



Children's Rights in Kenya – an Analysis Based on the CRC Reports

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Foreword

Knowledge is paramount for Save the Children Sweden (SCS) when deciding how, with what and where we can support the children of Kenya. In the process of increasing our knowledge about where the achievements and challenges are in implementing children's rights, this study was conducted. It is a logical first step for SCS to look at the reports to the UN Convention on the Rights of the Child (CRC) Committee.

This analysis has given us an historic insight since the signing of the CRC by Kenya (as one of the first countries). It also shows achievements made and remaining challenges. Those who have contributed to the achievements should be proud. That gives inspiration and strengths to face remaining challenges. Of course, it is easier to face challenges the more individuals that are involved. Each one has a way of contributing. SCS are therefore happy to share this report with you and hope that it will inspire you further to realize the rights of girls and boys in Kenya.

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Acronyms

AAC	Area Advisory Council
AIDS	Acquired Human Immunodeficiency Syndrome
ANPPCAN	African Network for the Prevention and Protection Against Child Abuse and Neglect
ARV	Antiretroviral
CBOs	Community Based Organisations
CCF	Christian Children's Fund
CDFs	Constituency Development Funds
CLAN	Children's Legal Action Network
CRADLE	The Child Rights Advisory and Legal Aid Centre
CRC	UN Convention on the Rights of the Child
EARS	Education Assessment Resource Services
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
FGM	Female Genital Mutilation
FPE	Free Primary Education
GJLOS	Governance Justice Law and Order Sector
HIV	Human Immunodeficiency Virus
KAACR	Kenya Alliance for the Advancement of Children
NACADA	National Agency for the Campaign Against Drug Abuse
NACC	National AIDS Control Council
NCCS	National Council for Children Services
NGOs	Non-Governmental Organisations
OVC	Orphans and other Vulnerable Children
PMTCT	Prevention of Mother to Child Transmission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VCT	Voluntary Counselling and Testing

I. Introduction

I.1 The CRC and the Reporting Process

The *UN Convention on the Rights of the Child* (CRC)¹ was adopted by the United Nations General Assembly on 20 November 1989 after ten years of careful drafting. It is the most universally accepted human rights instrument in history and has been ratified by 192 countries (only Somalia and United States have not ratified). The CRC is the first legally binding international instrument that incorporates the whole spectrum of human rights – civil and political rights as well as economic, social and cultural rights and it applies to all children under the age of 18. The CRC emphasises that children are holders of rights and that these rights are entitled to every child everywhere in the world. Furthermore, it puts equal emphasis on all of the rights and there is no hierarchy of these human rights. Hence, the articles of the Convention are indivisible, interdependent and interrelated. This is an important key to interpreting the CRC.

The governments that have ratified the Convention on the Rights of the Child are committed to taking the necessary legal, administrative and other measures to implement the Convention. In order to monitor the states' implementation of the Convention, the *UN Committee on the Rights of the Child*² was established in 1991 (in accordance with article 43 of the CRC). The governments are required to submit regular, detailed reports to the Committee, describing the situation of children's rights in their country and the measures taken to meet their obligations and responsibilities outlined in the Convention.³ Governments are urged to involve all sectors of society in the preparations of their reports.⁴

Kenya ratified the Convention on the Rights of the Child on 30 July 1990. However, the government did not submit its *Initial Country Report*⁵, which was due in September 1992, until January 2000. This report covers the period between 1990 and 1997. Two alternative reports, produced by the *Kenyan NGO CRC Coalition*⁶ and the American NGO *Human Rights Watch*, were submitted to the UN Committee in 2001. The UN Committee considered the Initial Country Report of Kenya in September 2001 when its members met with representatives of the Kenyan government in Geneva. One month later the Committee published its *Concluding Observations* with comments and recommendations. Kenya's *Second Periodic Report*⁷, due in September 2002, has just been released (September 2005) and accordingly not yet been taken into consideration by the UN Committee. For the same reason no alternative reports to the second CRC report have been published so far. The Second Periodic Report covers the period between 1998 and 2004.

I.2 Purpose of Study

The purpose of this paper is to make an analysis of the Kenyan CRC reports, using the programme areas of Save the Children Sweden as the analytical framework. By identifying the status of children's rights within the different programme areas and where the achievements and gaps, challenges and constraints are, this study will provide a platform for Save the Children Sweden's up-coming situation analysis for Kenya.

Three interrelated questions will be analysed in this paper:

1. Where does Kenya stand within Save the Children Sweden's programme areas?
2. What are the achievements and challenges towards the realisation and protection of children's rights in Kenya, as expressed by the government in the CRC reports, the NGOs in their alternative reports and the UN Committee in its Concluding Observations?

¹ Refer to Appendix I for a full copy of the CRC.

² Hereafter called "UN Committee" or only "Committee".

³ States Parties to the Convention on the Rights of the Child are required to submit their initial report within two years of ratification and after that their periodic reports every five years. CRC Article 44.

⁴ www.unicef.org/crc/introduction.htm, International Save the Children Alliance, 2005, p. 13 ff.

⁵ This report will often be referred to as "first CRC report" or only "first report".

⁶ The Coalition has members from key children's organisations in the country, including Action Aid, ANPPCAN, CRADLE, Plan International, Save the Children Canada, World Vision etc. Kenya NGO CRC Coalition, 2001, p. 20.

⁷ This report will also be referred to as "second CRC report" or just "second report".

3. Is it possible to discern a process of development in the implementation of children's rights between the time periods covered by the first and the second CRC report, i.e. 1990-1997 and 1998-2004?

2. General Comments

Considering the fact that submission of Kenya's initial CRC report was delayed by eight years, one would have expected a more well written, constructive and solid report. However, following the ratification of the Convention, no proper structure for the reporting process was established in Kenya, and the reporting process did not begin until 1997. It was led by a Steering Committee, coordinated by the Children's Department, which worked with UNICEF and the NGO community through Kenya Alliance for the Advancement of Children (KAACR). The report itself identifies the lack of a functioning reporting structure and recommends the establishment of a monitoring mechanism to facilitate the writing of the next report. It also acknowledges that an effective coordination mechanism for the implementation of the CRC had been missing.⁸ Even though constraints and challenges are mentioned in the first report, questions arise regarding the depth and width of these, as well as the existence of other problems not mentioned in the report. A contributing factor to this criticism is the fact that the report to a great extent is focused on the legal and policy framework of children's rights. The comment of the Kenya NGO CRC Coalition in its alternative report is telling:

While the detailed description of the available legal and policy programs gives the impression that all the provisions are operational, this is not the reality.⁹

Accordingly, a recurring question that strikes the reader is how the judicial provisions are actually implemented on the ground. This comment is also applicable to the second periodic report, which to a large extent is focused on the newly passed *Children Act 2001* (see below). However, in comparison with the initial report, the second report indicates clear improvements, both in terms of the reporting process and the actual implementation of the CRC. A better mechanism for the reporting process was in place at the time of the writing of the second report.¹⁰ This report is better structured, more stringent, constructive and, perhaps most important, more self-critical than the initial report. Following the information relating to each article of the CRC are sections specifying constraints and recommendations, which provide valuable insight, not least for this study. Furthermore, the writing process of the second report had a greater extent of NGO and child participation, which makes this report more comprehensive and credible.

The *Children Act*¹¹, which came into force on 1 March 2002, is given a prominent position in both CRC reports; the first one highlights its coming enactment and what enormous improvement of the legal protection of children's rights this will entail; the second report makes references to the Act in almost every section, emphasising its great importance, describing it as "a new beginning for the development and effective protection of Kenya's children."¹² The *Children Act* is considered as a pioneering human rights law in Kenya's legislative history. It is closely related to the CRC and is the only legal instrument in the country that provides social, economic and cultural rights. Among its key social welfare provisions is the guarantee of free basic education and the right to health care.

The *Children Act* establishes the *National Council for Children Services* (NCCS), which was inaugurated in September 2002. The Council serves as the umbrella body for children services in Kenya, with the overall goal "to realize and safeguard the rights and welfare of the child (...) through effective implementation of the provisions of the *Children Act*".¹³ According to the *Children Act*, the Council shall exercise supervision and control over the planning, financing and co-ordination of child rights and welfare activities, as well as advise the government on these issues. It is also charged with the responsibility of coordinating the reporting on the CRC. The NCCS shall consist of Permanent Secretaries of relevant government ministries (home affairs, education, health, finance etc); the Attorney-General and Commissioner of Police, but also six

⁸ Initial Country Report, 2000, p. 119, 17, 25.

⁹ Kenya NGO CRC Coalition, 2001, p. 2.

¹⁰ Interviews with Mr. Wanjau 5 December 2005, and Mr. Munene, 8 December 2005.

¹¹ The Children's Act codified and replaced three previous statutes: The Children's and Young Person's Act, The Adoption Act and The Guardianship of Infant's Act.

¹² Second Periodic Report, 2005, p. 1.

¹³ National Council for Children Services, 2005, p. 2.

representatives of NGOs engaged in child welfare activities¹⁴, three representatives of religious organisations and two representatives of the private sector. Hence, the NCCS brings together and coordinates stakeholders from a wide spectrum of the Kenyan society. In collaboration with its key stakeholder, the NCCS has developed a five-year strategic plan for 2005 to 2009. The plan identifies four strategic issues and also addresses the importance of and how to implement these issues.¹⁵ In the different districts, the NCCS is represented by the *Area Advisory Councils* (AACs), which are responsible for coordinating children's issues at the community level.¹⁶ The NCCS is accountable to the ministry in charge of children's issues, which is the Office of the Vice President and Ministry of Home Affairs.

The *Department of Children's Services*, which also falls under the Office of the Vice President and Ministry of Home Affairs, is the main government agency mandated to provide services for the welfare of children and secure their rights as stipulated in the *Children Act*. The Children's department is the technical arm and secretariat of the NCCS, with responsibility to implement the decisions taken by the Council.¹⁷

¹⁴ According to the Children Act Section 31 (3), the six representatives of NGOs shall hold office for three years, but may be nominated for a further term of three years.

¹⁵ The Council has established four working committees, one for each strategic issue: 1. policy development and legal environment; 2. planning, research, monitoring and evaluation; 3. resource mobilization, management and organisational development; and 4. advocacy, media participation and partnership. A number of proposed activities as well as key indicators for each thematic area are described in the strategic plan. National Council for Children Services, 2005, pp. 12-14.

¹⁶ The Area Advisory Councils shall have the same composition and representation as the NCCS. Second Periodic Report, 2005, p. 4; National Council for Children Services, 2005, p. 8.

¹⁷ Second Periodic Report, 2005, p. 3; Interview with Mr. Wanjau, 5 December 2005.

3. The Four General Principles of the CRC

The Convention on the Rights of the Child builds on four general principles: non-discrimination, best interests of the child, the child's right to survival and development and the child's opinion. These four articles form the umbrella provisions of the Convention and the guiding principles for interpreting all its articles. Since these principles are fundamental and overarching they are provided a separate section in this paper. This section will also serve as a general introduction to the content of the CRC reports, which will be more carefully described and analysed in section 4.

3.1 Non-discrimination (CRC Article 2)

All rights specified in the CRC apply to all children without exception. It is the States' obligation to protect children from any discrimination, to identify the most vulnerable and disadvantaged children within their borders, including non-citizens and refugees¹⁸, and take affirmative action to ensure that the rights of these children are realised.

Different forms of discrimination against children in Kenya are highlighted in the two CRC reports. Children at most risk of being discriminated against are *girls, children with disabilities, orphans* and children affected by *HIV/AIDS* and children *born out of wedlock*. These different forms of discrimination are to a great extent rooted in cultural traditions. In many Kenyan communities, especially in the rural areas, male children are still preferred, which leads to discrimination against girls, who are also at risk of harmful traditional practices like female circumcision and early marriage. Rights of inheritance are to a great extent still restricted to male members of the family. Children with disabilities are often considered to be taboo children since disability is associated with bad luck. In some communities they are hidden from the public. Children affected by the HIV/AIDS epidemic are discriminated against and stigmatised. Children born out of wedlock are not fully accepted in the mother's home and many cultures refer to these children in derogatory terms.

Not only cultural traditions and social structures contribute to discrimination against children in Kenya, but also some of its the legislative provisions. One clear example is the issue of citizenship. According to Kenyan laws, a child whose father is Kenyan automatically becomes a Kenyan citizen regardless of where she or he is born, whereas a child born outside Kenya to a Kenyan mother and a non-Kenyan father only becomes a Kenyan citizen if he or she applies for citizenship. The different family laws of Kenyan communities also lead to discrimination against children.

3.2. Best Interests of the Child (CRC Article 3)

The principle of the best interests of the child is a major building block of the CRC and one of the most discussed terms in the Convention. It emphasises that consideration of the best interest of the child shall be the guiding principle of all decisions and actions involving children. The term is recurring in the different articles of the CRC.

The current *Constitution* of Kenya is silent on the rights of the child, whereas the *referendum draft Constitution*¹⁹ stipulated that a child's best interest shall be of paramount consideration in every matter concerning the child. The *Children Act* (Section 4 (2)) states that the best interests of

¹⁸ The enjoyment of rights stipulated in the CRC are not limited to children who are citizens of a State Party, but must – if not explicitly stated otherwise in the CRC – also be available to all children within the State's territory, including asylum-seeking, refugee and migrant children. Committee on the Rights of the Child, 2005, para. 12.

