Children’s Rights in Kenya
Mombasa, Nairobi, Naivasha, Suba, Tharaka
Situation Analysis 2007
Save the Children fights for children’s rights.
We deliver immediate and lasting improvements to children’s lives worldwide.

Save the Children works for a world:
- which respects and values each child
- which listens to children and learns
- where all children have hope and opportunity.

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1. Executive summary

The use of a rights based approach and children’s rights programming demands a solid knowledge on the situation of children. Consequently, the Save the Children Alliance in Kenya comprising Save the Children Canada, Save the Children Finland and Save the Children Sweden, commissioned a study on the situational analysis of children’s rights in Kenya in 2006. The overall objective was to produce an authoritative and comprehensive situational analysis on the rights of the child in Kenya that will benefit Save the Children Alliance members and other actors by providing updated baseline information that will inform interventions.

The study was conducted in five Kenyan districts: Tharaka, Suba, Naivasha, Mombasa and Nairobi. The study target areas were selected based on broad regional representation. Data collection entailed document review, Focal Group Discussions (FGDs) and Key Informant interviews. The analysis was primarily based on the United Nations Conventions on the Rights of the Child. It took into account Kenya’s contextual situation and was guided by the overarching objective of the survey.

Kenya lies in East Africa and covers an area of 225,000 sq miles with an estimated population of 34 million. The number of persons below 18 years is approximately 17 million with about 6 million comprising 0-5 year olds. Children therefore, make a significant proportion of Kenya’s population.

The Kenya Government ratified the United Nations Convention on the Rights of the Child (UNCRC) on 30 July 1990. The convention calls upon state parties to protect its children against all forms of harm. It reaffirms that children, because of their vulnerability, need special care and protection. In an effort to domesticate the CRC, the Government enacted the Children Act (Cap 586 Laws of Kenya) that came into force on 1 March 2002. It went further to enact the Criminal Law Amendment Act in July 2003 and the Sexual Offences Act in July 2006. The two statutes complement the Children Act by protecting the child against sexual abuse and exploitation. The Civil Society Organisations (CSOs) and international agencies played a significant role in providing resources and advocating for the formulation and enactment of laws that impact positively on the rights of the child.

The legal and policy provision have contributed in the establishment of structures, institutions and programmes to protect and uphold the rights of the child. There has been the creation of the National Council for Children Services (NCCS) that works as a coordinating and unifying agency for children services in Kenya. Family and children courts have been created with magistrates deployed to preside over cases involving children. The children’s rights awareness programmes, advocacy and trainings of law enforcers has seen the establishment of child protection units in addition to gender and children desks in police stations.

In 2003, the Kenyan child benefited from an election pledge that contributed in ushering the current Government into power- the introduction of free primary education. Consequently, there was a 103 per cent increment in school enrolment. Provisions have also been made for children of 0-5 years old to receive free medical care in Government health care facilities. It is often acknowledged that in a country impoverished with economic mismanagement, the children are the poorest of the poor. The Government therefore, implemented measures towards better management of the economy culminating in a growth rate of 5.8 per cent in 2006 up from a negative growth rate of 0.2 per cent in 2000.

It is however worrying that even with the enactment of laws; formulation of policies; establishment of structures, institutions and programmes to protect the rights of the child, the children in Kenya have a long way to go towards the enjoyment of their rights.

The definition of ‘who is a child’ is still a matter of contention with severe repercussions on the child. The Children Act defines a child as ‘Any human being below the age of 18 years’. However other laws exist that provide alternative definition of the child. The cultures of different communities in Kenya stress on their own definitions. This has led to early marriages, sexual

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1 Kenya CRC Report 2007
3 NGO Coalition on CRC complimentary report 2002-2005
abuse and lack of enjoyment of childhood. Cultural rites of passage to adulthood such as female genital mutilation (FGM) with its link to early marriage, is closely associated with the definition of a child. The Population Council of Africa (PCA) report indicates that 73 per cent of women in Kenya were already married by age 18.

Inasmuch an institution such as the NCCS has been established, it suffers from a shortage of technical staff and its devolved structures have not been established in all the intended areas. The number of family and children courts is negligible. There is only one children court established purely to cater for children. The magistrates assigned to preside over children cases end up dealing with other cases than those that touch on children. Moreover, many of the children magistrates exist only on paper. There are districts in Kenya that do not have a single court leave alone a children’s court. Children are still mixed up in adult cells with some of them ending up in prison. Access and realisation of justice is still a dream for majority of the Kenyan children.

Whereas the overall school enrolment rate increased (103 per cent) with the introduction of free primary education, regional disparities persist. Retention and transition rate along the various levels of education is still a major challenge especially for girls. Early Childhood Education and Development (ECED) is yet to be realised with about 65 per cent of children of ages 3-6 years unable to access education. Children with disability are discriminated against. They are often denied the right to education. Save the Children wants to raise discussions of the quality of early childhood education, and seeks support from pedagogical studies and recommendations to develop child friendly quality early childhood education in a child friendly environment.

The children's right to health is an ongoing challenge. Majority of Kenya’s children live in rural areas. However, more than 80 per cent of doctors operate in urban areas where only 25 per cent of the population reside. As of 2004, 54.2 per cent of all pre-school going children suffered from severe anaemia. Moreover, many children continue to die from malaria which is transmitted through female anopheles mosquitoes. The improvement in the economy is yet to have a significant impact in the livelihood of many Kenyans. Approximately 17 million Kenyans (56 per cent of the population) live on less than a dollar per day. The level of poverty has compelled children to search out for work. Consequently the children end up abused, exploited, trafficked and more often than not, their dream for education and better living standards is brought to an early ending.

The advent of HIV/AIDS has contributed to the increase in the number of Orphans and Vulnerable Children (OVC). There are about 1.1 million children in Kenya who have been made orphans specifically by HIV/AIDS. There are however approximately 2.3 million children made orphans by various causes. These children face stigma and discrimination by virtue of being orphans. They lack basic needs such as shelter, food and clothing. They are abandoned, neglected, disinherited and sexually abused. Existing interventions cannot cater for the overwhelming number of orphans and vulnerable children.

Kenya is recording an increasing number of cases involving sexual violence against children. It is estimated that over 30 000 children are defiled before they turn 13. Children also suffer from physical violence. The banning of corporal punishment in schools has not stopped physical violence on children.

The study of the five districts found out that the main issues impinging on children’s rights include poverty, harmful culture, poor infrastructure and facilities, inadequate services, family disintegration, urbanisation, HIV/AIDS and internal displacement. The most common forms of children’s rights violation entailed inaccessible health care; unsafe water and poor sanitation; inaccessible education and poor transition; sexual abuse, exploitation, child prostitution, abandonment and neglect; harmful cultural practices such as early marriage and FGM; corporal punishment; child labour; drug abuse and engaging in crime.

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5 Ibid
6 NGO Coalition on CRC complimentary report 2002-2005
7 NGO Coalition on CRC complimentary report 2002-2005
8 Ibid
11 Tony Johnson, Sexual Abuse of Girls, p13

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The realisation and full enjoyment of children’s rights in Kenya remains a challenge. Consequently the following recommendations are necessary:

- Advocacy for the review all laws relating to children to harmonise them with the Children Act
- Strengthening the capacity of the Children Department and the NCCS in undertaking their mandate
- Advocacy for establishment of Area Advisory Committees in all districts
- Reducing dependency on volunteerism in critical areas of child protection
- Establishment of strategic partnerships with institutions that have greater impact on child protection for popularisation of the United Nations Convention on the Rights of the Child
- Work with community based structures to establish a community self regulating mechanism against all forms of discrimination
- Support pro-poor strategies that use the child as an entry point to poverty reduction
- Promote diversification of incomes
- Strengthen the capacity of children officers to take a proactive strategy in child protection rather than only dealing with symptoms
- Lobby for the placement of Family and Child counsellor at the district level to work hand in hand with the children officer
- Develop mechanisms to popularise alternative care such as fostering, and guardianship
- Empower children who are victims of children’s rights violations to grow up as productive citizens
- Advocate for increased resource allocation to children with disabilities
- Promote the philosophy of safe and clean water
- Enhance children access to health care and promote responsible reproductive health.
- Advocate for free Early Childhood education
- Enhance accessibility to primary education and transition to secondary education
- Promote programmes that ensure children’s rights in the juvenile system and mitigate re-offence
- Advocate for the enactment of Trafficking of Persons Bill and any other child friendly Bill
- Priority areas of programming for the Save the Children Alliance should include child protection, advocacy, institutional strengthening, economic empowerment, health and education support.
2. Muhtasari Kuu

Utumiaji wa njia ya haki na utaratibu wa watoto inahitaji fahamu thabiti juu ya hali ya watoto. Kwa hiyo, Muungano wa Save the Children nchini Kenya, ikiwemo Save the Children Canada, Save the Children Finland, na Save the Children Sweden, ualiagiza utafiti juu ya hali ya haki za watoto nchini Kenya mwaka wa 2006. Shabaha ku ilikuwa ni ku tooa uchambuzi unaominika na ulio pana juu ya haki za mtoto nchini Kenya, utakaofaidi wanachama wa Save the Children Alliance pamoja na wahusika wengine kwa kupeana habari ilipo na inayothibitika na kuchangia miradi.


Kenya inaenea mashakiriki mwa Afrika na inatandaa kwa kipimo cha maili 225,000 mramba, ikiwa na idadi ya watu ifikayo millioni 34. Idadi ya watu walio na umri wa chini ya miaka 18 ni takriban millioni 17, wakiwemo million 6 walio na umri ya chini ya 0-5. Kwa hiyo, watoto ni sehemu muhimu katika idadi ya watu nchini Kenya.

Serikali ya Kenya ilithibitisha Umoyo wa Kimataifa wa Mapatano ya Haki za Mtoto (UNCRC) mnamo 30 Julai 1990. Mapatano hii inazitaka nchi zilikuwa na kufanya kuhusu watoto. Inathibitisha kwa kipimo cha maili 225,000 mramba, ikiwa na idadi ya watu walio na umri wa chini ya miaka 18 ni takriban millioni 17, wakiwemo million 6 walio na umri ya chini ya 0-5. Kwa hiyo, watoto ni sehemu muhimu katika idadi ya watu nchini Kenya.

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Ingawa taasisi kama NCCS imeanzishwa, inasum buliwa na upungufu wa wafanyi kazi stadi na mijengo iliyoamishwa hajaanzishwa katika maeneo yote yaliyokusudiwa. Nambari za mahakama za familia na watoto ni ndogo sana. Kuna mahakama moja pekee iliyoamishwa kushughulikia watoto tu. Mahakimu walioteuliwa kusimamia kesi za watoto hujipata wameshughulikia zaidi kesi zingine basi za watoto. Watoto bado wanajumuishwa kukaa pamoja na watu wazima katika jela, ambapo wengi wanaendelea kufariki kutokana na Malaria, ugonjwa unaoambukizwa na mbu wa kike.


Ingawa idadi ya watoto waliojiandikisha imeo ngezeka (asilimia 103) kutokana na masomo ya bure kwa shule za msingi, tofauti katika eneo mbalimbli zipo.

Haki ya watoto kwa afya bora ni shida inayoendelea. Wengi wa watoto nchini Kenya huishi mashambana. Walakini, zaidi ya asilimia 30 ya watoto kati ya umri wa miaka 0-14 wanaendelea kufariki kutokana na Ugonjwa unaoambukizwa na ugonjwa unaoendelea kufariki.

