



JOINT STAKEHOLDERS' SUBMISSION ON VIOLENCE AGAINST CHILDREN BY THE CHILD RIGHTS CLUSTER OF THE KENYA STAKEHOLDERS' COALITION ON THE UNIVERSAL PERIODIC REVIEW
OCTOBER 2024



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Introduction

1. This submission by the Child Rights Cluster of the Kenya Stakeholders Coalition on the Universal Periodic Review in Kenya provides an overview of the progress, challenges, and recommendations regarding child rights in Kenya since the previous Universal Periodic Review (UPR) cycle. This submission is a joint effort of 12 organizations in Kenya. The submission is informed by data collected from diverse stakeholders, including children, families, civil society organizations and service providers across Kenya. It reflects the coalition's concerns about the realization of children's rights, in alignment with international human rights commitments and the Sustainable Development Goals (SDGs).
2. Kenya has made commendable progress in certain areas, such as the enactment of laws to improve child protection, including the Children Act, 2022. The government's efforts to provide social safety nets for vulnerable families and initiatives to improve birth registration are also acknowledged. However, critical challenges continue to hinder the realization of child rights for all, especially marginalized groups such as children in street situations and children in contact with the law.
3. **This submission focuses on 5 key issues:**
 - i. **Policy and Legislative Gaps in addressing the prevalence of Female Genital Mutilation in Kenya**
 - ii. **Limited policy framework and evidence towards addressing child marriage in Kenya**
 - iii. **High prevalence of child sexual abuse and exploitation**
 - iv. **High prevalence of child labour**
 - v. **High prevalence of child trafficking**
4. We acknowledge the efforts made by the Government of Kenya in improving the situation of children, particularly in the area of child protection. However, significant gaps remain, and urgent action is needed to ensure that all children, especially the most vulnerable, fully enjoy their rights. This submission includes a series of recommendations aimed at addressing these gaps and promoting comprehensive measures to enhance the rights and welfare of children in Kenya.
5. We urge the Government of Kenya to prioritize the implementation of policies aimed at strengthening the child protection system, address systemic barriers to education, and ensure that children's voices are heard and included in decision-making processes that affect their lives.



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Issue 1: Policy and Legislative Gaps in addressing the prevalence of Female Genital Mutilation in Kenya

Summary of the issue

6. Figures obtained from KDHS surveys indicate that whereas national prevalence of FGM/C, has dropped from 38% in 1998 to 21% in 2014 and 15% in 2022, there is very high prevalence in some Counties notably Wajir 97%, Mandera 96%, Marsabit 83%, Garissa 83%, Samburu 76%, Isiolo 66%, Tana River 60%, Narok 51%, and West Pokot 44%.¹
7. Challenges in enforcement and implementation of the Prohibition of Female Genital Mutilation Act (2011)² and the National Policy for the Eradication of Female Genital Mutilation³ has partially contributed to the continued prevalence of FGM in some parts of Kenya. Social, economic, traditional and customary practices are some of the underlying issues experienced. Although awareness raising and increased dialogue are thought to have reduced the prevalence of FGM, it is also believed that these efforts have unintentionally contributed to hidden aspects of FGM. These include some families and communities performing FGM in secret, at night, across a national border, outside the 'circumcision season, or by cutting girls at a younger age. (Refer to Annex 1: Review of the Prohibition of Female Genital Mutilation (FGM) Act of 2011 – Draft Report).
8. In 2017, a medical practitioner petitioned the Constitutional Court of Kenya for declarations that the government through the Prohibition of FGM Act of 2011 violated the rights of women to choose to practice FGM, which, the petitioner considered to be a particular aspect of their culture. In 2021, the Constitutional court dismissed the petition in favour of the Government of Kenya but made recommendations that the Attorney General should forward proposals to the National Assembly to consider amendments to section 19 of the Prohibition of FGM Act with a view to prohibiting all harmful practices of FGM and sealing the lacunas in the law as set out in the judgment.⁴ The increasing concerns lead to questions on whether the Prohibition of Female Genital Mutilation Act of 2011 is working as it was intended to over the last 10 years, and whether there is a need for amendments to the Act to reflect the changing operational environment.