¹⁹ The government kicked off the process of reviewing the Kenyan Constitution in 2001, when the Parliament passed the Kenya Constitution Review Commission Act. This process involved a re-evaluation of the entire constitutional framework, as well as the rights and responsibilities enshrined therein. The Commission visited different parts of the country and gathered the views of the people on how to draft a new Constitution. A number of National Constitutional Conferences were held where the new Constitution was discussed. The final draft, the Wako draft, was released in September 2005 and on the 21 November 2005 the Kenyan citizens went to the polls in a historic referendum about the proposed new Constitution. However, the outcome was a clear "no" - the Kenyans rejected the proposal and the process of drafting a new Constitution has now reached a new phase. Kenya's Second Periodic Report contains many references to the "draft Constitution", especially to its Bill of Rights and its section on children. Note that by the time the second CRC report was written and this paper was outlined, the draft Constitution had not yet been rejected. However, due to the rejected status of the draft Constitution, it will be referred to as the "referendum draft Constitution" in this paper.

the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

Even though the legal provisions for adhering to the best interests of the child has been strengthened with the enactment of the *Children Act*, the implementation of this fundamental principle is still a challenge. The initial CRC report mentions that there are limitations to implementing the principle, both on the national, political level, but also on the family level. The second report specifies a number of initiatives that have been undertaken to secure the best interests of the child, including the joint government and civil society organisations Work Plan on The *Children Act*, which was initiated when the Act had just been adopted. The work plan is coordinated by the NCCS and is an ongoing project that aims to create awareness on the *Children Act* and facilitate its implementation, amongst others by translating the provisions of the Act to clear and achievable programmes.²⁰ According to the second periodic report, the main constraints that hinder the enforcement of the best interests of the child are inadequate budgetary allocation to the Department of Children Services and NCCS, and lack of adequately trained personnel. Consequently, Kenya is facing a challenge to cover the gap between law and implementation, between word and action.

3.3. The Child's Right to Survival and Development (CRC Article 6)

Every child has the right to life and survival, but also constructive development. A basic concept of the CRC is that children, within themselves, carry the potential for their own development. Article 6 emphasises that all children should be allowed and supported to develop their capacities.

The *Constitution* of Kenya guarantees the right to life, but does not mention children specifically. The *Children Act* (Section 4 (1)), however, states that every child shall have an inherent right to life and that it is the responsibility of the government and family to ensure the survival and development of the child. The Act also states that, notwithstanding the provisions of any other law, no child shall be subjected to capital punishment or life imprisonment.

According to the first CRC report “the government has established relevant programmes to ensure child survival and development.”²¹ However, some further reading makes it clear that there are many challenges and constraints facing the realisation of these rights, including declining public and family resources, and regional disparities in the availability of public health facilities. The second report points out continuing challenges, specifying malnutrition, inadequate sanitary facilities in schools and illegally procured abortions among the main constraints. Furthermore, the report states that enforcement of existing laws remains weak and that child battering is a continuing problem in Kenya. Once more the fundamental challenge of implementing the laws, of making the written word of children's rights a reality, comes to the reader's attention.

3.4. The Child's Opinion (CRC Article 12)

According to article 12 of the CRC, governments are obliged to ensure that children are listened to and their views sought and considered in matters that affect their lives. This provision applies both to individual cases and to children collectively. Children should be encouraged to participate in decision-making both within the family and school life.

In Kenya, it has traditionally been the elder members of the society that have taken the decisions concerning children. Even though changes have taken place and children's views slowly are being taken into consideration, this is still minimal. As the second report puts it:

*Child participation is a new concept that has not been well ingrained in the Kenyan society.*²²

²⁰ Interview with Mr. Wanjau, 5 December 2005

²¹ Initial Country Report, 2000, p. 32.

²² Second Periodic Report, 2005, p. 36.

Kenyan children are still hindered to reach full participation on issues that concern them. The second report explains this by referring to deeply rooted traditional attitudes, which lead many people in society to fear that if children are allowed to freely express their views they will get out of control and be unmanageable.

4. Children's Rights in Kenya Related to the Programme Areas of Save the Children Sweden

This section provides a more detailed analysis of the content of the CRC reports from the perspective of the programme areas of Save the Children Sweden. It is aimed at identifying Kenya's position, achievements and constraints in relation to ten of its eleven programme areas.²³ The comments, criticism and recommendations from the alternative reports and the UN Committee, which were provided after the submission of Kenya's initial CRC report, will be taken into consideration. By relating these comments and recommendations to the second report it will be possible to discern changes over time, whether and where progress has been made and action has been taken.

4.1 Programme Area One: Children, Exploitation and Abuse (CRC Articles 1, 19, 32, 33, 34, 35, 37)

4.1.1 Sexual Exploitation and Abuse

According to the first CRC report there are many indicators of sexual abuse and exploitation of children in Kenya, including newspaper reports of cases appearing before courts and cases reported to local NGOs. However, this is only the tip of the iceberg. Many cases are never reported, particularly where the abuser is someone responsible for protecting the child - parents, relatives, maids, houseboys etc. Children engaged in child labour, street children and children in domestic labour and institutions are particularly vulnerable to sexual exploitation. The UN Committee expressed its concern about Kenya's large and increasing numbers of child victims of commercial sexual exploitation.

Unfortunately, the second CRC report does not provide any indications on improvements, but rather the opposite:

*Available information points to an increase in commercial sexual exploitation of children as part of sex tourism and child pornography, particularly in the coastal region of Kenya. Both boys and girls are involved in this trade.*²⁴

However, the fact that this problem is highlighted in the second report indicates improved insight and increased awareness on the situation of children exposed to sexual abuse.

In an attempt to curb the escalating and harmful sex tourism, the Kenyan government in collaboration with partners²⁵ is developing a *code of conduct* on commercial sex tourism. The process of drafting this document, which has not yet been finalised, started in April 2005 and involves different stakeholders engaged in the tourism industry. The main purpose of the code of conduct is to provide a mechanism to prevent sexual exploitation of children and create a child friendly tourism industry. So far, training has been provided for different groups of personnel, including government officers, hotel managers, university teachers and taxi drivers, on how to handle children who have been sexually exploited by tourists.²⁶ In accordance with the recommendations of the UN Committee, the government has proposed a baseline survey, which will provide information on the magnitude of commercial sexual exploitation of children.²⁷

²³ These programme areas are presented in Appendix 2. The eleventh programme area: "Save the Children Sweden's Knowledge Management, Competence Development and Rights-Based Programme Planning" is not included in this study.

²⁴ Second Periodic Report, 2005, p. 97.

²⁵ Among these partners are UNICEF, the Austrian NGO Respect and ECPAT Kenya, which is a national coalition of NGOs, CBOs and individuals. Interview with Mr. Tsuma, 5 December 2005.

²⁶ Interview with Mr. Maurice Tsuma, 5 December 2005.

²⁷ In October 2005, the government had discussions with its partner UNICEF, which will be responsible for conducting this survey. Stakeholders like the Ministry of Tourism, the Children's Department, the hotel industry and NGOs will also be involved. Interview with Mr. Tsuma, 5 December 2005.

At the legal level, the *Children Act* states that a child shall be protected from sexual exploitation and use in prostitution or coercion to engage in any sexual activity, and exposure to obscene materials.

4.1.1.1 Trafficking

Little is said about the sale, trafficking and abduction of children (CRC article 35) in both the CRC reports. According to the initial country report “the sale, trafficking and abduction of children have been studied the least. It is believed they have not substantially taken root in Kenya.”²⁸

Considering the negative and increasing development of sex tourism mentioned above, the second CRC report is remarkably silent on the issue of trafficking. The section provided for this issue is brief and mainly focused on the fact that a task force has been set up to investigate reports of children who disappear from hospitals, and the development of *draft Adoption regulations*²⁹, which will provide protection to children at risk of sale, trafficking and abduction.³⁰ However, the second report also highlights the fact that the vulnerability of the victims implies that many cases of sale, trafficking and abduction of children go unreported.

4.1.1.2 Legal Minimum Ages of Sexual Consent and Marriage

At the time of the submission of the initial CRC report (2000) the minimum age for sexual consent was 14 years for girls. However, since the current *Constitution* allows different personal laws on marriage, divorce etc, there is no uniform legislation on these issues. The UN Committee considered the minimum age of sexual consent as being too low. It also raised its concern about the judicial inconsistencies regarding sexual consent and marriages and recommended Kenya to correct the disparities.

The second CRC report points out both improvements and continued challenges. The *Criminal Law Amendment Act*, which was passed in 2003, increased the minimum age for sexual consent to 16 years for girls. However, there is still no minimum age set for boys. On the other hand, inconsistencies in different Kenyan laws are still present. The *Children Act* defines a child as any human being under the age of 18 years. This implies that the minimum age of sexual consent according to this Act is 18 years, since it prescribes protective rights for all children against sexual abuse and exploitation, whereas the *Criminal Law Amendment Act* sets the minimum age at 16 years.

Furthermore, there are still several statutes applicable for the purpose of marriage in Kenya. The *Children Act* indirectly defines the minimum age for marriage at 18 since it prohibits the marriage of any child. The *Marriage Act*, however, sets the minimum age of marriage at 16 years for girls and 18 years for boys. The same applies under the *Hindu Marriage and Divorce Act*. In *Islamic law*, a person is free to marry on attainment of puberty. Under *customary law*, some communities deem a person ready for marriage after undergoing relevant initiation rites. In Kenya, cultural customs and practices are exempted from the constitutional guarantee to equal treatment before the law and, hence, children receive differential treatment depending on cultural/tribal background.³¹ Even though the enactment of the *Children Act* is an important step towards an improved and uniform legislation, the fact that the other family laws have not been changed means that the problem of discrepancy is still present.

A uniform and clear legislation is of course a very important prerequisite for effective protection and implementation of children’s right. At the same time, without transforming these laws into a reality of the every day lives of the Kenyan citizens, integrating it to their habits, customs and beliefs, the laws will never fulfil their purpose. Early marriage is still a common occurrence in Kenya. Issues involving sex are often not discussed between parents and children as they are considered “tabia mbaya” – bad manners. The fight against sexual abuse and exploitation of children obviously has to be fought at many levels - the political and judicial as well as the social and cultural. When it comes to the alarming situation of increasing sex tourism,

²⁸ Initial Country Report, 2000, p. 106.

²⁹ The draft Adoption regulations were gazetted in May 2005.

³⁰ The Children Act (Section 13) also provides children with protection from sale, trafficking or abduction by any person. The Act defines these violations as forms of abuse and gives the child who becomes victim of these exploitations the right to appropriate treatment and rehabilitation.

³¹ Written Replies to List of Issues from the Committee on the Rights of the Child, 2001, p. 21

it is important to stress that the challenge is global and, therefore, the responsibility to address the problem should be shared between the countries involved.

4.1.2 Economic Exploitation and Harmful Child Work

The second CRC report highlights the lack of information and adequate data on the situation of harmful child labour and economic exploitation in the country. In 1996, Kenya was reported to be among the top 10 African countries in the use of child labour.³² According to the *Child Labour Survey Report 1998/1999* (launched in 2002) 1.9 million children, aged 5-17 years, work for pay, profit or family gain.³³ Children work in plantations, mines, hawking, in households and also on the street (see below). Most of this work is hazardous, exploitative and prevents the children from attending school.

As in the case of sexual exploitation, the judicial provisions on harmful child work are not uniform. According to the *Children Act* every child shall be protected from economic exploitation and any work that is hazardous or will interfere with the child's education. A Task Force on Labour Laws has provided recommendations on children in employment in the form of a *Draft Employment Bill*, which is still pending. In accordance with the *Children Act*, the draft Bill defines a child as a person below the age of 18 years. However, it allows employment of children from the ages of 13 to 16 years for light work, but it does not define what light work implies nor provides protections for children in such employment. Furthermore, it defines children between 16 and 18 years old as employable, but without specifying the parameters for this employment. The *Employment Act* provides a third regulation, stipulating that employment of children under the age of 16 in industrial undertakings is prohibited, unless the children are under apprenticeship or training programmes. The *Draft National Policy on Child Labour* in its turn categorically states that persons under the age of 18 cannot be employed.

The initial report states that the number of working children has been increasing due to rising levels of poverty in the country, whereas the second report highlights the detrimental effect of HIV/AIDS, which has led to increasing numbers of child headed households. A positive development, however, is the introduction of free primary education in 2003 (see programme area 6 below), which has led many boys and girls to leave work and register in schools.

4.1.2.1 Street Children

The UN Committee expressed its grave concern at the high and increasing number of street children in Kenya, in particular their limited access to health, education and other social services, as well as their vulnerability to police brutality, sexual abuse and other forms of exploitation. The two alternative reports identified the alarming situation of children working and living on the street as one of the main constraints and gap that needs to be addressed.

Kenya's initial CRC report does not give much attention to the situation of street children. According to the second report, which provides this issue a separate section, there were 250 000 street children in Kenya in 2001.³⁴ The figure provided by the Kenya NGO CRC Coalition is 300 000 children, with over 50 per cent of these boys and girls concentrated in and around Nairobi.³⁵ The numbers of street children are increasing rapidly due to poverty, HIV/AIDS and the collapsing family structure, according to the Coalition. These children exist in circumstances that are sub-human and their very basic right to life is at risk every day. In addition, society is hostile to these boys and girls, seeing them more as deviants than as children requiring care and protection. According to the Kenya NGO CRC Coalition, the government had failed to provide tangible policies and strategies to tackle this national crisis. The government response had been to criminalize large numbers of street children just because they are homeless, usually charging them with vagrancy, Human Rights Watch states in their alternative report. Street children interviewed by Human Rights Watch told that they were frequently harassed and beaten by the

³² Second Periodic Report, 2005, p. 94.

³³ Initial Country Report, 2000, p. 102.

³⁴ Second Periodic Report, 2005, p. 92.

³⁵ These estimates are conservative, according to the Kenya NGO CRC Coalition, which states that the inexact and scattered nature of data is one of the biggest challenges when dealing with the problem of street children. The definition of street children used by the Coalition is: "children for whom the street, more than their family has become their home". This includes children on the streets (who often return home in the evening), children of the streets (who occasionally go back home) and children who are completely detached from their families. Kenya NGO CRC Coalition, 2001, p. 4, 16.

police. Girls in Nairobi reported that they were being sexually propositioned or forced to have sex with police in order to avoid arrest.³⁶

The second CRC report indicates that some progress have been made in relation to the alarming situation of street children. Most important, it seems like a change in approach and policy has taken place, from seeing street children as criminals (as indicated by the alternative reports) to children in need of care and protection. The government has put in place a policy to withdraw people living on the streets, including children, and place them in rehabilitation programs. In 2003, the government established the Street Families Trust Fund, aiming at supporting re-unification programmes for street children. Through the constituency development funds (CDFs) children receive support and are prevented from migrating to the street. At the judicial level, the *Children Act* provides recognition of street children as children in need of care and protection.

