

Child rights

- A study of the rights of children in Kenya and violations of the rights of children in Kenya

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Dedication

I wish to dedicate this work to my parents Hassan Ahmed Nuur and Sadiya Mohamed Sheikh Ali and my siblings Mohamed Hassan Ahmed and Hafsa Hassan Ahmed who have provided me with alot of encouragement and love. I dedicate it also to my husband Abdirashid Mohamed Hussein for his moral support and understanding during this study.

I would like to also dedicate it to EHS for providing me with the highest quality of learning and material for my work to whom without it would be difficult to have achieved the level of this accomplishment.

Abstract

This essay is about children's rights in one African country namely Kenya. It includes international documents like the United Nations Convention of the Rights of the Child (CRC) and the regional African Charter on the Rights and Welfare of the Child (ACRWC). The thesis also analyzes the differences between these documents and also the Sustainable development goals are discussed and how they directly touch children's rights.

This thesis also deals with the topic of how children's rights are protected by the Kenyan constitution . It will mention the international laws and conventions that Kenya is obligated to implement and follow in order to guarantee the kenyan children their rights. During the work we will take a look at legislations and policies that Kenya has established to promote and protect the rights of the children in Kenya.

I will analyze some of the violations of the rights of children in Kenya and will be mainly focusing on laws and policies that the country established. The thesis also includes an investigation of which children's rights are violated in Kenya. It consists of statistics and what the laws in Kenya say about these violations.

Keywords: CRC; ACRWC, Kenya, Child Rights, Africa, SDG:s, Violations

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Abbreviations and acronyms

CRC	Convention of the rights of children
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
UDHR	Universal Declaration of Human rights
UN	United Nations
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economical, Social and Cultural Rights
CEDAW	Convention on Eliminating Discrimination Against Women
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
UNICEF	United Nations International Children's Emergency Fund
SDG(s)	Sustainable Development Goals
ILO	International Labor Organization
FGM	Female Genital mutilation

PART ONE

Introduction

“Every child in the world has one thing in common, THEIR RIGHTS”.

Children deserve to be protected, as they are vulnerable and are in need of special protection. They have a right to care and protection from abuse and exploitation by their families, societies and governments. Children's rights are often afflicted and they face different abuses depending on where they live.

The definition of the child is in practice different across the world because of different cultures and perspectives. Generally, it is considered that a child is any person who is a minor or a person who has not reached the full legal age.¹ The Convention on the Rights of Child (CRC) defines a child as anyone below the age of eighteen.

In this work I review the different instruments that generally protect and promote children's rights. I will focus on one African country (Kenya) and find out the laws and policies in place which Kenya follows in order to guarantee rights and protection for the children living in the country.

Firstly, I chose this subject, because of my interest in child rights issues. Secondly I travelled to Kenya to study the laws and the policies the government has implemented in order to protect children. I could observe that children living in Kenya did not enjoy the rights that Western children have and enjoy. During my stay in Kenya I could see many street children and that corporal punishment is still used at school and at home.

¹ Alaimo, Kathleen & Klug, Brian. *Children as equals exploring the rights of the child*. Lanham: University Press of America, 2002 s.25

Background

The Universal Declaration of Human rights was adopted in 1948 by the United Nations general assembly in Paris. It says in Article 1 that

”All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”²

Generally, all rights and freedoms that humans inherited through out the history are classified to three parts which are:

Civil and Political rights

These are the rights for example the right to life, right to nationality, right to integrity, right to own property, right to public assembly and association, freedom of thought and religion, freedom of movement, right to effective legal justice, freedom of expression and opinion, right to vote and take part in the government etc. These are all mentioned in the International Convention on Civil and Political Rights (ICCPR).³

Social, Economic and Cultural rights

These rights are mentioned in the International Convention on Economical, Social and Cultural Rights (ICESCR) for example the right to work, right to education, right to healthcare, right to social security, right to take part in cultural life, right to family life, right to an adequate standard of living etc.⁴

Vulnerable group rights

The group rights the rights that are entitled to special groups of people. These rights can be the rights that are mentioned in the Convention on Eliminating Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of Persons with Disabilities (ICRPD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child (CRC).

² Universal Declaration of Human Rights (UDHR)

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³ <https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>

⁴ <https://www.ohchr.org/documents/professionalinterest/cescr.pdf>

Convention of the rights of children

The 1924 declaration called the Genève declaration was one of the first documents that specifically focused on children's rights.

The Convention of the rights of children is an international treaty that was established in 1989. Its aim is to acknowledge that just as Adults children have rights as individuals. The Convention on the Rights of the Child includes general human rights, special rights for children, and rights for special groups of children. All countries of the world except the United States have ratified the Convention on the Rights of the Child. Governments in all countries should always first think about what is best for the children and listen to what the children have to say in matters that concern them. The Convention on the Rights of the Child contains a wide range of rights that apply to every child in the world.