Summary of the existing framework

9. Kenya has criminalized FGM through the Constitution of Kenya (2010), the Prohibition of Female Genital Mutilation Act (2011) and the Children Act (2022). Kenya is also a signatory to several international human rights instruments such as the Committee on the

¹ 2022 Kenya Demographic Health Survey

² https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProhibitionofFemaleGenitalMutilationAct_No32of2011.pdf

³ <https://gender.go.ke/wp-content/uploads/2019/10/NATIONAL-POLICY-FOR-THE-ERADICATION-OF-FEMALE-GENITAL-MUTILATION-.pdf>

⁴ <https://kenyalaw.org/caselaw/cases/view/209223/>



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Elimination of all forms of Discrimination against women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), and the International Convention on Civil and Political Rights (ICCPR). In Africa, Kenya has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and the African Convention on the Rights and Welfare of the Child (ACRWC).

Progress made in Kenya since the last UPR

10. During the 3rd Cycle review, in 2020, Kenya accepted the following nineteen (19) recommendations made by peer states towards ending female genital mutilation: 142.95, 142.96, 142.97, 142.98, 142.99 and 142.100, 142.101:, 142.102:, 142.103:, 142.104:, 142.105:, 142.107:, 142.108:, 142.110:, 142.111:, 142.112:, 142.114:, 142.115:, 142.116:, and 142.117: towards making an effort to implement existing legislation to end female genital mutilation.⁵
11. We believe that these recommendations have been partially implemented. Examples of positive developments include the establishment of 22 County Anti FGM Steering Committees, development of a manual for training Anti-FGM champions (2022), publishing of manual for the eradication of medicalization of FGM (2021), male engagement guidelines launched and published in 2022, tool kit for journalists and editors for reporting on FGM developed and launched in 2021, launch of Youth Anti FGM networks in all the 22 FGM hotspot counties, launch of cross border Anti FGM action plan which targets Kenya, Uganda, Tanzania, Somalia and Ethiopia in 2021, the Alale Anti-FGM declaration among the Pokot elders of Kenya and Uganda (2021) and Kisima declaration of the Samburu Elders to end FGM (2021).⁶
12. On county specific action plans and policies, Tharaka Nithi County launched a GBV Policy in 2022; Garissa County launched a Gender Policy in April, 2022 while Narok, Garissa, Wajir, Migori, Kisii and Tana River counties adopted costed action plans to end FGM.⁷

Recommendations

13. The Government should Amend the Prohibition of FGM Act 2011 with a view to prohibiting all harmful practices of FGM and enforce the judgment in the Constitutional Petition 244 of 2019.

⁵ <https://undocs.org/A/HRC/44/9>

⁶ Report of the Auditor General on the Anti-Female Genital Mutilation Board for the Year ended 30th June 2022. http://www.parliament.go.ke/sites/default/files/2023-04/Report%20of%20the%20Auditor%20-%20General%20on%20Anti-%20Female%20Genital%20Mutilation%20Board%20for%20the%20Year%20Ended%2030%20June%20C%202022_compressed.pdf

⁷ Report of the Auditor General on the Anti-Female Genital Mutilation Board for the Year ended 30th June 2022. http://www.parliament.go.ke/sites/default/files/2023-04/Report%20of%20the%20Auditor%20-%20General%20on%20Anti-%20Female%20Genital%20Mutilation%20Board%20for%20the%20Year%20Ended%2030%20June%20C%202022_compressed.pdf



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14. The Government should Support hotspot counties to develop policies and strategies on ending FGM in West Pokot, Bungoma, Baringo, Elgeyo Marakwet, Bomet, Taita Taveta, Embu, Meru and Laikipia.

