



## Convention on the Rights of the Child

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### Committee on the Rights of the Child Forty-fourth session

#### Summary Record of the 1202<sup>nd</sup> Meeting

Held at the Palais Wilson, Geneva on Tuesday, 16 January 2007, at 10 a.m.

*Chairperson:* Mr. Doek

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Consideration of reports of States parties (*continued*)

*Second periodic report of Kenya on the implementation of the Convention on the Rights of the Child*

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*The meeting was called to order at 10.05 a.m.*

**Reports of States parties** (item 4 of the agenda) (*continued*)

*Second periodic report of Kenya on the implementation of the Convention on the Rights of the Child (CRC/C/KEN/2; list of issues to be taken up (CRC/C/KEN/Q/2); written replies by the State party concerning the list of issues (CRC/C/KEN/Q/2/Add.1))*

1. At the invitation of the Chairperson, the members of the delegation of Kenya took places at the Committee table.
2. **Mr. Moody Awori** (Kenya) stated that Kenya had incorporated the Convention on the Rights of the Child into domestic law through the enactment of the Children's Act, 2001, that is currently being reviewed to take better account of the situation of children. The National Council for Children's Services, whose role is to oversee planning, financing and coordination of child welfare activities, is made up of representatives from the Government, civil society, the private sector and religious organizations. Area Advisory Councils have been set up.
3. Since free and compulsory primary education was introduced in 2003 more children have been able to attend school. Enrolment had risen from 5.9 million in 2003 to 7.6 million in 2006. Secondary school enrolment had increased by 19.2 per cent. The existing structures are now overstretched and need to be expanded and improved to accommodate the huge influx of children, but without compromising the quality of education.
4. Part of the five-year Education Sector Support Programme (2005-2010), which encourages individuals, communities, the private sector, non-governmental organizations (NGOs) and development partners to jointly support the education sector, is to integrate children aged 4-5 years into the primary cycle by 2010.
5. That Programme also aims to integrate children with learning disabilities into the mainstream school system, but the lack of reliable statistics on persons with disabilities was hindering that process and as a result the Government was to conduct a nationwide survey by April 2007 on people with disabilities to determine the numbers and types of their disabilities. The Persons with Disability Act (2003) comprehensively addressed the situation of disabled people.
6. Budgetary allocations to the social services sector rose from 63 billion Kenyan shillings in 1999/2000 to 155 billion in 2006/07, allowing all children under the age of five years to receive free medical care in Government institutions. Immunization coverage increased from 46 per cent in 2001 to 71 per cent in 2006. Other health policies were in place such as the school health policy and the adolescent reproductive and development policy.
7. There were over 2 million orphans and vulnerable children in Kenya, mainly as a result of the HIV/AIDS pandemic. The Government had drawn up a national policy on orphans and vulnerable children which allowed them to be cared for within the community and a family setting. A financial support programme for families fostering and taking care of orphans had been put in place to strengthen family and community capacities to provide support for orphans and vulnerable children; the programme currently involved 9,000 families.

8. Kenya had also signed instruments of accession to the Hague Convention on Inter-country Adoption. The spirit of that Convention was captured in the Children's Act and the Children (Adoption) Regulations of May 2005.

9. On the matter of juvenile justice, 119 Magistrates had been appointed to handle children's matters, making it easier for minors to access justice. Kenya endeavoured to divert juvenile offenders from the standard justice system by encouraging social reintegration through community-based rehabilitation programmes.

10. One of the greatest current challenges was the number of children living and working on the streets. The introduction of free primary education in 2003 had reduced the number of such children and the same year saw the introduction by the Government of an initiative to rehabilitate street children, 6,000 of whom were enrolled as a result in various primary schools in the country, with 800 taking vocational training courses.

11. The Government was determined to protect children from all forms of abuse, neglect, exploitation and violence. A campaign against violence, which was initiated in July 2006 in cooperation with the United Nations Children's Fund (UNICEF), aimed to create awareness of children's rights and actively encouraged communities to work with the Government and its partners to stop violence through the "Stop Violence Bus" which travelled from district to district. The campaign called for safe schools and for community policing to make neighbourhoods safer. It emphasized access to justice and responsive health services for victims of sexual assault (within 72 hours of an attack) to protect children from HIV/AIDS and reduce trauma.