However, the second CRC report admits that there are still major constraints present in Kenya. The different initiatives to address the problem of street children have been un-coordinated, human and financial resources are inadequate and the rehabilitation of children is slow, painful and costly.

4.1.2.2 Drug Abuse

Closely linked to the problem of street children is the issue of drug abuse. Especially glue sniffing is rampant among boys and girls living and working on the street. The first CRC report states that drug abuse is increasing rapidly, both on the streets and in school. It also highlights that the law addressing drug abuse is inadequate, especially in relation to children. According to the second report, drug and substance abuse had reached crisis levels in Kenya, especially in secondary schools, before the *Children Act* came into force in 2002. The *Children Act* provides children with protection from use of different drugs, or from being involved in their production, trafficking or distribution. Sale of glue to children has been outlawed, as well as the sale of alcoholic drinks and spirits in sachets. In 2001, the National Agency for the Campaign Against Drug Abuse (NACADA) was established. The agency has conducted educational and sensitisation campaigns in school, and drug abuse has been incorporated in the primary and secondary school curriculum.

Consequently, action has been taken and improvements have been made, even though a lot more needs to be done in the fight against drug abuse. Among the constraints mentioned in the second report are inadequate facilities and manpower, and the fact that most organisations addressing the problem of drug abuse (including NACADA) are based in Nairobi, which means that the rest of the country does not receive much of help.

4.1.3 Violence and Corporal Punishment

When the first CRC report was submitted, corporal punishment was still allowed in Kenyan schools, according to the *Education Act*, even though its manner of infliction was restricted. In honest and clear wordings, the initial report states that cruel and inhuman punishments have caused a lot of concern in Kenya, that children in schools are subjected to corporal punishment and that it is widely practiced also by parents and guardians. Cases of deaths and serious injuries resulting from corporal punishment have been reported. There have also been cases of police brutality against children. Street children and children in conflict with the law are especially vulnerable in this regard.

Corporal punishment in school is one of four main areas of concern identified in the alternative report produced by Human Rights Watch.³⁷ According to this report, the infliction of corporal punishment is routine, arbitrary and often brutal. Teachers use caning, slapping and whipping to maintain discipline, but also to punish children for poor academic performance. The UN Committee also expressed its deep concern that corporal punishment continues to be practiced in schools, in the juvenile justice system, in the family and in care institutions. It recommended Kenya to take legislative measures to prohibit all forms of physical and mental violence.

³⁶ Human Rights Watch, 2001, p. 2.

³⁷ The other three areas addressed in the report are: street children, the juvenile justice system and HIV/AIDS.

In April 2001, the Minister of Education banned corporal punishment in schools as a matter of policy. With the enactment of the *Children Act* children are now provided legal protection against torture, cruel treatment or punishment.³⁸ However, as Human Rights Watch emphasises, changing the legal regime is just a first step. Changing the attitudes of teachers and other officials dealing with children, and creating awareness on alternative forms of discipline is an ongoing and demanding challenge. Corporal punishment is so well accepted that it is difficult for teachers to view their actions towards children as abusive. The second CRC report confirms this condition:

*Although (...) corporal punishment [is] illegal, it continues in learning institutions. The forms of punishment carried out in schools include caning, various abuses by teachers, cutting grass from 6.00 am to 7.00 pm among others.*³⁹

Enforcing the ban on corporal punishment is consequently a huge challenge. Another constraint is that the *Children Act* does not explicitly prohibit corporal punishment by parents, which implies that this kind of punishment is lawful in Kenyan homes. So far, the measures taken to address corporal punishment have been focused on schools and other institutions, which indicate a lack of focus on the home environment.⁴⁰

4.2 Programme Area Two: Children without Sufficient Family Support (CRC Articles 5, 9, 10, 18, 20, 21, 22, 25, 37)

4.2.1 Parental Guidance and Responsibility

In accordance with the CRC, the *Children Act* stipulates that children have a right to know and be cared for by their parents, and gives parents the responsibility of providing their children with education, guidance, medical care, adequate diet, shelter, clothing etc. However, whereas the CRC clearly states that both parents have common responsibilities for the upbringing and development of the child, this is not fully covered in the Kenyan legislation. According to the *Children Act* (Section 24(3)) the parental responsibility for a child born out of wedlock lies with the mother. The father of a child born outside marriage can acquire parental responsibility by applying to the court, but is not obliged to. This means that the mother of the child has to take on a large burden and that the child's right to parental guidance and protection from both parents as stipulated in the CRC, is not secured.

4.2.2 The Extended Family Under Pressure

A recurring theme in the first CRC report is the big transformation of Kenyan society as a result of modernisation, migration and urbanisation, which has led to the disintegration of the extended family. The description of the traditional Kenyan society and the virtues of the extended family, provided by the first report, is very positive, almost nostalgic:

*In traditional Kenyan society, children belonged to the whole community. They were valued because they ensured the continuity of the community and lineage, and ensured care for parents in old age. Survival, development and protection were undertaken collectively by the extended family in the best interest of all members, especially children.*⁴¹

Adult members of the extended family prepared the children for adulthood in traditional African society. Especially grandparents were important agents of socialisation, introducing children to important matters like sexual behaviour, larger social roles, values and traditions, often through

³⁸ Noteworthy, the *Children Act* (section 18) uses the terms "torture, cruel treatment or punishment" but does not specifically mention corporal punishment in schools or homes. However it prohibits corporal punishment in the juvenile justice system, (Section 191 (2)).

³⁹ Second Periodic Report, 2005 p. 45.

⁴⁰ According to a survey where 267 respondents in Kenya were interviewed, 54 per cent of the parents said that physical punishment should not be banned. ANPPCAN Kenya Chapter, 2005, p. 18.

⁴¹ Initial Country Report, 2000, p. 54.

story-telling, proverbs and songs. The authority given to the adults was seldom abused, according to the first report.⁴²

However, the transformation from extended to nuclear family, from rural to urban living, from traditional to modern life is considered to have had a negative impact on the situation of children:

*The new family forms, which include the nuclear family, female- and child-headed households and families headed by grandparents, are vulnerable. They fail to provide for the basic social services of the children. This compromises the best interest of the child. The presence and increasing population of children in need of special protection further indicate this.*⁴³

4.2.3 Orphans

According to a report produced by the Kenyan government and UNICEF in 2004, the total number of orphans⁴⁴ (between 0-14 years old) in Kenya is estimated to be 1.7 million, which is 12 per cent of all Kenyan children. 54-60 per cent of these children have lost one or both their parents due to AIDS.⁴⁵ Most of these children lack proper care and supervision. This has led to an increased burden and stress for the extended family, which already suffers from disintegration (see above), but tries to take care of the orphans. The AIDS pandemic has also led to an increased number of child-headed households, where children as young as 10 to 12 years old have to take the main responsibility of their siblings.

Children who have been left orphaned are eligible for government assistance under the *Children Act*. However, even though the legal provision is there, the societal burden to provide services like orphanages, health care and education is overwhelming and the government does not have the full capacity to implement this provision.⁴⁶ Together with its partners, the government has put in place an OVC (orphans and other vulnerable children) programme to support children affected by HIV/AIDS, but there are not enough human and financial resources to meet all the needs. A number of other constraints are highlighted by the second CRC report, among others: scattered information on available services and programs that support orphans; no centralisation of the registration of these institutions; and absence of independent complaint mechanisms for children in alternative care institutions. Already in 2001, the UN Committee expressed its concern regarding the last mentioned problem, but unfortunately the complaint mechanisms are still not in place.

4.2.4 Protection of Children Deprived of a Family Environment

The initial CRC report states that a child who is considered to be in need of protection (i.e. a child who is destitute, has no parent or guardian or has been deserted) may be taken to a place of safety. This place could be any institution, hospital or “other suitable place whose owner is willing to accept temporary care of the child”.⁴⁷ If no such place is available, a juvenile remand home or even police station is considered as a place of safety. The UN Committee reacted to this fact and recommended Kenya to take actions to make sure that children in need of care are not kept in juvenile remand facilities or police stations. In addition to this, the Committee also encouraged the government to make clear distinctions between children in need of special protection and child offenders. Furthermore the Committee expressed concern regarding the inadequate review of children’s placement in institutions.

Since the initial report was submitted improvements have been made, especially at the judicial level. The *Children Act* provides comprehensive and detailed protection for children in need of care and protection.⁴⁸ In accordance with the recommendations of the Committee, it clearly states

⁴² Initial Country Report, 2000, p. 55.

⁴³ Initial Country Report, 2000, p. 32, 54.

⁴⁴ The Second CRC report defines an orphan as a child who has lost one or both parents. Second Periodic Report, 2005, p. 47.

⁴⁵ Second Periodic Report, 2005, p. 48.

⁴⁶ Kenya NGO CRC Coalition, 2001, p. 18-19.

⁴⁷ Initial Country Report, 2000 p. 64.

⁴⁸ The Children Act defines a child in need of care and protection as: a child who has no parent or guardian, is destitute, is found begging, whose parent has been imprisoned or find difficulty in parenting, who is prevented from education, who, being a female is subjected to female circumcision or early marriage etc.

that these children shall be placed in separate facilities from child offenders' facilities. Furthermore, The *Children Act* requires the manager of an institution where a child has been placed to supervise and assess the condition of the child periodically, and to make sure that the welfare of the child is safeguarded. According to the second report, the government periodically inspects the situation for children in institutions, although it is not adequately done. It also points out that after care services for children that have been released from government institutions are inadequate; that these institutions do not have the capacity to address children with special needs; and that there is no policy to guide NGOs on periodic review of children placed under their care.

4.2.5 Adoption

The first CRC report points out that instead of formal adoptions, informal foster care often takes place around the extended family system in Kenya, where relatives take care of cousins, nephews, nieces etc for varying periods of time. The UN Committee expressed its concern that informal adoptions are more accepted and practiced than formal, and recommended the Kenyan government to strengthen the administrative procedures for formal domestic adoptions in order to prevent misuse of informal and private adoptions. Considering the increasing number of children without sufficient family support, the Committee also encouraged Kenya to establish an effective foster care programme and to ratify the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

Kenya has not yet ratified the Hague Convention on Intercountry Adoptions, but, according to the second CRC report, its provisions have been captured in the *Children Act* (which replaced the previous Adoption Act) and consultations aimed at ensuring the ratification have begun. The *Children Act* provides regulation for the adoption of children resident in Kenya, locally or internationally.⁴⁹ Section 155 of the Act stipulates the establishment of the *Adoption Committee*⁵⁰, with the purpose of overseeing adoption issues, including formulating the governing policy in matters of adoption, effecting liaison between adoption societies, the government and NGOs, and considering and proposing names of guardians *ad litem*⁵¹. According to Section 153 of the *Children Act*, any child who is resident within Kenya may be adopted, irrespective of whether the child is a Kenyan citizen or was born in Kenya or not. No adoption order shall be made unless the child concerned has been in the continuous care of the applicant within Kenya for a period of three consecutive months preceding the application.⁵² Furthermore, no adoption order can be made if the applicant is of unsound mind, has been charged and convicted by a court or is homosexual. Joint applicants have to be married to each other and sole male applicants are not allowed to adopt a female child, whereas sole female applicants are not allowed to adopt a male child. A sole male foreign applicant is not allowed to adopt at all.⁵³ Only the High Court has the jurisdiction to make adoption orders, according to the *Children Act*.

According to the second CRC report, the government has formulated draft subsidiary regulations to ensure that adoption of children, in accordance with the CRC Article 21, is undertaken with the best interests of the child as the paramount consideration. In 2002, the Family Division of the High Court was established, which has led to faster and more efficient handling of adoption cases.

Legal provisions and institutions for formal adoption are now in place in Kenya. However, as the second report points out, most people within communities still opt for foster care or local arrangements to support orphaned and vulnerable children - high costs and lack of clear information being the main hindrances to adoption.

⁴⁹ International adoption of children was previously not allowed in Kenya. Second Periodic Report, 2005, p. 56.

⁵⁰ According to the Ninth Schedule of the Children Act, the Adoption Committee shall consist of the following members: the Director; four representatives from charitable children's institutions and organizations engaged in welfare activities (appointed by the Minister); one representative from Kenyatta National Hospital; one representative from private hospitals (appointed by the Kenya Medical Association); one representative of the Law Society of Kenya; a representative of the Ministry of Foreign Affairs; the Attorney-General.

⁵¹ According to the Children Act Section 160, a guardian *ad litem* shall be appointed for the child pending the hearing and determination of an adoption application. The guardian *ad litem* shall safeguard the interest of the child, intervene on behalf of the child etc.

⁵² The Children Act, Section 157 (1).

⁵³ The Children Act, Section 158.

4.3 Programme Area Three: Children in Armed Conflict and Disaster (CRC Articles 22, 38, 39)

4.3.1 Refugees

As an “island of peace”⁵⁴, surrounded by countries affected by conflicts and civil strife, Kenya is host to many refugees. According to the first CRC report 174 000 refugees, including about 92 000 children, were seeking shelter in the country.⁵⁵ In collaboration with UNHCR, Kenya has established two refugee camps: Kakuma in Rift Valley province and Daadab in North Eastern Province, which cater for displaced children from Somalia, Sudan, Ethiopia, Rwanda and Burundi. Some are unaccompanied minors; some are children of single parent; whereas others are together with both their parents. However, accompanied or not, they are all given refugee status by the government. According to the first CRC report, the refugee children in the camps have access to adequate health facilities for immunization, prenatal care and general health care. During the period covered by the first report (1990-1997), the government provided formal and non-formal education for the refugee children in cooperation with UNHCR, UNICEF, Save the Children Sweden et. al. Guidance and counseling was also provided, as well as apprenticeship programmes.