Issue 2: Limited policy framework and evidence towards addressing child marriage in Kenya

Summary of the issue

15. Kenya is home to over 4 million Child Brides. 1 in 4 young women were married or in union in childhood. 1.1 million were married or in union before the age of 15 while 4.2 million were married or in union before the age of 18 years.⁸ This situation is compounded by lack of updated data on child marriage as well as a specific policy framework targeting child marriage. Regarding data, there are no updated national and county specific statistics on child marriage when compared to other harmful cultural practices such as FGM. On policy gaps, the Government of Kenya has yet to fulfil its commitment of finalizing the development and implementation of a draft national action plan on ending child marriage in Kenya made during the 3rd Cycle in 2020 (recommendations Nos 142.33:Canada and 142.34:Norway).⁹
16. This creates a situation where child marriage flourishes unchecked. The consequences of child marriage are devastating. Girls forced into marriage are more likely to experience teenage pregnancy, drop out of school, and face increased violence, HIV infection, and maternal and child mortality. Their health suffers from reproductive complications, and their economic opportunities are severely limited, hindering both their own well-being and national development.

Summary of the existing framework

17. Kenya has criminalized child marriage through the Constitution of Kenya (2010), the Sexual Offences Act, The Children Act, 2022 and The Marriage Act, 2014. The Children Act, 2022 Section 23. Provides that “(1) No person shall subject a child to— (c) child marriage; (g) any other cultural or religious rite, custom or practice that is likely to negatively affect the child's life, health, social wellbeing, dignity, physical, emotional or psychological development.”
18. The Marriage Act, 2014. Section 2 defines a child as “an individual who has not attained the age of eighteen years”; Section 4 provides that “A person shall not marry unless that person has attained the age of eighteen years”. Section 87. “Any person who marries a person who is below the minimum age commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or to both.”

⁸ UNICEF: Child marriage in Eastern and Southern Africa. A statistical overview and reflections on ending the practice. <https://data.unicef.org/topic/child-protection/child-marriage/>

⁹ Report of the Working Group on the Universal Periodic Review, Kenya 15 June–3 July 2020: <https://undocs.org/A/HRC/44/9>.



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Progress made in Kenya since the last UPR

19. During the 3rd UPR cycle in 2020, Kenya accepted two recommendations regarding the finalization and implementation of the draft national action plan on ending child marriage in Kenya.¹⁰ These were recommendations 142.33 made by Canada and 142.34 made by Norway. This recommendation has not been implemented. Other recommendations that were accepted by Kenya relevant to child marriage include:¹¹ 142.35; 142.54; 142.97; 142.107; 142.115; and 142.117.
20. The only positive developments towards addressing child marriage has been the passage of The Children Act, 2022. Section 23 of this Act criminalizes child marriage and also identifies it as a harmful cultural practice. *“No person shall subject a child to— (c) child marriage; (g) any other cultural or religious rite, custom or practice that is likely to negatively affect the child's life, health, social wellbeing, dignity, physical, emotional or psychological development”*.¹²

Recommendations

21. The government should Develop and implement a National Action Plan towards ending Child Marriage in Kenya as per the 3rd Cycle UPR recommendations (Nos 142.33 142.34 142.35).
22. The government should Enhance periodic research to address county specific prevalence and drivers of child marriage and create a central depository of information on the same.

Issue 3: High prevalence of child sexual abuse and exploitation

Summary of the issue

23. In Kenya, violence against children remains to be a serious problem, with nearly half of females (45.9%) and more than half of males (56.1%) experiencing childhood violence. Nearly one in six females experienced childhood sexual violence, with a lower percentage of males affected¹³ According to the 2019 national violence against children survey report, 62.6 percent of females experienced multiple incidences of sexual violence in childhood. Violence against Children is a serious public health, human rights and social problem. Violence has severe consequences for children's health and well-being, significantly impacting their physical health, social mobility, success and mental health.
24. Child sexual exploitation continues to be an issue both offline and online. In recent years, the Country has experienced a surge in sexual exploitation of children in entertainment and transport industries, especially the long-distance truck transport corridors. According to the 2023 ECPAT Sexual Exploitation report, sexual exploitation is facilitated by