12. Over 2 million children were engaged in child labour. Kenya had ratified International Labour Organization (ILO) Conventions No. 138 concerning Minimum Age for Admission to Employment, setting the age of employment at 16 years, and No. 182 concerning the Worst Forms of Child Labour. A time-bound programme seeking to prevent the worst forms of child labour and to withdraw and rehabilitate children involved in them was under way. In view of the importance of data in programme planning, the Kenya National Bureau of Statistics was establishing a centralized database.

13. Kenya was host to hundreds of thousands of refugees, many of whom came from neighbouring war-affected countries. Significant numbers of refugees were accommodated at Kakuma and Dadaab camps. In addition many refugees, including asylum seekers, lived without humanitarian assistance in urban areas, particularly in Nairobi. Despite the many challenges, the Government intended to develop a system which would improve the forecasting and management of refugee flows. The Refugee Act would provide the legal basis for protection of refugees in Kenya, consistent with the principles enshrined in the international and regional instruments entered into and applied by Kenya. The Act set out all the core standards of international protection, especially those relating to women, children and vulnerable groups. It would enable a machinery to be established for the management of refugee affairs, including the establishment of systems and procedures for the registration of asylum-seekers and refugees, refugee status determination, compilation of refugee records along with a database and issuance of documents confirming refugee status.

14. Even though achievements had been uneven and many obstacles remained, Kenya was determined to comply with the objectives and principles enshrined in the Convention with a view to changing the world for and with children.

15. **Mr. Kotrane** asked about the state of play in the ratification process for the Optional Protocol on the sale of children, child prostitution and child pornography, and whether Kenya intended to ratify the Hague Conventions, particularly the Convention in respect of Inter-country Adoption. Since the Convention on the Rights of the Child had been invoked in

the Kenyan courts it would be useful to know the status of that Convention in domestic law. The delegation might also indicate whether the Kenyan Commission on Human Rights had a mechanism whereby children and their parents could directly lodge a complaint concerning a violation of any of their rights, particularly a violation on the part of public bodies.

16. It was regrettable that the age for marriage was still different for girls and boys, that the minimum age of criminal responsibility (eight years) had not been raised despite the Committee's recommendations, that it was difficult for children from religious minorities to practise their religion within the charitable institutions where they were accommodated and that such children sometimes even had to receive instruction at school in a religion that was not their own.

17. **Ms. Ouedraogo** asked whether a new plan of action had been drawn up to follow up on the plan of action for 1999-2000 and whether it covered all the fields set out in the Convention. It would also be useful to know how the various activities promoting the rights of the child were coordinated, whether Area Advisory Councils for Children's Services had adequate resources to discharge their role as local and national coordinators, how provision was made to implement the Convention in districts where there was no Council for Children's Services, and what the Government intended to do to prevent a straddling of responsibility between the Advisory Councils and local Children's Department offices.

18. Noting the absence of any independent mechanism to monitor the application of the Convention, she pointed to the need for such a mechanism to be established and asked whether the National Commission on Human Rights acted as a monitor.

19. The efforts made by the State party to encourage the registration of births were laudable but significant numbers of births were still not registered in rural areas and the delegation might therefore indicate any plans for improving the system for registration of births in rural areas, overcoming the constraints described in the report and ensuring children born outside wedlock were able to be registered, given that one of the pre-requisites for registering the birth of a child was that the parents were married.

20. The initiatives introduced in Kenya to eradicate violence were to be welcomed but it would be useful to learn whether the prevention programme offered disciplinary measures other than corporal punishment, which was often used in Africa to punish children.

21. **Ms. Vuckovic-Sahovic** asked whether the Government intended to introduce a children's ombudsman given that monitoring was a key aspect in the protection of children's rights and that it was important for children to know whom they should approach in order to assert their rights.