Kesi za dhuluma za kijinsia dhidi ya watoto zinaendelea kuonge zeka nchini Kenya. Kuna majilio ya Ukimwi imechezwa kwa haki za watoto. Watoto akipatikana kwa kufikia basi za watoto, kufahamu basi za watoto, na kupigwa marufuku kwa adhabu ya kutandikwa. Kwa hivyo, mapendekezo yafuatayo ni muhimu:

- Utetezi juu ya ukaguzi wa sheria zote zinazohusu watoto ili kuzipatanisha na Sheria ya Watoto.
- Kuimarisha uwezo wa Idara ya Watoto na NCCS ili kutekeleza maagizo ya watoto.
- Utetezi juu ya kuanzisha Kamati za Ushauri katika maeneo yote yaliyokusudiwa.
- Kupigwa marufuku kwa adhabu ya kutandikwa shuleni huko njia ya watoto.
- Utetezi juu ya uchungu wa familia wao ili kuzijipata uchungu wa familia na watoto.
- Utetezi juu ya kuanzisha Kamati za Ushauri katika maeneo yote yaliyokusudiwa.
- Kupigwa marufuku kwa adhabu ya kutandikwa shuleni huko njia ya watoto.
- Utetezi juu ya uchungu wa familia wao ili kuzijipata uchungu wa familia na watoto.
• Kufanya kazi kwa miundo ya jumuiya ili kuanzisha jumuiya inayorekebisha dhuluma zote dhidi ya ubaguzi.
• Tegemeza mikakati za umaskini na zinazotumia mtoto kama kiingilio cha kupunguza umaskini.
• Kusaidia kupanu mapato.
• Kuimeisha uwezo wa maafisa wa watoto, ili kuanzisha mkakati wa ulinzi kwa watoto badala ya kushughulikia ishara pekee.
• Kufunza njia nyingi za kupata riziki
• Kuwaongeza vipawa askari wa watoto ili waweze kuchukua msimamo katika kuwalinda badala ya kushughulikia dalili tu
• Kushawishi kuteuliwa kwa mshauri wa familia na watoto katika wilaya ili kufanya kazi pamoja na afisa wa watoto.
• Kupata mbinu za kufunza wananchi kuhusu njia nyingine za kulinda watoto kama kulewa na watu wengine ama familia ya wazazi
• Kuza taratibu za kueneza utunzaji tofauti kama vile malezi na kulea na ulinzi.
• Kuwezesha watoto waliovurugiwa haki zao kukuwa wananchi wanaozalilisha mazao.
• Kupigania nyongeza za rasimali kwa watoto walio na ulemavu.
• Kusaidia kukuza falsafa ya maji safi.
• Kuwezesha watoto kupata matibabu na kusaidia kukuza uzazi unaoafaa.
• Kuteteka masomo ya bure kwa watoto wachanga.
• Kuzidisha kufikia kwa elimu ya msingi na mageuzi kuelekea elimu ya upili.
• Kusaidia kukuza mipango ambayo huhamishia watoto haki zao katika mahakama ya watoto na kupunguza marudio ya uhalfu.
• Kuteteka uanzilishi wa mswada wa kufanya biashara ya Kusafirisha watu, na mswada mwengine wowote unaotetea watoto.
• Sehemu muhimu za mipango ya Save the Children Alliance sharti izingatie ulinzi kwa mtoto, utetezi; kuimarisha taasisi, uwezo wa kiuchumi, afya na na ulinzi wa watoto.
3. Introduction

Kenya lies in East Africa and covers an area of 225,000 sq miles with an estimated population of 34 million\(^{12}\). The number of persons below 18 years is approximately 17 million with about 6 million comprising 0-5 year olds\(^{13}\). Children therefore, make a significant proportion of Kenya's population.

The Kenya Government ratified the United Nations Convention on the Rights of the Child (UNCRC) on 30 July 1990. It went further to domesticate the UNCRC by enacting legislation and providing policy framework aimed protecting the rights of the child and providing guidance on interventions focusing on children. However enforcement of the legislation remains a big challenge.

Institutions have been created to coordinate and oversee the protection of the rights of the child. However it has not been possible for them to fully carry out their mandate. The right to justice is still a dream for many children. Civil liberties, right to privacy and participation are often not taken seriously when it comes to children.

A significant proportion of Kenyan children do not access education, in spite of the introduction of free primary education. There are also increasing cases of sexual and physical violence on children.

The orphans and the disabled children continue to be stigmatised, discriminated and robbed of their rights. Child labour is commonplace and trafficking in children has shifted to a higher level.

The mortality rate of children especially of 0-5 years is a major concern. Access to safe motherhood and health care is extremely limited especially in rural areas. Moreover, the influence of culture, socioeconomic and political factors continue to shape and determine the enjoyment of children’s rights.

Commissioning of the Study

The use of a rights based approach and children’s rights programming demands a solid knowledge on the situation of children. Consequently, the Save the Children Alliance in Kenya comprising Save the Children Canada, Save the Children Finland and Save the Children Sweden, commissioned a study on the situational analysis of children’s rights in Kenya in 2006.

The mission and vision of the Save the Children Alliance is in line with the UNCRC. Save the Children fights for children’s rights and delivers lasting improvements in children lives worldwide. It works towards a world:

- which respects and values each child
- which listens to children and learns
- where all children have hope and opportunity.

Save the Children Canada established a Kenya country programme in 1984 with a country office in Nairobi. Projects implemented by Save the Children Canada include HIV/AIDS, water and sanitation, education, girl-child’s rights programming, advocacy and participation.

Save the Children Finland has worked in Kenya through partners since 1985, mainly in South Tharaka. It addresses children’s rights based programming undertaken through direct support, in partnership with the government, Civil Society Organisations and networks of child protection, Non Governmental Organisations and other actors.

Save the Children Sweden began its activities in Kenya in 1992. Between 1992 and 1997, it had a programme in Kakuma Refugee Camp where in partnership with the United Nations High Commission for Refugees (UNHCR), over 17,000 children from Ethiopia and Sudan were provided with psychosocial and educational support. Presently, Save the Children Sweden supports partners in Kenya in the area of juvenile justice.

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\(^{12}\) NGO Coalition on CRC complimentary report 2002-2005


Children’s Rights in Kenya
**Overall Study Objective**

To produce an authoritative and comprehensive situational analysis on the rights of the child in Kenya that will benefit Save the Children Alliance members and other actors by providing updated baseline information that will inform interventions.

**Methodology**

*Study Sites*

The study target areas were selected based on broad regional representation. The selected areas showcased the common problems typical of the greater region they represented. The areas comprised Nairobi (Nairobi Province), Tharaka (Eastern Province), Suba (Nyanza Province), Naivasha (Rift Valley Province) and Mombasa (Coast Province). Inasmuch as the sampled areas are not in themselves wholly representative of the country’s situation, they nonetheless give a fairly representative overview of issues of children’s rights from a national perspective.

*Data Collection*

The data collection process entailed document review, Focal Group Discussions (FGDs) and Key Informant interviews.

*Document Review*

The research team reviewed documents that provided crucial information on children's rights in Kenya. The documents were mainly in the form of surveys, reports, laws, policies and international instruments on child protection.

*Focal Group Discussions*

The field study entailed selection of pre-determined primary sampling units or clusters from which the desired number of subjects within a specified target group (identified demographic variables) were chosen. Discussions were held with a cross-section of actors who impact on child protection. They included children, parents, teachers and community members. Each cluster had varied numbers depending on the nature of the cluster (for instance parents and teachers tended to be more than other clusters. A child participation forum was formed at each of the visited places. Children who attended were largely representative and variously included out of school children, children with disabilities, orphans and vulnerable children, children on the streets, child commercial sex workers, children in conflict with the law, amongst others. The process utilised participatory facilitation techniques to guide the discussions. It involved children watching feature films and docudramas on the plight of children. The children were mainly between ages 13-15 (from Class 7 to Form II).

*Key Informants*

Key informant interviews were done mainly with persons with specialised knowledge on a given area of child protection. Some of the key informants included children officers; magistrates; district administrators; health, labour and education officials.

*Analysis*

The analysis was primarily based on the UNCRC. It took into account Kenya’s contextual situation and was guided by the overarching objective of the survey.

*Study Limitations*

The survey was undertaken within a very short span of time. Consequently there was inadequate time to learn from each target area. There was no mechanism for incorporating learning from
one district to the other as the visits from one district to the next were too closely spaced. Given that the timeframe was limiting, all children were interviewed in one place. In certain instances, out of school children felt embarrassed and intimidated hence did not meaningfully contribute. In some cases, children were brought with severe mental disabilities and were unable to participate. Even though this may have been a limitation, it in itself also showed the challenges faced by children with disabilities. The culture of research and documentation is also not well entrenched hence most of the literature available were not current and could not give a clear overview of child protection in the country. It was noted that most government officers were not free to give information in spite of the enhanced democratic space. Cultural beliefs in certain targeted areas inhibited community members including parents from freely sharing information.

**Structural Layout**

This study begins by examining the socioeconomic and political contest of child protection in Kenya. It goes further to highlight the legal and policy framework. It delves into the actual survey in the five targeted districts and analyses its findings against the UNCRC. It concludes by making recommendations on the child protection in Kenya.
4. The Kenyan child and the Related Socioeconomic and Political Context

Introduction

The Kenyan child is affected by the socioeconomic and political dynamics. This section begins by looking at the social aspects that impact on the child. It goes further to examine the economic factors and finally the political paradigms.

The Social Face of Children’s Rights

The social factor is crucial in the realisation of children’s rights in Kenya. In this context, it entails attitudes and their respective practices usually informed by culture and the need to preserve existing knowledge and practices. There are numerous socially-held beliefs that impact negatively on children.

Children are often seen as adults (18 years and above). The different cultures in Kenya have their own definition of who is a child. There is hardly any community in Kenya that culturally defines a child as a person of less than 18 years of age. For instance, a child who has undergone the rite of passage (usually circumcision) automatically becomes an adult. The child therefore ceases to have the right to enjoy leisure and recreation activities associated with children. In the event of a girl-child, the rite of passage may mean the end of her right to education because she would now qualify as a wife and a mother. Moreover, the child’s right to identity is often interfered with by culture. Registration of births is culturally foreign hence many children especially in rural areas are technically ‘illegal’ residents of their own countries.

The right to privacy is yet to be fully accepted. To many people privacy is about adults, not children. Moreover, children are often seen as persons to be seen not to be heard for it is assumed they have nothing serious to offer. Consequently, their right to participation on matters affecting them is denied. Culturally, children are not supposed to talk in a gathering of adults. They should also not keep company with adults, may be with women (women are sometimes seen as children).

Children often suffer from discrimination propagated by culture and myths. In many homes, girls are perceived as persons who will ‘cease’ to belong to the family by getting married. Consequently, investing in their education is seen as a loss and mere charity to her new family. The girl child ends up being denied her right to education. The disabled children suffer from similar discrimination. They are perceived as a loss, useless and an embarrassment to the family. As a result of such a perception, the disabled children may not only be denied the right to education but even the ‘right to sunshine’.

The Kenyan society strongly believes in corporal punishment. It is often perceived as a corrective measure rather than physical violence or torture. Many parents and teachers come from a background where they were severely caned by their parents and teachers hence they propagate the same treatment to their children and pupils.

