

Situation of Violence against Women and Children in Kenya: Implementation of the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Alternative report to the UN Committee Against Torture

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The content of the report is the responsibility of the authors and does not necessarily reflect the views of the European Union.

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Children living in Kibera, Nairobi, Kenya, one of the largest slums in Africa





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Violence against women and children in Kenya

An alternative report to the Committee against Torture
November 2008

A report compiled by the World Organisation Against Torture (OMCT),
in collaboration with



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VIOLENCE AGAINST WOMEN AND CHILDREN IN KENYA

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FOREWORD

The purpose of this alternative report is to address specific violence against women and children, including torture or other cruel, inhuman or degrading treatment or punishment, its causes and consequences. The report draws attention to consistent violations involving torture and ill-treatment inflicted on women and children by both State officials and non-State actors. It also addresses to what extent the Kenyan Government fails to protect women and children from torture. In this respect, the present report provides the UN Committee against Torture (the Committee) with a legal and practical overview of women's and children's rights in Kenya in the context of the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).

This report is based on the international legal obligations of Kenya under the Convention. In particular, it refers to the positive obligation to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”¹ and “to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”² Furthermore, this report refers to the Committee's general comment No. 2 (2007), with a particular emphasis on the paragraph stating that whenever State authorities or others acting in an official capacity “know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility ... under the Convention for consenting to or acquiescing in such impermissible acts.... [T]he State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.”³

The effective elimination of torture and other forms of violence requires a multifaceted and integrated approach that incorporates respect for a wide range of human rights. To this end, OMCT submitted the present alternative report which specifically focuses on violence against women and children. In addition, OMCT submitted to the Committee against Torture a report addressing the economic, social and cultural root causes of torture.⁴ OMCT has further submitted to the forty-first session of the Committee on Economic, Social and Cultural Rights a report that considers torture and other forms of violence in Kenya from the perspective of the International Covenant on Economic, Social and Cultural Rights.⁵ By submitting these three alternative reports, OMCT would like to provide the committees with a basis for adopting mutually reinforcing recommendations that address a wide range of causes of torture and cruel, inhuman or degrading treatment in Kenya.

¹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 2(1).

² *Ibid.*, art.16(2).

³ General Comment No. 2 (2007): Implementation of article 2 by States parties, UN Doc. CAT/C/GC/2, para. 18.

⁴ *Addressing the economic, social and cultural root causes of torture in Kenya*, November 2008, available at www.omct.org.

⁵ *The lie of the land*, available at www.omct.org.

NOTE ON THE AUTHORS

This alternative report has been prepared by a number of specialised Kenyan NGOs, with coordination by and technical input from OMCT.

Profile of the Coalition on Violence Against Women

The Coalition on Violence Against Women - Kenya, COVAW (K), is a registered, non-partisan and non-profit-making national women's human rights non-governmental organisation. COVAW (K) works to promote and advance women's human rights by working towards a society free from all forms of violence against women. COVAW (K) was established in 1995 as a result of a workshop organized by WILDAF (Women in Law and Development in Africa) that sought to strengthen the networking capacities of women's organisations in Kenya.

COVAW (K) is committed to breaking the silence concerning violence against women and girls in Kenyan communities, and works towards building capacities of individuals, communities and the entire nation to recognise violence against women as an abuse of human rights and to take appropriate measures to stop it. Since its inception, COVAW (K) has continued to be instrumental in characterising violence against women as a crime and a human rights violation, whether perpetrated in private or in the public domain.

Profile of the members of the NGO CRC Committee involved in preparation of this report

The NGO CRC Committee is comprised of organisations active in the child sector from all over the country, with its secretariat at the Kenya Alliance for the Advancement of Children (KAACR). The Committee has four thematic subcommittees: Legal and Policy, Child Poverty, Child Participation and Rapid Response. The Committee played an active role in the process of drafting the shadow report for the Committee against Torture and was represented at the NGO validation workshop on the shadow report held in Nairobi on 5 September 2008. In addition, the NGO CRC Committee has held several meetings of its members to compile information and draft the shadow report in consultation with OMCT (child rights activities).

This report covers the period up to June 2007 when the State party report (CAT/C/KEN/1) was submitted. However, in a few instances, crucial information and statistics covering the period beyond June 2007 have been cited.

The NGO CRC Committee mandated the Legal and Policy Subcommittee to gather and compile as much information as useful. Member organisations of the CRC Committee that provided information include ANPPCAN Kenya, Childline Kenya, CLAN, The CRADLE, KAACR, Save the Children-Canada and the Legal Resources Foundation. A brief on the members of the NGO CRC Committee follows.

Kenya Alliance for the Advancement of Children (KAACR) is an alliance of child-focused organisations committed to the implementation of the UN Convention on the Rights of the Child. KAACR was established in 1989 with the primary duty of monitoring and evaluating the implementation and non-observance of the principles and provisions of the Convention in Kenya. Since its inception, KAACR has been implementing programmes on child rights with a special focus on promoting information exchange and cooperation among organisations

working with children and advocating for policy reforms which address the interests and well-being of children in Kenya as reflected in the Convention on the Rights of the Child.

ANPPCAN - African Network for the Prevention and Protection against Child Abuse and Neglect is a pan-African child-rights organisation with chapters in 17 African countries. The Kenya Chapter is a charitable, non-profit organisation and was registered as a non-governmental organisation in 1995. Like the other ANPPCAN chapters, ANPPCAN Kenya operates as a national resource centre on child abuse and neglect and children's rights. It provides information and technical expertise on child protection and child rights issues, carries out research on emerging children's issues and lobbies Governments, donors, other NGOs and communities on behalf of children.

The Children's Legal Action Network (CLAN) is a registered charitable trust formed in 1998 with the core mandate of providing free legal aid to children who have been abused, those in need of care and protection and those in conflict with the law. CLAN's mission is to advocate for, protect and enhance the rights and welfare of children through the provision of free legal aid and related services by working together with frontline service providers including Government departments, civil society organisations, individuals and children.

The CRADLE - The Children's Foundation is a non-profit-making and non-governmental organisation committed to the protection, promotion and enhancement of the rights of the child through court representation, advocacy and law reform. In 1999 The CRADLE set up a pilot programme for the first legal aid clinic of its kind for children and has since continued protecting and promoting the rights of the child.

The Legal Resources Foundation (LRF) was established in 1994 as an autonomous project of the Kenyan Human Rights Commission. In the course of 2000 it was registered as a trust and became an independent legal entity. Since then LRF has developed innovative methods to raise legal and human rights awareness among the young, underprivileged and undereducated classes in Kenya. Its programmes consist of community-based paralegal training, theatre for civic education, legal and human rights education for secondary schools, production of educational radio programmes and publication of materials to be used in its own and similar educational projects.

Childline Kenya is a non-governmental organisation registered in 2004 and working in Kenya to protect and promote a culture of children's and human rights. Childline Kenya provides a nationwide 24-hour toll-free helpline for counselling and referral services to those in difficult situations, including children, young persons and their families. The organisation brings together a variety of organisations that provide services in the areas of health, legal aid, counselling, rescue and emergency response, child welfare, child rights promotion and advocacy. Through the helpline, children can access essential services through an allied referral system, thereby providing a platform for a coordinated response to children's concerns in Kenya.

Save the Children-Canada is an international non-profit organisation that fights for children's rights, delivering immediate and lasting improvements to children's lives in Kenya.

INTRODUCTION

Preliminary remarks⁶

The Kenyan Government presented the initial report under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) to the Committee against Torture. Even though the initial report (CAT/C/KEN/1) was due in 1998, it was submitted only in 2007, almost nine years late. Although the report states that the delay was due to “political, social and economic problems”⁷ in the country, no plausible reason has been given for the delay in submitting the report. In addition, despite the fact that the Government claims that civil society was fully involved in the preparation of the State report, NGOs complain that civil society was not adequately consulted and no validation exercise was undertaken on the final content of the report by civil society.

Principle areas of concern with respect to torture and ill-treatment in general

Since ratification of the Convention the situation with respect to torture has not drastically altered in Kenya. This is due to the fact that many of the elements that facilitate the persistence of torture continue without substantial change.

The steps taken by Kenya to address various forms of torture in the country were not the result of a systematic strategy aimed at implementing the recommendations of the UN Special Rapporteur on the question of torture⁸ as well as the concluding observations of the Human Rights Committee.⁹ These recommendations remain largely unimplemented and are still awaiting concrete action on the part of the Government. The initial report does not contain a list of tangible measures undertaken by Kenya with a view to implementing its international obligations.

In particular, the principle areas of concern with respect to torture are the following:

- Weak legislative framework and Government failure to fully integrate the Convention into the domestic legislation and, more specifically, failure to define the crime of “torture” under Kenyan criminal law. The Government itself admits that torture and police violence persist in Kenya, and adds that “acts of torture can and have been prosecuted under crimes such as assault, assault occasioning bodily harm, assault occasioning grievous bodily harm, rape, sexual assault, murder, attempted murder, etc., which are provided for under the Penal Code, the Police Act and other laws such as the Children Act”;¹⁰
- Prevalence of torture, violence and excessive use of force inflicted by the police and other security forces as a common and widespread phenomenon in Kenya. Torture takes place in secrecy, through a wide range of police abuses and arbitrary actions that cause severe mental and physical injury up to and including death;
- Persistent culture of impunity and absence of sanctions for those officers who perpetrate torture or cruel, inhuman or degrading treatment. Absence of thorough and impartial

⁶ The information contained in this introduction is mainly based on *Torture and related violations in Kenya*, alternative report to the UN Committee against Torture, forty-first session, November 2008, prepared by the Independent Medico-Legal Unit – IMLU, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/IMLU_Kenya_CAT41.pdf. For further information, please refer to that report.

⁷ UN Doc. CAT/C/KEN/1, para. 2. The report is available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/435/80/PDF/G0743580.pdf?OpenElement>.

⁸ See UN Doc. E/CN.4/2000/9/Add.4.

⁹ See UN Doc. CCPR/CO/83/KEN.

¹⁰ UN Doc. CAT/C/KEN/1, para. 32.

investigations on allegations of torture. Absence of adequate remedies and redress, including full rehabilitation, for survivors and families of victims.

- Failure of the Government to collect and provide data on torture cases at the national level in order to document, monitor and prevent violations of the Convention.

Overview of violence against women and children

Gender-based violence and violence against children are serious and persistent issues in Kenya. UNICEF reported that in Kenya the level of violence against children has reached very high levels, in particular sexual violence. The UNICEF representative in Kenya further emphasised that “[w]e need to get people talking, to break the silence around violence and make sure that everyone knows where to go to get help.”¹¹ Street children are vulnerable to harassment and physical and sexual abuse; they are seen as offenders, criminalised, and are frequently arbitrarily arrested, beaten and ill-treated by police officers.

As regards women, the persistence of certain cultural norms, traditions and stereotypes, as well as de jure discrimination regarding their role in society, perpetuates violence against women and girls in Kenya. In this respect, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that the “State party has not taken sustained and systematic action to modify or eliminate stereotypes and negative cultural values and practices”.¹² Most gender-based violence cases remain unreported, or at least unpunished, and this occurs in particular with respect to sexual violence. Besides the fact that rape occurs regularly in Kenya, the lack of adequate systems within the relevant institutions means that such cases are marred by irregularities and lack of sufficient evidence, and consequently most cases are not fully prosecuted. Police officers are not adequately trained to treat matters related to gender-based violence and many officers still regard domestic violence, including marital rape (which remains an issue “untouched” by Kenyan law), as a private affair. In many cases, law enforcement agents have been known to ridicule women reporting such matters. This has led to a lack of confidence in the Government’s response and has had the additional effect of further inhibiting women from reporting violence inflicted on them.

The already vulnerable situation of women and children has been exacerbated by the post-elections crisis. On 25 January 2008, the IRIN news service reported that “children and women have borne the worst of the violence in Kenya”, emphasising that sexual violence has increased especially in camps set up for internally displaced persons (IDPs), where girls and women exchange sex for biscuits, or for other services. Indeed, internally displaced women are constantly exposed to violence. The Gender Violence Recovery Centre in Mombasa reported that cases of sexual violence have doubled since the elections crisis and there has been an increase in sexual assaults, most of whose victims are girls under the age of 18.¹³

Ensuring adequate protection for women and children from ill-treatment and other abuses remains a challenge in Kenya. For that reason, the Government should take concrete steps to address human rights violations concerning women and children, and to protect them from all forms of violence. Furthermore, the Government should also commit to training both the police and the judiciary on women’s and children’s human rights and insist that violence against women and children is unacceptable.