22. **Mr. Liwski** welcomed the increase in social expenditure but asked what proportion of that expenditure was earmarked for children. It would be useful to know whether there were plans for a proportion of the considerable budget allocated to debt-servicing to be reallocated to children's services, as had been the case elsewhere. It would be useful if for the next financial year the Government had regard to the results of the multiple indicator cluster survey conducted by the Central Bureau of Statistics with a view to achieving a more equitable distribution of budget allocations, especially as between the various districts.

23. With regard to the right not to be subjected to torture, the delegation might indicate how complaints received were followed up and whether there were programmes in existence to help child victims of torture and facilitate access by them to the justice system.

24. **Ms. Al-Thani** noted with concern that the Constitution did not expressly prohibit discrimination on grounds of health but that children affected by HIV/AIDS were

discriminated against, particularly with regard to access to education. Although the Government had issued guidance to force teachers to admit such children into schools, social stigma was the crucial issue which needed to be tackled.

25. The continued use of corporal punishment was also of concern as punishments of all kinds which had been prohibited since 2001 continued to be inflicted on children in school. It would be useful to know whether campaigns had been run to eradicate corporal punishment within the family and in other settings such as detention centres, and to hear what recourse was available to the victims.

26. **Ms. Khattab** noted that girls continued to be discriminated against, especially with regard to access to education. Primary education was now free for all children but many girls were not enrolled. It would therefore be useful to know what the Government was doing to help girls enjoy that right and whether there were any special programmes specifically for girls.

27. The process of democratisation was moving forward in Kenya, allowing minorities to assert their rights but lack of information meant that communities in isolated districts were deprived of basic services such as education or health care, especially in farming and hunter-gatherer communities. Further details on initiatives targeting those groups would be welcomed.

28. **Ms. Smith** noted with satisfaction that place had been set aside in the draft constitution for children's right to express their opinions but she asked what plans there were to remove obstacles, particularly cultural obstacles, to the exercise of that right. The adoption of guidance on children's participation was welcome but inadequate.

29. Since the delegation had referred to the need to "integrate children into the community", it might outline what had been done to that end and the extent to which children genuinely participate in drafting policies relevant to them, or even in the decision-making process itself.

30. The right to express oneself was closely linked to access to information but the report did not state what opportunities Kenyan children had to access information (at school, via the internet, etc.). Health was one field where the right to express oneself was particularly important, especially for girls. Adolescent girls therefore had to have access to information on reproductive health and be able to consult medical staff without their parents being present, and that did not appear to be the case.

31. It was clear from the report that the right to protection of private life was not given sufficient respect in institutions where among other things it was common practice for mail to be opened. The right to freedom of religion was restricted to the extent that children did not have the right to change religion until the age of 18 years, in other words, when they were no longer children. Finally, the number of sporting, cultural and leisure facilities seemed to have fallen, especially in urban areas, thereby restricting the opportunity for children to engage in healthy activities. The delegation was asked to give further details on these matters. Information on libraries would also be welcome.

32. **Mr. Siddiqui** welcomed the efforts made by the Government to improve data collection but regretted the lack of a centralized collection system to provide coordination between the various services involved with children. Furthermore, the Government apparently did not publish annual statistics on children or specific studies on the most vulnerable groups. Further details about KenInfo would be useful, especially with regard to the resources allocated to it and the role of the Children's Department in managing it.

33. The delegation might indicate who managed social expenditure, given that bodies closest to the community concerned were usually best placed to discharge that role, whether use of allocations was assessed and what the Government intended to do to overhaul the resources allocated to the Children's Department, which were inadequate not only in comparison with other government departments but also in view of the activities which that Department had to conduct. Finally it would be useful to know the exact powers of the members of the Area Consultative Committees.

34. **Mr. Krappmann** asked how effect was given to the principle that the best interest of the child had to be the priority in all circumstances, as set out in article 4 of the Children's Act.

35. **The Chairperson** asked for details of the meeting held in November 2003 when donors had agreed to allocate 1.2 billion dollars per year to the Government to help reduce the budget deficit and the pressure of loans. That aid should have enabled it to alleviate debt servicing and therefore save on funds likely to be reallocated to social expenditure for example.

