



Laws, Policies and the Reality for Ending Violence against Children in Ethiopia, Kenya and Uganda

Dr Eddy Joshua Walakira

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The African Child Policy Forum (ACPF)

ACPF is a leading, independent, pan-African centre of policy research and dialogue on the African child.

ACPF was established with the conviction that putting children first on the public agenda is fundamental for the realisation of their rights and wellbeing and for bringing about lasting social and economic progress in Africa.

ACPF's work is rights-based, inspired by universal values and informed by global experiences and knowledge, and is committed to internationalism. Its work is based on the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and other relevant international human rights instruments. ACPF aims to specifically contribute to improved knowledge on children in Africa; monitor and report progress; identify policy options; provide a platform for dialogue; collaborate with governments, inter-governmental organisations and civil society in the development and implementation of effective pro-child policies and programmes and also promote a common voice for children in the developing world.



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LIST OF ACRONYMS

ACPF	The African Child Policy Forum
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ANPPCAN	African Network for Prevention and Protection of Children Against Child Abuse and Neglect
CREAW	Centre for Rights Education and Awareness
GDP	Gross Domestic Product
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organization
MoES	Ministry of Education and Sport
MoFPED	Ministry of Finance, Planning and Economic Development
MoGLSD	Ministry of Gender, Labour and Social Development (Uganda)
NGOs	Non-Governmental Organisations
UBOS	Uganda Bureau of Statistics
UNCRC	United Nations Convention on the Rights of the Child
UNOCHA	United Nations Office for Humanitarian Affairs
UNPFA	United Nations Population Fund



PREFACE

ACPF considers violence against children an important area of concern for those involved in the protection of children and in the creation of an Africa truly fit for children. At the centre of ensuring the protection of children are African governments. Many of our governments have responded by signing and ratifying most of the major international and regional instruments that seek to protect children. These include: the African Charter on the Rights and Welfare of the Child, the United Nations Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among others. It is worth noting that some countries have gone ahead to domesticate these instruments within their national laws and legislation. Some countries have further developed Children's Acts or laws to ensure the full protection of their children.

Despite these notable efforts to create legal and policy frameworks to support the realisation of children's rights, it remains apparent that the situation of violence and wellbeing of children in Africa is still appalling. Regrettably, too often and in too many African countries, cultural and traditional beliefs deeply rooted in society sanctioned violence. This has presented a dilemma as it contradicts the provisions in national laws and Children's Acts.

This study commissioned by ACPF reviews the legal and policy frameworks on violence against children in Ethiopia, Kenya and Uganda. It presents the reality of what has been done, the progress made in putting child protection systems in place, but it also brings out the gaps that need to be addressed. The study highlights the importance of putting in place effective reporting mechanisms that will bring out the prevalence of violence. Recommendations are made to ensure implementation and enforcement of child protection within the three countries.

I would like to emphasise that sufficient resources are required to ensure the protection of our children. Therefore, adequate resources need to be allocated by governments to child protection systems, particularly to the child protection units in the judiciary, police and local government. These units also need training in child-friendly judicial systems to facilitate their work. Violence against children must be stopped and this can be done by governments putting in place effective laws and policies.

David Mugawe
Executive Director





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EXECUTIVE SUMMARY

Introduction

This report brings together the key study findings of a review of legislation and policies relating to violence against children in Ethiopia, Kenya and Uganda, following the successful completion of country studies in 2009. By synthesising these findings we aim to create a regional picture on the current state of legislation and policies on violence against children. The studies were commissioned by The African Child Policy Forum, (ACPF) a rights-based organisation working to promote the rights of children through policy, advocacy, capacity building and knowledge sharing. The studies used both primary and secondary data sources, collecting primary data from experts on children issues in Ethiopia, Kenya and Uganda. These included people working in government children's departments, the judiciary and education, as well as local and international NGOs and agencies working on child-related issues. The analysis of data is informed by content and thematic approaches, while presentation is both descriptive and analytical.

Children and violence

Ethiopia, Kenya and Uganda have a combined population of over 140 million, which is growing at a yearly rate of 2.6 – 3.2%. All three countries have a young population — half are under 18. Between them they have an estimated 9.4 million orphaned children, many through AIDS-related illness. Children in all three countries often fall victim to different forms of physical and emotional violence, sexual abuse including rape and commercial sexual exploitation and the worst forms of child labour, such as conscription in armed conflict. Other forms of violence experienced by children in all three countries are caused by procedural and institutional processes — for example, violence in the justice system experienced by children in conflict with the law.

Ratification and domestication of international instruments

Ethiopia, Kenya and Uganda have all made commendable efforts to ratify most of the key international conventions aimed at protecting children from abuse, discrimination and violence.

Among the many instruments ratified by the three countries are: United Nations Convention on the Rights of the Child (UNCRC); African Charter on the

Rights and Welfare of the Child ('the African Children's Charter'); Universal Declaration of Human Rights; International Convention on Civil and Political Rights (ICCPR); International Convention on Economic, Social and Cultural Rights (ICESCR); and International Labour Organisation's (ILO) Convention no 182 on the Elimination of the Worst Forms of Child Labour. Uganda and Kenya have also ratified two optional protocols to the UNCRC: on the Sale of Children, Child Prostitution and Child Pornography; and on the Involvement of Children in Armed Conflict.

What emerges from the studies is that all the countries have made considerable efforts to domesticate several international treaties into national law, particularly reflecting concerns of the UNCRC in their national constitutions. In the case of Kenya, the new constitution (August 2010) explicitly provides for child-related issues apart from other general rights that apply to all persons. Furthermore, although Kenya and Uganda have Children Acts that cater to safeguard the rights of children in many cases, including protection against violence, Ethiopia has yet to develop a comprehensive law for children.

In many countries, there are issues that are not addressed in national legislation; this is particularly true with Ethiopia, Kenya and Uganda. Several laws require harmonisation, having been developed in piecemeal form.

In Ethiopia, the domestication of international instruments has not been published in the *Federal Negarit Gazeta* ('gazeta'), which is mandatory for a law to be nationally binding. So, although the constitution stipulates that international agreements are considered an integral part of domestic law, the implementation of international law remains a challenge. The underlying issue that prevents the effective enforcement of international human rights instruments is the lack of consensus over whether or not they should be officially published in the *gazeta* in order to be applied at domestic level. While one position stresses that the publication of the conventions in the *gazeta* is a prerequisite for invoking the provisions in local courts, the opposing view dismisses the need for publication and argues that international legal instruments can be applied in their present state.



Policies aimed at ending violence against children

All three countries have made efforts to develop policies to respond to the needs of children in the areas of education and health, among others. With particular reference to violence, Uganda has various policies and initiatives to end violence against children, including: a policy for orphans and other vulnerable children; the national strategic programme plan of intervention 2005/06-2009/10; a child labour policy; and directives to stop violence in the school system. Ethiopia aims to address violence against children through: the developmental and social welfare policy; the national action plan for children and the national plan of action for the establishment and development of civil registration and vital statistics systems. Kenya is still in the process of developing policies that respond to the specific needs of children, in line with its new constitutional provisions on children's rights.

Gaps in policies and legislation

All the countries lack a comprehensive policy to end violence against children. Uganda and Ethiopia have developed piecemeal policies to respond to violence in the school system and sexual violence respectively, but these are largely ineffective. Where policies do exist, they lack consolidation, harmonisation and integration. Response mechanisms for children who are victims of violence are poor, and policy implementation is inadequate. This is due to various reasons, including: the marginalisation of units working on child-related issues in the justice and government systems; insufficient funding; insufficient capacity, including trained personnel; incomplete documentation; poor coordination and monitoring of activities related to protecting children from violence; and the lack of a transparent system for reporting cases of violence, investigating them and consequently holding perpetrators accountable.

In spite of the efforts of the three governments to domesticate international laws and their

achievements in enacting local legislation to end violence, there are still several gaps in the national legal frameworks that require addressing. These relate to: limited awareness on existing laws among duty bearers; the absence of provisions for specifics on protecting children against violence in the home environment (these differ in each country); trafficking issues; the absence of comprehensive or consolidated laws in Ethiopia; and poor implementation in all countries. There are also contradictions between laws and constitutions in some cases — for example, sections of Kenya's Children Act have been declared unconstitutional and Ethiopia has not yet published international instruments in the *Federal Negarit Gazeta*.