The traditional family usually comprising father, mother and children, and the extended family that entails close family relatives, is now undergoing changes. Kenya has approximately 2.3 million orphans regardless of cause. There is now an increase in child-headed households. The communal values that encouraged helping the suffering are now endangered. Consequently members of the extended family may be unwilling to support orphans hence denying them the safety net they need in their growth and development.

The Kenyan society is however getting more aware of children rights and is slowly changing the socially held beliefs that are detrimental to the right of children. Nonetheless a lot remains to be accomplished.

The Economic Factor

Kenya has been classified as one of the most unequal countries in the world, with the inequalities manifested through gender and regional lines and also further affecting specific segments of the
population. This is reflected in income opportunities and access to socio-economic rights. For instance, the country’s top 10 per cent households control 42 per cent of the total income while the bottom 10 per cent controls less than 1 per cent of the income. This means that the wealthier people have better access to education than the poorer ones with the attendance ratio at primary school for the top wealth group at 86 per cent and for the lowest wealth group at only 61 per cent. Both infant and maternal mortality rates are lower among the wealthy groups and higher amongst the poorer groups with the poorest 20 per cent losing 149 children before their fifth birthday in every 1,000 live births as compared to only 91 for the richest 20 per cent.

These disparities are also manifested at a regional level. For example, 97 per cent of land in Nyanza is classified as high potential whereas in North Eastern none is so classified. The government’s economic strategy over the years has been to allocate more resources to high income yielding areas. Inasmuch as it makes economic sense, it infringes on the equal rights of persons residing in low income areas. Whereas the overall access to water is low in Kenya with only 7.6 per cent of house-holds having access to tap water, there are regional disparities with North Eastern (a generally dry province) only having 1 per cent households with piped water while Nairobi has about 33 per cent. The difference in life expectancy between the Central and Nyanza provinces is a staggering 16 years whereas the doctor-patient ratio is about 1:20,700 in Central province but 1:120,000 in North Eastern Province. The poor infrastructure in some regions has impeded parents from taking their children to early childhood education centres fearing the long distances the children have to tread.

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In order to lessen regional disparities, the Government established the Constituency Development Fund that provides funds to all constituencies to develop projects of their choice. The Government has also implemented measures towards better management of the economy culminating in a growth rate of 5.8 per cent in 2006 up from a negative growth rate of 0.2 per cent in 2000. The improvement in the economy is yet to have a significant impact in the livelihood of many Kenyans. Approximately 17 million Kenyans (56 per cent of the population) live on less than a dollar per day.

The high poverty levels have seen many children drop out of school in search of work. Approximately 27 per cent of children between 5-14 years in the period 1999-2005 were engaged in child labour. Poverty has denied children the right to adequate standard of living. In urban poor households, parents have no right to privacy leave alone children. They are often congested in one-roomed houses. In the event the children are orphaned, the economic hardships have scared members of the extended family to take them in hence the children find themselves abandoned, neglected and sometimes they end up as children in conflict with the law. The greed for money has driven unscrupulous persons to establish homes disguised as rehabilitation centres. The centres have inadequate standards of living and sometimes children are used as sex objects. There have been reported cases of child trafficking where children are lured and used as commodities for sale.

**The Political Paradigm**

The year 2002 ushered in a new era in Kenya. Kenyans elected what was largely seen as a reformist government that was mainly composed of former opposition leaders and some former civil society luminaries that had been agitating for democratic and political change. The new Government was elected mainly because of the political pledges it had made to the electorate. Some of the key promises included free primary education, a new constitution and eradication of regional disparities.

The government upon its election ushered in an era that has been characterized by an increasing democratic space and hence increased protection of rights. It went further and decreed free primary education that has seen many children join school. Whereas the free primary education was driven mainly by the need to win the election and the reduction of the educational financial burden on parents, the Kenyan child ended up as the greatest beneficiary.

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15 Kenya CRC report 1998-2004
The constitutional development process saw the acceptance of many laws that were to provide the Kenyan children with constitutional rights to enjoy their rights as children. However, political motives and differences among politicians influenced the rejection of the final draft by the Kenyan people during a national referendum in 2005.

Regional disparities have a long political history in Kenya. Areas that were perceived to be politically correct benefited immensely from government supported projects. Such regions ended up having a good road network, electricity, piped water, adequate health centres, security, industries that provided employment and markets and more schools were build and equipped through contributions (harambee) graced by top government officials and the political pyramid. The disparities therefore favoured children from one region through improved healthcare, education access and standards of living while discriminating against regions that were not politically correct. It is not easy for the Government to harmonise development in all regions. Consequently eradication of regional disparities is an ongoing process.

The greater challenge has been however holding a fragile government coalition together, a fact that has shifted public attention from other reform initiatives by the government.

The citizen’s emulation of politically instigated grand corruption has contributed in entrenching corruption in the Kenya at various levels and sectors. Corruption is an obstacle to service delivery that would have impacted positively on children rights. The Government has put in place structures, institutions and legal provisions to fight corruption. However, a lot remains to be done in eliminating the vice.
5. Legal and Policy Framework

Introduction

Legal and policy frameworks are vital in the protection and enjoyment of child rights. This study offers snapshots of International Instruments signed by the Kenya Government. It highlights Kenya’s Laws and focuses on the Children Act. The section concludes by providing an overview of the policy framework.

International Instruments

The Government has ratified several international instruments that directly and indirectly impacts on child protection. Some of these instruments include the UNCRC, the Optional Protocol to the UNCRC, the African Charter on the Rights and Welfare of the Child (ACRWC) and International Labor Organisation (I.LO) Convention and the Statute of the International Criminal Court (ICC).

The Government of Kenya ratified the CRC on 30 July 1990 thereby committing itself to the realization of the rights of children set therein. The CRC calls on States Parties to protect its children against all forms of harm including child abuse, sexual exploitation, sale, trafficking and abduction, child labour, torture and deprivation of liberty. Further to the CRC, the Government ratified the Optional Protocol to the UNCRC on involvement of children in Armed Conflict and the Optional Protocol on Sale of children, child prostitution and child pornography.

In protecting children within a regional perspective, the Kenya ratified the ACRWC in the year 2000. The Charter complements the UNCRC within an African setting and goes further to offer protection against harmful social and cultural practices, protection against apartheid and provides a framework for the protection of children of imprisoned mothers.

In protecting children against child labour, the government has also ratified the I.LO Convention No. 138 on the Minimum Age of Employment and the I.LO Convention No. 182 on the Elimination of the Worst Forms of Child Labour. Additionally, in March 2005, Kenya ratified the Statute of the ICC. The ICC outlaws sexual exploitation as part of war crimes against humanity.

Additional international instruments include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention Against Torture (CAT).

It may be argued that the Kenya’s record in ensuring ratification and reporting on the international treaties is impressive and has improved significantly over the years. For instance, it has already submitted its second periodic report under the UNCRC and is in the process of finalizing its first report under the African Charter to the African Committee of Experts.

The greater challenges however lie in the domestication of the treaties and following on recommendations by international monitoring bodies.

The Laws of Kenya

Kenya has a multi-tiered and multi-sourced system of laws with the constitution being supreme. Other sources of law include: Acts of Parliament of Kenya; certain Acts of Parliament of the United Kingdom; substance of the common law; doctrines of equity and statutes of general application in force in England as of the 12th of August 1897 with certain qualifications; the procedures and practice observed in the courts of justice of England as at that date; and African customary laws so long as they are not repugnant to justice and morality and not inconsistent with any written laws.

As at the year 2002, there were over 60 pieces of legislation, (written laws) that dealt with various aspects of children’s rights in Kenya. Some of the laws have since been repealed and

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17 Judicature Act, Chapter 8, Laws of Kenya
others passed that have certain aspects relating to children such as the Environmental Act that deals with issues of sustainable development, the Criminal Law Amendment Act that mainly deals with issues of sexual violence and most recently, the Sexual Offences Act that consolidates laws dealing with sexual offences and also introduces new offences under the law on sexual offences such as gang rape and child sex tourism. However, a new proviso under the Act, (Section 38) makes it a crime for a person to give false information relating to sexual offences and metes out punishment equivalent to the crime complained against if it is proven that the person gave false information to the police. This provision is bound to discourage victims from reporting cases of sexual violence against them for fear of ‘counter-prosecutions’ in case the matter does not succeed. The legal fears emanate from the fact that many cases of rape are not properly prosecuted hence conviction rates are very low.

There are also forthcoming laws that deal with children’s issues such as the Domestic Violence (Family Protection) Bill, HIV/AIDS Prevention and Control Bill, Trafficking in Persons Bill amongst others. Currently though, the primary law dealing with children is the much acclaimed Children’s Act that came into force on 1st March 2001.

The Children Act has been deemed the “Children’s Bill of Rights” that largely incorporates the provisions of the UNCRC and the ACRWC, (hereinafter the Charter). It covers the UNCRC fundamental principle of the best interests of the child in all matters that affect the child. The Children Act defines a child as a human being under the age of 18 years. It guarantees protection of the rights of the child from all forms of abuse. It gives a wider protection for the child against discrimination of any kind. It guarantees among others, a child’s right to health care, education, parental guidance, food, shelter, name, nationality, privacy, leisure and recreation. Penalties are meted for violations of these rights.

The enactment of the Children Act has been seen as the primary indicator of the government’s will to safeguard the rights of children in Kenya. It has been lauded as a pioneering human rights law in Kenya’s legislative history and is currently the only legal instrument in Kenya that provides social, economic and cultural rights along with some protection of civil liberties. It was enacted primarily to domesticate the UNCRC and the ACRWC and hence it is a milestone as there are not many other laws that seek primarily to domesticate specific treaties.

However, one of the key challenges is that the age of criminal responsibility still remains at 8 years and the same needs to be reviewed upwards. Section 82 of the Constitution continues to pose a major obstacle to the full realization of the rights of the child. The section allows for discrimination on issues of personal law. The instances of personal law specifically mentioned include adoption, marriage, divorce, burial and devolution of property. The provisions of the constitution override those of any other law. The effect of this constitutional provision is to nullify protection of various rights in the Children Act especially protection from harmful cultural practices.

The Policy Framework

An examination of the existing literature and in particular, the State Reports on the implementation of the UNCRC points to the fact that the government has been formulating different policies to address diverse children’s rights issues in the country and further to respond to different violations of the rights. The following are some of the formulated policies in response to different situations concerning the rights of children.

National Policy on Orphans and Vulnerable Children

The National Steering Committee on Orphans and Vulnerable Children formulated the National Policy on Orphans and Vulnerable Children. One of the primary aims of the policy is to develop interventions targeting children made vulnerable as a consequence of HIV/AIDS.

Draft Labour Child Policy

The government developed the draft Child Labour Policy which seeks to provide interventions towards curbing the problem. However the policy remains a draft and has never been finalized for adoption and implementation by the government since it was drafted in the year 2000.
Adolescent Reproductive Health and Development Policy

The government recently (2006) launched the Adolescent Reproductive Health and Development Policy to cater for the needs of adolescents. This is very vital as many adolescents die of reproductive health-related issues yet there are no adequate services to address their plight. The number of youth-friendly services that have been established in some health facilities following the launch of the services is however still unknown.

