

State Party Examination of Kenya's Second Periodic Report

Session 44 of the Committee on the Rights of the Child

Kenya ratified the Convention on the Rights of the Child (CRC) on 30th September 1990. On 16 January 2007, the Committee on the Rights of the Child (the Committee) examined Kenya's Second Periodic Report.

Opening Comments

His Excellency Dr. Moody Awori, Vice President of the Republic of Kenya and Minister for Home Affairs, presented the Second Periodic Report. He stressed the importance of the National Council for Children's Services as the body responsible for proper planning, financing and coordination of child welfare activities. He pointed out the introduction of free and compulsory primary education through the Kenya Education Sector Support Programme (KESSP) and the resulting influx of children. A lack of statistical data had made planning difficult, particularly for children with disabilities. He also noted the challenge of the HIV/AIDS pandemic and the resulting AIDS orphans and vulnerable children. The Chief Justice gazetted 119 new Magistrates to handle children's matters and to create easier access to justice for children. The problem of street children was still growing in Kenya and a programme for the rehabilitation of these children had been initiated. The "Stop Violence Bus," a joint campaign between the government and UNICEF, was started in order to raise awareness of children's rights and rally against violence. He added that although Kenya had ratified the ILO Convention's no. 138 and no. 182 on the minimum age of employment and the worst forms of child labour, the exploitation of children continues to be a problem. Lastly, he mentioned the large number of refugees (including children) in Kenya and the comprehensive Refugee Act which aimed to improve their situation.

The rapporteur, Mr. Hatem Kotrane made special note of the importance of the presence of the Vice President as the head of the delegation as it showed the high priority of children. With 17 million children, he noted the importance of children's rights. He commended the steps already taken by the government, such as the ratification of a number of international conventions and agreements. He did, however, point out that there was a lack of coordination and truly independent structures.

Implementation and General Principles

The Committee asked about the coordination between national and local levels and independent monitoring mechanisms for children's rights. The delegation emphasised the role of the National Council for Children's Services in coordinating activities, specifically noting its role in the coordination of the Periodic Report. As for monitoring, the delegation emphasised the role of the Area Advisory Councils. The Committee was concerned that these Councils were neither entirely independent nor sufficiently distributed and thus did not serve adequately as a monitoring mechanism. The delegation replied that guidelines were issued for these bodies and that they were planning on establishing them in more regions. The Committee also asked about budgetary allocations for children's programmes and the impact of major foreign debt. It was concerned that although the budgets for health and education had increased, they were not directly reaching children. The delegation responded that the budget was not disaggregated to show specific provisions for children. In addition, the budget was distributed under Ministerial lines which could lead to regional imbalances. The State party emphasised that it had not been accepted into any debt relief programme. A comment was also made on the progress against factors contributing to corruption.

The Committee was also concerned that a lack of statistics made planning, budgeting and implementation of programmes very difficult, particularly for vulnerable children, refugees and disabled children. The delegation noted that attempts had been made in this area, but the lack of a

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central data collection centre and funds had prevented any real progress. The Committee recommended further cooperation with UNICEF in this area.

The Committee asked about the status of the CRC in national law and what plans the State party had to give the CRC a privileged role. The delegation replied that the principles of the CRC were enshrined in the Children's Act. The preamble of the Children's Act gave effect to all of the main ideas of the CRC. Although courts were prone to use the Children's Act instead of the CRC in decisions, the CRC was still very important. The Committee asked if judges received training on the CRC. The delegation noted that the Kenya Women's Judicial Association started a programme to train judges and magistrates on international conventions. The delegation noted a specific case where the CRC was invoked to ensure the right of a child to receive higher education.

Definition of the Child

The Committee asked about the different age of marriage between boys and girls. The delegation explained that although the minimum age of marriage, as defined in the Marriage Act, was technically 18 years for both boys and girls, Hidduh marriage allowed for the marriage of children under 18. The review of the Children's Act would hopefully address the issue of marriage, bringing all institutions in line with the CRC. The Committee also asked about the minimum age for criminal responsibility which was set at 8 years. The delegation did not directly address this issue, but did outline the procedure for criminal proceedings for a child under 18.

Civil Rights and Freedoms

The Committee was troubled that many children remained unregistered. They asked how the state was making positive changes in this area. The delegation did not respond to this question directly. The Committee was also concerned about children born out of wedlock. It wondered if marriage of parents was a requirement for registration and what the rights of a child were in this situation. The delegation replied that this question was complicated by social and cultural conditions. In practice, a child was guaranteed support from both parents by going to court and demanding it. The State party had implemented an awareness programme on this issue and expected 50,000 maintenance reports to be dealt with at district level. The distinction of children born in or outside marriage would be addressed in the review of the Children's Act.