In its supplementary report, the Kenya NGO CRC Coalition presents a much darker picture of the situation for refugee children, describing the existence in the two camps as a “struggle for survival (...) [where] access to basic necessities is limited.”⁵⁶ The climate in the two camps is very harsh and even though each camp has got a hospital, illnesses like malaria, dysentery and tuberculosis are recurrent. In addition, security is not guaranteed in and around the camps and banditry is a common occurrence. Refugee girls are especially vulnerable to sexual abuse, and even though several cases have been reported, the level of investigation is low. Moreover, Kenya does not encourage local integration of refugees, leaving children with the only options of repatriation, resettlement or staying in the camp, according to the Kenya NGO CRC Coalition. The Coalition also pointed out that the government did not seem to put any efforts to reunite unaccompanied children with their families, despite the fact that, according to the CRC Article 22, it is obliged to.⁵⁷

The UN Committee also expressed its concern regarding the situation of refugee, asylum-seeking and unaccompanied children in Kenya, in particular their inadequate access to education, health and other social services, as well as the sexual abuse and violence against refugee girls. The Committee recommended Kenya to take legal and other measures to protect the rights of refugee children, especially girls.

According to the second CRC report, Kenya continues to provide shelter, education, health care and nutrition for thousands of refugees from neighbouring states, in collaboration with partners like UNHCR. A new ministry has been created for the Department of Refugees in the Office of the President, which has led to increased funding to support the refugee camps. The situation of the girl child has improved in terms of sanitation, through provision of separate toilets, and women and girls are given priority when it comes to food and education.

As regards the development at the legal level, the *Children Act* identifies refugee children as children in need of care and protection, and charges the government with the responsibility to take care of and protect them. According to Section 10 (3) of the Act, the government also carries the responsibility to rehabilitate and reintegrate children that are victims of armed conflicts. Furthermore, a *Refugees and Displaced Persons Bill* has been drafted and tabled in the Parliament. When enacted, this bill will assist in the reunification of refugee children with their families. It stipulates provisions on standards and procedures for asylum seekers and unaccompanied refugee children, and sets out their rights and responsibilities. However, the fact

⁵⁴ Second Periodic Report, 2005, p. xiii.

⁵⁵ Initial Country Report, 2000, p. 97.

⁵⁶ Kenya NGO CRC Coalition, 2001, p. 10.

⁵⁷ Kenya NGO CRC Coalition, 2001, p. 10.

that this Bill is mentioned already in the first report indicates the slow and time-consuming process of enacting bills in Kenya.⁵⁸

The second CRC report highlights several problems that inhibit the implementation of the rights of refugee children. The fact that there are few interpreters in the camps creates language barriers and limits children's possibility to communicate and, hence, their access to other rights. Stigmatisation of refugees by local communities is also a problem, as well as difficulties in tracing family members. Trafficking of drugs and small arms in the camps has exposed children to dangerous situations in the camps. In addition, there are no special programmes for children with special needs and the government lacks adequate data on refugee children. The report recommends that the Refugee bill should be enacted as soon as possible, that a baseline survey on refugee children should be carried out, and that proper channels for tracing families should be put in place.

4.3.2 Internally Displaced Children

During the 1990s, Kenya experienced several severe ethnic clashes. As a result of these conflicts, which to a large extent were related to the multi-party elections in 1992 and 1997, more than 195 700 children were internally displaced and thousands of children were orphaned, raped and maimed.⁵⁹

In 1998, the government established a judicial commission, mandated to investigate the origin and causes of the clashes, as well as the actions taken by the police during the conflicts. The UN Committee noted the establishment of this commission, but expressed its concern that insufficient efforts have been made to resettle the many families who were displaced during the clashes. The Kenya NGO CRC Coalition emphasises that even a decade after the first clashes erupted many displaced families and children are still living in camps and are waiting to be permanently resettled. This unstable situation has a negative and disturbing effect on the children, many of which lack access to basic social services, including education.⁶⁰ The UN Committee as well as the NGO CRC Coalition recommended the Kenyan government to reinforce and hastened the resettlement of displaced families and to guarantee their rights to housing, education and social services.

According to the second CRC report very few ethnic clashes, and hence minimal displacement, have occurred since the first report was submitted. However, the problem of displaced children is still present. There are no rehabilitation programs for children affected by internal conflicts in place, and that the proposed resettlement of displaced people has not been implemented.

At the legal level, the *Children Act*, section 10 (2) states that no child (i. e. no person under the age of 18) shall take part in hostilities or be recruited in armed conflicts. Where armed conflicts do occur respect for and protection and care of children shall be maintained.

4.4 Programme Area Four: Children's Rights to Non-Discrimination (CRC Articles 2, 23, 30)

As indicated in section 3.1 above, children in Kenya are discriminated against in different ways. However, when comparing the two CRC reports it is obvious that legal improvements have been made to enhance children's right to non-discrimination. The *Children Act* states that no child shall be subjected to discrimination on the grounds of sex, disability, origin, race, religion etc. Furthermore, the Act provides protection from harmful cultural rites, such as female circumcision (see also programme area five)

⁵⁸ The UN Committee expressed its concern that so many bills (Children Bill, Refugee Bill, Domestic Violence Bill etc.) were still undergoing review and had to be discussed in Parliament before being enacted. Committee on the Rights of the Child, 2001, p. 3.

⁵⁹ Initial Country Report, 2000, p. 98.

⁶⁰ Kenya NGO CRC Coalition, 2001, p. 11.

4.4.1 Girls

When it comes to discrimination against girls, the government, together with its partners, is implementing the Alternative Rite of Passage Initiative, which has the goal of replacing and eliminating female genital mutilation (FGM). People found forcing girls to undergo FGM are arrested and prosecuted by police. However, according to the second report the anti FGM campaigns need to be intensified and the current penalty under the *Children Act* (12 months in prison or a fine of 50 000 Kshs or both) is not stiff enough to deter those who practice FGM. In order to address gender disparities in education, the government and UNICEF have been working on a policy on gender and education. This has led to gender being mainstreamed in the Ministry of Education, Science and Technology Strategic Sector Plan, the Education Act and the Free Primary Education Plan (see programme area 6).

4.4.2 Children with Disabilities

The current *Constitution* is silent on the issue of discrimination on the basis of disability.⁶¹ According to the initial CRC report, this has sometimes been interpreted as if it is lawful to discriminate against people with disabilities (!). At the time of submission of the first report there was no progressive legislation that allowed differential treatment for disabled. The report admits that violations of the rights of children with disabilities have persisted over the years, referring it to ignorance, attitudes, culture and poverty.

In its alternative report, the Kenya NGO CRC Coalition identifies children with disabilities and the rejection, isolation and discrimination they face as a major concern. The situation is particularly grim for the girl child, who suffers a triple discrimination by being a child, having a disability and being female. Many families restrict their disabled children's contacts with the outside world and teachers, officials and communities do not take into account the needs or aspirations of these children. A telling indication is that children with disabilities are grossly under-enrolled in Kenyan schools. According to the first CRC report only 6 per cent of the disabled children in need of special education were enrolled in a special school programme.⁶²

The UN Committee was concerned with the inadequate legal protection and insufficient policies, facilities and services for children with disabilities in Kenya. It also pointed out the insufficient efforts made to facilitate the inclusion of disabled children in the educational system and in society in general. The Committee recommended the Kenyan government to collect adequate statistical data on children with disabilities, implement alternatives to the institutionalisation (i. e. deprivation of liberty) of these children and establish special education programmes and where possible include them in the regular school system.

The second CRC report indicates a number of legal and practical improvements for children with disabilities. The *Children Act* stipulates that children with disabilities shall have the right to be treated with dignity and receive medical treatment, special care and education. In 2003, The *Persons with Disability Act* was enacted to provide for the rights and equal opportunities for persons with disabilities, and The National Council for Persons with Disability was established to oversee the implementation of this Act. The current *Education Act* is under review in order to address the special needs of children with disabilities and, in accordance with the recommendations of the UN Committee, programmes have been developed to integrate children with disabilities in regular schools. The government has also set up a task force for special needs education. According to the recommendations of this task force, at least one teacher trained in special education is to be posted to every primary school.⁶³ Furthermore, 72 education, assessment resource services (EARS) have been established to offer services for early detection and placement of disabled children. As advised by the UN Committee, a national survey of people with disabilities is proposed.

61 The referendum draft Constitution identified the issue of persons with disabilities as a human rights issue, providing protection for the rights of these persons and emphasising their inherent dignity as human beings.

62 Initial Country Report, 2000, p. 87

63 Other recommendations of the task force that are being implemented: children with disabilities are allocated 3020 Kshs per child per year (compared to the standard allocation of 1020 Kshs) and regular schools with special units are allocated 17 000 Kshs per school per year for infrastructure to enable accessibility. Second Periodic Report, 2005, p. 64.

Children with disabilities are, however, still very vulnerable. According to the second report, 25 per cent (750 000) children of school going age have disabilities. 90 000 of these children have been identified and assessed, but in 1999 only 14 614 were enrolled in education programmes.⁶⁴ In most public places (schools, hospitals etc.) infrastructure is not disability friendly, health institutions still lack means to detect disabilities early, and lack of statistics on the status of children with disabilities makes it difficult to plan adequate interventions. Ignorance and lack of awareness contribute to the continued violations of disabled children's rights. This is perpetuated by some cultural practices and beliefs, which consider children with disabilities as taboo or bad omen.

4.4.3 Children Born Out of Wedlock

Children born out of wedlock also face discrimination, both in terms of material provisions and cultural attitudes, as well as judicial provisions.⁶⁵ Kenyan children with married parents are entitled to better parental care in terms of maintenance from both parents than those who are born outside wedlock. Where there is no marriage, the child has no right to be maintained by its father, unless the father has acquired parental responsibility in accordance with Section 25 of the *Children Act*.⁶⁶ In addition, the mother of the child has no right to be maintained by the child's father, but is nevertheless expected to take care of the child. According to the first CRC report, children born out of wedlock are better protected and taken care of in the rural areas, where customs and family ties are strong, than in the urban environment.

4.5 Programme Area Five: Children's Right to Health and a Good Physical Environment (CRC Articles 7, 16, 24, 27)

The government of Kenya is committed to improve the health of its population, according to the first CRC report, which also states that the access to health facilities has increased.⁶⁷ However, the introduction of the cost-sharing policy has raised the cost of health service and thus reduced this accessibility. Inadequate supply of drugs; the unbalance between urban and rural areas in terms of staff (with more than 80 per cent of the doctors being based in the cities caring for 20 per cent of the population); and the negative impact of HIV/AIDS on children's health and survival are other problems mentioned in the first report.

The UN Committee noted the efforts made by the Kenyan government to improve children's health, but was concerned about the insufficient number of trained medical staff, high maternal, infant and under-five mortality rates, increasing incidence of HIV/AIDS and the cost-sharing policy.

The second CRC report highlights that under the *Children Act* (Section 9) every Kenyan child has the right to health and medical care, the provision of which shall be the responsibility of the parents and the government.

The government has taken action to increase access to primary health care by rationalising cost sharing in dispensaries and health centres, according to the second CRC report. However, Kenya is still facing major health challenges, including: acute shortages of professional staff in rural areas and overpopulated hospitals with patients sharing beds.⁶⁸ In addition, the multi-ethnicity of the country makes it difficult to promote primary health care and eliminate harmful practices.

⁶⁴ Second Periodic Report, 2005, p. 64.

⁶⁵ All four systems of family law in Kenya (Islamic, African Customary law, Hindu law and English law) distinguish between children born outside from those born inside wedlock. The current Constitution protects these four statutes and considers them equal. Initial Country Report, 2000, p. 60. The referendum draft Constitution, however, contained the provision that all children, whether born within or outside wedlock are equal before the law and have equal rights.

⁶⁶ Section 25 of the *Children Act* states: "Where a child's father and mother were not married at the time of his birth the court may, on application of the father, order that he shall have parental responsibility for the child, or the father and the mother may by agreement ('a parental responsibility agreement') provide for the father to have parental responsibility for the child."

⁶⁷ According to the first CRC report, 42 per cent of the population resides within 4 km of a health facility and 75 per cent within 8 km. Initial Country Report, 2000, p. 77.

⁶⁸ The reduction in cost sharing has resulted in a 300 per cent workload increase in health centres and dispensaries. As in the case of education, the cost of increased access is decreased quality. Second Periodic Report, 2005, p 73.

4.5.1 Birth Registration

The majority of births in Kenya take place at home. In 1998, only 42 per cent of the women delivered in a health facility. Five years later, in 2003, the figure had decreased to 40 per cent.⁶⁹ According to the *Births and Deaths Registration Act*, every child has to be registered and given a name at birth. The registration is for free if done within six months after the child's birth.

Nevertheless, according to the first CRC report, only 30 per cent of Kenyan births are registered annually, most of them in health institutions.⁷⁰ The low coverage of registration is explained by, amongst others: poor infrastructure that makes it hard to reach children for registration; cultural beliefs, where some communities are hesitant to reveal the birth of children to strangers since they fear witchcraft or breaking the taboo that children should not be counted; poor health facilities and cost-sharing policy, which has led many women to deliver at home (these births are often not registered); poverty and ignorance, where refugee children poses a special challenge, since most of these children do not want to reveal their identity; and lack of computerisation.

The UN Committee reacted to the fact that so many children are not registered, and recommended the government to raise awareness among midwives, community and religious leaders as well as parents to ensure that all children are registered at birth.

According to the second CRC report, the government, through the Department of Civil Registration, has taken action to increase awareness on the importance of birth registration. Community leaders and registration agents have received training in order to sensitise the public and influence a positive change in attitudes. The use of assistant chiefs in the registration of births at home has improved the registration coverage remarkably, even though it is still far from the expected levels. The government is also in the process of computerising the registration procedure countrywide.

The second report, however, points out several existing constraints, among others, the lack of an effective mechanism that can ensure that registrations of births are done; and the cultural beliefs that create a barrier to immediate registration.⁷¹ The low birth registration rate, in its turn, hampers effective planning for children's health.

