

Universal Periodic Review Report – 2nd cycle
UNICEF report
June 2014

Section 3. Thematic Areas – Implementation of International Human Rights Obligations, Taking into Account Applicable International Humanitarian Law

A. *Equality and non-discrimination:*

1. The Constitution of Kenya 2010 recognises the principle of equality and non-discrimination, and expressly provides for the duty of state officers to address the needs of vulnerable groups in society, including children, and in the duty to take special measures for marginalized groups. The Constitution does not explicitly prohibit discrimination against a child on the basis of parents' or guardians' status.
2. In 2011 Kenya was found in violation of the rights of Nubian children to non-discrimination, nationality and prevention of statelessness by the African Committee of Experts on the Rights and Welfare of the Child. Nubian children were refused birth certificates and denied automatic citizenship at age 18, with consequent restriction of property rights, and rights to health and education.
3. The Constitution of Kenya 2010 under chapters on Citizenship and the Bill of Rights has special provisions for all stateless persons (Nubians included). The Citizens and Immigration Act 2011 allows stateless persons to apply for Kenyan Citizenship by 2016, ensuring that existing children of Nubian descent whose nationality is not recognized can be accorded nationality. A vetting office has also been set up in Kibera where the majority of the Nubians reside. However, the National Registration and Identification Bill, 2012 whose provisions will strongly link birth registration and the children's right to nationality is yet to be enacted into law. The extensive documentation required to enable birth certification, which is now a prerequisite for taking public examinations, is also still a challenge.

B. *Right to life, liberty and security of the person;*

4. Progress has been made in the Implementation of The Children Act 2001 which incorporates the Convention on the Rights of the Child. Currently the act is under review to align it to a more progressive Constitution of Kenya 2010 that makes special provisions for children's protection, survival, development and participation rights.
5. The Constitution exclusively in Article 14 (4) presumes a child under the age of 8 years found in Kenya and whose nationality or parents are unknown, to be a Kenyan citizen. Article 68 protects the right of children to own family land, while Chapter 4 (53) 1 (e) refers to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.

6. The right to protection of children from harmful practices has been enhanced by the Constitution. Chapter 4 (53) 1 (d) provides for the special rights of the children; to be protected from abuse, neglect, harmful cultural practices, all forms of violence, in-human treatment and punishment, and hazardous or exploitative labour. The enactment of the Prohibition of Female Genital Mutilation Act and the creation of the FGM Board, coupled with significant studies and advocacy undertaken by UNICEF and government regarding violence against children is a good step towards eradication of harmful cultural practices including FGM. Section 4 of the Marriage Act 2014 provides the minimum age of marriage as 18years. The Office of Director of Prosecution is to establish a unit to fast track the prosecution of FGM and child marriage.
7. Despite the efforts made so far, the national FGM/C prevalence is at 27%., while prevalence is over 90% among the Borana, Kuria, Kisii, Samburu and Somali communities. An Anti-FGM Board was established in December 2013 to co-ordinate efforts to end FGM/C and child marriage. The Board has a Chairperson and 8 members and a full-fledged Secretariat. Successful prosecution of FGM cases has been registered although this is still rare.
8. The government in collaboration with child rights stakeholders has developed a Framework for a National Child Protection System in Kenya which outlines the role of all stakeholders. A Childcare and Protection Officers Programme was initiated in 2010 to build the capacity of officers and increase efficiency in the five juvenile justice agencies: Judiciary, Prisons, Police, probation and the Children's Department. However child prostitution, and the trafficking of children is still prevalent and there are significant numbers of street children, who are vulnerable to various forms of violence and lack appropriate care and protection. Kenya has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography.
9. The Constitution 2010 Article 53.1.d provides for "protection of children from exploitative labour." The elimination of child labor is reinforced by the draft Child Labour Policy, while Article 38 of the Basic Education Act, 2013 prohibits employment of children of school going age. To reinforce the operationalization of these frameworks, the Government has institutionalized Child Labour Committees at the County level. However, the level of government resource allocation slows implementation of these legal frameworks and structural reforms.

C. Administration of justice, including impunity, and the rule of law:

10. Good progress has been registered in the establishment of necessary measure to address the needs and challenges of juveniles in prison and custody. A number of specialised children's courts and children's Magistrates have been established in all the regions in Kenya. At the community level, Juvenile Justice Sub-committees and

Court Users committees have been formed to take prompt action on cases of children in conflict with the law as well as those in need of care and protection. The age of criminal responsibility, at 8 years, is yet to be raised in line with international standards.

F. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life:

11. The Constitution of Kenya 2010, (Article 10) provides for the right of citizens to participate in all matters affecting the state regardless of their age or sex or colour or religion. The government developed Guidelines for child participation in the year 2008 which are currently being reviewed to include children's participation in devolved units. Official structures for children's participation (Kenya Children Assembly) have been put in place and are functioning well with support from UNICEF and NGOs.

