



REPUBLIC OF KENYA



INITIAL REPORT TO THE AFRICAN UNION ON THE IMPLEMENTATION OF THE AFRICAN
CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD-2003 TO 2007

Figure 1: Map of Kenya (Based on administrative boundaries).

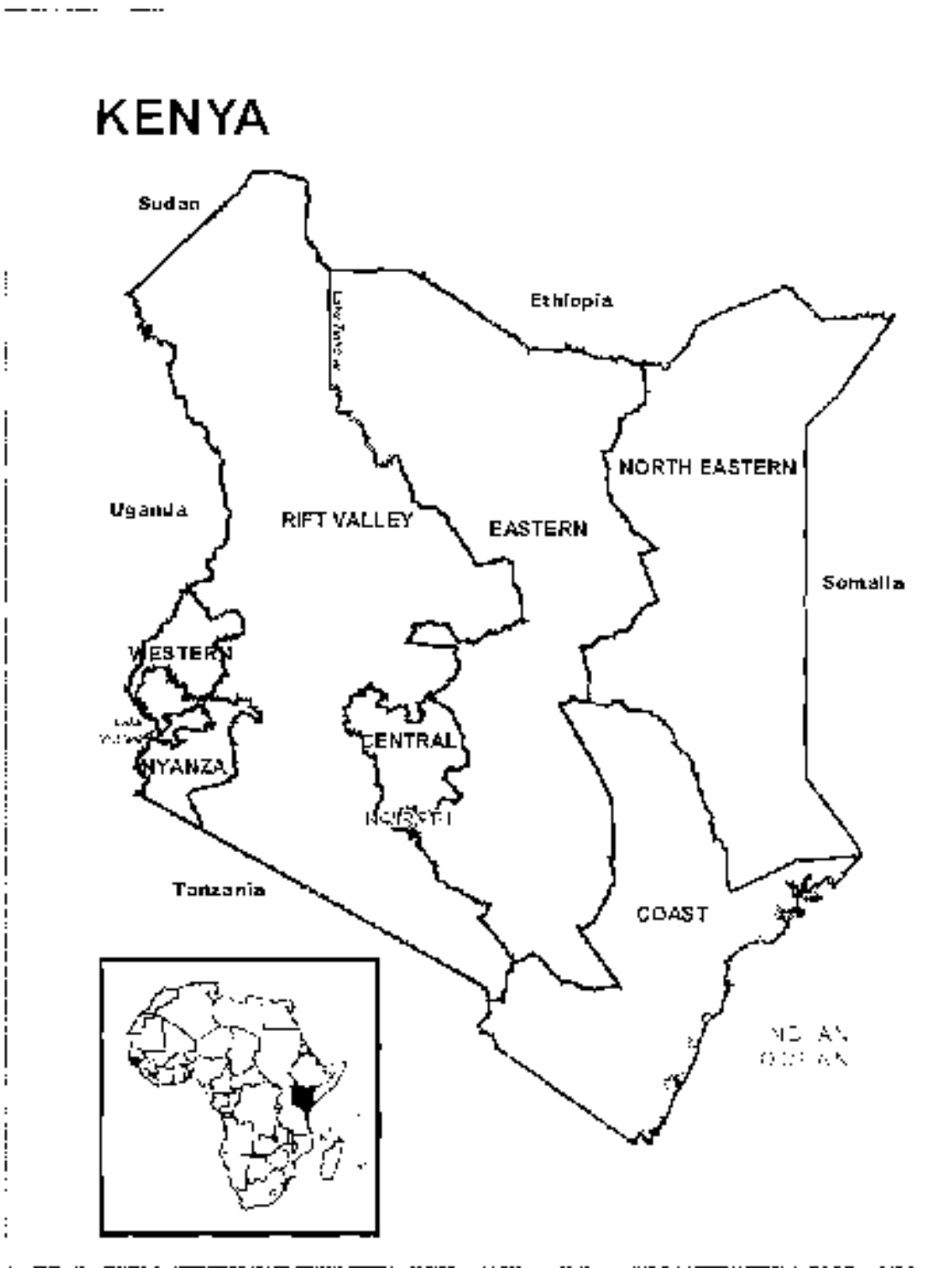


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Kenya Children's Rights Watch (SCRWC) is a non-governmental organization that monitors and reports on the human rights of children in Kenya.

ACRONYMS AND ABBREVIATIONS

AAC	Area Advisory Council
ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immuno-Deficiency Syndrome
AMREF	African Medical and Research Foundation
ARV	Anti-Retroviral
ASAL	Arid and Semi-Arid Lands
BLOC	Basic Essential Obstetric Care
BoG	Board of Governors
CAS	Country Assistance Strategy
CBO	Community Based Organisation
CBS	Central Bureau of Statistics
CDI	Constituency Development Fund
CLOC	Comprehensive Essential Obstetric Care
CTDA	Canadian International Development Agency
CNSP	Children In Need of Special Protection
CRC	(UN) Convention on the Rights of the Child
CSO	Civil Society Organisation
CWD	Children with Disability
DANIDA	Danish International Development Agency
DCS	Department of Children Services
DFTD	Department for International Development
EARC	Educational Assessment Resource Centres
EARS	Education, Assessment Resource Services
EFA	Education for all
EOC	Essential Obstetric Care
ERSWEC	Economic Recovery Strategy for Wealth and Employment Creation
FBO	Faith Based Organisation
FGM	Female Genital Mutilation
FPE	Free Primary Education
GCN	Girl Child Network
GJLOS	Governance Justice Law and Order Sector
GoK	Government of Kenya
GTZ	German Technical Cooperation
HIV	Human Immuno-deficiency Virus
ILO	International Labour Organisation
IMCI	Integrated Management of Childhood Illness
IMR	Infant Mortality Rate
IPeC	International Programme on the Elimination of Child Labour
ITN	Insecticide treated nets
IUCD	Intrauterine Contraceptive Device
JICA	Japan International Cooperation Agency
KAACR	Kenya Alliance for Advancement of Children
KCC	Kenya Country Office
KDHS	Kenya Demographic and Health Survey
KEMRI	Kenya Medical Research Institute
KEPI	Kenya Expanded Program on Immunization
KES	Kenya shillings (US \$1= Approx. KES.75)
KICC	Kenyatta International Conference Centre

KNCHR	Kenya National Commission on Human Rights
KSPA	Kenya Service Provision Assessment Survey
LBW	Low Birth Weight
MCH	Maternal Child Health
MDG	Millennium Development Goals
MICS	Multiple Indicator Cluster Survey
MNT	Maternal and Neonatal Tetanus
MoEST	Ministry of Education Science and Technology
MoH	Ministry of Health
MoPND	Ministry of Planning and National Development
MPET	Master Plan on Education and Training
NACADA	National Agency for the Campaign Against Drug Abuse
NAOC	National Aids Control Council
NCC	Nairobi City Council
NCCS	National Council for Children Services
NGO	Non-Governmental Organisation
NHSSP	National Health Sector Strategic Plan
NPAN	National Plan of Action for Nutrition
NSHF	National Social Health Insurance Fund
NSSMB	National Sports Stadium Management Board
ODA	Overseas Development Agency
OPEC	Organisation of Petroleum Exporting Countries
OVC	Orphans and Other Vulnerable Children
PEPFAR	President's Emergency Plan for AIDS Relief
PMTCT	Prevention of Mother to Child Transmission
PRSP	Poverty Reduction Strategy Paper
RAAAPP	Rapid Assessment, Analysis and Action Planning Process
SDP	Service Delivery Points
SID	Society for International Development
SIDA	Swedish International Development Agency
SMC	School Management Committee
SOWCR	State of the World's Children Report
SWAP	Sector-wide Approach
UNAI EL	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
UNCRC	United Nations Convention of the Rights of the Child
UNDCP	United Nations Drug Control Programme
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNGASS	United Nations General Assembly Special Session
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNVAC	United Nations Study on Violence Against Children
UPEL	Universal Primary Education
USAID	United States Agency for International Development
VCT	Voluntary Counselling and Testing
WHO	World Health Organisation

FOREWORD

The initial Kenya Country Report on the implementation of the African Charter on the Rights and Welfare of the Child covers eight Thematic areas:-

- General measures of implementation
- Definition of the child
- General principles of implementation
- Civil rights and freedom
- Family environment and alternative care
- Basic health and welfare
- Education, leisure and cultural activities
- Special protection measures

The main focus of the general measures of implementation is the obligation of the state party which is reflected in the ratification of the UNCRC and ACRWC leading to their domestication through the enactment of the Children Act, 2001.

Together with this, the Act establishes statutory structures such as the National Council for Children Services (NCCS), the Children Courts and institutions for the reception and care of children in need of care and protection.

Poverty has been a big impediment to the achievement of the child's right to development. The Economic Recovery Strategy is an attempt by the government of Kenya to reducing poverty and raising the general standard of living of the people, attain Universal Primary Education, reduce child/maternal mortality rates among others.

In 2003, the government of Kenya provided free primary education and this raised enrolment of pupils in primary schools by 0.9 million. Although there was pressure in the beginning because of lack of adequate physical facilities and teachers, through the assistance of development partners, the government has embarked on the expansion of the existing facilities and employment of more teachers.

It is important to note that although good efforts have been made to provide basic education and health to children, the HIV/AIDS pandemic has continued to be a threat to the survival and development of the children. Intervention programmes have however been put in place such as the Orphans and Vulnerable Children programme (OVC), addressing children made vulnerable by HIV Aids.

To help bring down violations of the rights of the child, severe penalties have been proposed by the Children Act and the Sexual Offences Act. In the past, sentences and fines for the child offenders have not been punitive enough to deter those who violated child rights and welfare. Already 119 magistrates have been gazetted to deal with issues of children to ensure that matters are not delayed in the legal process.

In order to develop a new National Plan of Action (NPA), the country has embarked on the review of the current NPA. The Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) paper and the Millennium Development Goals (MDGs) will provide the basis for the development of the new NPA which will incorporate children issues.

Table 3: Number of children under 18 years by sex, age and residence 2004

Age	Urban			Rural			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
0	17,919	116,824	134,743	543,930	537,370	1,081,300	666,360	624,570	1,290,930
1	14,020	112,09	126,11	519,111	506,661	1,025,772	610,577	626,306	1,236,883
2	104,351	104,253	208,604	501,618	493,264	994,882	602,193	604,304	1,206,497
3	54,410	54,332	108,742	485,493	49,000	534,493	370,667	379,196	749,863
4	56,426	52,247	108,673	476,632	464,841	941,473	552,491	550,664	1,103,155
0-4	547,324	543,300	1,090,624	2,529,062	2,486,024	5,015,086	3,026,001	3,019,720	6,045,721
5	79,162	70,207	149,369	427,713	417,840	845,553	497,120	500,431	997,551
6	70,567	71,413	141,980	410,053	404,875	814,928	477,162	409,296	886,458
7	68,729	68,117	136,846	396,011	385,610	781,621	456,801	419,295	876,096
8	59,149	62,508	121,657	375,611	371,055	746,666	416,003	435,340	851,343
9	57,765	60,297	118,062	362,075	350,365	712,440	412,793	417,37	830,163
5-9	335,420	341,222	676,642	1,975,493	1,926,348	3,901,841	2,281,784	2,297,209	4,578,993
10	27,051	27,041	54,092	300,179	371,167	671,346	490,915	448,712	939,627
11	21,796	21,111	42,907	253,966	261,137	515,103	415,448	419,243	834,691
12	17,249	16,117	33,366	256,263	234,936	491,200	297,232	211,373	508,605
13	49,765	50,063	99,828	286,124	221,312	507,436	279,601	302,962	582,563
14	43,966	54,171	98,137	223,777	227,721	451,498	261,167	262,145	523,312
10-14	258,627	288,511	547,138	1,754,504	1,595,927	3,350,431	1,988,354	2,009,115	3,997,469
15	37,567	35,777	73,344	295,916	374,648	670,564	417,033	453,715	870,748
16	38,498	38,226	76,724	284,887	256,618	541,505	405,597	379,181	784,778
17	65,112	62,560	127,672	235,056	227,219	462,275	405,622	411,233	816,855
15-17	102,187	100,855	203,042	755,959	658,486	1,414,445	1,228,252	1,244,129	2,472,381
Total	1,293,565	1,370,146	2,663,711	7,358,910	7,166,904	14,525,814	8,574,302	8,623,201	17,197,503

Source: Census Bureau of Statistics, 2004

Table 4: Number of children under 18 years by sex, age and residence 2005

Age	Urban			Rural			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
0	11,778	11,778	23,556	522,654	516,157	1,038,811	631,605	628,518	1,260,123
1	118,690	116,875	235,565	505,166	526,126	1,031,292	653,115	678,843	1,331,958
2	66,159	128,601	194,760	515,700	511,143	1,026,843	624,156	633,746	1,257,902
3	58,272	76,227	134,499	502,607	496,757	999,364	596,742	592,411	1,189,153
4	69,323	98,139	167,462	494,372	496,614	990,986	575,107	577,397	1,152,504
0-4	527,105	573,168	1,100,273	2,579,389	2,535,277	5,114,666	3,086,005	3,078,975	6,164,980
5	68,137	87,177	155,314	476,289	459,728	936,017	553,962	557,110	1,111,072
6	73,477	74,653	148,130	426,751	421,361	848,112	496,626	493,625	990,251
7	71,613	71,325	142,938	412,564	395,712	808,276	472,771	476,379	949,150
8	61,700	65,231	126,931	350,316	340,191	690,507	454,651	458,202	912,853
9	60,376	62,537	122,913	375,167	367,555	742,722	433,710	426,825	860,535
5-9	355,459	361,452	716,911	2,090,911	2,038,579	4,129,490	2,414,720	2,431,692	4,846,412
10	11,941	17,717	29,658	263,442	256,938	520,380	311,155	314,798	625,953
11	37,192	60,735	97,927	369,442	381,102	750,544	432,631	427,661	860,292
12	33,169	56,192	89,361	371,978	345,772	717,750	414,716	419,112	833,828
13	11,766	38,354	50,120	351,222	326,124	677,346	396,197	402,983	799,180
14	48,224	56,644	104,868	329,729	317,551	647,280	376,932	383,366	760,298
10-14	264,643	295,494	560,137	1,795,647	1,735,567	3,531,214	2,035,834	2,056,317	4,092,151
15	46,349	58,922	105,271	316,547	331,572	648,119	360,438	365,167	725,605
16	61,111	82,018	143,129	382,516	372,329	754,845	436,671	423,054	859,725
17	60,260	87,704	147,964	351,796	340,170	691,966	424,775	411,564	836,339
15-17	177,720	228,644	406,364	1,050,859	1,043,071	2,093,930	1,221,884	1,249,745	2,471,629
Total	1,324,360	1,408,748	2,733,108	7,522,901	7,320,964	14,843,865	8,767,643	8,816,830	17,584,473

Source: Central Bureau of Statistics (2005)

- Infant mortality rate per 1000 is 71 while under 5 mortality rate is 105
- The distribution of population is uneven, the most densely populated areas being found in the urban, around Lake Victoria, the highlands and the coastal strip which have fertile soil and well distributed, reliable rainfall.
- Kenya has had growing numbers of refugees and asylum seekers from neighbouring countries
- Kenya's Economy has undergone major reforms over the past ten years. These include the removal of import, price and foreign exchange controls which has opened up the domestic economy to stiff competition.
- The lowest growth rate was recorded in real GDP at 0.2 percent in 1993 and 2.8 per cent in 1992 declining to 1.8 per cent in 1998.
- However, the economy recovered from negative growth of 0.2 per cent in 2000 to record a modest growth of 1.7 per cent in 2001
- This improvement was as a result of favourable weather impacting positively on agriculture and power generation; increased demand for information and communication services, favourable tax

arger numbers of children in conflict with the law away from the formal juvenile justice system and back to their communities and society.

Adoption regulations 2005 and Charitable Children Institutions regulations 2005 are now in place and have been disseminated to all stakeholders.

Children issues have been identified and given consideration in the national budget as depicted by the increase in allocations over the years.

In its Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003-2007 the Government of Kenya states its broad objective is to reduce poverty and narrow inequality through employment, empowerment and improving access, affordability and quality of social services. Specific goals have been defined for each of the targeted sectors:

Education: To achieve 100% primary school enrolment rate (UP_) and reduce disparities in access and quality of education by 2005.

Health: To ensure that fundamental concerns of equity, access, affordability and quality in the provision of basic health services are met.

HIV/AIDS: To ensure systematic HIV/AIDS research and control and introduce interventions that address the situation of children orphaned by the pandemic.

Shelter and Housing: To facilitate the construction of housing units to meet the growing demand for housing and to explore the possibility of working with development partners to develop a framework for upgrading slums and informal settlements in urban areas.

Food and Nutrition: Recognising that a significant proportion of people, especially children, still live under threat of hunger and starvation a key objective of Government is to ensure food security and eliminate Vitamin A deficiency in children under five years.

INSTITUTIONAL FRAMEWORK FOR PROVISION OF CHILDREN SERVICES

The National Council for Children Services (NCCS) established under The Children Act is the umbrella body for children services in Kenya. The Council is responsible for general supervision and control over planning, financing and co-ordination of child rights and welfare activities in the country and advises the Government on all aspects of child welfare. It also makes regulations, coordinates evaluation, monitoring and reporting of programmes and activities targeting children. The Council also facilitates donor funding of child welfare activities.

The Department of Children's Services in the Office of the Vice President and Minister for Home Affairs is the technical arm of the Council. The Department is the main Government agency mandated to provide services for the welfare of children and secure their rights as stipulated in the Children's Act. The objectives of the Department are to:

- Ensure that children placed in Government institutions are provided with basic necessities;
- Promote the rehabilitation of children so that they can be re-integrated into the community as responsible citizens;
- Curb and control the increasing number of children in need of care and protection through guidance and counselling;
- Facilitate Registration and inspect all statutory children's institutions including rehabilitation schools, voluntary children's institutions and gazetted local authorities;
- Investigate cases of children in need of discipline and those who offend the law and make recommendations to the courts on the best modes of intervention;

- Investigate cases of children who are neglected, orphaned or abandoned and provide assistance.

CONTEXT AND IMPLEMENTATION

Implementation of the Children Act

A Strategic Plan for the Implementation of The Children Act 2002 - 2007 was completed in 2002 with the participation of stakeholders. The Plan runs from 2005-2009 and is operationalized through the creation of institutions that protect the rights of children, the most important of which is the establishment of the National Council for Children Services (NCCS). Launched in September 2002, the NCCS is replicated in administrative areas all over the country through Area Advisory Councils (AACs). AAC membership comprises the Department of Children's Services, relevant Government ministries, Non-Governmental Organizations, Religious Organizations, the private sector and the civil society organizations.

The NCCS Strategic Plan 2005 - 2009 puts forward a monitoring and evaluation process for tracking progress, efficiency, effectiveness, outcomes and impact for implementation of various strategies aimed at meeting the rights of the child. NCCS has made progress in implementing its mandate and is working closely with line ministries, NGOs and donor agencies to pool resources to address issues affecting children at national and local levels.

Monitoring Mechanisms

Kenya National Commission on Human Rights (KNCHR) was established in 2003 under an Act of Parliament to replace the Standing Committee on Human Rights (SCHR). Its mandate is to monitor the violation of the rights of all persons including children. The commission has been working on various matters relating to human rights violations and has prepared reports on the implementation of the UNCRC and children in conflict with the law and has provided copies to Government. In addition, in 2005, The Commission trained 35 children officers and 30 Labour officers on human rights matters including children's rights. KNCHR has 30 members of staff and 9 Commissioners. The budget allocation to the Commission has increased steadily since it was established in 2003 as follows per financial year;

Table 6: KNCHR budget in millions Kshs

Year	2003	2004	2005	2006
Staff	43	42	519	210

Source: KNCHR Annual Report

Access to Education

The Bursary Fund has been relocated from the district to constituency level to enable children from poor families in all parts of Kenya to access education. Priority in allocation is given to Orphans and Vulnerable Children (OVC)

Children's Courts

One hundred and nineteen (119) magistrates have been appointed to serve in the Children's Courts. Other than murder charges these magistrates hear and try all matters concerning children including:

- Custody and maintenance matters;
- Guardianship of children;
- Granting Judicial orders for the protection of children;
- Measures for dealing with children who need special care and protection; and
- Treatment of child offenders.

Focus on Children in Need of Care and Protection

Under The Children Act, a large number of categories of children in need of care and protection are eligible for Government assistance including: children left orphan by all causes including HIV/AIDS and those infected by the disease, street children, child workers, destitute children, battered children, child mothers, handicapped children, juvenile delinquents, children whose parents are imprisoned, sexually abused children, neglected children, children of parents with mental disability and abandoned children. The Government has created institutions for the rehabilitation and care of children and provides rules and regulations on how to treat children who need special care and protection, including those in charitable children institutions (Children Homes).

Orphans and Other Vulnerable Children (OVC)

As the Government develops a response towards issues affecting OVCs, a number of notable progressive steps have been made within the last year such as:

- The formation of a representative National OVC Steering Committee; the development of National OVC guidelines that clearly outline roles for the Ministry of Health, Ministry of Home Affairs, Ministry of Gender, Sports, Culture and Social Services, and various stakeholders. These guidelines uphold the UNCRC by providing standards for rights-based OVC programming and augmenting. The Children Act, demonstrates Kenya's practical commitment to the rights of children, including those orphaned and made vulnerable by HIV/AIDS;
- A Rapid Assessment, Analysis and Action Planning process (RAAAP) helped to outline priority interventions and budgetary estimates on OVCs which has led to pilot programmes.
- A legislative review identified gaps in Kenya's law with regard to OVCs as a basis for drafting of an OVC Bill;
- An informal Parliamentary Committee on OVCs has been established to raise political awareness on the issue;
- A direct cash subsidy programme to families looking after orphans is in place.

In its Strategic Plan, the National Council for Children Services has in place a mechanism to monitor the implementation of The Children Act.

The Government is working towards ensuring that police stations have a desk to receive and investigate complaints of violation of children rights in a child friendly manner. Police officers have been trained on the Children Act to manage these desks.

Local administrative officers are working closely with NGOs, FBOs, CBOs, and CSOs to save and protect the girl-child from forced early marriage. There are efforts to educate communities on the harmful impacts of female circumcision/ female genital mutilation and offer alternatives for initiation ceremonies for girls. Children rescued from forced early marriages or female genital mutilation are rehabilitated and returned to school. Teenage mothers are also given an opportunity to continue with their schooling.

Budgetary Allocation

The total budgetary allocation to the Children's Department by the Government has increased tremendously from KLS. 20.2 million and KLS.197.7 million in development and recurrent expenditure respectively in financial year 2000/2001 to about KES.74.1 million and KES.240.8 million in development and recurrent expenditures respectively in financial year 2003/2004. During the FY2005/6 the allocation increased to KSH 366 million and KES 504 million in the FY2006/7.

There has also been a general increase in allocation to social services such as health and culture. The introduction of free primary education also saw the education sector allocated KES.3.6 billion. This was partly financed through the support of UNICEF and bilateral donors such as World Bank and DFID.

Proportion of budget allocated to social expenditure

A recently published study¹ shows that there are marked regional, socio-economic, ethnic and gender differentials in the share of income and access to social services. In its 2003-2007 Economic Recovery Strategy for Wealth and Employment Creation (ERS) the State commits itself to reducing the unacceptable high levels of poverty, hunger and inequality through targeted initiatives.

It is difficult to establish the proportion of the State's budget devoted specifically for children. Trends in Government expenditure over the last six years show that large allocations for debt servicing, salaries and other recurrent costs in the Government budget leaves very little for social services. There has been a drop in the level of savings in the country; since 1995, Kenya has spent substantially more than it has saved or invested, with the single largest allocation in central Government's 2003/4 budget being the earmarking of \$254m to foreign debt servicing. Increasing poverty is a major contributory factor with poverty rising to 56% of the population living on less than US\$1 a day.

It is important to re-orient public expenditure to core social sector ministries and improve the rate of utilization of these funds by setting priorities at district level and entrenching social budgeting and policy discourse into financial planning.

There is likelihood of exponential increases in donor funding for development priorities such as HIV/AIDS (for example, under the US Government's President's Emergency Plan for AIDS Relief, PEPFAR funds) and other targeted funding such as the Constituency Development and Bursary Funds. Sector-Wide Approaches to Programming (SWAPs) and other innovative program implementation strategies currently being introduced may also attract considerable additional resources. In November 2003, at the first Consultative Group meeting held between donors and the Government in eight years, international donors pledged to provide up to US\$1.2 billion annually in budget and other support over the following three years to meet the large budget deficit and ease the pressure on borrowing from domestic banks at commercial rates. The Government requested for a Consultative Group meeting held in April 2005 to address donor concerns in the wake of allegations of corruption. Although no new pledges of funding were made donors re-stated their confidence in the future of Kenya and disbursement on previous commitments would continue.

¹ 2004, STDSIDA/GnK-McPND, Pulling Apart – Facts and Figures on Inequality in Kenya.

Table 7: Government Budgetary Expenditure 1999-2004

Central Government Expenditure on Social Services, 1999-2004 (KES. millions)					
	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004
RECURRENT EXPENDITURE					
Education, Science and Technology	47,600	48,768	53,738	61,603	71,800
Health	9,336	14,870	10,527	14,448	16,005
Labour and Human Resource Development	678	825	1,048	1,165	1,483
Home Affairs, National Heritage and Sports	3,220	3,882	6,581	5,235	5,992
SUB-TOTAL	60,834	68,355	71,896	82,751	95,281
DEVELOPMENT EXPENDITURE					
Education, Science and Technology	660	1,093	2,597	1,811	8,431
Health	865	759	3,510	4,893	5,116
Labour and Human Resource Development	147	334	493	389	297
Home Affairs, National Heritage and Sports	84	356	860	1,127	442
SUB-TOTAL	1,756	2,543	7,520	11,224	14,290
TOTAL EXPENDITURE	62,590	70,898	79,416	93,975	109,570
Local Government Expenditure on Social Services, 1999-2004 (KES. millions)					
	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004
Education	631	694	718	822	835
Health	786	859	993	1,107	1,291
Other social services	100	254	231	357	443
TOTAL EXPENDITURE	1,518	1,873	1,872	2,286	2,568

Several broad-based initiatives address issues relating to Kenya's budget policy formulation and implementation and aim to create systemic linkages at all levels. These initiatives will provide the environment necessary for the full implementation of the ACRWC.

Disaggregated data

A socio-economic database, KenInfo has been developed by the Central Bureau of Statistics (CBS) with joint technical support from the UN to ensure the systematic gathering of data on children. A national database on children in need of special protection was launched by the Children's Department to gather data on children and their fundamental rights and to assess trends at national and local level.

In 2000, the Central Bureau of Statistics, which falls under the Ministry of Planning and National Development, carried out a multiple indicator cluster survey. The objective of the survey was to monitor progress towards achieving the World Summit on Children goals and strengthen national capacity for generating indicators for assessing progress for children and women. The survey had a module on orphanhood for children aged 17 years or less and the results indicate 8.3% of the children interviewed were orphaned. Of the total number of girls interviewed, 8.7% were orphaned while 7.8% of the boys interviewed were orphaned. At the Provincial level, there were large disparities with Nyanza recording

the highest incidence of orphan hood at 13.9%.