¹¹ See <http://www.irinnews.org/report.aspx?reportid=59759> .

¹² Concluding comments of the Committee on the Elimination of Discrimination against Women: Kenya, UN Doc. CEDAW/C/KEN/CO/6, para. 21.

¹³ <http://www.un.org/apps/news/story.asp?NewsID=25414&Cr=kenya&Cr1> .

PART 1
IMPLEMENTATION OF THE CONVENTION AGAINST
TORTURE WITH RESPECT TO WOMEN

1. Legal and institutional framework related to the implementation of core United Nations human rights treaties, including the Convention Against Torture

With regard to women's rights, Kenya ratified the Convention on the Elimination of All Forms of Discrimination against Women on 9 March 1984 and committed itself to the Beijing Declaration and Platform for Action (1995), Security Council resolution 1325 (2000) on women, peace and security and the African Union Solemn Declaration on Gender and Equality (2004).

Neither the Constitution nor other national legislation contains a definition of discrimination against women, a situation compounded by the fact that a general/working definition of torture is lacking in all Kenyan statutes, thereby failing to provide a basis for tackling issues of discrimination in all spheres.

The Constitution of Kenya does not provide equal citizenship rights for women. Section 82(4) (b) and (c) of the Constitution of Kenya provides that the Constitution's guarantee of non-discrimination does not apply with respect to personal laws, in particular in the areas of marriage, divorce, adoption, burial and succession.

Customary laws are still applicable in Kenya. In practice, they are to be used as a guide in civil cases affecting people of the same ethnic group as long as they do not conflict with statutory laws. Customary law in Kenya is applied most often in cases related to marriage, divorce, death and inheritance issues. For example, the current Kenyan Constitution expressly states that land rights under customary law are to be respected and fully compensated, unless they are repugnant to written law.

Legislative changes with regard to gender issues have been impeded by the fact that there have been a lot of delays in Parliament regarding some key gender-related bills which, if passed, would go a long way within cultural contexts in addressing some of the discriminatory issues affecting women with regard to matrimonial issues, property rights and inheritance.¹⁴ The Matrimonial Property Bill and the Equal Opportunities Bill have been under preparation since 1999. The enactment of the Domestic Violence (Family Protection) Bill has been pending since 2002.

In Kenya, the payment of bride price and polygamy are recognised and indeed still widely practised, mainly by the communities within the country with no specific references or remedies in the law in instances where discrimination would arise from these practices. If passed, the Matrimonial Property Bill would go a long way in addressing issues related to inheritance of property by women in polygamous situations. Another example shows that provisions governing division of property under the laws covering succession and divorce are not clearly set out. In the landmark case *Kivuitu v. Kivuitu*, it was established that women are entitled to half of the property in the case of death of the spouse, or divorce.¹⁵ However, subsequent judgements have attempted to water down this precedent by stating that women are entitled to half of the marital property only if they can prove that they contributed financially to their households.

¹⁴ For more details on the denial of women's property rights in Kenya, see OMCT, *Addressing the economic, social and cultural root causes of torture in Kenya*, op. cit., pp. 25 and 26.

¹⁵ *Kivuitu v. Kivuitu*, [1991] 2 KAR 241.

Thus, discriminatory laws, especially in terms of property rights and inheritance and in marriage and family relations, are still applied with the sanction of customary laws.

In that regard, CEDAW, noting the delays in the passage of crucial laws such as the Family Protection (Domestic Violence) Bill, the Matrimonial Property Bill and the Equal Opportunities Bill, requested the State to complete without delay its legislative reform.¹⁶

Within the governmental structure, the Ministry of Gender, Children Affairs and Social Development was established in 2003 within the National Commission on Gender Development as a parastatal which is an elevation of the women's bureau formed in 1976, with a mandate to spearhead gender issues at Cabinet level. Following the 2007 election and the formation of the subsequent Government, the Ministry was renamed Ministry of Gender and Children Affairs. It is currently the only ministry that is specifically mandated to deal with gender issues. However, other ministries such as the Ministry of Education, the Ministry of Health, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Ministry of State for Special Programmes, and the Office of the President (Police Department) have made some attempts to include gender components; there have, however, been limitations in the applications of their mandates in this regard.

2. Practice of torture and other cruel, inhuman and degrading treatment or punishment

As recently recognised by CEDAW, “adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life” persist in the Kenyan society.¹⁷ This perpetuates discrimination against women, including in its worst form, that is, violence against them.

2.1 Violence in the context of conflict

The post-election violence that rocked Kenya between December 2007 and March 2008 exposed many women, girls and children to the dangers and vulnerabilities of women and girls in conflict situations. During the post-election violence at the beginning of 2008, women and girls fleeing their homes and those who sought sanctuary in the internally displaced person (IDP) camps were exposed to and experienced gender-based violence ranging from all forms of sexual abuse and exploitation to physical and domestic violence. The findings of an inter-agency report, undertaken by the Gender-Based Violence (GBV) Subcluster,¹⁸ found that encamped women repeatedly expressed fears of sexual violence as a result of makeshift sleeping arrangements in the IDP camps where males and females (not of the same family) were forced to sleep together in one tent. There were also concerns expressed over the lack of regulations and screening procedures at the camp that allowed men from outside to enter the camp without verification of their IDP status or posing as volunteers. Sexual exploitation was also a concern as women and girls were coerced into exchanging sex for basic resources such as food, sanitary supplies and transport.

¹⁶ UN Doc. CEDAW/C/KEN/CO/6, paras. 17 and 18.

¹⁷ Ibid., para. 21.

¹⁸ Gender-Based Violence Subcluster, *A Rapid Assessment of Gender-Based Violence During the Post-Election Violence in Kenya*, conducted January – February 2008.

The assessment sought to examine the nature and scope of sexual violence that occurred during the flight of the victims of violence, as well as within IDP and alternative camps. It also evaluated the capacity of both community- and camp-based programmes to prevent and adequately respond to cases of sexual violence.

The assessment was carried out in selected sites in the North Rift Valley, South Rift Valley, Coastal Region, Nairobi and Central Province. The findings revealed that in the course of the violence, perpetrators exploited the conflict by committing sexual violence with total impunity, and efforts to protect or respond to the needs of women and girls were remarkably insufficient. Sexual violence was used as a fear-instilling tactic as women were told that they and their children would be raped if they did not abandon their property within a designated time frame; often the threat was realised.

Many victims were raped and infected with HIV/AIDS and/or other sexually transmitted infections (STIs) and many others were raped regardless of their HIV status at the time. This in turn caused many new infections and reinfections.

To date, no case has been prosecuted by the Government regarding the sexual violence that was perpetrated against victims during the post-election turmoil.

*Case of 29 women of Kibera*¹⁹

General facts: During the post-election violence, 29 women from the Kibera area who were raped and/or sexually assaulted by either Administration Police from the chief's camp, or General Service Unit officers reported their abuse to the Gender-Based Violence Recovery Centre at Kenyatta Hospital. It was reported that, during the curfew imposed during the period of post-election violence, police officers on patrol would break down doors of houses where women were known to reside alone (without an adult male presence). They would then assault and rape the women, sometimes in the presence of children. Given that police officers usually conducted these patrols in squads of 10, the assaults were usually collective and the rapes frequently took the form of gang rape. Women were raped either in their homes or in the surrounding neighbourhood. The highly volatile situation prevented the women from accessing immediate post-rape care and they received treatment only in March 2008. For most of them, this was too late.

Alarming, of the 29 women raped, 18 are HIV-positive, some having contracted the virus before their rape while a number contracted the virus following the incident. One of the victims, who was already HIV-positive and severely sick at the time, informed the rapists of her status. The 10 Administrative Police officers from the chief's camp nevertheless proceeded to rape her. Another victim was raped in the presence of her 8-year-old son and infected with HIV. A third victim became pregnant as a result of the rape and was due to give birth in October 2008. Despite the fact that the perpetrators of the abuse are known by virtue of having worked at the chief's camp in Kibera, none of them have been apprehended or charged with any crime.

¹⁹ Cases reported to the Gender-Based Violence Recovery Centre (Kenyatta Hospital), a one-stop-shop facility for survivors of sexual violence supported by Kenyatta Hospital and COVAW (K). The crimes described were committed between 30 December 2007 and 1 January 2008.

The 29 women are receiving medical support, post-exposure prophylaxis, anti-retroviral treatment and psychosocial support from the Gender-Based Violence Recovery Centre at Kenyatta Hospital. COVAW (K) is currently working together with the women and the Centre to look into the possibility of undertaking a public interest litigation case.

At the moment, the women are being offered psychological support at Kenyatta Hospital as efforts are directed towards collecting forensic evidence in order to proceed with the prosecution of the case. The women were able to present their evidence during the hearings of the Commission of Inquiry into Post-Election Violence and this helped to inform the Commission's report.

State violence occurs in particular during armed conflicts. This is, however, largely disputed by security forces and undocumented. A situational analysis of women and children undertaken in 2007²⁰ in the Mount Elgon District of Kenya, a region frequently plagued by land-related conflicts, revealed that during the occurrence of violence, both the militia groups and the Government of Kenya security forces inflicted sexual violence on women and children. According to the analysis, security forces violated women and girls during the curfew imposed from 6 p.m. to 6 a.m. While it was in fact acknowledged that the curfew reduced the number of abductions and the killing of people by the militia groups, in the area in question, the most frequent complaints were that security forces harassed people by looting and confiscating their property, by illegally extorting money from them and raping women and girls.

It is worth noting that the report on the findings of the Commission of Inquiry into Post-Election Violence (Waki Commission) acknowledged that sexual violence was a crime that was widely perpetrated during the post-election violence.²¹ The report further acknowledged that law enforcement agents were in fact perpetrators of the crime and the report therefore called for immediate security sector reform, something that had also come up under the Agenda 4 (law and the Constitution) items agreed upon by the two main principals in the election. Kenya waits with baited breath to see whether the recommendations of the Waki Commission will in fact be taken into consideration and whether that will in turn lead to justice for the women, girls and children who were sexually violated by law enforcement agents.

2.2 Domestic violence

Domestic violence is rampant in Kenya and despite interventions, notably by civil society actors, there has been a steady increase in the number of cases and the severity of domestic violence in all regions in Kenya. A report by COVAW²² stated that according to the Police Administration, women suffer more in domestic disputes caused by their spouses than in any other circumstance. Domestic abuse accounted for 48% of all violations. Women and children were most likely to suffer abuse from parents and husbands. The primary research indicated that the most prevalent form of abuse of women is usually a combination of physical assault followed by emotional stress, sexual violence and neglect, both financially and otherwise.

²⁰ COVAW, *Situational analysis on the women and children in the Mount Elgon District in Kenya*, October 2007.

²¹ *Report of the Commission of Inquiry into Post-Election Violence*, October 2008, p. 263.

²² COVAW, *In Pursuit of Justice: A Research Report on Service Providers' Response to Cases of Violence Against Women in Nairobi Province*, October 2002.

2.3 Trafficking

The practice of trafficking is increasingly rampant in Kenya, both within and outside its borders.

Internal trafficking

Despite the occurrence of international trafficking due to porous borders, weak immigration laws and corruption, internal human trafficking is the most common form of trafficking in Kenya, with women and children commonly identified as victims. Internal trafficking occurs primarily from rural areas to urban centres, particularly Kisumu, Malindi, Mombasa and Nairobi. Victims are young, needy girls, especially from the rural areas, who are taken to urban centres to work as housemaids, sometimes for a fee. The young girls are lured (usually by relatives) on the pretext that they will be sent to school once they arrive in the town. The main purpose of trafficking to Nairobi is domestic labour while trafficking to coastal regions is predominantly for purposes of sexual exploitation because of the tourism sector. A newspaper report in late 2007²³ gave the details of the conviction of a Congolese woman who was charged in a Nairobi court with trafficking two girls aged 12 and 15 years for sexual exploitation. Persons are also trafficked for the purpose of forced labour in the agricultural sector, particularly on tea plantations and flower farms.

*Case of R. v. Hans Vriens*²⁴

In the case of *R. v. Hans Vreins*, The CRADLE held a brief on behalf of three young girls who had implicated Hans Vriens, a Dutch national, with sexually exploiting them. This was related to a suspected case of trafficking in children that involved Mr. Vriens who was accused of exploiting several children in Kenya. He had established a school in one of the slums where he had recruited young girls and housed them in a boarding school. It was alleged that he had not only developed a list of over 70 girls against whose names was marked “virgin” or “non-virgin”, but he had also exposed them to pornographic material. It was further alleged that he took some of these girls with him for holidays in Mombasa where he introduced them to his friends as “spring chickens” which was, incidentally, the name of the school.