¹⁰ Report of the Working Group on the Universal Periodic Review, Kenya 15 June–3 July 2020:<https://undocs.org/A/HRC/44/9>

¹¹ Report of the Working Group on the Universal Periodic Review, Kenya 15 June–3 July 2020:<https://undocs.org/A/HRC/44/9>

¹² https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf

¹³ <https://www.unicef.org/kenya/reports/The-2019-Violence-Against-Children-Survey>



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intermediaries or middle persons such as family members, teachers, transporter sector actors (motorbike riders and public transport drivers and others in the transport industry), pimps, traffickers and organized crime syndicates. Police officers can also serve as intermediaries or in covering up the sexual exploitation of children (by receiving a 'protection fee' from the exploiters).

25. According to the disrupting harm report 2021, among children who were subjected to OCSEA through social media, Facebook and WhatsApp were the most common platforms where this occurred¹⁴. The survey suggested that 67% of 12- to 17-year-olds in Kenya are internet users and thus potentially exposed to online exploitation and abuse. The survey further depicted that ways in which children and young people are subjected to online sexual exploitation and abuse are complex and nuanced and tend to involve interactions of online and in-person harm that see technology misused at different points during the continuum of abuse. The internet seems to expand offenders' resources.
26. Children and young people are deceived into sharing self-generated sexual images that are then used to coerce them into in-person sexual abuse. Digital technology can also be misused as a tool to record and share in-person sexual exploitation and abuse¹⁵.
27. The survey (disrupting harm report 2021) found that the law enforcement, justice and social support systems have inadequate awareness, capacity and resources to respond to cases of OCSEA. Findings from the capacity assessments of law enforcement and access to justice interviews revealed that often the police and prosecutors have difficulty knowing how to recognize, investigate and prosecute OCSEA cases. This reflects both gaps in legislation and a lack of access to training on these issues¹⁶.
28. Inadequate resourcing in the national budget affects implementation of the existing laws and policies. For example, the national budget for the period 2023/24 had not allocated resources towards implementation of the National Plan of Action, to tackle online child sexual exploitation and abuse (OCSEA) 2022-26. The National Plan of Action against sexual exploitation of Children 2018-2022 on the other hand was hardly implemented due to inadequate resourcing (human and financial).
29. On the timely response and justice front, SEC cases, once reported, are faced with delayed adjudication. There is a need to establish Children Courts as provided for in section 90 of the Children Act 2022 to help in prioritization of cases and fast tracking of justice to children. The Child Justice Strategy 2023-2030¹⁷ confirms that; though Magistrates' Courts nationwide have been gazetted to handle children matters, there are only 2 children's

¹⁴ <https://www.end-violence.org/disrupting-harm>

¹⁵ https://ecpat.org/wp-content/uploads/2023/01/DH_Survivors_FINAL_online.pdf

¹⁶ <https://ecpat.org/wp-content/uploads/2022/03/DH-Kenya-Report.pdf>

¹⁷ <https://www.judiciary.go.ke/wp-content/uploads/2023/07/Child-justice-Strategy.pdf>



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courts, in Nairobi, Milimani and Mombasa, Tononoka Children's Courts, gazetted and specifically set aside for children matters.

Summary of the existing framework

30. Kenya has established various comprehensive legal and policy frameworks to address child labour, sexual exploitation, and child trafficking, emphasizing children's rights and protection.

Legal frameworks

31. The Children Act (2022) is a comprehensive piece of legislation addressing child protection, welfare, and rights. Under part II, sections (18) & (22), the act criminalizes child labour, sexual exploitation, and trafficking, and has further established mechanisms such as child protection units and welfare committees to safeguard children's rights.¹⁸
32. The Sexual Offences Act (2006) defines and penalizes various forms of sexual offenses, including those against children under sections (8), (9), (11), (12), (13), (14), (15) & (16). The act mandates reporting and protection measures for victims of sexual exploitation.¹⁹

Policy frameworks

33. The National Plan of Action for Children in Kenya (2015-2022) under chapter 3; Sub-section 3.3 (17, 18, 19, 20 & 27) outlines strategies to improve child welfare and protection, including specific measures to combat child labour, sexual exploitation, and trafficking.²⁰