Data on immunization, education, birth registration, nutrition and child labour is now available. In the strategic plan of the Central Bureau of Statistics for the years 2003-2008, a national survey on persons with disabilities is proposed. Results from the 2003 Kenya Demographic and Health Survey (KDHS) are available and a year-long Kenya Integrated Household Budget Survey began in 2004. The Central Bureau of Statistics has been able to map poverty by age and gender to locational level. This additional data will enable focused allocation of resources to alleviate poverty. The United Nations High Commission for Refugees (UNHCR) has data on refugee children but this is limited to children in camps.

In 2002, Kenya initiated a campaign to raise awareness on the importance of the different dimensions of development in relation to achievements of the Millennium Development Goals (MDGs). A national MDG taskforce comprising the Ministry of Planning and National Development, the UN system, NGOs and the private sector was created to spearhead this process. Activities undertaken under this initiative include joint sensitisation workshops with NGOs, media briefings and technical seminars with the objective of developing consensus and promoting understanding of the significance of the MDGs, their link to national planning frameworks and the mode and frequency of country level reporting. The State party prepared its first comprehensive MDG progress report in 2003.

Resources for Children

Data on budget allocations and trends (in absolute figures and percentages of the national and regional budgets) for the years 2004, 2005 and 2006 regarding the implementation of the UNCRC and ACRWC.

Kenya's National budget for the FY 2006/07 stands at Kshs 550 billion, an appreciable part of which is set aside for children's programs.

The total budgetary allocation to the Children's Department has increased from Kshs. 20.2 million and Kshs 197.7 million in development and recurrent expenditure respectively in the FY 2000/2001 to about Kshs 74.1 million and Kshs. 240.8 million in the FY 2003/2004. The combined allocation for the FY2005/2006 was Kshs 366 million and has increased to Kshs 504 million in 2006/2007.

There has been a significant increase in the budgetary allocations to social services sector such as education and health as shown in Tables 4, 5, 6, 7, 8 and 9.

Education: Pre-Primary, Primary and Secondary

Tables 8 and 9 show recurrent and development expenditures on pre primary, primary and secondary education for the FYs 2003/2004 to 2005/2006. The Tables indicate that most of the Government spending on education goes to the primary sector where recurrent expenditure takes almost three quarters of the entire allocation.

Table 8: Expenditure on Education (Recurrent) in millions of ksh

Education level	FY 2003/04	FY 2004/05	FY 2005/06	Total
Pre-primary	3.51	24.66	57.00	85.17
Primary	3,966.52	5,561.62	5,146.58	14,674.72
Secondary	745.42	933.79	2,893.70	4,572.91
Total	6,917.45	7,547.87	10,099.28	24,564.6

Source: Ministry of Education

Table 9: Expenditure on Education (Development) in millions of ksh

Education level	FY 2003/04	FY 2004/05	FY 2005/06	Total
Pre primary	362.55	6.60	No allocation	369.15
Primary	2,214.9	1,366.90	1,211.60	6,722.6
Secondary	151.90	125.50	172.00	577.4
Total	2,729.35	1,499	1,483.6	7,619.15

Source: UNICEF Kenya, 2005.

Health care

Primary Health Care

Recurrent budgetary allocations on Primary Health Care are given in Table 10. The figures indicate that budgetary allocations for primary health care increased significantly from Kshs 5 million to over Kshs 20 million over the three year period.

Table 10: Primary Health Care (recurrent) kshs

FY	2003/2004	2004/2005	2005/2006	Total
Amount	5,115,515	19,801,684	24,507,444	53,624,673

Source: UNICEF Kenya, 2005.

Table 11: National Aids Control Programs in Kshs

FY	2003/2004	2004/2005	2005/2006	Total
Amount	2,757,623	1,955,685	17,372,640	42,115,133

Source: UNICEF Kenya, 2005.

Programs and services for children with disabilities;

Table 12: Programs for children with disabilities

FY	2003/04	2004/05	2005/06	Total
Special primary school	14,071,680	70,000,000	50,000,000	194,071,680
Special Secondary school	14,000,000	15,000,000	45,000,000	114,000,000
Total	68,071,680	105,000,000	135,000,000	308,071,680

Source: UNICEF Kenya, 2005.

Support programs for families

Table 13: Budgetary support programs for families in millions of Kshs

FY	2003/04	2004/05	2005/06	2006/07	Total
Cash Transfer Program (CTP)	-	-	15	50	124
<i>Source: CDF Appraisal Report</i>					

The Cash Transfer program targets families who foster Orphans and Vulnerable children (OVC). It was started on pilot basis in 2004/05 targeting 500 families and in FY 2006/07 9,000 families are targeted.

Support for children living below the poverty line

Poverty issues are generally addressed through various poverty eradication programs e.g. the Poverty Eradication Commission of Kenya, school feeding programs, Constituency Development Fund (CDF), Local Authority Transfer Fund (LATF), Local Authorities Service Delivery Action Plan (LASDAP) and the Free Primary Education introduced in 2003. These programs have significant budgetary allocations.

Programs and activities for the prevention of and protection from child labour, child abuse and child sexual exploitation.

The budgetary allocations for Children's Department in the Office of the Vice President and Ministry of Home Affairs are used in programs for the protection from child labour, child abuse, and child sexual exploitation.

Table 14 shows the amount of money allocated to the Department for the last four financial years.

Table 14: Budget allocation for Department of Children Services (Kshs)

FY	2002/03	2003/04	2004/05	2005/06	Total
Recruitment	1,040,100	240,700,572	275,022,726	374,943,984	1,029,964,056
Development	15,000,000	15,000,000	16,917,850	21,703,800	386,845,850
Total	255,102,170	255,790,572	242,743,570	562,071,584	1,416,809,896

Source: CDF Appraisal Report

Programs and services for abandoned children, including street children;

Table 15 shows amounts allocated to the Street Families Rehabilitation Trust Fund (SFRTF), which deals with street children and the Nairobi Children's Home that cater for abandoned children. In the FY 2004/2005 the SFRTF funds increased, but have since reduced from 65 million in FY 2004/2005 to about 20 million in the previous two financial years, given that about 6,000 children were removed from streets and placed in schools, rehabilitation centres and in employment.

Table 15: Budget for program on Street and Abandoned children in million of Kshs.

Institution	FY2003/04	FY 2004/05	FY2005/06	FY2006/07	Total
SNRTI	40	65	70	77	147
Minot Childrens Home	4.0	1.9	4.8	4.3	19.2
Total	44.8	69.8	74.8	86.8	166.2

Source: SAC, Kisumu Office

Programs for the recovery and rehabilitation of juvenile offenders

Table 15 indicates the allocation provided for statutory institutions that are charged with the responsibility of rehabilitating juvenile offenders.

Table 16: Budget allocation for rehabilitation Institution In millions of Kshs.

Institutions	2003/04	2004/05	2005/06	Total
1 Basic Institutions	63.3	60.5	71.6	191.4
11 Technical Schools	107.1	91.8	104.3	303.2
11 Childrens Residential Homes	27.0	38.9	50.3	151.4
4 Probation Centers	0.1	8.7	12.4	34.2
Total	232.8	209.9	241.5	684.2

Source: SAC, Kisumu Office

Programs and services for children living in pastoralist and/ or rural Communities.

The Government provides support to children living in pastoralist and rural communities through programs directed to the Arid and Semi-Arid Lands. These include feeding Programs, mobile health clinics, mobile schools, school boarding facilities and expansion of schools among others.

CONSTRAINTS

1. While there has been a general increase in the allocation to social services such as health, education and culture, it is not possible to identify children's interests in the budget so that a clear analysis can be done on the proportion that is spent on children.
2. A number of groups point to limitations inherent in the Children Act. In particular, the penalties provided under the Act are not severe enough to deter persons who target vulnerable children for purposes of abduction, trafficking and sale, sexual abuse, child labour or other forms of exploitation.

RECOMMENDATIONS

1. Mechanism on how Children and other stakeholders can be involved in the budgetary process to have their issues prioritised needs to be put in place.
2. A budget that goes directly to child health care and welfare needs to be set aside. Provision of adequate resources needs to be made with regard to finances, personnel, office, transport and logistics to child welfare services.
3. Budgetary officers need to be sensitised on child rights issues so that they do not address issues affecting children on an *ad hoc* basis.

CHAPTER 2: DEFINITION OF A CHILD

ARTICLE 2: DEFINITION OF A CHILD

Legal and Policy Framework

The Children Act, 2001 clearly defines a child as a person under the age of 18 years. This Act repealed the Adoption Act¹, the Children and Young Persons Act, (Cap 141), and the Guardianship of Infants Act, Cap 141(Cap 144) that had different definitions of a child.

Minimum age of sexual consent

By amending the Penal Code (Cap 63), the Criminal Law (Amendment) Act of 2003 sets the age of sexual consent at 16 years for girls. Previously the age of sexual consent was 14 years. There is no minimum age set for boys even though the Penal Code states that boys under the age of 17 years are incapable of having carnal knowledge. The Children Act provides that the State shall protect children from sexual exploitation and abuse including prostitution and involvement in pornography.

Minimum age for marriage

The Children Act indirectly defines the minimum age for marriage as 18 years by prohibiting the marriage of any child. However, there are other statutes in place that have different minimum ages for marriage namely, The Hindu Marriage and Divorce Act² and the Marriage Act³. These statutes provide that the minimum age for marriage for a girl is 16 and minimum age of marriage for a boy is 18. Customary law and Islamic law (*Sharia*) allow for persons under the age of 18 to be married.

Age of criminal responsibility

The legal age of criminal responsibility is 8 years according to the Penal Code. Between the age of 8 and 12 years, a child is presumed not to be criminally responsible for his or her actions unless it can be proved that at the time of doing the act or making the omission, the child had the capacity to know that he or she ought not to do the act or make the omission.

There is a felt need to revise the age of criminal responsibility by developing measures and regulations to address situations where children below 12 years have committed crimes. Issues to be considered include the implementation of policies on diversion of children in conflict with the law and separating Borstal institutions from the prisons system so that juvenile offenders are handled in a child-friendly manner.

Minimum age of employment

The Children Act Section 10 protects a child from child labour, economic exploitation and work that is hazardous. A Task Force on Labour Laws has come up with recommendations on children in employment in a Draft Employment Bill. The Bill seeks to amend labour statutes in Kenya and has provisions for protection of children including protection from the Worst Forms of Child Labour in line with the Optional Protocol on the CRC on children participating in Armed Conflict and the ILO Convention⁴ and corresponding Recommendations⁵. The Bill defines a child as a person below the age of 18 years, in harmony with The Children Act. However it allows employment of children from the ages of 13 to 16

¹ Chapter 143 of the Laws of Kenya

² Chapter 157 of the Laws of Kenya

³ Chapter 150 of the Laws of Kenya

⁴ Worst Forms of Child Labour Convention, 1999, ILO Convention No. 182

⁵ ILO Recommendation No. 190

years for light work and defines those of 16 to 18 as employable. The Bill does not clearly define the parameters for this employment. It does not define light work and does not provide protections for children in such employment.

The Employment Act (Cap 2265) prohibits the employment of children under the age of 16 in industrial undertakings unless they are under apprenticeship or training programmes.

A Draft National Policy on Child Labour states categorically that persons under the age of 18 years cannot be employed.

Minimum age for education

Section 7(2) of The Children Act states that every child is entitled to free basic education, which shall be compulsory. There is no provision in the Children Act setting a minimum age for commencement and end of compulsory basic education and neither does the law set out a minimum legal age for the end of compulsory education.

Access to legal advice

A child of any age is allowed to access legal advice. Section 77(1) of the Children Act gives the court powers to order legal representation for any child brought before the court. In addition, Section 186 (b) makes provision for legal aid by the State for child offenders.

A child below the age of 18 years cannot institute proceedings on his or her own and does not have the capacity to sue or lodge complaints and seek redress before a court or other relevant authority without parental consent. They can institute such proceedings through an adult.

Independent access to medical treatment

There is no minimum age for independent access to medical treatment.

Contractual capacity

There is no minimum age for entering into a contract under the Law of Contract. Kenya has borrowed substantially from English common law and statutory law relating to contract. The following principles drawn from English law apply in Kenya:

- i) Contracts may be entered into with infants except where statute law states otherwise, and the consequences of such contracts may be determined by state law;
- ii) Contracts by infants are avoidable at the instance of the infant;
- iii) Certain contracts by infants are made void *ab initio* by the Infants Relief Act 1874 of England.

This Act, which is treated in Kenya as a statute of general application governs the major parts of a child's contractual capacity. The Act renders void all contracts with infants for the payment of money lent or to be lent, contract for goods supplied or to be supplied and it states that any purported ratification by an infant upon attaining the age majority of earlier contracts shall not form a basis for action against the child. The general practice in Kenya is that people rarely contract with children. In the area of employment there are usually no contracts between children employees and their employers. Children are unaware of the provisions of the law and cannot bargain for better terms. The application of English law on this matter can no longer be justified.

Legal capacity to inherit, to conduct property transactions

Under the Law of Succession Act a child can inherit but cannot conduct property transactions until they are 18 years.

The HIV/AIDS pandemic has resulted in many child-headed households. Such children are unable to easily access the benefits of their parents' estate in order to maintain their siblings. Even where the money is held by the Public Trustee, the procedure of accessing it is quite technical and out of the reach

of many children. It is also prone to abuse by guardians.

To create or join associations

There is no provision in the law that sets out the minimum legal age for creation of or joining associations. Most associations for children are under the auspices of the school or youth groups under the Ministry of Gender, Culture, Sports and Social Services.

Choosing a religion or attending religious school teaching

Children acquire the absolute right to change their religion once they reach 18 years but prior to that they exercise the choice to practice religion subject to parental guidance.

Consumption of alcohol and other controlled substances

Section 16 of The Children Act protects children from hallucinogens, narcotics, alcohol, tobacco products and psychotropic and related drugs. It also states that a child who is using or consuming alcohol is considered a child in need of care and protection.

Section 3D of the Liquor Licensing Act, (Chapter 121) of the Laws of Kenya outlaws employment of persons under the age of 18 years to sell, control, or supervise the sale of liquor. The same section prohibits the sale of alcohol to persons less than 18 years of age.

The Criminal Law (Amendment) Act of 2013 makes it an offence to supply or offer to a child petroleum distillate, glue or other related hallucinogenic products. A child here is defined as a person below the age of 18 years. Children are not allowed to enter establishments selling alcohol while unaccompanied. Unfortunately, many children are exposed to consumption of alcohol in their homes in cases where parents brew local alcohol for income. A teacher reported that a boy carried 'marua', a traditional brew to school. She noted that,

“If the alcohol was not being prepared at home, the boy would not have accessed it.”
 He len K. Nkanda, teacher from Tharaka District

Children are involved in selling and consumption of alcohol, drugs and other narcotics. Laws against sale of alcohol to children ought to be enforced more stringently. Parents complain that shopkeepers do not even look at the persons they are selling the alcohol to.

Sometimes drug peddlers use children to traffic drugs since they know they are less likely to be suspected and if arrested, they are likely to be treated leniently.

Voluntary enlistment in the armed forces; Conscription into the armed forces; Participation in hostilities

Section 13(2) of The Children Act states: “No child shall take part in hostilities or be recruited in armed conflict and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law”.

Section 15(3) states that it shall be the responsibility of the Government to provide protection, rehabilitation care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or natural disaster.

The Children Act allows children who have been involved in hostilities to be taken into protective custody.

Several laws have implications for children involved in hostilities. Given that the age of criminal responsibility is 8 years, this means that a child under 8 years cannot be arrested in connection with a criminal matter.

There is also no minimum age for placement of children in health institutions.

Regarding the minimum legal age for placement of children in welfare institutions, The Children Act Section 191(1)(c) (e) provides that if an offender is between 10 and 15 years they will be sent to rehabilitation schools. The Borstal Institutions Act sets the minimum age of admission into Borstal Institutions at 15 years. The Act states that children can stay in the Borstal institutions for a maximum of three years. The Children Act Section 190(3) provides that no child under the age of 10 years shall be ordered to be sent to a rehabilitation institution.

The Prisons Act (Cap. 90) also provides that persons aged between 17 and 21 years may be placed in corrective training institutions instead of prisons.

The Refugee and Displaced Persons Act which is envisaged to be the legal framework for asylum seekers and refugees has no minimum age for deprivation of liberty of asylum seeking and refugee children only stating that there will be special protection measures for women and children asylum seekers and refugees.

Participating in administrative and judicial proceedings affecting the child

Section 4 of The Children Act requires that in all proceedings affecting children, the courts, with due regard of the child's age and maturity shall seek the child's opinion and give it the weight it merits. Further, the consent of children over the age of 14 years is required in adoption proceedings affecting such children.

According to Section 75(3)(a) of The Children Act, the Court is bound to consider the ascertainable feelings and wishes of the child with reference to the child's understanding in any proceedings. Thus it is left to the discretion of the Magistrate or the administrative authority to decide whether the child's wishes can be taken into consideration. The absence of guidelines hinders the effective participation of children in such proceedings.

Giving testimony in court in civil and criminal cases

The Criminal Law (Amendment) Act of 2003 has amended Section 124 of the Evidence Act, (Cap. 80) which required compulsory collaboration of the evidence of a child of tender years (10 years and under) in sexual abuse cases. There is no minimum legal age for giving testimony in court; this is left to the court's discretion.

CONTEXT AND IMPLEMENTATION

Although a child is defined as a person below 18 years under the Children Act, there are laws and policies that are at variance with this provision. This makes proper planning and implementation of interventions difficult. In some cases, programs that should benefit children end up not benefiting them at all. An example is universal primary education through which some people that do not fall under the definition of a child benefit at the expense of children.

In practice different communities define children differently. Most define a child as a human being who is still dependent on his or her parent, still in school or college, not married and in some cases not yet circumcised, or one who has not passed the initiation stage to adulthood. Others simply look at body size or biological changes such as menstruation in the case of girls. A person may be over 18 years but still receive care and protection from parents or guardians. Children are only considered adults when they move out of the control of their parents such as when they marry or get a job and move to their own house.

There is a tendency to address children's issues in a piecemeal manner with different policies developed for different issues using different definitions of the child. This gives rise to a situation where children

are categorized differently by different Government agencies. The Children Act sets out the legal framework for protection of children's rights, but inconsistency in policies have the effect of weakening the protection set out in the law.

A Committee under the NCCS has been put in place that will advise on legal and policy issues and make reform. It is envisaged that with enhanced capacity, this Committee and the NCCS in general should be able to effectively provide direction for the harmonization of laws and policies on children's issues.

Legal age of criminal responsibility

There is a felt need to raise the age of criminal responsibility by developing measures and regulations to address situations where children below 12 years have committed crimes. Issues to be considered include the implementation of policies on diversion of children in conflict with the law and divesting Borstal institutions from the prisons system so that juvenile offenders are handled in a child-friendly manner.

Minimum age of sexual consent

For the purposes of the Children's Act and the Sexual Offences Act a person consents if he or she agrees by choice, and has the freedom and capacity to make that choice.

According to the Criminal Law Amendment Act of 2003 the minimum age for sexual consent is 16 years. However, different laws on marriage allow girls under the age of 16 years to be married making implementation of the minimum age for sexual consent difficult. There are plans to harmonise relevant laws through constitutional review and legal reform.

In many cases, issues involving sex are not discussed between parents and children as they are considered "tabia mbaya" – bad manners. Furthermore, some children face early exposure to sexual behaviour due to parents having sex within their hearing or sight as a result of cramped living conditions and alcohol use or abuse by one or both parents. Poverty and other factors such as the impacts of HIV/AIDS result in young girls entering into forced sexual liaisons when they are below the minimum age of sexual consent.

Minimum age of marriage

Early marriage is still a common occurrence in Kenya owing to customary laws that allow marriage of children especially after certain rites of passage such as circumcision.

- ⋮ "I had a good friend, when we closed school in April she never came
- ⋮ back to school. We were told she had been married."
- ⋮
- ⋮ Aminah Godana, 17 years, Moyale, Isiolo.

Employment and child labour

Given the economic situation in Kenya, children find themselves subjected to work and economic exploitation. This is compounded by the increasing incidence of child-headed households. About 12% of households consist of orphans looking after themselves many of whom have been orphaned by HIV/AIDS. Many communities allow children as young as 8 years to be employed as house girls, herders and workers in plantations as a means of boosting their income.

- ⋮ "Yeye ni mdogo sana, hata hajafikisha 8 years, anuleba makaa, na
- ⋮ anelua uniform. Ukimuliza kwani hajeenda shule, anasema anafunya
- ⋮ kazi." ("She is so young, hardly 8 years old carrying charcoal, and in
- ⋮ school uniform. When asked why she has not gone to school, she says
- ⋮ she is working").
- ⋮ Innocent Musa, 15 years, Form 1, Isiolo.

Independent access to legal advice, capacity to sue, lodging complaints and seeking redress before a court or other relevant authority without parental consent

Children have no *locus standi* to approach the Courts for redress and can only do so through other parties. The Children Act Practice and Procedure Rules, which govern proceedings under The Children Act, are very technical and can only be applied by technically qualified persons such as lawyers. This makes access to justice for children difficult and puts it out of reach.

Independent access to medical treatment

Parents accompany their children to health institutions until such an age that the child is mature and feels comfortable. However, as a matter of practice, medical personnel are not allowed to attend to girl children in the absence of their parents. It is a felt need that any intervention to allow greater independence should balance children's needs for privacy against parental guidance and control.

CONSTRAINTS

1. Children are not able to defend their cases in court.
2. Whereas a child is defined as a person below the age of 18 year under the Children Act, there are laws and policies that are at variance with this provision making planning and implementation of interventions difficult. In practice, different communities define children differently.
3. The HIV/AIDS pandemic has resulted in many child headed households who are unable to easily access the benefits of their parents' estate in order to maintain siblings.
4. Many children, especially those of school going age are getting more exposed to drug and alcohol abuse

RECOMMENDATIONS

1. Practice and procedure governing proceedings under the Children Act should be simplified and rules amended to give children *locus standi* to sue in court on their own or seek redress before any relevant authority, subject to minimum standards providing for due regard to the age and capacity to understand by the child.
2. Magistrates and administrative officials need to be sensitised to the requirement and importance of taking into account the wishes of the child in administrative and judicial proceedings.
3. Licensing of clubs and beer selling outlets in residential areas should be prohibited and the Liquor Licensing Act amended to allow for revocation of licences of outlets selling alcohol to children.
4. Legal interventions should be formulated to enable orphaned children access the estates of deceased parents' (taking into account the child's age and degree of maturity) without the guardian's consent, especially the OVCs.
5. Legal statutes should be harmonized to address the variance on specific children issues like; age of sexual consent, marriage and criminal responsibility.

CHAPTER 3: GENERAL PRINCIPLES OF IMPLEMENTATION

ARTICLE 3: NON-DISCRIMINATION

Legal and Policy Framework

The Children Act:

- Section 5 provides that no child shall be subjected to discrimination on the grounds of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or social connection.
- Section 12 states that a child with disabilities shall have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost, whenever possible.

The Persons with Disabilities Act makes it illegal to discriminate against children with disabilities on any grounds.

CONTEXT AND IMPLEMENTATION

The Government, with partners, is implementing the Alternative Rite of Passage Initiative with the goal of replacing, and thereby eliminating Female Genital Mutilation (FGM). People found forcing girls to undergo FGM are arrested and prosecuted by the police.

So far 800 former street children have been rehabilitated through the National Youth Service and 2000 reintegrated back into their communities through the Street Families Rehabilitation Trust Fund. Faith Based Organizations (FBOs), the Nairobi City Council and other lead organisations have also been involved. At the same time, the number of registered women groups increased from 107,080 with a membership of 4,787,701 in 1999 to 122,951 in 2003 with a total membership of 4,928,690 (Economic Survey 2004). The objective of the majority of these groups is to have community programs that improve the livelihoods of the children and extended families of members.

A significant move towards catering for the educational needs of children with disabilities (CWDs) is the establishment of Educational Assessment Resource Centres (EARCs) in each district of Kenya. This has brought assessment services closer to children with disabilities, their parents and communities. The Report of the Proceedings of the National Disability Conference 2004 shows that over 10 EARCs have trained staff and are well equipped. The Government commissioned a Task Force on Special Education in 2003 to look into the plight of children with disabilities. The Task Force produced a report whose recommendations have been taken on board by the Ministry of Education, Science and Technology. There are moves towards inclusive education where CWDs can attend any school of their choice.

Civil Society Organizations have set up sponsorship programs to cater for children with disabilities in high schools. This supplements the Constituency Bursary Fund set up by the Government in all 210 constituencies.

Over the last three years, the GoK and UNICEF have been working on a policy on gender and education. The GoK established two task forces, one at policy level to advise Government on issues related to gender and education and a Ministerial body to mainstream gender issues. These are now showing results. For example, in the education sector reforms, gender has been mainstreamed in the Ministry of Education, Science and Technology (MOEST) Strategic Sector Plan, the Education Act and FPE Plan,

Master Plan on Education and Training (MPET, 1997-2010). The National Plan of Action has replaced MPET. Efforts to address gender disparities in education are also evident in official Government documents such as the PRSP, March 2002, and the Welfare Monitoring Survey II. The PRSP replaced by the ERS, in particular, acknowledges that women and girls are disadvantaged in accessing education. Other initiatives include the Gender and Education policy.

In an effort towards addressing gender disparities in programming for children in conflict with the law, the Government set up Dagorell Girls Rehabilitation School in March 2004 to complement Kirigiti Girls Rehabilitation School in taking care of girls in need of special protection.

CONSTRAINTS

1. Effective enforcement of children rights is undermined by certain cultural practices like FGM
2. It is observed that there are too few institutions to cater for children with disabilities at all levels from Early Childhood Development centres through to primary and secondary schools and tertiary institutions. This makes it difficult and very competitive for children with disabilities to be admitted into available schools.
 - i. "In our school, it is so traumatizing especially during exam time. The exam for the blind is brought long after other students have sat their exams".
child from Eastern province.
3. Even though the Government has allocated additional resources to cater for children with disabilities in primary schools, the amount is still inadequate.
 - i. "We did not wish to be born blind so we can pay an extra fee. We also need free education".
Mulinda from Kitul District in Eastern Province.
4. The free primary education policy does not cater for pre-primary pupils and this impacts on the quality of primary education negatively.
5. Many CVCs are disinherited by relatives, abandoned, neglected and exploited sexually or economically through child labour. Children from families infected or affected by HIV/AIDS are discriminated against and stigmatised;

RECOMMENDATIONS

1. Anti FGM campaigns need to be intensified. The current penalty under The Children Act provides for 12 months in prison or a fine of KES.50, 000 or both. This is not stiff enough to deter the culprits who practice FGM. Licenses of medical professionals who perform FGM should be revoked.
2. Budget allocation for schools supporting children with disabilities need to be increased and additional integrated special schools and classes for children with various forms of disabilities need to be set up.
3. Children with disabilities lack adequate facilities to cater for their needs in court. Special police and judicial officers require training in sign language to work with children with disability.
4. Communities and families should encourage children to form groups and organize themselves to participate in activities concerning children. Children need training for child to child awareness creation in their group activities especially on issues such as abortion, family, violence etc.
5. There is need for feedback from school administration on the issues raised by children in the suggestion boxes.
6. The Ministry of Health should schedule regular visits by mobile clinics to provide medical attention and monitoring of children especially in arid and semi-arid areas and slum settlement in the urban areas.