The Committee noted that children in institutions were often not allowed to exercise their religion when they belonged to a religious minority and were forced to receive religious instruction unrelated to their own. The delegation replied that due to the often specialised institutions and their locations within specific religious and ethnic groups, most of children belonged to the same religion and it was difficult to make separate provisions. These issues would be addressed in the review of the Children's Act. The law provides that children were free to change their religion at 18. However the Committee noted that at 18, he or she was not a child anymore. The State party did not respond specifically to this statement.

The Committee was concerned about the right of children not to be tortured, be subjected to inhuman treatment and asked about the sort of assistance given to children subjected to this treatment. It also enquired whether the judicial or political bodies were paying attention to these complaints and other specific civil rights of children. The delegation responded that the Constitution did not disaggregate when it defined the rights of people in its Constitution and it did not have a specific provision for children. The Children's Act did, however, recognise the rights of the child in this light.

The Committee expressed alarm about the general right of the child to be heard, as members felt that what was included in the draft constitution and existing structures was insufficient. The Committee asked what was being done to include children in planning and decision-making. The delegation noted that there was a large effort made to see that children were heard, as illustrated by the Children's Cabinet, Children's Clubs, participation in the Second Periodic Report, and participation in the Judicial System. The Committee asked if the National Council for Human Rights had any mechanism to receive complaints from children. The delegation said that the Council received complaints from

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children and adults, had the responsibility to monitor prisons and institutions, and had published specific reports on issues affecting children. The delegation also noted a good rapport with Children's Services which kept the Council well informed on children's issues. The Committee expressed concern that there was no follow-up mechanism to this important body and noted that a unit or deputy for children needed to be created.

Non- Discrimination

The Committee asked about discrimination against children affected by HIV and AIDS and their access to education. The delegation responded that although there was one instance of children not being allowed, a Court decision decided that it was illegal. Awareness needed to be raised on this issue.

The Committee asked about provisions for disabled children citing a high number not attending school and a lack of real data about their situation. The existing programmes and training were insufficient. The delegation explained that a large survey was going to be taken in April to better plan for the future.

Family Environment and Alternative Care

The Committee noted that the number of children in institutions was drastically increasing and that very few children were being placed in foster homes. It was also interested in the monitoring mechanisms for these institutions. The delegation said that new regulations for Charitable Children's Institutions (CCIs) were implemented and monitored by Area Advisory Councils. The increase of children in institutions was due to an increase in registration and not an increase in children in these facilities. The delegation also commented on the increase of Informal Foster Care by the extended family and neighbours. The Committee asked if these informal structures were receiving any state support. The delegation described the Cash Transfer Programme which identified these families and gives them 1000 shillings per month. The Committee recommended that more emphasis be put on the legal protection of these children.

The Committee asked if the State party planned to ratify the Hague Convention on International Adoption. The delegation replied that it had been approved by the Cabinet and was on its way to the Netherlands.

Basic Health and Welfare

The Committee was hoping to see progress in the area of healthcare, but was surprised to see that mortality rates at birth and for children under 5 had actually increased. It asked about the policies in place to address this and other issues related to childbirth. The delegation noted that it was aware of this trend and was trying to focus more on primary healthcare, as the focus on curative healthcare was not working. A community-based strategy was being implemented and the recruitment of Community Health Extension Workers and retired midwives helped with the staffing problems. In addition, the state was beginning to disburse its funds directly so that the community could better allocate its use. The many natural disasters also affect mortality and malnutrition rates. The Committee enquired about the prevalence of breastfeeding, which also tied into children's health indicators. The delegation admitted that breastfeeding was quite low. The Committee also enquired about preventative measures taken for pregnant mothers and children against malaria. The delegation reported that more than 3.4 million nets were distributed in campaigns against malaria in addition to those that were available free of charge in maternity clinics and to children under five.

The Committee asked about the high rate of teenage pregnancies and illegal abortions and what was being done about them. It expressed concern that even in situations of rape and incest, abortion was not an option. The delegation said that girls could have access to drugs preventing pregnancy immediately after the rape or incest. However there remained a firm resistance to any legalisation of abortion. The Committee also asked about adolescents' general access to health. The delegation

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described the Youth Health Centres, which distributed information and gave adolescents confidential, youth-friendly services.