4.5.2 Adolescence, Reproductive Health and HIV/AIDS

The first CRC report admits that adolescent health has not been fully addressed in Kenya. Existing health programmes have mainly focused on children under five years old and the health service in the country is not youth friendly, implying that it does not adequately deal with issues of early pregnancies, depression, drug addiction and other social ills among youths.⁷² According to the first report, 17 percent of the young Kenyan women between 15 and 19 years old had already given birth.⁷³

The data provided by the second CRC report is that 46 percent of the adolescents without education have begun child bearing, and that four out of ten women who die of unsafe abortion⁷⁴ complications are below the age of 20. The national average rate of contraceptive use is 39 percent.⁷⁵ In 2003 the government launched the Adolescent Reproductive Health and Development Policy to address the challenges faced by youths. In some health facilities, youth friendly health services have been established, where young people are provided reproductive health services, including information and counseling on early pregnancies.

The appalling problem of HIV/AIDS is recognised as a threat to the survival and development of children by the first CRC report. In 1997, 1.3 million Kenyans were estimated to be HIV infected, of which approximately 78 000 were children. One year later, the estimated

⁶⁹ However, about 90 per cent of Kenyan women are seen by skilled health personnel at least once during pregnancy. Second Periodic Report, 2005, p. 67.

⁷⁰ Initial Country Report, 2000, p. 36 f.

⁷¹ In some communities mothers are confined up to nine months after giving birth. Second Periodic Report, 2005, p. 35.

⁷² 55 percent of the Kenyan population is younger than 19 years old, according to the Second Periodic Report. This figure is provided in "Adolescence in Kenya – the Facts", produced by the Centre for Adolescent Health and Development.

⁷³ This was a decline compared to five years earlier when the figure was 21 percent. Initial Country Report, 2000, p. 79

⁷⁴ The Penal Code prohibits abortion, unless the life of the mother is threatened. Second Periodic Report, 2005, p. 60.

⁷⁵ Noteworthy, this figure relates to "currently married women" and hence includes adult women but not young, unmarried women. There are regional disparities in contraceptive use. In 1998, the highest user rate, 55 per cent, was recorded in Central Province and the lowest rate, 20 per cent, in Coast Province. Second Periodic Report, 2005, p. 61, 68.

figure of children affected by AIDS (for example by being left as orphans, or carrying the virus themselves) was 600.000, a figure expected to increase dramatically.⁷⁶

According to the second report, the HIV prevalence in Kenya has declined from 13 per cent in 1999 to 9.4 per cent.⁷⁷ Around 10 percent of the reported AIDS cases are found among children under the age of five, mostly due to mother-to-child transmission of the virus. Approximately 100 000 children are HIV positive in Kenya, and many more have already died of AIDS.⁷⁸

As a response to the challenges posed by the AIDS epidemic in Kenya, the government declared HIV/AIDS a national disaster in 1999 and established the National AIDS Control Council (NACC), which is located in the Office of the President. An important achievement of the NACC is the publishing of the *HIV/AIDS Prevention and Control Bill 2003*. In cooperation with different NGOs, the government has set up 401 Voluntary Counselling and Testing Centres (VCT) and 450 Prevention of Mother to Child Transmission (PMTCT) sites across the country. Antiretroviral (ARV) treatment is promoted in Kenya, but currently only 24 000 people are receiving ARV therapy, whereas the government target is 950 000 people. Even though the prices of ARVs have gone down, most Kenyans can still not afford the 500 Kshs per month that they cost. Unfortunately, children formulation of ARVs is still limited, which impedes the access to treatment for children who suffer from AIDS.⁷⁹

4.5.3 Female Genital Mutilation

In some communities in Kenya, the cultural practice of female genital mutilation (FGM) is considered a necessary rite of passage to womanhood. According to the first CRC report as many as 70 per cent and even up to 98 per cent of the girls are circumcised in some areas (Kisii, Narok and Samburu being in top).⁸⁰ FGM often have negative physical effects on the girl child, including post-operative complications, haemorrhage, infection, urine retention and difficult childbirth. The most common reason given for conducting the female circumcision is the support of “good tradition”.⁸¹

The UN Committee was deeply concerned that Kenyan law did not prohibit female genital mutilation and recommended the government to take legislative and other measures to prohibit and eradicate this harmful cultural practice.

According to the second CRC report, three out of ten Kenyan women have been circumcised on a national average.⁸² With the adoption of the *Children Act* children in Kenya are now provided legal protection from harmful cultural rites. By specifically mentioning the term “female circumcision” the *Children Act* goes one step further than the CRC, which has a more general formulation that requires governments to take measures to abolish “traditional practices prejudicial to the health of children.”⁸³ Considering that the ritual of female circumcision is a deeply rooted cultural tradition in some Kenyan communities, it is, however, obvious that the legal provision only is a first step. The real challenge is to create changes in attitudes and develop new forms of initiation rites that do not lead to physical harms.⁸⁴

4.5.4 Physical Environment

The two CRC reports give the issue of children’s right to a good physical environment comparably little attention. However, some aspects of the issue are addressed.

⁷⁶ Initial Country Report, 2000, p. 76, 72.

⁷⁷ According to the most recent figures from UNAIDS, the HIV prevalence rate in Kenya among adults (15-49 years) is 6.7 per cent (range: 4.7 – 9.6 per cent). www.unaids.org/EN/Geographical+Area/by+country/kenya.asp

⁷⁸ Second Periodic Report, 2005, p. 71.

⁷⁹ Second Periodic Report, 2005, p. 71 f.

⁸⁰ Initial Country Report, 2000, p. 80.

⁸¹ Ibid.

⁸² This is a decline by ten per cent compared to the national level of 1998. The big difference between the regional and national prevalence of FGM, indicates that this cultural practice is, to a great extent, concentrated to certain regions. Second Periodic Report, 2005, p. 69.

⁸³ CRC, Article 24 (3).

⁸⁴ The first CRC report refers to an example in Kisii, where the rite of passage was conducted without the actual operation; an initiative that met a lot of resistance from community leaders, including women. Initial Country Report, 2000, p. 79.

When it comes to the environmental situation for school going children, boys and girls in the arid and semiarid land areas often have to walk very long distances to reach school; a walk that is risky and sometimes even a danger to their lives. However, what kind of dangers these children face and what measures could be taken in order to address them is not dealt with in the reports. According to the second CRC report, the sanitary facilities in schools are inadequate with negative effects on the health of children. As a result, girls often stay home during menstruation. The toilet to pupil ratio in schools has increased from 1:100 to 1:70, but gender aspects are not yet taken into consideration in the construction of toilet facilities.⁸⁵ Furthermore, the government has undertaken to develop School Health Policy Guidelines for a safe and healthy environment, and smoking in public places has been prohibited.

The *Children Act* provides boys and girls with the right to privacy. This right is, however, often compromised in Kenya, mainly due to poverty. In many poor households the entire family shares one room. In 1998, 47 per cent of the families in the rural areas shared one room, whereas the corresponding figure in the urban areas was 29 per cent.⁸⁶ In 2004, 62 per cent of the households had an average of 2.6 persons per room in urban areas.⁸⁷ Lack of privacy is also a problem in overcrowded children's institutions. However, the government has recently developed regulations for children's institutions with minimum standards on accommodation and sanitation facilities. These include requirements of sufficient number of wash basins, showers and toilets; facilities for private studies and adequate communal space for sitting, playing, recreation and dining.⁸⁸

4.6 Programme Area Six: Children's Right to Adequate and Relevant Education (CRC Articles 28, 29, 31)

The first CRC report describes an education system that is hampered by several constraints. It points out that the right to education for every child in Kenya is provided for but not guaranteed. According to the Kenya NGO CRC Coalition the cost-sharing policy, which meant that Kenyan parents could contribute up to 65 per cent of the recurrent school costs, was the single most influential factor inhibiting universal participation. The enrolment in *primary school* (children between 6-14 years) declined from 87 per cent in 1992 to 76 per cent in 1996. However, the figures provided by the government in its written replies to the UN Committee's list of issues, show that the gross enrolment rate had increased to 88 per cent for boys and 87 per cent for girls in 2000. On the other hand, the completion rate the same year was only 46 per cent for boys and 48 per cent for girls.⁸⁹ Hence, there is a great disparity between enrolment and completion rate and the primary school system is characterised by a high wastage rate due to dropout and repetition.

The enrolment rate in *secondary school* is far lower than in primary school, indicating a low transition rate. In 2000, the gross enrolment was 23.5 per cent for boys and 21 per cent for girls. Interestingly, the completion rate in secondary school is much higher than in primary. In 2000, it was 81 per cent for boys and 77 per cent for girls.⁹⁰

The initial CRC report recognises that there are problematic gender and regional disparities in enrolment, where boys are favoured in provision of education, and children in rural areas often have a long distance to school. Socio-cultural factors like rites of passage and early marriages also inhibit the child's access to education. Furthermore, children with disabilities are grossly under-enrolled in Kenyan schools (see programme area seven for further discussions on this issue). Children's right to education was, during the period covered by the first report, severely affected by the government's low budgetary allocations to the sector. Furthermore, about 85 per cent of these recurrent expenditures went to general administration and planning, including teachers' salaries, leaving little left for investments in physical facilities and improved quality of education. The report also recognises problems of poor targeting and distribution of money.

⁸⁵ Second Periodic Report, 2005, p. 78.

⁸⁶ Initial Country Report, 2000, p. 43.

⁸⁷ Second Periodic Report, 2005, p. 39.

⁸⁸ Section 25 of The Children (Charitable Children's Institutions) Regulations, 2005 (which are yet to be gazetted).

⁸⁹ Written Replies to List of Issues from the Committee on the Rights of the Child, 2001, p. 14.

⁹⁰ Written Replies to List of Issues from the Committee on the Rights of the Child, 2001, p. 15.

The UN Committee commented the non-increase of the budget for education and the introduction of cost-sharing policy in Kenya, and expressed its concern regarding the low enrolment and high drop out and repetition rates, as well as the insufficient numbers of trained teachers and schools. It was also worried about the quality of education and urged Kenya to take measures to guarantee free and compulsory education, decrease drop out rates and enhance quality.⁹¹

The second CRC report highlights a number of improvements towards implementing children's right to education. Also in this area, the *Children Act* has provided children with enhanced legal rights. Section 7 of the Act states that every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the CRC. In 2003, the government took actions to implement this legal provision by introducing Free Primary Education (FPE). The FPE initiative aims at attaining universal primary education and education for all.⁹² Even though coupled with difficulties in provision, the report considers FPE an important milestone towards the implementation of the CRC. FPE has led many children go back to school – the net effect being the increase of pupil enrolment by 1.3 million in 2003 and 0.2 million in 2004.⁹³ During the second reporting period (1998-2004) the co-operation between the government and development partners accelerated, in order to strengthen the education sector. Through the assistance of its partners, the government has embarked on the expansion of existing facilities and employment of more teachers. However, the teacher pupil ratio still varies from 1:35 to 1:100 in different regions of the country.⁹⁴

Moreover, the Ministry of Education has developed a Child Rights Curriculum at pre-school and teacher training colleges. In collaboration with Kenya Human Rights Commission the ministry has also developed and disseminated a Human Rights Handbook for primary school.

Secondary school education is, however, not free in Kenya, but there are bursaries for needy children. The enrolment in secondary schools has been steadily increasing though. In 2002 enrolment went up by 5 per cent from the previous year.⁹⁵ There is near parity between boys and girls in secondary school at the national level, but differences on the regional level.⁹⁶ The quality of secondary school education has improved greatly, according to the second report, but no further information on how or why this has taken place is provided.

The second CRC report also points out a number of continuing difficulties and constraints. The transition rate from primary to secondary school is still low. In 2003, the figure was 42 per cent.⁹⁷ The report attributes this to the high poverty levels among households⁹⁸ and the slow growth of secondary school institutions. Harmful cultural practices like early marriages and female genital mutilation are prevalent and hinder the retention of girls in school. HIV/AIDS has led to many child headed households where children have to balance between being in school and taking care of their siblings. Even though corporal punishment has been banned, as already mentioned, this practice is still used in schools. In arid and semi-arid land areas there are vast distances to school, which discourage children from completing their education. In many parts of the country there is a high proportion of unqualified and untrained teachers, which affect the quality of education. Furthermore, there is a shortage of school inspectors and lack of adequate physical facilities. The bursaries given to students are inadequate and the fact that the largest portion of the budget goes to teachers' salaries does not necessarily translate to better quality education.

Both CRC reports recognise the importance of rest and recreation for a child's development. The *Education Act* requires schools to provide an enabling environment to ensure that children have time to play and participate in leisure activities. However, the first report states that because

⁹¹ Kenya was encouraged to pay particular attention to the quality of education in the light of Article 29.1, which focuses on the aims of education.

⁹² To achieve universal primary education is also one of the eight Millennium Development Goals, agreed upon by the world's leaders in 2000 at the United Nations Millennium Summit.

⁹³ Second Periodic Report, 2005, p. 79.

⁹⁴ Second Periodic Report, 2005, p. 78.

⁹⁵ From 804 510 students in 2001 to 847 287 students in 2002. Second Periodic Report, 2005, p. 80.

⁹⁶ For example, in North Eastern Province the boy to girl ratio is 55:45, whereas in Nairobi it is 42:58.

⁹⁷ Second Periodic Report, 2005, p. 81.

⁹⁸ 56 per cent of Kenyans live below the poverty line (on less than 1 US dollar per day), according to the Second Periodic Report, 2005, p. 62.

of the overcrowded 8-4-4 system of education in Kenya, a substantial part of children's free time is used for homework, leaving little time left for recreation.

The second report states that the primary school curriculum was reviewed and rationalised in 2002, but it does not explain whether and how this has provided more time for recreational activities and leisure. Nevertheless, the conclusion of the second report is that play and leisure are not given adequate time and priority by parents and teacher. The negative aspects of some cultural practices, like FGM, widow inheritance and childhood marriages, are mentioned as constraints to the implementation of children's right to rest and recreation.