Recommendations and the way forward

In order to bridge existing gaps in law, all three countries need to enact a consolidated law for children's rights and strengthen the implementation of existing laws. Publishing the international instruments in the gazeta is important in the case of Ethiopia while Kenya must now focus on implementation of the child-related issues reflected in its new constitution. Ethiopia and Kenya both need to revisit the age of criminal responsibility for children, which is currently too low; 8 for Kenya and 9 for Ethiopia. All the countries need to increase awareness of laws for the protection of children's rights among duty bearers, including law enforcement agencies.

All three countries need to develop a comprehensive policy for addressing violence against children that encompasses different forms of violence in different settings. They must also address the gap between the availability of policies and their implementation. Greater advocacy is needed for increased funding for government units involved in the implementation of the Children Acts and other laws and policies that affect children. The Kenyan government needs to speed up the process of passing policies aimed at protecting the rights and meeting the needs of children.



Box 1: Key recommendations

- There should be wider dissemination of laws and policies concerning the protection of children among duty bearers. Wherever possible, laws should be translated into local languages.
- There is an urgent need to: cater for wide-ranging issues that affect children and are not currently catered for in national legal instruments; speed up the process of development of laws and policies; gazette laws where it is mandatory; and harmonise contradictory provisions as applicable in each country.
- Revision of existing laws should always take into account the economic and social realities of those affected and the capacities of existing institutions.
- To bridge the mismatch between the availability of laws and policies and their lack of implementation, advocacy efforts should target the prioritisation of increased funding for child protection units in the justice system. These include: family and children's courts; police child protection units; and other key departments such as probation and welfare offices where they exist.
- A specialised mechanism should be established to monitor and document incidences of violation of children's rights, supported with a database. The governments of the three countries should establish effective and confidential complaint procedures for children and their families and ensure that complaints are promptly and thoroughly investigated and acted upon.
- All three governments need to explore the possibility of utilising community-based approaches when handling children in conflict with the law in order to protect them from the violence they currently face in detention facilities. Guidelines should be developed for handling children in conflict with the law and protecting their rights during detention in police cells, including allowing access to medical care.
- Long-term interventions for protecting children against child labour and juvenile delinquency should include investment in strengthening parenting skills and supporting income-generation activities for children and their parents, as well as ensuring access to quality social services.





1. Introduction

This report brings together the key findings from a review of legislation and policies relating to violence against children in Ethiopia, Kenya and Uganda. The report follows the successful completion of country studies and aims to synthesise their findings in order to gain a regional picture on the current state of legislation and policies on violence against children and so determine what can be done at regional level. The three country studies, commissioned by The African Child Policy Forum (ACPF), were undertaken against a backdrop of growing evidence of violence against children in some eastern and southern African countries. Other studies by the United Nations and civil society organisations recently carried out in Uganda and other countries have corroborated the evidence found by ACPF.

In spite of the growing amount of available information on the subject, and the increased awareness and concern about widespread violence against children, slow progress has been made in terms of reducing such violence. However, Ethiopia, Kenya and Uganda have made some noteworthy progress in putting in place a legal and policy framework to protect the rights of children, including protecting them against violence. The studies sought to review key legislation and policies, with a view to identifying any gaps that undermine the desire to protect children against violence and to make feasible recommendations for the people involved in child protection.

Recent legal developments mean that some of the information in this report about the legal status of international child rights instruments has already been superseded. In Ethiopia, for example, the result of a landmark child custody case brought to the Cassation Bench of the Federal Supreme Court in November 2007 by ACPF's Children's Legal Protection Centre successfully defended the principle of the 'best interests of the child' from Article 3 and Article 4 of the ACRWC and UNCRC as applicable in Ethiopian law. This was despite the fact that it had not been published in the *Federal Negarit Gazeta*. The effect of this is that, although the relevant law is yet to be published in *gazeta*, it is considered applicable in Ethiopia. However, it remains to be seen whether this development will set a precedent in future cases that invoke principles from international legal instruments ratified by Ethiopia.

This report is divided up as follows:

- Section 1 introduces the study and the methodology employed.
- Section 2 provides a background on violence against children in the study countries.
- Sections 3 and 4 gives an overview and analysis of legislation and policies for protecting children against violence.
- Sections 5-7 provides a more detailed examination on the status of laws and policies by country, including any gaps.
- Section 8 provides a synthesis of our findings and conclusions.
- Section 9 sets out our recommendations.

1.1 The scope and purpose of the review

Violence against children remains a pervasive — but often largely ignored — issue in many parts of the world, including Africa. This is certainly the case in the study countries, where children regularly face humiliating physical and psychological abuse at home, in school and in the community. They endure painful and harmful acts against them, primarily and ironically, committed by those closest to them: parents, family members, neighbours, school teachers and peers.

Regrettably, in many African countries, deeply rooted cultural and traditional beliefs often sanction violence as a way of disciplining children, and there is no tradition or knowledge of alternative forms of discipline. Worse still is the fact that children remain powerless victims: their viewpoints and opinions are generally ignored and they have no formal or traditional recourse for redress or protection.

The present study comes at a time when the number of children who suffer from different forms of violence is increasing, particularly in cases where children are: commercially and sexually abused; trafficked (ILO 2007); involved in labour (Walakira 2007a); physically abused (ACPF and SCS 2006b) and Ministry of health 2004); involved in armed conflict; abandoned; and or suffer from neglect. Child victims of violence often suffer severe consequences including death, negative impacts on



their physical, social and emotional development and becoming susceptible to learning difficulties in school. They may find it hard to develop close and positive friendships; some may try to run away from home or display suicidal tendencies; others are likely to internalise violence as a form of conflict resolution.

For these reasons, ACPF considers violence against children to be an important area of intervention and believes that governments need effective policies and laws to address the issue. This review of legislation and policies was therefore envisioned to generate innovative ideas for addressing the legal, policy and implementation challenges in the fight to prevent violence against

children.

The overall purpose of the country studies was to generate evidence on the current state of legislation and policy in the three countries regarding their adequacy in protecting children against violence. In turn, this evidence would inform the design and implementation of appropriate interventions by ACPF and other stakeholders involved in child protection issues.

In specific terms, the studies sought to: review existing policy and legislation relating to violence against children; identify any gaps and inconsistencies; and come up with viable policy suggestions on how to address the increasing violence against children through legal and policy



measures.

2. An overview on violence against children

The general picture from the policy framework of the three countries is that, while they are making efforts to develop policies for the realisation of children's rights, all three countries lack a comprehensive policy to end violence against children. Kenya is still in the process of developing policies to tackle violence against children, while Ethiopia and Uganda have developed piecemeal policies to respond to violence in the school system and sexual violence. They lack adequate consolidation, harmonisation

through AIDS-related illnesses.

and integration, and are rendered ineffective. Response mechanisms for children who are

victims of violence are inadequate, insufficient funding and a lack of capacity among children's service providers means that policy implementation is limited.

Ethiopia, Kenya and Uganda have a combined population of over 140 million, half of whom are under 18. The populations are growing at a rate of 2.6%-3.2% per annum. There are more than 9 million orphans, many of whom are orphaned

Table 1: Indicators on the situation of children 2008

Country	Total population (millions) 1	Children under 18 (millions) 2	Population growth rate 3	Sources
Ethiopia	79,100	41,018	2.6	4,000,
Kenya	38,000	19,182	2.6	3,000,
Uganda	29,200	17,728	3.2	2,000,
Sources				
			5	



1	Population Reference Bureau. (2008). World Population Data Sheet, 2008.	www.prb.org/Publications/Datasheets/2008/2008wpds.aspx
2, 3, 6	UNICEF. (2009). The state of the world's children 2010.	Table 6 Accessed at: www.unicef.org/rightsite/sowc/statistics.php
4	UNICEF. (2008) Monitoring the situation of children and women.	Accessed at: www.childinfo.org/files/orphans_Estimates_1_o_Dec_2008.xls
5	ILO. (2010). World social security report 2010: providing coverage in the time of crises and beyond	Statistical Annex, Table 3.1 www.socialsecurityextension.org/gimi/gess/showtheme.do?ti

With rapidly growing populations, parents, carers and governments in all three countries have been unable to adequately meet the needs of their children. As a result, children are dying young in large numbers: the under-five mortality rate ranges from 109 in Ethiopia to 135 in Uganda per 1,000 live births, while infant mortality rates are 69 in Ethiopia, 81 in Kenya and 85 in Uganda. The inadequacy or lack of care systems at home and in the community forces many surviving children to enter the world of work at a young age, and many experience violence in the form of exploitation, abuse and subjection to difficult conditions.