The convention protects children's civil, political, economical, cultural and social rights, and it is ratified by 190 countries which means that these states have to legally follow and implement the articles of the convention.

The UN Committee on the Rights of the Child monitors and observes how the states parties work with the convention. Every five years, all state parties have to submit a report to the Committee on the Rights of the Child. The Committee then submits recommendations to the state on how they should act or what they need to improve and implement the convention on the rights of the child fully. The countries that have ratified the Convention on the Rights of the Child are compelled to present general reports on how they promote and work with children's rights and their work to implement the Convention on the Rights of the Child.

It is one of the international human rights conventions that is ratified by most countries. Although the CRC is the most ratified document in history, children all over the world don't enjoy the rights mentioned in the conventions due to different situations. Lack of education, poverty, harmful practices, abuse, etc are the reasons children do not fully enjoy their rights.

The convention of the rights of children has four main principles and they are:-

- None discrimination (Article 2)
- The best interest of the child (Article 3)
- survival, development, and protection (Article 6)
- Participation and views of the child (Article 12)⁵

The general objective of the essay

The general objective and purpose of this essay is to describe the laws, conventions and regulations that protect and promote children's rights. It also describes the treaties and agreements of both international and regional documents that protect children.

During the work I will describe the African Charter on the Rights and Welfare of the Child and mention if there are any differences between the CRC and ACRWC or if they are the same.

Another objective of this essay is to focus on one African country and as I mentioned I choose Kenya. I will be studying the conventions, laws and legislations that this country follows in order to guarantee and protect children's rights in the country.. The plan is to also label some of the child rights violations that occur in Kenya.

Research questions

1. What are the different legal frameworks that protect and promote children's rights ?
2. What is the African Charter on the Rights and Welfare of the Child and is it the same as the CRC and find some differences?
3. How are the rights of children in Kenya protected by the government and what are some of children's rights that are violated?

⁵ <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>

Methodology and material

The method used in this study was to gather research from several relevant sources such as books, articles, international conventions. This work will consist of a factual part based on printed and electronic sources. The data used for this study was mainly drawn from international conventions like, United Nations Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Sustainable Development Goals.

The facts and statistics used in the study were obtained from reports published or written by international organisations like UNITED NATIONS, UNICEF, SAVE THE CHILDREN and from the Office of the United Nations High Commissioner. The other materials used were the Constitution of Kenya, the Children Act and other legislations that were used in Kenya regarding promoting and protecting children's rights. I gathered a lot of information and analysed the materials and chose the ones that are relevant for my work.

The books I used for the essay were *Children as equals exploring the rights of the child* written by Alaimo, Kathleen & Klug, Brian. The other book used is called *Liv och lek i Afrika - en antologi om barns situation i fem länder* written by Marianne Enge. Some articles are also used for example from International Journal of Humanities and Social Science and Child Abuse Review.

I was in Kenya in November and December and planned to do field work while I was writing my thesis and had difficulties getting literature because of the Covid pandemic, it has definitely affected my work. It was also difficult to get the opportunity to interview some people and this limited my study. This made it difficult for me to get information while i was in the country about how children's rights are viewed in Kenya and how the laws that exist in the country protect children.

Theory

In liberalism all people are born with rights and have dignity because they are *human*.

The theory I used in my thesis is liberal human rights theory about human rights being universal and since human rights are universal they belong to all societies. This theory is also applicable to african countries in this case Kenya.

Considering children's rights are human rights and children are entitled to rights the same way adults are entitled to rights. All children need to be respected and treated with dignity and equality no matter their background or where they live in the world. The needs of a child are different from adults and that's why children need special rights and protection because of their immaturity and vulnerability. The rights children have are mostly protective rights that safeguards them from violence, neglect, discrimination and exploitation. Their rights may be different from adults for example children have the right to rest, leisure and play or the right to not be separated from parents unless it is in the best interests of the child to do so.

Children are the future of our generation and by guaranteeing them rights and promoting their lives will mean that tomorrow the world will be a good place for the next generation.

In this thesis it is assumed that international conventions and laws are made and are there to protect children against child rights violations. We now have international agreements and instruments which protect children and recognize their rights. But due to limitations, they can apply to certain countries which makes that children all over the world do not enjoy the same rights or fully enjoy their rights the same way.

Disposition

The first part of this work consists of an introduction and a background about human rights especially child rights. In this part the objective of the essay is also presented and the questions that the essay will try to answer are also presented. After that the theory and methodology and the disposition are given.

In part two the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) are presented. Later on The differences between these two documents are compared and the differences between the two documents are highlighted. Lastly at the end of part two the Sustainable Development Goals are mentioned and the goals that especially affect children.

In part three I focused on Kenya and looked at the laws and legislations that exist in order to protect and promote children's rights in kenya. The CRC, ACRWC, Children's Act and the Constitution of Kenya were one of the legislations that were mentioned and discussed in this chapter. At the end of the

In part four of the essay some violations against children's right in Kenya were lifted, for example corporal punishment, child marriage, child labour etc.