All in all, there have been considerable improvements for Kenyan children in their right to education, above all due to the Free Primary Education initiative. However, some vital questions do arise. Save the Children Sweden's programme area six clearly spells out not only children's fundamental right to education, but their right to an adequate and relevant education, highlighting the importance of quality. The initiating of FPE, which led to a substantial increase of students, in combination with inadequate budgetary allocations, leads the reader to question how the quality of education could possibly be guaranteed in Kenya. The challenge of providing enhanced access, retention and equity as well as quality of education appears as overwhelming. One could also question to what extent the primary education really is free. Even though the children are now exempted from paying tuition, they still have to pay for their uniforms and sometimes also for their books. Considering the high levels of poverty in the country, this implies that education is in reality still not accessible to all children.

4.7 Programme Area Seven: Children's Right to Participation (CRC Articles 12, 13, 14, 15)

The current *Constitution* of Kenya does not entail any specific provisions for children's right to participation.⁹⁹ The *Children Act*, however, provides protection and encouragement of child participation, stating that in any matter of procedure affecting a child, the child shall be accorded an opportunity to express his or her opinions, which shall be taken into account as may be appropriate according to the child's age and degree of maturity.

As mentioned earlier, the concept of child participation is not well established in the Kenyan society and culture. Hence, there is still a long way to go before children's views are heard and taken into account within learning institutions and the family. Nevertheless, children in Kenya are free to join clubs, associations and societies in school, which provide them with the opportunity to express themselves and articulate their opinions. According to the second CRC report, civil society organisations continue to establish children rights clubs and in some schools children are allowed to choose their school leaders. However, the crowded school curriculum leaves little time left for the students to engage in co-curriculum activities, like clubs and associations.

In the preparations of the two CRC reports children were invited to participate. According to the first report, 350 children took part in children's workshops, where they expressed their views on the CRC and its implementation in Kenya. The process preceding the second report involved 400 children, 40 in each region, in a series of regional workshops in 2004, where children also acted as facilitators. In September the same year, a national validation workshop took place, in which 107 children (and 40 adults) confirmed the content of the first draft of the report.¹⁰⁰ To include children in the reporting process is of great importance and a prerequisite for producing an accurate and honest CRC report.¹⁰¹ However, the two Kenyan CRC reports do not provide any information on the circumstances surrounding the children's participation, whether the children felt comfortable enough to express their thoughts, worries and questions, how much time and space they were given, and in what way their opinions were taken into consideration.

In comparison with many other aspects of the CRC, the issue of child participation is given relatively little attention in the two reports. In addition, the fact that most of the section on children's participation is focused on legal aspects and not much is said on the situation on the

⁹⁹ The referendum draft Constitution, however, proposed that children should have the right to know of decisions affecting them and to express an opinion.

¹⁰⁰ Second Periodic Report, 2005, p. 12 f.

¹⁰¹ See for example Committee on the Rights of the Child, 2003, para. 12.

ground, indicates that there is a great need for this principle to be transformed from a judicial provision in nice wordings to a Kenyan reality.

4.8 Programme Area Eight: The CRC and Children's Human Rights (CRC articles 42, 44)

4.8.1 The Reporting Process

Article 44 of the CRC regulates the reporting process, according to which the State Parties regularly shall submit reports on the measures they have adopted to implement Convention. In its guidelines for periodic CRC reports, the UN Committee emphasises that the reporting process should “encourage and facilitate popular participation and public scrutiny of government policies”¹⁰² This means that civil society organisations, who played a crucial role in drafting the CRC, also have an important role in the reporting process.

As mentioned in the section “General Comments”, both Kenyan CRC reports involved civil society participation, not least the second report, which engaged a large number of NGOs that not only provided their expertise, but also financial resources.¹⁰³ This development indicates a strong commitment from the civil society in taking part in the process, as well as an inclusive attitude from the government's side.

The UN Committee welcomes the establishment of NGO coalitions and alliances committed to promoting, protecting and monitoring children's human rights. In Kenya, the Kenya NGO CRC Coalition has been monitoring the implementation of the CRC since 1997. It has members from key children's organisations in the country¹⁰⁴ and worked with the government in the preparations of both the initial and the second CRC report. The Coalition also prepared a supplementary report to the initial state report.

The second CRC report has just been submitted to the UN Committee in Geneva (September 2005) and will probably be taken into consideration by the Committee in the end of 2006. At that occasion the NGOs will also be given the opportunity to present their supplementary report, which has not yet been drafted.

4.8.2 Making the CRC Widely Known

According to Article 42 of the CRC, State Parties are requested to make the principles and provisions of the Convention widely known to both children and adults. The first CRC report mentions that activities like the Day of the African Child have been used to create public awareness on the CRC in Kenya; and that the Christian Children Fund (CCF) has translated the CRC into Kiswahili, of which 20 000 copies have been published and distributed in the rural areas.

The UN Committee, however, expressed its concern that there is still a lack of awareness of the CRC among professional groups, children and parents, and recommended the Kenyan government to reinforce training and sensitisation among lawyers, teachers, health personnel, school administrators, as well as traditional and community leaders.

Besides the translation to Kiswahili, the CRC is now also available in sign language, Braille and several native languages in simplified versions, according to the second CRC report. A popular version of the *Children Act* is also available. In schools, the establishment of child clubs have been used as a tool to educate children on the Convention. However, there is still lack of awareness on children's rights, especially in some communities where strongly held cultural and traditional practices constitute the main obstacles. There is therefore need for continued training on children rights among relevant stakeholders and the general public, according to the second CRC report.

¹⁰² Committee on the Rights of the Child, 1996, para. 20.

¹⁰³ For example, the different regional workshops where children participated were organised and funded by NGOs. Interview with Mr. Munene, 8 December 2005.

¹⁰⁴ These include Action Aid, ANPPCAN, CRADLE, Plan International, Save the Children Canada, World Vision etc. Kenya NGO CRC Coalition, 2001, p. 20.

4.9 Programme Area Nine: Good Governance in the Best Interests of the Child (CRC Articles 4, 26, 37, 40)

4.9.1 Implementing Child Rights

According to the CRC, the state has the ultimate responsibility to implement children's rights and is obliged to take action and make sure that these rights are respected and realised in practice.

Article 4 of the Convention requires the State Parties to:

undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

When reporting about the measures of implementation, Kenya's initial CRC report is rather brief and mainly focused on the forthcoming *Children Act*.¹⁰⁵ Considering the fact that the adoption of the *Children Act* provided Kenya with an historic and comprehensive legislation, which aims to domesticate the CRC, it is not surprising that the second report, to a great extent, is focused on this Act and the structures and institutions it establishes. The formation of the National Council for Children Services, the Area Advisory Councils at the district level, the Children's Courts and institutions for children in need of care and protection are all a result of the Act and important tools for the implementation of children's rights in Kenya. Without a clear legal and administrative framework children's rights will never be realised.¹⁰⁶

However, this being said, the importance of enforcing existing laws and assuring that established structures are actually functional cannot be overestimated. As the Kenya NGO CRC Coalition pointed out in its comments to the initial state report:

*Even after the Children Bill is enacted, a lot more will have to be done to fully realize its good intentions.*¹⁰⁷

No matter how well formulated the legal provisions and well intentioned the administrative structures are, if they are not provided the political priorities, economic resources and trained personnel they require, their objectives will not be realised. Hence, the issue of resources and political will is utmost important. This is captured in the second part of article 4 of the CRC, where it is acknowledged that lack of resources can hamper the implementation of child rights, but that State Parties are still required to take action "to the maximum extent of their available resources".

Whereas the second CRC report proudly presents the adoption of the *Children Act*, it is rather silent on how to implement and operationalise its provisions and the institutions it establishes. According to experts on child rights in Kenya, this is now the main challenge ahead.¹⁰⁸

The second CRC report states that the government's total budgetary allocation to the Children's Department has increased during the last years.¹⁰⁹ However, it is not possible to identify what proportion of the state budget is reserved specifically for children. This makes it difficult for the government to demonstrate whether it has actually allocated its maximum

¹⁰⁵ Soon after Kenya's ratification of the CRC, the Attorney-General requested a review of the existing laws relating to the welfare of children. Following a consultative process, a report was submitted to the government in 1994. One of the report's key recommendations was the enactment of a Children Bill. Soon thereafter a cabinet decision led to the publication of the Children Bill (1995). However, the bill was criticised, not least by many NGOs, who considered it falling short of the provisions of the CRC. The Attorney-General then directed a task force to review the bill and a new bill was drafted, which later on was enacted as the Children Act 2001.

¹⁰⁶ As the UN Committee points out in its General Comment no. 5 (2003), even though the development of new laws and structures, bodies and activities that are child focused sometimes might seem cosmetic, their presence do at least indicate a change in the perception of the child's place in society and a willingness to give higher political priority to children.

¹⁰⁷ Kenya NGO CRC Coalition, 2001 p. 2.

¹⁰⁸ Interviews with Mr. Munene, 8 December 2005 and Mr. Mwangi, 9 December 2005.

¹⁰⁹ From 20.2 million Kshs in development and 197.7 million Kshs in recurrent expenditures in the 2000/2001 financial year, to 74.1 million Kshs in development and 240.8 million Kshs in recurrent expenditures in the 2003/2004 financial year. Second Periodic Report, 2005, p. 6.

available resources to children's rights, and hence, fulfilled article 4 of the CRC, or not.¹¹⁰ Moreover, for the last six years Kenya's government expenditures have, to a large extent, been allocated to debt servicing, salaries and other recurrent costs, leaving little left for social services. As a response to this, the second CRC report emphasises the importance of reorienting the public expenditure to core social sector ministries and to improve the utilization of these funds. Considering the high level of corruption in Kenya, the last mentioned factor appears as crucial.¹¹¹ However, the issue of corruption and misuse of funds is not further discussed in the report.

4.9.2 Juvenile Justice

The initial CRC report gives the impression that the juvenile justice system in Kenya is functioning rather well. The Kenyan NGO CRC Coalition strongly reacted to this, stating that this description contrasts with the actual situation on the ground. According to the alternative reports, the situation for children in the juvenile justice system is unacceptable. Surveys indicate that only 15 per cent of the children in the system are actually categorised as offenders and of these only a small percentage have committed serious offences.¹¹² This means that children in need of care and protection are lumped with offenders. The government also brings this issue up in its initial report, admitting that there is an overlap of discipline and protection cases in the juvenile justice system. Another constraint mentioned by the government is that there was only one officially designated Juvenile Court in Kenya at the time of the first report.

In contrast to the CRC reports, the two alternative reports provide detailed information on the tough conditions for children in conflict with the law. The reports witness of lengthy remand periods, often more than six months. This lead many children to plead guilty to crimes they are accused of just to avoid spending time in juvenile remand homes or adult remand prisons where conditions are known to be particularly harsh. The court proceedings, in both regular and juvenile courts, are often rushed and do not allow children fair opportunities. At the time of the submission of the alternative reports in 2001, the courts could commit children to approved schools, borstal institutions or adult prisons. The approved schools are under the administration of the Children's Department and aimed at educating and rehabilitating children, but their reputation of being little more than child prisons is a great disadvantage for these children when applying for jobs. Borstal institutions, which are under the administration of the Prisons Department, are for boys aged 15 years and above. The environment is penal and punitive. Most boys receive no academic education at all, but are assigned to hard labour. Before the enactment of the *Children Act*, children as young as 14 years could be sentenced to adult prisons, where conditions are very harsh.¹¹³ The main message of the two alternative reports is that institutionalisation as remedial measure for children is over-used in Kenya, especially since even children who are non-offenders or first or minor offenders are deprived of their liberty.

In its response to the first CRC report, the UN Committee expressed concern about the quality of the juvenile justice system in general and the fact that there was only one juvenile court in the country. It recommended Kenya to use deprivation of liberty (institutionalisation) only as a last resort; abolish the use of corporal punishment in the juvenile justice system; improve conditions in detention facilities and ensure that cases involving children in need of care and protection are not treated as criminal cases. The Committee was also concerned with the

¹¹⁰ The importance of making children visible in the budgets was highlighted by the UN Committee in 2003: "No State can tell whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of... available resources' (...) unless it can identify the proportion of national and other budgets allocated to (...) children, both directly and indirectly". Committee on the Rights of the Child, 2003, para. 51.

¹¹¹ According to Transparency International's Corruption Perception Index (CPI) 2005, Kenya is one of the most corrupt countries in the world. On the CPI index, which ranges between 10 (highly clean) and 0 (highly corrupt), Kenya's score is 2.1. www.transparency.org/policy_and_research/surveys_indices/cpi/2005

¹¹² Save the Children UK, CLAN and ANPPCAN et. al., carried out reviews of the juvenile justice system between 1997 and 2000 and reached the conclusion that between 80 and 85 per cent of the children in police custody or correctional facilities are children who are in need of care and protection, the majority of these being street children. The reviews also showed that 15 to 20 per cent of children in conflict with the law who are categorised as offenders have committed relatively minor offences, which could be linked to survival efforts. Annual Progress Report to Sida on the Diversion Project, Save the Children Sweden, December 2005; Kenya NGO CRC Coalition, 2001, p. 7.

¹¹³ In 1996, Human Rights Watch interviewed six adolescents who had been sentenced to adult prisons. They all commingled with adults, slept on the floors and complained of hunger. They had received no education whatsoever, but had to work under the hot sun on prison farms. Human Rights Watch, 2001, p. 8.

minimum age for criminal responsibility being as low as eight years, and recommended the Kenyan government to increase this legal age.

The second CRC report indicates some positive developments. The *Children Act* provides fundamental and highly needed legal protection for children in conflict with the law. The Act prohibits capital punishment, imprisonment¹¹⁴ and corporal punishment for child offenders, and gives a child who is deprived of liberty the right to have contact with his or her family and to be separated from adults while in custody.¹¹⁵ In addition, the *Children Act* stipulates the establishment of Children's Courts, which are required to be child friendly, take due regard to the best interests of the child and deal with criminal cases quickly.¹¹⁶

In line with the *Children Act* and the recommendations from the UN Committee, the government has set up Children's Courts in all provinces through the appointment of Children's Magistrates, mandated to preside over children's cases. All in all, 119 magistrates throughout the country have been sensitised on how to handle matters relating to children. However, there is still only one distinct Children's Court, which is provided a separate building, in Kenya.