The Government has however been slow on the enforcement of the adopted policies and fast-racking of those yet to be passed.
6. Study Findings

Introduction

Five districts were selected for in-depth study, Tharaka, Suba, Naivasha, Mombasa and Nairobi,. The districts were selected on the basis of diversity and representation. Some districts have challenges typical to an urban set up whereas others with challenges similar to a rural set-up. Most also have different socio-economic and cultural challenges atypical of the areas surrounding them. They districts therefore give a largely representative sample of challenges relating to children’s rights in most districts in Kenya.

Tharaka District

Introduction

Tharaka district is one of the thirteen districts that form Eastern Province. It is a relatively young district that was curved off the larger Meru district. The district is divided into 3 administrative divisions, namely Tharaka South, Tharaka Central and Tharaka North. There is a single local authority – Tharaka County Council that has 19 wards and one constituency. The following table gives baseline data on selected issues of Tharaka district\(^\text{18}\).

<table>
<thead>
<tr>
<th>Total Area</th>
<th>1569.5 sq Kms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Size</td>
<td>110,503</td>
</tr>
<tr>
<td>Female/Male sex ratio</td>
<td>100:90</td>
</tr>
<tr>
<td>Total number of youthful population (15-25)</td>
<td>27,041</td>
</tr>
<tr>
<td>Total population of primary school-going age</td>
<td>31,250</td>
</tr>
<tr>
<td>Total population of Secondary school-going age</td>
<td>1,505</td>
</tr>
<tr>
<td>Population growth rate</td>
<td>3%</td>
</tr>
<tr>
<td>Life expectancy</td>
<td>51 years</td>
</tr>
<tr>
<td>Under 5 mortality rate</td>
<td>76/1000</td>
</tr>
<tr>
<td>Total number of households</td>
<td>20,239</td>
</tr>
<tr>
<td>Average household size</td>
<td>5</td>
</tr>
<tr>
<td>Female-headed households</td>
<td>7,083</td>
</tr>
<tr>
<td>Children in need of special protection</td>
<td>2635</td>
</tr>
<tr>
<td>Absolute poverty (District)</td>
<td>65%</td>
</tr>
<tr>
<td>Most prevalent diseases</td>
<td>Malaria, respiratory diseases, intestinal worms</td>
</tr>
<tr>
<td>Doctor/patient ratio</td>
<td>1:100,992</td>
</tr>
<tr>
<td>No. of health posts</td>
<td>13</td>
</tr>
<tr>
<td>No. of health clinics</td>
<td>11</td>
</tr>
<tr>
<td>No. of hospitals</td>
<td>1</td>
</tr>
<tr>
<td>Average distances to nearest health facilities</td>
<td>7 kms</td>
</tr>
<tr>
<td>Pre primary schools</td>
<td></td>
</tr>
<tr>
<td>No. of pre-primary schools</td>
<td>155</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td>Boys: 3170 (36.5%)</td>
</tr>
<tr>
<td></td>
<td>Girls: 3126</td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td>Boys: 25.63%</td>
</tr>
<tr>
<td></td>
<td>Girls: 20.74%</td>
</tr>
<tr>
<td>Primary schools</td>
<td></td>
</tr>
<tr>
<td>No. of primary schools</td>
<td>152</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td>Boys: 12,114 (93.5%)</td>
</tr>
<tr>
<td></td>
<td>Girls: 12,840 (99.5%)</td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td>Boys: 32.79%</td>
</tr>
<tr>
<td></td>
<td>Girls: 47.75%</td>
</tr>
</tbody>
</table>

\(^{18}\) Tharaka District Development Plan 2002-2008
### Teachers/pupil ratio

**Secondary Schools**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total enrollment rates by sex</td>
<td></td>
</tr>
<tr>
<td>Boys: 681 (11.9%)</td>
<td></td>
</tr>
<tr>
<td>Girls: 824 (13.8%)</td>
<td></td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td></td>
</tr>
<tr>
<td>Boys: 6.86%</td>
<td></td>
</tr>
<tr>
<td>Girls: 3.52%</td>
<td></td>
</tr>
</tbody>
</table>

### Other areas

- **No. of households with access to piped water**: 1,433
- **Average distance to nearest portable water point**: 2 kms
- **Number of households with electricity**: 1
- **Number of households with telephone connection**: 7
- **Mobile service coverage**: Nil

### Overarching Issues Impinging on Child protection

#### Poverty

The district comprises low, hilly and sandy marginal low lands. Soils are mostly sandy and stony. Poor methods of farming and soil conservation have led to severe erosion. The situation has been worsened by charcoal burning and overgrazing. This affects the economic output of this area. The district has a bimodal rainfall pattern with an annual rainfall averaging between 500-800 mm per year. It is classified as a semi-arid/arid area with low rainfall that only comes in March to May enabling the people to plant quick-growing crops such as sorghum, green grams and millet. The second rainy season is also about October-November. Poverty levels are very high in the district. Parents may therefore be unable to afford even extremely subsidized medical care for the children and themselves. Children may not enrol in early childhood education and secondary schools due to inability to pay the school fee. Girls would be married off as a way of generating income through dowry payments.

#### Infrastructure

The district has a very poor infrastructure with roads without tarmac, no electricity in most places, has a poor telecommunication system (it uses the old phone system that no longer exists in most parts of the country, has no mobile telephone system) Even though there are 8 major rivers, none of them is tapped hence there is no access to clean and safe water. The poor infrastructure affects movement of persons hence impacting negatively on children. Expectant mothers may not access healthcare in time, children may be hindered to get to school and will not fully exercise their right to information due to limited communication network. Lack of clean water and poor sanitation threatens their health and survival rights as well as an adequate standard of living. Skilled workers would rather work elsewhere than in Tharaka. Consequently the child’s right to services such as education, justice and medical care is severely affected.

#### Culture

In all the districts studied, Tharaka district ranks top when it comes to the influence of culture on people. Consequently, the residents would justify children’s rights violations with cultural explanations. FGM, early marriages, low opinion on education and many other retrogressive practices and attitudes have been fuelled with culture. The people of Tharaka have a tendency to hide violations against children because the culture demands secrecy.

> "I had a good friend called Nkatha*. When we closed school in April she never came back to school. We were told she had been married."  Kawira* 13

*Real name concealed*
Institutional capacity and interventions
The district lacks a Children Officer and depends on a Voluntary Children Officer who covers the entire district without even volunteer allowance hence would not be effective. Other volunteer persons include Community Health Workers and Traditional Birth Attendants. Moreover the Area Advisory Committee for the National Council for Child Services is not present in Tharaka. The district has only one mobile court that sits once a week. A Children Court or child-friendly court is therefore nonexistent. The doctor/patient ratio is 1:100,992. Apart from the Government (that already suffers from inadequate capacity) there are few local and international development agencies offering child protection programmes. The interventions mainly include training of Traditional Birth Attendants and teachers; establishment of health centres (not common); construction of school infrastructure such as classrooms, toilets and water tanks; provision of uniform, food and sponsorship; Awareness and advocacy on harmful cultural practices and HIV/AIDS. However, these programmes can hardly cope with the greater need for services.

Common Problems and Forms of Child Rights Violation

Health
The health care facilities are few and far apart hence practically inaccessible especially in the event of emergencies. There are insufficient health personnel. The district hospital has only two doctors. Costs are also prohibitive given the poverty levels in the district. Consequently the infant mortality rate is 76/1,000 live births with most deliveries taking place at home. Malaria is the most prevalent disease.

Education
Early Child Education institutions are few, expensive and many distances away from the reach of young children hence many parents would rather not take their young children to school. The average age of starting school is 10 years. Primary schools are characterised with understaffing with a class of about 80 pupils hence affecting the quality of education that the children have a right to. A significant number of children lack uniform and even sitting places because of few classrooms. Poor enrolment in secondary schools is mainly due to lack of school fees hence the transition rate is extremely low.

Harmful Cultural Practices
The most common harmful cultural practice entails FGM with a prevalence rate varying from 50-100 per cent in some areas. The initiation contributes to early marriages. In Kathangacheni, Tharaka district, culturally girls are required to graze cattle and get married and hence they do not prioritize other rights such as the right to education. Many people in Tharaka look at disabled children as a bad omen hence they miss out on schooling.

Violence
Elimination of corporal punishment has been aggressively resisted by most teachers and parents in the district. Domestic violence is prevalent at home hence children lack proper guidance and sometimes run away from home. The violence is mostly as a result of abuse of drugs especially illicit brew.

“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 the table, fencing the school, uprooting a tree trunk, unreasonable suspensions…”
Innocent Musa Class 6
Basic Needs
The consumption of illicit brew has negative effects on families. Most drunk men do not focus on the home food security. This tended to create a food crisis and hence there was always need for relief food. The government feeds on average 40,000 people on relief food per month. Children in such homes may not prioritise other rights such as education. Moreover children experience dietary problems due to reliance on millet, sorghum and green grams.

Suba District

Introduction
Suba district is one of the 12 districts in Nyanza Province. The District has five administrative divisions- Mbita, Lambwe, Central, Gwassi, and Mfangano. The majority of the people will be found concentrated along the lakeshore and employed in fishing industry. The following table gives baseline data on selected issues of Suba district:

<table>
<thead>
<tr>
<th></th>
<th>1056 sq kms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Area</td>
<td></td>
</tr>
<tr>
<td>Population Size</td>
<td>170,326</td>
</tr>
<tr>
<td>Total no. of males</td>
<td>82,000</td>
</tr>
<tr>
<td>Total no. of females</td>
<td>88,080</td>
</tr>
<tr>
<td>Total number of youthful population (15-25)</td>
<td>41,405</td>
</tr>
<tr>
<td>Total population of primary school-going age (6-13)</td>
<td>39,697</td>
</tr>
<tr>
<td>Total population of Secondary school-going age (14-17)</td>
<td>18,579</td>
</tr>
<tr>
<td>Population growth rate</td>
<td>3%</td>
</tr>
<tr>
<td>Life expectancy</td>
<td></td>
</tr>
<tr>
<td>Males: 52.8</td>
<td></td>
</tr>
<tr>
<td>Females: 53.4</td>
<td></td>
</tr>
<tr>
<td>Under 5 mortality rate</td>
<td>130/1000</td>
</tr>
<tr>
<td>Total number of households</td>
<td>33,984</td>
</tr>
<tr>
<td>Average household size</td>
<td>4.6</td>
</tr>
<tr>
<td>Absolute poverty (Rural and Urban)</td>
<td>40.03%</td>
</tr>
<tr>
<td>Most prevalent diseases</td>
<td>Malaria, Upper respiratory and Diarhea</td>
</tr>
<tr>
<td>Doctor/patient ratio</td>
<td>1:85,036</td>
</tr>
<tr>
<td>No. of dispensaries</td>
<td>7</td>
</tr>
<tr>
<td>Number of health centres</td>
<td>9</td>
</tr>
<tr>
<td>No. of health clinics</td>
<td>3</td>
</tr>
<tr>
<td>No. of hospitals</td>
<td>2</td>
</tr>
<tr>
<td>Average distance to the nearest health facility</td>
<td>20 kms</td>
</tr>
<tr>
<td>Pre primary schools</td>
<td></td>
</tr>
<tr>
<td>No. of pre-primary schools</td>
<td>168</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td>Boys: 44%</td>
</tr>
<tr>
<td>Boys: 42%</td>
<td></td>
</tr>
<tr>
<td>Teacher/pupil ratio</td>
<td>1:31</td>
</tr>
<tr>
<td>Primary schools</td>
<td></td>
</tr>
<tr>
<td>No. of primary schools</td>
<td>172</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td>Boys: 18,099 (94%)</td>
</tr>
<tr>
<td>Boys: 16,366 (85%)</td>
<td></td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td>Boys: 8%</td>
</tr>
<tr>
<td>Boys: 6%</td>
<td></td>
</tr>
<tr>
<td>Teacher/pupil ratio</td>
<td>1:30</td>
</tr>
<tr>
<td>Secondary Schools</td>
<td></td>
</tr>
<tr>
<td>No. of Public Secondary schools</td>
<td>12</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td>Boys: 1,732 (19%)</td>
</tr>
<tr>
<td>Boys: 656 (7%)</td>
<td></td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td>Boys: 6%</td>
</tr>
</tbody>
</table>
Girls: 8%
Teacher/Pupil ratio: 1:16
No. of tertiary institutions: 5
No. of households with access to piped water: 2,174
Average distance to nearest portable water point: 4 kms
Number of households with telephone connection: 93

Main Issues Impinging on Child protection

HIV/AIDS
Suba district has the highest rural HIV/AIDS prevalence in the country with the district being the epicenter of the disease in the province with the prevalence rate reaching up to 37 per cent of the overall population of the district. This has resulted in widowhood, poverty and many children left behind as orphans. Many children who are orphaned have to fend for themselves hence they drop out of school to look for jobs. Their survival rights are also diminished for they have to support themselves in all issues.