During the investigations, the police continually harassed the young girls, including continually arresting and charging members of their families on fabricated criminal charges. At one point, witnesses were arrested while they were going to the court to give evidence. They included 9- and 10-year-old orphaned girls. Unfortunately, due to poor investigations and interference by the police, the accused was acquitted on all counts. It is alleged that he has since moved to western Kenya where he opened and is still operating a new school. Although this case occurred in 2001, the facts illustrate the current situation with regard to internal trafficking in Kenya.

International trafficking

²³ *Daily Nation*, 15 December 2007.

²⁴ *R. v. Hans Vriens*, CMC criminal case No. 1380/2001.

Regarding, international trafficking, a report on the status of human trafficking in Kenya published by The Cradle in 2006²⁵ identified Kenya as a fast-growing source, transit and destination country with regard to trafficking involving especially women and girls. The report further indicated that in cases of suspected trafficking of children in Kenya, the objective and method of trafficking frequently appeared to be illegal adoptions. For young children who may be trafficked for purposes such as removal of organs, religious rituals or witchcraft, gender criteria appear to be immaterial. It further revealed that children are at particular risk of trafficking owing to poor birth registration.

Most of the trafficked women are lured abroad with the offer of a job, and are then kept in confinement after their identification documents have been confiscated. This practice is common with immigrants trafficked to the United Kingdom and Middle East countries such as Lebanon and Syria where they are offered jobs as teachers but are essentially employed as maids when they arrive at the country of destination.

2.4 Harmful traditional practices

Female genital mutilation (FGM) is still widely practised, especially among the Maasai, Kisii and Somali communities in Kenya. In spite of the enactment of the Children's Act (2001), which prohibits FGM, the practice continues in some areas of the country. In addition, women over 18 years of age are usually pressured or forced into undergoing FGM.²⁶

A newspaper article in 2008²⁷ reported that "over 90 percent of all women over 20 years in Laikipia North District in Kenya are circumcised". Laikipia North District, in the Rift Valley Province of Kenya, is predominantly inhabited by the Maasai and Samburu communities who are known to practise FGM. In the predominantly pastoralist communities, hundreds of girls undergo circumcision every school holiday. In these communities, parents generally think that pregnancy before circumcision is a curse.

The initiative to eliminate FGM has been largely the effort of civil society organisations. In addition, while some government officers, especially those in marginalised areas, have been helpful in rescuing girls and apprehending those perpetrating FGM, a good number have instead condoned the practice in their areas and even participated in FGM ceremonies. More concrete and practical efforts have to be made by the Government on the issue, which should extend to provision of safe house facilities for girls who are under threat or who have been rescued and the punishment of administration and police officers found to be condoning or participating in the practice. Stiff penalties should also be meted out to parents who are found to have given away their daughters to be forcibly married.

As a result of the cultural belief among those communities that practise FGM that a girl must be married once she is circumcised, forced early marriage is still widely practised in those communities, with the sanction of religion and culture. Most of the girls, some as young as 15, are married before the attainment of majority age (18 years) and without their consent and regardless of whether they have reached puberty. In the above-mentioned press article,²⁸ it was noted by Helen Gathogo, a manager of Nanyuki Children's Home, which shelters rescued

²⁵ The CRADLE - The Children Foundation, *Grand Illusions, Shattered Dreams: A Report on the Status of Human Trafficking in Kenya*, 2006.

²⁶ See section 3 below on the current legislation with regard to female genital mutilation.

²⁷ *The Standard*, 9 August 2008.

²⁸ *Ibid.*

girls, that the Provincial Administration, police and the Children's Department had failed to protect minors as the authorities were too lenient on parents who forced their daughters into early marriage.

Case of girls rescued from forced marriage

The Standard of 26 May 2008 carried two accounts of girls who had been rescued by the police after being married off by their parents.

In one of the incidents, the girls, aged 13 and 14, who were pupils at Ol Kinyei Primary School in Mukogodo in Laikipia North District of Kenya, were withdrawn from school after their parents found them suitors. After being rescued, they were taken to Nanyuki Children's Home, where the administrator confirmed that their middle-aged husbands had run off.

The second case related to the rescue of a 6-year-old girl from a forced early marriage in Isiolo District in Kenya. The Children's Department, the Provincial Administration police and the Child Welfare Society spent five days combing the remote Kipsing Location in Isiolo District where they rescued the minor, who had been hidden by her would-be husband. The minor's father had given her to a 55-year-old man for marriage.

3. Definition and criminalisation of torture (articles 1 and 4 of the Convention)

Legislation does not clearly address all forms of gender-based violence; it should specify criminal and civil law responses, unambiguously stipulate sanctions and include measures to prosecute State agents and private actors who are perpetrators of violence.

3.1 State violence

Section 74(1) of the Constitution states that "no person shall be subject to torture or to inhuman or degrading punishment or other treatment". There is neither a more detailed definition nor a clear criminalisation of torture within the national legislation.

Section 24 of the Sexual Offences Act foresees the criminalisation of abuse of position of the superintendent or manager of a jail, remand home or any other place of custody, or any other law enforcement officer. The offence includes taking advantage of this position to have sexual intercourse, or to commit any other sexual offence under the Act. The perpetrator shall be liable upon conviction to imprisonment for a term of not less than 10 years.

3.2 Violence in the context of conflict

Kenyan laws and policies do not currently deal with violence in the context of conflict, including violence perpetrated by those in authority. Legislation has to be amended in order to improve the situation of internally displaced women in accordance with international instruments and standards. The necessary amendments to legislation should also ensure that all victims of sexual violence committed during conflict are compensated adequately and receive medical, psychological and social rehabilitation.

3.3 Domestic violence

The persistence and even the increase of domestic violence may be attributed to the fact that there is no specific law that deals exclusively with that issue. The current practice is to criminalise the offence under the Penal Code as assault/battery, but this usually disregards violence that is perpetrated in the home. The Children's Act provides that children living in situations of violence should be considered to be in need of care and protection.

The enactment of the Family Protection (Domestic Violence) Bill has been pending since 2002. This bill attempts to deal comprehensively with all aspects (physical, psychological and sexual) of violence within domestic settings and would be the only statute in Kenya that recognises domestic violence as a crime. The bill also makes provisions for counselling and psychological attention for the victims of domestic violence and for safe houses for victims who are at risk in their current domestic situations. It makes provision for protection orders against perpetrators, including denying them access to the matrimonial home, provides for a "friend" to make an application for a protection order on behalf of another, and provides for rehabilitation and setting up of a fund for domestic violence victims. The fund is to be a Government initiative.

One of the reasons for the delays in the enactment of the bill is related to the provisions that would criminalise marital rape. In the Kenyan context, marital rape remains a concept that is widely not understood, or even thought to exist. The view of most legislators is that there cannot be rape within a marital relationship. This therefore means that the offence of marital rape has not yet been expressly criminalised in any legislation, and is often used as a basis for delaying the adoption of any gender-related bills.²⁹

3.4 Sexual violence

The Sexual Offences Act 2006 was enacted to comprehensively address the issue of sexual violence in Kenya. Prior to its enactment, there was no adequate legal framework to cover sex-related offences; provisions were scattered throughout various statutes including the Penal Code. The Sexual Offences Act became operational on 21 July 2006. Civil society organisations then embarked on capacity-building and sensitisation of the police and judicial officers on its provisions and usefulness. Consequently, the Sexual Offences Act is increasingly being applied against sexual offenders by prosecutors, judges and magistrates. It is, however, too early to determine precisely its application and its impact in practice.

Section 3(1) of the Sexual Offences Act foresees that:

A person commits the offence termed rape if -

- (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
- (b) the other person does not consent to the penetration; or
- (c) the consent is obtained by force or by means of threats or intimidation of any kind.

(2) In this section the term - intentionally and unlawfully - has the meaning assigned to it in section 43 of this Act.

²⁹ Among the reasons why the Domestic Violence (Family Protection) Bill has not yet passed is because it would outlaw marital rape. The Sexual Offences Act 2006 was passed only after certain provisions, including that recognising the offence of marital rape, were removed from the bill.

Section 4 defines attempted rape thus: “Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape”.

In our view, the definitions of rape and of attempted rape are not wide enough and do not take into account acts other than penetration with a genital organ. Other situations are covered under section 5, sexual assault, which encompasses situations when:

- (1) Any person who unlawfully -
 - (a) penetrates the genital organs of another person with -
 - (i) any part of the body of another or that person; or
 - (ii) an object manipulated by another or that person except where such penetration is carried out for proper and professional hygienic or medical purposes;
 - (b) manipulates any part of his or her body or the body of another person so as to cause penetration of the genital organ into or by any part of the other person's body, is guilty of an offence termed sexual assault.

Gang rape is also introduced in the Act in section 10:

Any person who commits the offence of rape or defilement under this Act in association with another or others, or any person who, with common intention, is in the company of another or others who commit the offence of rape or defilement, is guilty of an offence termed gang rape.

A person guilty of rape is liable upon conviction to imprisonment for a term which shall not be less than 10 years but which may be extended to imprisonment for life; of sexual assault, liable upon conviction to imprisonment for a term of not less than 10 years but which may be extended to imprisonment for life; and of gang rape, liable upon conviction to imprisonment for a term of not less 15 years but which may be extended to imprisonment for life.

Prostitution in itself is not criminalised but to cause, incite to prostitution or control the activity of a prostitute is punishable under article 17 of the Sexual Offences Act 2006 with imprisonment for a term of not less than five years or to a fine of 500,000 shillings or both.

3.5 Trafficking in persons

There has also been a delay in the enactment by the Parliament of the revised draft of the Counter-Trafficking in Persons Bill. If passed, it would be the first comprehensive law that would deal exclusively with the issue of trafficking and all its elements. Trafficking as a concept in Kenya is largely unknown, and often perceived to be a moral, not a criminal issue. However, this bill should include prevention measures and provide for the effective prosecution and punishment of traffickers, as well as protection and support for victims. This issue was also the subject of a recommendation by CEDAW calling upon the State to expedite the adoption of the bill, but also urging the State to include the elements mentioned above.³⁰

As a consequence, the issue of trafficking is currently legally dealt with only partially. Other than the Children Act 2001³¹ and the Penal Code, the Sexual Offences Act is the only

³⁰ UN Doc. CEDAW/C/KEN/CO/6, para. 30.

³¹ Chapter 586 of the Laws of Kenya (Act No. 8 of 2001); came into force on 1 March 2002.

other statute that contains provisions dealing with the issue of trafficking. But the provision on trafficking for sexual exploitation targets all persons whereas the one on trafficking for all purposes targets only children.

Thus, section 18 of the Sexual Offences Act on trafficking for sexual exploitation states:

- (1) Any person who intentionally or knowingly arranges or facilitates travel within or across the borders of Kenya by another person and either -
 - (a) intends to do anything to or in respect of the person during or after the journey in any part of the world, which if done will involve the commission of an offence under this Act; or
 - (b) believes that another person is likely to do something to or in respect of the other person during or after the journey in any part of the world, which if done will involve the commission of an offence under this Act, is guilty of an offence of trafficking for sexual exploitation.

A person guilty of an offence under this section is liable, upon conviction, to imprisonment for a term of not less than 14 years or to a fine of not less than 2 million shillings, or both.

3.6 Harmful traditional practices

The Government outlawed the practice of female genital mutilation under the Children Act (2001). Section 14 of the Act provides that “[n]o person shall subject a child to female circumcision, early marriage or cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development”.

The law gives women over the age of 18 years a choice whether to undergo FGM, as they are considered capable of making a decision at that age. However, the pressure and sanction of culture effectively negate the issue of choice as most of the girls consider that they have to undergo FGM in order to be accepted within their communities.

As noted, the practice of early and forced marriage is criminalised under section 14 of the Children Act. Also, section 29 of the Sexual Offences Act, which targets in particular sexual acts within this context, provides that “[a]ny person who for cultural or religious reasons forces another person to engage in a sexual act or any act that amounts to an offence under the Act is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than 10 years”.

4. Measures to prevent acts of torture and other ill-treatments (article 2(1) of the Convention)

The challenge in dealing with issues of sexual and other forms of violence against women relates to the lack of policy and a framework, including a legal framework, on violence against women. This means that relevant Government departments are unable to formulate work plans and form an agenda specifically on the issue of the prevention of violence against women as it relates to torture.