In collaboration with partners, the Department of Children Services has set up regulations (which are yet to be gazetted) to govern children's institutions. Rehabilitation centres have greatly improved, according to the second CRC report, and children are now classified according to age and needs. Education and vocational training is provided in children's institutions.

In addition, in 2001, the Diversion Project for Children in Conflict with the Law in Kenya¹¹⁷ was initiated as a response to concerns raised in reviews of the Kenyan juvenile justice system.¹¹⁸ The Diversion Project aims to ensure that children in need of care and protection and minor offenders are diverted¹¹⁹ from the formal criminal justice system, and rehabilitated and reintegrated with their families and communities. In this way children are protected from staying in police cells for long duration, which also protects them from further abuse. As a result of the project, many children in conflict with the law have been repatriated to their families and government institutions have been decongested. The Department of Children's Services is the focal point of the Diversion Project activities and the capacity of its personnel has been built through training and material support. Under the Governance Justice Law and Order Sector (GJLOS) the government is planning to expand and strengthen the Diversion Project, and the Department of Children Services has included diversion in its 2005/2006 work plan.¹²⁰

When it comes to the legal aspect it is, however, important to note that even though the *Children Act* provides protection for children in conflict with the law, it does not, in contrast with

¹¹⁴ By prohibiting imprisonment, the Children Act goes even further than the CRC (article 37), which prohibits life imprisonment without possibility of release and stipulates that imprisonment shall be used only as a last resort. Under the Children Act (Section 191), the court may order a child offender to a *rehabilitation school* (if the child is above ten years); a *borstal institution* (if the child has attained the age of sixteen); an *educational institution* or vocational training programme, or a *probation hostel*; commit the child to the care of an adult or *charitable institution*, but also order the child to pay a *fine* or conduct *community service*.

¹¹⁵ The Children Act, Fifth Schedule.

¹¹⁶ According to The Children Act, Fifth Schedule, remand in custody shall not exceed three months in ordinary offences and six months in capital offences.

¹¹⁷ The Diversion Project operates within the management of Save the Children Sweden. The Project was piloted in four areas – Kilimani, Kamukunji, Nakuru and Kisumu - but has now been expanded to nine areas; the five new project areas being Buruburu, Naivasha, Gucha, Siaya and Kakamega. The project activities are carried out through key strategies, which include the *Strategic Alliance* at the national level. This Alliance is a forum for collaboration and lobbying on issues of juvenile justice, diversion and child rights, with key government departments, representatives of the NCCS, donors, international and national NGOs (including CLAN, CRADLE, CCF, Child Welfare Society of Kenya, Youth Alive Kenya and many more) and CBOs among its members. At the district level, *District Diversion Core Teams* have been put in place and are operational in all the nine project areas; *Child Protection Units* are operational at district and community level in nine selected police stations in the project areas. Save the Children Sweden supports the sustainability of the Diversion Project in Kenya and has therefore been involved in discussions with various key actors to promote this goal. In July 2005, Save the Children Sweden signed an agreement of collaboration with the Police Department and in September 2005 an agreement was signed with the Department of Children's Services. Annual Progress Report to Sida on the Diversion Project, Save the Children Sweden, December 2005

¹¹⁸ Among the concerns raised in the reviews were: lack of separation of social welfare issues from criminal justice issues; disproportionate allocation of resources to institutions rather than to community based alternatives; and lack of coordination within and between relevant government departments and NGOs involved in the juvenile justice system. Annual Progress Report to Sida on the Diversion Project, Save the Children Sweden, December 2005.

¹¹⁹ *Diversion* involves a process where young people who come into conflict with the law, particularly first time offenders, are removed from the criminal justice process and redirected to community support services. See for example United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

¹²⁰ Second Periodic Report, 2005, p. 99; Annual Progress Report to Sida on the Diversion Project, Save the Children Sweden, December 2005.

the CRC, clearly spell out the rights of children within the juvenile justice system, and the principle of diversion is not explicitly included in the law. Whereas the CRC (articles 37 and 40) stipulates that arrest and detention shall be used only as a measure of last resort and that judicial proceedings and institutional placements shall be avoided wherever possible, the wording of the *Children Act* is not that precise. However, since the *Children Act* limits the length of remand, stipulates the separation of children and adults in custody, establishes child friendly Children's Courts and outlaws imprisonment, diversion is implied in the Act.¹²¹

The second CRC report highlights a number of other constraints, which inhibit the implementation of the rights of children in conflict with the law, among others: inadequate legal aid¹²² and counselling services for juvenile justice; overcrowded remand cells, which exposes children, especially girls, to risks of abuse; inadequate number of Children's Courts and magistrates, which means that children are held in police cells and remand homes. In addition, the number of rehabilitation centres and rescue homes is also inadequate and record keeping in the juvenile justice system is not up to date.

Moreover, the *Children Act* does not increase the minimum age of criminal responsibility, which, therefore has not been changed, but is still eight years according to the Penal Code. The second CRC report states that "there is a felt need to revise the age of criminal responsibility by developing measures and regulations to address situations where children below twelve years have committed crimes."¹²³, but no further information is provided on the progress of this process.

4.9.3 Social Security

The current *Constitution* of Kenya does not mention the right to social security, and the country lacks a universal welfare and social security system. The *National Social Security Fund Act* is the main legislation governing social security. This fund requires contribution from formally employed citizens. Public servants, who retire at the age of 55 years, receive a pension, but the benefits are inadequate and often insufficient to maintain the children of the retired employee. Even more vulnerable are the poor, aged, disabled, single mothers and child-headed families, since these groups are not eligible to any social security benefits.

Noteworthy, the two CRC reports use almost the exact same wordings when discussing social security, indicating stagnation and few positive developments in this area. Hence, there is still a long way to go before children's rights to benefit from social security, including social insurance, as stipulated in article 26 of the CRC, is fully implemented in Kenya. The second CRC report recommends the government to create a social welfare scheme, which also includes the vulnerable groups in society; and to review the current social security fund so that the retired workers can continue to support their families by means of their pensions.

4.10 Programme Area Ten: A Civil Society for the Rights of the Child (CRC Article 45)

Article 45 of the CRC recognises the importance of civil society involvement in the implementation and follow up of the Convention, and invites "competent bodies" to take part in this process by providing their expertise. The UN Committee emphasises that even though the state is ultimately accountable for complying with the CRC (see programme area nine), all members of society are responsible for implementing the rights of the child. The government therefore needs to work closely with NGOs, including human rights organisations, youth groups, academic institutions and faith groups, when promoting and realising child rights.¹²⁴

¹²¹ The Diversion Project with support from the Governance, Justice, Law and Order Sector and key government departments are in the process of having diversion included in the Kenyan Law. Annual Progress Report to Sida on the Diversion Project, Save the Children Sweden, December 2005.

¹²² Legal aid is provided by various NGOs and private advocacies, but to a very minimal extent. However, the Children Act puts the responsibility of providing children with legal aid on the state. According to the Children Act (Section 77) the court may, where the child is unrepresented, order that the child be granted legal representation by means of money provided by the Parliament. Section 186 (b) provides that every child accused of having infringed any law shall, if he is unable to obtain legal assistance, be provided with assistance by the Government in the preparation and presentation of his defence.

¹²³ Second Periodic Report, 2005, p. 14 f.

¹²⁴ Committee on the Rights of the Child, 2003, para. 56, 58.

In Kenya, the level of co-operation between the government and civil society is relatively high, not least in comparison with the situation a couple of years ago, when the political climate was less open and democratic, and freedoms of association and expression was limited.¹²⁵ The inclusive structure of the National Council for Children Services, with representatives from nongovernmental and religious organisations, as well as the private sector, indicates the government's willingness to co-operate with civil society.

At the same time, the two CRC reports clearly indicate that the Kenyan government, to a great extent, is dependent on the services of the civil society in order to implement the rights of boys and girls in the country. For example, in the section on street children, the second CRC report states: "NGOs and the private sector play a key role in the provision of financial and material resources"¹²⁶. Similar statements are recurring throughout the reports, highlighting the important functions and roles of civil society organisations in Kenya, but also the more problematic aspects of the relation between the government and civil society and the distribution of responsibilities. In this context, there is a general discussion on the positive and negative effects of the fact that civil society actors in many countries have become main service deliverers and in that way actually taken over the responsibilities of the state. The consequences of this development, not least when it comes to issues of accountability, national coordination and equal distribution of services are important to consider.

¹²⁵ According to Freedom House, Kenya is currently considered "partly free", whereas it was considered "not free" in 1999. The surveys of Freedom House focus on the implementation of political rights and civil liberties in the world, and countries are ranked on a scale between 1 and 7 (where 1 indicates the highest level of freedom and 7 the lowest). In the 2005 survey, Kenya's score was 3 on political rights and 3 on civil liberties, whereas the corresponding figures in 1999 were 6 and 5. www.freedomhouse.org/research/freeworld/2005/Egypt-Kiribati.pdf, www.freedomhouse.org/research/freeworld/2000/countryratings/kenya.htm

¹²⁶ Second Periodic Report, 2005, p. 93.

5. Concluding Observations

Having taken a closer look at Kenya's two CRC reports, the enactment of the *Children Act* does appear as a major achievement and a great step forward in the implementation of children's rights. Boys and girls in Kenya are now provided with far more thorough and comprehensive legal protection than before. At the same time there are also gaps and constraints. Firstly, there are limitations inherent in the *Children Act*. For example, children born out of wedlock are not provided with protection against discrimination and the minimum age of criminal responsibility, eight years, has not been revised. Furthermore, the rights of children within the juvenile justice system are not clearly stated and the principle of diversion not included in the Act. Secondly, other laws are not consistent with the *Children Act*, which limits the effect of its provisions. The need to harmonise all laws on children to create conformity with the *Children Act*, and hence the CRC, is therefore of great importance. The third and maybe the most crucial gap to be addressed is the one between the written law and the realisation of its words.

In almost every issue discussed and analysed in this paper, the question of implementation has been a constant concern. A comprehensive and clear legal protection is a very important and necessary first step in order to realise children's rights. However, no matter how well formulated and comprehensive the judicial framework is, if there are not enough efforts to implement them, the words will lose their meanings. A recurring issue, identified in almost every section of the reports as a main constraint for implementing the CRC, is lack of *resources*. It is obvious that resources are scarce in Kenya, where half of the population lives in poverty. However, instead of just leaving the comment on resources as a statement, it would have been constructive if the reports had developed their arguments on the issue of *priorities*. At the end of the day there are always priorities to make, in both wealthy and poor countries, but unfortunately children and their rights and needs are seldom on the top of the political agenda. Hence, the importance of creating awareness on governments' obligations to implement children's rights cannot be overemphasised.

Another recurring constraint mentioned by the two reports is the issue of *cultural practices* and traditional customs. It is rather surprising that the CRC reports, especially the second one, puts so much emphasis on the negative aspects of cultural traditions. In its Written Replies to the List of Issues from the UN Committee, the government even makes the conclusion that cultural and traditional practices constitute one of the major challenges to the full realisation of child rights in Kenya.¹²⁷ As a response to this challenge, the CRC reports frequently recommend that communities should be sensitised and educated. This kind of recommendation indicates a top-down approach, where one tries to impose change from above. However, the successful initiative of engaging assistant chiefs to register births indicates the importance of linking programmes to the cultural traditions and creating change from within the communities. Nevertheless, there are few recommendations in the CRC reports that address the possibility of integrating the implementation of child rights to the local customs, habits and beliefs. Hence, one of the challenges ahead is to find locally appropriate ways of implementing children's rights, while still promoting the general principles of the CRC.

Evidently, Kenya has made a number of important achievements towards the realisation of children's rights as stipulated in the CRC. On the other hand, there are remaining challenges and constraints that inhibit the implementation of these rights. However, with a comprehensive and progressive legislation as an important starting point, duty bearers and relevant stakeholders are now given constructive tools to make these rights a reality and to release the great potential of every boy and girl in Kenya.

¹²⁷ Written Replies to List of Issues from the Committee on the Rights of the Child, 2001, p. 21.

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Appendix I: The Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force 2 September 1990, in accordance with article 49.

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognising the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

Part I.

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6

1. States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance

with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (order public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (order public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations As are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, As the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, As appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, As well As for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, As appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose

own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, As well As the making of other appropriate arrangements.

Article 28

1. States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such As the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so As to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards As may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances As defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only As a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, As well As the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognise the right of every child alleged As, accused of, or recognised As having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged As, be accused of, or recognised As having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged As or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged As, accused of, or recognised As having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such As care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

Part II.

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realisation of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognised competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, As well As to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-general of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-general shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-general at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if denominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place As determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-general of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions As the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-general of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also

contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialised agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-general to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Part III .

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-general of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-general of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-general of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-general of the United Nations. The Secretary-general shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-general shall convene the conference under the auspices of the

United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-general of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-general of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-general

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-general of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-general

Article 53

The Secretary-general of the United Nations is designated As the depository of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-general of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorised thereto by their respective governments, have signed the present Convention.

Appendix 2: Save the Children Sweden Programme Areas

Save the Children Sweden is a membership organisation built on democratic principles. Our organisation is independent in relation to the state and government institutions economically as well as politically. Our work is based on the UN Convention on the Rights of the Child and the Universal Declaration on Human Rights, which implies respect for the dignity and equal worth of each person as an individual and as a member of society. Save the Children Sweden and its partner organisations do not replace the function of the state in the implementation of the Convention on the Rights of the Child.

