate that in 2018 the infant mortality rate stood at 35.57 and the under-five mortality rate stood at 41.1. The Committee further notes from studies that under-five mortality rates are highest in Western and arid Northern (especially Turkana county) provinces due to malaria and HIV/AIDS prevalence; food insecurity and malnutrition, respectively. Studies further indicate that millions of Kenyans from rural areas and urban informal settlements cannot access safe drinking water (42%) and sanitation (70%), which increases the number of preventable communicable diseases, especially among young children, which accounts for the primary cause of under-five mortality. The Committee therefore reiterates its previous recommendations and urges the State Party to:

- i. Undertake all appropriate measures to reduce the alarmingly high rate of infant and under-five mortality by addressing the causes of preventable diseases and making treatments available in a timely manner;
- ii. Provide insecticide-treated nets to reduce cases of malaria among children;
- iii. Provide sanitation and safe drinking water giving attention to marginalized populations in rural and remote areas as well as in urban slums;
- iv. Fast-track the enactment of the Food Security Bill 2017 and a new National Nutrition Action Plan;
- v. Provide nutritional supplements to infants and children under five affected by malnutrition; eliminate food insecurity by providing social grants to disadvantaged populations in arid and semi-arid lands (Northern and Eastern regions);
- vi. Put in place robust measures to implement the National Food and Nutrition Security Policy at the national and county levels to avert frequent droughts;
- vii. Intensify efforts aimed at eliminating HIV/AIDS mother to child transmission country-wide; and,
- viii. Provide free 100% immunization coverage in accordance with Global Vaccine Action Plan (GVAP) 2011-2020.

25. The Committee is informed that due to school closure as a result of COVID-19, children who had benefited from school feeding programs are facing nutritional challenges at home. To this effect, the Committee recommends for the State Party to ensure that children continue to benefit from feeding programs that are suitable with measures to prevent the spread of COVID-19 and ensure that such measures reach in most marginalized areas.

26. The Committee is informed that the conditions of some quarantine facilities are not child friendly, and thus put children at greater risk of infection with COVID-19. Therefore, the Committee recommends that the State Party ensures that quarantine facilities are well equipped with sufficient bedding, water, food and cleaning supplies, such as soaps and detergents.

27. The Committee notes from the constructive dialogue that the Government of Kenya has made remarkable progress in the provision of safe drinking water to certain regions. However, the Committee is aware that some households have to travel long distances to access water points which increases their risk of infection. In this regard, the Committee recommends that the State Party improves its infrastructure and ensure that children have access to safe drinking water especially during the COVID-19 pandemic.

28. While that the State Party has provided child-friendly information related to the prevention of COVID-19, the Committee encourages the State Party to continue providing regular child-friendly COVID-19 information as a preventive measure.

Respect for the views of the child and the promotion of child participation

29. The Committee notes with appreciation that the State Party has continued to conduct sensitization programmes on the significance of children's participation in decision making. Moreover, the Committee recommends for the State Party to undertake the following measures:

- i. Develop children's policies into child-friendly language and translate into local languages;
- ii. Put in systems, structures and ensure budgetary allocations to facilitate the participation of children including children with disabilities in governance at both levels of government by providing requisite tools and equipment including braille and interpreters.

30. The Committee is informed that during COVID-19 the government of Kenya has requested the public's opinion on several issues, including on conditions of schools reopening. However, the Committee notes with concern that children did not participate in the consultations, and hence the Committee recommends that the State Party:

- i. Ensures meaningful participation and engagement of children in decision-makings including in situations of emergencies by introducing child friendly mechanism; and
- ii. Reviews the child participation Guidelines 2010 and align them with contemporary child participation challenges by considering the emerging practice of virtual child participation.

D. CIVIL RIGHTS AND FREEDOMS

Name, nationality, identity and registration at birth

31. The Committee notes with appreciation that the State Party has taken several measures to enhance birth registration in Kenya. However, the Committee is informed that the Government requires every candidate registering for national examinations to have a birth certificate. Moreover, the Committee is informed that the vetting process, administrative challenges as well as the high number of cases at the Civil Registry have negative impact on the realization of universal birth registration. To this effect, the Committee encourages the State Party to allocate adequate financial, technical and human resources to effectively implement and take concrete actions that allow every child to have a birth certificate. Among other things, the Committee urges the State Party to increase the accessibility of civil registry services through decentralization, remove the administrative hindrances that discourage birth registration, and create awareness about the importance of birth registration. Besides, the Committee recommends that birth registration services be extended to Refugee and IDP camps.