3. An overview of the legal framework

3.1 Ratification of international legal instruments

Ethiopia, Kenya and Uganda have made commendable efforts to ratify most of the key international treaties protecting children from abuse, discrimination and violence. Briefly, some of the instruments the countries have ratified include:

- *UN Convention on the Rights of the Child (UNCRC) 1990*: the international human rights instrument that most authoritatively prohibits the practice of corporal punishment in schools. According to Article 28(2), state parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity.
- *African Charter on the Rights and Welfare of the Child ('the African Children's Charter') 1999*: this represents the regional expression of universal children's rights with a particular focus on issues affecting children in Africa. In relation to violence, article 16 places an obligation on states to protect children from all forms of abuse and violence.
- *ILO Convention no 182 on the Elimination of the Worst Form of Child Labour (ILO 182) 1999*: article 3 of this convention defines the worst forms of child labour to include child trafficking, forced labour, forced recruitment into the armed forces and child prostitution, all of which constitute acts of violence against the child. States are expected to prohibit these acts and protect children from them.
- *Universal Declaration of Human Rights(UDHR) 1948*: states that everyone has the right to life, liberty and security (Article 3) and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5).
- *International Convention on Civil and Political Rights (ICCPR) 1976*: concurs with the Universal Declaration of Human Rights (Article 7).
- *UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) 1987*: places limits on forms of discipline and punishment, and prohibits corporal punishment.
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Trafficking in Persons (2003) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002)*: both place an obligation on state parties to ensure that the trafficking of children is criminalised and penalised in national law.
- *International Convention on Economic, Social and Cultural Rights (ICESCR) 1987*: this is the sister treaty to the ICCPR, encompassing rights such as education, health etc., which are socio-economic in nature.
- *Optional Protocol on the Involvement of Children in Armed Conflict 2002*: While article 38 of the UNCRC prohibits children who are less than 18 years from participating directly in hostilities, this optional protocol was drafted to raise the minimum age of direct involvement in armed conflicts to 18 years. However, age 15 years is retained in the protocol as the minimum age for voluntary enlistment.
- *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1981*: Under this treaty, parties are committed to eliminating discrimination against women for the purpose of ensuring that they have equal rights as men in all endeavours. Special attention is placed on the girl-child in areas such as education and freedom from violence.
- *African Charter on Human and People's Rights (ACHPR/African Charter) 1986*: This was drafted to encompass African values and perspectives in global human rights, drawing inspiration from the UDHR, among others.
- *The Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption 1993*: This was drafted in response to the need to safeguard the best interests of children within the context of inter-country adoption by guarding against child trafficking and the commercialisation of the adoption process.



- *International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1969*: Under this convention, state parties are expected to eliminate all forms of racial discrimination on the basis of race, colour, descent, national or ethnic origin, which impact negatively on the enjoyment of all rights.
- *United Nations Convention against Transnational Organised Crime 2003*: This represents the major international instrument in the fight against transnational organised crime and it is supplemented by three protocols, one of them dealing with the crime of trafficking in persons, especially women and children.
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 2003*: This convention offers protection to workers in countries other than their own and such protections are extended to their family members, including children.
- *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 2004*: The purpose of the court is to complement and reinforce the functions of the African Commission on Human and Peoples' Rights.
- *Rome Statute of the International Criminal Court (ICC statute) 2002*: This treaty establishes the international criminal court, its functions, jurisdiction and structure and tries war crimes and crimes against humanity.

There is more detail on which of the above the countries have ratified in Sections 5-7. Because the countries have ratified the above instruments at different times, levels of domestication differ.

3.2 Status of domestication of international instruments

All the countries have made considerable efforts to domesticate several international treaties into national laws. Indeed, Kenya's new constitution, promulgated on 27 August 2010, explicitly brought out child-related issues and accorded children the necessary special protection. However, studies show that in all African countries, including Ethiopia, Kenya and Uganda, there are issues that are yet to be catered for in national legislation. In several cases, laws require harmonisation, having been developed in piecemeal form¹. (Sloth-Nielsen 2008)

a) Ethiopia

Although the international instruments have been domesticated, they have yet to be published in the *Federal Negarit Gazeta*, which is mandatory for a law to be nationally binding. Nevertheless, the 1995 constitution, which is the overarching law of the land, recognises ratified international human rights treaties as an integral part of the domestic legal system [Article 9(4)] and as standards for the interpretation of fundamental rights and freedoms [Article 13(2)].

In a bid to meet international standards for the protection of children's rights such as UNCRC, the African Charter and the Universal Declaration of Human Rights, Ethiopia has enacted a number of laws to domesticate some of the provisions of these international conventions. The constitution devotes a number of sections to child-related issues for example, Article 36 recognises the necessity for care of children, protecting them against exploitation and abuse, providing a favourable environment in which to develop their full potential and giving juveniles in institutions or orphanages the right to be kept separately from adults.

The Ethiopian criminal code reinforces the constitutionally guaranteed human rights of women and children by protecting them from traditional practices that are known to be harmful to their health and wellbeing. Female genital mutilation, early marriage, the abduction of young women and other forms of sexual violence are specifically forbidden and clearly delineated in Articles 561-570 as criminal acts, entailing various degrees of punishment. The criminal code also outlaws corporal punishment and child trafficking.

The Ethiopian Civil Code of 1960 contains some provisions relating to crucial events such as birth registration. These provisions are in line with Article 7 of the UNCRC which calls for the registration of a child immediately after birth. Birth registration is essential for protecting children from violence by: enforcing minimum age employment laws to prevent child labour; ensuring that children in conflict with the law are not treated legally or practically as adults; shielding children from under-age military service or conscription; countering child marriage; and assisting children who need to be repatriated or reunited with family members.

The Labour Law proclamation no 377/2003 prohibits the employment of children below 14 years [Article 89(2)] and protects them against worst forms of child labour, while the revised family code proclamation no 213/2000 seeks to put the

¹ For more details on individual countries, see Sections 5.3, 6.3 and 7.3; for a full list of national legislation see Appendix 1.



child in a safe care environment. All these comply with relevant international provisions.

b) Kenya

The government has made significant efforts towards domesticating international instruments and standards for child protection into national laws. It ratified the UNCRC on the 31 July 1990 and the African Children's Charter on 25 July 2000, and has ratified a number of other important multilateral human rights conventions with direct bearing on children's rights (see Section 6.3 for more details).

Kenya has long struggled for constitutional reform. Almost five years after the formal review process started, the new constitution came into force on August 2010. It is not difficult to fathom the positive impact this constitution will have on children's rights: it recognises that children are particularly vulnerable to violations of their rights and that they have specific and unique interests. Article 53 explicitly states that a child's best interests are of paramount importance in every matter concerning the child and that every child has a right to:

- a name and nationality from birth;
- free basic education;
- basic nutrition, shelter and healthcare;
- protection from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous or exploitative labour;
- parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married or not;
- not to be detained, except as a measure of last resort for the shortest appropriate period of time, in separate areas from adults and in conditions that take account of the child's age and gender.

The new constitution imposes a duty on private persons as well as the state to ensure children have access to the above rights. In addition, it requires the state to act positively to prevent abuse, violence, neglect and exploitation.

The 2001 Children Act also sets forth legal obligations of all duty bearers — the government, parents and civil society — to respect, protect and fulfil the rights of children. It seeks to protect children from child labour and armed conflict, abuse, harmful cultural practices, sexual exploitation, drug use, torture and deprivation of liberty².

Other laws, such as the Criminal Law (Amendment) Act 2003, outlaw subjecting any person to torture

or cruel, inhuman or degrading treatment or punishment. This is in conformity with the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and ICCPR. Accordingly, the repeal of corporal punishment was a major credit towards the elimination of inhuman and degrading treatment.