In the last part of this paper I analysed the results of the study. Some conclusions and summary were included. summarised.

PART TWO

Children's rights in Africa

The last century children's rights were recognised all over the world including Africa.

All the countries in the African continent have ratified or signed all the documents that are fundamental for children's rights. This means that the states are obligated to recognise the rights mentioned in these documents and ensure that the children in Africa enjoy their rights just like other children around the world. However, children in Africa live in different situations and according to UNICEF a lot of children living in Africa are exposed to harmful practices, poverty, conflicts, different types of abuses and lack of education.⁶

Sustainable development goals

The sustainable development goals were adapted in 2015 by world countries. It is a global agreement and applies to all countries.⁷ It has 17 goals that should be achieved by 2030, its aim is to end poverty, inequality, protect the planet and benefit everyone on the earth including children.

SDG and children

Sustainable development means to make the world a good place for all humans without damaging the planet for the next generation of children. According to UNICEF 1 in 5 children live in poverty and 1 in 8 children face food insecurity, SDG:s can improve the lives of children living all over the world. The global goals are related to the rights of the child under the UN Convention on the Rights of the Child. If the goals are achieved, the situation of children in the world will improve. Sustainable development goals means protecting all children's rights no matter their Some goals that directly and specially affect children are

⁶ <https://www.developafrica.org/blog/childrens-rights-africa>

⁷ <https://www.un.org/sustainabledevelopment/>

Goal 1: No poverty

Due to poverty children can not enjoy their basic rights such as the right to food, to healthcare, clean water, right to education, right to shelter and protection. This goal confirms that no child should have to grow up in poverty and is linked with the UN Convention on the rights of the child in article 6 on the *survival and development of the child* and article 27 on the *right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development*

Goal 2: Zero hunger

Children have the right to food and nutrition. According to UNICEF, almost all deaths of children under the age of five is due to malnutrition.⁸ This goal directly relates to the CRC article 6 on *right to life*. The convention says that the state party has to ensure the survival and development of every child.

Goal 3: Good health and wellbeing

According to UNICEF all children must be able to get and receive good healthcare and get immunization and vaccinations against infectious diseases. The children with disabilities both mental, physical and developmental disabilities should get the support and care they need. This goal is also related to the CRC article 24 on *every child's right to healthcare*.⁹ The aim of this goal is also to prevent child deaths and newborn mortalities and promote healthy development for children all over the world.

Goal 4: Quality education

Education is very important and a key to the SDG;s goals, this global goal 4 focuses on everyone's right to get good education, especially children which is closely linked to the Convention on the Rights of the Child. This is the convention's requirement in article 28 about *every child's right to get education*. It also means that children should get a quality education which then helps to develop and have a good life in the future.¹⁰

⁸ <https://www.unicef.org/media/60231/file>

⁹

<https://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/publikationer/barnkonventionen-pa-engelska.pdf>

¹⁰ <https://www.unicef.org/media/60231/file>

Goal 5: Gender equality

Statistics from UNICEF shows that, 650 million girls and women around the world have been married as children and over 200 million have undergone female genital mutilation¹¹.

The plan of this goal is to make sure that girls and boys should have equal rights and opportunities and no girl or woman should be discriminated against. All gender based violence such as child marriage and violence against girls, such as Female Genital Mutilation and sexual violence against girls must be stopped. This goal is also linked to CRC on Article 2 about *non-discrimination*.¹²

These goals all touch children in different ways and apply to children living all over the world. The goals have an impact on protecting and promoting children's rights all over the world. According to UNICEF, sustainable development goals cannot be accomplished without the realization of children's rights.¹³

African Charter on the Rights and Welfare of the Child

The ACRWC is one of the first treaties in Africa which spotlights the rights of children and promotes and protects children's rights in Africa. African countries have adopted a charter on the rights and welfare of children in 1990 in Addis Ababa, which was adopted by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU). The convention came into force 9 years later in November 1999. Since the Charter was adopted 49 of 55 states in the African Union have ratified the ACRWC, that is 89% of the African Union states.¹⁴

¹¹ <https://www.unicef.org/sdgs>

¹² <https://www.unicef.org/sdgs>

¹³ <https://www.unicef.org/sdgs>

¹⁴

<https://www.developafrica.org/blog/childrens-rights-africahttps://resourcecentre.savethechildren.net/node/18571/pdf/thecharter30infographicsreportenglish.pdf>

Unique features of ACRWC

Unlike the CRC the ACRWC has some unique features which makes it differ in some areas. The concept of establishing a charter for children's rights in Africa came when the CRC was being drafted by the UN and the African countries perceived that the CRC does not include an African perspective on child rights. They sensed that the African children faced different challenges and that they had unique situations which were not covered by the United Nations Convention on the rights of the child. Some challenges that the African states saw was that children did not have access to quality healthcare, large number of African children did not have opportunities to education, they were victim of harmful cultural and traditional practices, children were discriminated against based on their ethnicity, religion, disability, race, gender, many children lived in poverty and in disasters such as floods and conflicts which lead to many refugee children in the African continent.