In the matter of trafficking, a National Plan of Action on Trafficking in Persons has been initiated by the International Organization for Migration (IOM) in collaboration with the

Government of Kenya. A National Steering Committee to formulate and implement the National Plan of Action is also in place. The Steering Committee is currently hosted by the Ministry of Home Affairs under the Children's Department.

The State has been especially lethargic in setting up safe houses and boarding schools where the intended victims of FGM and early marriage can escape in order to avoid victimisation and pressure from their communities.

5. Education and information (article 10 of the Convention)

The insensitivity of officials experienced, especially by sexual abuse and domestic violence victims, at police stations, and sometimes the failure to provide appropriate and holistic assistance to the victims demonstrate that the State needs to undertake training and capacity-building programmes for law enforcement officers, judicial officers, medical personnel, judges and magistrates to ensure that they are sensitised to the rights and needs of the women who are victims of violence.

Currently, there is no specific focus within the curriculum on issues of gender-based violence. The police training programmes should be specific, with a particular focus on the elimination of gender-based violence, so that police officers recognise and acknowledge it as a grievous human rights violation and act accordingly. In order to be more effective, such training should be included in their curriculum so that every officer is knowledgeable about how to deal with the issue of violence against women with the gravity it deserves.

Civil society organisations have initiated awareness-raising campaigns on issues touching on violence and torture within the society and communities. In such initiatives, the civil society organisations have endeavoured to collaborate with various State departments to create awareness. The State has not, however, initiated or allocated resources to this issue.

6. Investigation (article 12) and the right to a remedy (article 13 of the Convention)

6.1 General obstacles for women in their access to justice

Women are much more disadvantaged, compared to men, in accessing justice, especially when dealing with domestic violence, as well as other forms of gender-based violence.

The issue of reporting is central in cases of violence against women. One of the obstacles is represented by women's economic dependence on men. According to the OMCT,³² the majority of women have limited access to resources for seeking justice, both in terms of legal services and the costs of medical consultations.

In that regard, the National Legal Aid Scheme was launched by the Ministry of Justice on 18 September 2008. When operationalised, the scheme is intended to offer legal aid with a national focus on the group of Kenyans who cannot afford it. Currently, however, there is no legal aid being offered by the State either for victims of sexual violations or for victims of any other gender-based violence in Kenya. Provision of legal aid in Kenya is still the preserve of civil society organizations such as the International Federation of Women Lawyers-Kenya

³² See OMCT, *Addressing the economic, social and cultural root causes of torture in Kenya*, op. cit.

(FIDA (K)), COVAW (K), Kituo cha Sheria, CLAN, ANPPCAN Kenya, The CRADLE, and others.

Reporting sexual or domestic violence is further compromised by social obstacles. Many women do not report violence because they fear revenge, social stigma, or losing custody of their children.³³

With regard to the law enforcement staff's behaviour, there have been attempts by civil society organisations and the Police Department to offer sensitisation on issues of gender through training and capacity-building of law enforcement staff. Indeed, *In Pursuit of Justice* noted that in most police stations in Kenya, women reported their cases of abuse openly at the reporting desks and this exposed them to public scrutiny, shame and intimidation. It was also found that some police officers are quite negative about the issue of violence against women and women's human rights in general; they still think that it is a "family affair" and nothing to do with them.

The Gender Desk Programme is an initiative by the Police Department (through the Office of the President) to set up gender desks at selected police stations as a pilot project. The programme, established in 2003, aims at mainstreaming the issue of violence against women. Thus, every police station is supposed to have a policewoman in charge of dealing with cases of gender-based violence. This will have the secondary effect of promoting the recruitment of women police officers and sensitising on gender violence, especially in rural areas. The programme has not been very successful as there are not enough trained police officers to staff the desks. The policy of transfer within the police force (every officer is required to transfer every three years) also affects the consistency of operations of the gender desks. The initiative has also been poorly publicised.

Reporting violence is challenged by the complicated procedure for filing a complaint. In cases of violence, women are required to produce three documents: a police abstract, a "P3" Form and a medical report. It is a long procedure, which clearly deters women wishing to denounce violence.

The P3 Form is legally accepted written evidence of physical abuse. Only recently have P3 Forms been made more accessible; the police used to have the monopoly of the Form whereas now, it can also be found in hospitals and can be downloaded from the internet. However, women are still not fully aware of the existence of such a form. Currently, the victims are charged for filling out and signing the P3 Form, although the law does not officially provide for such payment. In practice, this becomes an impediment to the pursuit of justice for those who cannot afford payment, i.e. the majority. The cost of filling out the P3 Form is also not standardised and varies from station to station. The Government should ensure that the P3 Form is easily available and duly filled out and signed by the necessary officials free of charge.

6.2 Specific issues related to some forms of violence

Violence in the context of armed conflict

³³ Ibid., p. 27.

The Government should put in place mechanisms to ensure prompt and effective investigation of all allegations of rape and sexual violence committed in conflict areas, and prosecute and punish perpetrators with appropriate penalties. Regrettably, because of the atrocities they witnessed and experienced, many of the women and girls did not report their rapes as they considered silence a “lesser evil” to losing their lives, livelihoods and property. Further, it is impossible to obtain information about State officers who have been convicted of sexual violence crimes as the trials are conducted by courts martial to which the public have no access and the decisions reached by the courts martial are not available in the public domain.

Domestic violence

Attitudes of police and other law enforcement officers with regard to the issue of domestic violence further abet the persistence of violence against women. In most police stations, the officers are reluctant to record any cases of domestic violence as they are unwilling to interfere in “domestic issues”. Domestic violence is still not treated with the same gravity as other cases when they are reported. Often the victim reporting the incident is asked what she did to provoke the violence and is encouraged to resolve the issue at home.

Sexual violence

Attention should be paid to the procedure for reporting rape and other sexual offences. Currently, the victim can only be treated by one Government medical doctor, who is also required to attend court. This process does not take into account the delicate nature of sexual abuse cases which dictates that the victim cannot take a bath or wash her clothes lest crucial evidence be lost.

The Post Rape Care (PRC1) Form was created with the intention of having the medical doctor fill in vital information including the psychological state of the victim and the location of all physical injuries and bruising. This form is then used to fill in the P3 Form as the PRC1 is not admissible in the Kenyan courts as evidence. The P3 Form is inadequate in terms of giving details, for instance on the psychological condition of the victim. This is exacerbated by the fact that most officers are not sensitized enough to fill in the P3 Form correctly in cases of sexual abuse. The insensitivity sometimes encountered by sexual abuse victims when reporting to the police usually means that the victim must endure further torture, adding to her ordeal.

It should be noted that in most cases, lengthy investigations are undertaken for sexual abuse cases and equally lengthy medical processes long after a suspect has been arraigned in court. The lengthy processes are attributed to the fact that, as noted, there is only one Government doctor in every district in Kenya, who is mandated to attend to sexual violence victims and fill out the medical report detailing the victim’s injuries. The same doctor is required to attend court sessions during the hearings in order to give evidence. Proper forensic equipment to collect and store evidence necessary for sexual violence cases is also lacking. In most cases, sexual violence victims are not able to pay for legal representation and are therefore unsure of how to proceed for quick resolution of their cases.

In addition, sexual offence cases are often thrown out of court on account of technicalities.

<i>Case of Dzitu v. Republic</i>

Judicial Attitudes of the Kenyan Bench on Sexual Violence Cases, a digest published by COVAW in 2005, detailed the case of *Dzitu v. Republic*,³⁴ where the appellant was charged with, among other things, rape (section 140 of the Penal Code), with the alternative charge of indecent assault on a female (section 144 (1) of the Penal Code). The second count related to attempted rape (section 141 of the Penal Code). The appellant was convicted and sentenced to serve four years in prison plus three strokes of the cane with hard labour, but he appealed. One of the grounds on which the court allowed the appeal and acquitted the appellant was that the case was prosecuted by a prosecutor below the rank of acting inspector.

Sometimes judicial attitudes revealed in the exercise of judicial discretion can be entirely unreasonable.

Case of Matheka v. Republic

In the case *Matheka v. Republic*,³⁵ in which the appellant was convicted of defilement of a girl under the age of 14 years in contravention of section 145(1) of the Penal Code and sentenced to 14 years' imprisonment plus eight strokes of the cane, the judgement of 8 October 2001 states: "The evidence against the appellant was overwhelming... The conviction was therefore proper and the appeal against conviction is therefore dismissed. On sentence, the appellant was awarded the maximum as provided by law. [In] this age of AIDS such offenders must adequately be punished. However, taking into account that the appellant is a first offender, the appeal against sentence is allowed".

6.3 The right to protection

Regarding the protection of women victims of violence, it appears that the access to shelter, safe houses and psychosocial assistance is a crucial component of accessing justice. Indeed, in Kenya, most of the victims of sexual and physical violence are further exposed to violations when they are forced to return to the place they were abused due to a lack of shelters and safe houses. Some victims opt not to report or pursue cases for this reason.

Shelters for the protection of victims of violence are still largely unavailable in Kenya and these services are mainly provided by civil society organisations. In Nairobi, only the Women's Rights Awareness Programme (WRAP) provides shelter for women who have been victims of violence and must be removed from their home situations. However, WRAP is overwhelmed and can only cater for very few women, and even then for a very limited period of time. In most cases, women will opt to remain in their violent situations as the centre is unable to provide shelter for a woman and her children and many times going to a shelter will mean separation from one's children.

With regard to protection of witnesses, the Sexual Offences Act provides for the protection of vulnerable witnesses who are giving evidence in sexual offences cases, including minors. The Family Protection (Domestic Violence) Bill, if passed, would provide for the establishment of safe houses for victims of domestic violence who have got to be removed from their home situation.

7. Recommendations

³⁴ *Dzitu v. Republic*, High Court at Malindi, case No. 73/02.

³⁵ *Matheka v. Republic*, High Court at Mombasa, case No. 126/00.

The NGOs participating in this report recommend to the Government of Kenya that it:

- Adopt a comprehensive legal framework to guarantee non-discrimination against women, firstly by deleting the exception to the principle of non-discrimination introduced in the Constitution itself (article 82(4)(b) and (c)), secondly by amending all discriminatory laws, and finally by adopting as soon as possible the Equal Opportunities Bill ready since 2000; it should also make customary law accord with the principle of non-discrimination;
- Take all the measures necessary to eliminate violence against women, including by the adoption of a comprehensive legal framework on all forms of gender-based violence; measures of prevention of all forms of violence against women must be taken through national plans or agendas on this issue;
- Take all the measures necessary to give effective access to justice, especially by ensuring prompt and effective investigation of allegations, and provide adequate redress (including health and social assistance) to the women victims of sexual violence in the context of the post-election violence; in that regard, the current legislation must be enhanced to address cases of violence in such situations and provide the necessary protection and redress to victims; in addition, emergency plans of action should include specific measures related to gender-based violence;
- Take all the measures necessary to end the increase in cases and severity of domestic violence, especially by adopting the Domestic Violence (Family Protection) Bill which has been pending since 2002; in that regard, take measures to eliminate forced early marriage, which is still widely practised;
- With regard to sexual violence, address the inadequacy, in terms of the needed information and the cost, of the P3 Form and ensure training on this type of violence and on the way to receive such victims; ensure a prompt and effective investigation and appropriate legal and medical assistance;
- Take all the measures necessary to end the increasing practice of trafficking, both within and outside the borders, especially by initiating early warning systems; enact the Counter-Trafficking in Persons Bill, whose passage has been delayed, as soon as possible in order to deal comprehensively with the issue, and include clear provisions on prevention, prosecution and protection measures;
- Implement effectively the prohibition of female genital mutilation, which is still widely practised, taking all the measures necessary to eliminate it; provide for and apply penalties to State agents who condone or tolerate such practices;
- Implement gender-sensitivity training in order to avoid situations of revictimisation of women victims of violence and eliminate patriarchal views on the relationship between women and men; in addition, put in place awareness-raising campaigns or support them when they are initiated by NGOs;
- With regard to the access to justice of women victims of violence, reinforce and develop the gender desks created in some police stations, especially by training the officers and ensuring that staff transfers do not affect the operations of the gender desks;

- Ensure effective protection of women victims of violence by creating shelters and safe houses.