Statistics and Examples

34. Sexual exploitation is a pressing concern in Kenya, particularly in urban areas and coastal regions like Mombasa, where tourism-related exploitation is prevalent. UNICEF reports highlight that around one in two young adults in Kenya experienced violence as a child, according to the 2019 Violence Against Children Survey, implemented by the Ministry of Labour and Social Protection. This found that 46 per cent of 18 to 24-year-old women faced at least one type of violence – physical, emotional or sexual – during their childhood, as well as 52 per cent of young men in the same age group. The prevalence of child marriage among girls stands at 23 per cent.²¹

Progress made in Kenya since the last UPR

35. Kenya has developed and launched a National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse in Kenya 2022–2026. It aims to guide government, industry, policymakers, civil society organizations and communities to take the right measures to ensure the internet is safe for children.

¹⁸ https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf

¹⁹ https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/SexualOffencesAct_No3of2006.pdf

²⁰ <https://extranet.who.int/mindbank/item/7343>

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<https://www.unicef.org/kenya/media/1526/file/National%20Prevention%20&%20Response%20Plan%20on%20VAC.pdf>



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36. The National Plan of Action Against Sexual Exploitation of Children in Kenya 2018 - 2022 provides a roadmap of activities to be implemented by state and non-state actors in Kenya in the period 2018-2022 to prevent and protect children from sexual exploitation.
37. Kenya's Journey Towards Protecting Children: A Decade of Change (2010-2019). The comparative data provided valuable insights into the progress achieved over the years, shedding light on areas that required additional attention. The observed decreases in the prevalence of VAC, along with improvements in disclosure. The research sought to gather insights that could be used to refine existing policies, interventions, and strategies for VAC prevention.

Recommendations

38. The government should Invest in the capacity building of police officers, prosecutors, judges/magistrates, lawyers, courtroom staff, child protection officers and frontline workers on sexual exploitation of children including online exploitation and abuse to enhance their capacity for effective prevention and response within their respective professions.
39. The Chief Justice to fast-track establishment of children courts in the remaining 45 Counties as provided for in Section 90 of the Children Act 2022, as a means to expedite access to justice for all children.
40. The government should Enact mandatory budget allocation to support implementation of the relevant laws and policies in prevention of sexual exploitation and abuse of children.

Issue 4: High prevalence of child labour

Summary of the issue

41. Despite Kenya enacting a number of laws and regulations governing child labour, such as ratification of ILO Conventions 138 and 182 (ILO/IPEC, 2002a), the Constitution 2010, Children Act (2022), Sexual Offences Act (2006), Employment Act (2007) and Counter Trafficking in Persons Act (2010), inconsistencies between these laws and regulations regarding children involvement in employment highlights the gap in Kenya's legal framework to adequately protect children from the worst forms of labor which is a major contributor of weak enforcement of child labour legislations²².
42. Data from the Kenya National Bureau of Statistics (KNBS) shows that 8.5 percent of children, or 1.3 million, are engaged in child labour. The highest child labour rates, at more than 30 percent, are in the arid and semi-arid land (ASAL) counties. Children also engage in, among other activities for financial gain such as prostitution and drug trafficking making them suffer from psychological trauma and degrade their morals²³.

²² https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2022/Kenya.pdf

²³ <https://www.unicef.org/kenya/stories/lets-end-child-labour-kenya#:~:text=And%20in%20almost%20every%20case,are%20engaged%20in%20child%20labour.>



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43. Kenya lacks updated and comprehensive data on all facets of child labour. A National Children Database has been established under the NCCS. However, the database does not have disaggregated data on child labour in terms of magnitude, structure, distribution and different forms. At the national level, where child labour surveys have been undertaken, they have been piecemeal and infrequent.
44. Lack of up-to-date child labour data has led to conflicting estimates, inconsistent intervention measures and poor targeting. The data and information gaps have hampered government and stakeholders from taking concrete actions to bring assistance to victims of child labour, and/or enforcement measures. It has also inhibited development and implementation of effective capacity building, lobbying and advocacy programs, inclusive of formulation and implementation of robust actions towards sustainable reductions in all forms of child labour.