The Sexual Offences Act (2006) protects children from sexual abuse, makes justice procedures more child-friendly in cases of sexual abuse, and punishes those involved in child trafficking, prostitution, pornography, and the deliberate transmission of HIV or any other life-threatening sexually transmitted disease. The Evidence Act (Cap 80 1989), the Employment Act (2006) and several other laws all have provisions to protect children from harm or to ensure they receive justice.

c) Uganda

The constitution was promulgated in 1995 when the UNCRC and several other instruments relating to children's rights were already in place. In drafting the constitution, delegates looked to the provisions of the UNCRC. As such, it delineates children's rights in Article 34 — including the right to know and be cared for, their entitlement to basic education, medical treatment, protection against hazardous work, etc. Besides the constitution, Uganda developed an all-encompassing law to cater for issues affecting children: the Children Act Cap 59 (2000), formerly the Child Statute (1996). The Children Act brought together all the scattered laws about children and incorporated other issues to bring it in line with the UNCRC and the African Children's Charter. Issues of care, protection against violence, harmful employment and other basic rights are catered for in Sections 2-7. It created institutions — including the family and children court — with jurisdiction and elaborate procedures; underlined the powers of probation officers to investigate and enforce care orders; and set out how to handle children in conflict with the law. While the Children Act is comprehensive, some argue that it overlooks certain issues, and its provisions need revisiting to conform to current social and cultural changes.

Other additional instruments such as the Penal Code Act Cap 120 (2000 amended 2007), further represent the government's commitment to reflect some of the provisions of international instruments on child trafficking and commercial sexual exploitation of children in local legislation, including in the UNCRC and the Optional Protocol on the Sale

² Supra note 8, Section 10(1), 13, 14, 15, 16 and 18 respectively.



of Children, Child Prostitution and Pornography. Other Acts — including the Local Government Act Cap 243 (1997 amended 2000); the Police Act (1994 amended 2000); the Magistrates Courts Act (1997 amended 2007); and the Employment Act (2007) — all have provisions that seek to protect children against rights violations, including violence. Furthermore, the amended Penal Code Act (2007) reviews the definition of sexual abuse to include rape, defilement and any other sexual acts involving children.

Having many policies aimed at protecting the rights of children does not necessarily guarantee the protection of children's rights if their implementation is ineffective. In the case of Uganda, the laws in place are fairly good, but poor implementation defeats the purpose of formulating them. Moreover, while some Acts, such as the Employment Act (2007), prohibit the abuse of children, neither the penal code nor the Acts themselves prescribe any set penalties for abusers.

3.3 Existing gaps in legislation to end violence against children

In spite of the efforts of the three governments to domesticate international laws and their achievements in enacting local legislation to protect children against violence, there are still several gaps in the national legal frameworks that need to be addressed. In all three countries these relate to: the limited awareness duty bearers have of existing laws; the absence of specific legislation and policies to protect children against violence in a home environment; trafficking issues; the absence of comprehensive or consolidated laws; and the weak coordination and implementation of protection schemes.

a) Ethiopia

Article 36 of the constitution recognises international instruments on child rights and protection. Nevertheless, to ensure their application, more effort is required to adapt the ratified instruments into the official *Federal Negarit Gazeta* — a mandatory requirement in the country's law-making process³. As it stands, the government issues proclamations to confirm the ratification of the stated instruments, but has not published an official version of the contents. However, the recent decision by the Federal Supreme Court's Cassation Bench — whereby ACPF successfully defended the principle of the 'best interests of the child' from Article 3 of ACRWC and Article 4 of the UNCRC as applicable in Ethiopian law — demonstrated that

international agreements can be directly invoked into domestic law. It remains unclear whether the precedent set by the Cassation Bench will override the mandatory requirement to include international human rights obligations in the official gazette (*gazeta*).

The Ethiopian constitution does not protect children from corporal punishment that may be inflicted on them at home by parents and guardians, nor does the penal code adequately acknowledge the grave suffering caused to women and children by harmful traditional practices. Although the constitution guarantees respect for the cultures of people, the law falls short of enforcing the appropriate legislative, administrative and other measures in the context of UNCRC. Furthermore, the criminal code specifies a lesser punishment for a sexual offence against a boy compared to a girl without any clear rationale, which is against the principle of non-discrimination.

Children suffer violence in the justice system, particularly in prisons, where disciplinary measures for child prisoners often disregard their rights and include inhuman and degrading punishment. Prison officials have been found to fail to protect the children in their care and, to use psychological violence against them (ACPF 2007). Furthermore, the Ethiopian criminal justice system excludes children over 15 from most of the legal protections accorded to children, in contravention of the UNCRC and the African Children's Charter. Non-custodial treatment of children in conflict of the law is not recognised.

b) Kenya

One of the obstacles for child protection in Kenya is the multiple definitions of a child based on socio-cultural considerations. The legal minimum age for criminal liability is 8 years: according to the penal code, a child between the ages of 8 and 12 is deemed not to be criminally liable for his actions unless it is proven that, at the time of commission or omission of an act, he/she had the capacity to know that he/she should not have committed or omitted that act. This would mean that a child aged 8 to 12 years could be criminally prosecuted, provided there is proof that he had the capacity to judge whether or not to commit an offence. The issue is how to prove that an 8-year-old child had the capacity to know that he or she was committing an act punishable by law. The judge is therefore solely reliant on her/his firm conviction to sentence that child, which leaves plenty of scope for victimisation. Given this great discrepancy, in its initial report on

³ As stated in Article 71(2) of the constitution, Article 3 of the *Federal Negarit Gazeta* Establishment Proclamation 3/1994, and Article 14 the law-making procedure for the House of Peoples' Representatives Proclamation 14/1994.



the implementation of the African Children's Charter, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) recommended to the government of Kenya that it should raise the minimum age of criminal liability to 12 years (ACERWC 2009) in keeping with the internationally acceptable age of criminal responsibility⁴. However, age 12 is still considered too low for criminal liability by child rights activists and the UNCRC Committee has sometimes criticised a minimum age fixed at 12 or below, consistently calling for an increase in minimum age (Odongo 2008).

In the same report the ACERWC further indicated that, in accordance with the Kenyan Criminal Procedure Code and the Criminal Law (Amendment) Act (2003), the minimum age of sexual consent is 16 years. However, various statutes on marriage authorise girls younger than 16 to contract marriage, making it difficult to enforce the law on sexual consent. The ACERWC specially and urgently requested the state raise the age of sexual consent to 18 years, to comply with the definition of a child in the African Children's Charter and, consequently, promote the education of young girls. It also recommended the adoption of a family code (applicable to all Kenyans) to govern and harmonise matrimonial practices in the country. A further recommendation was that the state harmonise the definition of the child within the national context and conduct a campaign to sensitise and inform the population on the issue (ACERWC 2009).

Despite its progressive nature, the 2001 Children Act falls short of fully complying with international law standards on the rights of the child on a number of issues, including:

- the lack of a social security scheme for children for low-income families;
- the enactment of overly lenient penalties for child abuse, neglect and other violations of children's rights;
- provisions which discriminate against children born out of wedlock;
- the non-recognition of pre-trial diversion and the failure to enact a higher minimum age of criminal responsibility in the provisions on juvenile justice;
- the lack of an explicit ban of the use of corporal punishment in the home and schools;

Although these gaps have given rise to initiatives to amend the Act, there are concerns that the provisions in the proposed amendments would not effectively enhance child protection for children in institutions.

Indeed, the enactment of the Amendment Bill has been inordinately delayed as it shuffles between the Kenya Law Reform Commission, the office of the honourable Attorney General and the Ministry of Gender, Children and Social Development.

c) Uganda

In Uganda, the minimum age of criminal responsibility was raised from age 8 to 12, as a result of Uganda's comprehensive child law reform process. Although age 12 is still considered low, it is better than the situation in Kenya since age 12 is in compliance with the internationally acceptable age of criminal responsibility as already highlighted. However, a number of glaring gaps have been identified in Ugandan law with regard to protecting children against violence. For example, the Children Act fails to specify how to attain guardianship or the rights and responsibilities of a guardian, a situation that has been exploited by unscrupulous people to abuse children.