32. The Committee appreciates that the State Party has taken measures concerning the registration of transgender and intersex children. The Committee commends that during the reporting period, a Task Force on Policy, Legal, Institutional and Administrative Reforms regarding Intersex Persons in Kenya was established in March 2017. In this regard, the Committee recommends for the State Party to consider and effectively implement the report of the National Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Intersex Persons in Kenya to boost the registration processes of intersex children.

Freedom of expression, association, conscience and religion, protection of privacy

33. The Committee notes with concern that during the peaceful protest involving children, a number of pupils were injured when police lobbed tear gas canisters against the demonstrating pupils. The Committee recommends that the State Party ensures that children's freedom of expression, conscience, thought and religion are respected by raising awareness among parents, caregivers, teachers, police officers in communities and schools concerning these rights; and amend the Public Order Act as well as develop guidelines and regulations on the right to peaceful demonstration.

34. The Committee commends the State Party for conducting sensitization programs on behalf of children about their rights including their right to privacy. However, the Committee notes with concern that the right to privacy has been violated and cases have been brought before the Court on this matter. Therefore, the Committee recommends for the State Party to sensitize law enforcement officers about the importance of upholding children's right to privacy and holding persons who violate this right accountable; and fully implement the Data Protection Bill to ensure safe collection, storage and use of data in general and children-related data in particular.

Protection against torture and abuse

35. The Committee welcomes the enactment of the Prevention of Torture Act No. 12 of 2017. However, the Committee notes with concerns that the provisions of the prevention of Torture Act 2017 need to be expanded to contain in the definition targeted perpetrators beyond public officers by including non-state actors. In this regard, the Committee appreciates that the State Party has informed in its response to the list of issues that the Department of Justice under the office of the Attorney General is looking into reviewing the definition of torture and discuss more on Prevention of Torture Act implementation and challenges. The Committee recommends that this review materializes in the foreseeable future.

36. The Committee notes from the constructive dialogue that the State Party has undertaken national violence against children survey to provide up-to-date information and data for effective programming. The Committee recommends that the State Party:
- i. Takes concrete measures to ensure that violence against children is eradicated in the country;
 - ii. Takes action against perpetrators of child abuse and torture in schools, care facilities and communities; and
 - iii. Engages traditional and religious leaders to fight all forms of emotional, physical and sexual abuse against children.
37. The Committee also notes with concern the worrying trends of human rights violations during the August 2017 general elections cycle and during the constructive dialogue, the Committee raised the issue related to the delays in investigating the matter. To this effect, the Committee recommends for the State Party to: promptly investigate to bring to justice perpetrators of violence against children in the period before, during and after the 2017 general elections; and, develop guidelines for the protection of children in emergencies including such contexts as elections related violence.

E. FAMILY ENVIRONMENT & ALTERNATIVE CARE

Alternative care and adoption

38. The Committee welcomes the development of the Alternative Family Care Guidelines adopted in 2015. which have been piloted in five demonstration counties. The Committee also appreciates that the State Party has also initiated the process of de-institutionalization of children to reintegrate them back to the family set up and the community at large. Also, the Committee notes from the constructive dialogue that at the beginning of the COVID-19 outbreak, children living in alternative care were taken back to their families and communities as a measure to mitigate the spread of the virus. The Committee recommends that the State Party further:
- i. Strengthens its rehabilitation and reintegration mechanisms for children being de-institutionalized to ensure that they have the necessary skills when they join a family setting;
 - ii. Undertake regular monitoring of the situation of children placed in an alternative care;
 - iii. Thrives to ensure that children who have left institutions do not come back to the institutions; and
 - iv. Invest in measures to prevention separation of children from their families as the situation of vulnerable families has become worse due to the pandemic.
39. The Committee further urges the State Party to ensure that children who remained in the institutions continue to receive appropriate care and protection. Hence, the

Committee recommends for the State Party to provide support for institutions, regularly monitor institutions to ensure that children get the most care and are not subjected to unfavorable conditions or any kind of abuse, and collect disaggregated data on the number of children in institutional care to inform interventions.