Weak Policy, Institutional and Coordination Mechanism

45. The Ministry of Labour and Social Protection under its National Steering Committee on Child Labour manages and coordinates eradication of child labour activities. The committee, however, faces challenges in executing its mandate. One of the challenges is inadequate human and financial resources within its secretariat. The Child Labour Division has only two technical officers who also undertake other functions within the Directorate of Labour and the larger Ministry of Labour and Social Protection. The low staffing levels within the Child Labour Division means that the secretariat cannot effectively develop agenda, organize committee meetings, implement resolutions and make regular follow-ups. The child Labour division have a limited budgetary allocation. This makes it difficult for the Division to facilitate the committee meetings, implement committee resolutions and undertake follow-on actions. At the sub national levels, key coordinating committees and the labor inspectorate lack adequate resources to carry out their mandate. This is coupled with inadequate number of labor inspectors, currently one per county, to effectively address child labour.
46. Even though a number of state and non-state actors are involved in activities towards elimination of child labour, the stakeholder efforts are not well harnessed and coordinated. This leads to duplication of efforts and thin spreading of resources. It also introduces intervention fatigue on the target beneficiaries and limits exploitation of synergy.

Summary of the existing framework

47. Kenya has established various comprehensive legal and policy frameworks to address child labour, sexual exploitation, and child trafficking, emphasizing children's rights and protection.



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Legal frameworks

48. The Constitution of Kenya (2010) under Article 53 1(d) provides for children's rights to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.
49. Building on this provision, The Employment Act (2007) Chapter 226, Part VII (protection of children) under sections (53), (54), (55), (56), (57) & (58) prohibits the employment of children under 13 years for any work and restricts the employment of those under 18 in hazardous work environments. This act aims to ensure that children are not exploited in the workforce and that their health and safety are protected.²⁴
50. The Children Act (2022) is a comprehensive piece of legislation addressing child protection, welfare, and rights. Under part II, sections (18) & (22), the act criminalizes child labour, sexual exploitation, and trafficking, and has further established mechanisms such as child protection units and welfare committees to safeguard children's rights.²⁵

Policy frameworks

51. The National Plan of Action for Children in Kenya (2015-2022) under chapter 3; Sub-section 3.3 (17, 18, 19, 20 & 27) outlines strategies to improve child welfare and protection, including specific measures to combat child labour, sexual exploitation, and trafficking.²⁶
52. The National Policy on the Elimination of Child Labour (2016) under chapter four focuses on policies and strategies that are aimed at prevention, identification, withdrawal, rehabilitation and reintegration of children involved in all forms of child labour through establishment of child labour free zones, legislative enforcement, education initiatives, and community awareness campaigns, Step Up Surveillance and Action on Child Trafficking, and Strengthening Policy, Institutional and Coordination Mechanism to combat child labour.²⁷

Statistics and Examples

53. Child labour remains a significant issue in Kenya with data from the Kenya National Bureau of Statistics (KNBS) indicates that 8.5 percent of children, or 1.3 million children are engaged in child labor. The highest child labor rates, at more than 30 percent, are in the Arid and Semi-Arid (ASAL) counties such as Samburu, Wajir, Kajiado, Mandera and Turkana counties being in the lead. These children are often found working in agriculture,

²⁴ <https://webapps.ilo.org/dyn/travail/docs/505/Employment%20Act%202007.pdf>

²⁵ https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf

²⁶ <https://extranet.who.int/mindbank/item/7343>

²⁷

<https://repository.kippra.or.ke/bitstream/handle/123456789/607/Sessional%20paper%20no%201%20of%202015%20On%20the%20national%20policy%20on%20elimination%20of%20child%20labour.pdf?sequence=1&isAllowed=y>



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domestic work, and informal service and industry sectors. Initiatives like the Free Primary Education program aim to reduce child labour by ensuring that children stay in school.²⁸