After the African countries discussed the CRC draft they agreed that the CRC has a western ideology on rights and acknowledged that the CRC did not have a clear definition of who is a child and that the convention did not mention any responsibilities of the child toward its family, society and government.

The basic principles of the ACRWC are

- Non-discrimination (Article 3)
- The best interests of the child (Article 4)
- The life, survival and development of the child (Article 5)
- Child participation (Article 7)
- Providing for the responsibilities that every child has with regard to their society, the state and the international community. (Article 31)¹⁵

¹⁵ <https://au.int/en/documents-45>

Also the definition of a child differs between the CRC and the ACRWC.¹⁶ The Article 1 of the CRC says that

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.¹⁷

The ACRWC is more straightforward when defining a child and says in Article 2 that

A child means every human being below the age of 18 years old.¹⁸

The difference is revealed as that the ACRWC gives protection to all persons under the age of 18 years old with no limitations or conditions, while the CRC gives wide opportunity to states or locals for interpretations of who a child is and the definition of a child.

Furthermore, the CRC does not mention any responsibilities of the child but the ACRWC clearly mentions that children have responsibilities and duties towards their parents/family, society and the state depending on their abilities and capacities such as their age.

This how it is mentioned in article 31 of the ACRWC

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (a)** To work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- (b)** To serve his national community by placing his physical and intellectual abilities at its service;
- (c)** To preserve and strengthen social and national solidarity;
- (d)** To preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue, and consultation, and to contribute to the moral well-being of society;

¹⁶ International Journal of Humanities and Social Science Vol. 5, No. 7(1); July 2015
http://www.ijhssnet.com/journals/Vol_5_No_7_1_July_2015/17.pdf

¹⁷ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁸ <https://au.int/en/documents-45>

- (e) To preserve and strengthen the independence and the integrity of his country;
- (f) To contribute to the best of his abilities at all times and at all levels, to the promotion and achievement of African Unity.¹⁹

These duties like “respecting elders”, “preserve african culture” and “strength the independence of his country” are some of the things mentioned in Article 31 of the ACRWC which are an African perspective on upbringing children and preparing the child for an adult life with duties and responsibilities.

The ACRWC has some other unique features that cover the African culture and the situations that children living in Africa suffer. Such features are that the African Charter on the rights and welfare of the child,

- Defines a child as ‘every human being below the age of 18 years’ irrespective of whether they have attained majority before 18 years.

As mentioned above Article 2 says that A child means every human being below the age of 18 years old. This means that the Charter gives no exceptions regarding this matter.

- Includes ethnicity as a ground for non-discrimination.

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

- Protects the child against apartheid and discrimination.

This is one of the unique things of the ACRWC, Article 26 states that states parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.²⁰

¹⁹ <https://au.int/en/documents-45>

²⁰

https://www.acerwc.africa/wp-content/uploads/2018/06/African_Children_Charter_Website_Version_English_2015.pdf

- Expressly proclaims supremacy over any custom, tradition, cultural or religious practice that is inconsistent with the rights of the child.

Article 1 of the charter expresses that any custom, tradition, cultural or religious practice that is inconsistent with the rights mentioned in the charter are discouraged.

- Protects the child from harmful social and cultural practices.

Article 21 says that state parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular.

- Expressly prohibits child marriage and the use of children in armed conflict.

Article 21 (2) mentions about prohibiting child marriage betrothal (engagement) of boys and girls and makes clear that the minimum age of marriage is 18 years old also that all marriages must be registered officially. Article 22 mentions that it is prohibited to use children in armed conflicts, take part in hostiles and be recruited into armed groups and forces.

- Adopting a more contextualized approach to education for example imposes an obligation on States to ensure that girls who become pregnant before completing their education have an opportunity to continue with their education.

An extremely unique provision in the charter is contained in Article 11(6) and does not appear in the CRC. The provision in this article aims at safeguarding the rights of pregnant girl-child to education. “The charter says girls who become pregnant shall be given the opportunity to finish an interrupted education”.²¹

- Expressly mentions female, gifted and disadvantaged children in the context of the right to education.

Article 11 the governments should also take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

²¹

https://www.acerwc.africa/wp-content/uploads/2018/06/African_Children_Charter_Website_Version_English_2015.pdf

- Imposes an obligation on states to prevent the use of children in all forms of child begging

The African charter in article 29 (b) introduces another unique provision for the first time. It introduces the prohibition of using children in begging which is a unique factor that is not mentioned in the UN Convention on the rights of the child.

- Ground-breaking provisions relating to juvenile justice.