In its concluding observations and recommendations to the government of Uganda on its initial report on the implementation of the African Children's Charter, the ACERWC observed that, although the law recognises a child as any person under 18, the legal working age varies from 14 to 16 years according to the type of work, and the minimum age of criminal responsibility is 12 years. It also noted that, while the constitution sets the age of marriage at 18 years, additional laws on customary marriage and the marriage of Muslims set the age at 16 years or below. For better protection of children, the report recommended that the state harmonise these texts to comply with the definition of a 'child' in the African Children's Charter (ACERWC 2010).

Furthermore, although Ugandan laws outlaw corporal punishment, they do not adequately protect children in conflict with the law. Some children are beaten during arrest for extraction of evidence, while others are sometimes severely beaten at school and at home. While the law provides for the general protection of the rights of vulnerable children, it lacks the provision to compel the state and other duty bearers to meet the needs of children who are abandoned, including those affected by conflict or on streets.

Although laws are in place with concomitant policies, the lack of resources makes their implementation difficult. It is also worth noting that the law system's ability to deter sexual abuse is limited by the absence of birth certificates to ascertain

⁴ General Comment no. 10 (Children's rights in Juvenile Justice) of the UNCRC Committee, released in 2007, provides for age 12 as the minimum age of criminal responsibility. The UNCRC Committee also criticized Kenya for maintaining age 8 as the minimum age of criminal responsibility, in its concluding observations to Kenya's initial report to the Committee in 2001.



the age of children and the inability of victims to meet the medical costs of examination in cases of defilement.

3.4 The way forward

To bridge existing gaps in the laws that protect children against violence in **Ethiopia**, a consolidated law for children's rights must be enacted and the international instruments published in the federal gazette. The courts need to clarify whether

international agreements can be automatically invoked into domestic law, based on the precedent set by the Cassation Bench of the Federal Supreme Court. **Kenya** needs to build on the momentum of the new constitution and expedite the adoption of the Children Act (Amendment) Bill 2008. **Uganda** must revisit the provisions on guardianship and strengthen the implementation of existing laws. **All three countries** need to revisit the age of criminal responsibility for children.

Box 2: Suggestions for legislative reform in Ethiopia

- A comprehensive child rights law should be developed.
- A standard document on child rights protection should be developed, to bring together all the different initiatives and provisions that focus on child protection.
- Domestication of the UNCRC is urgently required, and the international instruments that Ethiopia has acceded to must be published in the *Federal Negarit Gazeta*.
- Provisions in the criminal code that deal with the protection of minors from sexual abuse should provide equal protection to both girls and boys to fit with the principle of non-discrimination.
- Provision on trafficking needs to be broadened to include recruitment, transport and organising, as stipulated in the international instruments.
- The criminal code needs to be revised to further clarify the prohibition of corporal punishment at home, in line with UNCRC and other instruments.
- Protection of children in the justice system should be increased, particularly in prisons, where they vulnerable to inhuman and degrading treatment.

Box 3: Suggestions for legislative reform in Kenya

- The Children Act (Amendment) Bill 2008 must be enacted.
 - All legislation dealing with issues pertaining to violence against children must be harmonised in conformity with the Children Act (Amendment) Bill 2008, which embodies the most beneficial provisions for children, drawing directly from the UNCRC and the African Charter.
 - Children's cases should only be handled by children's magistrates and children's courts to ensure the speedy disposal of cases involving children. The jurisdiction of the children's courts should be harmonised and enhanced to deal with children charged with capital offences.
 - Courts, officers responsible for children and police officers should be encouraged to always uphold the principle of the best interest of the child when dealing with cases involving children.
 - The government should accelerate the establishment of a national legal aid scheme to ensure greater access to justice for children in need of care and protection, and children in conflict with the law.
 - The government and the community at large should hold perpetrators of violence against children accountable through effective and transparent complaint, monitoring, investigation and redress mechanisms.
 - There should be thorough and prompt investigation of instances of violence against children, with appropriate action taken against those responsible — including counselling, probation, suspension and termination and prosecution.
- A Bill should be enacted to combat trafficking, with any changes in law and jurisprudence promptly communicated to judicial officers, the police and other duty bearers.



Box 4: Suggestions for legislative reform in Uganda

- The guardianship provisions in the Children Act should be revised to specify the process, rights and responsibilities of a guardian, as is the case with provisions on adoption.
- The rules and guidelines for children's homes need to be enforced and a new provision in the law should specify situations when a childcare institution can take on children who are orphaned by one parent or have parents with no means of looking after them.
- Children in the justice system should have their rights protected through specification in the Children Act in line with the justice system.
- A law should be developed to deter harmful punishment and treatment of children in school and at home.
- There should be a special fund to meet medical, legal and care costs for children who are victims of defilement.
- Awareness-raising activities about existing child protection laws should be intensified among duty bearers and the general public.
- Funding of probation and welfare offices should be increased to strengthen the implementation of the Children Act.





4. A review of the policy framework

4.1 Introduction

a) Ethiopia

Ethiopia has the following major policies with implications for protecting children against violence: The developmental and social welfare policy (1996) which among others commits the government to make every effort to implement all international and regional human rights instruments concerning children's rights and wellbeing.

The *plan for accelerated and sustained development to end poverty (PASDEP)* covers 2005-10 and focuses on achieving the millennium development goals. Closely related to this is Ethiopia's national plan of action for children which complements national development objectives in all key sectors of the economy, and is also targeted towards achieving the millennium development goals.

There is also the *national plan of action on sexual abuse and exploitation of children 2006-10* and the on-going development of civil registration and vital statistics system. Details on these policies follow in section 5.

b) Kenya

Kenya Vision 2030 is the government's development blueprint that provides a "collective aspiration for a better society by 2030". It aims to "create a globally competitive and prosperous country with a high quality of life by 2030" and to "transform Kenya into a newly-industrialising, middle-income country providing a high quality of life to all its citizens in a clean and secure environment". To achieve this, the vision has been anchored on three pillars: economic, social and political governance.

The *national policy on orphans and other vulnerable children* seeks to among others protect orphans and vulnerable children from all forms of abuse, exploitation and discrimination. It expressly recognises the need for gender sensitivity and inclusiveness in the development and implementation of all responses to orphans and vulnerable children. Throughout, the policy acknowledges that girls are more vulnerable and susceptible to abuse and it therefore underscores the need to adopt deliberate measures aimed at enhancing the protection of girls. This is however without prejudice to the principle of non-discrimination in ensuring protection for both boys and girls from sexual abuse.

The policy further emphasises the need to enforce existing laws that address issues of child abuse and exploitation and calls for the formulation of guidelines for combating child labour, child sexual abuse, child sex tourism, child trafficking and other forms of exploitation.

Other policy materials that protect children from violence include: the national plan of action for orphans and vulnerable children; the national plan of action for the elimination of female genital mutilation; the national plan of action to prevent and combat the commercial exploitation of children; the national plan of action on education for all; national guidelines on adoption; and the HIV and AIDS children's policy and life skills curriculum.

The Government of Kenya is currently in the process of drafting a national policy on children. The department of children's services of the Kenyan Ministry of Gender, Children Services and Social Development has been spearheading the development of this policy, which seeks to among others provide a framework for addressing issues related to children's rights and wellbeing in a holistic and focused manner. It would serve as a practical guidelines tool for the implementation of the Children Act. It is expected to act as a regulatory framework to coordinate the many related policies and legislations that are geared towards the promotion of children's rights, and to act as a criterion for evaluating and monitoring the implementation of legislation, policies and programmes on child-related issues. The draft policy recognises the need to protect all children and in particular those with disabilities and special needs from any practice that may interfere with their growth and development. It further postulates that protection rights can be realised through actions that ensure a child's birth registration and identity, and systematic measures to guard against substance abuse, physical abuse, child labour, trafficking, sexual abuse and exploitation, neglect, displacement, disaster, war and conflict among others.

c) Uganda

A number of policies have been passed to protect children from violence. These include policies to encourage children to remain in school — such as the *orphans and other vulnerable children policy*



(2004), *child labour policy* and *universal primary education policy* — and other general policies, such as the national youth policy and HIV and AIDS policy.