*The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.*

36. **Mr. Hussein** (Kenya) said that Kenya had already signed its instrument of accession to the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption and that the National Adoption Committee, the key body provided for in that Convention, had been meeting every month for two years. All information on the adoption procedure in Kenya was posted on the Internet. The Government had drawn up guidelines on adoption and had registered several bodies for the purpose of coordinating adoptions. Over the three preceding years there had been 643 in-country or inter-country adoptions.

37. **Mr. Owade** (Kenya) said that the Optional Protocol on the sale of children, child prostitution and child pornography had not yet been ratified, but that the consultations that were under way regarding incorporation of the Protocol into domestic law were due to reach a conclusion within 12 months.

38. **Ms. Ragut** (Kenya) said that the Convention in its entirety had been incorporated into the Children's Act, which was the legislation used by the courts to safeguard the rights conferred upon children under the Convention. An initiative by the Association of Women Lawyers in Kenya was providing training to judges on the enforcement of human rights instruments, and 200 judges had already taken up the training. The Convention had been directly invoked in court rulings and as a result some parents had been forced to pay for their child's university studies following a court finding that university education was part of the higher education described in the Convention.

39. **Mr. Hussein** (Kenya) noted that the National Commission on Human Rights received and handled as many complaints from adults as it did from minors. Its role was to forward the complaints to the competent authorities as well as to forward reports on specific topics and provide guidance to the authorities, suggest training programmes for them, facilitate the process of institutional reform by supplying expert opinions, and monitor detention centres, the probation services and children's welfare services.

40. **Ms. Vuckovic-Sahovic** asked whether the State intended to increase appropriations to the National Commission on Human Rights, which had an important role as an independent monitoring body. Its training budget should be revised upwards because children's rights raised specific issues that required specialist training.

41. **Mr. Filali** asked whether the National Commission on Human Rights incorporated a structure geared specifically to children's rights, whether it was authorized to act of its own motion if it became aware of a rights violation and whether it monitored casefiles forwarded to the Ministry of Justice until they were closed.

42. **Mr. Afande** (Kenya) replied that the National Commission on Human Rights had more extensive powers than the body that had preceded it. In particular, it was closely involved with investigations conducted by the Ministry of Justice.

43. In 2006, the National Council for Children's Services established a steering committee to draw up a new plan of action which was due to enter into force in 2007. The measures implemented by the Council were coordinated nationally and at Area Consultative Committee level by officials responsible for children's matters. Currently, only 62 of the 72 districts had an Area Consultative Committee but the gap would be filled. The human and financial resources allocated to the National Council, which were still inadequate, were constantly rising. Some 160 officials for children's matters would be recruited that year, thereby doubling capacity. Guidance had been sent to all Area Consultative Committees to ensure they understood their role properly.

44. The straddling of activities between the National Council for Children's Services and the Children's Department was long-standing. Resolving it was part of the task entrusted to the Law Reform Commission which began a review of a number of texts in 2006, among them the Children's Act.

45. **Mr. Okoth** (Kenya) noted that the Constitution did not provide for any distinction between citizens on grounds of the manner of acquisition of citizenship, whether by birth, naturalization or marriage. The rights enshrined under the Constitution were guaranteed for everyone on an equal basis. Some problems still remained but would in no way be resolved by introducing a reference to children in the Constitution.

46. **Ms. Khattab** requested further information on the status and rights of children born outside wedlock and on any discrimination to which they may be subject.

47. **Mr. Okoth** (Kenya) agreed that the constitutional guarantees against discrimination on grounds of cultural prejudices had unquestionably not been strengthened enough, but noted that the State had consistently taken care to prevent any interpretation which might be in conflict with the principle of equality. The provisions of the Children's Act in that regard were problematic and that was why the status of children born outside wedlock had been singled out as one of the major challenges to tackle as part of the legislative reform under way.

48. **Ms. Ragut** (Kenya) confirmed that children born within and outside wedlock were not equal before the law and that that was one of the principal topics of debate. Pending introduction of the reform, children born outside wedlock were already able to invoke in court their right to have a relationship with both their parents and to be cared for by them. Children were able to invoke case-law to request a DNA test and, once paternity had been established, to apply for payment of a care allowance. The public were well aware of this although the de facto situation in the matter was better than the de jure one.