“I know a case where a child Akinyi lost her parents when she was in class V. The aunt took her to take care of her but instead she just worked in the house while the other children went to school.”
Awuor, 14

Poverty
Suba is one of the poorest districts in Kenya. Poverty levels are high and many children drop out of school to look for means of subsistence through employment. Even though Suba district is rich in one resource: fishing, however many middle men who are not from the district exploit this industry to the detriment of the locals thus resulting in high levels of poverty. The price levels are very low and because of poor infrastructure, it is hard to market the fish in other areas. Poverty has contributed in young boys dropping out of school to work in the beaches. The girls on the other hand engage as commercial sex workers with fishermen and middlemen.

Harmful Culture
Many people live in the fear of “chira” which is a curse that purportedly befalls those who fail to follow culture. Thus many girls are married young and should the husbands die, they have to be inherited by a brother in law lest “chira” affects their children. Many opt to be inherited and consequently die of AIDS rather than be affected by “chira”. Culture propagates discrimination against girls. This means that their advancement is compromised especially in education. Culturally a girl is considered “ogwang” (wildcat because she has no place in the home. On the other hand there have been situations where boys have been forced to engage in the practice in wife inheritance. A case in point is of a standard 7 who was forced to inherit his late brother’s wife.

Most Common Forms of Violation of Child Rights
- Inaccessible Education
  - The children’s rights are mainly violated when they do not go to school because of long distances; when they have to drop out of school because of prohibitive costs of education and when they have to do chores for teachers and sometimes corporal punishment meted upon them
- Inaccessible Health care
  - The numbers of health facilities in the district are few and scattered, most of them are inaccessible by roads especially during rainy seasons. There are also Islands with no public health facilities. There is an acute shortage of health personnel, both technical and non-technical thus hampering health service delivery. Most parents were unable to afford
drugs for their children especially if they were not available at the district hospital. Safe motherhood is a problem and many mothers deliver at home. The situation is made worse with inadequate trained Traditional Birth Attendants.

**Sexual Abuse, Exploitation and Child Prostitution**

The impact of HIV/AIDS has left behind many widows. Most of them are able to make money in the fishing industry and many lure young boys from school to stay with them and have sexual relations. Many of these young boys drop out of schools and some get infected with HIV. On the other hand, many girls are sexually abused and exploited by different people including teachers, touts and fishermen. The fishermen, for instance, have a lot of money by the standards of the neighbourhood. Many girls are lured to have sexual relations with them in exchange for monetary favours. The girls either drop out school to live an active life as Commercial Sex Workers or drop out when they eventually get pregnant. A challenge though is that most locals do not know that child prostitution, sexual exploitation and what is perceived as ‘promiscuity’ all amount to criminal offences in law. This is because there is not much awareness created in this regard and also there is not much law enforcement in relation to sexual abuse due to the absence of an effective justice system.

**Overview of Interventions**

Interventions in Suba are mainly construction of classes, training of community educators, HIV treatment and care, staffing of the district hospital, education sponsorship of children, feeding programmes, paralegal training and advocacy. Unfortunately there seem not to be a major focus to economic empowerment programmes given that poverty is a main contributing factor to almost all children’s rights violations in the district. Moreover majority of the people live on the beaches with poor sanitary conditions yet water and sanitation programming is lacking. Ongoing advocacy campaigns have not targeted children’s rights to justice. There are no law courts in Suba hence no children courts.

Suba has attracted many international development agencies raising concern on inadequate presence of local organizations that are instrumental in ownership and sustenance of programmes. Inasmuch as there are organisations offering assistance to children, the support they give is not sufficient because many organizations are clustered mainly around initiatives related to HIV/AIDS. The ones dealing with other interventions are few, unevenly distributed within the district and have limited resources.

**Naivasha District**

**Introduction**

Naivasha District is a newly created district from Nakuru District in Rift Valley Province. It covers an area of 1,782.30 sq km. It has 8 locations and 16 sub-locations. The projected population was 175,457 by 2002 with a density of 98 000. It has Lake Naivasha which is a main tourist and economic attraction center (for fishing and flower farming). Given that Naivasha is a new district, there is no District Development Plan for it as yet, hence a lot of information specific to the district is still largely unavailable. The information provided in tabulated below is of Nakuru District from which it was carved. The following table gives baseline data on selected issues of Naivasha\(^{20}\).

<table>
<thead>
<tr>
<th>Total Area</th>
<th>7,242 sq km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Size (2002)</td>
<td>1,312,555</td>
</tr>
<tr>
<td>Total no. of males</td>
<td>662,009</td>
</tr>
<tr>
<td>Total no. of females</td>
<td>650,546</td>
</tr>
<tr>
<td>Female/Male sex ratio</td>
<td>98:100</td>
</tr>
<tr>
<td>Total number of youthful population (15-25)</td>
<td>325,163</td>
</tr>
<tr>
<td>Total population of primary school-going age (6-13)</td>
<td>288,278</td>
</tr>
</tbody>
</table>

\(^{20}\) Nakuru District Development Plan 2002-2008
Main Impinging Factors on Child Protection

Poverty
The flower farms are the main employers in the district. However, majority of people are unemployed with those working in the flower farms earning very little money (as little as KES 100 per day). The parents salary leave nothing for the child’s upkeep and they have to pay KES 1,000 for rent of small rooms without water and electricity and the balance of KES 2,000 is meant to feed, cloth and educate the whole family. Moreover almost a third of the households are female-headed. Poverty has forced many children to engage in petty crime and child prostitution. Naivasha ranks top in the numbers of child offenders among the districts involved in this study.
Lack of Families
Naivasha has many children orphaned by HIV/AIDS and many of them end up being in conflict with the law. Many of the children sent to approved schools are mainly orphans who lack parental guidance and support. The orphans are often vulnerable to all sorts of abuse.

Industrialisation
The establishment of many flower companies, tourist resorts and military camps has contributed in making Naivasha a cosmopolitan and convergence centre. Consequently there has been an increase in child, prostitution, sexual abuse and orphan and vulnerable children.

The elders blamed the rise on HIV/AIDS on track drivers who promote commercial sex work in town. This leads to mothers dying and many children left orphaned.

Internal Displacement
Family separations as a consequence of ethnic clashes in the neighbouring areas have led forced children to migrate to Naivasha to live with relatives. These children end up suffering from a lack of education, food, clothing and more often than not they are physically abused. They may engage in prostitution to as a way of making a living. Sometimes huge migrations of families from clash torn areas have settled in congested makeshift villages without water, toilets and basic amenities.

Most Common Forms of Violation of Children’s Rights

Sexual and Physical Abuse
The many flower companies in Naivasha have developed estates for their employees with majority of the estates harboring as many as 5,000-20,000 people. The people are diverse with many from upcountry and other places. Many are divorced, widowed, separated or unmarried. When they arrive at the farms, many get new husbands or partners. These partners often physically and sometimes even sexually molest children from the woman’s previous marriage. The parents noted that most flower farms prefer to hire women and so many times the children are left on their own and hence it is easy for someone to abuse them usually luring them with food as they often do not have food at home. There are also many cases of house helps who are also beaten and mistreated especially by the female employers.

“Two girls aged 4 and 5 years walking alone in a coffee plantation were raped by an old man.”-Mary Muthoni Standard V pupil

Child Prostitution and Abandonment
Naivasha has child prostitutes as young as 12 years of age. Truck drivers and soldiers often lure the girls to engage in sexual “relations” (read defilement) with them. “K” Street in Naivasha has children as young as 12-13 who are controlled by pimps that are mainly women. Some mothers who are themselves Commercial Sex Workers compel their daughters into liaisons with their own customers to augment family income. Many girls who are themselves involved in commercial sex work get pregnant and they have no means to take care of the child hence they often abandon the child near the hospital.

Poor Education Access and Transition
Naivasha has many disabled children as evidenced from the turnout during the celebrations to mark Disability Day in Naivasha. However, only a few are enrolled in school. There is a private school for children with disabilities but it is expensive and not many children can access it. Children with disabilities face the greatest challenge in school. This is because the infrastructure is insensitive to their needs. Take for instance those who are physically challenged and have to use the same dirty toilets as the other children. Consequently the children may be forced to wait when the get home for lunch. There are also transition problems with many children unable to access secondary education usually due to poverty. The dropout rate of boys is extremely high at
38 per cent compared to girls at 3 per cent. Reasons for such a big disparity are rather unclear but can be associated with child labour and drug abuse.

**Waterborne Diseases and Poor Sanitation**
The crowding in internally displaced persons makeshift villages and the congestion witnessed in flower firms housing units have subjected children to disease and inadequate standard of living.

**Overview of Interventions**
Majority of interventions in Naivasha revolve around provision of institutionalised homes. Few interventions provide vocational training independent of the homes. There is also the school sponsorship programme at a minimal level. The only project targeting the justice system is the construction of Child Protection Units and provision of life-skills for children in conflict with the law. There is also a pilot programme on Cash subsidy of KES 1,000 per month to guardians who take care of orphans.

**Mombasa District**

**Introduction**
Mombasa District is situated in the South-Eastern part of Coast Province. It is the smallest of the seven districts of the province covering an area of 229.6 sq km, excluding 65 sq km of water mass. It borders Kilifi District to the North, Kwale to the South and West and the Indian Ocean to the East. The district is divided into four divisions: Island, Changamwe, Likoni and Kisauni. The population size in 2002 was estimated at 741,085. The following table gives baseline data on selected issues of Mombasa.