G. Right to Education:

12. There has been significant progress towards the realization of the right to education. The 2010 constitution sets out the framework of the right to education. The Basic Education Act, 2013 part 6 emphasizes access, standards and quality education. Other legislative and policy instruments have been developed to address education issues in Kenya including the Policy on Alternative Provision of Basic Education; the Gender in Education Policy; the Affirmative Action Policy; Sessional Paper No. 14 of 2012, and Child Friendly Schools Strategy.
13. The Basic Education Act was enacted to ensure overall education access, quality, equity, relevance, and mainstream Early Childhood Development and Education (ECDE) into basic education. The Policy on Alternative Provision of Basic Education targets marginalized children in urban informal settlements and arid and semi-arid lands. Children in the arid lands have lower levels of access, quality and completion of primary education.
14. The Sessional Paper No. 14 (2012) also provides for free and compulsory pre-primary education for all 4-5 year olds, as well as health and nutritional support for under-five year olds attending day care centres and schools. The Ministry of Education released KShs. 1.6 billion in 2012-13 for disbursement in the financing of Early Childhood Development and Education (ECDE).
15. While acknowledging the progress attained thus far, it should also be noted education quality and completion rates for primary school are emerging as critical issue. Whilst the Net Primary Enrolment Ratio increased to 95.3% in 2012, the primary school completion and transition to secondary rates stood at 80.3% and 76.6% respectively (*Economic Survey Report 2013*). An estimated 1.2 million school-age children are still excluded from formal education services countrywide.

H. Right to social security and to an adequate standard of living:

14. The Constitution recognizes the right to social security and the state's obligation to provide social security to persons unable to support themselves and their dependents. Significant progress has been registered in the cash transfer for orphans and vulnerable children. The programme which is part of a larger national programme of social protection has been scaled up to reach over 150,000 households (over 500,000 children) by the end of 2013, with further expansion to another 100,000 households by end of June 2014. In addition, the National Social Protection Policy 2012 recognises child vulnerability and includes commitments to expand social protection to all poor orphans and vulnerable children, and to move towards family income grants. Impact evaluations shows the programme has beneficial effects on children including reduced incidence of diarrhea, increased enrolment in secondary school, improved access to health care, better diet, reduced child labour, and enhanced adolescent wellbeing. The programme currently reaches around 30% of need.

I. Right to health:

15. The right to health in Kenya has been enhanced by the Constitution of Kenya 2010 which enshrines the right to the highest attainable standard of health that has now been devolved. The Kenya Health Policy Framework 2013 – 2030 promotes equity in the distribution of health services. Devolution of health services has seen a redistribution of human resources for health particularly affecting northern counties. These areas have been historically underdeveloped. UNICEF and partners are responding to this by supporting the national and county governments to enhance capacity of health managers on leadership, management and governance, and strengthen institutional accountability in the devolved system of governance.

16. A Presidential Directive was issued in June 2013 on free antenatal and maternity services in all public health facilities and is expected to support improvements in access, infrastructure, and quality of care. The Health Bill 2014 seeks to address health financing, the right to emergency medical treatment, and the right of children to basic nutrition and healthcare services including immunization.

17. Despite the country implementing the recommendations of global initiatives towards accelerating survival of women, new-borns and children, there is inadequate progress in reducing preventable deaths of women, new-borns and under-fives. Maternal mortality is still high and the majority of maternal deaths take place during child birth and the immediate 24 hours following delivery.

18. Kenya has recorded an increase of almost 20 per cent in immunization coverage over the past four years. The majority of still unvaccinated children live in the remote districts of Northern Kenya and other pastoral and mobile communities. There has been little progress in reducing under-nutrition for the past decade in Kenya, specifically stunting which remains at 35% and a huge cost to the country's social and

economic development. While a lot of emphasis has been placed on treating acute malnutrition, limited focus and investment has been registered on the prevention side, encompassing food and nutrition security more broadly. In the same vein there is very high underlying nutritional vulnerability to shocks in the arid and semi-arid areas - even in the absence of drought.

19. HIV prevalence among women and men aged 15-49 slightly declined to 5.6% in 2012. Kenya is home to 1.2 million adults living with HIV, 190,000 children 0-14 years with HIV, and some 2.6 million orphans and vulnerable children (OVC), of whom the vast majority are orphaned (71%). Over a third of all OVCs are between 10 and 14 years and account for a significant proportion of the country's adolescent population (KAIS 2012).
20. Women and girls continue to be disproportionately more affected than men, with 30% of new infections among young women 15-24 years. Progress to reduce mother to child transmission has been limited with about 14% transmission rates in the last three years. There is less progress for children 0-14 years with only 43% of children on ART in 2013.

J. Persons with disabilities:

21. The Basic Education Act, 2013 provides for establishment of learning institutions to cater for the needs of children with special needs. The government has also set aside cash transfers to address the needs of people living with severe disability including children, and also those living with albinism. Limited resources restrict the quality of education offered to this vulnerable group.