The Charter goes a long way when it comes to juvenile justice in Article 17 has issues concerning children in juvenile justice. The things mentioned are firstly, that children must be separated from adults and that the process must be speeded and they must be assumed innocent until recognized guilty. Every child has the right to special treatment while the trial goes on and the accused child has the right to get information in a language he/she understands. Another advancement of the ACRWC is that Article 17(3) if found guilty the child has the right to reformation, re-integration into his or her family and social rehabilitation.²²

- Elaborates on the responsibilities of the child.

These responsibilities are contained in Article 31 of the charter and the provision that children shall assist the family, superiors and elders makes the charter unique which is absent in the CRC.

- Covers not only child refugees but also internally displaced children.²³

Both the CRC and ACRWC protect refugee children But the ACRWC goes little further and even protects internally displaced children in Article 23 (4) and says that “The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.”²⁴

This means that not only refugee children are protected but also internally displaced children due to conflicts or disasters are also protected the same way as refugee children.

²²https://www.acerwc.africa/wp-content/uploads/2018/06/African_Children_Charter_Website_Version_English_2015.pdf

²³ <https://resourcecentre.savethechildren.net/node/18571/pdf/thecharter30infographicsreportenglish.pdf>

²⁴

https://www.acerwc.africa/wp-content/uploads/2018/06/African_Children_Charter_Website_Version_English_2015.pdf

PART THREE

Kenya

Kenya is a country located in the eastern Africa and got its independence in 1960 from the British colonialism. It is a country where different people with different ethnicities, religion, traditions and culture live together. At least 50 ethnic languages are spoken in the country and it has a population of 54,985,702 people.²⁵ According to UNICEF 67 percent of children born under the age of five are not registered.

Children in Kenya are born into different lives and in different situations, some are born into rich families some are born into poor families and that makes that children living in Kenya the gaps are big between the rich and the poor.²⁶

International legal framework

Kenya ratified many international treaties including the International Covenant on Civil and Political Rights (ICCPR in 01 May 1972) and the International Covenant on Economic, Social and Cultural Rights (ICESCR in 01 May 1972). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW in 09 March 1984), the Convention of the Rights of Children (CRC in 30 July 1990), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT in 22 February 1997), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD in 13 September 2001). Kenya has also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 28 January 2002 and the Convention on the Rights of Persons with Disabilities (CRPD in 19 May 2008).²⁷

Kenya was one of the first African countries to ratify the CRC.²⁸ On September 2000 Kenya has signed the optional protocol to the CRC regarding child prostitution and child pornography. When

²⁵ <https://data.unicef.org/country/ken/>

²⁶ Marianne Enge, *Liv och lek i Afrika - en antologi om barns situation i fem länder*. 1979

²⁷ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN

²⁸ <https://www.unicef.org/kenya/stories/child-rights>

it comes to child labour Kenya ratified the ILO convention on minimum age and on worst forms of child labour.²⁹

Regional legal framework

Kenya ratified the African charter on the rights and the welfare of the child in 2000, and has implemented it as a law.

National framework

The Children Act 2001

The Children Act came into force in 2001, its aim is to strengthen child rights in Kenya. It is supposed to promote and protect the children's rights in Kenya just as it mentioned in the CRC and its principles. Both the Convention of the rights of the child and the African charter on the rights and the welfare of the child are made into national law through the children's act program. The children Act accustomises the CRC and the ACRWC, this was done to make the children's rights to become a national law and get easier to understand. It is divided into 14 main sections that describe the legal situation of children and the institutions that help with the care and protection of children. The legislation includes the children and adolescents act, the guardianship act and the adoption act. Some of the rights that the Act includes and guarantees are

- Survival and best interests of the child
- The right to education
- The right to healthcare
- Rights of disabaled children
- The right to get protection from abuse and exploitation
- Right to parental care
- Protection from child labour and armed conflict
- Protection from harmful cultural rites and traditional practices
- Duties and responsibilities of a child

²⁹

<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=46af4d360&skip=0&query=child%20rights&coi=KEN>

- Right to leisure and recreation
- Right to protection from sexual exploitation
- Right to name and nationality
- Protection from drugs
- Right to privacy
- Right to religious education
- Protection from torture and deprivation of liberty³⁰

The legislation includes the children and adolescents act, the guardianship act and the adoption act.. The rights are dependant on each other including children's rights to protection and participation, the best interest of the child, right to life, survival and development and non-discrimination. The Children Act forwards and addresses the rights that a child is entitled to and the aspect of the parents and the government. The Children Act also mentions just as the ACRWC the responsibilities of the child in article 21.³¹ The Children's Act has main ideas such as child's best interest and welfare must be considered every time a decision concerning children is being taken in all areas. In addition, various other Kenyan laws include provisions aimed at advancing child rights and protecting children from abuse and neglect. These include the prohibition against Female genital mutilation Act, the sexual offences Act, the trafficking in persons Act, the marriage Act, the domestic Violence Act, the basic education and the employment Act.³²