<table>
<thead>
<tr>
<th>Total Area</th>
<th>229.6 sq km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total no. of males</td>
<td>405,374</td>
</tr>
<tr>
<td>Total no. of females</td>
<td>335,712</td>
</tr>
<tr>
<td>Female/Male sex ratio</td>
<td>1.17:1</td>
</tr>
<tr>
<td>Total number of youthful population (15-25)</td>
<td>186,386</td>
</tr>
<tr>
<td>Total population of primary school-going age (6-13)</td>
<td>112,185</td>
</tr>
<tr>
<td>Total population of Secondary school-going age (14-17)</td>
<td>55,597</td>
</tr>
<tr>
<td>Population growth rate</td>
<td>3.6%</td>
</tr>
<tr>
<td>Life expectancy</td>
<td>58.6</td>
</tr>
<tr>
<td>Under 5 mortality rate</td>
<td>128/1000</td>
</tr>
<tr>
<td>Total number of households</td>
<td>183,540</td>
</tr>
<tr>
<td>Average household size</td>
<td>4</td>
</tr>
<tr>
<td>Female-headed households</td>
<td>47,043</td>
</tr>
<tr>
<td>Children in need of special protection</td>
<td>8,893</td>
</tr>
<tr>
<td>Absolute poverty (Rural and Urban)</td>
<td>38.32%</td>
</tr>
<tr>
<td>Most prevalent diseases</td>
<td>Malaria, respiratory and skin</td>
</tr>
<tr>
<td>Doctor/patient ratio</td>
<td>1:30,000</td>
</tr>
<tr>
<td>No. of dispensaries</td>
<td>394</td>
</tr>
<tr>
<td>No. of hospitals</td>
<td>9</td>
</tr>
<tr>
<td>Average distance to the nearest health facility</td>
<td>0.5 km</td>
</tr>
<tr>
<td>Pre primary schools</td>
<td>325</td>
</tr>
<tr>
<td>Total enrollment rates (males and females)</td>
<td>26.13%</td>
</tr>
<tr>
<td>Teacher/pupil ratio</td>
<td>1.9</td>
</tr>
</tbody>
</table>

21 Mombasa District Development Plan 2002-2008
### Primary schools

<table>
<thead>
<tr>
<th>Category</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of primary schools</td>
<td>159</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td></td>
</tr>
<tr>
<td>Boys:</td>
<td>62.8%</td>
</tr>
<tr>
<td>Girls:</td>
<td>61.3%</td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td></td>
</tr>
<tr>
<td>Boys:</td>
<td>N/A</td>
</tr>
<tr>
<td>Girls:</td>
<td>N/A</td>
</tr>
<tr>
<td>Teacher/pupil ratio</td>
<td>1:29.3</td>
</tr>
</tbody>
</table>

### Secondary Schools

<table>
<thead>
<tr>
<th>Category</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Secondary schools</td>
<td>35</td>
</tr>
<tr>
<td>Total enrollment rates by sex</td>
<td></td>
</tr>
<tr>
<td>Boys:</td>
<td>51.3%</td>
</tr>
<tr>
<td>Girls:</td>
<td>19.3%</td>
</tr>
<tr>
<td>Total drop out rates by sex</td>
<td></td>
</tr>
<tr>
<td>Boys:</td>
<td>N/A</td>
</tr>
<tr>
<td>Girls:</td>
<td>N/A</td>
</tr>
<tr>
<td>Teacher/Pupil ratio</td>
<td>1:1:25</td>
</tr>
</tbody>
</table>

### Tertiary institutions

- No. of tertiary institutions: 25
- No. of households with access to piped water: 163,913 (80.4%)
- Average distance to nearest portable water point: 1 km

### Main Factors Impinging on Children’s Rights

#### Mombasa as a Holiday Destination

Mombasa witnesses a convergence of cultures and lifestyles of persons who come to relax and spend their money on recreation. The relaxed attitude of holidaymakers seems to have contributed in residents taking on a relaxed attitude yet they are not on holiday. The residents may not want work and they view education as an overwhelming task. Women will introduce young girls to child prostitution as a way of making money out of the holiday makers.

#### Poverty

It was noted that poverty was a big challenge in Mombasa due to a variety of reasons. Many parents in Coast Province are not well educated hence many of them do not have jobs. However there is a challenge in Mombasa of lack of self-drive even for those who are educated. However poverty has also been brought about by a history of years of racial discrimination that led to poverty amongst the locals. Most natives were dispossessed of their land and hence they can not even be able to get loans for development. Children are therefore denied adequate standard of living and may be forced to drop out of school to engage in economic activities. The teachers noted that most children do not have three meals a day and many parents are unable to afford uniforms.

#### Culture

Many communities still practice early marriages and there is a very low premium placed on the value of girls. Consequently girls drop out of school to get married usually arranged marriages. A higher premium is placed on younger girls. The marriages lead to early sex that amounts to sexual violation. On the other hand cultural attitudes on institutionalization of children have protected children, in that the families are willing to take them in as their own children.

#### Family Disintegration

This is as a consequence of high levels of divorce caused by forced marriages and women looking for richer husbands. Men also have a tendency to marry many wives and neglect the first one forcing her to leave. Children find themselves without proper parental guidance, neglected and abandoned. The family disintegration is never in the best interest of the child.

#### Most Common Child Rights Violations

**Child Prostitution**

Girls are employed in massage parlors where they double up as commercial sex workers. Both boys and girls are affected and in some instances, women send their daughters to undertake commercial sex work. This is especially for mothers who are themselves Commercial Sex
Workers. Sex tourism also promotes child prostitution, abduction and trafficking. It is done by both locals and foreigners.

**Early Sexual Encounters**

Early exposure to sex, has led to many homes that now have single-mother parents who are themselves children. The challenge with children themselves being children is that their own basic rights are denied and they are, by virtue of age, unable to provide the basic needs for their own children. This perpetuates a cycle of abuse that unless broken may lead to spiralling cases of abuse of child rights. It is further complicated as in an instance where a child fails to take care of the basic needs of another child, who is to be held accountable? The children of such children often are neglected and in need of care and protection.

**Drug Abuse**

There is an increase in drug abuse by young people. The police noted that drug abuse is very rampant and most of the time leads to criminal activity like mugging and stealing. Drugs like heroine, bhang and brown sugar are readily available. It is often the parents who go to the police to complain about their children’s involvement in drugs. Children who abuse drugs often drop out of school and may not engage in any meaningful activity.

**Inadequate School Facilities and Staffing**

Many schools are overcrowded and the available teachers cannot provide quality attention to the children. The pupils sometimes sit on the floor for lack of desks. Most schools have very few toilets and this affects studies. The required ratio is 1:25 for girls and 1:30 for boys including a urinal. In one school it was observed that there were only two toilets by the road side but they had no doors. This meant that only boys could use them.

**Overview of Interventions**

There are few actors and interventions in Mombasa. The ones available entail construction of classes, training of teachers in alternative punishment, legal representation, advocacy on children’s rights and rehabilitation of children.

**Nairobi**

**Introduction**

The study focused mainly in Kayole area of Nairobi. Kayole is an urban settlement with both informal and formal settlements. It is among the most populated areas of Nairobi. The baseline data specific to Kayole is not available within the Nairobi Development Plan.

**Main Factors Impinging on Children’s Rights**

**Poverty**

Nairobi has many people who are either not employed or lowly employed. This affects their ability to make provisions for their children. Unfortunately, many parents have turned to drug and substance abuse thereby compromising their ability to provide parental support to their children. Consequently children are neglected and end up engaging in child labour and prostitution. They find themselves vulnerable to defilement and other acts of sexual and physical abuse. Education becomes one of the first things to be abandoned.

**HIV/AIDS**

HIV/AIDS has made a significant number of children to be orphans and vulnerable. Children of ailing single parents drop out of school to nurse their parents. They also engage in child labour or prostitution to supplement the family income. Inasmuch as interventions in the area have helped in making the HIV situation tolerable, they have also created dependency among beneficiaries leading to abuse of such services. For instance mothers who are HIV positive will register and be given food. Some sell the food and go drinking leaving children hungry, alone and vulnerable. Many of the children whose parents are HIV positive are also registered for sponsorship. Given
that the mothers end up with no responsibilities (since food, medication and sponsorship is taken care of), they end up abandoning their parenting roles and the children who may be on full sponsorship end up dropping out of school.

Urbanisation

Rural urban migration characterized with failed economic dreams has seen the rise of congested makeshift settlements with their own unique cultures. The cultures will condone child prostitution, dropping out of school, crime, drug abuse among other lifestyles. Consequently the children’s right for guidance and proper support is compromised. Urbanisation also erodes communal responsibilities and support and replaces it with a-me-first philosophy that has seen parents abandoning their children and neighbours not caring about what is happening next door.

Common Forms of Child Rights Violations

Child Neglect and Abandonment

In many situations, a couple stays together but as soon as the woman delivers, the man abandons her and starts living with another woman. Such betrayed women sometimes abandon their children. There are many girls who have babies and throw them away reasoning that there are organisations that take such children in their fold. The children noted that many children are always abandoned at “By Grace” children’s home.

“When my parents died, my aunt threw me to the streets when I was five years old. I was like the child we saw in the movie. I am told I was picked by a nun and taken to “By Grace”. They have taken care of me since then”.  
Mercy 14

Sexual Abuse and Child Prostitution

There are many single mothers who come home with different male partners who end up sexually molesting the children. On the other hand many girls work in places where illicit brews are sold and double up as child prostitutes. Many are said to be from upcountry and are brought by relatives who make money from the children’s abusive activities.

Child Labour

The children were noted to be involved in:

- Collection of scrap metal, plastics, bones (for making feed): Both boys and girls, (some even as young as 5 years are involved). The children miss school in the afternoons to collect the scrap metal
- Working in quarries: This involves both boys and girls some as young as 10 years
- Domestic House-Helps: Many girls ages 9-10 are often taken from Soweto slum in Kayole to work in Umoja, Dandora and Komarock. Umoja has the highest incidents of domestic house-helps. The girls are paid on average KES 1,500-2,000 in Umoja and KES 2,000-4,000 in Komarock,. However, this only applies for older domestic house-helps. The younger ones are paid less. Nonetheless they still end up getting exploited as many are not paid anything at all and if they complain they are dismissed or the employer accuses them of stealing. They are also overworked and in some instances sexually abused
- Street-hawking by selling bananas, groundnuts, avocados and snacks.

Crime

Children are used to ferry guns for gangsters from one point to another. This mainly involves boys and girls ages 15-18. The gangsters use them as they can carry dirty sacks that cannot be inspected by the police and sometimes they carry them in school bags. It was reported that the police arrested 20 of them around November-December, 2005. It was also observed that most crimes are now committed by children. The child offenders end up dropping out of school.
Inadequate Access to Public Schools
The public schools are more preferred due to the free education policy. However, even with a high population density, there are very few public schools in Kayole hence children have to trek long distance to access education.

Overview of Interventions
The interventions on the ground entail education support to children rescued from child labour, orphans and vulnerable children. Supply of basic needs to families infected or affected by HIV/AIDS. There are also advocacy programmes on children’s rights and legal referrals.
7. Study Findings, the United Nations Convention on the Rights of the Child and the Children Act

Introduction

This section looks at the study findings in the context of the Study Findings and the UNCRC. It takes an Article approach with a cluster format.

Contextualising the Study Findings, UNCRC and the Children Act

Measures of Implementation

Article 4: Implementing the UNCRC

In an effort to domesticate the UNCRC, the Government enacted the Children Act (Cap 586 Laws of Kenya) that came into force on 1 March 2002. However contradictions exist with other pieces of legislation. The Children Act (CA) established the NCCS that works as a coordinating and unifying agency for children services in Kenya. It however suffers from a shortage of technical staff and its devolved structures have not been established in all the intended areas. When it comes to data collection on the rights status of the child, clearly disaggregated data to capture a host of issues is missing. Moreover there is a clear lack of sufficient resources to address children’s rights issues.