To address the protection needs of orphans and vulnerable children and to operationalise the 2004 policy, the government developed and implemented a *five-year strategic plan of action* with funding mainly from donors (MoGLSD 2004b). Areas earmarked for intervention include: socio-economic security; food and nutrition security; care and support; mitigating the impact of conflict; education; psychosocial support; health; and child protection. Using the human rights-based approach to programming, the family and community are the first line of right holders. The plan emphasises the participation of vulnerable children and families and the decentralised delivery of integrated and holistic services.

In order to keep children in school and protect them from potential exploitation through child labour, the government passed the *universal primary education policy* in 1997. This led to a tremendous increase in primary school attendance, with enrolment increasing from around 3 million in 1997 to some 7.6 million in 2006 (UBOS 2006). Enrolment currently stands at 90% of children aged 6-15 years. However, high dropout rates remain a challenge and literacy levels remain at 69% according to the 2005/06 national household survey.

With regard to children in institutional care, the Ministry of Gender, Labour and Social Development has developed *rules for children's homes*, which have been appended to the Children Act. These state that a person opening up a home must first receive authorisation from the ministry, which confirms that he or she is a person of integrity, has specific administrative structures and is providing adequate facilities for children. However, while these rules are in place, they are not always enforced.

The *national child labour policy* passed in 2006 presents a milestone in the efforts of the government and civil society organisations in the fight against the worst forms of child labour that undermine the dignity of children.

4.2 Achievements in relation to policy

a) Ethiopia

The government has developed a number of policies that impact directly on the wellbeing of children and are preventive interventions in addressing violence against children. The *developmental social welfare policy* prioritises the social welfare of the family, children (particularly those under difficult circumstances), youth, women and the elderly, while

the PASDEP devotes a section to children's special needs. There is also the *national plan of action on sexual abuse and exploitation of children 2006-10*.

The *education and training policy*, meanwhile, aims to promote a democratic culture, tolerance and peaceful resolution of differences by: raising a sense of discharging societal responsibility; promoting unity, liberty, equality, dignity and justice; and forming citizens who are endowed with moral values, a culture of respect for positive work habits and a high regard for workmanship.

b) Kenya

As already mentioned, the government is presently in the process of developing a national policy and action plan on human rights through the department of children's services of the Kenyan Ministry of Gender, Children services and Social Development. Although these are commendable efforts in the right direction, these policies have yet to be finalised. However, the efforts by the Government of Kenya to offer universal primary education and constantly increase the budgetary allocations for early childhood education are also commendable initiatives.

c) Uganda

There is evidence that the enactment of policies aimed at improving the situation of children has had significant impact on the lives of children in Uganda. However, there is still more to be done for the thousands of children who are exposed to violence.

Non-governmental organisations (NGOs) and other agencies in Uganda have initiated a number of programmatic interventions to target children who are at risk of commercial sexual exploitation and child labour, in conflict with the law or exposed to other forms of violence. They also have some leverage on policy-making. The main players in Uganda are: the International Labour Organization (ILO) and its numerous programmes on child labour; the Federation of Ugandan Employers; the Uganda Youth Development Link (UYDEL), and Save the Children in Uganda.

4.3 Gaps in policies to end violence against children

The policy environment in the three countries is still far from conducive to reform. There are numerous challenges, bottlenecks and gaps. The general picture is one in which policies to protect children against violence are lacking, and programmes to respond to the needs of children affected by violence are limited. Where they exist, they are not



streamlined and mainly organised by civil society organisations. This is particularly the case for children affected by conflict or natural disaster.

a) Ethiopia

The main limitation of the *developmental social welfare policy* is that it views violence against children mainly from a social, rather than a rights perspective. In general, the policy fails to lay the necessary guidance for taking measures to create the protective environment for children.

Although the *PASDEP* has good potential for improving the quality of life of children and their families, it is fraught with a number of difficulties, including a lack of analysis of child poverty and a preoccupation with education at the expense of other relevant interventions.

Although the *education* and training policy makes a case for providing education that promotes democratic virtues, tolerance and peaceful resolution of differences, it does not address the issue of corporal punishment in schools. In response to persistent reports about children being brutalised in schools, the Ministry of Education and Sports passed Circular no 15 of 2006, banning corporal punishment in the school environment. However, this is yet to be made into a designated national policy.

Neither the HIV and AIDS policy nor the framework for the national response to HIV and AIDS contain clear directives and strategies to support children who are affected by HIV and AIDS. Our review of other policy documents — for example, those on youth, education, population, social affairs and women — revealed that, although they may recognise the challenges and problems that children face, they do not have specific policy provision in connection with, issues of sexual abuse, exploitation or other forms of violence against children.

b) Kenya

The government has not yet enacted an overarching policy on children's issues, and any action taken to date to develop policies that complement and maintain existing legislation to protect children against abuse, violence and exploitation have at best been piecemeal. In other words, most of these laws have been passed without the pre-requisite policy papers to support them. That said, current efforts to draft a national children policy represent a significant step forward in Kenya's attempts to undertake a comprehensive review of all policy to ensure compliance with the norms contained in

international and regional treaties. The process now needs to be accelerated.

c) Uganda

Despite the achievements to date, children in Uganda still face widespread cases of sexual abuse, physical abuse, emotional violence and numerous children engaged in hazardous labour. The gaps in existing policies for protecting children against violence take many forms, including:

- a lack of a comprehensive and coherent policy to address violence against children (existing policies are piecemeal and disjointed);
- the underutilisation of existing structures to address violence against children, including: probation and welfare offices; secretaries for children under local councils; the inspectorate unit from the Ministry of Gender, Labour and Social Development; the National Children's Council; family and children court and child and family protection units;
- inadequate coordination and monitoring of reported cases of violence against children and the work of the various units responsible for handling such cases, the lack of a transparent system for reporting and investigating cases of violence and holding perpetrators responsible;
- limited funding for establishing new remand homes to cater for the increase in the number of children requiring such service and inadequate funding to run the existing ones;
- ineffective response mechanism for child victims of violence at national, regional and local levels: services for victims are thin on the ground and institutions, mainly from civil society, lack significant government support;
- the Ministry of Gender, Labour and Social Development's lack of a functional inspectorate unit means that in practice many children's homes open without adequate authorisation; they admit children without court orders, separate children from their families, and hold them in perpetuity, creating environments that are open to child abuse.

4.4 The way forward

The study shows the need to initiate actions in all three countries to ensure that more children gain from current policy initiatives and other programmatic interventions to address violence against children.



Box 5: Suggestions for policy reform in Ethiopia

- The training of government institutions and relevant officials is paramount in the implementation of policies and programmes at local level, to ensure they do not remain on paper.
- The government needs to clarify its policy direction on issues, such as: implementing mechanisms to protect women and children against harmful traditional practices; the issue of corporal punishment in schools and at home, including repealing obsolete laws; and making education compulsory.
- Studies show that children in institutions and alternative care suffer physical, mental and sexual violence and remain at risk unless a range of safeguards are implemented. These include: effective training and vetting of all staff; regular and confidential reviews of all children's placement and treatment; independent inspections, including interviewing children and staff in private; and protection of whistle blowers (UNICEF 2006).

Box 6: Suggestions for policy reform in Kenya

- The government is currently developing a national plan of action on trafficking. However, there is need for a national policy to combat trafficking, upon which to anchor the Draft Trafficking in Persons Bill.
- The national policy on children should be finalised for better protection to children.
- The government, in conjunction and consultation with civil society organisations dealing with the welfare of children, should provide training for children's court judges and magistrates on current legal and policy issues in the area of children's rights, particularly in relation to international developments. This would impact on the quality of judgements on cases that have to do with children's rights.
- The government, NGOs and the community should ensure that children know and understand their rights.
- There is a need to provide training and sensitisation for duty bearers and officials who come into contact with children, including teachers, parents and officers dealing with children in conflict with the law. Such training should deal with how to treat children, teach non-physical means of discipline, and address issues such as sexual violence, harassment, etc.