Corporal Punishment

The Committee acknowledged the progress on the elimination of corporal punishment in schools; however it remained concerned about corporal punishment in the home. The delegation affirmed that corporal punishment was strictly forbidden in the school setting and there were appropriate monitoring and punishment systems in place. The delegation admitted that it was very difficult to change this practice in the home.

Education, Leisure and Cultural Activities

The Committee congratulated the delegation on the increased enrolment of children by way of the Kenya Education Sector Support Programme (KESSP) and the introduction of free and compulsory education in 2003. Despite this progress there was little implementation, enrolment rates were still low and the teaching staff was neither sufficient nor well trained. The delegation admitted that there were still problems in education. A targeted approach through KESSP identified regional disparities and identified poor districts which would in turn receive educational grants to renovate classrooms and facilities. The Education Support Programme was developed to train more teachers. The Committee asked about vocational and non-formal education. The delegation highlighted that vocational schools absorbed most children who did not transfer from primary to secondary schools. Although non-formal schools did exist, teachers were often not formally trained. Efforts had been made to provide training and materials to these centres.

Special Protection Measures

The Committee repeatedly asked about the continued practice of Female Genital Mutilation (FGM), despite laws against it. The delegation responded that it was a culturally sensitive issue which was deeply rooted in certain communities. The State party had implemented a National Plan of Action for FGM which aimed to reduce the number of girls affected by 40% and increase awareness in communities by 40%.

The Committee noted the large number of refugees and refugee children in Kenya. Some families had been in refugee camps for over a decade. It wanted to know if there was any policy that worked towards integration, repatriation and family reunification. The delegation emphasised the Refugee Act which registered and identified refugees and tried to reunify them with their families. The Committee asked about reports that indicated there were more boys in school than girls in refugee camps. The delegation noted that this particular camp was originally planned for only boys and it was not a case of discrimination. The Committee also observed the current policy refusing entry to Somali Refugees and the lack of protection for these children. The delegation said that it needed to take its own security situation into consideration and as in any conflict, children may suffer, but it was not their intention.

Exploitation and Child Labour

The Committee asked if Kenya was planning on ratifying the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). The delegation said that the OPSC was signed on 8 September 2000, but ratification had not yet happened. The State party was holding conferences to find out the best way to do it. There had been a move away from the blanket ratification of instruments that were hard to implement. They affirmed that it should be ratified in the following 12 months.

The Committee noted that more than 2 million children were working and it joined the ILO in expressing concern in this area. In particular, laws had not been adapted to protect children from hazardous employment, unpaid work or long hours. The delegation cited new laws which set the age of work at 16, defined light work and eliminated the worst forms of child labour. The Committee

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asked what provisions were being made to address the gap years between education and the minimum age of employment, which were between the ages of 14 and 16.

Juvenile Justice

The Committee asked about the process for pre-trial detention for children in conflict with the law. The delegation responded that a child could not be held for more than 24 hours and these cases had to proceed without delay. If a child could not afford bail, pending cases were usually finalised within 3-6 months. Children charged with capital crimes could be held longer and the Children's Act review tried to ensure that even these children were within the protection of the Children's Courts.

The Committee was concerned that the police picked up children off the street for preventative detention, referred to as diversion. It enquired about the process in this situation, if the child's opinion was taken into account and whether there was any status offence in Kenyan Legislation. The delegation confirmed this practice and stated that it was being reviewed under the revision of the Children's Act. The Committee asked if there was any overseeing body in this area. The National Diversion Co-Teams followed the regulation of diversion and trained police officers to receive these children. Each station was also supposed to have a social worker to ensure that the child's rights were being respected. These children were separated from those who had committed offences.

The Committee was also interested in the process of children being indicted as adults and not benefiting from the CRC. There were reports of some children being sentenced to death. The Committee enquired about the treatment of children in serious cases, as well as defence services for children. The delegation said that the treatment of children in capital crimes was under review. The death penalty was strictly forbidden for children. Legal aid was the right of every child, yet it was difficult to access. A possible strategy was to require lawyers to donate a certain number of hours to children's cases. An effort also needed to be made to ensure that children who were charged as adults were protected by the provisions of the Children's Courts. The state believed that children should have this protection.

Concluding Remarks

The Committee warmly thanked the delegation for their heartfelt contribution to the discussion. Special thanks were given to the Vice President for his obvious commitment to children's rights. The Committee observed that much political and economic progress had been made and expressed hope that this would have an effect on the rights of children. Particular concern was communicated in the areas of non-discrimination, institutions, health, education and juvenile justice.