A child rights approach

All work of Save the Children is done through a child rights based approach. This means that boys and girls participate as rights holders, claiming their own rights, and as actors in their own development. A rights based approach considers the broader context and addresses root causes. It takes a holistic approach to children and their situation. All actions are based on an analysis of the socio-cultural context and how stakeholders and duty-bearers perceive the rights of the child and childhoods. This approach emphasizes the indivisibility and interdependence of rights and is based on the four general principles of the Convention on the Rights of the Child:

- Non-discrimination
- Best interests of the child
- Right to survival and development
- The right of the child to express his/her views

The individual needs and circumstances of a child should be considered in all actions and decisions regarding that child in order to ensure that the best interests of the child is given primary consideration. Children should be involved in decisions that affect their lives. The right to information, to expression of thoughts and ideas and the right to influence are fundamental for children's possibilities to claim their rights. Save the Children Sweden recognizes children as advocates of change and resilience. We believe that it is important to nurture the energy and creativity of children and young people so that they can actively take part in shaping their environment, their societies and the world they will inherit.

The values of the Convention on the Rights of the Child relate to qualities of life to which everyone is entitled, regardless of age, gender, race, religion, nationality, or any other factors. Disadvantaged and marginalized children, including adolescents in particular, need special attention and support to access basic services, build self-esteem and to prepare them to take responsibility for their own lives. Save the Children Sweden works against exclusion, marginalisation, stigmatisation and oppression, and for inclusion, respect and integration,

Duty-bearers accountable

The responsibility for ensuring that rights are respected, protected and fulfilled lies ultimately with national governments and they are to be held accountable for maintaining and implementing human rights. This responsibility also concerns all other parts of society from the level of international institutions, through nation state and community, to individuals in the family. Parents and adults close to children have special responsibilities and play a key role with regard to their protection.

What Save the Children Sweden wants to do

Save the Children Sweden tries to influence decision makers and authorities to take into account the rights of the child in planning, policy making, allocation of resources, and practical actions media to monitor and promote the rights of the child civil society, including children's and youth's own organizations; to act as a watch-dog monitoring and promoting the rights of the child families as well as individual children and adults in local communities to respect, protect, and reinforce the rights of the child.

Our main implementing strategies are

- research and analysis
- knowledge dissemination and capacity building
- direct support
- advocacy and awareness raising

The Save the Children Programme Area Strategies are based on the vision, values and guidelines of the Compass - Framework and Direction for Save the Children Sweden.

1. Exploitation and abuse of children ¹²⁸

Children need special protection because they are children and as such dependent, formative and potentially vulnerable. This is particularly true for children at risk of various forms of violence, exploitation and neglect and in need of additional support to enjoy their equal rights. Save the Children Sweden takes a holistic approach to children and their situation focusing on the complex pattern of immediate and underlying factors that may put children at risk of abuse and exploitation. Parents and adults close to children have special responsibilities, and play a key role with regard to their protection. When measures are taken to protect children from harm, their right to development is of major concern.

2. Children without sufficient family support¹²⁹

Both parents have a responsibility for the upbringing and development of the child. This responsibility may be shared with others such as members of the wider family. The State has an obligation to support and ease the burden of the family when it assumes its responsibility to protect and guide the child. If the child is deprived of his or her family environment, the State shall provide special protection and assistance. A child who is placed by the competent authorities for care, protection or treatment has a right to periodic review of the treatment. This also applies to girls and boys who are outside their country of origin and separated from parents or their previous legal/customary primary care giver. For children without family support, Save the Children Sweden advocates family-like alternatives to institutional care and believes in community-based solutions. Alternatives should therefore be found in the immediate neighbourhood and only in exceptional cases or as a last resort should children be placed in institutions.

3. Children in armed conflict and disaster

To develop preventive measures and to protect children in armed conflict and disaster, Save the Children Sweden believes that it is important to strengthen the community and to build constituencies of support and commitment. In war and emergencies it is important to apply a long-term development perspective also when short-term actions are carried out. The general policy of Save the Children to use a holistic perspective when analysing violations of children's rights is paramount in the planning of responses to children in conflict and emergencies. Save the Children believes that interventions to re-establish a normal everyday life - including education, health services and a safe environment - are essential to fulfil the right to development for these

¹²⁸ *Definitions:* Child Abuse refers to certain direct, detrimental contact as well as non-contact acts towards a child. Child Exploitation refers to the systematic use of children's work in harmful conditions. Exploitation often includes acts of abuse but is a wider concept since it also involves parties other than those who are directly performing the abusive acts towards the child.

¹²⁹ *Definition:* Children without sufficient family support are children under 18 years who do not count with parents' or other legal/customary primary caregivers' efforts to protect against violations of his or her rights.

girls and boys. All interventions need to be based on the involvement of the children, and their views and suggestions have to be taken into account.

4. The child's right to non-discrimination¹³⁰

The principle of the equal worth of all human beings is part of the fundamental values of Save the Children Sweden. Discrimination manifests itself in various forms. It can be direct or indirect, conveyed via words or deed and occur at all levels of society, including the family. Children may be subjected to several forms of discrimination simultaneously. To address inequality and to promote equity, affirmative action or positive discrimination may be required. Save the Children Sweden finds it essential to listen to children to get their views and experiences of any discriminatory decision or treatment. It is important to recognize children's capacity as advocates for change and resilience.

5 A. The right to a good physical environment¹³¹

The survival and development of girls and boys depend to a great extent on the physical environment where children's spend their daily lives. Save the Children Sweden believes that children, from the beginning of life, are active participants in their own development. We believe that girls and boys shape their world, at the same time as they are being shaped by it. The quality of the environment affects children's physical health, learning, and capacity, as well as their emotional and social growth. As there are always threats to children's optimal development and their right to protection from abuse, it is important to identify the protective factors in the physical environment. These positive factors may act as a buffer against the threats and contribute to building up resilience and capacity to cope with the difficulties. For example, possibilities to recreation and play offer opportunities for children to interact with their environment in a developmentally constructive way. To ensure a good, safe and healthy environment, children need to know their rights. They also need basic health education, knowledge of how to prevent accidents, and possibilities to develop respect for the natural environment.

5 B. Young people's right to sexual health¹³²

The right to sexual and reproductive health means that every individual is free to choose his or her partner, the mode of sexual relationship, and if they want to have children. Sexual rights are about respect for each person's physical and mental integrity, about each individual's right to say Yes or No to sex and the right to be protected against sexual abuse and discrimination. Save the Children Sweden acknowledges that young people are sexually active and we consider important to provide young people with the information needed to understand how their body functions, and to know what it implies to respect one's partner. They also need to know how best to protect themselves from HIV/AIDS and other sexually transmitted diseases as well as from sexual abuse and exploitation.

Save the Children Sweden acknowledges that parents and the family have the primary guiding role. The right of children and young people to exercise influence over their own lives means that adults have to allow them space and take their views seriously. Since issues regarding sexual and reproductive health usually are sensitive and often taboo, attitudes and opinions of adults are crucial to ensure young people the support required. In relation to abortion, Save the Children Sweden wants to contribute to permissive legislation globally, as well as care and treatment, in the best interests of the child. The right to non-discrimination means that all young people have an equal right to sexual health, including girls, young people from ethnic minorities, young people with disabilities, with "different" sexual preferences or those suffering from HIV/AIDS.

¹³⁰ *Definition:* Save the Children Sweden defines discrimination as a negative differentiation in treatment of an individual or a group, based on certain grounds such as sex, origin, or opinion, which has the purpose or effect of impairing someone to enjoy her or his rights.

¹³¹ *Definition:* In this context, physical environment means the direct surrounding of the child, the immediate environment in children's homes, schools and workplaces, as well as the environment in the neighbourhood and in the city. Issues to take into consideration are: Housing; water and sanitation; environmental hazards; environmental stress.

¹³² Work area within the programme area of A good physical environment and the best possible health

6. The right to education

All children have the right to basic education that is free of charge. They also have rights in education, as education should aim at developing the child's personality, talents and mental and physical abilities to prepare them for a responsible life in a free society. To be in the best interest of the child, the content of learning has to be relevant and adjusted to each child's individual capabilities. Teaching styles and attitudes have to be child-friendly in a learning-friendly environment, respecting the integrity and individual needs of the child. To achieve this, physical and mental punishment, bullying and other forms of degrading treatment have to be eliminated. This would also contribute to keeping children in school. In addition, the basic values of the CRC have to be known and adopted by adults responsible for the upbringing and education of children. It is important to use education to practice participation, and prepare the child for an active, responsible life in society. Participatory and cooperative learning strategies are essential to develop critical thinking, conscious decision-making and peaceful conflict resolution. Children also have rights through education as all children are entitled to know their rights. Teachers are key agents to transmit this knowledge to their students.

7. Children's right to be heard and to participate

Children have the right to express their views freely and to be heard and taken seriously when they do so. The views of the child should be taken into account and given consideration in accordance with his or her age and maturity. In addition, the child has a right to search and receive information in order to be able to form its opinions. Children's participation is a process that should be understood and implemented within the local social and cultural context. The forms of participation may vary, from close dialogue between a child and a parent to children taking part in decision-making processes at various levels. The right to information, to expression of thoughts and ideas and to influence is fundamental for children's possibilities to claim their rights. This is valid for all children including the marginalized child. Save the Children Sweden believes that children's participation enhances self-respect and respect for others. This respect will, in turn, enhance awareness of and sensitivity to democratic values and human rights. In addition, the quality of decisions concerning children will improve when children are listened to and their opinions are taken into consideration.

8. The human rights of the child and child rights programming

Human rights as enshrined in international human rights conventions, in particular the UN Convention on the Rights of the Child, are based on respect for the dignity and value of each person as an individual and also as a member of society. Everyone is entitled to these rights, regardless of age, gender, race, religion, nationality, or any other factors. States have a primary obligation to ensure that these rights are respected, protected and fulfilled. This duty also concerns all other elements of society from the level of international agencies to individuals in the family. All work of Save the Children Sweden is done through a child rights based approach and all programmes are developed following the characteristics of child rights programming. A rights based approach considers the broader context of society at large and addresses root causes. It empowers children as holders of human rights to claim those rights in partnership with adults. This approach considers governments as key duty-bearers and hold them accountable. It seeks inclusive gender sensitive solutions. It requires a holistic perspective and a multi-sector programming approach. All actions are based on an analysis of the socio-cultural context.

9. Good governance in the best interest of the child

Save the Children Sweden applies a rights-based approach to its programme work. A key feature of this approach is the notion of individual citizens, including children, as rights holders and states as primary duty bearers. When a state ratifies the Convention on the Rights of the Child, it becomes accountable to all children in that country. The country also becomes accountable to the international community. It is their responsibility to ensure that rights are respected, protected, promoted and implemented. The notions of accountability and duty bearers are closely linked to the concept of good governance. A commonly accepted definition of governance is: The way the state exercises its political, economic and administrative power. Key attributes of good governance are that institutions and processes build on the rule of law, are accountable,

open, effective and responsive and give space for equal and meaningful participation. Consequently, a rights-based approach implies assessing strengths and weaknesses of governments with regard to the implementation of the CRC, cooperating with them and advocating for change when needed. Good governance for children is integral to all aspects of the programme work of Save the Children Sweden.

10. A civil society for the rights of the child

Save the Children Sweden in its capacity as a Swedish non-governmental organisation is part of the civil society in Sweden¹³³. It is also part of the global civil society, primarily as a member of the International Save the Children Alliance. Save the Children Sweden is built on democratic principles, and it shall reflect democratic values and contribute to a democratic culture. We are independent in relation to the state and government institutions. All programme work is guided by the norms and principles of the UN Convention on the Rights of the Child. Save the Children Sweden stresses the importance of international monitoring and we believe that an active civil society built on democratic principles is fundamental to promote, monitor and uphold respect for human rights and human dignity, including the rights of the child. We strive for fair NGO representation in international and other fora and we encourage those civil society representatives who are closest to the children concerned to speak out.

11. Knowledge management, capacity building and rights-based programme planning

The main characteristics of the programme are:

- The programme work reflects a holistic view of children. All parts interact to reinforce the totality of the programme.
- Save the Children Sweden builds its programme work on knowledge and commitment and on learning from experiences.
- The programme has clear messages for change and is result oriented.
- In its programme work Save the Children Sweden keeps a critical and open dialogue with colleagues, members and partners.
- Save the Children Sweden extensively shares information and knowledge.
- The programme contributes to the development of capacity, commitment and responsibility internally and externally.
- Advocacy is built on knowledge and aims at long-term and sustainable effects
- All staff members contribute to a well-functioning administration

¹³³ *Definition:* Save the Children Sweden defines civil society as Citizens who act collectively and voluntarily in an organised way in order to express or promote a common interest or opinion. Thus the civil society is the organized sphere in the public space between the individuals and their private households and the state along with its various institutions.

Save the Children Sweden in Eastern and Central Africa

Save the Children Sweden started working in Eastern and Central Africa in 1965. Today, the organisation has offices in Addis Ababa, Ethiopia; Nairobi, Kenya; and Khartoum, Sudan. Save the Children Sweden has long-term child-rights based development programmes in Ethiopia and Sudan, and it supports local partners in Kenya, Eritrea, Somaliland and Uganda.

The organisation focuses on building the capacity of local people, community-based structures and organisations. In Eastern and Central Africa, it works with more than forty different non-governmental organisations and government bodies. In addition, it has adopted a direct implementation approach in southern Sudan and in the refugee camps of western Ethiopia and North Darfur.

All of the work in the region focuses on children's rights, and tackles issues that affect marginalised children. The core of the work focuses on children affected by conflict, discrimination, abuse, exploitation, and HIV/AIDS. Save the Children Sweden's focus also includes education, child participation and good governance in the best interest of the child.

The major task facing child rights advocates today is making the UN Convention on the Rights of the Child a reality for all children. The exchange of experience and know-how are proactive ways to work towards this goal, which is why Save the Children Sweden makes its books and reports available for the world. Welcome to visit our child rights bookshop on the internet, www.rb.se/bookshop

Save the Children Sweden is a non-governmental organisation. It is an active member of the International Save the Children Alliance – a global movement for children's rights.

Through 18 offices around the world, the organisation contributes ideas, experience and funds to 500 projects in more than 60 countries. Welcome to visit the Save the Children website, www.savethechildren.net

Save the Children Sweden fights for children's rights. We deliver immediate and lasting improvements to children's lives worldwide.

Save the Children Sweden works for a world:

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

More information about Save the Children Sweden and our projects worldwide can be obtained from our head office.

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