Article 42: Making the UNCRC widely known

The various actors in children’s rights issues have attempted to promote the UNCRC awareness campaigns in the form of the Children Act. However, the study indicates that there is still a high level of ignorance on what the Act contains hence many people feel they are not obliged under law to uphold child rights.

Article 2: Non-discrimination

Whereas the overall school enrolment rate increased (103 per cent) with the introduction of free primary education, regional disparities persist. Retention and transition rate along the various levels of education is still a major challenge especially for girls. Early Childhood Education and Development (ECED) is yet to be realised with about 65 per cent of children of ages 3-6 years unable to access education. Children with disability are discriminated against. They are often denied the right to education. The Children Act, however, gives protection for the child against discrimination of any kind. This is progressive as it offers a wider protection than obtained even in the current constitution.

Article 6: The Right to Life, Survival and Development

Kenya still has a high mortality of 120 for every 1,000 live births. The Government however, is providing free antenatal care and treatment for children less than five years of age. Many children suffer from dietary-related complications. For instance, as of 2004, 50-60 per cent of all school-going children lacked vitamin A. Children with disability are sometimes deliberately left unattended or to die. Ethnic clashes have not spared children. The Children Act guarantees the child’s right to food, clothing, life and affirms the principle of the best interest of the child.

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22 Kenya CRC report 2002-2005
23 Kenya CRC report 2002-2005
25 Kenya CRC report 2002-2005
Article 12: Respect for Views of the Child
In spite of Government's effort to put in place legislation and guidelines for child participation, cultural inhibitions have been a major obstacle in realising the concept. The Children Act however goes further to even allow the child to seek compensation from the person abusing the child’s rights.

Definition of the Child
Article 1: Definition of a Child
The definition of ‘who is a child’ is still a matter of contention with severe repercussions on the child. The Children Act defines a child as ‘Any human being below the age of 18 years’. This is likely to augur well for girls’ education as children are precluded from early marriages and harmful cultural practices. A child of tender years is also defined as a child of 10 years, a hitherto a grey issue in cases of custody. This is because even though it is clear that custody of children should be given to mothers where a child is of tender years, it was not clear what tender years entailed. This has now been resolved under the Act. It also gives a wider definition of child abuse to include physical, sexual, psychological and mental injury.

However other laws exist that provide alternative definition of the child. The cultures of different communities in Kenya also stress on their own definitions. This has led to early marriages, sexual abuse and lack of enjoyment of childhood. Cultural rites of passage to adulthood such as FGM with its link to early marriage, is closely associated with the definition of a child.

Civil Rights and Freedoms
Article 7 and 8: Name, Nationality and Preservation of Identity
Approximately 38 per cent of children do not have birth registration. Majority of births in Kenya take place at home hence are never registered. The Children Act affirms that a child is entitled to a name and nationality.

Article 16: Protection of Privacy
The right to privacy is yet to be fully accepted. To many people privacy is about adults, not children. In urban poor households usually characterised with a single room house, parents have no right to privacy leave alone children. The Children Act However stipulates that a child has a right to privacy.

Article 17: Access to Information
Poor telecommunication infrastructure especially in rural areas is a major hindrance to access information leave alone appropriate. Even where access to information is possible, regulation and enforcement of laws to ensure appropriate information for children is still a long way to be a reality in Kenya. The Children Act affirms the child’s right to guidance especially from the parent and goes further to protect the child from harmful practices.

Article 37: Torture and Inhuman or Degrading Treatment or Punishment
Corporal punishment predominantly featured in the study. The Kenyan society strongly believes in corporal punishment. It is often perceived as a corrective measure rather than physical violence or torture. Many parents and teachers come from a background where they were severely caned by their parents and teachers hence they propagate the same treatment to their children and pupils. Children with disability are sometimes chained and locked up in houses or under a tree. Moreover FGM even in its worst form is still practiced. Forced early marriages were common especially in the study areas of Mombasa and Tharaka. The Children Act protects the child against physical abuse, torture and other harmful practices.

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26 Kenya CRC report 2002-2005

35 Children’s Rights in Kenya

35 Children’s Rights in Kenya
**Family Environment and Alternative Care**

**Article 5: Parental Guidance and Article 5 Parental Responsibility**
The Children Act bestows parents with the duty to guide their children. However, this is so far the children are born within wedlock. In practice however, the study indicates that parents tend to neglect their children and may not be role models of good character in the home. Teachers have been left to do the guidance.

**Article 20: Protection of Children without Families**
Socioeconomic considerations hinder members of the extended family and well wishers from taking in a child without a family. The responsibility seems to have been left to Government and children homes. The public is often ignorant of Government services available for such children. In Mombasa however, cultural requirements promoted taking care of such children with the family setup hence lower cases of children without families. The study indicates that instead of getting help, such children are often mistreated, abused and exploited. The Children Act Regulates foster care placement and provides for the conditions for foster care placement, persons qualified to foster children and penalties for contravening the law as relates to foster care, amongst others. This is more so for children who are temporarily displaced from their homes or who are in transit to adoptive homes. It further regulates the running of children’s institutions such as rehabilitation of schools and remand homes.

**Article 19: Protection from Abuse and Neglect**
Legislation alone has not been possible to protect children from abuse and neglect. Children are still neglected, sexually and physically abused sometimes within homes that are supposed to be sources of refuge. The Children Act protects the child from all forms of abuse.

**Health and Basic Welfare**

**Article 23: Children with Disability**
The costs for health services for persons with disability are usually prohibitive. Many children with disability are forced to share similar facilities in schools making it difficult to pursue learning. There are few special schools. Moreover many schools deal with only one aspect of disability. Under the Children Act, children with disabilities are accorded special protection.

**Article 24: Health and Health Services**
Children access to health has been hindered by among others inadequate and distant located health facilities, cost of care and few health personnel. Few children enjoy clean water and sanitary conditions. They are often left out in antiretroviral (150,000 are HIV positive) treatment yet they should come first. The Children Act protects the child's right to health.

**Article 27: Standard of Living**
Approximately 12 million Kenyans do no have decent and affordable housing. The study indicated that children in slum areas or makeshift villages for internally displaced persons have to continuously confront the reality that they may not even have a simple roof over their head the next day they wake up. Poverty has been the key contributing factor in the realisation of adequate living standards. The Children Act, however asserts the child’s right to shelter and other basic provisions.

**Education**

**Article 28: Right to Education**
Whereas the overall school enrolment rate increased (103 per cent) with the introduction of free primary education, regional disparities persist. Retention and transition rate along the various levels of education is still a major challenge especially for girls. Early Childhood Education and Development (ECED) is yet to be realised with about 65 per cent of children of ages 3-6 years

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unable to access education. Children with disability are discriminated against. They are often denied the right to education. The Children Act on the other hand stipulates that free primary education is compulsory.

**Special Protection Measures**

**Article 32: Child Labour**
The high poverty levels have seen many children drop out of school in search of work. Approximately 27 per cent of children between 5-14 years in the period 1999-2005 were engaged in child labour. The labour may be in form collection of scrap metal, domestic house-help, street hawking, and working in quarries and on farms. The Children Act seeks to protect children from child labour by providing for regulatory laws and also goes beyond the ordinary legal approach to a more social approach to justice by seeking to rehabilitate children who have been involved in armed conflict.

**Article 33: Drug Abuse**
In spite of the government setting up a national agency to coordinate efforts towards the elimination of drug abuse, children continue to abuse drugs. In Mombasa for instance, the abuse of drugs is so high that it is often the parents who go to the police to complain about their children's involvement in drugs. Children who abuse drugs often drop out of school and may not engage in any meaningful activity. The Children Act protects the child from all forms of abuse including those to do with drugs.

**Article 34: Child Sexual Exploitation**
Girls are employed in massage parlors where they double up as commercial sex workers. Both boys and girls are affected and in some instances, women send their daughters to undertake commercial sex work. This is especially for mothers who are themselves Commercial Sex Workers. Sex tourism also promotes child prostitution, exploitation, abduction and trafficking. It is done by both locals and foreigners. The Children Act condemns child sexual exploitation as a form of abuse.

**Article 35: Sale, Trafficking and Abduction of Children**
There is no strong legal and policy framework for effective protection of children against this article. The penalty of trafficking in children is extremely lenient.

**Article 35: Children Deprived of Liberty**
Children are often mixed up in adult cells. They sometimes are ‘convicted in prison’ instead of them being seen as child offenders. Moreover the normal cases in practice hardly prioritise children cases. There are few interventions to mitigate against re-offence. On the other hand the Children Act guarantees the Child’s right to liberty. It focuses on the treatment of children in conflict with the law and specifically provides for a child-friendly set-up and methods of dealing with such children.

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28 Kenya CRC report 2002-2005

Children’s Rights in Kenya
8. Recommendations towards the Protection of Children’s Rights in Kenya

Overall Recommendations:

- Advocacy for the review all laws relating to children to harmonise them with the Children Act
- Strengthening the capacity of the Children Department and the NCCS in undertaking their mandate
- Advocacy for establishment of Area Advisory Committees in all districts
- Reducing dependency on volunteerism in critical areas of child protection
- Establishment of strategic partnerships with institutions that have greater impact on child protection for popularisation of the United Nations Convention on the Rights of the Child
- Work with community based structures to establish a community self regulating mechanism against all forms of discrimination
- Support pro-poor strategies that use the child as an entry point to poverty reduction
- Promote diversification of incomes
- Strengthen the capacity of children officers to take a proactive strategy in child protection rather than only dealing with symptoms
- Lobby for the placement of Family and Child counsellor at the district level to work hand in hand with the children officer
- Develop mechanisms to popularise alternative care such as fostering, and guardianship
- Empower children who are victims of children’s rights violations to grow up as productive citizens
- Advocate for increased resource allocation to children with disabilities
- Promote the philosophy of safe and clean water
- Enhance children access to health care and promote responsible reproductive health
- Advocate for free Early Childhood education
- Enhance accessibility to primary education and transition to secondary education
- Promote programmes that ensure children’s rights in the juvenile system and mitigate re-offence
- Advocate for the enactment of Trafficking of Persons Bill and any other child friendly Bill.

Priority Areas for Save the Children Alliance

Child Protection

This area of programming should focus on children in conflict with law and those who are either neglected or abandoned. It should also encompass children who are trafficked, internally displaced, abused especially sexual abuse and exploitation and those who are discriminated upon as in the case of disability, gender or by virtue of being an orphan. The programme should address both causes of children’s rights violations and the issue of service delivery including juvenile justice. It should target critical components of the justice system and instrumental agents of change. The programme should also support rehabilitation and reintegration interventions especially those living on the street.

Advocacy

Support should be offered to interventions focusing on popularisation of child rights, lobbying for legislation that upholds the rights of the child and enforcement of the same.
Special attention should be paid to advocating and lobbying for policies targeting internally displaced children and finalisation of existing policies and laws that impact on children.

**Institutional Strengthening**
This is a cross-cutting programme area that entails building the capacity of strategic stakeholders to enable them to rollout effective interventions aimed at realising the rights of the child. Targeted institutions may include community based organisations and government agencies responsible for child protection. The capacity building may be in the form of infrastructure, supplies, trainings or technical support.