Box 7: Suggestions for policy reform in Uganda

- The government must develop a comprehensive policy to address violence against children.
- Stakeholders should advocate for increased funding for key institutions in the implementation of the Children Act, including: the probation and welfare office; family and children courts; child and family protection units; the ministry of gender, labour and social development; local council courts; and remand homes.
- Guidelines should be developed for handling children in conflict with the law to protect their rights during detention in police cells, particularly with regards to: allowing access to medical care; separation from adults during detention; giving full information on their rights; and holding officials accountable if they extract evidence through beating.
- Birth registration should be strengthened at district level, to make it easier to ascertain the age of children who are victims of sexual violence.
- National guidelines must be developed and adopted on alternative forms of positive discipline; those developed by the African Network for Prevention and Protection against Child Abuse and Neglect (ANPPCAN) can be a useful starting point.



5. Ethiopia's policies and legislation framework

5.1 Background information

Ethiopia is situated in the Horn of Africa and composed of various ethnic groups speaking more than 80 languages, including Amharic, which is the dominant language. The country has played a key role in African development, especially with its pioneering role in the formation of the Organisation of African Unity, now the African Union. Ethiopia has a federal system with elections every five years and two Houses of Parliament — the House of People's Representatives and the House of the Federation.

By 2005 Ethiopia was home to 79 million people, with a population growth rate of 2.6% per annum between 2005 and 2008 and, about 41 million people under-18 year olds (see table one). The rapidly growing population has increased by about 18 million in only 10 years. According to the 1994 population census, only 14% of Ethiopia's 53.5 million people lived in urban areas. Life expectancy for Ethiopians dropped to 42.5 in 2004 according to the World Development Report 2007. The 2007 population census (data on religion) indicates that 51% of Ethiopians are Orthodox Christians, 33% Muslims, and 10% Protestants, with the rest following a diversity of other faiths.

Ethiopia adopted a new population policy in 1993, with the broad objectives of: reducing the fertility rate from 7.7 children per woman in 1990 to 4 by 2015; increasing the prevalence of contraceptives from 4% in 1990 to 44% by 2015; reducing maternal, infant and child morbidity and mortality; and improving welfare within the population. The government is currently implementing a 20-year health sector development programme, which focuses on: the democratisation and decentralisation of health services; developing preventive healthcare; capacity building; improving equity; increasing private sector participation; and promoting inter-sectoral linkages.

Ethiopia's economy is based on farming for most people in the highlands and pastoralism for those in the lowlands. Agriculture constitutes 54% of GDP, employing up to 80% of the population and accounting for over 90% of total export earnings. Between 2001 and 2005 the annual GDP growth rate averaged 5%. The government is currently implementing a second poverty reduction strategy in its PASDEP which covers 2005-10.

5.2 The situation of children

Various studies have shown that violence against children is rampant in Ethiopia. A review of the main studies that attempt to show the magnitude of the problem suggests a very deplorable picture — according to one study, more than 60% of adults admitted tying up a child with a rope or electrical wire and 57% admitted punching a child; more than 70% of children had been hit with a stick or other instrument, and 63% of adults admitted forcing a child to inhale the smoke of burning chilli peppers (ACPF and Save the Children Sweden 2006).

Studies indicate that corporal punishment is the most common form of violence experienced by children at home. In the same study mentioned above, only 17% of the children interviewed said they had never experienced any type of corporal punishment (ACPF and SCS 2006b).

Beating is the most common type of physical punishment, followed by hitting with a stick (74%), hitting the head (73%), slapping (70%), pinching (69%), whipping with a belt (64%) and being forced to kneel down (53%). Psychological violence includes shouting, looking threatening, insulting and giving verbal threats. Sexual violence includes abuse, rape, sexual harassment, exploitation and harmful traditional practices such as abduction, early marriage and female genital mutilation.

Cultural attitudes, a lack of awareness of alternative forms of discipline, poverty and problems related to law enforcement are major causes of violence against children in Ethiopia. The exposure of children to different forms of violence is a clear violation of their rights in domestic law and many international instruments. A detailed report on violence against children in Ethiopia can be found in the 2006 joint publication of the ACPF and Save the Children, Sweden (ACPF and Save the Children Sweden 2006).

The situation of children in conflict with the law is not any better. Disciplinary measures in prisons in Ethiopia are decided on by prisoners' disciplinary committees on which children are not represented and enforced by prison administrations. Such measures include inhuman and degrading punishment. Prison officials fail to protect children by delegating disciplinary authority to these unsupervised prisoners' committees. There is also



some evidence that prison wardens intimidate children in their care, depriving them of their liberty in a manner that constitutes psychological violence (ACPF 2007)⁵.

5.3 Legal framework to end violence against children

Ethiopia is signatory to a number of international standards and codes including:

- UNCRC (ratified June 1991).
- ILO Minimum Age Convention no138 (ratified 1999).
- ILO Convention on Worst Forms of Child Labour (ratified 2003).
- The African Children’s Charter (ratified 2000).

Ethiopia is also party to the ICESCR and the ICCPR, which set international standards on human rights for all people, including children. The Universal Declaration of Human Rights is recognised today as international customary law.

Although a number of pieces of legislation have been enacted in Ethiopia to protect the rights of children in general, there is no comprehensive or consolidated policy aimed at protecting children. The development of a comprehensive law or code specifically dealing with the rights of children could help to address various aspects of child rights issues in a more focused way.

5.3.1 Constitution (1995)

The constitution devotes a number of sections to issues pertaining to children, and recognises the necessity to protect children against exploitation and abuse, as well as the need for a conducive environment in which children can develop their full potential. It also has a mechanism for domesticating some of the key provisions of the African Charter, thereby protecting children from violence. These provisions, which include those prohibiting violence against children, can be found in article 36 of the constitution.

Article 9(4) of the constitution recognises international human rights instruments ratified by Ethiopia as an integral part of the domestic legal system. Accordingly, the domestication of international agreements, including human right conventions, will enable international instruments to be implemented as any other law passed by the House of People’s Representatives, subject

to their being published in the *gazeta*, as the law stands now. More importantly, the principles of the Universal Declaration of Human Rights and international human rights instruments adopted by Ethiopia are generally recognised as standards for the interpretation of the fundamental rights and freedoms of the constitution, which are enshrined in Article 13(2). As well as giving recognition to the ratified international human rights instruments, Article 36 also delineates the rights of children.

5.3.2 Criminal code proclamation no 414/2004 (2005)

This code reinforces the constitutionally guaranteed human rights of women and children by protecting them from traditional practices that are known to be harmful to their health and wellbeing. Articles 561-570 outlaw harmful traditional practices — such as female genital circumcision, early marriage, harmful practices on new-borns, abduction of young women and sexual violence of any kind — and sets out various degrees of punishment depending on the degree of harm to the victims. It also outlaws corporal punishment and trafficking of children. The code repealed the penal code of the Empire of Ethiopia (1957) and the revised special penal code of the provisional military administration council (1982).

5.3.3 Labour law proclamation no 377 (2003)

Articles 89(2) and 48(2) stipulate that the minimum age of employment under any circumstances, including through an apprenticeship, is 14. Thus, the law allows young people; including young offenders aged 14-18 to be employed under certain conditions that must be strictly adhered to by the employer. Article 89 also stipulates that these conditions include not working for more than seven hours a day, prohibition of overtime work and night work, and provision for weekly rest and public holidays.

5.3.4 Revised family code proclamation no 213 (2000)

Article 216 places children under the care of their guardian and tutor to ensure proper care. A child’s father and mother are automatically guardians and tutors for their children, but the court can appoint testamentary guardians and tutors in lieu of natural parents, to take care of a child until he or she reaches the age of majority. The revised family code

⁵ The African Child Policy Forum (2007). Children in prisons and detention centres in Ethiopia: The way forward. Addis Ababa.



fulfils part of the provision of the UNCRC; Article 7 indicates that it is the right of every child to be cared for by their parents where possible.

5.3.5 Civil code (on birth registration) (1960)

Reflecting Article 7 of the UNCRC, the civil code requires a child to be registered immediately after birth. Registration is normally followed by the issuing of a birth certificate, which is indispensable in many Ethiopian states for enrolling children in school or securing medical treatment. Registration is also a method of ensuring other rights of the child, such as identification following war, abandonment or abduction (Save the Children Sweden and Federal Supreme Court juvenile justice project office 2005). Birth registration proves a child's age and can therefore also protect them from violence by: preventing child labour (by enforcing minimum employment age laws); ensuring that children in conflict with the law are not treated legally or practically as adults; shielding children from underage military service or conscription; countering child marriage; reducing trafficking; and assisting repatriated children to be reunited with family members.