In 2010 Kenya made a major reform in its constitution, it had not been changed since 1969. The new constitution notices fundamental human rights including children's rights. Children's rights were protected in Article 21 on implementation of rights and fundamental freedom in paragraph 3

All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.³³

³⁰ Children Act, 2001

http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%208%20of%202001#part_II

³¹ <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%208%20of%202001>

³² <https://www.humanium.org/en/kenya/>

³³ CONSTITUTION OF KENYA, 2010

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>

In Part 3 on specific application of rights, article 53 of the constitution states that

1. Every child has the right :-

- (a) To a name and nationality from birth;
- (b) To free and compulsory basic education;
- (c) To basic nutrition, shelter and health care;
- (d) To be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
- (e) To parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
- (f) not to be detained, except as a measure of last resort, and when detained, to be held
 - (i) For the shortest appropriate period of time; and
 - (ii) Separate from adults and in conditions that take account of the child's sex and age.

2. A child's best interests are of paramount importance in every matter concerning the child.³⁴

This was the first time children's rights was mentioned in the constitution of Kenya and it meant a great milestone for children because it gave children more protection to children's rights.

The Children's Act has improved and implemented children's rights in Kenya, but there are still problems that need to be addressed. One of the issues is the low age for criminal responsibility and the concluding observations on the combined third to fifth periodic reports of Kenya by the committee on the rights of the child has urged the country to raise the minimum age of criminal responsibility which is 8 years old to an internationally acceptable level, and ensure that all children, by definition persons under 18 years of age and are protected by the juvenile justice system.³⁵ The committee has also mentioned that the children are held together with adults. Some other issues that got addressed are the increasing number of street children and the situations of street children and how they lack protection. The economic exploitation of children that include child labour, drug trafficking, begging and scavenging and there is an increase of using children as domestic workers. Education for children with disabilities is still a problem due to schools not having equipment and specialised schools are not available in some areas and others are not affordable.³⁶

³⁴ CONSTITUTION OF KENYA, 2010

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>

³⁵ <https://www.refworld.org/docid/57aaeb8b4.html>

³⁶ <https://www.refworld.org/docid/57aaeb8b4.html>

PART FOUR

Violations of child rights in Kenya

A Government-led study in 2010 regarding violence against children showed that an estimated 79 percent of boys and 76 percent of girls experienced at least one form of physical, sexual or emotional violence before the age of 18.³⁷

Children living on the streets is very common in Kenya. This is because they do not have other options. Some children are forced to live on the streets because they may be run away from their houses due to violence at home or because they do not have someone to take care of them. In their everyday life on the streets they face a lot of violence both physical and emotional as they are seen as a problem by many. Street children in Kenya are seen as criminals by the police and people working within law enforcement. This leads to that they become victims of violence and discrimination facing beatings, torture and even get killed by the law enforcement officers. Police brutality against street children is common and there are many cases. For example :

On the 6th of January 2004, the police shot a 13-year old boy 6 times for stealing a cellular phone. According to eye witness reports, he was made to sit and kneel before the police killed him.³⁸

The African Charter on the rights refers to protecting and promoting rights of children with disabilities and mention in article 13,

"Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions

³⁷ <https://www.unicef.org/kenya/stories/Child-rights-in-kenya-30-years-on>

³⁸

<https://www.refworld.org/cgi-bin/telex/vtx/rwmain?page=search&docid=46af4d360&skip=0&query=child%20rights&coi=KEN>

which ensure his dignity, promote his self-reliance and active participation in the community.³⁹

Children with disabilities are mentioned in the children's act 2001, section 12 and says that

A disabled child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible.⁴⁰

There is also another act concerning children with disabilities which is called “The Persons with Disabilities Act” that was signed in 2003. This Act is established so that children with disabilities do not get discriminated against and that they get the education and the healthcare they need. Nonetheless children with disabilities go through discrimination in many areas such as at schools, hospitals, judicial system and other institutions around them.

Corporal punishment

In 2001, the Kenyan government banned the use of corporal punishment in Kenyan schools and passed a law giving children protection against all forms of abuse and violence.⁴¹ Although cases are still reported of children who experience corporal punishment and get injured at school.

A child lost an eye following a beating by his teacher.⁴²

Corporal punishment is used to “discipline” the “stubborn children”. Different methods are used such as “smacking, pulling ears, scolding, cuffing, forcing a child to kneel on a hard floor, tapping, forcing a child to stand in the sun, requiring a child to remain motionless, physical exertion, pulling hair, isolating a child in a confined space, burning fingers, washing a child’s mouth with

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https://www.acerwc.africa/wp-content/uploads/2018/06/African_Children_Charter_Website_Version_English_2015.pdf

⁴⁰ <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%208%20of%202001>

⁴¹ Child Abuse Review Vol. **19**: 248–258 (2010) Published online 30 May 2010 in Wiley InterScience

⁴²

<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=46af4d360&skip=0&query=child%20rights&coi=KEN>

soap, denying a child the use of a toilet”.⁴³ At most time’s boys are beaten at the back with a rubber or a wooden cane/stick. Some severe beatings at school are not reported to the police because the parents fear that the teacher may take revenge later. Corporal punishment disobeys with Kenya’s Constituion and even the international law about child protection. Despite the fact that corporal punishment is prohibited by the united nations convention on the rights of the child (CRC), the convention against torture and other cruel, Inhuman, or degrading treatment or punishment, the universal declaration of human rights (UDHR) and the international covenant on civil and political rights (ICCPR) it still occurs in kenyan schools and even at home.