PART 2
IMPLEMENTATION OF THE CONVENTION AGAINST
TORTURE WITH RESPECT TO CHILDREN

1. Widespread forms of violence that currently affects children in Kenya

The violence experienced by children early in 2008 as a result of the post-election incidents epitomizes the very worst that can happen to children: lack of shelter, clothing, food, access to education and health services. Protection of children in general was absent. Children were also victims of widespread gender-based and sexual violence including defilement, sodomy, forced circumcision and even mutilation of their sexual organs.³⁶

For those who ended up in IDP camps as a consequence of these incidents, daily life has been difficult. As explained in the first part of this report, girls were easily led into commercial sex work in order to earn a living or in exchange for food. This put them at risk of contracting HIV/AIDS, STIs and unwanted pregnancies. Both boys and girls were easy prey for exploiters of child labour while in the camps. Even though many families have since moved out of the camps, their situation remains dire as they have lost everything. Assistance from both Government and development partners has helped, but more is needed.

The **main issues of concern** with regard to the implementation of the Convention against Torture with regard to children are the following:

- harmful traditional practices;
- the general practice of corporal punishment constituting daily degrading treatment of children;
- sexual violence and exploitation;
- trafficking of children.

Any form of torture or cruel or degrading treatment of children results in serious and long-term psychological consequences for the child's development. This impact includes, among others, long-term trauma, aggressive behaviour at school, psychological effects, denial of justice and the right to obtain remedies, lack of education and jeopardized health.

The State party report mentions child protection in several instances within the framework of the implementation of articles 10, 12 and 16 of the Convention. However, NGOs consider this information too limited.

2. Legislation and structure of implementation

2.1 Definition of the child

The Children Act defines a child as any human being under the age of 18 years. Specific legal provisions with regard to minimum age are:

- the minimum age of criminal responsibility in Kenya is 8 years;
- the minimum age of sexual consent has been raised to 16 years;³⁷ however, this only applies to girls younger than 16, thus offering less protection to girls aged between 16 and 18 and to boys;
- the minimum age for marriage is legally 18 years old;³⁸ however, the Hindu Marriage and Divorce Act³⁹ allows girls aged between 16 and 18 years to marry. In addition, under the

³⁶ *Report of the Commission of Inquiry into Post Election Violence*, op. cit., p. 241.

³⁷ Penal Code (Chapter 63 of the Laws of Kenya) amended by the Criminal Law Amendment Act No. 5 of 2003.

³⁸ Section 14 of the Children Act.

- various forms of customary law, boys and girls under 18 may marry.⁴⁰ NGOs remain extremely concerned that the Children Act, which outlaws early marriage, cannot be consistently applied because of several contradictory statutes that remain in force;
- the minimum age for admission into employment has been recently lowered to 13 years.⁴¹

2.2 Domestic legislation with respect to children and protection of their rights

Constitution

Chapter V of the Kenyan Constitution protects the fundamental rights and freedoms of every person in Kenya. In particular, section 74(1) protects every person from torture and inhuman or degrading punishment or other treatment. Although the provisions do not specifically refer to children, their interpretation includes the protection of all children within Kenyan borders. A draft constitution⁴² had been drawn up in collaboration with the “children sector” and submitted for popular approbation in 2005. The draft dealt extensively with the welfare of children providing not only protective, but positive rights as well. However, it was rejected by the referendum. Since then, two other bills have been drafted to stimulate the process of constitutional review.⁴³

Statutes

The Children Act. The Children Act (No. 8 of 2001)⁴⁴ aims at integrating the UN Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child. The enactment of the Children Act was widely seen as a new beginning for the development and effective protection of Kenyan children. The Act establishes statutory structures to facilitate the administration and safeguards of children’s rights.

According to most national NGOs, the Children Act has resulted in a great improvement in the promotion and protection of children’s rights. However, there are several gaps which should be addressed by the Government to ensure that every child in Kenya enjoys full legal protection of his/her rights, among which is the question of the legality of corporal punishment. In this regard, the Kenya Law Reform Commission (KLRC), whose mandate is to review laws in the country, commenced a review of the Children Act in 2006. However, to date the exercise is yet to be completed.

The Sexual Offences Act. The Sexual Offences Act complements the Children Act with regard to the protection of children from various sexual offences. It provides for the prevention of and protection of all persons from harmful and unlawful sexual acts. However, section 38 of the Act has been termed retrogressive as it seeks to criminalise making false allegations of a

³⁹ Chapter 157 of the Laws of Kenya, section 3(1), lit. c.

⁴⁰ The Kenya Law Reform Commission is currently reviewing the various marriage laws.

⁴¹ Employment Act of 2007; previously section 2 of the former Employment Act, Chapter 226, Laws of Kenya, set the minimum age at 16 years old.

⁴² Government of Kenya, The Draft Constitution of Kenya, Government Printer, Nairobi, 2005.

⁴³ The Constitution of Kenya Amendment Bill (2008) and the Constitution of Kenya Review Bill (2008).

⁴⁴ The Children Act codified and replaced three statutes: the Children and Young Persons Act (Cap 141), the Adoption Act (Cap 143) and the Guardianship of Infants Act (Cap 144).

sexual nature. A complainant, including a child, can be penalised if allegations of a sexual offence are disproved later on, for whatever reason.⁴⁵

Relevant bills under discussion

It is hoped that once the Domestic Violence (Family Protection) Bill is finally enacted it will also help protect children from violence at home. The bill recognises the psychological and emotional effects of violence. The Counter-Trafficking in Person's Bill, a culmination of a consultative process in 2006, protects children from both international and domestic trafficking, which results in exploitation and violations of children's rights including child labour, child prostitution and child sex tourism. The bill is yet to be published and deliberated by Parliament.

2.3 Structures of implementation, organisation and supervision of children's issues

The main governmental authority in charge of implementing the rights of the child is the National Council for Children Services (NCCS) created by the Children Act as the coordinating and unifying agency for children's services in Kenya.⁴⁶ The Act also establishes institutions for the reception and care of children in need of care and protection. It requires local authorities to promote the best interests of children within their respective jurisdictions and prohibits discrimination on any grounds. In addition, the Department of Children Services promotes the rights of children in conflict with the law in rehabilitation schools and is strengthening law enforcement and rehabilitation programmes.

It is acknowledged that the creation in 2008 of a new ministry for children, the Ministry of Gender, Children Affairs and Social Development, is meant to further help in coordination of children's issues. However, it appears that matters concerning children are not being given due consideration (gender and women-related issues are given more priority). Child rights NGOs are lobbying for children's issues to be featured more in the Ministry's strategic plan. The position of Secretary, Children Affairs was also created.

2.4 Judicial authorities dealing with children's issues

Children's courts are established under the Children Act (section 73). They are special courts that deal with child-related cases. They treat both civil and criminal matters that involve parental responsibility, custody and maintenance, guardianship, protection of children, foster care and child-related criminal matters whether the child is the victim or the offender (with the exception of murder and crimes committed jointly with adults). Up to October 2008, over 100 magistrates were gazetted to hear children's matters all over the country. There is need for additional gazetted child magistrates to be appointed as transfers are still continuing. For the moment, there are only two fully functional children's courts in Kenya, in Nairobi and in Mombasa,⁴⁷ whereas in other parts of the country, ordinary courts are turned into children's

⁴⁵ The Act is strengthened by the *Reference Manual on the Sexual Offences Act, 2006 for Prosecutors* that expounds the Act as well as setting standards and addressing recommendations on best practices to various key service providers (see Sexual Offences Act Rules and the establishment of the Sexual Offences Task Force).

⁴⁶ Section 30 of the Children Act.

⁴⁷ Mombasa Children's Court is operational due to the efforts of the Kenya Alliance for the Advancement of Children which provided funds for the rehabilitation of an old building to be turned into a children's court. The court has been operational since 2006.

courts when a case involving a child arises. Children's courts face certain challenges, especially with regard to huge volumes of work.

In addition, the Family Division of the High Court and the Kadhis' courts may seek the views of the child in the process of reaching a decision involving the child in civil matters such as personal status, marriage, divorce and inheritance. Kadhis' courts have jurisdiction where the parties profess Islam.⁴⁸

Finally, in customary traditional law, local chiefs and village elders arbitrate complaints within communities. Those who cannot afford to travel to urban centres or to pay a lawyer may be able to refer to the traditional system. The traditional system may have positive effects for children, in particular when it seeks to avoid deprivation of liberty and when it tries to find a penalty matching the interests of the child, those of the community and those of the victim.

3. The practice of torture and other cruel, inhuman or degrading treatment or punishment

3.1 Excessive use of force by law enforcement officials

Although arbitrary killings of street youth by law enforcement officials are not as common as they were a few years ago, they still take place, mainly in urban centres. Street children have been shot by police officers on the pretext that they were criminals resisting arrest. NGOs are of the view that whether or not street children are engaged in criminal activities, there is no reason for resorting to such methods.

Case of arbitrary killing

Four-year-old Ian Macharia Githinji, who was walking in the street, was shot dead by a stray bullet when the police were apparently executing a 19-year-old man who they seem to have disagreed with. The incident occurred around Bahati Estate, Nairobi. Even though the official statement from the police indicated that the death was accidental and that the police fired the shot in self-defence, eyewitness accounts indicated that the police shot carelessly into a crowd that was not violent and that was made up mainly of children. The judicial authorities have not made any move to prosecute the policemen who killed Ian.⁴⁹

3.2 Corporal punishment

Corporal punishment at school

In 2001, the Education Act was amended to outlaw corporal punishment in schools. Nonetheless, the practice remains common in schools and other educational institutions, with cases of permanent injury and even death occurring as a result.⁵⁰ In a study that was carried out among 65 teachers,⁵¹ over 30% said they used the cane while another 23% punished with manual labour. Only 15% of the teachers interviewed used guidance and counselling as an

⁴⁸ *The place of children in kadhi's courts*, brochure of Kenya Alliance for the Advancement of Children, 2005.

⁴⁹ High Court, criminal application No. 631/02.

⁵⁰ OMCT's alternative report to the Human Rights Committee, *State Violence in Kenya*, February 2005.

⁵¹ Assessment of corporal punishment in schools conducted by the Kenya Alliance for the Advancement of Children, 2007, p. 14.

alternative. To most teachers and caregivers interviewed, corporal punishment is the “efficient and most appropriate” form of punishment. School corporal punishment in Kenya has a high degree of cultural acceptance and approval.⁵²

Children lack the capacity to seek redress for violations of their rights and where redress is sought in a court of law, the culprits are either acquitted or fined minimal amounts as the act is treated as a simple offence. For example, in the case of the defilement of a 17-year-old girl by the headmaster of a public institution on diverse dates in August and September 2006, the child victim became pregnant but the headmaster was acquitted (criminal case No. 230/07).

The legislation contributes to this situation: section 127 of the Children Act states that nothing takes away the right of a parent, guardian or custodian of a child to punish a child reasonably. Duty bearers, including teachers, see this provision as a justification for inflicting different forms of corporal punishment.

Cases of pupils’ protests against corporal punishment at school

In November 2004, over 100 students of Kanunga High School in Kiambu District marched for over 40 km protesting the infliction of corporal punishment on seven of the students by the school administration.⁵³ This problem has been acknowledged by Professor Karega Mutahi, the Permanent Secretary in the Ministry of Education, in the media. He observed that despite the ban on corporal punishment, it was still being practised in some schools.

Towards the end of the second term of 2008 many secondary schools in Kenya experienced unrest and many school buildings were set on fire by striking students. In one case a male prefect died when he tried to rescue his schoolmates who were locked up in a dormitory that had been set ablaze. The reasons given by the students ranged from excessive and sometimes degrading punishment to alleged high-handedness by the school administration. A number of the students have been arraigned in court and the children sector is concerned that the law and procedures and safeguards applicable to child suspects were not properly followed. These and other issues concerning children and violence have been discussed in various child rights NGO meetings during the year.⁵⁴

Corporal punishment at home

Corporal punishment still takes place in many homes, as various reports show.⁵⁵ The Kenyan society strongly believes in corporal punishment as a means of educational discipline. It is often perceived as a corrective measure rather than physical violence or torture. Many parents and guardians, even those who may be aware that it has been banned in schools, will still cane

⁵² Ibid., p. 15.

⁵³ *East African Standard*, 15 November 2004.

⁵⁴ The NGO CRC Committee also issued a press release on the same matter during a well-attended press conference. The Parliamentary Committee on Education, Research and Technology held meetings with stakeholders, including children, in most parts of the country in order to get their views on how best to address such issues. Consequently, the Ministry of Education is implementing the recommendations proposed by the NGO CRC Committee. ANPPCAN Kenya has in the past several years observed an annual “No *Kiboko* Day” where children and other stakeholders engage in activities to advocate for non-violent ways of addressing discipline. The CRADLE - The Children’s Foundation has handled 15 cases of corporal punishment from 2006 to 2008.