"Say no to FGM". Alternative rights of passage have had some success. An aggressive campaign is needed.

ARTICLE 26: PROTECTION AGAINST APARTHEID AND DISCRIMINATION.

The article obligates member states to take measures to address needs of children affected by ethnic, religious or other forms of discrimination.

Non discrimination is a general principle of fundamental importance for implementation of the whole charter.

Legal and Policy Framework

It is important to state that Kenya is not affected by the problem of apartheid but we need to contend with the issue of discrimination in various spheres.

This is in spite of the fact that the constitution of Kenya chapter 5 section 32 gives provision for the protection of the fundamental rights and the freedom of the individual including discrimination on grounds of race, creed, sex, tribe among others.

The Children Act also prohibits any discrimination and guarantees to all children equal and effective protection against discrimination on any grounds of origin, sex, religion, creed, custom, language,

opinion, conscience, colour, birth, social, political, economic, or other status, race, disability, tribe, residence or social connection.

Section 12 states that a child with disability shall have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible.

CONTEXT AND IMPLEMENTATION:

Kenya appreciates the fact that the child is an easy target for discrimination. Protection measures have been accorded at all levels to prevent children from all forms of discrimination in the society.

In Kenya the principles relating to the best interests of the child and the prohibition of discrimination has been incorporated into domestic law.

However in the process of implementing the Children Act it has been noted that the child is discriminated against in several situations.

The Act appears to be in conflict with itself, the UNCRC and ACRWC, in regard to children born out of wedlock. The Act provides that parental responsibility for children born out of wedlock rests upon the mother at the first instance. The father is at liberty to choose whether to apply to court for parental responsibility or not. Thus it appears the child is discriminated against on account of birth and penalized because of his/her parents' marital status.

Birth certificates of adopted children read 'adopted' instead of bearing the name of the child.

Children born out of incestuous relationships are not accepted in many communities. They are said to be taboo children who have no place in the particular family.

In some situations children infected and affected as result of HIV/AIDS are regarded as outcasts, a burden and social misfits. Some have been killed by relatives or refused admission in schools.

Similarly children born with a certain disability in some isolated instances are regarded as a curse.

Some children who do not perform well academically to the standard of a particular school are forced to repeat or transfer to other schools.

In an attempt to address the educational needs of children with disabilities the Government has established Educational Assessment Resource Centres in all the 72 districts in Kenya. This has brought assessment services closer to children with disabilities, their parents and communities.

The report of proceedings of the National Disability Conference of 2004 shows that over ten (10) Educational Assessment Resource Centres have trained staff and are well equipped. The Government commissioned a task force on special education in 2003 to look into the plight of children with disabilities. The task force produced a report whose recommendations have been taken on board by the ministry of education, Science and Technology. There are moves towards inclusive education where children with disabilities can attend any school of their choice.

Civil society Organizations have set up sponsorship programmes to cater for children with disabilities in high schools. This supplement the Constituency Bursary Funds (CBF) set up by the Government in all 210 Constituencies.

Over the last three years the Government of Kenya and UNICEF have been working on a policy on gender and education. The GOK established two task forces, one at policy level to advise the Government on issues related to gender and education and ministerial body to mainstream gender issues. These are now showing results. For example in the education sector reforms, gender has been mainstreamed in the Ministry of Education, Science and Technology strategic plan and Free Primary Education (FPE) programme. Efforts to address gender disparities in education are also evident in official Government documents such as Poverty Reduction Strategy Paper (PRSP). The PRSP which was replaced by the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) in particular acknowledges that women and girls are disadvantaged in accessing education. Other initiatives include the gender and education policy.

In an effort towards addressing gender disparities in programming for Children in conflict with the law, the Government set up Dagoretti Girls Rehabilitation School in March 2004 to complement Kirigiti Girls Rehabilitation School in taking care of girls in need of special care and protection whose numbers have increased during the past thirty years or so.

CONSTRAINTS:

1. Laws to protect children exist, but their implementation is not effective. As already stated some traditions and customs are still very strong and will disappear only if coordinated Information, civic and moral education activities is carried out.
2. Traditional 'rejections' a customary means of exclusion has particularly adverse effects on children. A parent will reject a child because of the conditions in which his/ her birth took place. Enforcement of children rights is undermined by cultural beliefs in particular as regards persistence of gender stereotypes and role distribution between boys and girls.
3. Some children with disability are chained to beds and in dog kennels due to conditions that could have been improved or reversed with early interventions. Parents are ashamed of them and so hide them from the community and thus violating their rights. The parents are ignorant of the various facilities and services that can improve the quality of life for their children and allow them to develop to their full potential.
4. It is observed that there are too few institutions to cater for children with disabilities at all levels from Early Childhood Development Centres through primary and secondary schools and tertiary institutions. This makes it difficult and very competitive for children with disabilities to be admitted into available facilities. Many are privately owned and run and are too expensive for the poor parents. This leaves out many children from getting support.
5. Even though the Government has allocated additional resources to cater for children with disabilities in primary schools the amount is still inadequate.
6. Many Orphans and Vulnerable Children (OVCs) are discriminated, stigmatized disinherited by relatives, abandoned, neglected and exploited sexually or economically.

RECOMMENDATIONS

1. Birth certificates of adopted children should be the same as those issued to other children.
2. Public awareness campaigns to combat persisting discriminatory attitudes and negative traditional beliefs as well as promoting children's rights within the society and particularly within the family.

3. Involvement of political, religious and community leaders be encouraged to take an active role in supporting efforts to eradicate traditional customs and practices that discriminate against children.
4. Officers deployed in courts, Police and Judicial Officers should be trained in sign language and Braille to facilitate communication with Children with special needs.
5. Additional resources and facilities in favour of institutions that cater for the needs of disabled persons shall be considered. Those constructing roads, public buildings and institutions such as schools, hospitals should be sensitive to the needs of the disabled in the provision of facilities such as toilets stairs, ramps for wheel chairs and so on.

ARTICLE 4: BEST INTERESTS OF THE CHILD

LEGAL AND POLICY FRAMEWORK

Although the current Constitution is silent on the rights of the child, the Children Act states in Section 4(2), that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be of primary consideration. It requires that in all decisions regarding a child undertaken by a Children's Court, the child's best interest should be central.

CONTEXT AND IMPLEMENTATION

To secure the best interests of children, a number of initiatives in different sectors, have been undertaken. Through the Department of Children Services, the Government has facilitated, interpreted and implemented the joint government and Civil Society Organizations work plan on The Children Act. NCCS is expected to take on the responsibility of fundraising for children's activities across the country besides its role of coordination of child welfare activities.

Towards better planning and programming on children's issues, the Children's Department in collaboration with partners has established a centralised database system that will enhance service delivery to the children through information sharing and efficient, focussed planning for children issues. So far, 249 children organizations have registered to use the database and distribution of the software to other organisations is on-going.

A curriculum has been introduced at Kiganjo Police Training College to train police officers on child rights and child protection. Implementation of this program started in 2001 with the support of civil society organizations and the Government. Graduates of the training are expected to exercise greater sensitivity in matters relating to children and the protection of their best interests. Every police station has officers handling cases relating to women and children. The police department has collaborated with civil society partners to establish child protection units in fourteen (14) police stations around the country and there are plans to expand service to other regions.

Under the Governance, Justice, Law and Order Sector program work plan, the Children's Department plans to construct seven additional children's courts in the country. Five child friendly holding facilities in police stations already exist in Nairobi, Kisumu, Nakuru and Mombasa. The improvement of children's remand homes and rehabilitation schools and strengthening of rehabilitation programs through capacity building is underway. There are currently 11 remand homes with an average annual population of 600 children and 12 rehabilitation centres whose average annual population is 1,510 children.

The Chief Justice has appointed 119 magistrates to deal specifically with children's issues throughout the

country and has set out rules and regulations on matters relating to the Children's Courts. A model child-friendly court has been set up in Nairobi and the process of setting up a second court in Mombasa, with support from partners, is almost complete. Sign language interpreters and Braille facilities are provided for in the courts for children with special needs. The UNCRC has also been produced in Braille.

Through collaboration with partners the Government has developed draft regulations for guidelines on the establishment and management of charitable children's institutions in Kenya. Similar collaboration saw the "Best Practice on Working with Street Children in Kenya" completed and launched in 2001 by the Forum for Actors in Street Children Work.

The Ministry of Gender, Sports, Culture and Social Services is planning to conduct a census on persons with disabilities, children included. However, for planning purposes, the Koech Report (1999) included indicators that addressed issues of children with disabilities and continues to provide some basis for planning.

CONSTRAINTS

1. Inadequate budgetary allocation to the Department of Children Services and NCCS remain an impediment in relation to the extent and number of the activities they carry out.
2. Lack of adequately trained personnel in the various programs dealing with children also hampers implementation of children rights. As a result, there have been limited efforts to ensure that the principle of "best interests of the child" is well grounded in all activities relating to children.

RECOMMENDATIONS

1. The budget allocation for children services should be increased for effective implementation of activities.
2. A trained personnel in the various programmes dealing with children to enhance implementation of children rights is very important.

ARTICLE 5: SURVIVAL AND DEVELOPMENT

LEGAL AND POLICY FRAMEWORK

The Constitution of Kenya guarantees the right to life.

The Children Act also provides for the inherent right to life, survival and development in the following ways:

- Section 4(1) states that every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.
- Section 8(1) and (2) says every child shall have a right to religious education subject to appropriate parental guidance, and that the Minister responsible for children's affairs shall make regulations giving effect to the rights of children from minority communities to give fulfilment to their culture and to practice their own language or religion.
- Section 17 entitles a child to leisure, play and participation in cultural and artistic activities.
- Section 18(2) states that notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or to life imprisonment.
- Section 19(2) states that no child shall be sentenced to death.

The Penal Code provides for offences of infanticide, abortion and "killing of the unborn" for the protection of the lives of young children. The Penal Code further states that an expectant woman shall not be

sentenced to death. This is for the protection of the life of the unborn child.

The Persons with Disabilities Act has been enacted and it provides for the rights and rehabilitation of persons with disabilities. This includes rights to life, survival and development of children with disabilities. The GoK and partners have developed a 5-year OVC plan of action.

The HIV/AIDS Prevention and Control Bill addresses the prevention of the spread of HIV/AIDS and will serve to improve the lives of children affected and infected by HIV/AIDS if enacted.

CONTEXT AND IMPLEMENTATION

There are Government campaigns to ensure that the life of the child is preserved including the Kenya Expanded Programme on Immunization (KEPI) to eradicate the deaths of children from immunisable diseases. As a result of sustaining high immunization coverage of more than 75% for all antigens in the past five years, vaccine-preventable diseases have declined steadily in incidence and prevalence. The Government is also implementing a programme on Prevention of Mother to Child Transmission of HIV/AIDS. The Government and partners continue to mobilise resources through agencies such as the Global Fund Initiative to support programs that address prevention, care and support of children affected by HIV/AIDS and diseases such as malaria.

There is a comprehensive Maternal Child Health Programme in which neo-natal and post-natal care is given to mothers free of charge in all public health facilities. Mobile clinics have been set up in arid and semi-arid areas. The Government and partners have carried out campaigns on malaria, poliomyelitis and provide free mosquito nets for pregnant mothers and children under 5 to reduce infant mortality rates.

Children under 5 years receive free treatment and this has gone a long way in prolonging and improving the quality of life of infants in Kenya. A National Social Health Insurance Fund is proposed as a medical scheme under which all children will be treated free of charge. Currently, street children receive health services from charitable organizations like the Red Cross and Red Crescent medical facilities. Goal Kenya runs a mobile clinic that serves to street children in the rehabilitation program at various centres in Nairobi. Kenyatta Hospital and other Government health facilities have a scheme for street children to receive treatment at a subsidized rate or free of charge.

Implementation of Free Primary Education has resulted in high enrolment rates and there is provision in the school curriculum for games, hobbies and drama among other activities. The school feeding program in arid and semi-arid areas continues to play an important role in school retention in 30 districts. There are 29 ASAI districts and Nairobi region where the program is active. Records from the MOEST indicate that the number of beneficiaries as of July 2014 is 1,027,333.

On housing, the Government has put in place a taskforce to develop a housing policy in collaboration with other partners.

There is considerable awareness among communities on the rights of the child and legal service providers and law enforcers regularly act positively on cases that are reported to the authorities.

The Traffic Police have initiated a programme for training young children in primary schools on road safety and this is aimed at preventing the death of children through road traffic accidents.

A Government policy on food security and a Disaster Management Unit under the Office of the President has been established.

CONSTRAINTS

1. Malnutrition remains a key problem for majority of Kenyans. Data is insufficient and does not indicate the nutritional status of children in need of special protection, street children and children with disability.
2. Enforcement of existing laws remains weak and reports of child battering continue. Children in the labour sector are often exploited; they are underpaid and are sometimes sexually exploited.
3. Inadequate sanitary facilities in schools compromises the health of children and the girl child often stays at home during menstruation.
4. Adolescent mothers face complications during child-birth posing risks for the lives of both mother and child due to their age, poor nutrition status and inaccessibility to health facilities.
5. Obstacles to the delivery of quality reproductive health services include inequitable distribution of facilities that make access difficult for a majority of Kenyans; poor management; lack of adequately trained personnel, medical equipment and essential drugs and cultural or religious beliefs and practices.
6. Despite the fact that abortion is illegal in Kenya, cases of illegally procured abortions continue.

RECOMMENDATIONS

1. Interventions targeting the prevention of malnutrition and access to food must remain a primary concern of initiatives targeting children.
2. Sanitary facilities in schools must be improved.
3. There is need for Health workers to facilitate improvement of family behaviour regarding newborn care both at home and in health facilities.
4. Government should also take a lead role in encouraging adolescent reproductive health education and discouraging harmful cultural practices.

CHAPTER 4 – CIVIL RIGHTS AND FREEDOMS

ARTICLES 6: NAME AND NATIONALITY

LEGAL AND POLICY FRAMEWORK

Section 11 of The Children Act provides that every child has a right to a name and nationality, and that where a child has been deprived of an identity, the Government should provide appropriate assistance and protection with a view to establishing that identity.

Births and Deaths Registration Act (Cap 149) Laws of Kenya provides in the L.N 184/1971 that registration of births and deaths of all inhabitants within the republic is compulsory. Registration of births is free if done within the first 6 months of a birth or death. Section 8 of the same Act states; a registrar shall not register a birth or death after the expiry of six months from the date of such birth or death except upon receiving the written authority of the Registrar General issued in accordance with the rules and upon payment of the prescribed fee.

Section 12 provides that no person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the registrar of such evidence as may be required to show that the father and mother were married according to law or, in case of Africans in accordance with some recognized custom.

Section 13 states that where any living new-born child is found exposed, it shall be the duty of any person who finds a new born child or in whose charge such a child may be placed, to give to the registrar of the registration area in which such child is found within seven days of finding of such child, such information of the particulars required to be registered for registration concerning the birth of such a child as the informant may possess.

CONTEXT AND IMPLEMENTATION

The Department of Civil Registration has designed and implemented social mobilization and training strategies to increase the level of awareness on the importance of birth registration. The strategies target community and opinion leaders and registration agents. The community leaders then sensitise the public, influence positive change in attitudes towards birth registration and help in notification of births. The registration agents sensitise the public during barazas (public meetings), community functions and antenatal clinics. At times both the print and electronic media are used in awareness campaigns.

Birth registration activities are monitored at the head office, districts, divisions and locations through Districts registration services at the head quarters, District Civil Registration Monitoring committees, Division Civil Registration Committee and Location Action Committees. Members of these committees include the Provincial Administration, Ministries responsible for Health and Education, Central Bureau of Statistics, Department of Children Services, NGOs operating division and location levels, women and youth groups, village elders and Traditional Birth Attendants.

The use of assistant chiefs to register births occurring at home has greatly improved registration coverage. Though still far from the expected levels, this strategy has none the less increased the volume of births captured. The training and the mobilization for community members and leaders has greatly improved the level of awareness on birth registration.

Information communication booklets have been produced for use by:

- District heads and officers in Government
- Health personnel
- Community based organizations and leaders
- Schools, colleges and adult educators
- Chiefs and assistant chiefs
- Members of public

These booklets are distributed free of charge during social mobilization workshops and to registrars in each district for onward distribution to the various groups.

The Government undertook an impact evaluation survey on civil registration improvement initiatives in Nyanza and Western provinces with financial assistance from UNICEF. The process of reviewing the Births and Death Registration Act to harmonize it with current best practices is underway with support from the expanded legal sector reforms.

The Government is also in the process of computerizing the registration process countrywide during the 2004 and 2008 plan period.

Intensive training of the provincial administration is taking place at all levels with human rights approach to service delivery. Since this is the network used to register births occurring at home, the training is expected to result in expanded coverage of these births.

CONSTRAINTS

1. There is no proper mechanism to ensure registrations of births are done within the stipulated 6 months after birth. Cultural beliefs in some communities are a barrier to immediate registration of births. In some communities, mothers are confined for a long period after delivery.

RECOMMENDATIONS

1. Both technical and financial resources need to be decentralized to improve registration of births occurring in rural areas, nomadic communities and informal settlements of urban areas.
2. There is a need to provide for registration of children whose births are not recorded within the six-month duration provided for in the Birth and Death Registration Act.
3. The Act should be reviewed to address cultural barriers that constrain registration of births.
4. There is a need to create official links between registration of births and other registration services like National Health Insurance Fund, immunisation, school enrolment and the National Examination Council, Kenya Revenue Authority, National Registration Bureau, Immigration and others.

ARTICLE 7: FREEDOM OF EXPRESSION

LEGAL AND POLICY FRAMEWORK

The current Constitution under Section 79 protects the freedom to receive ideas and information without interference.

The Children Act in Section 8 states that every child shall have a right to religious education subject to appropriate parental guidance and further that the Minister shall make regulations giving effect to the rights of children from minority communities to give fulfilment to their culture and to practice their own language or religion.

The Act further states that in any matters of procedure affecting the child, the child shall be accorded the opportunity to express his/her opinion and that opinion shall be taken into account as may be appropriate taking into account the child's age and degree of maturity.

CONTEXT AND IMPLEMENTATION

To some extent, children are involved in making decisions concerning family resources including sale of land, career development especially in those institutions that have developed Career Guidance Departments; some schools have suggestion boxes for children to express their views and opinions; in some schools children select their prefects; some schools allow children to participate in formulation of school rules; children can join Clubs of their choice where these exist; and children participate in drama and music festivals.

Children participation is facilitated in national and international celebrations including the Day of the African Child, the Universal Children's Day, International AIDS day, reporting on the CRC and Children's Voices among other activities. A significant number of children have been enabled to participate in international meetings, conferences and forums focusing on issues affecting them.

CONSTRAINTS

1. Child participation is a new concept that has not been well ingrained in the Kenyan society.

“All children whether blind, disabled or not should participate in family/school activities”.

Mutinda, Kitui.

RECOMMENDATIONS

1. Public awareness campaigns on the civil rights and freedoms of children targeting both the police and adult members of society, particularly parents, need to be stepped up.
2. The Government and partners need to continue sensitising the society and people who work with children on the importance of child participation.

ARTICLE 9: FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

LEGAL AND POLICY FRAMEWORK

The provisions of Section 8 of The Children Act accord freedom of thought, conscience and religion to children.

Section 83(1) provides that in determining whether or not a custody order should be made in favour of the applicant, the court shall have regard to: “the ascertainable wishes of the child; the customs of the community to which the child belongs; and the religious persuasion of the child”.

In cases of foster care placement, the Children Act provides that where a child’s religion is known, the child shall be placed with a foster parent who either is of the same religious persuasion as the foster child or who gives an undertaking that the child will be brought up in that religious persuasion.

The Act also provides that parents have the right to provide parental guidance in religious, moral, cultural and other values.

CONTEXT AND IMPLEMENTATION

Under the provisions of the Children Act, the court recognizes the rights of the child to religious persuasions in matters of adoption and custody. Where the child is above the age of 14 the consent of the child is mandatory, before an adoption or custody or any decision regarding the child is made.

As part of disseminating the Children Act, campaigns have been intensified by the government and children agencies to create awareness against harmful cultural practices that violate a child rights to freedom of thought and conscience such as FGM, early marriages.

CONSTRAINTS

1. Some religious groups have beliefs and practices that infringe on the rights of children. For example there are religious sects that prohibit their adherents from seeking medical attention from hospitals whenever they fall sick.
2. In some children’s institutions, the distinction between religious instruction and indoctrination is not very clear, and thus many children fall victims of the latter, while the law provides for the former.

RECOMMENDATIONS

1. Campaigns against harmful cultural practices must be intensified.
2. The already gazetted charitable children institutions regulations, 2005 need to be fully implemented to ensure that children are accorded their fundamental rights.

ARTICLE 8: FREEDOM OF ASSOCIATION

LEGAL AND POLICY FRAMEWORK

The Constitution of Kenya guarantees the right of all people in Kenya to freely associate and to assemble peacefully.

CONTEXT AND IMPLEMENTATION

Government departments and CSOs have facilitated the creation of structures and forums for children to assemble, associate and express their opinions at local, national and international levels. Examples of such initiatives are mentioned under Article 13.

Children in learning and religious institutions are generally encouraged to engage in co-curricular activities such as sports and a variety of clubs and groups. Time is also set-aside for the various clubs and groups to meet and initiate their activities, and to a large extent, contribute to the decisions affecting them in the society. Such clubs include Child Rights clubs, Law Clubs, HIV/Aids Clubs.

Over 10 child-centred Non-Governmental Organizations have developed manuals, which caregivers and other workers in the children's sector employ in the implementation of child participation approaches in their work-stations and communities.

CONSTRAINTS

1. There still exist religious beliefs and cultural practices that frustrate the implementation of the right to freedom to association and peaceful assembly due to the prohibition of interaction, especially between boys and girls.

RECOMMENDATIONS

1. Encourage child participation in all matters that affect them.
2. The AACs need to be strengthened to facilitate children rights to association.

ARTICLE 10: PROTECTION OF PRIVACY

LEGAL AND POLICY FRAMEWORK

Section 19 of The Children Act provides that every child shall have a right to privacy subject to parental guidance.

Section 74 of The Children Act provides that a Children's Court shall sit in a different building or room or at different times from those in which other proceedings other than Children Courts are held and no person shall be present at any sitting of a Children's Court except: members and officers of the court; parties to the case before the court, their advocates and witnesses or other persons directly concerned in the case; parents or guardians of any child brought before court; registered representatives of newspapers or news agencies; or such other persons as the court may specially authorize to be present.

Section 76(5) of The Children Act provides that in any proceedings concerning a child, whether instituted

under this Act or under any written law, the child's name, identity, home or last place of residence or school, shall not, nor shall the particulars of the child's parents or relatives, any photograph, or depiction or caricature of the child be published or revealed, whether in any publication or report including any law report or otherwise.

CONTEXT AND IMPLEMENTATION

The Kenya Demographic Housing Survey 2004 reveals that 62.1 per cent of households have an average of 2.6 persons per room in urban areas. The Government has developed guidelines for children's institutions setting minimum standards on accommodation and sanitation facilities of children.

The "Economic Survey 2004" shows that the approved expenditure on GoK housing doubled from KES. 48.6 million in 2002/2003 fiscal year to KES. 81.2 million in 2003/2004 fiscal year. Approved expenditure as a percentage of development expenditure went up marginally by 0.4 percent in 2003/2004 financial year as compared to 0.29 per cent in 2002/2003 financial year.

CONSTRAINTS

1. The boundary between protection of privacy of the child and actions that parents, learning institutions and other caregivers may need to take in the provision of parental guidance is blurred.
2. The media has not fully adhered to the right of the child to privacy due to lack of awareness.

RECOMMENDATIONS

1. Raise awareness on the child's right to privacy.
2. Provide adequate and proper sanitary facilities in schools, particularly for the girl child.

ARTICLE 31: RESPONSIBILITIES OF THE CHILD.

The article outlines the responsibilities of children to society especially in the African context.

Legal and Policy Framework:

The Children Act section 21 provides for duties and responsibilities of a child with due regard to the evolving capacity of the child. It provides a framework for the relationship between the child, his or her family, the community and the State.

The Child Participation Guidelines provide for the involvement of children in all spheres and situations that affect them.

CONTEXT AND IMPLEMENTATION:

Article 31 signals clearly that the Charter regards the child as an active member of the family emphasizing the exercise by the child of his/her responsibilities; appreciating the family as the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children.

The article notes that the civil rights and freedoms of the child are to be exercised subject to parental consent or discipline.

Traditionally the child has been seen as a dependent, invisible and passive family member. Today the child is 'seen' and heard and is expected to play a part and contribute to the overall well-being of the family and society at large.

The parents on their part are well placed to build the capacity of children, to intervene in a growing manner in the different stages of their decision-making, in order to prepare them for responsible life. This approach enables children to become active partners, with appropriate skills to participate in family and community-based activities.

This underscores a growing recognition of the importance of early childhood development within the family for the prevention of violence and other forms of crime in later life. This recognition provides motivation for developing comprehensive support and education programs on parenting and preparation of parenthood.

This is because parents are their role models. Children learn by watching their parents act. They teach children the ways of the community. They help their parents in carrying out the daily chores of filling the land running errands, helping in cooking, nursing the babies and participating in cultural festivals as modelled by adults.

Children with no responsibilities never learn some of life's most basic lessons: every individual can be of service to others and life has meaning beyond one's own immediate happiness. Children also participate in music, drama festival and science congress. The activities are institutionalized and supported by the Ministry of Education Science and Technology.

Children voluntarily participate in environmental clubs which occasionally clear streets and collect garbage, tree planting and other environmental concerns as part of community responsibility. Some 707 children directly participated in the reporting process of the UNCRC and ACRWC.

They took part in both regional and international forums, that United Nations Special Session (UNGASS) and United Nations Study on Violence against children (UNVAC).

The Sungura programme is child participatory and aims to enhance the skills of children to carry out micro enterprise activities such as rearing of rabbits, barber shops, as well as hair dressing to support the families during evenings and weekends.

CONSTRAINTS

1. There has been a lot of emphasis on child right targeting children themselves leaving out the parents and at the same time hardly any mention of child responsibilities which has resulted in conflict between the child, parents and the child rights advocates.
2. When not properly monitored children responsibilities may be misused by the community. Some of the domestic activities deprive children of their right to play and leisure may translate into child labour. Young children end up being exploited as they work as house helps, herdsmen and others.
3. There is poor communication between the parents and their children due to social change, family breakdown and urbanization.