54. Similarly, reports from the U.S. department of labour, 2022 findings on worst forms of child labour in Kenya report show that Kenya has made minimal advancements as it continues practices that delays advancement to eliminate child labor. Children in Kenya are subjected to the worst forms of child labor, including in commercial sexual exploitation, sometimes as a result of human trafficking, and forced domestic service as other children perform dangerous tasks in agriculture. Key coordinating committees related to the elimination of child labor lack adequate resources to carry out their mandates, and the labor inspectorate does not have sufficient financial and human resources, affecting its ability to ensure that child labor laws are enforced.²⁹

Progress made in Kenya since the last UPR

55. The 3rd cycle report made the following recommendations: *143.16. 142.81. 142.60. 142.71. 142.78*, largely recommending stepping up efforts to combat and eliminate child labour by enforcing compulsory education. The state has made efforts towards implementation of free primary education. and developing the draft National Plan Action Plan on eliminating child Labour which is currently under development The state, through partnerships with civil society organizations has supported the establishment of County Child Labour Committees in 4 Counties namely Busia with support of Terre des Hommes Netherlands and Bungoma, Kajiado, Mombasa with support of ILO. This leaves a strategic and operation coordination gap in the other 43 Counties as far as efforts to eliminate Child Labour are concerned.

Recommendations

56. The government should Employ more labour inspectors to reinforce compliance with labour laws, conduct regular inspections and promote child labour free formal and informal sectors. The labour inspectors should collaborate closely with the police, chiefs, Assistant Chiefs and Village Elders to combat child labour in Kenya.
57. The government should Invest in building the capacity of state officials in child labour to complement labour inspectors in addressing child labour both in formal and informal sectors.
58. The government should Establish operational County Child labour committees in the remaining 43 Counties to help facilitate, coordinate and implement the process of eliminating child labour at county level.
59. The government should Establish and operationalize County Advisory Committees in all 47 Counties.

²⁸ <https://statistics.knbs.or.ke/nada/index.php/catalog/22/related-materials>

²⁹ https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2022/Kenya.pdf



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60. The government should Enforce strong regulations and oversight of the informal sector including holding fraudulent labour recruiters criminally accountable, and training inspectors to report potential violations to the appropriate officials for prosecution.

Issue 5: High prevalence of child trafficking

Summary of the issue

61. The State has made the following efforts in eradicating child trafficking; identifying more trafficking victims; providing identified victims with direct services or referrals to NGO-provided care; and developing a bench book for judges to improve hearing of labor trafficking cases. The government finalized guidelines for the disbursement of funds for trafficking victims from the National Assistance Trust Fund for Assisting Victims of Trafficking and used the fund to support economic reintegration for trafficking survivors.
62. However, the following still exist as gaps that need to be addressed; Protection services for victims remained limited and inconsistent in quality. The government continued to rely on civil society to provide most victim services, including all shelter services, and did not provide adequate in-kind or financial support for these efforts. Despite serious and sustained concerns of official complicity in trafficking crimes, which hindered both law enforcement efforts and victim identification, the government did not report any law enforcement action against allegedly complicit officials.

Summary of the existing framework

63. Kenya has established various comprehensive legal and policy frameworks to address child labour, sexual exploitation, and child trafficking, emphasizing children's rights and protection.

Legal frameworks

64. The Constitution of Kenya (2010) under Article 53 1(d) provides for children's rights to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.
65. The Children Act (2022) is a comprehensive piece of legislation addressing child protection, welfare, and rights. Under part II, sections (18) & (22), the act criminalizes child labour, sexual exploitation, and trafficking, and has further established mechanisms such as child protection units and welfare committees to safeguard children's rights.³⁰
66. The Counter-Trafficking in Persons Act (2010), part II under sections (3) & (4) (13), (14), (15) & (22) focuses on preventing human trafficking, protecting victims, and prosecuting

³⁰ https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2022/TheChildrenAct_2022.pdf



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traffickers. Section (22) of the act also includes provisions for a National Assistance Trust Fund to support trafficking victims.³¹