The law to ban corporal punishment does not apply at home and children also get punished at home and there s no existing law that bans corporal punishment at home. According to law physical violence is allowed to be used at home to discipline children as long as it is not exaggerated or is extreme.

Child labour

Kenya ratified the International Labour Organisation conventions regarding child labour for example ILO convention number 138 concerning minimum age for labor. Kenya has also ratified the ILO convention number 182 regarding worst forms of labour.

The minimum age for work in Kenyan law is 16 years old and does not meet the international standard.⁴⁴ Many children are brought from the rural areas to the city to go school but instead they become child workers. Poverty, family violence and poor economy is one of the reasons that lead to children becoming workers and violence against them is common and is a current issue and is not always forwarded in the media.

Criminal responsibility

Minimum age for criminal responsibility is stated in the Kenyan penal code in chapter 4 article 14 which is about immature age. It says that

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<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=46af4d360&skip=0&query=child%20rights&coi=KEN>

⁴⁴ <https://www.refworld.org/topic.50ffbce4c9.50ffbce4d2.5bd05ad12.0....html>

1. A person under the age of eight years is not criminally responsible for any act or omission.
2. A person under the age of twelve years is not criminally responsible for an act or omission, 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.
3. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.⁴⁵

This means that a person older than 8 years is criminally responsible if it is proven that they deliberately committed the crime. Kenya is one of the world's countries with the lowest age for criminal responsibility.

Child marriage and FGM

In Kenya there is a marriage Act that came in 2014 which prohibits child marriage. The marriage act sets 18 years as the minimum age.⁴⁶ However child marriage is common in Kenya according to a study made by UNICEF 2017, 23% of girls in Kenya are married before the age of 18 years and 4 percent are married before the age of 15 years.⁴⁷ Kenya ranks in the 18th place for the highest number of women under 18 years old who are married before the age of 18 years old. Child marriages are most common in the Northern part of the country with 56 percent and the coastal province with 41 percent of child marriages are reported.

Female genital mutilation is a violation of rights of girls and women's rights and is a gender-based violence. In 2011 Kenya has established an act called "Prohibition of Female Genital Mutilation Act", it criminalizes and defines all forms of FGM regardless of age or status.⁴⁸

It also the only major legislation that rules Female Genital Mutilation in Kenya but there is still huge number of girls in Kenya getting mutilated. The Prohibition of Female Genital Mutilation Act also mentions the punishment of persons performing FGM and Article 29 of the Act says that A person who commits an offence under this Act is liable, on conviction, to imprisonment for a term of not less than three years, or to a fine of not less than two hundred thousand shillings, or both.⁴⁹

⁴⁵ Penal code of Kenya

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>

⁴⁶ <https://www.icmec.org/wp-content/uploads/2018/02/ICMEC-Kenya-National-Legislation.pdf>

⁴⁷ <https://atlas.girlsnotbrides.org/map/kenya/>

⁴⁸ <https://www.refworld.org/pdfid/5afae0ba4.pdf>

⁴⁹ PROHIBITION OF FEMALE GENITAL MUTILATION

PART FIVE

Analysis/discussion

In this chapter of this essay I discuss the results of my study. The convention of the rights of children is a very important legal framework that protects children all over the world. It also showed that the CRC is the most ratified document. The African Charter on the rights and the welfare of the child is also a regional treaty that protects and promotes the rights of children in the African continent. This charter puts tests on international law and human rights and means in Article 31 that in African culture and tradition that family is the basics of the society and that everyone has responsibility including children to promote African Unity.

The differences between the ACRWC and CRC were also mentioned in this essay and the things that stood out were the definition of a CHILD was described differently.

When the ACRWC was being drafted it was believed by the African countries that the CRC was missing some important issues that are relevant to African culture. The situation of African children was also different at the time and majority of the children in Africa lived in poverty and other difficult situations. That led to the ACRWC had to have some unique features like it protects the children against apartheid and discrimination, protects the children from harmful social and cultural practices, includes ethnicity as a ground for discrimination and it imposes an obligation on states to prevent the use of children in all forms of child begging. The Charter also mentions and elaborates responsibility of the child, which means that children have responsibilities towards their families, society and the state. The charter also says that the child has to preserve and strengthen African cultural values in his relations with other members of the society. These are the responsibilities every child has depending on their ability, age and capacity.