RECOMMENDATIONS

1. Develop strategies through which child rights and child responsibilities are simultaneously disseminated to the schools, community, churches and other forums.

2. It is critical that parents spend adequate time with their children in order to train them in things that are important in life. They have a duty and responsibility to show the children how to live.

CHAPTER 5 – FAMILY ENVIRONMENT & ALTERNATIVE CARE

ARTICLE 25: SEPARATION FROM PARENTS

LEGAL AND POLICY FRAMEWORK

Section 6(1) of The Children Act gives the child a right to live with and be cared for by parents. It further provides that children can only be separated from their parents if this is in their best interests for example where a parent is found to be abusing a child. This is done through the courts and the Government is charged with the responsibility of providing for alternative care. In such cases Section 114(c) provides that, the court can grant an Exclusion order which ensures that a parent who has been abusive to a child is kept away from the child.

Where a child is separated from his or her parents through extra judicial means, responsibility falls on the Government to provide assistance for reunification of the child with his family.

CONTEXT AND IMPLEMENTATION

The CBS Multiple Indicator Cluster Survey (MICS) report for the year 2000 indicates that 65.7% of children aged 0-14 years live with both parents. A gender comparison showed that 66.5% of boys were living with their parents compared to 64.9% of girls. A much higher 72% of urban children live with both parents compared to 64.1% in the rural areas.

By definition, the death of one or both parents results in a child becoming an orphan. The MICS showed that 8.3% of children are orphaned. Girls registered a higher proportion at 8.7% compared to boys at 7.8%. Regionally Nyanza province had the highest incidence of orphan hood at 13.9% compared to other regions.

The GoK/UNICEF report 2004 on The Rapid Assessment, Analysis and Action Planning Process (RAAPP) for Orphans and other Children Made Vulnerable by HIV/AIDS in Kenya shows that the total number of orphans (aged 0-14) is estimated to be approximately 1,700,000 or 12 % of all children. Children orphaned by AIDS as a percentage of total orphans are 51-60%. Those between 10-14 years form 55% of this group while those aged 0-4 years make up 14.5 %.

The Government has initiated reforms in the Prisons Department that are likely to provide a child friendly environment for children accompanying imprisoned mothers. Children below 4 years may not be separated from their mothers; while older ones are placed in alternative care.

To improve service delivery in institutions, the Children's Department has put in place minimum requirements and standards to guide the operation and management of such institutions. In addition,

some non-governmental organizations have researched and documented guidelines and interventions in professional practice such as the "Best Practices in Working with Street Children in Kenya", 2001.

A child who has reached the age of 14 years shall give consent in adoption, foster care proceedings (Children Act Section 158 (4) (f)). Under revised custody laws, the wishes of the child must be considered.

The Street Families Rehabilitation Fund initiated in 2003 has enabled many street children to be reunited with their families while others have been placed under alternative care. In 2003, the Government, private sector and non-governmental organizations working with children launched the Street Families Rehabilitation Fund that has already made milestones in the rehabilitation of former street families. About 2000 youth (boys and girls) benefited from the National Youth Service and Vocational Training Centres placements. This initiative started in Nairobi and now there are pilot projects in Mombasa, Kisumu and Nyeri districts. Many street children have been reunited with their families through this initiative.

CONSTRAINTS

1. Children accompanying their imprisoned mothers suffer neglect and abuse. Those left behind fend for themselves, drop out of school and are ostracized. The situation is worse of the girl child who ends up assuming the role of the mother or engaging in early marriage.
2. Separation from parents, for whatever duration of time, has negative effects on children who need love, care and role models. Keeping them together with their parents is not an easy option as, for example children who accompany their mothers to prison are also exposed to abuse and neglect.
3. In spite of the Government commitment to promote community based care, communities have limited capacity to take care of children separate from their parents. In addition there are inadequate institutions to cater for the rising number of children in need of care. Where available, the institutions lack adequate resources.

RECOMMENDATIONS

1. Strengthen services for children who accompany mothers to prison and provide alternative care for those who are left behind. There is need also to strengthen collaboration with partners who provide alternative care to children who would otherwise have to stay in prison with their mothers.
2. Empower and support community structures that take care of children affected by HIV/AIDS.

ARTICLE 20: PARENTAL RESPONSIBILITIES

LEGAL AND POLICY FRAMEWORK

The Children Act sets out parental responsibilities. It gives parents the responsibility of providing education, guidance, medical care, immunization, adequate diet, shelter and clothing. It elaborates on custody and rights of access. It gives both parents equal rights. Neither the mother nor the father has a superior right or claim against the other in the exercise of parental responsibility.

Where parents cause their children to be in need of care and protection, they may be prosecuted in a court of law and the court may order them to exercise proper parental control or issue a Family Assistance Order. Such orders are meant to ensure that parents who do not undertake their responsibilities over their children are compelled and assisted to do so.

Further to the above, the Act also provides for the offence of neglect, which prohibits wilful neglect, ill treatment and cruelty towards children by their parents and other caregivers. The offence attracts

imprisonment for a maximum of two years and a fine of up to 200,000 Kenya shillings (US\$2,700) or both.

CONTEXT AND IMPLEMENTATION

The Government and partners have made efforts to sensitise communities on parental responsibilities through different public forums i.e Chief barazas, HIV/Aids awareness, seminars, consultative meetings and religious institution.

CONSTRAINTS

1. The Children Act Section 24(3) (a) and (b) and Section 25(1) a and b fails to harmonise the diverse cultural practices on parental responsibility. In communities that follow paternal lineage fathers enjoy an upper hand on parental responsibility.
2. In legal cases where the court demands for the test in cases involving disputes over parentage, the costs of DNA testing are prohibitive at KES. 36,000 (US\$ 450) for two samples to be tested.
3. Whereas The Children Act acknowledges the role of both parents in apportioning responsibility it gives the father a choice to accept responsibility for children born out of wedlock.

RECOMMENDATIONS

1. Section 24 (3) should be amended to require the father of a child born out of wedlock to automatically acquire parental responsibility.

ARTICLE 16: PROTECTION FROM ABUSE AND TORTURE

LEGAL AND POLICY FRAMEWORK

The key statutes that deal with matters relating to violence against children, abuse and neglect are The Children Act and the Penal Code (Cap 63 Laws of Kenya).

The Children Act under Part II (Safeguards for the Rights and Welfare of the Child) Section 14, 15 and 16 provide for the child to be protected from physical and psychological abuse, neglect and other exploitation including sale, trafficking or abduction by any person.

The Children Act also places a penalty upon summary conviction of a term of imprisonment and a fine for offenders who have committed offences under Section 20.

The Children Act prohibits any person from subjecting a female child to circumcision and provides for protection of all children from early marriage, cultural rites, customs and traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity, physical, psychological development, exploitation and use in prostitution, inducement, coercion to engage in any sexual activity, exposure to obscene material, protection from use of hallucinogens, narcotics, alcohol, tobacco products or psychotropic drugs and any drugs that may be declared harmful by the Minister for Health, torture, cruel treatment or punishment, unlawful arrest and deprivation of liberty. (Sections 14, 15, 16, 17, 18). Section 127 provides for the offence of Neglect, which is defined as the wilful failure to provide, ill treatment, cruelty on a child by a parent or care giver.

The Section 73-80 of the Children Act provides machinery (Children's Courts) for intervention for children who are in need of care and protection. Abused children shall be placed in places of safety by authorized officers, administrative officers, children officers, voluntary agencies and the community.

The Kenya Government has banned corporal punishment in schools (MOEST Legal Notice LN 56/2001).

Further to the above, the Penal Code provides for offences which amount to child abuse. Such include, abuse including rape, defilement, indecent assault and common assault.

CONTEXT AND IMPLEMENTATION

The Government has opened children's desks in selected police stations under the diversion program. Legal collaboration statements of a child in defilement cases are no longer needed. Under the Criminal Law Amendment Act, the Government has increased sentence on defilers from 14 years to life imprisonment.

Institutions created under The Children Act are in place (rehabilitation schools and Children's Remand homes) where child offenders are committed for training. The Diversion Programme described under Article 37, addresses children in police stations.

The Government and partners have trained children in child rights through child rights clubs in schools. Children in these clubs are aware of their rights and report cases of abuse. In addition, both the electronic and print media groups have highlighted the abuse of children with resulting action from the relevant authorities.

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

Various NGOs have formed coalitions and networks to enhance their service delivery for children in need of special protection. Establishment of the Family Division of the High Court, Children's Court, and training of juvenile justice personnel has created a more child friendly judicial justice system.

CONSTRAINTS

1. Inadequate resources are a constraint on efforts to address cases of child abuse. In some parts of North Eastern Province there are no legal aid services for children.
2. Sexual abusers are acquitted by courts due to legal complexities causing fear and uncertainty among parents or guardians who seek redress for their abused children. The numbers of intervention programs to help both the victim and perpetrator once a case is reported are limited.
3. Parents, guardians, law enforcement agents and community members are sometimes compromised by child abusers especially in cases of sexual abuse against children; in many cases they will accept money to cover up the stigma of child abuse making it difficult to take action and prosecute abusers.

“Two girls aged 4 and 5 years walking alone in a coffee plantation were raped by a 21 year-old man. The mother of the man who had raped them took him away so that he would not be arrested. The girls were taken to hospital. Police are still looking for him.”

Mary Muthoni, Standard 5, Urban Primary School, Embu.

RECOMMENDATIONS

1. Raise awareness and sensitise communities on the effects of child abuse and neglect.
2. Lobby for adequate allocation of resources to programmes that deal with child abuse and neglect.
3. There is need to support a study to establish the magnitude of child abuse in Kenya.

ARTICLE 37: TORTURE

LEGAL AND POLICY FRAMEWORK

Section 74(1) of the Constitution of the Republic of Kenya outlaws torture.

Corporal punishment was outlawed in schools through Legal Notice No. 56 of 2001 and circulated to all head teachers. Corporal punishment is outlawed in the Children Act section 191 (2) which states that no child offender shall be subjected to corporal punishment. The Kenya government has taken measures to eliminate corporal punishment through strengthening guidance and counseling and developing guidelines on alternatives to corporal punishment. Reported cases of corporal punishment are dealt with through the laid down procedures.

Kenya in conjunction with partners is running a campaign on violence against Children part of which includes corporal punishment. The campaign aims at enlightening the Populace on early identification and ways to respond to all forms of violence against children.

Section 18(1) of The Children Act states that no child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Capital punishment or life imprisonment is also outlawed in Subsection (2) in line with Article 37(a) of the CRC.

The Kenya Police Act outlaws the use of torture or any unreasonable force by police officers. The Criminal Law Amendment Act, incorporated amendments from the Criminal Procedure Act, the Penal Code and the Evidence Act. It outlaws the use of torture for purposes of obtaining confessions from suspects and accused persons. This includes children who may be in conflict with the law. The Children Act in Section 186(d) provides that "every child accused of having infringed any law shall not be compelled to give testimony or to confess guilt".

According to the Criminal Law (Amendment) Act 2004, confessions will only be admissible in a court of law if they are made during court proceedings and not at police stations, as was the previous practice. The Children Act further provides that no child shall be interrogated in the absence of a parent/guardian, social worker or children officer.

The Government has ratified the UN Convention Against Torture and is preparing its first report to the UN Committee on Human Rights.

CONTEXT AND IMPLEMENTATION

The Government of Kenya has put measures in place to address torture, which include establishment of Rehabilitation Schools, Children Remand Homes, Children Courts and the Diversion Programme for Children in Conflict with the Law. The Diversion Programme, described under Article 37, targets police stations.

Records with the Children's Department indicate that the number of children found in conflict with the law has fluctuated without following any particular trends over the past 5 years; in 2000 they numbered 416; in 2001 there were 676; in 2002 there were 466; in 2003 there were 674 falling to 662 in 2004.

The Kenya Police Service Strategic Plan has been designed with a human rights approach to address service delivery. NGOs and Government institutions have been set up to investigate cases of torture including the Kenya National Commission on Human Rights.

Through the Department of Children Services, the Government continues to intervene on child abuse

cases at district level including in cases of torture and other forms of degrading and inhuman treatment. A crisis desk that operates telephone hotlines to rescue children in need of protection has been set up.

In response to the overwhelming need for children services, partner organizations and other institutions continue to support government efforts in protecting children whose rights are violated. The services provided by these partners range from legal aid and provision of shelter, to counselling and referrals.

CONSTRAINTS

1. Inaccessibility to legal assistance and cultural beliefs and attitudes make children vulnerable to torture, cruel, inhuman and degrading treatment.
2. Awareness campaigns targeted at law enforcement officers and security organs have centred on police officers leaving out others who handle security matters such as security guards, watchmen and local authorities.
3. Even after the enactment of The Children Act, cases of torture, cruel and inhuman treatment of children continue to be witnessed in the country. In extreme cases, deaths occur. Some of the children are maimed for life. Those responsible include parents, care givers or teachers and others.
4. The various categories of children in need of care and protection to be tortured as indicated by formal reports include those born out of wedlock, children with disability, children living with stepparents, and include those orphaned by HIV/Aids.
5. Children on the streets continue to face cruel and inhuman treatment especially at the hands of law enforcement agencies usually on allegations of having committed crimes.
6. The court process remains slow and unaffordable to most Kenyans.
7. Although The Children Act makes corporal punishment illegal, it continues in learning institutions. The forms of punishment carried out at schools include caning, various abuses by teachers, and cutting grass from 6.00 a.m. to 7.00 p.m. among others.

RECOMMENDATIONS

1. There is need to enforce the ban on corporal punishment in schools to sensitize the teachers and to provide alternative forms of discipline. Cases of child victims should be addressed in their best interest.
2. With the positive result observed through the introduction of Children Desks in police stations, the programme should expand to other areas, in addition to the current fourteen. A toll free hotline is necessary in the police stations, for children victims.

ARTICLE 24: ADOPTION

LEGAL AND POLICY FRAMEWORK

The Children Act provides for adoption of children resident in Kenya either locally or internationally. Previously, international adoption of children was not allowed in Kenya.

Kenya has acceded to the Hague Convention on Inter-Country Adoptions. However the provisions of the Convention had been captured in the Children's Act even before the accession. The Act empowers the Minister to establish an adoption committee that oversees adoption issues in the country. The Committee formulates governing policy in matters of adoption, effects liaison between adoption societies, Government and NGOs, considers and proposes names of guardians *ad litem*, monitors adoption activities in the country and such other functions as conferred on the committee by the Act.

Any child who is resident in Kenya whether or not the child is a Kenyan citizen or was born in Kenya may be adopted (Section 157(1)).

No application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic of Kenya for a period of three consecutive months preceding the filing of the application (Section 157(1)).

The Act gives jurisdiction only to the High Court to make adoption orders (Section 151). The Government has drawn up draft subsidiary regulations to ensure that adoption of children is undertaken with the best interests of children.

An adoption order shall not be made if the applicant is of unsound mind, has been charged or convicted of an offence by a court of competent jurisdiction, or is a homosexual. Joint applicants should be married to each other. A sole male foreign applicant is not allowed to adopt (Section 158 (3) (a) and (b)). However under special circumstances a sole female foreign applicant may adopt.

The Act also allows for international adoptions upon a joint application of 2 spouses who are not Kenyan residents and are not Kenyan citizens provided that the applicants have obtained the consents from a court of competent jurisdiction in the country where both or one of them ordinarily resides (Section 162).

Any person who contravenes the provisions of the adoption section shall be guilty of an offence and liable to imprisonment and, or a fine (Section 179(b) (ii)).

CONTEXT AND IMPLEMENTATION

The Adoption Committee has been constituted, Adoption regulations are in place and there is fast, efficient handling of cases at the High Court after the establishment of the Family Division in 2007. Consultations aimed at ensuring that Kenya ratifies the Hague Convention on International adoption have begun. Magistrates handling children's matters have been gazetted and trained. Children's Court in Nairobi has been renovated and equipped.

Table : 17 Numbers of Local and Foreign Adoptions for 2003-2006

Year	Local Adoptions			Foreign Adoptions			Grand Total
	Male	Female	Total	Male	Female	Total	
2003	35	59	134	41	24	65	199
2004	45	39	94	34	31	69	163
2005	47	72	103	56	42	78	181
2006	70	30	56	20	16	41	100
Total	121	256	387	157	119	256	643

Source: Figures as of July 2006 (up to date High Court figures)

CONSTRAINTS

1. Most people within communities opt for foster care or local agreements to support orphaned children. They cite high costs and lack of clear information as hindrances to adoption.
2. Although adoption regulations are in place the implementation process is gradual.

RECOMMENDATIONS

1. Strengthen and support other structures to be able to handle cases of adoption.
2. Support finalization and implementation of adoption rules and regulations.

ARTICLE 18: PROTECTION OF THE FAMILY.

The article obligates the state to protect and provide support to the family. It provides for equality of rights and responsibilities of parents in matters of bringing up and maintenance of their children regardless of marital status.

LEGAL FRAMEWORK:

In an attempt to protect the family, Kenya has enacted various laws and statutes. The following sections of the Children Act address various issues on children

Section 6 gives a child the right to live with and be cared for by his or her family.

Section 23 provides for duties, rights, powers and responsibilities and authority which by law a parent of a child has in relation to the child. The duties include duty to maintaining a child and providing a child with:

- Adequate diet
- Shelter
- Clothing
- Medical care including immunization
- Education and guidance
- Protect a child from neglect, discrimination and abuse among other rights.

Section 32 gives the National Council for Children Services (NCCS) the mandate to exercise general supervision, control, planning, financing and coordination of child rights and welfare activities and to advise the Government on all aspects thereof. At community level, the Area Advisory Councils (AAC) which represents the NCCS, ensure the protection of children's rights and welfare.

Section 38 (6) (b) also gives the Director of children services the responsibility of safeguarding the welfare of children and assist in the establishment, promotion, supervision of services and facilities designed to advance the well being of children and their families.

Section 58 provides for alternative care facilities for children who for diverse reasons cannot be cared for by their families. In addition the Government has developed regulations to govern these institutions to ensure that the rights and welfare of children are safeguarded.

Part 11 on foster care and part 12 on Adoption in the children act, provide for alternative forms of family care for children. To this end the Government has developed adoption regulations to streamline both local and international adoptions.

The Law of Succession Cap 160 provides that all the children of the deceased are entitled to inherit from their parents' estates, their gender or marital status notwithstanding.

In any proceedings concerning divorce or nullity of marriage or judicial separation, the Matrimonial Causes Ordinance Chapter 152 provides for custody and maintenance and the education of the children whose parents are due to part ways. This is done to minimize the suffering children usually undergo as result of differences between their parents.

CONTEXT AND IMPLEMENTATION:

The Kenya Law Reform Commission is committed to fast-track the process of reviewing the gaps identified in the Children Act so that the Act is in harmony with itself, the United Nations Convention on the Rights of the Child (**UNCRC**), the African Charter on the Rights and Welfare of the Child (**ACRWC**), the Law of Succession Cap 160, Registration of Births and Deaths Act Cap 149.

To avoid duplication of services and wastage of resources, the Government through the National Council for Children's Services has put in place a Planning, Research, Monitoring and Evaluation Committee. This will assist in establishing services that do not exist and develop policies and frameworks to respond to emerging issues.

Support programs for families

Table 18: Budgetary support programs for families in millions of Kshs.

FY	2003/04	2004/05	2005/06	2006/07	Total
Cash Transfer Program (CTP)		-	19	56	104
Subsidized Medical Charges					

The Cash Transfer program targets families who foster Orphans and Vulnerable children (OVC). It was started on pilot basis in 2004/05 targeting 500 families and in FY 2006/07 9,000 families are targeted.

The 1999 population and housing census put the population of Kenya at 28 million people with an annual growth rate of 2.9%. Kenya's current population is estimated to be 34 million. More than half of the country's population (52%) are children. At the same time an estimated 56% of the total population are considered to be absolutely poor and are largely unable to afford basic services like education, health, food and shelter. Of this number an estimated 8.6 million are children. Many communities experience harsh climatic conditions leading to inadequate food production and loss of livestock that the pastoral communities depend on.

In its Economic Recovery Strategy for Wealth and Employment (ERSWEC 2003-2007) the Government of Kenya is making an attempt to implement the Millennium Development Goals (MDG's). The Government has as one of its broad objective, to reduce poverty, reduce inequality through employment and improving access, affordability and quality of social services such as education, health, shelter and housing, food and nutrition among others.

HIV/AIDS pandemic has strained the social fabric, overwhelming traditional support and care systems and traumatizing families. Increased needs for social services arise from the orphans including those who are infected and those who face rejection and discrimination. As a result, this has led to an increase in the number of children on the streets, child headed house hold and children in institution. There is a

growing numbers of elderly people who have lost their adult children who would support them in the absence of a proper social welfare system.

The magnitude and impact of HIV/AIDS and the realization that Kenya was losing 500 to 700 of its people daily prompted the Government to declare HIV/AIDS a national disaster on 25th November, 1999. On 26th November, 1999 the National AIDS Control Council (NACC) was established to provide policy and strategic framework for mobilizing and coordinating resources for prevention of HIV/AIDS, transmission and provision of care and support to the infected and affected people.

As already stated child headed households are increasing every day as a result of deaths of parents from HIV/AIDS. To prevent the Orphaned Children from institutionalization, efforts are being made to support them to live within their relatives and communities. This is being done because the loss of family attachment and identity together with rising levels of poverty can impede children's physical, intellectual and emotional development and also make them vulnerable to abuse and exploitation.

The Government has taken measures to protect Children Orphaned by HIV/AIDS through the introduction of direct cash transfer programme on a Pilot basis in selected districts. The programme was started in 2004 in pilot bases in Kwale, Garissa and Nairobi with the support of UNICEF. In the 2005-2006 financial year the Government allocated forty eight million (KSh.48, 000,000) towards the direct support DVCs within the family and the community. A child in family receives 1000 per month. This is a small amount compared to the needs of ever increasing number of vulnerable children.

The programme is now being implemented in Bungoma, Kisii Central, Machakos, Nyandarua, Nyuri, Meru North, Mombasa, Nakuru, Trans Nzoia . So far 7,000 children have benefited country wide. This financial year 2006-2007 the government allocated fifty six million six hundred thousand, 600,000) to enhance the programme. It is the intention of the Government and other partners to expand the programme based on the information contained in the monitoring and evaluation report that is on going.

CONSTRAINTS:

Section 25 of the Children Act vests the parental responsibility upon the mother in the first instance, where children are born out of wedlock. It further provides that a father may acquire parental responsibility upon making an application in court or by entering into an agreement with mother.

Failure to include in subsection 25 (1)(a) the "mother", "child" "or any other person" as people who can apply for parental responsibility of a child born out of wedlock denies the child the opportunity of growing up in a family or being brought up by both parents as emphasized in the Charter.

The number of orphans due to HIV/AIDS pandemic is indeed alarming and overwhelming. Interventions to address their needs are so far inadequate allowing a large number of them to fall out of the existing social safety nets.

In certain circumstances, children are adversely affected where one or both parents work or study away from home and hardly meet or have quality time with them. This poses great challenges in parenting as children spend more time in school with peer groups and teachers or with the house helps at home which sometimes exposes children to all forms of abuses and negative influences.

The cost of counselling services for children and families facing a wide range of social problems are prohibitive and therefore out of reach of many.

The print and electronic media have posed great challenges to the family. Children spend more time watching TV as a form of social activity and hardly have time to interact with other family members. What they watch is uncensored and impacts negatively on their moral and social upbringing.

RECOMMENDATIONS

The Government shall enhance collaboration with diverse partners in designing and implementing interventions targeting vulnerable groups especially children affected and infected by HIV/AIDS and those with disabilities through pro-poor program initiatives.

Members of parliament are urged to be proactive in initiating legislation and influence allocation of resources in areas that will promote and sustain the family.

Private sector participation is critical in militating against the impact of HIV/AIDS on children and families.

A systematic and continuous awareness campaign targeting parents on their child rearing responsibilities is of critical importance.

Micro-finance programs to approximately 56% of Kenyans living below poverty line shall be strengthened to enable them uplift their living conditions in order to provide better care for their children.

Continuous censorship of material in both print and electronic media to control negative influences on children.

This scenario calls for serious awareness raising campaigns to both law and enforcement agencies and more so, to the women and the girls who should learn to insist on their rights of innocence. The best interest of the child is paramount in all situations.

CHAPTER 6 HEALTH AND BASIC WELFARE

ARTICLE 5: SURVIVAL AND DEVELOPMENT

LEGAL AND POLICY FRAMEWORK

Section 9 of The Children Act, provides that a child shall have a right to health and medical care. The Kenya Health Policy Framework is the main policy body giving direction to the sector. This has now been translated into the National Health Sector Strategic Plan 1999-2004. Other policy declarations and documents include:

- National Reproductive Health Strategy (1997-2010)
- The National Reproductive Health Implementation Plan (1998-2003)
- National Reproductive Health Curricula for Service Providers (2003)
- Contraceptives Commodities and Procurement Plan (2003-2006)
- Essential Obstetric Care (EOC) Manual for Health Service Providers in Kenya (March 2002)
- Standards for Maternal Care in Kenya (December 2002)
- Postpartum Care in Kenya (1999)
- Effective Clinical Audit Manual (2003)
- Protocols and Guidelines for Quality Obstetric and Pre-natal care (2002)
- National Implementation Plan for the Integrated Management of Childhood Illness (IMCI) Strategy (2003-2004)

- National Plan of Action for Nutrition (NPA/N)
- Community Nutrition and Care Plan of Action, 1999
- Adolescent Reproductive Health and Development Policy (May 2003)
- National HIV/AIDS Strategic Plan (2000 – 2005)
- National Guidelines on Management of Opportunistic Infections
- National Guidelines on Prevention of Mother To Child HIV/AIDS Transmission (PMTCT)
- National Programs Guidelines on Orphans and Other Children made Vulnerable by HIV/AIDS
- National Social Health Insurance Bill
- Economic Recovery Strategy for Employment and Wealth Creation

CONTEXT AND IMPLEMENTATION

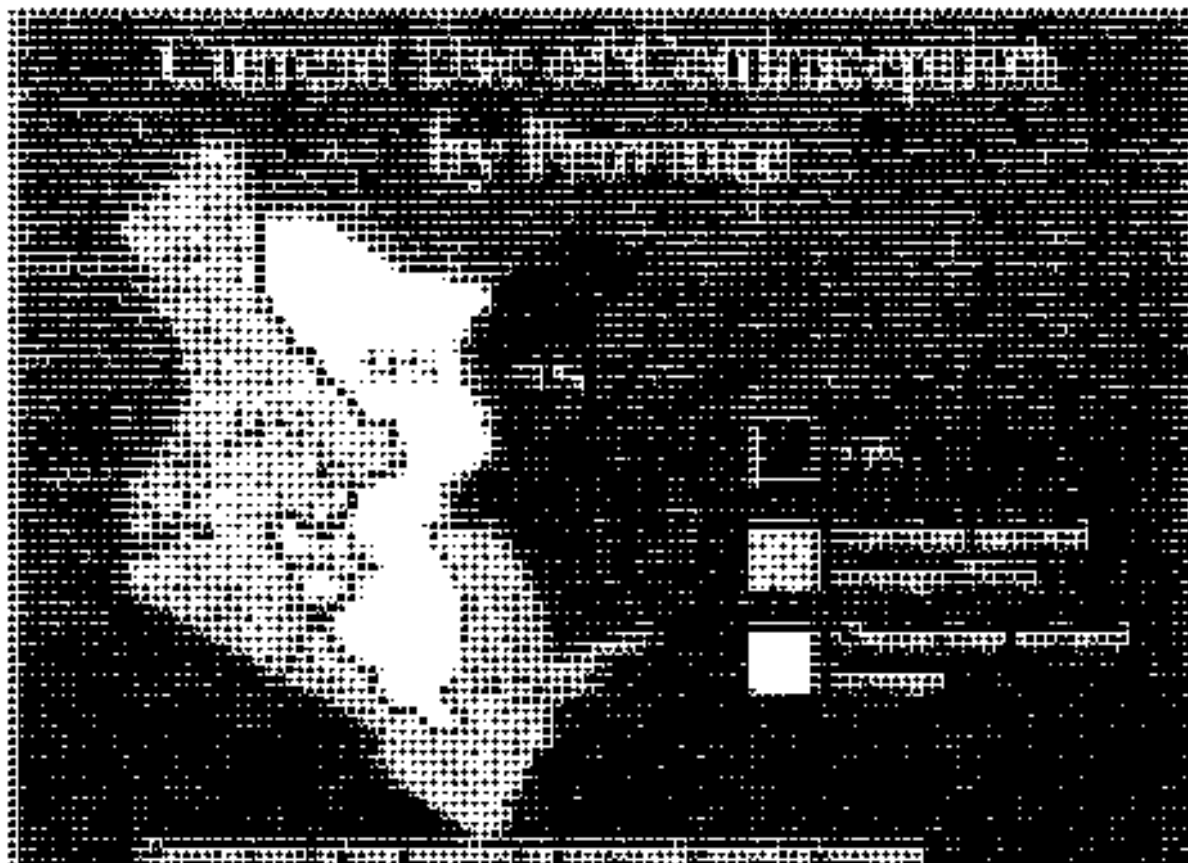
The Penal Code forbids the imposition of a death sentence on a child. The right to life is extended to the unborn child by the law, which prohibits abortion unless the life of the mother is threatened. A death sentence cannot be passed on a pregnant woman. The Penal Code further creates the offence of infanticide to protect the lives of the infants.