⁵⁵ See, for example, Save the Children Alliance, “Children’s Rights in Kenya” - Mombasa, Nairobi, Naivasha, Suba, Tharaka: Situation Analysis 2007, p. 35.

their children at home. This is due to poor parenting skills; many parents believe that it is the only way to discipline a child and parents who were caned when they were young believe they should do the same to their children.

3.3 Sexual violence and abuse

In September 2008 the Government, through the Office of the Attorney General, established a team to work on regulations under the Sexual Offences Act. It is hoped that this will help streamline the handling and prosecution of cases under the Act. A task force to oversee the implementation of the Act has also been set up.⁵⁶

Incidents of sexual violence continue to be reported throughout the country.⁵⁷ The Nairobi Women's Hospital receives victims ranging in age from months-old baby girls to women aged over 80. Of late a number of young boys have also received treatment after being sexually assaulted. Even though more cases of sexual abuse of girls are reported, boys are also increasingly being sexually molested. According to information from the Naivasha Disadvantaged Support Group⁵⁸ most affected are children between the ages of 4 and 12 years. They generally fear exposing the culprits after being threatened.

It is important to clarify that any perceived changes or improvements in terms of a reduction in the number of defilement cases can only be verified after thorough scientific investigations. The mere enactment of a Sexual Offences Act in itself cannot serve to reduce incidents of sexual violence.

There are reported cases of teachers sexually harassing female students. Unfortunately, it is often only when this leads to sexual intercourse and the girls become pregnant that action is taken by parents and guardians. A few teachers have been arraigned in court and others disciplined by the Teachers Service Commission. Sometimes the cases are settled out of court due to ignorance on the part of the parents or when they are coerced to do so under duress from authorities (practice of "friendly settlement").

3.4 Sexual exploitation

Despite Government's adoption of international standards and its association in relevant initiatives aiming to combat sexual exploitation of children, Kenya lacks a national plan of action on child sexual exploitation although the country is among the few in Africa that have programmes and activities in the areas of protection, prevention, recovery and reintegration.

⁵⁶ The task force was appointed under Gazette Notice No. 2154 of 23 March 2007. Membership includes representatives from the Office of the Attorney General, the judiciary, the Law Society of Kenya and civil society organisations.

⁵⁷ For example, on 22 September 2008, the *East African Standard* reported at least four cases of child sexual abuse. In one of the reported cases a brother defiled his 12-year-old sister for months and also had his friends do the same. It was only discovered when she contracted an STI. The case is still pending in court. A woman burned the private parts of her 12-year-old daughter after the daughter said she had been raped. The case is still pending in court. In 2007 a man is reported to have defiled his retarded stepdaughter for the whole year but relatives intervened when she developed complications. The mother was aware of the abuse. The case is still pending in court. In September 2008, a 70-year-old man was arraigned in court charged with defiling an 8-year-old girl.

⁵⁸ The organisation offers free legal and counselling services to victims. This has enabled many to seek help within a reasonable time.

NGOs have taken a lead role in this. The role of Government has not been as active as expected.⁵⁹

UNICEF, in consultation with the tourism industry, has developed a Code of Conduct to educate hotel workers and their guests on the need to protect children from commercial sexual exploitation. Indications are that this has raised awareness among all the stakeholders in the tourism industry.⁶⁰

According to a study conducted by the Save the Children Alliance⁶¹ many children in parts of Kenya become victims of commercial sexual exploitation. Sex tourism also promotes child prostitution, exploitation, abduction and trafficking. Research has shown that this is carried out by both locals and foreigners, especially in Coast Province. An estimated 10,000-15,000 girls in Malindi, Mombasa, Kilifi and Diani are involved, with the majority aged between 12 and 13 years.⁶²

3.5 Trafficking in children

Child trafficking⁶³ for both commercial and sexual exploitation does take place from Kenya to foreign countries. Young girls are especially vulnerable to commercial sexual exploitation and many have been trafficked out of the country to end up as sex slaves. The practice is rampant in Coastal Province due to the tourism industry.

Even though there are reports that the State through various foreign embassies has intervened in such cases, most of the efforts to assist victims of trafficking have mainly been from NGOs. The efforts by the State fall short of established standards for child protection for which the State bears the primary duty.

A Counter-Trafficking in Persons Bill has been drafted through the efforts of both Government and civil society groups. At the urging of NGOs have been playing a key role to have the bill introduced in Parliament. However, they are concerned over the delay in passing the bill as children continue to be trafficked.

4. Definition and criminalisation of torture (articles 1 and 4 of the Convention)

4.1 Absence of a definition and the criminalisation of torture of children, and inappropriate penalties

⁵⁹ A situational analysis of sexual exploitation of children in the Eastern and Southern Africa Region: the vicious circle of sexual exploitation, HIV/AIDS, vulnerability of children and violations of children's human rights, ANPPCAN/UNICEF, Nairobi, 2001.

⁶⁰ The Code of Conduct is implemented in collaboration with the Association of Hotel Keepers and Caterers KAHC, the Kenya Tourism Federation, the Mombasa and Coast Tourist Association, the Kenya Tourism Board, the Association of Tour Operators, hotels which are members and international tour operators. KAHC is the lead partner.

⁶¹ Save the Children Alliance, *Children's Rights in Kenya*, op. cit., p. 30.

⁶² *The Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Coast*, a study conducted by UNICEF and the Government of Kenya, 2006.

⁶³ For basic information on child trafficking in Kenya, see "Introduction to concepts and terminologies on trafficking in persons", presentation by Tal Raviv, Nairobi, on 13 August 2008, IOM. Information on child trafficking as a cause of further violence against children is also documented in OMCT's alternative report, op. cit.

The Children Act prohibits torture and cruel treatment or punishment (section 18(1)) but does not provide any definition of torture when it is perpetrated against a child. Penalties for the commission of such acts are very light compared with what international jurisprudence prescribes.⁶⁴ Section 2 of the Children Act details child abuse as including physical, sexual, psychological and mental injury.

In its report, the Kenyan Government states that the Kenya Law Reform Commission is addressing the deficiency of the definition of torture in the Kenyan statutes. However, NGOs note that even though the Children Act is currently under review, conspicuously absent is a proposal to define torture. Courts of law have not developed any specific interpretation of torture when the victim is a child.

4.2 Criminalisation of other acts of violence

In addition to torture, the Children Act protects children from:

- “physical and psychological abuse, neglect and any form of exploitation including sale, trafficking or abduction by any person” (section 13);
- harmful cultural rites, i.e. “female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development” (section 14); and
- “sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials” (section 15).

The same penalties as in the case of torture are applicable when those acts have been perpetrated against a child.

Section 127 of the Children Act also creates an offence of cruelty to and neglect of children by those having parental responsibility, custody, charge or care of any child and provides for a penalty of a fine of up to K Sh 200,000⁶⁵ or imprisonment for a maximum term of five years or both. In cases of other forms of violence, the perpetrators are pursued under ordinary offences not specifically aiming at protecting child victims.

Moreover, the Sexual Offences Act also protects individuals, particularly women and children, from sexual violations. It broadens the range of sexual offences and provides tougher penalties against sexual offences: rape is now punished with a minimum of 10 years to a maximum of life imprisonment, and transmission of HIV/AIDS by a prison term of 15 years minimum. Several offences focus on sexual violence against children such as defilement, promotion of sexual offences against a child, child trafficking, child sex tourism, child prostitution, child pornography and incest, among others.

Corporal punishment is prohibited in schools,⁶⁶ in the penal system as part of sentencing⁶⁷ and as a disciplinary measure in juvenile detention centres⁶⁸ and in care institutions receiving children.⁶⁹

⁶⁴ Section 20 of the Children Act provides that any person responsible for torture, or cruel treatment or punishment is “liable upon summary conviction to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine”.

⁶⁵ Approximately equivalent to US\$ 2,665.

⁶⁶ Children Act and the review of the Education Act.

⁶⁷ Section 191(2) of the Children Act.

However, despite encouraging legal amendments and recent case-law, there is no explicit legal prohibition of corporal punishment at home by parents. The repealed Children and Young Persons Act that allowed persons having care or control of a child to administer reasonable chastisement (section 23) has been replaced by the Children Act that provides for the protection of children from abuse and neglect (section 13). But a doubt still exists whether or not “reasonable” punishment may be used and about what “reasonable” means. Moreover, a 2004 judgement by the Kenyan High Court might be regarded as a landmark case.⁷⁰ The case concerned a man convicted of subjecting his 3-year-old daughter to torture under the Children Act. Although the High Court did not condemn corporal punishment of children in general, it rejected the appellant’s argument that he was a parent disciplining his child as a mitigating factor, affirmed the right of children under the Children Act to be protected from torture and cruel, inhuman or degrading treatment and asserted that a parent’s behaviour under the guise of discipline can constitute such treatment. Until then, ill-treatment was judicially considered a crime that could be committed exclusively by the State and not private individuals. The High Court’s ruling also confirmed the power of the courts to examine the status of corporal punishment in the home.

It is also hoped that once the Domestic Violence (Family Protection) Bill is finally enacted, it will also help protect children from violence at home. The bill recognizes the psychological and emotional effects of violence.

Finally, the use of corporal punishment within employment settings is not regulated and therefore not prohibited.

5. Measures to prevent acts of torture and other cruel, inhuman or degrading treatment against children (article 1(2) of the Convention)

5.1 Legislation and its implementation

As far as legislative measures to prevent acts of torture and other ill-treatment are concerned, sections 2 and 4 of Part 2 of the present report provide information on the legislation protecting children from violence.

Nevertheless, the current state of the legislation does not fully and adequately protect all children from violence. There is a need to further define and legislate on all forms of violence, including in the family environment. In addition, awareness-raising and sensitisation of the population or targeted groups should be developed in order to inform and educate people about a violence-free environment.

5.2 Administration of juvenile justice as a means to prevent torture and other cruel, inhuman or degrading treatment of children

Minimum age for criminal responsibility

⁶⁸ Children Act; previous legislation allowing disciplinary corporal punishment no longer applies even though it has not yet been repealed.

⁶⁹ Children Act and repeal of former regulations.

⁷⁰ *Isaac Mwangi Wachira v. Republic High Court of Kenya (Nakuru)*, criminal application No. 185 of 2004.

OMCT and the NGO coalition are deeply concerned about the legal age for criminal responsibility. Indeed, according to section 14 of the Penal Code, “a person under the age of eight years is not criminally responsible” and from eight years to 12 “is not criminally responsible ... unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission”. Both the Committee on the Rights of the Child in 2001⁷¹ and 2007⁷² and the Human Rights Committee in 2005⁷³ expressly recommended that the State take legislative measures to increase the legal age of criminal responsibility.

Under the current review of the Children Act there is a proposal to revise the age of criminal responsibility upwards from the current 8 years to 12 years.⁷⁴ The justification for this is in order, among other things, to reduce the number of children facing prosecution and thus being criminalised.

Administration of the juvenile justice system

Procedure. According to the Fifth Schedule to the Children Act dealing with Child Offender Rules, once a child is arrested on suspicion of having infringed the law, he or she must be brought before the court as soon as possible. The period of custody must not exceed 24 hours without the leave of the court and the child must be informed of the charges as soon as possible. The parents of the child shall also be promptly informed and no police interview will take place in the absence of the child’s representative. The schedule also requires children to be held separate from adult offenders. The courts have the power to send children to a remand home⁷⁵ during the period of investigation, but limited the period of stay to six months (in case of an offence punishable by death; in case of any other offence the maximum time is three months). However, this provision has since been declared unconstitutional by the Court of Appeal.⁷⁶

The principles protecting children involved in the juvenile justice system are the following:⁷⁷

- the court may grant legal representation to an unrepresented child (section 77(1) of the Children Act);
- legal assistance should be provided by the Government if the child is unable to afford a lawyer;
- the child should be promptly and directly informed of the charges against him/her;
- the child has the right to a resolution of the case without delay;
- the child shall not be compelled to give testimony or confess guilt;
- the child has a right to a free interpreter;

⁷¹ UN Doc. CRC/C/15/Add.160, para. 25(a).

⁷² UN Doc. CRC/C/KEN/CO/2, para. 68(c).

⁷³ UN Doc. CCPR/CO/83/KEN, para. 24.