**Economic Empowerment**
Poverty is a major hindrance in the enjoyment of child rights. Pro-poor interventions should be formulated with the child as an entry point. Parents or guardians of children made vulnerable to abuse due to poverty should be economically empowered through sustainable interventions that will lead to an environment where children can enjoy a good standard of living. This may be in the form of vocational training and incoming generation activities. Child mothers, orphans, children in conflict with the law, those in child labour including commercial sex workers deserve attention especially with respect to vocational training and seed funding. Mechanisms should also be formulated to economically empower community based volunteers as a group. The volunteers may include paralegals and community workers.

**Education Support**
Access to early childhood education and transition to secondary education is a major area of concern. Either or both infrastructural and technical support to early childhood education will enable many young children access education. On the other hand school sponsorship especially for secondary education will enhance transition and promote the education rights of children.

**Health**
Facilitation of mobile clinics through partnerships with medical associations and the Ministry of Health both at national and district levels will enable access to clinical services and antenatal care for the children and mothers in areas that lack medical facilities. Safe water and sanitation practices should also be promoted especially through schools, community water points and even places of worship. Support should also be given to interventions aimed at promoting responsible reproductive health behaviour for both adolescents and children in their pre-teen years.
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## Annex I

Participants in the Children’s rights Situational Analysis

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<tr>
<th>District</th>
<th>Persons Interviewed</th>
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<tbody>
<tr>
<td>Tharaka</td>
<td>District Commissioner, MOH, District Officer, District Social Services Officer, District Education Officer, Deputy District Education Officer, Public Health Officer, Volunteer Children Officer, Head Teacher and Chairman BOG Marimanti School, Deputy Principal and Teacher Tharaka Boys, Head Teacher Kamatungu Day and Boarding Primary School, four parents and children representing various categories</td>
</tr>
<tr>
<td>Suba</td>
<td>District Commissioner, District Education Officer, Officer in charge of child right issues in education, Officer Commanding Police Division, two police officers, Volunteer Children Officer, Teacher MA Academy, Teacher Modo Secondary, Teacher Nyasumbi Primary, Teacher Mbita High School, Teacher and BOG member Tom Mboya Secondary, Manager and Sponsors Relations Officer Christian Children Fund, Chairman Nyabede Beach, 8 women fishmongers and two fishermen, 30 children</td>
</tr>
<tr>
<td>Naivasha</td>
<td>Magistrate, District Labour Officer, Children Officer Project, Volunteer Children Officer, Constable assigned to children desk, Ministry of Health-Nursing Officer, Paediatrician, Matron Manager Safe House, Project Officer Kenya National Outreach Counselling, Society of Women Living with AIDS, Chief with Assistant Naivasha town location, three teachers and two PTA members, 7 parents, 9 elders, one internally displaced person, 23 children</td>
</tr>
<tr>
<td>Mombasa</td>
<td>District Officer, Provincial Criminal Officer, Officer in Charge of Station, Officer in Charge of Crimes, Education District Quality Assurance and Standards Officer, Municipal Education Officer, 8 teachers, 5 parents, 5 NGOs, 28 children</td>
</tr>
<tr>
<td>Nairobi</td>
<td>Teachers, two parents, three officers from ANNPCAN(K), one from Wofak, one from By Grace, Volunteer Children Officer, Officer in Charge of Station, Chief, 28 children</td>
</tr>
</tbody>
</table>
## Annex II

### Summary of Selected laws Relating to Children in Kenya

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<th>ACT</th>
<th>CHAPTER</th>
<th>CONTENTS/OBJECTIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption Act</td>
<td>143</td>
<td>Dealt with the registration of adoption orders, control of adoption societies, regulation of arrangements made by adoption societies and other persons in connection with adoption of children.</td>
</tr>
<tr>
<td>African Christian Marriage and Divorce Act</td>
<td>151</td>
<td>Provides for marriage of African Christians and their dissolution. Deals with the question of consent to marriage, status of African Christian widows especially with respect to guardianship of children of the marriage; custody and maintenance of children after divorce, nullity of marriage or judicial separation.</td>
</tr>
<tr>
<td>Age of Majority Act</td>
<td>33</td>
<td>Provides for age of Majority at 18 years. A person is considered to be of full age and ceases to be under any disability by reason of age on attaining the age of 18 years.</td>
</tr>
<tr>
<td>Asian Officers' Family Pensions Act</td>
<td>194</td>
<td>Makes provision for granting of pensions to widows and children of Asian Officers appointed to the service of Government after 1942.</td>
</tr>
<tr>
<td>Asian Widows and Orphans Act</td>
<td>193</td>
<td>Makes provision for granting of pension to widows and children of deceased Asian Officers.</td>
</tr>
<tr>
<td>Betting, Lotteries and Gaming Act</td>
<td>131</td>
<td>Prohibits betting and gaming with young persons except under certain conditions, e.g. it takes place in a private dwelling house or in the presence of a parent or guardian of that person.</td>
</tr>
<tr>
<td>Births and Deaths Registration Act</td>
<td>149</td>
<td>Provides for notification and registration of births and deaths. It is the duty of every Registrar of births and deaths to keep a register of births and deaths to enter particulars of every birth and death notified to him.</td>
</tr>
<tr>
<td>Bills of Exchange Act</td>
<td>27</td>
<td>Provides for capacity to incur liability as a party to a bill of exchange i.e. it is co-extensive with capacity to contract. It also deals with a bill drawn or endorsed by an infant, minor or corporation having no capacity to incur liability on a bill.</td>
</tr>
<tr>
<td>Borstal institutions</td>
<td>92</td>
<td>Makes provision for the establishment of Borstal institutions for youthful offenders and for the detention of such offenders and incidental purposes.</td>
</tr>
<tr>
<td>Chief’s Authority Act</td>
<td>128</td>
<td>Conferred authority on chiefs to prohibit or restrict the manufacture, distilling, consumption or possession of native intoxicating liquors and the supply of such liquors to young persons. The Act also exempted persons under 18 years to over 15 years of age from rendering compulsory service in connection with preservation of natural resources.</td>
</tr>
<tr>
<td>[Now Repealed]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Act</td>
<td>Section</td>
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<tr>
<td>11</td>
<td>Children and Young Persons Act</td>
<td>141 (Repealed and provisions incorporated to the Children’s Act)</td>
</tr>
<tr>
<td>12</td>
<td>Civil Procedure Code</td>
<td>21</td>
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<tr>
<td>13</td>
<td>Constitution</td>
<td>Act No. 5 of 1969</td>
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<td>14</td>
<td>Co-operative Societies Act</td>
<td>490</td>
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<td>15</td>
<td>Contract Act</td>
<td>23</td>
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<td>16</td>
<td>Criminal Procedure Code</td>
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<td>17</td>
<td>Law of Domicil Act</td>
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<td>18</td>
<td>Education Act</td>
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<td>Fatal Accidents Act</td>
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<td>Film and Stage Plays Act</td>
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<td>Firearms Act</td>
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<td>24</td>
<td>Geneva Conventions Act</td>
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<tr>
<td>No.</td>
<td>Act Title</td>
<td>Section</td>
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<tr>
<td>25</td>
<td>Guardianship of Infants Act</td>
<td>144 (Now Repealed and provisions incorporated into the Children Act)</td>
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<tr>
<td>26</td>
<td>Hindu Marriage and Divorce Act</td>
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<td>27</td>
<td>Immigration Act</td>
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<td>28</td>
<td>Industrial Training Act</td>
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<td>Judicature Act</td>
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<td>Kenya Boy Scouts Act</td>
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<td>32</td>
<td>Kenya Girl Guides Act</td>
<td>220</td>
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<td>33</td>
<td>Kenya Citizenship Act</td>
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<td>34</td>
<td>Legitimacy Act</td>
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<td>Limitation of Actions Act</td>
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<td>36</td>
<td>Liquor Licensing Act</td>
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<td>37</td>
<td>Marriage Act</td>
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<td>38</td>
<td>Magistrate’s Courts Act</td>
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<tr>
<td>No.</td>
<td>Act Title</td>
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<tr>
<td>39</td>
<td>Maintenance Orders Enforcement Act</td>
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<td>National Social Security Fund</td>
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<td>45</td>
<td>National Youth Service Act</td>
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Save the Children Canada works in 10 countries worldwide. In Kenya, the organisation established a country office in 1984 and currently has its country head office in Nairobi and programme office in Meru. The Kenya programme has undertaken various community projects to benefit children in eastern Kenya which include rain water harvesting, sanitation improvement, domestic energy conservation, school facilities improvement, provision of learning materials, elimination of female genital cutting, establishment of Child Rights Clubs in schools and community education on children’s rights.

HIV/AIDS has been a focus of Save the Children Canada’s work in Kenya and the programme has worked with the ministry of health to construct and operationalise 7 Adolescent Reproductive Health Service centers and peer education programmes with outreach services including VCT in 7 districts namely Meru North, Meru South, Meru Central, Tharaka, Isiolo and Laikipia Districts. The programme also supports young parents living with AIDS and orphans and vulnerable children under a Total Care Initiative model.

The Kenya programme undertakes advocacy work with the government and the NGO network on children’s rights and assists in state party reporting UNCRC, implementation of the Children’s Act and setting up of Area Advisory Councils in various Districts and development of national guidelines on Child Participation. The organisation is a gazetted member of the National Council for Children Services. Save the Children Canada’s programme supports education for vulnerable children, among them Internally Displaced Children and ECE education. The Kenya programme hosted the Emergency Liaison Team of the Save the Children Alliance, which undertook drought emergency response in the 2006/07 Kenya drought emergency.

Save the Children Finland has been having activities in Kenya since 1990. The regional program currently works in Ethiopia and Kenya and envisages covering Eritrea, Somalia, its base being the EastAfrica regional office in Nairobi. In Kenya, the organisation has advocated for health education, especially for mothers and children through Tharaka primary health care project. It also implements two EU funded projects, namely the European Initiative for Democracy and Human Rights (EIDHR) and support to Kazi Mashambani Development Program (KAMADEP) projects in western Kenya. The EIDHR projects focuses on stopping all forms of violence against children by increasing the capacity of policy makers, civil society organizations and implementing institutions to address issues of violence against children and facilitating a regional platform for dialogue and networking. Through KAMADEP SCF mainly focuses on upholding children rights with respect to access to clean water and improved sanitation.

In Ethiopia and Kenya, the organisation has worked to enhance the capacity of its local partners in child rights programming e.g. in Kenya a local partners is supported to build capacities of CBOs and FBOs to provide quality child focused services. In 2006–07 support has been given for the emergency drought situation in Isiolo district on water, hygiene and sanitation interventions in primary schools.

Save the Children Sweden began its activities in Kenya 1992. Between 1992 and 1997, the organisation had a programme in Kakuma Refugee Camp where, in partnership with UNHCR, over 17,000 children from Ethiopia and (later) Sudan were provided psychosocial and educational support. During 2006 support was given to the Alliance drought emergency response in the Central Province. Save the Children Sweden supports partners in Kenya in the area of Juvenile Justice, taking initiatives to abolish corporal punishment in schools, supports partners to protect children from sexual exploitation and is engaged in child protection activities for Somali refugees in eastern Kenya. The country has also been the base for training Regional Military Peace Keepers on issues of children’s rights and child protection. Nairobi has been the operational base for the organisation’s work in southern Sudan and from July 2006 locates the Regional Office for Eastern and Central Africa.

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