Kenya has declared the goal of eliminating neonatal tetanus by 2005. The Government made this declaration jointly with UNICEF, WHO/UNFPA and also established a global fund for it. Subsequently the elimination of maternal tetanus was added as a priority in acknowledgement of the fact that death from maternal tetanus is as important to the baby as neonatal tetanus. The Kenya Expanded Program on Immunization (KEPI) offers Tetanus Toxoid to pregnant women starting at about 4 months of pregnancy.

This renewed effort to eliminate maternal and neonatal tetanus (MNT), has seen the Government develop a five-year plan to eliminate MNT using the high risk approach. The program covered 7 districts in the Coast Province, with coverage of 30%, 51% and 78.9% for the first, second and third rounds, respectively. Two rounds of the campaign have been carried out in Kisumu, Rachuonyo and Busia districts with coverage of 91% and 59% for the first and second rounds respectively.

For safe motherhood, key interventions focus on antenatal care, safe delivery, family planning, essential obstetric care, post-partum, newborn and post-abortion care.

Figure 2: Contraceptive use in Kenya



The Integrated Management of Childhood Illness (IMCI) Strategy has been incorporated into all district work plans and 24 districts have already had district level training of the first level health workers. So far 1238 clinical health workers have been trained on the IMCI case management. The Government has also put in place measures to provide free medical care to children under 5 years.

The State has intensified control measures on HIV/AIDS, which has had some impact in reducing the national prevalence from 13.5% in 2000 to 9.4% in 2003.

To reduce mother to child transmission of HIV, the Programme for Prevention of Mother to Child Transmission (PMTCT) was started. The full implementation of PMTCT was realized in the late 1990's and national strategies to intervene started in Kenya in 2000. There are now 450 sites that provide PMTCT services in both public and private health facilities. Strategies include improving antenatal care and delivery services and infrastructure. A PMTCT technical working group is in place to oversee the scaling up of the PMTCT programs. The Government has registered 401 integrated and stand-alone Voluntary Counselling and Testing (VCTs) centres.

Anti-drug campaigns have been carried out through the National Campaign against Drug Abuse (NACADA). There is great participation by civil society in advocacy programs that promote survival and development of children such as Voluntary Counselling and Testing Centres (VCTs) and programs to discourage child abuse and neglect.

CONSTRAINTS

1. Poverty levels are very high with 56% of Kenyans living below poverty line. As a result malnutrition has a major impact on the well-being of children as many families can only afford a meal a day.

2. The HIV prevalence of 9.4% still remains a big challenge to the country and families with devastating effects including the increased number of orphans and its direct impact on socio-economic development.
3. The delivery of quality reproductive and child health services in Kenya is hampered by lack of equitable distribution of facilities leaving a majority of Kenyans to walk long distances to access them, poor management, the lack of adequate trained personnel, medical equipment and essential drugs, and some negative cultural and religious practices.
4. Existing social structures are insufficient and inadequately funded. This hampers the provision of the child's right to life, survival and development especially those from poor families.
5. Child mortality is high in some areas due to lack of proper antenatal and postnatal care that compromises the life of the new born.
6. The lack of effective mechanisms for birth registration hinders effective planning for children.

RECOMMENDATIONS

1. A database on nutritional status should be established and measures to combat food deficiencies intensified. A strategy of making food accessible to for those who cannot afford it should be put in place especially during difficult times such as crop failure. In the long run systems that ensures food security throughout the year are urgently needed.
2. Child mortality is still high in some areas due to lack of proper antenatal and postnatal care that compromises the life of newborn. Access to antenatal care, trained hands at delivery and postnatal care training of birth attendants in delivery care and in preventive and case management of newborn illnesses as well as recognition of danger signs must be key components of training.
3. More baby-friendly hospitals that promote knowledge on the importance of exclusive breastfeeding among families and communities as well as health workers and managers at health centres are needed. The process of transferring the Code of marketing Breast milk Substitutes from the Bureau of Standards to the Public health Law should be hastened.
4. Distribution of health facilities must be made equitable.

ARTICLE 13: CHILDREN WITH DISABILITIES

LEGAL AND POLICY FRAMEWORK

The Persons with Disability Act of 2003, has been enacted to provide for the rights, rehabilitation and equal opportunities for persons with disabilities. It provides a framework in which the rights of children with disabilities are protected.

The Children Act Section 17 states that a disabled child has the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible.

CONTEXT AND IMPLEMENTATION

The Ministry of Gender, Sports, Culture and Social Services has the overall mandate of uplifting the living standards of Kenyan's through mobilization of resources for socio-economic development. The Ministry plays a lead role in advocacy, rights and rehabilitation of persons with disabilities.

The National Council for Persons with Disability was established to oversee the implementation of Persons with Disability Act 2003. Equipment and assistive devices for children and persons with disability are exempted from taxes when imported through organizations of or for the disabled persons. A national survey of people with disabilities is proposed.

It is estimated that about 25% (750,000) children of school going age have disabilities. Ninety thousand (90,000) of these have been identified and assessed. However only 14,614 were enrolled in education programs for children with disabilities in 1999. A similar number was either at home or in regular schools with little or no special assistance.

The current Education Act is being reviewed to address the special needs of children with disabilities. Programs have been developed to integrate children with disabilities in regular schools. Following the implementation of free primary education policy, the Government set up a task force for special needs education whose findings stipulated allocation of funds as follows:

- Regular schools with special units have been allocated KES.17,000 per school per year for infrastructure to enable accessibility.
- Children with disabilities are allocated KES. 3020 per child per year compared to the standard allocation of KES.1020 per child.
- Schools catering for children with special needs get an additional KES.153,000 per school per year.
- At least one teacher trained in special education is to be posted to every primary school. This will be achieved through the ongoing distant learning programme for special education.

Meanwhile, the Government has established 77 education, assessment resource services (EARS) throughout the country to offer services for early detection and placement of disabled children. Further, Kenya Institute of Special Education (KISF), trains teachers in institutional and distance learning on children with disabilities. Community based rehabilitation programs are implemented by the Ministry of Health in the Districts.

As an initial step to ensuring that future policies incorporate the needs of children with disabilities, a national disabilities survey is being undertaken by the Central Bureau of Statistics in collaboration with other Government Departments and partners. This will provide disaggregated baseline data to facilitate the development of policy and program interventions.

Tables 19 and 20 give estimates of the number of children with disabilities and those at school and those that have never gone to school from age 5 to 17, excluding those aged 0-4.

The estimates provided here are provisional and have been generated based questions which were part of a Literacy Survey conducted in 2006 by CBS and the Department of Adult Education.

Table 19 Number of children with disabilities, 2006

Age	Sex		Total
	Male	Female	
3	8,773	7,677	16,452
4	2,785	5,369	11,140
7	1,416	3,251	6,558
8	2,612	3,277	6,325
9	2,592	1,992	4,553
10	2,543	2,073	5,013
11	1,581	1,336	2,931
12	1,012	1,476	3,318
13	1,094	1,612	3,509
14	1,052	1,773	3,749
15	1,376	1,519	3,149
16	1,154	0	2,383
17	808	1,723	2,118
Total	32,474	35,182	71,745

Source: DHS

There are more male children with disabilities than females according to the table 19 above

Table 20: Number of children with disabilities attending schools and never attended, 2006.

Age	Male		Female	
	At school	Never attended	At school	Never attended
3	3,716	3,057	5,467	2,110
4	1,304	324	4,100	925
7	3,092	249	3,088	474
8	2,026	209	2,982	255
9	2,472	102	1,741	162
10	2,733	132	1,905	125
11	1,548	56	1,253	62
12	1,709	102	1,288	78
13	1,666	160	1,676	80
14	1,736	79	1,409	71
15	1,171	51	1,219	31
16	1,164	190	954	42
17	481	35	638	19
Total	20,658	5,915	27,986	1,619

Source: DHS 2005

Table 20 depicts that majority of the disabled children were enrolled in school in the year of study

Children with disabilities attending special schools

Table 21: Children with Disabilities attending Special Schools In 2003

Year	2003		
Sex	M	F	Total
Institutions	71,241	57,584	128,825

Source: Ministry of Education

In 2003, there were 1,215 Institutions providing services for children with special needs.

CONSTRAINTS

1. Infrastructure in most public places such as schools, hospitals, recreational places and public transport are not disability friendly.
2. Most health institutions still lack means to detect disabilities early in life.
3. While the Government has improved budgetary allocation for this sector 60% of this goes to recurrent expenditure, it is still inadequate to meet the increasing numbers of people with disabilities resulting from road accidents, drug abuse and natural catastrophes. Inadequate facilities, information, expertise and personnel to deal with issues of disability especially at grassroots level inhibit the full development of children with disability.
4. Communication remains a big set back in reaching out to people with disabilities. Most communication channels assume a non-disabled person as the audience and there are few interventions using sign language, Braille or audiocassettes. None of the tools targeting behaviour change in the campaign against HIV/AIDS are made to suit people with disabilities.
5. The lack of statistics on the status of children with disabilities makes it difficult for the Government to plan adequately for them.
6. Ignorance and lack of awareness has allowed the continued violation of the rights of children with disabilities. Some cultural practices and beliefs perpetuate discrimination of CWDs in some communities where such children are considered taboo or bad omens hence parents lock them up in their houses for long hours.
7. Institutions for CWDs isolate children from the rest of society. Currently there is no proper plan for mainstreaming them. For instance, in standard schools, teachers and pupils are not sensitised to support and co-exist with CWDs.
8. Children with disabilities found in remand homes and rehabilitation schools are not adequately catered for since the institutions are meant to hold children of delinquent behaviour and do not have adequate facilities for those with disability.
9. Poverty has caused an increase in the number of cases of neglect of children.

RECOMMENDATIONS

1. Budget allocation should be increased to schools with children with special disability categories. Additional integrated and special schools and classes for children with various forms of disabilities should be set up.
2. The Government should ensure children with disabilities have adequate facilities to cater for their needs in court and in schools.
3. Special police and judicial officers should be trained in sign language to work with children with disability.
4. Special programmes to decongest remand homes should be strengthened.

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3. Special police and judicial officers should be trained in sign language to work with children with disability.
4. Special programmes to decongest remand homes should be strengthened.
5. Statistics on the status of children with disabilities should be regularly updated and maintained.

ARTICLE 14: HEALTH AND HEALTH SERVICES

LEGAL AND POLICY FRAMEWORK

The Children Act provides the right to health care and access to medical services for all children in Kenya.

The National Social Health Insurance Fund seeks to ensure that all Kenyans, including children can have access to free medical and health services.

A number of policy directives are in place to respond to the main health challenges in Kenya. Significant policy directives include the National Health Sector Strategic Plan (1999 – 2004), the National Reproductive Health Strategy (1997 – 2010) and the National Reproductive Health Implementation Plan (1998-2003).

Others include the National Cervical Cancer Screening Programme Draft (Sept 2003), National Implementation Plan for the Integrated Management of Childhood Illness (IMCI) Strategy (2000-2004), the National Malaria Strategy (2001-2010), the National Plan of Action of the elimination of FGM in Kenya (1999-2019) the National Condom Policy and Strategy 2001-2005 and the National Programs Guidelines on Orphans and Other Children Made Vulnerable by HIV/AIDS, the National Plan of Action on OVC and Kenya Demographic and Health Survey (KDHS) 2003.

CONTEXT AND IMPLEMENTATION

Right to Health and access to Health services

Health Sector Reforms outlined in the LRS aim to reduce the disparity in health resources and ensure

they are affordable and accessible to Kenyans. The Ministry of Health has continued to train more health personnel and this is confirmed by a 3.2 per cent increase in the number of registered medical personnel from 57,208 in 2001 to 59,049 in 2002. The Government has also made efforts to improve the remuneration of doctors in order to fight the brain drain. The remuneration of GoK doctors was increased by 200% in 2002 and that has resulted in the re-entry of about 1100 doctors who had emigrated owing to poor terms of service.

Traditional Birth Attendants (TBA) are being trained with support from UNICEF, WHO and AMREI among others. About 3000 had been trained by the year 2000. Their role is being redefined to enable them to act as community resource persons (CORPs) providing a linkage between the community and health facilities.

The Government recognises the role that traditional healers play in the health system. The Kenya Medical Research Institute (KEMRI) undertakes research on herbal medicine and Kenyatta University also has a research department dealing with traditional medicine. The Ministry of Health Department of Standards and Regulatory Services is also working towards the integration of traditional medicine with modern medicine.

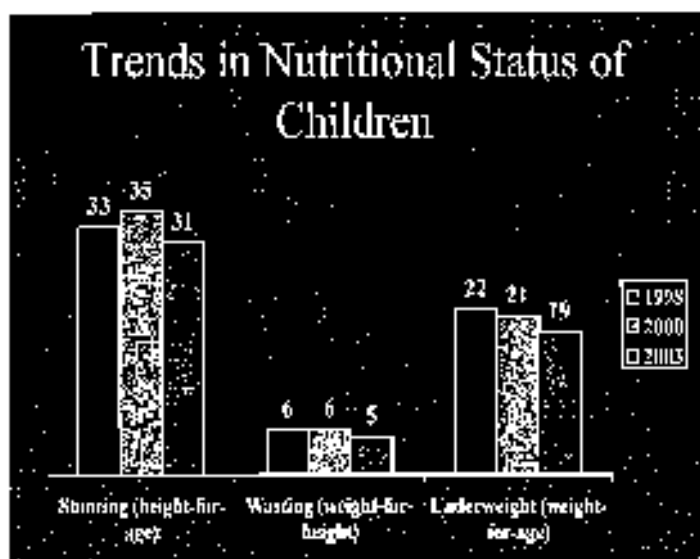
Distribution of health institutions and hospitals, beds and cots has recorded marginal increase over the years. There were 4,421 health institutions in Kenya in 2001 compared to 4499 in 2002. The total number of hospital beds and cots also rose from 58,080 in 2001 to 60,657 in 2002, representing a marginal increase of 4.4 per cent. Overall, the ratio of beds and cots per 100,000 population improved marginally in all provinces.

The Government has taken measures to increase access to primary health care by rationalising cost sharing in dispensaries (KES.10) and health centres (KES.20). The National Social Health Insurance Fund (NSHIF) Bill will further improve access to health care at all levels of health care.

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The Infant Mortality Rate (IMR) is currently estimated at 77/1,000 live births, while under-five mortality rate is 115/1,000 live births (KDHS 2003). The maternal mortality ratio was 590/100,000 live births in 1998 and 414 per 100,000 in 2003. Fifty-seven (57%) of children between 12- 23 months are fully immunised (KDHS 2003) with minimal difference between rural (56%) and urban (59%) coverage. Regional coverage varies between 9% and 79%.

Figure 3: Trends in nutritional status of children



underreported because a majority of the deaths occur at home. An estimated 9% of infants in Kenya are born with low birth weight (SDWCR, 2003). Low birth weight is probably the single most important factor in neonatal mortality. Malaria in pregnancy is believed to account for 5-10% of infant deaths associated with LBW.

By 2000, Kenya had yet to eliminate Neonatal Tetanus (NNT) (see UNICEF: Elimination of Maternal Neonatal tetanus, 2000). The goal of elimination of NNT by 2005 was consequently declared jointly by UNICEF, WHO/UNFPA along with the establishment of a global fund for it.

During pregnancy, about 90% of women are seen by a professional health provider at least once but at delivery a much lower figure is recorded for those attended to by skilled personnel (in 1998, 45%, 1999, 51%, 41% in 2000 and 42% in 2003). Only about 42% of births took place in a health facility in 1998 and 58% at home in the hands of unskilled attendants. The 2003 KDHS showed no improvement with only 46% delivering at a health facility.

As part of the effort to improve safe-motherhood in Kenya, key interventions focus on the main pillars of the safe-motherhood initiative namely: ante-natal care, safe delivery, family planning, essential obstetric care, *post-partum*, newborn and post-abortion care.

Only 15% and 9% of facilities were equipped to provide Basic Essential Obstetric Care (BEOC) and Comprehensive Essential Obstetric Care (CEOOC) respectively in 1999 (KSPA, 1999). Currently 40% of hospitals, 30% of maternity units, 3% of health centres and 5% of clinics are able to provide BEOC services. About 28% of hospitals, 15% maternity units, 3% health centres are able to provide CEOOC. A quarter of all hospitals and 15 per cent of maternity units have been assessed as ready to provide CEOOC. Some 2/5 hospitals and less than 1/2 of maternity units have been assessed to have all the elements necessary to perform the functions of the basic EOC. Most of the designated Service Delivery Points (SDPs) for family planning services are unevenly distributed (MoH, 1996). About 88% of the facilities providing family planning services offered at least three methods but with marked provincial variations. For example, about a third of the facilities in Coast and Nyanza provinces offered IUCD compared with 60% in Central province and 77% in Nairobi. Between 1993 and 1998, use of contraceptives for all methods increased minimally from 33% to 39%. This situation had not changed in 2003 (39%).

The nutritional status of under fives did not improve in the 5 years preceding the KDHS 2003 that revealed the following; stunting of 30% (11% severe), wasting of 6%, underweight of 22% and 2.6% exclusive breastfeeding rate at 4 to 6 months. Hospital data estimates 20% of pregnancies are complicated while 20% of women develop complications during birth.

An estimated 1.08 million children are born in Kenya every year. (State of the World's Children Report 2003).

The high risk period around birth presents various conditions that are responsible for up to 40% of infant mortality (NF-SSP, 1999). Neonatal mortality is often

In 1988, the highest user rate of 55% was recorded in Central Province and lowest user rate of 20% was recorded in Coast Province with a national unmet need of 24% (KDHS, 1993; KDHS, 1998).

To contribute to the reduction of infant and under 5 mortality rates the Government adopted the Integrated Management of Childhood Illnesses (IMCI) Strategy in 1997. This has since been implemented in collaboration with WHO, UNICEF and other partners including USAID, SIDA, DANIDA and World Bank. IMCI strategy is one of the National Public Health and Clinical high priority packages in the National Health Sector Strategy Plan 1999-2004. Other essential packages include Reproductive Health, Malaria Control, KLP1 HIV/AIDS and STD Control and prevention of major environmental health related communicable diseases control such as cholera, typhoid and dysentery as well as food safety. IMCI is also a component of The Poverty Reduction Strategy and the ERS. Health workers have already been trained in IMCI. So far 24 districts (35%) have initiated IMCI. A total of 1238 (7%) clinical health workers have been trained in IMCI case management while 22% of pre service medical institutions are teaching IMCI. IMCI drugs have been incorporated into the essential drug kits making available pre-referral drugs at primary level facilities. A strategic document on implementation of IMCI in the community is at an advanced stage of development.

The Polio vaccine continued to be administered to children in order to eliminate the disease.

On the National Plan of Action for Nutrition (NPAN) there are advanced plans to remove the Kenyan code of marketing breast milk substitutes from the Kenya Bureau of Standards and replace it with provisions in the Public Health Act as a safety measure for safeguarding the health of the child. Several interventions have been taken to reduce the high malnutrition rates. These include assessment of the Baby Friendly Hospital Initiative and training of health workers on infant feeding in the context of HIV, growth monitoring and promotion, micronutrient deficiency control and nutrition management in emergency situations.

Statistical data by sex, age groups, urban and rural areas covering the years 2003, 2004 and 2005 on:

Rates of infant and child mortality;

The risk of death during childhood varies by age of the child, being highest immediately after birth and decreasing as the child grows older. Available data indicates that childhood mortality in Kenya worsened in the late 1980s and early 1990s. With the recorded decline in HIV prevalence rates in the country (6.7% in 2003 to 5.54% in 2005) and improvement in child health care services, it is projected that the worsening childhood mortality indicators 14 would be reversed. The following are some of the indicators for measurement of childhood mortality rates.

IMR = Infant Mortality Rate (The probability of dying before the first birthday)

CMR = Child Mortality Rate (The probability of dying between the first and fifth birthdays)

U5MR = Under-five Mortality Rate (The probability of dying before the fifth birthday).

Table 22: Rates of Infant and Child Mortality

	2003			2004			2005		
	Urban	Rural	Total	Urban	Rural	Total	Urban	Rural	Total
IMR (per 1,000)	61	79	77	61	79	77	60	74	71
CMR (per 1,000)	41	55	47	41	55	47	39	50	45
IMR/CMR (Ratio)	1.5	1.4	1.6	1.5	1.4	1.6	1.5	1.5	1.6

Source: Kenya Demographic and Health Survey (KDHS) 2003/04

The figures for mortality rates when given for surveys of a particular year, represent some average period spanning about five years. Infant and child mortality rates record only small changes which are not recognized on a yearly basis but after a period of time on average five years. The figure given for 2003 therefore can still hold true for the year 2000 (three years before the survey) and can also hold true for 2006 (three years after the survey).

(b) Rates of immunization

Immunization in Kenya is undertaken by the Kenya Expanded Program of Immunization (KEPI), which largely follows the World Health Organization's (WHO) guidelines for vaccinating children. A child fully immunized should have received one dose of BCG, 3 doses each of DPT/Hepatitis B and Polio, and one dose of measles. The information provided in Table 19 focuses on children aged 12-23 months since this is an age group expected to have been fully immunized.

Table 23: Rates of Immunisation (Fully Immunised Children 12- 23 months)

Year	2003			2004			2005		
	Urban	Rural	Total	Urban	Rural	Total	Urban	Rural	Total
Immunized (%)	58.7	56.4	56.8	59.7	55.1	56.8	60.7	55.4	56.8

Source: KDHS 2003/04 Kenya Demographic and Health Survey

Changes in the rates of immunization are usually very minimal especially when determined from a survey. The rates when determined for a particular year represent an average and can therefore be used as representatives for some years before and after the survey.

Table 24: Immunisation coverage report for children below 1 year (2001-2006)

Antigen	2001	2002	2003	2004	2005	2006
BCG	71%	80.0%	87.01%	87.5%	84.3%	85%
OPV3	34%	62.5%	72.2%	74%	68%	71%
DPT3	60%	60%	89.1%	76%	77%	79%
Measles	32%	47%	77.5%	67%	69%	77%
Fully immunized	42%	46%	57%	55%	61%	59%

Source: KEMRI, Ministry of Health (2006)

The figures in Table 24 indicate data for both routine and campaign immunization.

(c) Rates of malnutrition

The standard indices of physical growth that describe nutritional status of children are Stunting, wasting and underweight.

Stunting: Height-for-age (stunting) is a measure of linear growth. Stunting is a condition reflecting the cumulative effect of chronic malnutrition.

Wasting: Weight-for-height (wasting) measures body mass in relation to body length and describes current nutritional status. Wasting represents the failure to receive adequate nutrition and may be as a result of inadequate food intake or recent episodes of illness causing loss of weight.

Underweight: Weight-for-age (underweight) is a composite index of height-for-age and weight-for-height. A child can be underweight for his/her age because he/she is stunted, wasted or both. Weight-for-age is a useful tool for continuous assessment of nutritional progress and growth in children. Recent studies undertaken in the country shows that malnutrition indicators have only changed slightly. Table 21 provides the malnutrition status in Kenya for the years 2003, 2004, and 2005.

Table 25: Rates of malnutrition under 5

Year	2003			2004			2005		
	Urban	Rural	Total	Urban	Rural	Total	Urban	Rural	Total
Stunting (%)	21.5	31.7	30.3	23.6	31.7	30.3	23.5	31.7	30.3
Wasting (%)	1.7	5.0	5.6	4.7	5.8	5.6	1.7	5.0	5.5
Underweight (%)	2.6	21.3	12.9	2.6	21.3	12.9	19.9	12.6	21.3

Source: KNBS (2006, 2007)

Water and Sanitation

Almost 75% of Kenyans draw their drinking water from rivers or streams. About 71% have piped water connected to their dwellings, compound or plot while 11% use a public tap, almost one in 5 households use wells as a source of drinking water the majority of which are covered or protected. Less than 5% of households use other types of water supply sources. The majority of households (53%) are within 15 minutes of their water sources (KDHS 2003). Eighty three percent (83%) of households have access to decent sanitary facilities such as a main sewer and pit latrine (1999 Census). In rural areas 21% are exposed to poor sanitary conditions as compared to 2% in urban areas.

A major development in this regard is the coming into force of the Water Act 2007.

The Kenya Government in collaboration with partners is implementing an Integrated programme on water and environmental sanitation in schools and communities. The objective is to contribute to child survival, protection and development by supporting efforts to achieve universal access to safe water supply and environmental sanitation services.