40. Moreover, the Committee recommends that the State Party expands the scope of the government-supported social protection program to children without parental care within the current care reform efforts.
41. With regards to adoption, the Committee appreciates that the State Party has escalated monitoring and regulation of Charitable Children Institutions (CCIs) by developing a National Standards for best practices in CCIs 2013 which have incorporated the provisions of the UN guidelines for Alternative Care. However, despite its previous recommendation for the State Party to ensure the registration and monitoring of CCIs, the Committee notes that the many CCIs are not yet registered. The Committee is further informed that the inspection and monitoring of the CCI's and the programs at childcare institutions are weak. Therefore, the Committee recommends that the State Party undertakes tangible measures to ensure the full registration of CCIs and allocates the necessary budget and personnel to inspect the CCIs.
42. Moreover, the Committee notes from the constructive dialogue that the State Party has issued a moratorium on inter-country adoption to protect children from abduction, trafficking or other forms of exploitation. To this effect, the Committee recommends for the State Party to promote domestic adoptions and other local alternative care systems such as kinship care and foster care. Moreover, the Committee strongly encourages the State Party to achieve the aim of the moratorium on inter-country adoption by developing legislative, policy, and administrative measures that can enable the State Party to devise functioning adoption system whereby the State Party is able to monitor inter-country adoption and ensure the protection of children from any form of abuse and neglect post-adoption.
43. The Committee further appreciates that the State Party has developed the Alternative Family Care Guidelines 2014 to enhance the legal framework and existing practices for children without parental care and those at risk of being separated from their parents. In this regard, the Committee recommends the State Party to develop a policy framework to guide the implementation of alternative family care.

Protection of the family

44. The Committee notes that more effort should be exerted in the protection of the family and prevention of separation whenever possible as family is the best environment in which children can be raised. In this regard, the Committee welcomes the Social Protection Fund and the Presidential Bursary Scheme established to support and strengthen families through cash transfer programmes. The Committee recommends to the State Party to increase the budget allocation to cash transfer programs with a view to reach out to more families. The Committee also encourages the State Party to invest in family entrepreneurship to encourage income generating activities that can be commenced at minimal budget or resources available in the household. The Committee also recommends that the State Party works closely with civil society who engage in such projects for better results.

F. Education, leisure and cultural activities

The Right to Education

45. The Committee appreciates that the State Party has taken various measures to enhance access to education for children including pre-primary education. However, during the constructive dialogue, the Committee raised issues related to teacher-student ratio, long distance to reach school, the security of children, psychosocial support for pregnant girls, equitable distribution and scarcity of teachers, low-cost private schools most prevalently in urban informal settlements. Moreover, the Committee is informed and concerned that there is lack of clean and safe water in schools; and the special education units are still facing infrastructural challenges, inadequate instructional materials and equipment necessary for the realization of a truly inclusive system. The Committee recommends for the State Party to:

- Build more schools in all parts of the State Party, recruit more teachers and ensure that school infrastructure is accessible to children with various forms of disabilities;
- Increase the accessibility of pre-primary schools in all areas of the Country including rural areas;
- Ensure that schools have clean and safe water particularly at this time of Covid-19 but also in a sustainable manner;
- fully implement the re-entry policy guidelines on pregnant girls and raise awareness about the re-entry policy to school personnel, teenage mothers, parents, caregivers and communities to enable teen mothers to return to school;
- Implement psychosocial programmes at school and in communities to support teen mothers and address the issues related to stigma and discrimination at school and community level that hinders teen mothers from returning to school; and

- Ensure that special education units have the necessary infrastructure as well as personnel and at the same time strive towards fully inclusive education system.

46. Furthermore, the Committee notes from the constructive dialogue that the government of Kenya has put in place strategies to ensure continuity of education through online platforms such as radio, television and the internet. However, the Committee is informed that children who live in poor, vulnerable, and marginalized households are unable to benefit from continued learning through these platforms due to lack of access. Moreover, the Committee is aware that the accessibility to learning content by children with disabilities ranging from those with visual and hearing impairments to those with mental impairments has been a challenge as most of the mediums available are not accessible to these group of children, and are therefore left behind. Hence, the Committee recommends that the State Party accords special attention to vulnerable and marginalized children as well as children with disabilities to ensure that they also learning during COVID-19.

47. The Committee is also informed that the provision of education within the Juvenile Justice System in Kenya is still facing issues related to lack of provision of education in all subjects, levels or classes at various juvenile institutions, the limited number of teachers and poor learning environment. In this regard, the Committee recommends that the State Party allocates sufficient budget for providing quality education for children in conflict with the law; ensure that the educational framework in juvenile institutions match the mainstream basic education provisions; and, ensure the smooth transition of children from juvenile justice institutions to the mainstream educational institutions.