⁷⁴ Section 66, Children Law Amendment Bill, section 14 of the Penal Code is amended: in subsection (1) by deleting the word “eight” immediately after the words “under the age” and substituting therefor the word “twelve”.

⁷⁵ According to the Child Offender Rules contained in the Fifth Schedule to the Children Act (point 10(3)), in case of pre-trial custody, custodial measures should be carried out in a Children’s Remand Home, except when the child aged over 15 years old proves to be of unruly or depraved character; if so, he could be sent to a borstal institution.

⁷⁶ Criminal appeal No. 239 of 2004, *Kazungu Kasiwa Mkunzo and Swaleh Kambi Chai v. Republic*, where the court stated that a time limit cannot be set for the court to hear a matter and that the requirement is merely that the same be heard and determined within “reasonable time” as provided for under the Constitution of Kenya.

⁷⁷ Concerning Children’s Courts but also all other courts dealing with a case involving a child. See sections 186 and 187 of the Children Act.

- the child has a right to appeal if found guilty (first to the High Court and then to the Court of Appeal);
- the child's privacy shall be respected;
- children with disabilities have a right to special care and dignified treatment;
- the court is required to act in the best interests of the child and to consider his/her welfare, feelings and needs;
- the child has a right to medical assistance.

A child's right to assistance while being arraigned in court and making a plea is not always properly implemented in practice. There are several instances, particularly during the recent school strikes, of pupils being arrested, interrogated and prosecuted in the absence of their parents/guardians/representatives.

Alternative to the formal criminal justice system: Diversion Programme. As far back as 2000, a review of the juvenile justice system in Kenya identified a number of shortcomings, among them the fact that 15-20% of children in conflict with the law actually turn out to have committed minor offences. In January 2001 it was agreed that children who have committed minor offences should be diverted to other alternatives and a diversion framework was therefore developed.⁷⁸ The Diversion Programme is presently being piloted in 14 project areas: Kilimani, Kamukunji, Buru Buru, Kasarani (Nairobi Province); Naivasha, Nakuru, Bondeni and Kitale (Rift Valley Province); Busia and Kakamega (Western Province); Kisumu, Siaya, Kisii, Gucha (Nyanza Province). It is important to note that Kenya has eight provinces and only four have had an opportunity to participate in the Diversion Programme.

The Diversion Programme aims to prevent children in conflict with the law from coming into contact with the formal justice system or from receiving custodial sentences. Diversion is possible at different levels: at the community level (prevention), the police level (arrest), the court level (sentencing) and the institutional level (rehabilitation). At the police level, pilot child diversion desks have been set up in some police stations⁷⁹ and child protection units have been introduced in every police station in the country. Proceedings have been set up in order to safeguard children's rights and to avoid abuse as much as possible. Some of the important aspects of diversion include separation from other inmates, specially trained police officers who do not wear police uniforms, and establishment of diversion committees in which civil society representatives take part, among others. In order for a case to be considered by the diversion committee, the child has to admit guilt for the offence he or she is accused of. The practice of requiring a child to admit guilt before the case is considered excludes groups of children like street children, who are thus unable to benefit from the diversion system. This practice should therefore be regarded with caution in order to ensure that all children can legitimately benefit from the diversion system in full respect of their rights.

There is a need for a judicial review of the diversionary process as it is practised in Kenya. In this respect, a clear statutory directive should define the diversion, clearly set the profile of suitable cases and establish the availability of diversion structures at all levels and, most importantly, establish which children are diverted and to which structures.

⁷⁸ CLAN, concept paper presented to the update workshop for the National Diversion Core Team on the lobbying process for the enactment of the Children Law Amendment Bill 2006 - in particular the concept of diversion, 15 August 2008, Hotel Intercontinental, Nairobi.

⁷⁹ Fourteen police diversion desks existed in May 2006 according to NCCS figures.

Through the ongoing review of the Children Act it is hoped that diversion will be incorporated in law as opposed to being implied, as currently obtains. These efforts are spearheaded by CLAN under the direction of the National Diversion Core Team.⁸⁰ In addition, CLAN prepared a “Draft bill on the diversion concept” which has been incorporated in the draft Children Law Amendment Bill 2006. It is important that proper institutional frameworks to operationalise the concept and generate criteria for diversion be put in place.

Measures. Different measures are provided for as penalties that can be applied to a child offender.⁸¹ Some are custodial measures like placing children in conflict with the law in a charitable children's institution, a rehabilitation school, a borstal institution, an educational institution or a probation hostel. Non-custodial measures also exist: committing the child to the care of a fit person, whether a relative or not; ordering the child (in reality the parents/guardians) to pay a fine, compensation or costs or any or all of them; placing the offender under the care of a qualified counsellor; ordering the child to follow a vocational training programme or perform work under the community service orders.

The Children Act sets limits to the punishment of child offenders. Section 190 of the Act outlaws imprisonment and placement in a detention camp. It also states that a child shall not be sentenced to death, and only children over 10 years old can be sent to a rehabilitation school. However, it is of concern that children can still get life sentences in cases of murder, for example. Section 191(2) of the Children Act additionally prohibits corporal punishment as a method of dealing with child offenders.

Alternative measures to detention. Alternatives to custodial sentences are possible upon the recommendation of a probation officer or children officer. These require the child to be under close supervision or placed with a counsellor or a fit person determined by the court⁸² and also to perform community service.

There is need for the Government of Kenya: (1) to define alternative sanctions taking into account the special needs of children; and (2) to promote their use among the judiciary as an alternative to deprivation of liberty.

6. Education and information on child rights safeguards (article 10 of the Convention)

In general, various sectors in the country have been trained on issues covering human rights. These educational and training activities have been carried out by both Government and NGOs.⁸³ They are aimed at raising awareness on human rights, including child rights protection issues, as well as how to address violations. Torture and other cruel, inhuman or degrading treatment as a topic is thus addressed within this wider ambit. It is important to note that no training specifically based on the Convention has been provided. Officials from the police, the judiciary, the health sector, social work, teaching as well as personnel in institutions, services and facilities working with and for children have benefited from training.

⁸⁰ CLAN presented a memorandum in this regard to the Kenya Law Reform Commission on 27 April 2006.

⁸¹ See section 191 of the Children Act.

⁸² Section 10(6) of the Child Offender Rules in the Fifth Schedule to the Children Act.

⁸³ Organizations involved in training are the ANPPCAN Regional Office, ANPPCAN K, CLAN, The CRADLE, IMLU and KAACR.

7. Treatment of children arrested and deprived of their liberty (article 11 of the Convention)

There is a variety of settings where children can be kept in Kenya. Children sent to places where they cannot leave at will fall under two categories: those in need of care and protection and those in conflict with the law. Children in need of protection include orphans, abandoned children, street children, victims of abuse and children with disabilities.⁸⁴ Those in conflict with the law include juvenile offenders and those on remand awaiting trial.

7.1 Separation in detention according to age, sex and legal grounds for detention

In Kenya, many children are considered and treated as child offenders because they come from deprived socioeconomic backgrounds. Thus, many of them (including street children) are committed to the same settings as children in conflict with the law. Although section 119(2) of the Children Act states that children in need of care and protection should “be placed in separate facilities from a child offenders’ facility”, children are sometimes mixed. In this regard, there is an urgent need to separate the social welfare and criminal justice systems. Similarly, most police stations do not separate children in conflict with the law from those in need of care and protection. This increases the stigmatisation of children in need, such as many street children, who are treated as criminal suspects by the police after arrest.

Even though the current situation regarding the separation of adults and children is much better, on some occasions children are still held in custody with adults, constituting a violation of their rights. According to statistics from the Department of Prisons, in 2007 there were a total of 6,681 children in custody.⁸⁵ Efforts have been made to separate children from adults in police stations, notably through diversion desks/programmes (see above). However, there are cases where children who are temporarily held in custody have reported being subjected to violence from adult inmates in mixed populations. It seems the wardens and police officers are generally aware of these violations but do little to prevent abuse of children by adult inmates. This problem is exacerbated by the fact that often due to lack of vehicles to transport children to court for trial, many end up staying longer in custody, thereby increasing the likelihood of being abused and ill-treated.

7.2 Arrest and excessive use of force

While making an arrest,⁸⁶ police officers are not allowed to use excessive force. Nevertheless, both the Criminal Procedure Code and the Penal Code⁸⁷ have an exception: it is possible to use force when carrying out an arrest on condition that it is reasonable and necessary in the particular circumstances. The respect of human rights, including child rights, and the legality of the arrest depends on its interpretation by the Kenyan courts.⁸⁸

⁸⁴ Section 119(1) of the Children Act defines and gives examples of a child in need of care and protection.

⁸⁵ “The need for diversion – the Prison’s Department perspective”, paper presented by Josphat Ituka, Assistant Commissioner, Prisons Department, on 24 September 2008 at a Multisectoral Forum on Diversion in Nairobi.

⁸⁶ According to the Children Act, children are not arrested but are apprehended.

⁸⁷ Section 21 of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, and section 18 of the Penal Code.

⁸⁸ In one case, *Antony Njue Njeru v. Republic* [2006] EKLK, 14 July 2006, the Court of Appeal of Nairobi decided that a “police officer may use arms against any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person provided that arms shall not be used unless the officer has reasonable ground to believe that he or any other person is in danger of grievous bodily harm or that he cannot otherwise effect the arrest.”

NGOs urge that the interpretation of the words “necessary” and ”reasonable” be limited to restricted cases and should be implemented in compliance with international human rights law, particularly the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Cases of violence against arrested children

In 2004, Kamau, a 17-year-old street boy, was shot and wounded by police officers after he was accused of stealing a cellular phone. As a result of police brutality, he lost the sight in both eyes. However, instead of arresting those responsible for the act and charging them with a crime, the boy was arrested on trumped-up charges of robbery with violence (a non-bailable capital offence under the Constitution of Kenya). The CRADLE offered him legal representation and he was eventually acquitted, but only after undergoing a full trial. What remains disturbing in this case is that the policemen who shot and wounded Kamau have not been charged and the authorities have failed to offer compensation to Kamau for the loss of his eyesight.⁸⁹

In another incident reported by The CRADLE, a 7-year-old boy was accused of having raped a 9-year-old girl. He was locked up at Riruta Satellite Police Station together with hardened criminals, who harassed him. While at the police station he complained of feeling ill, but did not receive medical attention. He was then taken to court on 5 January 2004 but could not be charged with the offence of rape due to his age (under the legal minimum age of criminal responsibility). However, he was remanded at Kabete Remand Home (in Nairobi) because his parents could not afford to pay the bond of K Sh 20,000. This was a clear violation of section 14 of the Penal Code which establishes 8 years as the minimum age of criminal responsibility, and even 12 with respect to boys committing “carnal” offences.

It is hoped that the introduction of child protection units in every police station in the country will help to decrease the use of violence against arrested children by law enforcement officers.

7.3 Places where children are deprived of liberty in Kenya

Rehabilitation schools

According to the Children Act, children above the age of 10 can be sent to a rehabilitation school following a care order issued by a children’s court. Rehabilitation schools are institutions where children can stay, be taken care of and be rehabilitated⁹⁰ and have been established “to provide accommodation and facilities for the care and protection of children” (section 47(1)). Rehabilitation schools also receive children in conflict with the law aged between 10 and 15 years and who have already been convicted.⁹¹

In rehabilitation schools, children are cared for, receive training and can follow an apprenticeship course to learn a vocation such as tailoring or masonry. The maximum time that a child can spend at a rehabilitation school is three years, and they cannot stay beyond the

⁸⁹ Case Trends Monitor, The CRADLE - The Children Foundation, 2004.

⁹⁰ Definition found in *The Children Act, Cap 586, Laws of Kenya*, an executive summary of the Children Act in English and Swahili, published by the Ministry of Home Affairs Children’s Department, German Technical Cooperation and Save the Children–Canada.

⁹¹ Section 191(e) of the Children Act.

age of 18, except by order of the children's court.⁹² Upon release from the rehabilitation school, the child remains under the supervision of a person appointed by the Director of Children's Services for a period of two years.⁹³ A child can also be provided with medical treatment or professional counselling if the child is a drug addict or he or she is suffering from a mental illness. Despite the potential of these institutions, teachers report that their work is often limited by lack of equipment.

According to section 55(1) of the Children Act, children who abscond, or exhibit difficult behaviour, or exercise inappropriate influence can have their sentences increased. Indeed, those children under 16 risk seeing the period of committal increased (to a six-month maximum), whereas boys over 16 can be sent to a borstal institution.