Adolescent Health

According to the KDHS 2003-2004, adolescents constitute 15% of the Kenyan population. With implementation of free primary education a large population of adolescents are in school. Adolescents are faced with various problems including drug abuse, early pregnancies and abortions, early marriages and mental problems including suicidal tendencies.

"Adolescence in Kenya - the Facts" a report by the Centre for Adolescent Health and Development indicates that 55 percent of Kenya's population is less than 19 years of age with one third of the entire population being between 13 and 19 years old. Approximately 29 percent of children work to support their families, 13 percent to cover school fees and 10 percent to buy food. Of the adolescents without education 16 percent have begun child bearing; 1 out of 5 children in primary school and 2 out of 5 in secondary school have consumed alcohol; 4 out of 10 women who die of unsafe abortion complications

are below the age of 20 with adolescents being more susceptible to pregnancy related complications; and 3 out of 10 women in Kenya have been circumcised marking a 10 percent decline from 1998.

The KDHS reveals that adolescents are engaging in delinquent behaviour early and in greater numbers than ever before. A survey by UNICEF and CAS 2003 shows 58 percent of youth had been involved in general theft and 30 percent did so due to idleness. Poverty, unemployment and drug abuse are some of the factors contributing to the increase in criminal activity among the youth.

In May 2003, the Government launched the Adolescent Reproductive Health and Development Policy to address the challenges faced by the adolescents. Youth friendly health services have been established in some health facilities. The services provided for the youth include, reproductive health services, information, counselling on drug use and early pregnancy and its effects.

The Government is also in the process of developing School Health Policy Guidelines for a safe and healthy environment. Forty percent (40%) of primary and 77.7% of secondary schools provide guidance and counselling services.

Smoking in public places has been prohibited. Moreover a Tobacco Bill is in parliament. The Criminal Law Amendment Act 2003 makes it an offence to supply and offer to children petroleum distillates, glue and other related hallucinogens. Packaging of alcohol in sachets has been outlawed to reduce the increasing sale of alcohol to children.

The Government and private agencies offer health services to street children and street families. A programme of the Ministry of Local Government and Home Affairs targeting street families within Nairobi, took children through training at rehabilitation centres and the National Youth Service (NYS). Subsequently they were provided with health services within those institutions.

“We have nurses in our rehabilitation centre and the hospital is only 500 meters away. We are happy because when we fall sick we get prompt treatment”.

Oyiaxo, 15 years old, from Kakamega.

On harmful cultural practices the Government is advocating for a rise in the legal age of marriage from 16 to 18 years to protect this age group from such practices. Measures are being put in place to protect girls from early marriages through encouragement of communities to adopt alternative rites of passage and providing the practitioners with alternative sources of income.

Adolescent health, the rates of early pregnancy and sexually transmitted infections (STIs), drug, tobacco, other substance abuse, suicide and other mental health problems.

Early pregnancy

Almost a quarter of young Kenyan women (aged 15-19) are either pregnant with their first child or are already mothers (KDHS 2003). An unintended pregnancy among young people has in the past led to disruption of their education. Decisions made by these young people on timing & number of children have also had consequences on the country's population growth, hence on the national development. Children born to very young mothers are also predisposed to higher risks of illness & death since their mothers are likely to experience complications during pregnancy. Table 26 gives the proportion of young people aged 15-19 who were either pregnant with their first child or were mothers for the years 2003, 2004 and 2005.

Table 26: Early Pregnancy

Age/Years	2003	2004	2005
15-19	23%	21%	21%

Source: DHS/KHS 2003

Sexually transmitted diseases

Information about the incidence of Sexually Transmitted Infections (STIs) is a useful marker of unprotected sexual intercourse. Tracking of STI epidemics, including HIV/AIDS, has mainly been from seroprevalence testing among pregnant women attending antenatal care clinics. The first population-based study was carried out during the 2003 Kenya Demographic and Health Survey (KDHS) which gave HIV prevalence rate of 6.7%. It is estimated that HIV prevalence rates dropped to 6.09% and 5.54% in 2004 and 2005, respectively. Table 27 provides HIV prevalence rates for 2003, 2004 and 2005. Results show that women are disproportionately affected by the epidemic.

Table 27: Sexually Transmitted Infections (STIs)- HIV Prevalence

Year	2003			2004			2005		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
15-19	0.4	1.0	5	0.36	2.73	1.45	0.22	2.42	1.31

Source: DHS

Tobacco and Alcohol Abuse

Past studies in Kenya have shown that less than one percent of adult women smoke and therefore no tabulations have been made. More men in their 30s and 40s smoke compared to those in other ages. It is recommended that women avoid alcohol during pregnancy and breastfeeding because of its effect on the health of the child and the mother.

Tables 28 and 29 show the prevalence of use of Tobacco among males and Alcohol among persons aged 15-19 respectively.

Table 28: Use of tobacco among males (%)

Years /Age	2003	2004	2005
15-19	5.7	5.7	5.7

Source: DSS (Government Campaign Against Drug Abuse (GACADA))

Table 29: Use of alcohol among persons aged 15-19 (%)

Years	2003		2004		2005	
	Male	Female	Male	Female	Male	Female
Age						
5-19	10.3	7.6	10.3	7.6	10.3	7.6
Residence						
Urban	35.4	2.4	35.4	2.4	35.4	2.4
Rural	28.1	5.4	28.1	5.4	28.1	5.4

Source: DSS/GACADA

HIV/AIDS

HIV prevalence in Kenya stands at 9.4% representing a decline from 13% in 1999. It is estimated that there were 1.02 million births in 2002. In a population of 30 million this generally reflects the large number of women in the sexually reproductive age bracket. With an HIV transmission rate of 10% during pregnancy estimates suggest 13,300 children were born with HIV in Kenya in 2002.

About 10% of reported AIDS cases occur in children under the age of five years. Most of these cases are due to mother-to-child transmission of HIV. An estimated 50,000 to 60,000 children under five years of age are infected with HIV per annum. Around 100,000 infants and children under the age of five are living with HIV in Kenya, and many more have died of AIDS. There are more than 1 million HIV orphans in the country and numerous child headed households.

Responding to the challenges posed by the HIV/AIDS scourge the Government declared HIV/AIDS a national disaster and instituted the National AIDS Control Council (NACC) in 1999 to coordinate AIDS control activities.

A notable achievement of NACC is the development and distribution of various HIV guidelines such as the National Program Guidelines on Orphans and Other Children made Vulnerable by HIV/AIDS, Guidelines for Prevention of Mother to Child Transmission (PMCTC), Guidelines for Voluntary Counseling and Testing and Guidelines on Home Based Care among others. Annual Sentinel Surveillance of the disease Progression and the 2003 KHDS have been carried out; and a National HIV/AIDS Strategic Plan for 2000-2005 made. An annual Joint AIDS Program Review (JAPR) is carried out together with implementing partners.

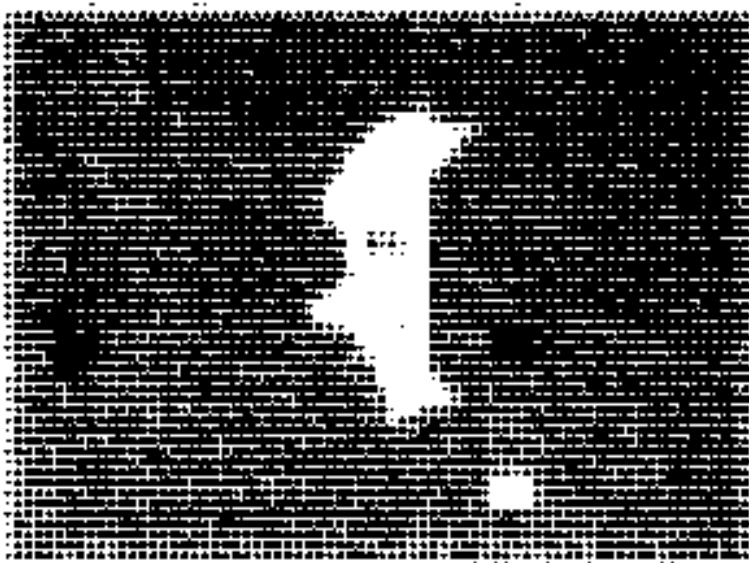


Figure 4: HIV prevalence by province

In collaboration with NGOs the Government has intensified efforts to fight the spread of HIV/AIDS through a host of Programs including setting up of 401 Voluntary Counseling and Testing Centres and 450 PMCT sites across the country, formation of a Cabinet Committee on HIV/AIDS which the President chairs and launch of the National AIDS and Sexually Transmitted Infections Control Program (NASCOPI) in addition to various advocacy and awareness programs.

Several organizations offer HIV services and most people are now aware of the existence of the disease. ARV therapy is being promoted in Kenya with treatment centres in two national teaching and referral hospitals and 8 provincial general hospitals, 16 district hospitals and 6 mission hospitals. All these facilities also have CD4 machines. About 24,000 people are on ARV therapy with a Government target of 95,000 through the "3" by "5" initiative. However limited children formulation of ARVs has hampered access to treatment by children. Though the prices have been reduced to KES. 500 per month, most Kenyans may not afford this. About 1100 health care workers have been trained on ARVs. Treatment of

tuberculosis, TB is free in public hospitals.

AIDS control units have been established in all Government ministries and departments with development sector specific plans and policies.

Through the Kenya Disaster Response Project of the National AIDS Control Council, 10% of about KES.1.4 billion has been allocated for the support of Orphans and Vulnerable Children.

**Data on the number of children affected and infected by HIV/AIDS.
Number of Children Infected by HIV/AIDS;**

Table 30: Number of children infected by HIV/AIDS, 2003

Year	2003			2004			2005		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
0-4	34,914	34,777	69,690	51,719	31,595	83,314	20,049	20,756	40,804
5-9	26,212	24,718	50,930	23,812	24,271	48,083	31,672	23,792	55,464
10-14	1,274	1,423	2,702	1,157	1,297	2,454	1,053	1,118	2,171
15-17	10,795	20,552	31,347	9,411	25,949	35,360	3,520	23,609	27,129
TOTAL	73,295	81,475	154,770	86,199	83,195	169,394	60,524	75,618	136,142

Source: KNBS 2003-05

According to the National Aids and STD Control Program (NASCCP), In 2006 it is estimated that 120,000 – 150,000 children are infected and between 20,000 – 30,000 infections occur annually. One third of infant deaths are attributable to HIV/AIDS.

Number of Children Affected by HIV/AIDS

Table 31: Estimated number of orphans by type by 2003

Maternal orphans	62,430
Faternal orphans	325,052
All AIDS orphans	387,482

Source: NASCCP

Table 32: Estimated number of orphans by 2004

Maternal orphans	1,414,000
AIDS	849,000
Non-Aids	255,000
Faternal Orphans	1,337,000
AIDS	497,000
Non-Aids	840,000
Dual Orphans	439,000
Non-Aids	390,000
AIDS	49,000
Total Orphans	2,311,000
All Aids Orphans	1,044,000

Source: OVCNIP Programme

Table 33: Number of orphans 2005

Maternal orphans	1,514,000
AIDS	245,000
Non-Aids	568,000
Paternal Orphans	1,408,000
AIDS	568,000
Non-Aids	541,000
Dual Orphans	472,000
Aids	192,000
Non-Aids	90,000
Total Orphans	2,450,000
All Aids Orphans	1,191,000

Source: UNICEF

Number of Children heading households due to HIV/AIDS

The information provided here are estimates for the number of all children headed households. There are no estimates for households headed by children as a result of HIV/AIDS. The estimated number of children headed households by 2003 was 61,171 (CBS, 2003). According to the Rapid Assessment, Analysis and Action Planning Process RAAAPP (2004), about 12% of Kenyan households are comprised of orphans looking after themselves.

Number of orphans of HIV/AIDS living in extended families or institutions

Though there are HIV/AIDS orphans living in extended families and institutions, no survey has been undertaken to estimate the figures.

Malaria

Malaria remains the most common cause of mortality in children aged under five in Kenya. Twenty million Kenyans are affected annually and 26,000 children under five years of age (72 per day) die every year. In addition pregnant women suffer severe anaemia and are likely to deliver infants of low birth rate as a result of contracting malaria. It is estimated that 170 million work days are lost every year due to malarial illness thus adversely affecting the country's economic development.

About 15% of children sleep under a net while 5% sleep under insecticide treated nets, ITN. The proportion of pregnant women sleeping under a net is 13% while 4% sleep under ITN. About 24 % pregnant women taken appropriate anti-malarial (SP) for intermittent treatment twice in pregnancy. Only 6% of children under five take appropriate anti-malarial within 48 hours.

The Government has put malaria control measures as indicated in the National Malaria Strategy (2002-2005). Intervention areas include management of malarial illness, vector control, control of malaria in pregnancy and control of malarial epidemics. Tax on imported mosquito nets has been waived and prices subsidised. Various ways of increasing ITN coverage and targeting the poor have been implemented including highly subsidised or free ITNs.

The country has benefited from the Global Fund for Malaria, HIV/AIDS and TB.

CONSTRAINTS

1. Rural areas face acute shortages of professionally qualified staff with more than 80% of the doctors based in urban areas where they care for 20% of the population. There is an acute shortage of

Public Health Officers, Public Health Technicians, Nutrition Technicians and Medical Social Workers who are supposed to spearhead the crusade of preventive as opposed to curative medical care.

2. Available health facilities cannot meet the demands of health care. The few hospitals are normally overpopulated with patients sharing beds. The recent reduction in rationisation of cost sharing in dispensaries and health centres resulted in a 300% workload increase in the facilities. Some facilities lack even basic drugs and equipment to meet the high demand.
3. Some regions are inaccessible with impassable roads especially during rains. This hampers access even where health care services are free.
4. The "2004/2005 Estimates of Recurrent Expenditure", June 2004 shows the net estimate of the Ministry of Health for financial year 2004/2005 amounts to KES. 15,900,389,780 (Approximately US \$212,000,000) compared to the net provision of KES. 15,936,440,460 for 2003/2004 financial year reflecting a decrease of KES. 36,051,100 (About US \$481,000).
5. A large population still encounters food shortage due to food insecurity. This is compounded by the recurrent natural disasters such as floods and drought in various parts of the country.
6. The multi ethnic status of the country makes it difficult to promote primary health care and to eliminate harmful practices.
7. The pandemic remains a threat to the provision of quality health care to children. Moreover, paediatric formulation of ARVs is not readily available for children in public facilities.
8. Children orphaned children by HIV/AIDS are still stigmatised.

RECOMMENDATIONS

1. There is need to employ more health personnel especially those that deal with primary health.
2. The government in collaboration with partners should equip health facilities and ensure accessibility and availability to all people. They should also train more community health workers to enable them deliver adequate services. Mechanisms need to be established for linking the community own resource persons with the health facilities.
3. The Government in collaboration with partners should improve the infrastructure and mobilise the communities to change their attitudes of complacency.
4. The Ministry of Health budget need to be increased to 15% of the National budget. Other health sector ministries also need more funding. There is still need for specific budget that goes directly to child health care/welfare.
5. There is need to subsidise farm inputs and assist farmers to produce more food. There is also need to improve seed quality and encourage diversification of food. Improved data collection and management will help in early recognition and response to disasters.
6. The multi ethnic status of the country makes it difficult to promote primary health care and to eliminate harmful practices. More efforts need to be put in awareness creation and communication for behaviour change.
7. The government needs to step up sensitisation to reduce stigma on children affected by HIV/AIDS. And in addition, provide them with free medication, food and shelter for children orphaned by HIV/AIDS. Paediatric formulation of ARVs should be made available in all health facilities offering ARVs.
8. The government and private sector need to improve the water management and distribution network to ensure all Kenyans have access to clean drinking water. Then there should be measures to penalise those who pollute the water.

CHAPTER 7 - EDUCATION, LEISURE AND CULTURAL ACTIVITIES

ARTICLE 11: RIGHT TO EDUCATION

LEGAL AND POLICY FRAMEWORK

Education and training in Kenya is governed by the Education Act Cap 211 and other related Acts of Parliament, including the Teachers Service Commission, TSC Act, Kenya National Examinations Council, KNEC Act, Adult Education Act, University Acts and various Acts and Charters of Universities. Currently, the Education Act is under review in order to harmonize all related Acts and to address emerging and reform issues such as Free Primary Education (FPE), HIV/AIDS, food and nutrition, and drug abuse.



Every child has a right to education.

5, no child can be discriminated against on any ground including disability. The Disability Act, 2003 provides that no child with disability will be denied the right to education as provided for in The Children Act and the UNCRC and the ACRWC. The Children Act Section 13(1) and 18(1) protect children from physical and psychological abuse (Section 12, Children Act). The Persons with Disability Act (Section 76(3) (b)) provides that any person or institution providing any special care or medical attention to children with disabilities must have regard to the child's physical, emotional and educational needs.

A policy guideline on child mothers is in place. Children who get pregnant while in school are now being re-admitted back to school not necessarily where they were before after delivery of the baby to complete their education. This ensures that the girl child is not denied the right to education and upholds the principle of non-discrimination.

In the year 2003, FPE was introduced with the objective of enhancing access, retention, and equity in education. The goal was and still is to attain Universal Primary Education (UPE) and Education for All (EFA), which is a Millennium Development Goals (MDG).

CONTEXT AND IMPLEMENTATION

Corporal punishment was outlawed in schools through Legal Notice No.56 of 2001 and a circular sent to all head teachers regarding the ban. The Ministry is also strengthening its guidance and counselling division both at headquarters and school level and is also developing guidelines on alternatives to corporal punishment in collaboration with stakeholders.

On protection of children, the Ministry of Education has developed a Child Rights Curriculum at pre-school (ECD) and teacher training colleges. In addition, the Ministry of Education in collaboration with the NGO Kenya Human Rights Commission has developed and disseminated a Human Rights Handbook for primary schools.

During the reporting period there has been accelerated co-operation between the GoK and a large number of development partners who are engaged in strengthening Education Sector activities. Key partners include USAID, covering 78 primary and non-formal schools in North Eastern Province and Coast Province and the African Development Bank fund covering 350 schools. Gender balance is a critical concern in interventions addressing these areas. Furthermore there are a large number of local NGOs, FBOs and CBOs who have rendered invaluable support for enhancing access to formal and non-formal education especially in the difficult regions such as slums and ASAL regions. The Government directly funds non-formal education centres that meet specified laid down criteria. Further, to streamline service delivery in the sub sector the Government is finalizing a policy on Non-Formal Education in Kenya.

Under FPE the pupil to text book ratio is 1:3 while the toilet to pupil ratio has improved from 1:100 to 1:70. Toilet facilities must take into consideration gender concerns in construction. The on-going teacher recruitment exercise is intended to improve teacher pupil ratio, which currently varies from 1:35 to 1:100 depending on the region.

Table 34: Enrolment in primary schools by province for 2002 and 2003

Province	2002			2003		
	Boys	Girls	TOTAL	Boys	Girls	TOTAL
Coast	204,071	169,485	373,556	242,336	204,540	446,876
Central	397,152	398,335	795,487	425,034	423,651	848,686
Eastern	577,956	578,977	1,156,933	641,562	625,840	1,267,401
Nairobi	72,436	72,439	144,875	134,782	88,783	205,352
Rift Valley	798,881	711,704	1,543,585	875,002	838,162	1,713,241
Western	381,393	383,787	768,180	509,883	508,739	1,018,662
Nyanza	560,654	534,885	1,095,539	649,455	622,766	1,272,241
North Eastern	34,626	15,405	50,032	41,688	19,129	60,817
Grand Total	3,030,169	2,898,072	5,928,241	3,519,742	3,331,634	6,851,376

The total number of primary schools in the country in 2003 was 17,832 with an enrolment of 6.8 million for school ages 6-13 while in 2002 enrolment was 5.9 million. While Free Primary Education is not compulsory, the net effect of introducing FPE has been to increase pupil enrolment by 1.3 million in 2003 and by 0.2m in 2004. This is indicated below.

Special education

A number of special education units for all categories of children with disabilities have been established. These units are found in primary, post-primary school and vocational training centres. The integration of children with disabilities within regular schools has increased their educational opportunities and alleviated the threat of isolation building a sense of dignity and promoting self-reliance. The Government policy is to encourage the integration of children with disabilities into regular schools in order to ensure

their full participation in the learning process. Under the free primary education program children with disabilities receive slightly more than double the funding allocation from the Government. Every public primary school receives KES.10,000 to make them environmental disability friendly.

District education and training boards are encouraged to establish special schools for children with disabilities. They are required to take into account the special needs of these children when putting up physical facilities. There is an established process of identifying children with disabilities and encouraging families to enrol them in school. The Government is also addressing the curriculum needs of children with disabilities who cannot fully fit within the existing education system. Within the Ministry of Education, a Special Needs Education unit (Quality Assurance and Directorate of Basic Education) was created in 1972 followed by Education Assessment and Resource Centres countrywide. A Special Needs Education Division headed by a Deputy Director Education was established in 2004. These changes were necessary in order to manage the provision of education to special needs children. To cater for education delivery, Kenya Institute of Special Education was established to train teachers. Children with less severe disabilities are taught with other children under the Kenya Integrated Programme.

Non Formal Education (NFE)

The government recognizes the need to develop NFE as a complementary strategy to achieve FFA. An NFE final draft policy and curriculum are in place. A few NFE teachers have been trained on basic pedagogical skills. The programme has been incorporated in the Sector Wide Approach (SWAP) to programming.

Under the GOK/World Bank I PL support, NFE centres in informal urban settlements are receiving funds. A total of fifty nine NFE centres have already received funds with each child getting KES.1,020 for purchase of instruction materials. The World Bank has also pledged to extend I PL support to children in NFE centres countrywide.

Secondary education

Although secondary school education is not free, there are bursaries for needy children to make it accessible to all. Enrolment in secondary schools has been steadily increasing, for example in 2002 enrolment went up by 5% from 801,510 in 2001 to 847,287 with girls comprising 47.2% of total enrolment.

The quality of education in secondary schools has greatly improved following recent reforms and restructuring in the administration of education.

There is near parity between boys and girls at secondary school level with a ratio of 50.06%: 49.93%. Differences emerge among regions; in North Eastern it is 55: 45 (boys to girls) whereas Nairobi ratios stand at 42.2:57.7 (boys to girls). The country is set to achieve the Millennium Development Goal (MDG) No. 3 on gender in this respect.

University education

University education forms the apex of Kenya's education and training. Middle level colleges including national polytechnics and teacher training colleges provide additional alternatives to post-secondary school education. Access to University education is hampered by lack of adequate funding and facilities.

25,500 out of 49,000 Kenyan youth gain admission to public universities. The annual intake into public universities is 10,000 students on regular programmes. In addition, there are 8,000 students on self sponsorship. Under private universities there are about 2500 students. About 5,000 go to foreign universities for undergraduate studies.

The number of female students is still low standing at 32.9 percent in the year 2003/2004. There has been an increase in enrolment of students in the six public Universities by 18.6 percent from 52,900

students in 2001/2002 to 62,876 in 2003/2004 academic years. Undergraduates' form 94.9 percent of the total student population, while the female population comprises 35 percent, representing an increase of 1.2 percent compared to the 2001/2002 academic year. The Government has licensed 15 private universities besides the existing 6 public universities. Efforts towards attainment of gender parity are being made through admission of girls at a cut-off point which is lower than for boys. For 2003 candidates cut-off points for girls was 65 while for boys was 66 up from 65 and 64 in 2002 for boys and girls respectively.

Guidance and counselling

Currently, 75 percent of schools and teacher training colleges have guidance and counselling programs. At secondary school level, the Teachers Service Commission has appointed teachers to head guidance and counselling departments in 75 percent of schools. Various educational institutions training teachers have also included guidance and counselling as a major subject and certificates offered at diploma, bachelor and master's level. Effective guidance and counselling services minimize cases of indiscipline.

Encouraging regular attendance

Strategies being implemented to encourage regular attendance at school and reduce drop out rates include providing bursaries to secondary schools to cater for poor children; provision of text books in all primary schools; a school feeding programme in arid and semi-arid regions and re-entry of the child-mother to school.

Table 35 shows information on rates of literacy, rates of enrolment from pre-school to secondary, percentage of completion, number and percentage of drop outs and repetition, and ratio of teacher per child .

Table 35: Enrolment in public pre-primary, primary and secondary school by sex

Level of Education/ Statistics/ Indicators	2003			2004			2005		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
PRE-PRIMARY									
Enrolment	876,477	795,656	1,672,133	873,417	804,024	1,677,441	870,028	813,347	1,683,375
Gross Enrolment Rate	58.5	55.1	56.8	58.5	55.0	56.8	59.6	56.2	57.9
Net Enrolment Rate	31.0	31.0	31.0	31.0	31.0	31.0	32.1	31.1	31.6
PRIMARY									
Enrolment	1,671,345	3,485,126	5,156,471	1,818,836	3,573,520	5,392,356	1,900,355	3,988,110	5,888,465
Gross Enrolment Rate	101.9415	100.5128691	102.7550447	104.8069106	101.5461902	104.8069106	104.8069106	104.8069106	104.8069106
Net Enrolment Rate	80.6	80	80.4	82.7	82	82.4	82.1	82.6	82.2
Primary Completion Rate	71.0	68.7	69.2	80.3	74.1	76.2	84.4	76.5	79.9
Drop out rate	2.1	3.6	2.8	-	-	-	-	-	-
Repetition Rate	10.1	5.4	9.6	-	-	-	-	-	-
Number of Teachers (quantity)	104,670	73,972	178,642	95,142	76,647	171,789	55,107	73,526	128,633
Pupil/Teacher Ratio			10.1			11.5			10.1
SECONDARY									
Enrolment	650,750	471,761	1,122,511	689,006	454,129	1,143,135	491,360	405,669	897,029
Gross Enrolment Rate	29.7	27.4	28.1	32.1	26.6	29.9	29.9	29.9	29.9
Net Enrolment Rate	8.4	16.5	16.6	15.7	16.1	15.9	9.4	16.5	15.8
Secondary Completion Rate	90.2	89.5	89.5	91.5	92.5	89.6	92.1	93.4	91.0
Number of Teachers (quantity)	29,576	17,136	46,712	31,146	8,190	47,564	30,948	6,477	47,425
Pupil/Teacher Ratio			8.6			15.4			19.0
Drop out rate	7.0	6.9	7.0	-	-	-	-	-	-
Repetition Rate	1.5	1.1	1.4	-	-	-	-	-	-

Source: Ministry of Education

A gradual increase over the years in pupil enrolment is evident in all the levels of education. Completion rates are higher among boys than girls.

CONSTRAINTS

1. There are no centres of excellence to tap the gifts highly talented children.
2. The slow growth of secondary school institutions has also contributed to the limited number of children travelling from primary to secondary school. The proportion of male and female children progressing from Form 1 to 4 has declined from 95% in 1996 to 80.7% in 2000.

The transition rate from primary to secondary schools in 2003 was 42.3% indicating that only a few pupils from primary move to secondary school. This low transition rate has been attributed to high poverty levels among the households, which stands at 56%.

Harmful cultural practices such as early marriages and FGM are still prevalent and hinder retention of children in schools.