Leisure, Recreational and Cultural Activities

48. The Committee notes with appreciation the measures that the State Party has undertaken to ensure the enjoyment of leisure, recreation and cultural activities. However, the Committee is informed that many schools in Kenya are still charging activity fees for leisure and recreation activities and the majority of schools especially in urban areas do not have outdoor playing facilities and equipment. Therefore, the Committee recommends for the State Party to:

- i. Improve infrastructure in schools to ensure that all schools in Kenya provide free leisure and recreation-related activities;
- ii. Ensure that every institution of basic education and training are required to have mandatory facilities including outdoor playing facilities and equipment, with provisions for persons with disabilities; and,
- iii. Establish public leisure and recreational centers to reach out of school and other children and ensure that such centers are friendly to children with disabilities.

H. Health and Welfare

49. The Committee commends the State Party for increasing the budget allocation to the health sector. However, during the constructive dialogue, the Committee was concerned about the huge disparities between counties on budgetary allocations for health care, as some counties are lagging behind, while others have exceeded the 15% of GDP prescribed in the Abuja Declaration. In addition, the Committee is informed that the State Party has concerns related to insufficient personnel, medical equipment and drugs; delays in salary payment for health personnel; protracted strikes of healthcare staff in the public sector (2017 and 2018) over wages and dire working conditions; poor service delivery despite high cost; inaccessibility of healthcare centers especially in rural and remote areas disproportionately affecting the economically disadvantaged population. Therefore, the Committee recommends to the State Party to:

- i. Increase the budget allocated to the health sector and ensure that the 15% requirement of the Abuja principle for health financing is met every year;
- ii. Strengthen collaboration between the national government, counties, faith-based organizations, the private sector and other stakeholders to facilitate the improvement in service delivery in the health sector;
- iii. Recruit adequate number of medical personnel to realize the vision of Universal Health Coverage and train health workers by providing free specialized trainings;
- iv. Put in place a national children referral health facility that adopts inclusive health care for children with disabilities;
- v. Build more facilities, provide sufficient medical personnel and equipment, and ambulances to ensure quality health care services especially in rural, semi-arid and arid areas; and
- vi. Improve working conditions in the public healthcare sector to avoid the occurrence of strikes and staff resignation.

50. The Committee notes from reports that in 2016, there is lack of facilities to cater for the needs of children with mental disabilities. Therefore, the Committee recommends that the State Party trains more specialized health workers and established more specialized centers to address the needs of children with mental disability.

51. The Committee notes with regret that the concern it raised in relation to teenage pregnancies in the concluding observations and recommendations it issued for the State Party has not been addressed. The Committee further regrets that the rate and challenges of teenage pregnancies have in fact escalated. As indicated in the State Party report, which was also confirmed during the constructive dialogue, the Committee regrets that teenage pregnancies have exacerbated with the curfew measures during the COVID-19 pandemic. Hence, the Committee recommends for the State Party to:

- i. Establish child-friendly quarantine procedures;
- ii. Adopt strategies for provision of uninterrupted services crucial to life and survival during the pandemic, including: immunization, treatment of diarrhoea, pneumonia, malaria as well as neo-natal services for pregnant women;
- iii. Undertake appropriate steps to ensure that adolescents have access to comprehensive and scientifically accurate sexuality education by integrating the subject in national schools' curriculum as well as by developing and implementing programs to reach out of school adolescents and make sure that the information reaches to girls at this Covid-19 season;
- iv. Take concrete actions to ensure that adolescent girls, including those in rural areas and from economically disadvantaged households, have access to full range of contraceptives including by addressing stock-outs especially during COVID-19 pandemic, and ensuring that the services are provided free of charge;
- v. Ensure that adolescents girls do not resort to unsafe abortion;
- vi. Strengthen access to comprehensive adolescent-friendly reproductive health services;
- vii. Enact the Reproductive Health Care Bill; and
- viii. Sensitize community leaders, families, and teachers about the importance of sexuality education and the use of contraception to address the stigma posed against girls who use contraception.

I. Special Measures of Protection

Children living with disabilities

52. The Committee commends that the State Party has ratified the Marrakesh Treaty which facilitates the reproduction of published materials in an alternative format for the visually impaired. In this regard, the Committee recommends the State Party to fully implement the Marrakesh Treaty to accommodate children living with disabilities in Kenya.