49. **Mr. Hussein** (Kenya) said that all care centres were now required to be registered, registration had to be renewed every three years and was only awarded if the centre respected the rights enshrined in the Convention, including the right to be heard and the right to a periodic review of the placement, and on the condition that all members of staff passed a medical examination and none had a criminal record. Moreover, budgetary

allocations had been made in preparation for the inspection of 500 care centres from 1 July 2006 to 30 June 2007. Inspections of over 200 centres had so far been carried out.

50. The foster care system, which had had to evolve in a short space of time, could only be used to place children who had already been placed in a centre. Many children who had no immediate family were cared for informally by the extended family, a traditional cultural practice in Kenya.

51. **The Chairperson** asked whether the State party intended to do more to ensure respect for the right to freedom of religion in care centres and whether an inspection board was responsible for renewing registrations.

52. He enquired whether there were any plans to establish a more formal framework for adoption within the extended family in order to safeguard the rights of the children concerned, and whether the financial incentives used to encourage care in a family setting applied to unofficial care within the extended family.

53. **Mr. Hussein** (Kenya) replied that the inspection of care establishments was carried out by Area Consultative Committees, whose role it was to recommend whether registration should be renewed or not.

54. Grandparents and other members of the extended family bringing up an orphan or vulnerable child with no social assistance had been registered on a list and received one hundred shillings per month. Some 500 families had received funds under the programme since 2004 and the figure was expected to rise to 9,000 this year and to 13,000 by 2008. Foster families who were not members of the family of the orphan or particularly vulnerable child in their care were able to benefit under the system provided that they satisfied certain criteria which showed evidence of their ability to bring the child up in good surroundings. A database of the information forwarded by the districts had been set up to facilitate the process of compiling the list of families eligible to benefit under the programme.

55. **Ms. Khattab** asked what distinction was drawn between orphans and vulnerable children. It was a matter of concern that families might be more reluctant to foster a street child, a child born out of wedlock or a child with HIV, for example, as compared to an orphan, and it would be useful to know whether the State party was taking any measures to enable these children to be placed in foster care and prevent them from becoming stigmatized.

56. **Mr. Hussein** (Kenya) said that the law required care centres to allow each child to practise his or her religion. However, in reality, children were most often admitted to the centres shortly after birth at an age where they had no conception of what their religion was and they naturally therefore embraced the religion taught in the foster centre, usually the dominant religion in the district.

57. It had to be noted that children with HIV could be stigmatized. A complaint had been lodged when one such child was refused the right to register at school, and the court clearly noted that every child had to have access to education, health-care and other services, regardless of his or her HIV status.

58. Children born out of wedlock were not victims of discrimination as much as children from one-parent families. Kenya was home to 42 indigenous communities and attitudes could vary considerably from one district and community to another. Among some ethnic groups, a child born to a young unmarried mother was entrusted to the care of the father's parents, whereas in others the child would be brought up by the mother. As a result of these cultural differences, some children did not enjoy the same rights as others. In 2006, 8,000



violations of the rights of the child were notified to the Children's Department and a rise in that number was expected for 2007.

59. **Ms. Karanu** (Kenya) indicated that there was still no single specified minimum age for marriage and that a number of laws and customs which were incompatible with the Convention were still in force. The review of the Children's Act which was currently under way should bring the Act into conformity with the Convention in that regard.

60. **Mr. Moriasi** (Kenya) indicated that his country had spared no effort to safeguard the exercise by children of their right to make their voices heard and to participate in decisions on matters affecting them. Schools had children's clubs, and a children's parliament comprising children from all groups of Kenyan society had been established. The children were asked to take part in drawing up rules for schools and children's centres. Children had been involved in drafting the report under consideration. A minor had the right to express his or her views in the judicial process and the views of the child were given due weight in accordance with the maturity of the child.

61. **Mr. Kotrane** was surprised that the number of children placed in institutions had doubled from 2003 to 2005 and requested an explanation.