Policy frameworks

67. The National Plan of Action for Children in Kenya (2015-2022) under chapter 3; Sub-section 3.3 (17, 18, 19, 20 & 27) outlines strategies to improve child welfare and protection, including specific measures to combat child labour, sexual exploitation, and trafficking.³²

Statistics and Examples

68. Child trafficking poses a serious problem in Kenya. The US Department of State's Trafficking in Persons Report (2023) classifies Kenya as a Tier 2 country, indicating ongoing issues despite government efforts. Children are commonly trafficked for domestic servitude, forced labor in agriculture, and sexual exploitation. Numerous rescue operations and the enforcement of anti-trafficking laws have led to the recovery of trafficked children and prosecution of offenders.³³
69. In summary, Kenya's legal and policy frameworks provide robust mechanisms to combat child labour, sexual exploitation, and child trafficking. Despite these efforts, significant challenges remain, necessitating continued enforcement, vigilance, and community engagement to protect children's rights and ensure their well-being.

Progress made in Kenya since the last UPR

70. The 3rd cycle report made the following recommendations on the thematic area of elimination of child trafficking: 142.1, 142.2, 142.3, 142.4, 142.5, 142.6, 142.7, 142.8, 142.9, 142.10, and 142.11.
71. The State is yet to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Further, strengthening and harmonization of existing national laws and policies. The state indicated that the protocol, signed in 2002, though not ratified there are no gaps with regard to the protection of children's rights due to existence of other legal frameworks like the Children Act of 2001, then under review, The Counter Trafficking in Persons Act, 2010 and the Employment Act of 2007.
72. The Children' Act was enacted in 2022, however there is a need to 1. develop an implementation framework which will include costing and a monitoring and evaluation framework; 2. fast track the development, gazettelement and adoption of the Rules and Regulations of the Act. 3. review the different existing National Plans of Action and align them to the Act Implement the existing policies to complement the Children Act (2022).

³¹ https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Counter-TraffickinginPersonsAct_No8of2010.pdf

³² <https://extranet.who.int/mindbank/item/7343>

³³ <https://www.state.gov/reports/2023-trafficking-in-persons-report/kenya/>



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73. In 2022, the government investigated 111 cases – 59 for sex trafficking, 10 for labor trafficking, and 42 for unspecified forms of trafficking – however, this data may have included other crimes. This compared with the government investigating 47 cases – five for sex trafficking, 17 for labor trafficking, and 25 for unspecified forms of trafficking – in 2021.
74. The government reported prosecuting at least 48 alleged traffickers – 11 for sex trafficking, three for labor trafficking, and 34 for unspecified forms of trafficking – under various laws in 2022.
75. The Counter Trafficking in Persons Advisory Committee has developed a draft Standard Operating Procedures on Victims of trafficking which needs to be finalized for implementation.
76. The National Action Plan for Combating Human Trafficking (2022-27) was reviewed and launched in July, 2023.
77. The Counter Trafficking in Persons Act 2010 is currently under review.
78. Child Trafficking cases over the past five years are as follows; 2019: 2,329, 2020: 2,523, 2021: 1976, 2022: 1,947, 2023: 1,634.³⁴

Recommendations

79. The government should Invest in building the capacity of law enforcement officials in strengthening efforts to investigate, prosecute, and convict traffickers, including complicit officials, and seek significant prison terms for convicted traffickers as a way of combating trafficking.
80. The government should Fully implement the National referral mechanism (NRM) by encouraging formal referral of trafficking victims by law enforcement officials for assistance and ensuring protection services are available for all victims.
81. The government should Establish shelters and/or rescue centers in Counties with high prevalence of child trafficking, dedicated for trafficking victims to receive specialized care including safe refuge.
82. The government should Work with its neighboring state parties to strengthen cross-border management and enforcement of relevant laws to combat cross-border trafficking of children.
83. The government should Ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to strengthen and harmonize existing national laws and policies.

³⁴ Kenya Economic Survey 2024 Link: [Check Here](#)