53. The Committee appreciates that the State Party ensures that all new buildings and structures conform to the accessibility standards set out in the Persons with Disabilities Act No. 14 of 2003 through the Ministry of Planning and Housing. The Committee recommends the State Party to take all appropriate measures to give effect to the Persons with Disabilities Act No. 14 of 2003. The Committee further recommends the State Party to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

54. The Committee appreciates that the State Party has established forty-seven (47) field offices to provide protection services to children against all forms of violence within the country. In this regard, the Committee recommends the State Party to allocate sufficient budget and technical support by ensuring that all offices have qualified personnel to effectively assist children in need of care and protection.
55. The Committee appreciates that the State Party has undertaken the training programme for workers in Kenyan sign language to improve access to services by the deaf community. The Committee recommends the State Party to increase the number of workers who can receive such training in all 47 county governments.

Children in emergency situations

56. The Committee recalls its Guiding Note on Children's Rights during Covid-19 and urges the State Party to give due regard to and implement the recommendations therein. The Committee notes that children in the State Party have been directly and indirectly affected by the pandemic and hence they need the Government's response to mitigate the negative impact of the pandemic on their rights and welfare. The Committee encourages the State Party to engage children in the measures it is taking and to give attention to vulnerable children who might be affected more.

Child labour

57. The Committee appreciates that the State Party has continued to implement the National Plan of Action for the Elimination of the Worst Forms of Child Labour 2009-2013. The Committee encourages the State Party to continue collaborating with its international and national partners to reduce the incidence of the worst forms of child labour by targeting regions with a high incidence of child labour in Kenya and put in place a new National Action Plan to eliminate the worst forms of child labour. The Committee further recommends that the State Party ensures that there is regular labor inspection by increasing the number of labour inspectors and build their capacity to identify child labour and withdraw children from situations of child labour; investigates and convict perpetrators of child labour; rehabilitates and reintegrates children withdrawn from child labor; and address the root causes of child labor such as poverty, insecurity, displacement and so forth.
58. The Committee notes with concerns that Section 56 of the Employment Act 2007 allows for a child between 13-16 years of age to perform light work despite the fact that the minimum age of employment is set at 16 years. The Committee recommends that the State Party ensures that this Section of the Act is not used to recruit children into heavy work and to prevent them from going to school. The State Party is encouraged to gradually raise this age as per the recommendation of ILO; to ensure that working children still attend school; and to ensure that children are not subjected to unfavorable or hazardous conditions of work. The Committee also encourages the State Party to craft legislative or policy documents

to guide the employment as well as working conditions of children who are in the employment age.

Children in situations of armed conflicts

59. During the constructive dialogue, the Committee raised the issue of the recruitment of children by armed groups. Regrettably, the Committee is informed that armed groups continue to recruit children both boys and girls, as young as 9 years old in the State Party. The Committee is further informed that the recruitment has mainly been targeted against socially and economically marginalized areas such as the urban informal settlements, the North Eastern and coastal regions. Moreover, during the constructive dialogue, the Committee raised concerns with regards to counter-terrorism and security measures in the implementation of the Prevention of Terrorism Act 2012, which do not comply with international human rights standards. The Committee recommends for the State Party to:

- i. Undertake measure to address the recruitment of children into armed groups, extremist groups as well as criminal groups;
- ii. Ensure that children are engaged in any kind of sensitizations efforts undertaken to address armed conflict or extremism;
- iii. Ensure that measures undertaken to prevent conflict and terrorism are in line with international and regional human rights standards; and
- iv. Provide psychosocial support as well as rehabilitation and reintegration services to children who have been recruited into armed groups.

Refugee Children, Children seeking asylum and Internally Displaced Children

60. The Committee appreciates that the State Party provides alternative care for unaccompanied children and has established Gender Desks at the Police posts within the refugee camps to deal with Children's issues. The Committee recommends to the State Party to continuously undertake children's rights education in refugee camps, inform the refugee community about the Gender Desks and ensure that the personnel is well trained to utilize child-friendly services to assist children who need care and protection. The Committee also encourages the State Party to support and monitor the situation of unaccompanied minors placed in foster care.

61. In addition, the Committee is informed that there is an acute shortage of health and education personnel and basic infrastructure for refugee children. The Committee recommends that the State Party improves the services provided to refugee children such as health, education, safe drinking water and justice by increasing the human resource and budget allocated as well as building conducive environment in refugee camps with improved hygiene and sanitation facilities.