62. Alarming, according to the UNICEF 2006 State of the World's Children report, the mortality rate among children under five rose from 97 to 120 per thousand live births from 1990 to 2005. Moreover the life expectancy for women in Kenya was only 48 years, mainly because of the high rate of maternal mortality. The delegation might indicate the methods and strategies being implemented by the State party to reduce child and maternal mortality.

63. As school was compulsory until the age of 14 and the minimum age of admission to employment had been set at 16, it would be useful to know what measures the State took to encourage children who had completed their compulsory schooling to move onto secondary education and to occupy those who did not want to pursue their studies further.

64. The delegation was asked to supply disaggregated statistics on refugee and displaced children and to explain why Kenya had no longer been receiving refugees from Somali since the recent events in that country.

65. **Ms. Khattab** asked whether the Kenyan Government was receiving any international aid to look after the many refugees accommodated on its territory, especially following the events in Somalia and Ethiopia.

66. **Ms. Lee** was surprised that the rate of school attendance in refugee camps was lower among girls than among boys.

67. She asked whether the State party had conducted the education programmes for children with disabilities provided for in the National Plan of Action on Education for All. Clarification was needed on access by children with disabilities to free education in specialist private establishments. The delegation might also indicate the measures being taken by the State to inform the parents of children with disabilities that their children had a right to education.

68. In light of the fact that Kenya was one of the countries most affected by corruption it would be of interest to know whether corruption had influenced the level of the education budget, especially the execution of programmes for disabled children. The delegation might also indicate why the breast-feeding rate had fallen sharply from 1994 to 2003 and the means being employed by the State party to reverse that trend.

69. **Mr. Filali** would appreciate details on the length of pre-trial detention of minors, and on the extra-judicial procedures used in Kenya to prevent minors, especially street children, from being committed for trial. It would be useful to know whether the children had the opportunity to express their views as part of these proceedings and whether the State party would be willing to adopt methods of dispute settlement based on the principle of restorative justice.

70. **Mr. Zermatten** asked whether Kenya might envisage introducing a juvenile justice system and whether the Children's Act took precedence over older legislation. He also asked whether training courses on juvenile justice aimed at magistrates might be held throughout the country, and not only in urban centres.

71. In the event that a minor and an adult were suspected of having committed an offence together it would be interesting to know whether the minor would be subject to a different procedure. The delegation might indicate whether there were plans to take the necessary steps to ensure that criminal penalties against minors were systematically replaced by community service. The statistics on offences committed by minors were not satisfactory and it would be useful to know how the State intended to collate full, reliable data.

72. In view of the fact that justice was administered in rural areas by customary courts, it would be useful to know whether minors' right to a fair trial was respected by such courts and whether the minors had a voice in the proceedings. Finally, the delegation might indicate what protection was offered to children who took part in criminal proceedings as witnesses or victims and the conditions in which their testimony was taken.

73. **Ms. Al-Thani** noted with concern that several problems persisted in Kenya: malnutrition; malaria and inadequate access for children and pregnant women to insecticides and mosquito nets; the high number of early pregnancies; the ban on abortion, including for victims of rape or incest and the underground abortions which occurred as a result; and inadequate access for adolescents to reproductive and mental health-care services. More extensive information on the strategies pursued by the State party to resolve these problems would be welcome.

74. Details would be welcome on the measures taken to provide HIV-positive children with free access to antiretroviral therapy and to prevent social stigma in their regard.

75. The delegation might indicate how the Water Act 2002 had been implemented and the steps the State party was taking to provide the whole population with access to clean water.

76. **Ms. Khattab** asked whether Kenya intended to withdraw its reservation to article 10, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights and adopt legislation giving pregnant women employed in the public or private sector the right to 14 weeks' maternity leave, in accordance with ILO Convention No. 183.

77. Information on the actions taken to eradicate female genital mutilation, which persisted in Kenya despite the fact that it had been prohibited since 2001, would be welcome. The delegation was asked to comment on the allegation made by some sources that children had been executed because they had not had access to a lawyer, even though the death penalty could not be imposed on minors in the State party.

*The meeting rose at 1 p.m.*