3. HIV/AIDS has left many children without care givers and led to child-headed families who have to balance being in school and providing for their siblings.
4. In ASAL areas, distances to school are vast and children have to cover long distances often endangering their lives and discouraging them from remaining in school.
5. Although corporal punishment has been banned, a few teachers still resort to forms of discipline that may not be in conformity with Ministry of Education guidelines.

"There is a lot of caning and pupils are abused by teachers. Other forms of punishment include cutting grass from 6 am-7 pm, collecting cow dung, sitting in the sun for a long period with a blanket over the head, being beaten with a pipe with your head under a table, being slapped and caned, fencing the school, uprooting a tree trunk, unreasonable suspensions and abuse from teachers".

Innocent Musa, 15 years - Isiolo.

6. In many parts of Kenya, a high proportion of unqualified and untrained teachers adversely affect quality of pre-primary school education.
7. ECD provision does not fall under the governments budget thus denying children who cannot afford education an opportunity
8. Provision of Vocational training is not harmonized.

RECOMMENDATIONS

1. A process of identifying gifted and talented children and the necessary curriculum as well as their placement needs to be developed.
2. The process of awarding bursaries for secondary education needs to be streamlined and coordinated.
3. Professionally trained guidance and counselling personnel must be recruited to strengthen services to students at all levels.
4. The big teacher shortage caused by high enrolment must be fully addressed by way of recruitment that began recently.
5. Cases of corporal punishment, no matter how isolated, must be monitored and documented in order to ensure that interventions have the necessary impact.
6. ECD learning should be harmonised with the formal learning system.
7. There should be enhanced collaboration between the government and stakeholders to improve and increase learner friendly infrastructure.
8. Vocational training should be harmonised to cater for children who do not access secondary education.

ARTICLE 11: AIMS OF EDUCATION

LEGAL AND POLICY FRAMEWORK

Recent policy initiatives have focused on the attainment of LRA and UPE. The initiatives are contained in the 1999 Report by the Commission of Inquiry on the Education System (Koech Commission), Education Sector Review 2002/03 and the 2004 Draft Sessional Paper: National Plan of Action on EFA. Key

concerns are access, retention, equity, quality and relevance, and internal and external efficiency within the education system.

The Government is committed to the provision of quality education and training as a human right for all Kenyans in accordance with international conventions, such as the EFA goal, and is developing strategies for moving the country towards the attainment of this goal. The implementation of Free Primary Education (FPE) is a step towards the attainment of UPE and a key milestone towards the realization of the EFA goal.

Aims, Goals and Objectives

The overall aim of Education is to achieve FFA by 2015 as indicated above in line with the national and international commitments and obligation. The following objectives have been set based on national and international aims and goals:

At Pre-primary and Early Childhood Development -

1. To lay a foundation for self confidence and free expression, and develop an appreciation of other people's needs and views to help them appreciate their own culture ; -To provide an all round development of the child in ages 0-6yrs. Objectives (2) to (5) relate to primary schooling
2. To ensure that all children, including girls, children with disabilities, children in difficult circumstances, and those from marginalized/vulnerable groups, have access to and complete free and compulsory primary education by 2010;
3. To enhance access, equity and quality at all levels of education and training by 2010;
4. To eliminate gender and regional disparities in primary and secondary education by 2015;
5. To ensure that the learning needs of all, young people and adults are met through equitable access to appropriate learning and life skills programs by 2015

Special education

To assist persons with disability to develop towards realization of full participation in social life, development and equality.

Technical training

To inculcate the vocational and entrepreneur skills necessary for self-employment.

University

To educate and train high level manpower needed for alleviating development through industrialization of the economy.

CONTEXT AND IMPLEMENTATION

The effectiveness of the current 8-4-4 structure and system has also come under increasing scrutiny in light of the decline in enrolment and retention particularly at the primary and secondary school levels in the last decade.

To realize the objectives outlined above, the Ministry has identified and is using the following indicators to monitor Education delivery:

1. Attainment of UPE and EFA by 2015;
2. Achievement of a transition rate of 70 percent from primary to secondary school level from the current rate of 47 percent, paying special attention to girls' education by 2008;
3. Enhance access, gender, equity and quality in primary and secondary education through capacity building for 45,000 education managers by 2005. On capacity building for education managers, by November 2004, a total of 19,000 head teachers, 1100 zonal inspectors of schools and 150 district education officers had been trained in financial management. The remaining 24,900 will have been trained by end of 2005.

1. Construct/renovate physical facilities/equipment in public learning institutions in disadvantaged areas, particularly in ASALS and urban slums by 2008. A grant of KES. 50,000 has been given to each primary school for water harvesting and sanitation. The grant is to be reviewed annually.

Using these indicators, the MOEST has taken several steps to follow up on its programs. The primary school curriculum was reviewed and rationalized in 2002 and became operational in year 2003. It will take 4 years to phase out the old curriculum. MoEST has a directorate responsible for implementation, quality assurance and standards. Children are taught practical subjects such as home science, agriculture, arts and crafts in order to inculcate vocational and entrepreneurial skills. They are taught to appreciate and respect the environment through clubs and societies and competitive festivals.

The Government recruits highly trained teachers for all levels as assurance to children's rights to quality education, retention, security, safety and health guarantee. There is a shortage of school inspectors and teachers at all levels an issue that is being addressed through annual recruitments.

On religious guidance in schools, individuals and educational management boards (school management committees, SMC and board of governors, BoGs) are required to respect all rights of children including the freedom of worship. Religious education is also incorporated within the school curriculum.

The curriculum is developed at the Kenya Institute of Education, KiE through the National Centre for Early Childhood Education, NACECE in collaboration with other stakeholders with funding from the World Bank. It addresses the child's environment with the aim of developing effective cognitive and physical abilities. It is, however, greatly influenced by the competitive nature of the primary school curriculum where Standard 1 children are required to have a level of mastery of linguistic, numerical and literacy skills.

Teachers are trained on the curriculum facilitated by Early Childhood Development, LCD officers at designated District Centres for Early Childhood development, DICECE.

In ASAL districts, the school feeding programme has been extended to pre-schools in 29 districts and the program also runs in Nairobi slum areas.

Table 36: Number of Pre-primary schools and teachers 1999 - September 2003

Year	No. of Schools	Boys	Girls	Total	Trained	Untrained	Total
2003	28,176	720,144	721,724	1,441,868	24,414	39,285	63,699
2001	27,573	590,816	572,716	1,163,532	22,311	24,808	47,119
2000	26,294	558,130	538,499	1,096,629	19,408	23,201	42,609
1999	24,429	544,644	519,239	1,063,883	17,541	22,750	40,291

Parity in the enrolment between boys and girls is being achieved. There are more untrained than trained teachers in pre-primary schools.

CONSTRAINTS

1. There is a shortage of school inspectors and although the Government recruits fully trained teachers for all school levels the assurance of children's right to quality education, school retention, security, safety and health in education is affected by the shortage.
2. The lack of adequate physical facilities hampers efforts to secure the right to education for every child.
3. Inadequate budgetary allocation does not translate to better quality education as the largest portion of the budget goes to paying teachers salaries.

4. Bursary given to students is inadequate.

RECOMMENDATIONS

1. Recruit more teachers and school inspectors to enhance quality of education offered in schools;
2. Provide physical facilities where they are lacking and expand the existing ones;
3. Increase budgetary allocation; and
4. Need for a mechanism to identify needy students who should access full education bursary.
- 5.

ARTICLE 12: LEISURE, RECREATION AND CULTURAL ACTIVITIES

LEGISLATIVE AND POLICY FRAMEWORK

The Children Act emphasises the responsibilities and duties of a child (Section 21(b), (d) and (e)). These provisions recognize that children have a role to play in preserving and strengthening social and national solidarity and to support the development of positive cultural values of their communities through their relationship with other members of that community. Section 17 of the Act provides for leisure, play and participation in cultural and artistic activities for the child and spells out the penalties for those who infringe on this right. The Educational Act requires schools to provide an enabling environment to ensure that children have time to play and participate in leisure activities.

A Draft Cultural Policy addresses the culture-based conflicts that affect the welfare of children. Such conflicts take the form of ethnic and religious differences, inheritance of property and succession. The Draft Policy also recognizes, provides for and supports cultural practices that do not violate the rights of children. The right to leisure, recreation and cultural activities cannot be enjoyed independently or in isolation. For example the right to education provides an opportunity for the enjoyment right in Article 31 with children being allowed time to participate in recreational and cultural activities. The Industrial Property Act of 2001 protects art galleries, books, innovation sites and monuments for children's leisure and learning.

The Ministry of Gender, Sports, Culture and Social Services will protect and promote art and creative talents of children and youth through the establishment of national art galleries.

CONTEXT AND IMPLEMENTATION

The Government funds institutions at different levels to ensure the conservation and promotion of Kenya's immovable heritage for the benefit of children and future generations. The Government has created and sustained an enabling environment in which performing arts such as, music, drama, dance, recitals, narratives, story-telling, film and poetry thrive for the benefit of children and the general public.

Clubs and societies in schools provide children with an avenue for rest, leisure and participation in cultural rights and arts.

Through grants and capacity building, the Department of Culture supports creative expression as a means of reviving and revitalizing dying languages, traditions and practices that served to promote the dignity of children in the African family. The Government supports and promotes the use of music and language in all learning institutions as a means of transmitting and promoting positive culture and at the same time discouraging and eradicating retrogressive cultural practices that negatively affect children.

Games, sports, recreation and entertainment are important for intellectual, emotional, physical development and relaxation of the mind and body of the growing children and youth. The Government has constructed sports stadia at districts headquarters and makes them available for use by youth and school children within their localities at a minimal cost or free of charge. The stadia are maintained and

equipped by the National Sports Stadia Management Board (NSSMB).

The Government has also encouraged the revival, development, research and popularisation of traditional games and sports that enhance the quality of recreational activities and entertainment locally and internationally.

The Government has undertaken to encourage the protection of family values and the rights of the children within the family. Conflicts that are culture-based and directly affect the welfare of the child, such as ethnic and religious differences, inheritance of property, succession, and disputes over land burial and marriage have been tackled through various mechanisms outlined in the Draft Cultural Policy.

Through the Department of Culture the Government encourages the existence of faiths and beliefs that teach respect for life, personal liberty and peaceful co-existence among Kenyans. At the same time it will discourage and fight retrogressive cultural practices, beliefs, faiths and manipulations that work negatively, are injurious, or infringe on individuals and children's rights. Such practices include female circumcision, early marriage, child mothers, wife battering, widow inheritance, some death taboos and ceremonies and extreme religious philosophies.

CONSTRAINTS

1. Play and leisure are not given adequate time by parents and teachers. Some private schools are located in unhygienic places with minimal or no play grounds.
2. Negative or retrogressive cultural practices are so entrenched to some cultures and traditions that it may take a long time to eradicate them. For example FGM, widow inheritance, and childhood marriages.

∴ "Some girls do not go to school at all and if they do, the drop out rate is high due to female circumcision leading to pregnancy and then marriage".

∴
∴ Child from Eastern Province.

RECOMMENDATIONS

1. Private schools should be registered only when they are able to provide space for play grounds.
2. More efforts should be put to sensitize communities to abandon the harmful cultural practices which impact negatively on the education of children.

CHAPTER 8: SPECIAL PROTECTION MEASURES

ARTICLE 23: REFUGEE CHILDREN

LEGISLATIVE AND POLICY FRAMEWORK

The Children Act identifies children who are refugees as children in need of care and protection. The Act places responsibility for their care and protection with the Government which, is also charged with the responsibility of assisting them to be reunified with their parents or families.

The Refugee Act has been passed by parliament. The Act makes provisions on standards and procedures for asylum seekers and un-accompanied refugee children. It sets out their rights and responsibilities while in the country.

CONTEXT AND IMPLEMENTATION

Kenya continues to host thousands of refugees from neighbouring countries. Education, health care and nutrition services are provided to refugees through collaboration between the Government and partners like UNHCR.

The Department of Refugees has been moved from the Ministry of Home Affairs to a new ministry created in the Office of the President. This has led to increased funding of programmes to support refugee camps, and it has been recommended that children receive adequate attention.

According to the government reports refugee children are classified among vulnerable groups and therefore get special attention. Issues affecting the girl-child like sanitation have been addressed through provision of separate toilets. Women and girls get priority in issues of food and education. The workload for children living in refugee camps has been reduced with special emphasis on the girl child. Schools have been introduced and the 8-4-4 curriculum is taught in refugee camps.

The UNHCR cooperation with the Government is meant to increase support of various programmes, especially those targeting children in the refugee camps.

CONSTRAINTS

1. Language barriers and stigmatisation of refugees by local communities are a constraint to securing the rights of refugee children. There are few interpreters in refugee camps and in schools for the refugees, which limits communication and thereby access to other rights.
2. Some refugee camps have become conduits for infiltration of small arms and trafficking of drugs which has exposed refugee children to risky situations in the camps.
3. There are difficulties in tracing family members and relatives of un-accompanied refugee children. This is further compounded by lack of cooperation from some foreign embassies in assisting in relocation and reunion with parents.
4. There are no special programmes to cater for children with special needs in the camps.
5. The Government lacks adequate data on refugee children and this hampers Government efforts to support children in the camps.

RECOMMENDATIONS

1. The Refugee Bill should be enacted as a matter of urgency with specific provisions and criteria on the protection for asylum seeking and refugee children.
2. There is need to carry out a baseline survey on the status of accompanied and unaccompanied refugee children in order to put protection measures in place.
3. There is need to build the capacity of the refugee program including training of all relevant personnel especially within the Government.
4. Proper channels for tracing families should be put in place.
5. Officials dealing with issues of refugees should be sensitised on the provisions of the JNCRC, the African Charter on the Rights and the Welfare of Children (ACRWC) and the Children Act.
6. Refugee status should include internally displaced children in conflict areas to enable them access services such as education, health, and other social services.

ARTICLE 15: CHILD LABOUR

LEGAL AND POLICY FRAMEWORK

The Children Act Section 10 protects children from economic exploitation and the worst forms of child labour.

The Employment Act protects children under the age of 16 from employment in industrial undertakings.

Kenya ratified ILO Convention 182 on the worst forms of child labour in 2001 and has since developed a draft child labour policy. ILO Convention 138, which Kenya has also ratified, sets out the minimum age for admission into employment. A taskforce has been put in place to carry out a review of Kenya labour laws with emphasis on children issues.

CONTEXT AND IMPLEMENTATION

A comprehensive survey carried out in 1998/1999 indicates the extent of child labour in Kenya and found that 1.9 million children aged 5-17 years work for pay, profit or family gain.

The Government in collaboration with other stakeholders has, through funding from International Labour Organisation/International Program on the Elimination of Child Labour (IPEC) program, initiated projects targeting the elimination of the worst forms of child labour. The time-bound program was launched in early 2005 targeting children subject to the worst forms of child labour.

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

Several organizations and other partners support income generating activities targeting parents as a way of keeping children in school.

The Child Labour Division of the Ministry of Labour coordinates the activities of child labour. Under the ILO/IPEC program the GoK has put in place a National Steering Committee that directs activities on child labour. Kenya has been a member of the global movement against child labour and has participated in several international events supporting this position.

(c) Number of children involved in child labour, indicating type of work.

Kenya conducted a survey in 1998/99 which has the most accurate data on child labour and type of work. There are however programs that have been undertaken by the Government and different agencies to prevent and withdraw children from child labour.

Table 37 gives the number of children and the type of work as at end of 1998.

Table 37: Number of children in child labour and type of work(1998/99)

Economic Activities	Age of the Children								Total
	Males				Females				
	5-9	10-14	15-17	Total	5-9	10-14	15-17	Total	
Agriculture & Forestry	60462	55281	50247	165990	66449	102105	119014	187568	753558
Mining & Quarrying	636	1776	502	3214	-	-	1481	1485	4699
Manufacturing	1951	1718	1236	4905	-	610	1010	3966	13430
Building & Construction	-	246	1010	1256	-	-	-	1256	3295
Wholesale, Retail trade, Restaurants & Hotels	750	4075	2700	10525	710	4377	6885	12222	29341
Transport & Communication	712	-	4108	4820	304	511	910	795	5607
Finance, Insurance, Real estate & Business services	-	264	1202	1466	-	2115	1171	3486	5157
Other services	3541	6300	5044	15285	3704	10305	10400	14709	50714
Private households with or without parents	2055	1200	8271	11526	1514	25887	10170	34306	111128
Total	101346	106690	190706	478742	79000	167921	201470	448391	926541

Source: Department of Labour (1999/00)

The table reveals that more girls than boys are involved in child labour than boys. Majority of children workers are engaged in agriculture & forestry and Domestic work economic activities.

Table 37 further shows that girls constituted over three quarters of child workers in other service sector and private households. Boys were the majority in the sectors that are traditionally male dominated, such as agriculture and forestry, mining and quarrying, building and construction. Age as a factor may have determined the distribution of working children by economic activities. Whereas employment in agricultural activities was fairly represented by all the age cohorts, older children dominated employment in the more demanding activities. For instance, boys aged 15 to 17 wholly dominated employment in agriculture and forestry, manufacturing and transport. Girls aged 15 to 17, dominated employment in manufacturing sector and in the hotel and restaurant sector.

Table 38: Programs that have been undertaken on prevention and withdrawal from child labour in 2003-2006

Programs	Sectors where children were working	Withdrawn			Prevented		
		Boys	Girls	Total	Boys	Girls	Total
ComAgri	Commerce, Agriculture, Subsistence agriculture and Child labour in care	1750	1074	2824	2240	1,697	4137
Time Bound Program	CSECC, Agriculture, Street and urban informal work, Child domestic work and Fishing	740	620	1360	775	997	1770
Education and training	Child Domestic Labour, Street and urban Working children, CSECC, AILM, employers, families and Children working in prostitution	409	560	1209	1000	300	2500
Skills Training	CDL, CSECC, Street children and children working in the street	60	140	200	120	200	320
CDL Capacity Building	Child Domestic Labour, Agriculture, Child Domestic work, Street and informal work	50	300	350	40	410	760
Country Program (3rd Phase)	Street and urban working children, Child domestic Labour, Agriculture	732	650	1382	1075	1815	3120
TOTALS				7,512			14,132

Source: Ministry of Labor

Table 38 shows programs that have been undertaken on prevention and withdrawal from child labour from 2003 to 2006. Total number of children between ages 5 and 17 supported in these programs is 21,661.

Number of children working on the streets.

The estimated number of children living on the streets of urban areas was 250,000 by 2002. The total number of children removed from the streets since 2003 and placed in different institutions and family reintegration programs is 6,000.

The following is the numbers of children removed from streets from major urban areas in the country in the year 2003 to date and were placed in rehabilitation programs.

Table 39: Children removed from the streets

FY	Amount
2013-04	50
2009-05	50
2005-06	95
2006-07	107
Total (FY 03-07)	302

CONSTRAINTS

The worst forms of child labour interfere with a child's education and health and are harmful to the child's physical, mental, spiritual, moral and social development.

1. There is lack of information and adequate data on the situation of child labour and economic exploitation. The report of a comprehensive survey carried out by CBS and launched in December 2002 (Child Labour Survey Report, 1998/1999) found that most of the work children engage in is hazardous, exploitative and prevents them from attending school.
2. Child labour is caused by poverty and results in many children having to rely on themselves for their own survival and that of their families. This often results in their exploitation.
3. Due to HIV/AIDS and poverty there is an increase in the number of child headed families.
4. The National Child Labour Policy and the Employment Bill are still in draft form.
5. There are few enforcement officers and resources to deal with cases of child labour.

RECOMMENDATIONS

1. Lobby for the enactment of the Employment Bill and adoption of the Child Labour Policy.
2. Strengthen the structures that address issues of child labour such as the inspectorate.
3. Support implementation of the ILO Convention 182 on the worst forms of child labour.
4. Speed up the review and harmonisation of labour laws.

ARTICLE 28: DRUG ABUSE

LEGAL AND POLICY FRAMEWORK

In Kenya the term drug abuse embraces both drug and substance abuse.

The Children Act protects children from use of hallucinogens, narcotic and psychotropic drugs or from being involved in their production, trafficking or distribution. A child found under such circumstances is considered to be in need of care and protection.

The Criminal Law Amendment Act (Section 24 (2)(A)) prohibits the supply and use of substances classified by the Minister responsible for health as a drug.

Sale of g'ite to children has been outlawed. Also banned is the sale of alcoholic drinks and spirits in sachets. The Narcotic Drugs and Psychotropic Substances Control Act prohibits dealing in drugs.

CONTEXT AND IMPLEMENTATION

Before The Children Act came into being in 2001, drug and substance use and abuse had reached crisis levels in Kenya, especially in secondary schools. The National Agency for the Campaign Against Drug Abuse (NACADA) was established in 2001 to develop suitable strategies to fight drug abuse and implement them with funding from the central Government. NACADA is staffed with officers drawn from various Government departments.

Since school going youth are most vulnerable, NACADA has conducted many educational and sensitisation campaigns in schools, and also uses the media. Drug abuse has been incorporated in the primary and secondary school curriculum by infusion into mainstream subjects.

The Government has also established Anti Narcotics Police Units at all the eight provincial Headquarters to address issues of drug abuse. Many FBOs, the private sector and NGO's are involved in preventive and rehabilitative activities for drug and substance users and abusers.

Tobacco and Alcohol Abuse

Past studies in Kenya have shown that less than one percent of adult women smoke and therefore no taboos have been made. More men in their 20s and 40s smoke compared to those in other ages. It is recommended that women avoid alcohol during pregnancy and breastfeeding because of its effect on the health of the child and the mother.

Tables 40 and 41 show the prevalence of use of Tobacco among males and Alcohol among persons aged 15-19 respectively.

Table 40: Use of tobacco among males (%)

Years /Age	2003	2004	2005
5-19	5.7	5.7	5.7

Source: *Coalition and Campaign Against Drug Abuse (CADA)*

Table 41: Use of alcohol among persons aged 15-19 (%)

Years	2003		2004		2005	
	Male	Female	Male	Female	Male	Female
Age	10.3	2.6	10.3	2.6	10.3	2.6
Total	5.1	29.7	5.1	29.6	5.1	29.7
Residence	Male	Female	Male	Female	Male	Female
Urban	33.4	7.5	33.4	7.5	33.4	7.4
Rural	26.1	4.6	26.1	4.6	26.1	4.4

Source: *CADA/UNICEF*

Alcohol use is higher among the youth in urban than in the rural areas.

CONSTRAINTS

1. There are inadequate facilities, manpower and resources to effectively fight drug abuse.
2. Some of the films children watch encourage drug abuse.
3. There are gaps in border controls to check the trafficking of drugs.
4. Most organizations addressing drug abuse are based in Nairobi Province including NACADA and so there is little or no activity at provincial and district levels.

RECOMMENDATIONS

1. Films and other media messages that encourage drug abuse should be edited.
2. The Government should provide adequate resources, both in human resources and finances, to help fight drug abuse and enhance control measures such as border patrols.
3. Awareness programs on the dangers of drug abuse should be intensified, especially those messages reaching children.

4. Need to support implementation of the legal provision prohibiting sale of alcoholic drinks in sachets, and in prohibited outlets like supermarkets, shops and kiosk.

ARTICLE 27: CHILD SEXUAL EXPLOITATION

LEGAL AND POLICY FRAMEWORK

The Criminal Law Amendment Act, passed into law in July 2003, brought into force stringent measures to curb sexual abuse; these include removal of consent by the Attorney General to prosecute in cases of incest, raising the age of consent from 14 to 16 years for girls and setting stiffer penalties for defilers from a maximum of 14 years to life imprisonment. The requirement for corroboration was removed in sexual offence cases involving young children of 10 years and under.

Section 15 of The Children Act provides that a child shall be protected from sexual exploitation and defines this to include child prostitution and child pornography, possession of child pornography and use of children in other unlawful sexual practices.

The Act, in section 15, provides that a child shall be protected from sexual exploitation and defines this to include child prostitution and child pornography, possession of child pornography and use of children in other unlawful sexual practices. The Act is implemented countrywide through various agencies including the police and other Government offices.

The Government has also enacted the Sexual Offences Act, 2006 which provides for the protection of children from sexual abuse specifically; defilement, child sex tourism, child prostitution, child pornography and trafficking for sexual exploitation, incest, exploitation of prostitution and sexual harassment. The penalties are stiffer than those provided for under the Children Act and the two Acts will offer better protection for children who are victims of sexual exploitation. The Sexual Offences Act, 2006 also provides for the establishment of forensic laboratories to assist in the collection storage and analysis of evidence to assist during trial.

CONTEXT AND IMPLEMENTATION

Available information points to an increase in commercial sexual exploitation of children as part of sex tourism and child pornography, particularly in the coastal region of Kenya. Both boys and girls are involved in this trade.

The Government in conjunction with partners have developed a Code of Conduct for hotels and taxi drivers to curb sex tourism and sexual exploitation of children which they signed in 2005. Training and sensitization against Commercial Sexual Exploitation of Children in the tourism industry have been undertaken. Sensitization trainings on sexual exploitation of children has been undertaken in the Coastal Province. Groups targeted included hotels, taxi drivers, tour operators, tourist police, children and judicial officers amongst others.

A study on Violence against Children was carried out in 2005 which covered matters of commercial sexual abuse of children as a form of child abuse to provide base line information as well as to monitor the extent of such abuses. The Government, UNICEF and other partners are spearheading a campaign to stop all forms of violence against children and creating awareness on the rights of children.

Child sexual exploitation has been linked to poverty, and the devastation caused by HIV/AIDS. Through the international programme on child labour, Kenya has targeted the child commercial sexual workers as a category at risk. Drug and alcohol abuse also contribute heavily to child sexual exploitation.

The Nairobi Women's Hospital in collaboration with the Government and other stakeholders has put in place programs to assist child victims of sexual abuse. The Government has designated the Kilimani Police Station in Nairobi to handle cases of gender-based violence including cases of child sexual exploitation.

CONSTRAINTS

1. Child sexual exploitation is fuelled by out-moded cultural practices, poverty - especially due to HIV/AIDS that has resulted in many child-headed families, broken families, and lack of sensitisation among community members, including children on issues of sexual abuse.
2. There are inadequate efforts in place to rehabilitate child survivors of sexual abuse.
3. The age of consent allows persons who are defined as children (between 16 years and less than 18 years) to consent to sexual intercourse.

RECOMMENDATIONS

1. A baseline survey to provide information on the magnitude of commercial sexual exploitation of children should be undertaken urgently.
2. Laws must be harmonised so that the age of consent is in line with The Children Act – 18 years.
3. Initiatives addressing commercial sexual exploitation should be coordinated for greater effect.
4. Communities should be sensitised and educated on harmful cultural practices that promote the sexual abuse of children.
5. Issues of child sexual abuse should be given prominence.
6. Stakeholders in the tourism industry should support implementation of the code of conduct on commercial sex tourism.
7. Mechanisms should be put in place to address victims of child sexual abuse.
8. There is need to identify and train professionals to handle cases of child sexual exploitation.