Children in Street situation

62. The Committee appreciates that the Street Family Rehabilitation Trust Fund (SFRTF) Board of Trustees through the secretariat has continued to coordinate rehabilitation activities for street families and children. The Committee further encourages the State Party to enhance the coordination between this Trust Fund and other organs dealing with children's rights. Moreover, the Committee recommends that the capacity of the Trust is built so that it is able to support children in street situation by providing services of reunification with family, rehabilitation and reintegration including alternative care for children who are orphaned or whose parents cannot be traced.

Sexual exploitation

63. The Committee appreciates that the State Party has initiated the process of ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Committee recommends for the State Party to expedite the ratification of the Optional Protocol.

64. The Committee appreciates the measures undertaken to address sexual exploitation of children including the establishment of an Anti-Child Sexual Exploitation and Abuse (CSEA) unit, development of guidelines on the establishment of Gender-Based Violence Recovery Centers, and the provision of psychosocial support to victims of sexual exploitation. In spite of these efforts, the Committee notes that cases of sexual abuse have increased due to lockdowns and school closures due to Covid-19; and that cases of sexual exploitation especially in tourism areas, child prostitution and child pornography is prevalent in the State Party as also noted by the UN Committee on the Rights of the Child. Furthermore, the Committee has noted from reports that sexual violence is perpetrated by teachers in schools. The Committee, therefore, recommends that the State Party:

- a. Thoroughly investigates cases of sexual abuse, prosecute perpetrators, and remedy victims;
- b. Provide rehabilitation, skills development and reintegration services to children who have been victims of any form of sexual exploitation;
- c. Sensitize communities, especially in areas of tourism, on how to protect children from sexual exploitation and train those involved in the tourism sector to detect and report cases of sexual abuse and exploitation of children;
- d. Intensify its legislative and administrative control in the tourism sector to prevent the sexual exploitation of children;
- e. Make schools safe for children, takes serious actions against teachers who sexually abuse children and provide sexual reproductive services for adolescent girls in schools;
- f. Establish child-friendly, one-stop centers where children can report without being victimized again and where they can get medical and psycho-social support at the time of reporting;

- g. Train the judiciary, police, prosecutors and all those that come in contact with cases of sexual abuse to ensure that the best interest of the child is upheld and there is not secondary victimization in any reporting or court process; and
- h. Decentralize the unit for combating sexual abuse to make them accessible in all Counties.

Children in situations of drug abuse

65. The Committee commends that the sale of illicit brews, drugs and alcohol to children is strictly prohibited and punishable by law in the State Party. However, reports reveal that the rate of children who use drugs, tobacco and alcohol has increased the age median age for using tobacco and alcohol has lowered. The Committee encourages the State Party to educate children and youths on the effects of alcohol, drug abuse and tobacco with regards to their wellbeing and development; ensure that drinking places are not opened near schools; and take measures against those who supply tobacco, alcohol and drugs to children.

Sale, trafficking and abduction

66. The Committee appreciates that the State Party continues to implement the Counter-Trafficking in Persons Act No. 8 of 2010. However, the Committee is informed that there are reported cases of an increasing number of Kenyans, including children, who have been trafficked within and outside the country mainly to the Middle Eastern countries. The Committee recommends that the State Party undertakes measures to trace the chain of traffickers and smugglers to further trace children who have been trafficked. Moreover, the Committee encourages the State Party to take serious actions against those involve in the sale and trafficking of children. The Committee recommends that children who have been trafficked and smuggled are not treated as criminals but as victims and are provided with the necessary medical, psychological and economical support. The Committee also encourages the State Party to collaborate with neighboring countries to address the cross-border child trafficking and also ensure the reunification of victims with their families.

67. The Committee appreciates that the State Party has developed a data collection mechanism to improve tracking of antitrafficking efforts across 47 counties. The Committee recommends the State Party to effectively use the information received from the data collection and take appropriate measures to address the issues related to trafficking in Kenya.