Children's remand homes

Section 50 of the Children Act establishes remand homes where children can be sent on the basis of a court order for a temporary period. Currently Kenya has 10 remand homes for children. The grounds on which a child is sent to these institutions have not been clearly set out. However, the practice shows that remand homes receive both children in need of care and protection and children in conflict with the law. Children in conflict with the law can be sent to remand homes while their cases are being investigated by the police. The period of remand varies from three months for petty crimes to six months for more serious offences.

*Case study: OMCT visit to the Nairobi Remand Home*⁹⁴

Nairobi Children's Remand Home has a capacity of 80 children. The ages of the children are between 8 and 17 years old. It has a mixed population of children in need of care and protection and those in conflict with the law. The administration argued that it was necessary to maintain a mixed population in order to maintain confidentiality of cases. According to the administration children are separated at night according to gender and age group. For years the number of children in need of care has been higher than the number of children in conflict with the law.⁹⁵

The process of receiving children into the remand home requires the administrators to register the children upon their arrival, but it was not clear to OMCT how this is systematically done. The time period spent in the home varies according to the nature of the offence. For a capital offence, it could be two or three years waiting for the end of investigation and trial. Officers working in the home try to promptly settle and investigate the cases involving children in need of care⁹⁶ so that they spend less time in the home.

⁹² Section 53(3) of the Children Act.

⁹³ Section 54(2) of the Children Act.

⁹⁴ Visited during OMCT's mission in Kenya in May 2006.

⁹⁵ In May 2006, there were 41 children in need of care and protection and 24 who were in conflict with the law in Nairobi Remand Home. The reason for the difference between those two figures given by the administration is because of the efficiency of the Diversion Programme thanks to which children in conflict with the law receive the assistance of the court process. During a recent visit to the same remand home by child rights NGOs in April 2009, the manager of the home was reluctant to give the exact numbers of children living in the home, disaggregated by reason for the deprivation of liberty (need of protection or in conflict with the law).

⁹⁶ The Nairobi Remand Home's officers are not competent to investigate cases of children accused of having infringed the law.

Basic education and medical care are provided in the remand home by external and volunteer partners. According to the manager, children living in the Nairobi Remand Home are not subjected to corporal punishment. However, some acts of violence occur, particularly sexual violence by teenage boys against other children. Indeed, girls and boys are mixed during the day and this situation leads to inappropriate contact between boys and girls, with some girls becoming pregnant. When this occurs, the rule is that the staff talks to the perpetrator and then informs the relevant authorities (this could include a magistrate) who decide on the best course of action. What happens in these scenarios after the magistrate is informed remains unclear. Obviously there is a need to examine the complaints mechanisms in remand homes and other institutions and take into account the victims' views, taking also into account the reasons why both children (the victim and the perpetrator) were in the home.

Children's homes

Children's homes provide protection and care to young children. Children are sent to the homes only upon the recommendation or request of authorised officers such as policemen, magistrates, staff of a public or a private hospital, and children's officers. The children's homes represent a temporary place of safety, and after a child's arrival, alternative placements are sought either with relatives or other guardians, in charitable institutions or through adoption.

The Nairobi Children's Home has a capacity of 50 children. While in May 2006 it was clearly overcrowded with 112 children, the current number of children is about 53. This decrease is partly due to the work of the home's administration with the police and the NGOs to facilitate returning children to their homes and encourage diversion.

Children with HIV/AIDS may also access medical care, but during OMCT's visit to the Nairobi Children's Home in May 2006, staff reported that there was a shortage of skilled personnel to address and support their specific needs. There was also some concern expressed during the visit that staff working with children had not been provided with training on children's issues and remuneration was inadequate. Naturally, these factors impacted upon how the children were treated in the home.

Moreover, access to education remains a challenge: neighbouring schools often refuse to accept children from the home and attempts to find external teachers to provide in-house education to children have been fruitless.

Charitable children's institutions

The Children Act also provides for private institutions to give secure accommodation and care to children in need. Children in need of care can be sent to a charitable children's institution in an emergency situation or by way of a care order.

Borstal institutions

The Borstal Institutions Act⁹⁷ provides for borstal institutions receiving youth offenders (boys only) from 15 to 18 years old. Borstal institutions are corrective and reinsertion centres.⁹⁸ Juveniles serving custodial sentences can be sent to a borstal institution instead of a prison.

⁹⁷ Chapter 92 of the Laws of Kenya.

There are currently three borstal institutions in Kenya: Kamiti Youth Corrective Training Centre (Kiambu District, Central Province); Shikutsa Borstal Institution (Kakamega District, Western Province); and Shimo-la-Tewa Borstal Institution (Mombasa District, Coast Province).

It is disconcerting that there are currently no borstal institutions for girls in Kenya.⁹⁹ In many instances they are mixed with boys in other institutions or detained in prison with adult women.

Youth offenders sent to borstal institutions are in detention and subjected to the borstal institutions discipline which includes a restricted diet and even corporal punishment as a disciplinary measure. Indeed, the Prisons Act and the Borstal Institutions Act authorise the use of corporal punishment on boys:¹⁰⁰ up to 10 strokes for children aged 15 and 16 and up to 18 strokes for children aged 17 and 18 years old. In practice, corporal punishment is still extensively used.

7.4 Monitoring and supervision of institutions receiving children

One of the missions of the Kenya National Commission on Human Rights is to monitor places of detention. However, on several occasions commissioners have been denied access to visit certain places such as prisons and police cells. This is of concern especially because it is important to establish whether or not a particular prison or police cells have any children in their custody and if they do, what the condition of these children is.¹⁰¹

Section 68 of the Children Act creates inspection committees that are appointed by the Minister to inspect rehabilitation schools, children's remand homes and charitable children's institutions. Following an inspection, the committee makes recommendations which it presents to the Minister to be implemented by the Director of Children's Services. According to section 24 of the Borstal Institutions Act, the Minister, a judge or a magistrate may visit any borstal institution for inspection.

In addition, local monitoring committees have been created at the level of area advisory councils. They are composed of representatives from NGOs, public officials dealing with children, faith-based organisations and the police, among others. They may receive and lodge complaints on a variety of issues (including child abuse) that occur in an institution. However, this monitoring system has not yet been operationalised and till now there has been no agenda for doing so. The Guidelines for the operation of area advisory council are published and used.¹⁰²

⁹⁸ Section 6 of the Borstal Institutions Act states the legal grounds for a judge or magistrate to send a juvenile to such a centre, i.e. when "it is expedient for his/her reformation that a youthful offender should undergo training in a borstal institution ... instead of dealing with the offender in any other way ... for a period of three years".

⁹⁹ Kirigiti Girls Rehabilitation School is the only girls' rehabilitation school in the country.

¹⁰⁰ Article 55 of the Prisons Act and article 36 of the Borstal Institutions Act. Section 36(3) of the Borstal Institutions Act prohibits corporal punishment of girls.

¹⁰¹ Legal Resources Foundation.

¹⁰² The National Council for Children Services, Guidelines for the Formation and Operation of Area Advisory Councils.

In the past, there have been cases of abuse in child institutions, particularly sexual abuse.¹⁰³ Those cases highlight the urgent need to regularise children institutions, vet the owners prior to their establishment, monitor their running and subject them to random inspections, ensuring that they have adequate complaints and request mechanisms in order to protect children from sex abusers who exploit the gaps in the law to prey on vulnerable children.

8. Investigation of cases where the victim is a child and the child's right to a remedy (articles 12 and 13 of the Convention)

In a few incidents where the perpetrators have been denounced, arrested and charged, an agreement between the victim, the family and the authors of the act can prevent them from being prosecuted. It is important to note that this kind of arrangement is usually not in the best interests of the child and is not to be encouraged for that reason. Ultimately, penalties such as bonds fail to act as a deterrent, for many perpetrators can easily afford the bonds.

The Department of Children Services receives complaints about child victims of abuse and neglect on a daily basis. In order to respond to the problem, the Government has set up a crisis/help desk in police stations and a free phone number to report cases of child abuse. However, it could be argued that setting up a free phone number still fails to capture all those children who are victims of abuse who live in rural areas where even basic telephone services are lacking.¹⁰⁴

In addition, many children fear to report abuse by caregivers and adults because in many ethnic groups in Kenya the child is not viewed as having equal rights to adults. Moreover, many acts of torture and other ill-treatment are committed against children by private persons, including relatives. Denunciations remain rare when the author is a relative of the child victim because of financial and emotional dependency of the victim on the author and possible pressure from family and community members to remain silent.

There is a lack of proper channels for reporting rape and sexual abuse. For example, as explained above, victims can only be examined by one Government doctor. This process does not take into account the delicate nature of sexual abuse. Moreover, police agents receiving victims of sexual violence are often insensitive to such abuses.

Therefore, the Government needs to go further than setting up help desks and phone lines, and carry out proactive and direct awareness-raising campaigns which actively engage civil society and challenge perceptions of childhood in Africa.

9. The child's right to redress (article 14 of the Convention)

In responding to the problem of violence against children, victims can be sent to rehabilitation schools, charitable children's institutions or remand homes, where they receive assistance and protection. However, despite the provisions of the Children Act which provide that child

¹⁰³ For example, sexual abuse of children in a privately run institution, Spring Chicken, in 2002. See Part 1, section 2.3 of this report.

¹⁰⁴ Child Line Kenya, which operates the 116 free telephone lines for children, hopes to reach out to all children in the republic as they acknowledge that a large population is left out.

offenders and children in need of care and protection should be kept separately, they are often mixed in these institutions.

Regarding victims of sexual violence, there is a clear need for additional adequate mechanisms to truly implement the Sexual Offence Act, particularly to end impunity and provide the child victims with effective recovery and remedies.

10. Recommendations

It is recommended that the Government of Kenya:

General implementation of the Convention with respect to children

Capacity-building

- Build the capacity of children, caregivers, law enforcement agencies, teachers and health workers, among others, to understand the right of the child to be protected against torture and help prevent it;
- Train and build capacity among police officers who handle cases of gender violence, especially cases of sexual assault;
- With regard to corporal punishment, build capacity among the various stakeholders with regard to attitude change and alternative forms of discipline;

Policy and legislation

- Adopt a specific law in Kenya that addresses torture and other cruel, inhuman or degrading treatment or punishment which also stipulates stiff penalties for those who torture children;
- Mandate health workers and other service providers to report cases of child maltreatment. This will help curb vice and assist the Government in documenting progress in the fight against torture;

Torture or other cruel, inhuman or degrading treatment or punishment (including corporal punishment)

- Investigate and prosecute all cases of torture and ill-treatment of children;
- Ensure that child victims are provided with appropriate services for care, recovery and reintegration, including psychosocial support for those affected by torture and other cruel, inhuman or degrading experiences, and with adequate legal assistance in this regard;
- Strengthen efforts to train professionals working with and for children;
- Explicitly prohibit corporal punishment in the home and in all public and private alternative care and employment settings;
- Conduct awareness-raising campaigns on children's rights to protection from all forms of violence and promotion of alternative non-violent forms of discipline;
- Improve the effectiveness of the monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions;

Harmful traditional practices

- Strengthen measures regarding female genital mutilation and early marriage and ensure that the prohibition against these practices is strictly enforced;

- Conduct awareness-raising campaigns and sensitization programmes to combat and eradicate these and other traditional practices harmful to the health, survival and development of children, especially girls;

Economic exploitation

- Develop and enact legislation, as well as policies, to protect children from the worst forms of child labour, including measures to address the root causes of this problem;
- Strengthen the capacity of the institutions responsible for the control of and protection against child labour;

Sexual exploitation and trafficking

- Strengthen legislative measures and develop a policy that addresses the sexual exploitation of children;
- Implement appropriate policies and programmes for the prevention, recovery and reintegration of child victims;
- Ensure enforcement of the law to avoid impunity;

Administration of juvenile justice

- Raise the age of criminal responsibility;
- Ensure that all minors, including those who have committed serious offences, are treated under the rules of juvenile justice and not in adult criminal courts;
- Establish children's courts in different places throughout the country;
- Take all necessary measures to ensure that persons under the age of 18 are only deprived of liberty as a last resort and that, if detained, children are separated from adults unless this is not in their best interest;
- Ensure that children in need of care are separated from children in conflict with the law;
- Implement and develop alternative measures to deprivation of liberty, such as diversion, probation, counselling and community service;
- Ensure that persons under 18 years of age in conflict with the law have access to free legal aid as well as to independent and effective complaints mechanisms;
- Make sure that street children are not systematically treated as children in conflict with the law.