ARTICLE 29: SALE, TRAFFICKING AND ABDUCTION OF CHILDREN

LEGAL AND POLICY FRAMEWORK

The Penal Code defines abduction as; "Any person who by force compels, or by deceitful means induces any person to go from any place as said to abduct that person." Offences such as kidnapping and child stealing are also provided for.

Section 13 of The Children Act protects children from sale, trafficking and abduction and defines these as forms of abuse.

CONTEXT AND IMPLEMENTATION

The upgrading of the Immigration Department to a ministry has given greater importance to immigration issues and will facilitate children leaving the country with all the necessary documents.

A Government Task Force was set up to investigate reports of children who disappeared from public hospitals in Nairobi at birth. The Task Force reports to the Minister of State for Provincial Administration and National Security for appropriate action.

Under the judiciary, the family court determines adoption cases and ensures that children are placed with suitable families. The Adoption Act was incorporated in The Children Act and provides for close supervision of adoption matters. Meanwhile, the development of Adoption regulations provides protection to children at risk of sale, trafficking and abduction once these come into force. An adoption committee established under The Children Act has been set up within the Office of the Vice President & Ministry of Home Affairs to direct the process of adoption and care and give guidance on the same.

CONSTRAINTS

1. There are several gaps in the law that pave way for abduction and trafficking of children.
2. Vulnerability of victims means many cases of sale, trafficking and abduction of children go unreported.
3. Lack of proper mechanisms to enforce the return of children is a constraint coupled with lack of adequate immigration controls to guard against illicit removal of children from the country.
4. Existing laws do not provide minimum sentences and so do not have a deterrent effect.
5. There is a shortage of trained personnel to handle child sexual exploitation cases.

RECOMMENDATIONS

1. There is need to re-examine and harmonise legislation that has implications for child abduction, sale and trafficking.
2. The Adoption Regulations should be disseminated widely.
3. Government mechanisms to respond to the sale, trafficking and abduction of children must be supported and strengthened if they are to be effective.

ARTICLE 22: CHILDREN IN ARMED CONFLICT

LEGAL AND POLICY FRAMEWORK

Section 10 of The Children Act provides that no child shall take part in hostilities or armed conflict and where such conflicts occur respect for and protection and care of children shall be maintained in accordance with the law. Further, it is the responsibility of the Government to provide protection, rehabilitation care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or national disaster.

CONTEXT AND IMPLEMENTATION

The ethnic clashes, which resulted in internal displacement of over 195,671 children, could largely be attributed to the 1992 and 1997 multi-party elections. Very few incidents of clashes have been reported since the last reporting period and as a result minimal displacement has occurred since then.

Following the 1990s tribal clashes the Government set up task forces to investigate and follow up on these cases with the intention of resettling the families and prosecuting perpetrators.

CONSTRAINTS

1. There are no rehabilitation programs for children affected by internal conflicts. Commissions have been set up which have proposed resettlement of internally displaced people but this has not been implemented.

RECOMMENDATIONS

1. The reports of various commissions on tribal clashes that advocate the resettlement of displaced children and their families should be implemented.

ARTICLE 17: ADMINISTRATION OF JUVENILE JUSTICE SYSTEM

LEGAL AND POLICY FRAMEWORK

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

The Child Offender provisions and the subsidiary rules thereof (Child Offender Rules) as provided for in The Children Act provide for the legal framework for the administration of juvenile justice.

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

- The right to innocence until proven guilty;
- The right to be informed of immediately of reason of arrest;
- The right to expeditious resolution of matters;
- The right to legal assistance and representation;
- The right not to be compelled to give testimony or to confess to guilt; and
- In determining matters the courts are directed to take due regard to the best interests of the child.

Matters concerning children, apart from those related to murder charge or where a child is charged jointly with an adult, are heard in a Children's Court by a Children's Magistrate. The court is required to be child friendly and the child's privacy is protected at all times.

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

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

CONTEXT AND IMPLEMENTATION

To ensure that the education of children in conflict with the law is not disrupted, The Children Act provides that their cases be handled expeditiously and without unnecessary delay. Where the case is not completed within 3 months after the plea has been taken, the case shall be dismissed. (Children Act, 51a Schedule, Child Offender Rules).

In the event that such children are found guilty they are committed to Rehabilitation Schools, probation hostels or Borstal institutions, and are provided with education in those institutions.

In line with the provisions of The Children Act, the Government has set up Children's Courts in all provinces, and 119 magistrates have been appointed and sensitised to handle matters relating to children throughout the country. The Children's Court is required to deal with matters quickly in criminal cases - within 3 months in ordinary offences and 6 months in capital offences. The Nairobi Children Court was set up to specifically deal with children matters. Under the GJLOS reform program normal courts are required to hear and determine children matters in the manner specified in the Act.

CILOS also proposes a National legal Aid Scheme which will cater for legal aid to children. Legal Aid is provided by various non-Governmental organizations and private advocates though to a very minimal extent.

The family division of the High Court was established and gives preference to children matters.

Through the technical cooperation between the Government of Kenya and Japan International Cooperation Agency (JICA), judicial officers, prosecutors, lawyers, law enforcement officials, and immigration officers have been trained by various organizations on the juvenile delinquent treatment system. National Standards and Training Manuals have also been developed in line with international standards. Training on child rights has been incorporated in the police curriculum, teacher-training curriculum and in the Faculty of Law at the University of Nairobi. There is increased collaboration between various actors and the Children's Department.

The Government is renovating the Lononoka Law Courts in Mombasa with the intention of converting it into a children court.

Table 42 show the number of children involved in crime and convicted by age for the years 2003, 2004 and 2005. The number of children convicted for crime declined in 2004 but increased in 2005.

Table 42: Number of children by age group, gender involved in crime and convicted between 2003-2006

Year	2003		2004		2005	
	Male	Female	Male	Female	Male	Female
UNDC's	1	-	166	-	311	11
6-17	5,465	644	3,700	151	4,488	506
TOTAL	5,466	644	3,872	151	4,596	517

Source: Children's Society, 2006

Table 43 shows the number of children on Probation and Community Service Orders (CSO) as a form of sanction. The length of the sanction depends on the offence committed and ranges between six months and three years.

Table 43: Juveniles serving on probation and CSO 2003-2005

Year	2003		2004		2005	
	Male	Female	Male	Female	Male	Female
CSO	219	23	276	43	494	192
Probation	1,349	176	1,545	406	1,134	197
TOTAL	1,567	199	1,821	449	1,740	389

Source: Children's Society, 2006

The upward trend of CSO cases is as a result of training of magistrates who are increasingly using CSO as an alternative to custodial sentencing for petty offenders.

Table 44 shows detention facilities for children in conflict with the law run by different departments. They include Probation hostels, Rehabilitation Schools, Borstal Institutions and Children's Remand Homes

Table 44: Detention facilities and their capacity

INSTITUTION	CAPACITY	ENROLLMENT							
		2003		2004		2005		2006	
Probation Hostels									
Kirumu Boys	70	40	38	43	41	41	41	41	41
Shauri Boys	70	70	64	6	0	0	0	0	0
Isarobi Boys	50	40	20	20	21	21	21	21	21
Kakua Girls	50	44	30	21	21	21	21	21	21
Rehabilitation Schools									
Mchaker Boys	320	90	16	16	27	27	27	27	27
Ikoni Boys	160	46	31	31	37	37	37	37	37
Perithe Boys	170	53	58	58	58	58	58	58	58
Thika Boys	160	160	152	152	74	74	74	74	74
Wangari Boys	320	78	184	184	221	221	221	221	221
Othaya Boys	200	92	147	147	52	52	52	52	52
Gatundu Boys	80	91	134	134	68	68	68	68	68
Karuri Boys	320	74	79	79	53	53	53	53	53
Karumaga Boys	160	12	127	127	56	56	56	56	56
Dagoretti Girls	200	80	55	55	30	30	30	30	30
King of Girls	200	272	157	157	168	168	168	168	168
Borstal Institutions									
Shikasa (Males)	226	142	203	203	271	271	271	271	271
Shikasa (Female/Mixed)	171	183	229	229	198	198	198	198	198
Y.C.T.C. Karuri (Mixed)	260	22	247	247	194	194	194	194	194
Children's Remand Homes									
		M	F	M	F	M	F	M	F
Kisumu	60	44	17	100	20	80	19	68	18
Muranga	60	30	3	44	14	40	7	37	1
Kisumu	60	45	5	50	11	40	5	38	10
Karumaga	80	65	7	52	8	40	4	67	5
Kenya	40	1	3	12	4	15	6	20	7
Elgeyo	60	11	5	38	6	37	2	21	5
Ukani	60	23	5	42	10	34	9	1	6
Uasin	60	32	5	31	1	34	6	28	12
Nairobi	60	61	7	80	1	94	5	61	8
Mandera	60	12	4	6	3	9	3	13	7
Meru	100	61	2	72	17	50	20	47	17

Source: Department of Probation, Children's Services and Borstals

The figures stated above are not cumulative; they represent the average case load handled by the institution in a particular year. The Decongestion policy in Kenya's penal institutions aimed at reducing the number of Juvenile offenders has borne fruit and the numbers are reducing.

Table 45 shows the number of children accompanying their mothers in prison for 2006. The figures are not constant and fluctuate on daily basis.

Table 45: Children accompanying their mothers to prison

Sex	Number
Males	116
Females	165
Total	281

Source: Women's Department

Table 46 indicates the number of children held in remand homes as they await trial. The average length of stay is 3 months.

Children Remand Homes	Capacity	2003		2004		2005		2006	
		M	F	M	F	M	F	M	F
Kisumu	80	03	17	100	20	90	19	69	10
Muranga	60	30	7	15	15	30	7	27	1
Kitale	60	25	5	30	1	30	6	29	10
Kakamega	90	55	7	95	8	90	7	87	3
Kenya	40	11	3	9	4	19	4	30	7
Hidzoi	90	17	5	18	6	37	8	23	9
Lilong	60	24	2	42	10	34	9	11	9
Nyeri	80	32	2	35	1	34	9	28	12
Nakuru	90	6	7	03	11	64	6	61	6
Machakos	50	12	4	6	3	9	5	15	7
Eldoret	100	6	21	70	7	50	20	37	17
Total	700	435	81	567	116	407	93	405	109

Source: Children's Department

The data provided in table 47 reflects children charged as adults.

Table 47: Children charged as adults

Year	Number
2003	626
2004	518
2005	320
2006	180

Source: Women's Department

The significant decline in the numbers of children charged as adults is due to the implementation of the Children Act and an increase of awareness of children's rights.

The diversion program was introduced in the police force in 2005. The information provided here is from stations where the police have set up Child Protection Units (CPUs).

Table 48: Children diverted from the justice system

Year	Male	Female	Total
2005	256	176	432
2006	69	203	274
Total	425	381	806

Source: AICIS Quarterly

The Probation and Aftercare Services Department offers aftercare services to ex-boarding inmates between 13-17 years old. The community reintegration also referred to as the resettlement programs is offered in the form of provision of business start up kits and vocational skills training. The ex-boarders are followed up for a period of three years as part of aftercare services. Between 2003- 2006 there were 916 boys in the Aftercare program.

CONSTRAINTS

1. There is inadequate legal aid and counselling services for juvenile justice.
2. Overcrowding in remand cells exposes children, especially girls to risks of abuse.

“*Acha nikupapasa au nikufagilie ndio nikupa special meals. Private parts of boys especially the anus and testicles/penis are squeezed. Sometimes wakubwa wakinyua haiafu ufunge macha unapigwa mbaya.*”

Crispin, a child from Coast region.

3. It is only at Nairobi Children's Court where there is a made protected witness box. In other areas, courts are cleared if children have to face their abusers or complainants while giving evidence and this can be intimidating.
4. The number of Children's Courts and magistrates in the country is inadequate leading to holding of children in police cells and remand homes.
5. Community justice systems are prevalent in many areas where culture is deeply rooted and where elders settle disputes and in some cases, justice for the child is compromised.

RECOMMENDATIONS

1. Strengthen and support civil society organisations that provide legal aid to children.
2. Improve the legal aid scheme.
3. Appoint more magistrates to handle children matters.
4. Support and initiate programs and infrastructure that separates boys from girls in rehabilitation.

ARTICLE 21: PROTECTION AGAINST HARMFUL SOCIAL AND CULTURAL PRACTICES

This article deals with customs and practices that may harm the life and health of children, for example female genital mutilation (FGM) and early marriage.

LEGAL AND POLICY FRAMEWORK

The Children Act, section 14 expressly states that no person shall subject a child to female circumcision, early marriages or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical development.

This law is in keeping with the international standards. Anybody who commits the offence can be imprisoned for up to 12 months or fined up to 50,000 shillings or both such fine and such imprisonment.

CONTEXT AND IMPLEMENTATION

In spite of the above legislation there exist cultural practices and beliefs that impact negatively on the welfare and normal growth of the child.

Official statistics paint a grim future for girls who undergo the age-old circumcision rite. Six in every ten end up with no education at all, mainly because their care givers, eager to receive bride wealth, force them into early marriage.

Some of the victims of female circumcision are sent to an early grave due to excessive bleeding, infections and birth complications.

Still research has established a cruel connection between circumcision which involves the use of the same knife on more than one initiate and the spread of HIV/AIDS.

It is a legend husbands whose wives are circumcised prefer to have sex with uncircumcised women and this puts them at risk of contracting the virus.

In response anti-circumcision campaigners have engaged community members on the dangers of the practice.

The police and the provincial administration have intensified efforts to rescue vulnerable girls and arrest the culprits.

In some areas the practice has been largely discarded, in other areas people are willing to listen, and in some areas one cannot dare talk against the practice.

Results from 2003 Kenya Demographic and Health Survey indicates that a prevalence rate of 97 per cent among the Somali community practise the worst forms of FGM known as infibulations. A survey to establish why the Somali still regard FGM highly found that they believe it preserves female virginity, purity and maintains female monogamy during marriage in accordance with the teachings of Islam.

The Government and other stake holders are committed to eliminating the various harmful social and cultural practices prevailing in Kenya. In the year 2004 Kenya hosted an international conference on Female Genital Mutilation (FGM) after which they confirmed their commitment to abandon the practice by the year 2020.

Regarding early marriage the Universal Declaration of Human Rights recognizes the free and full consent to a marriage. Consent cannot be free and full when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. The Convention on the Elimination of all forms of Discrimination against women mentions the right to protection from child marriage in article 16 which states "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage..." The Children Act provides that, any child under 18 years who gets married is regarded as a child in need of special care and protection (CNAP) and hence accorded protection. But different communities and cultures hold a different view: a girl is ready for marriage as soon as she undergoes the circumcision.

An estimated 53 per cent of Kenyan women have undergone the practice.

Incidents reported in the media illustrate the complexity and sensitivity of the issue of FGM. Most of the traditional cultures that oppress girls are designed to boost their market value when it comes to marriage stakes, whether it is bride price or dowry. The going price drops dramatically when girls become 'soiled goods' and hence the rush to marry them off younger and control their sexuality.

The law to prosecute perpetrators though there, is not fully enforced. Criminalizing FGM therefore is not enough. Where it is practiced, is defended as a social good. Many communities believe it preserves the chastity of young girls and prevents promiscuity by putting in check the girl's libido. It is seen as a mark of transition from childhood to adulthood and argues that a woman is worth more dowry if circumcised. However it has been observed that circumcised girls felt more adult and are more likely to engage in sexual relations earlier than the uncircumcised ones, and that in areas where girls are circumcised there are higher rates of teenage pregnancy and school dropouts.

CONSTRAINTS:

1. FGM is a deeply rooted cultural belief system that suggests necessity for purity.
2. It has been criminalized but the law is still widely ignored and FGM is practiced by several ethnic communities in Kenya.
3. Law enforcement and aggressive awareness campaigns have met formidable resistance in rebels who seem prepared to break the cultural norms in the name of protecting them. To cheat the law and escape the curiosity of the activists, they now cut the girls at much younger age and do away with the elaborate ceremonies that traditionally go with the rite.
4. Again many of the suspects may never stand trial in a court of law even if they are arrested. The police face technical and other difficulties when prosecuting cases related to FGM. This is mainly because FGM is a crime where victims depend on the culprits and often do not want to see the latter rot in jail. For example on 14th December 2005 eleven (11) cases were reported to the district children's office, Narok. Sadly none of the girls involved felt brave enough to record a statement implicating their parents.
5. Inadequate places of safety where girls running away from FGM can be rescued have also posed a challenge to the elimination of this vice.
6. However cracking the whip on the culprits should not be regarded as a panacea to winning the war against FGM and other harmful cultural practices.
7. Lack of adequate education on the dangerous practice.
8. What is equally critical is education to make communities appreciate the dangers of the practice.
9. Regarding early marriage there exist contradictions in the definition of marriage in different laws and statutes. For example under the Muslim law the minimum age of marriage is 15 years. Nonetheless one's maturity may be considered upon reaching puberty which ever comes earlier.
10. The African Christian Marriage and Divorce Act and the Hindu Marriage and Divorce Act contradict the Children Act by providing for lower minimum ages for marriage.
11. Under Hindu Marriage and Divorce Act it is 16 years for girls and 18 years for boys.

RECOMMENDATIONS

1. Various laws addressing marriage shall be amended to conform with the Children Act as it supersedes all other laws.
2. Intensify awareness campaigns via both print and electronic media, chief's *barazas*

3. Among others; targeting those who practice FGM and early marriage in communities and villages. Further, communities should be made to understand that there is no religious backing for the practice and that FGM inflicts unnecessary suffering to the initiates.
4. Include appropriate strategies aimed at eradicating FGM in national health policies. Such strategies would include the special responsibility of health personnel to explain the harmful consequences of FGM to the members of the public.
5. Develop a Plan of action clearly stating an undertaking to put an end to Traditional practices affecting the health of children, especially girls, that calls for mobilization of everyone to contribute directly or indirectly to the elimination of such practices.
6. Involvement of children in the war against the vice is critical as they share their experiences with the others. This shall be in line with the Child Participation guidelines already developed.
7. Scale up enforcement of the provisions in the Children Act that criminalize harmful cultural practices.
8. The current penalty under the Children Act provides for 12 months in prison or a fine of KSh.50,000 or both is too mild and should be harmonized with the penalty in the Sexual Offences Act.
9. Research and collection of data on harmful cultural practices shall be conducted and analyzed to guide further interventions.

ARTICLE 30: CHILDREN OF IMPRISONED MOTHERS.

LEGAL AND POLICY FRAMEWORK

The article is concerned with the rights and welfare of children whose mothers are in breach of the law. It obligates states to provide alternatives to custodial sentences, alternative institutional structures for confinement and prohibits death penalties.

Section 117 (c) of the Children Act recognizes children of imprisoned parents as children in need of care and protection.

The Prisons Act allows children aged below four years to accompany their Mothers to prisons.

Community Service Order (CSO) Act No. 10 of 1998, provides for convicted mothers to serve their term in the community working without pay for certain duration. The aim is to ensure that the children will not be separated from their parents.

Under the Probation of Offenders Act Cap 64 mothers of children of tender years are placed under Probation and Aftercare Services to facilitate follow up, supervision and counselling. All this is in the best interest of the child.

The Government has initiated policy reforms in the Prisons Department that will provide a child friendly environment for children accompanying imprisoned mothers.

CONTEXT AND IMPLEMENTATION

As at 14th November 2005, there were 321 children with their mothers in the 14 women penal institutions. The children are all below the age of 4years

The types of services offered to children accompanying their mothers to prisons are varied. The children are treated as innocent victims of circumstances. They are provided with children cots, blankets, clothes, special diet, immunization, day care and attend nursery together with the members of staff.

The religious needs of the children are catered for as the children also attend Sunday school service with other children of the staff. This helps them grow in a somewhat normal environment. Emphasis is put on ensuring that the children grow and leave prison without any scars, psychological or otherwise.

Special programmes such as distance parenting have been organized. This means that after every three months the other children left at home visit their imprisoned mother and interact freely as a family. This is done in an effort to maintain and encourage family contact and promote cohesion thereby reducing the effect of imprisonment on both the children and their parents.

Several reforms are ongoing in the Prison's Department with the Government allocating both human and financial resources to improve the facilities and conditions of the inmates as well as the prison officers. To supplement Government efforts, initiatives have been taken by Non-governmental Organizations (NGOs) and Faith based Organizations (FBO) to support ex-imprisoned mothers and their children.

The Prisons Department solicits for donations such as warm clothes, blankets, children toys, medical supplies and expansion of the facilities in the day care centres. All efforts are made to ensure that children do not interact with hard core criminals as this may adversely influence them. In their day to day activities the children interact with their mothers, identified women prisoners and the teachers at school.

In keeping with the international minimum rules on the treatment of offenders the Community Service Order Programme (CSO) in Kenya has strived to uphold non-custodial offender management approaches.

Within the female segment of the population of non-custodial supervisees are women with children who serve on community service for various periods.

Among this group are women mainly of the low income brackets and especially single parents having committed offences that are related to means of survival, for example possession of *chang'aa*, petty thefts, stealing by servant and so on.

The impact of CSO on women with children has been both negative and positive.

On the positive side family ties are not disrupted because the mother is not in custody. They may continue with their business albeit in a limited manner. They may also be referred to agencies that offer psycho-social support.

On the negative side the offender has limited time for gainful employment be it casual work, trade and so on. Adequate care, personal growth and development of their children who are left alone at home unattended are compromised.

Table 49: Community service orders for women

YEAR	NUMBER PLACED
2004	4/83
2005	8/66

Table 50: Probation orders made in respect of women only

YEAR	NUMBER PLACED
2004	1859
2005	1605

CONSTRAINTS

- 1) The imprisonment of parents particularly mothers of infants presents serious problems because the child is punished along with the parent. Babies tend to be unconcerned about where they live so long as they are with their mothers. However, difficulties arise when the child and mother have to separate thus leading to social problems in the long term due to early separation not to mention the cost incurred by the state to provide children with care.
- 2) Children accompanying their mothers to prison are denied the right to enjoy their full childhood by virtue of the fact that they are confined within the prison environment. Although mothers are singled out as being particularly crucial to the development of young children, it should be recognized that the imprisonment of fathers can also be very detrimental depriving children of important role models.
- 3) The quality of care for children in prison is not guaranteed, because the care givers do not have adequate skills to handle the children who are in need of special care and protection.
- 4) Inadequate consultations between the key agencies in the justice system that is Children's department, Prisons, Police, Probation, Judiciary and NGOs does not allow for concerted strategies in programming and providing the way forward to ensure the full protection of children who find themselves in prison for no mistakes of their own.

RECOMENDATIONS

1. Judiciary shall fast track the hearing of cases and or appeals of imprisoned mothers to facilitate their early release or start of prison sentence, whichever is applicable, so that such mothers can go back home to continue looking after their children.
2. A review of the Prisons Act to reduce the age of children accompanying mothers from 1 to 2 years. This is because by the age of 2 years, most babies have stopped breastfeeding. Practice has shown that there is a long term adverse effect on children who have grown up in prison up to whatever age, hence the need to ensure that children accompany their mothers to prison for the shortest time possible.
3. In collaboration with NGOs and all relevant stakeholders the government will make deliberate efforts to educate and or conduct awareness raising campaigns amongst spouses, and or partners of imprisoned mothers to take seriously the responsibility of looking after and caring for children when their mothers are imprisoned. It is important to ensure that fathers, partners and or spouses are taken on board in this regard, because after all, they too are parents of these children.
4. Make maximum use of Community Service Order for convicted mothers to avoid separation from their children.
5. Establish and strengthen collaboration and consultation among and between the agencies in the justice system.

6. Provision of various trainings to imprisoned mothers to improve on child care and parenting skills. To this end a training package should be developed to suit them.
7. Strengthen the Prisons discharge boards to seek early release for mothers imprisoned with children and facilitate their re-integration into the community to ensure children are settled and mothers do not re-offend.

CONCLUSION AND WAY FORWARD

CONCLUSION

From the foregoing, it is evident that Kenya has made progress in the implementation of the ACWRC various processes, all aimed at improving the welfare of the Kenyan child.

The enactment of the Children Act gives way to better preventive and protective measures for the child towards implementation of rights and welfare programmes.

The results of the Rapid Assessment Analysis and Action Planning (RAAAP) carried out in 2004 has given way to programmes targeting orphans and vulnerable children (OVC). The strengthening of data collection throughout government, and in particular within the Central Bureau of Statistics and the Children's Department, provide tools for planning, development and monitoring of interventions that were not available before. Notably, the collection of gender disaggregated data as well as information on children with disabilities and OVCs will enable targeting of initiatives to reach specific populations of children. It will also inform government processes such as budgeting that have far reaching implications for the children of Kenya.

Under the *Definition of a Child*, the Children Act takes precedence and categorizes a child according to the UNCRC and ACWRC.

The Children Act and the Persons with disabilities Act provides measures against discrimination and harmful cultural practices that impede implementation of child rights. The same provisions set out to address the issue of civil rights and freedoms. Measures have also been put in place that addresses torture, especially by the Children Act.

The repeal of the Adoption Act, the development of regulations on Adoption procedures and setting up of the Family Division in the High Court of Kenya are some of the new developments that ensure that issues of family environment and alternative care have been addressed. The regulations for Charitable Children's Institutions further ensures that rights and welfare of children is addressed under alternative care. The upgrading of the Immigration and the Registration of Person's departments into a government ministry further provides measures against issues of trafficking, sale, illicit transfer and non-return.

To ensure attainment of rights to life, survival and development, the Children Act and the National Health Sector Strategic Plan, 1999 - 2004 aimed at improving health services for the children. Several programmes including the PMCCF and the VCTs all ensure that services are closer to the communities, and especially in the interest of the child.

The implementation of Free Primary Education in 2003 by the government, and support from stakeholders has seen many children go back to school. Though coupled with difficulties in provision, this is a milestone towards the implementation of the UNCRC, ACWRC and the Children Act. The government has introduced a bursary scheme for OVCs in secondary schools further ensuring that all children have

access to education. The NFE draft policy is aimed at targeting OVCs who cannot cope with the formal education systems.

The Children Act puts in place special protection measures that recognize the rights of minority groups. It also recognizes the plight of children in need of special protection and provides a stable environment within which their rights can be addressed. Issues of liberty and protection from armed conflict are addressed by the Act.

WAY FORWARD

The process of the development of the National Plan of Action (NPA) has already started. All the issues gathered through children and adult presentations during the reporting process have been organized under various thematic clusters that aim at focused and targeted programming for children.

A child participation committee has been formed at the national level, which aims at developing guidelines and manuals to ensure that children participate fully in activities that relate to them and that they are protected from abuse and exploitation. This committee plans to lobby to the highest levels, to ensure that adequate resources are set aside in support of children services.

The NCCS has already begun the implementation of its strategic plan which aims at coordination, supervision and enhancement of child rights and welfare programmes.

Support towards networks and coalitions on child rights and welfare has been singled out as one way through which issues affecting children can be tackled. It is hoped that partnerships developed through the UNICEF and ACRWC reporting process shall be strengthened to be able to inform planning and programming processes.