Harmful cultural practices

68. The Committee notes with appreciation that there are legislative measures against child marriage, FGM and other harmful practices and that the President of Kenya has committed to end FGM by 2022. The Committee also appreciates that the State Party has established the Anti-FGM Board in 2014 and the Anti-FGM and

Child Marriage Prosecution Units. The Committee further commends that the State Party has incorporated FGM content in the school curriculum. However, the Committee is informed that harmful practices that especially target girls are still prevalent in Kenya. The Committee is also aware that FGM has largely contributed to child/forced marriages in Kenya as girls who have undergone the cut, despite being minors; are considered adults in their communities. The Committee also learned that cross-border FGM has increased as a result of the prohibition of FGM in Kenya. Moreover, the Committee is concerned that child marriage and FGM has increased due to lockdowns, curfews, and schools' closures introduced as a result of Covid-19. In this regard, the Committee recommends for the State Party to:

- i. Undertake continuous sensitization on the negative impact of child marriage and FGM in collaboration with community and religious leaders as well as teachers;
- ii. Craft mechanisms to address the escalation of child marriage and FGM during the pandemic such as creating community based safe spaces to address such issues, establish peer groups as well as closely work with families and community leaders;
- iii. Invest in empowering girls about the negative impacts of FGM and child marriage as well as mechanisms to escape and report such mechanisms; and
- iv. Work in collaboration with neighboring countries to prevent cross-border FGM practices.

69. The Committee notes with concerns that in some communities, boys undergo cultural rites after which they are considered old enough to marry and drop out of school. To this effect, the Committee recommends to the State Party to develop programs targeting eradication of harmful cultural practices that contribute to denial of education for the boy-child.

Child justice

70. The Committee appreciates that the State Party has taken measures to protect the rights of children in the criminal justice. However, the Committee is informed about the delays in judicial processes involving children. In addition, the Committee is informed that due to the limited detention facilities for minors, authorities often had to transport children very long distances to serve their sentences, spending nights at police stations under varying conditions along the way. The Committee recommends that the State Party expedites the court proceeding for children in conflict with the law and provide diversion programs. The State Party is encouraged to provide legal aid services for children and to make court services accessible to children with disabilities. The Committee encourages the State Party to ensure that non-custodial sentences are used against children in conflict with the law as much as possible and if detention is mandatory, children of all age must be detained in separate facility than that of adults. Furthermore, the Committee recommends that children are detained in facilities that are conducive for their

rehabilitation where they can access psycho-social support, education, health facilities and skills development.

71. Furthermore, the Committee urges the State Party to comply with the U.N. Rules for the Protection of Juveniles Deprived of their Liberty, and the U.N. Standard Minimum Rules for the Treatment of Prisoners concerning the standards of detention of children and to consider the Guidelines on Children in the Justice System in Africa.

Children of imprisoned care givers

72. The Committee appreciates that the State Party has enacted the Persons Deprived of Liberty Act No. 23 of 2014. In this regard, the Committee recommends the State Party to allocate sufficient budget and take concrete actions to enable the full implementation of the Act.

73. The Committee appreciates that the State Party has taken measures to ensure children detained with their mothers have access to essential services and education. The Committee further appreciates that the State party has also established early childhood development centres, health care facilities and child-friendly spaces in prisons. However, the Committee would like to refer to article 30 of the Charter and its General Comment No 1 on article 31 and reiterate that the primary obligation of the State Party is to ensure that children are not detained with their mothers. The Committee, therefore, encourages the State Party to use its maximum efforts to ensure that mothers or caregivers who are most likely to be imprisoned with their mothers are given non-custodial sentences. In the event where this is not possible, the Committee recommends that children of mothers and caregivers who are given custodial sentences are not kept in prisons but in separate facilities that responds to their needs. The Committee recommends that such children should have access to education, health and early childhood development facilities.

K. RESPONSIBILITIES OF THE CHILD

74. The Committee notes with appreciation that the State Party sensitizes children on their duties and responsibilities through the child right clubs and children assemblies, the Day of the African Child (DAC) celebrations, children council forums and religious institutions. The Committee encourages the State Party to conduct such sensitization at the national, county and community levels to reach out to children from low-income families. Moreover, the Committee recommends that the State Party creates environments whereby children can play their responsibilities and also ensure that their responsibilities in no way entail child labor, child marriage, or any violation of the Charter.

IV. CONCLUSION

75. The African Committee of Experts on the Rights and Welfare of the Child appreciates the measures undertaken and efforts invested by the Government of the Republic of Kenya towards the implementation of the African Children's Charter. The Committee aspires for the implementation of the current recommendations and would like to indicate that it will undertake a follow-up mission to assess the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit its next periodic report in January 2024 according to article 43 of the African Children's Charter.
76. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of Kenya the assurances of its highest consideration.