The sustainable development goals is also an agreement that affects children in different ways and applies to all the children and the countries are obligated to achieve and fulfil these goals. It was chosen in this work because SDG;s are linked, especially children's rights. The Sustainable Development goals and children rights are related and how some goals can improve children's life

<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2032%20of%202011>

better was also explained. According to UNICEF these goals can not be achieved without promoting and realisation of children's rights. These goals can improve children's rights and give them opportunities to live a good life and a future that is bright.

In part three of this essay, I described the laws and conventions which are protecting children in Kenya. It showed that Kenya has ratified almost all treaties both international and regional that protects and promotes children rights. Kenya has ratified most human rights treaties and other relevant legal and policy documents including the ICCPR and ICESCR. In Kenya child rights are highly protected by law. Kenya ratified all the important documents regarding children's rights. The convention of the rights of the child and the African Charter on the rights and the welfare of the child are both signed by the country. Kenya has adopted a children Act 2001 which includes different "Acts" that follow both CRC and ACRWC principles and the rights mentioned in these documents. All the existing laws and policies about children in Kenya follows the principles of best interest of the child, child participation, non-discrimination, survival and development. Some Acts that exists in the country are Female genital mutilation Act, The basic Education Act, Children and Adolescents act, The Guardianship Act and the Adoption Act , The marriage Act and many othe Acts that improve the protection of the children.

The country has also strengthened the rights of children and protection of their rights by law. The constitution was also reformed recently and now children's rights are mentioned and have a section which means higher protection for the kenyan children. After the constitution was reformed and it was the first time children's rights were mentioned in the constitution of Kenya. The government has also made some policies, legislations and laws concerning children rights and laws that protect them from violence.

In Part four some violations of children's rights in Kenya was highlighted. Violence against children is common and as mentioned above it showed that an estimated 79 percent of boys and 76 percent of girls experienced at least one form of physical, sexual or emotional violence before the age of 18.

After all the work done by the government there is still a large number of children in the country that do not enjoy their rights or get protection from violence.

These violations included violence against street children and the issues faced by these children as they are seen as criminals. The violence against street children is not always reported or talked

about in the media because most of these violations are made by the police. If the cases are not reported it means that there is no way to track the cases or know the actual number of violence against street children. Street children often die as a result of the violence or get detained or get beaten. Street children are also at risk for exploitation, street children in most cases get offered food and clothes and they get sexually exploited.

Another violation of children rights in Kenya was corporal punishment. Corporal punishment is also violation against human rights specially childrens rights. As mentioned corporal punishment at schools was prohibited by law and that there was no laws that apply to corporal punishment at home. Some severe beatings at school are not reported to the police because the parents fear that the teacher may take revenge later

Also the criminal responsibility in the country is low and Kenya is one of the world's countries with the lowest age for criminal responsibility which is 8 years old.

Some other violations against childrens rights that were noticed were child labour, violatiosn agaisnt children with disabilities, Female genetal mutilation and child mariages.

Summary and conclusions

This study has tried to explain the laws, agreements and policies that ensure children rights are protected, especially children living in Africa.

The question asked in the beginning of the thesis were

1. What are the different legal frameworks that protect and promote children's rights ?

As mentioned in the essay there is a convention (CRC), that is an international treaty and protects children globally. The African charter ACRWC was also pointed out as a regional framework and charter that Sustainable development goals was also mentioned because some goals directly affect children rights in different ways and its aim is also to protect children and promote their wellbeing and development.

2. What is the African Charter on the Rights and Welfare of the Child and is it the same as the CRC?

In this thesis it was shown that these documents differed considerably in many areas and had different perspectives regarding definition of a child and some other issues.

3. Are the rights of children in Kenya protected by the government and what rights are violated?

Children in Kenya have had constitutional protection since 2011 and the country has some other legislations and policies that protect rights. However, some violations, like violence against children in different areas were named in the study.

To sum up everything that has been stated, there are various laws and conventions that protect children's rights in Africa and specifically Kenya. The problem is that these laws and agreements are on paper and the real life situation for a lot of children in Kenya is different. We can say that the country has constituted different legislations and frameworks that recognise children's rights which is positive and a positive progress. In practice it is taking a long time and the country has difficulties when implementing these laws at all levels. I have come to the conclusion that Kenya most importantly is going forward with its child rights policies and the development is continuing although there is still a lot of work to be done in order to ensure that the Kenyan children are fully enjoying their rights.

The issues concerning corporal punishment at school and at home, minimum age for criminal responsibility and other issues concerning children would hopefully be solved soon as they are the violations of children's rights in Kenya that stand out.

Kenya is a developing country and has come a long way regarding children's rights and hopefully the work continues so that Kenya becomes a country where children's rights are fully protected. It would be interesting to follow up the improvements and see how children's rights are viewed and protected in 30 years from now.

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