5.4 Achievements

Ethiopia has signed and ratified a number of international instruments and attempted to domesticate the provisions of some of these instruments, albeit with different degrees of success. The state has enacted legislation in an effort to protect children and meet international standards.

Foremost has been the constitution, which recognises the key international instruments pertaining to child protection. Article 36(2) explicitly mentions the principle of the best interests of the child, one of the cardinal principles of the UNCRC: *'In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.'* Article 34(3), accords protection to the institution of the family as the basis of the society: *'The family is the natural and fundamental unit of society and is entitled to protection by society and the state.'*

Other achievements include the enactment of the laws mentioned in 5.3.

5.5 Gaps in the existing legal framework

While Article 36 of the constitution caters for the rights of children in respect of international provisions, these are rarely effected in practice. There is an ongoing discussion among lawyers on the possibility of invoking the provisions of international human right instruments ratified by Ethiopia. The controversy arises mainly due to the absence of the promulgation of international human rights instruments through the official *Federal Negarit Gazeta*, a mandatory requirement in the country's law-making process⁶. While proclamations have been issued confirming ratification of said instruments, their contents have not been published in the official gazette. Hence, there is a need to publish the full text of child rights conventions ratified by the country to enforce the wide protection accorded to children in general and from all forms of violence in particular.

While women and children are known to be the foremost victims of harmful traditional practices, the constitution has failed to accord the same protection to children as it does to women. Article 34 prohibits laws, customs and practices that oppress or cause bodily or mental harm to women and obliges the state to take measures for their elimination.

Although Article 34(3) accords protection to the institution of family as the basis of society, it does not define the concept of family so it is difficult to clearly identify right holders. There is no indication of the kind of protection that families are entitled to from the state and society.

Sexual abuse on infants is addressed under Article 627(1) of the criminal code, but there is no clear rationale about why the provisions fail to provide equal protection for boys and girls regarding sexual crimes.

Article 635 of the criminal code deals with trafficking in women and minors, forced prostitution and keeping them in brothels. All of these are punishable with imprisonment not exceeding five years, and a fine not exceeding 10,000 Birr (about US \$580).

The criminal code also makes corporal punishment of children in schools, other institutions and in the community a criminal act. However, disciplinary measures taken by parents for the purpose of the proper upbringing of children do not bring criminal

⁶ See Article 71(2) of the FDRE Constitution, Article 3 of the federal Negarit Gazeta establishment proclamation 3/ 1994, and Article 14 the law making procedure for the House of Peoples' Representatives proclamation 14/1994.



liability upon parents, in clear contravention of UNCRC Article 19, which demands the prohibition of violence in all settings. The law must explicitly prohibit corporal punishment in all settings.

Although Article 59 of the civil code provides for the registration of children at birth, it also stipulates that it is the responsibility of the public notary to register birth, death and marriage. The office of the public notary has never been officially established, and in reality town municipalities issue birth certificates upon application lodged by parents or guardians. Furthermore, the process is far from compulsory and seldom effected immediately after birth (Walakira and Opio 2006 p26).

5.6 Policies for ending violence against children

In this section we discuss the major policies with implications for protecting children against violence in Ethiopia.

5.6.1 National plan of action for children

This plan aims to complement development objectives in all key sectors, including efforts towards achieving the millennium development goals, and focuses on: providing quality education, health facilities, clean water, sanitation, food and nutrition; combating HIV; and protecting children against abuse, exploitation and violence. The plan is quite comprehensive and targets children in especially difficult circumstances. The main challenge is that some components have no measurable targets and lack clear indicators for the measurement of achievements or progress.

5.6.2 National plan of action on sexual abuse and exploitation of children (2006-2010)

The four major areas of intervention are: prevention; protection; rehabilitation and reintegration; and coordination and monitoring. The participation of children is treated as a crosscutting issue. If well implemented, this plan provides a very good framework for the protection of children from violence and exploitation.

5.6.3 Developmental and social welfare policy (1996)

This policy states the need to prevent and control the further spread of prevalent and deep-rooted social problems — such as prostitution, begging, drug and alcohol abuse, street life and juvenile delinquency — that affect not only those who are directly involved, but also their families and society at large. The policy is to be applauded for its provision that every effort must be made to implement all ratified

international and regional human right instruments concerning the rights of the child. Other problems identified in the policy include recurrent drought, famine, poverty, family breakdown, high population growth, increasing rural-urban economic divide and the high prevalence of harmful traditional practices. The policy commits the government to making every effort to implement all international and regional human rights instruments concerning children's rights and wellbeing.

5.6.4 Plan for Accelerated and Sustained Development to End Poverty (PASDEP) 2005-2010

PASDEP focuses on achieving the millennium development goals. Many development practitioners see poverty as the leading cause of child rights violations, so PASDEP's strategy is to accelerate socio-economic development to eradicate poverty. It gives recognition to child-related issues by devoting a section to the special needs of children. Overwhelming poverty remains the underlying cause of the violation of children's rights to survival and development: children who live in extreme poverty are often those who experience violence, exploitation, abuse and discrimination (UNICEF 2006).

In addition to all the above, other policies being implemented in Ethiopia include the national plan of action on orphans and other vulnerable children (2004-2006), while a national plan of action for the establishment and development of civil registration and vital statistics systems is being prepared. This would help improve birth registration processes for better rights and welfare of the child.

5.7 Gaps in policies

The study identified the following gaps in Ethiopia's policy framework to address violence against children: the absence of a single and comprehensive policy that deals with the issue of violence against children; the absence of policy regarding children in difficult circumstances (especially orphans and vulnerable children) that serves as a general directive regulating the form of assistance to be delivered; and the failure to translate the official text of the UNCRC and the African Charter into the official working languages of the different regional states.

The main limitation of the developmental social welfare policy, from the point of view of protecting children from violence, is that the only form of violence it addresses is through harmful traditional practices. Further, it views violence against children as a social problem, not a violation of human rights.



In general, the policy fails to provide the necessary guidance for taking measures to create a protective environment for children.

The PASDEP has very good potential to improve the quality of life of children and their families, but is fraught with a number of difficulties. The poverty reduction strategy paper that resulted from PASDEP lacks an analysis of child poverty and has some critical omissions: in fact, outside the context of education, it does not mention children at all and fails to address issues pertaining to violence against them.

Despite its laudable aim of providing education that promotes democratic virtues, tolerance and the peaceful resolution of differences, the *education and training policy* fails to address corporal punishment in schools. Although the school administration regulation, issued by the ministry of education 1998, does not include corporal punishment among its lists of acceptable disciplinary measures and thus implicitly prohibits it, the education policy does not *explicitly* deal with the issue of disciplining children in school.

Other policies fail altogether to address the issue of violence against children. For example, neither the *HIV and AIDS policy* nor the *framework for the national response to HIV and AIDS* have any clear directives or strategies to support children infected or affected by HIV.

Similarly, although the national policy on population recognises the challenges and problems children face, it makes no specific policy provision in connection with violence against children. The review of other policies — on youth, social affairs and women — revealed that these do not have

specific provisions in connection to violence against children, including issues of sexual abuse and exploitation.

5.8 The way forward

The issues raised in earlier sections of this report suggest that a number of actions need to be taken to mainstream the issue of violence against children in legislation, policies and action plans. It is clear that, despite their good intentions on paper, existing policies and laws have not always been translated into action on the ground. In addition to the suggested recommendations for Ethiopia in box 5, we recommend the following concrete steps:

- More efforts need to be made to domesticate the UNCRC and other ratified international instruments. This should include publication in the *Federal Negarit Gazeta* and consideration of their implications for domestic legislation-making or revision processes.
- There is a need to build the capacity of local government institutions to implement policies and programmes. Failure to do so will mean that well intentioned policies and strategies will remain on paper and not be implemented.
- There is a need to move towards developing a comprehensive child rights law, which currently does not exist in Ethiopia. It is important that a uniform document on child rights protection is developed to bring together all the different initiatives and provisions emphasising the protection of children.





6. Kenya's policies and legislation framework

6.1 Background information

Kenya has a population of 38 million, growing at 2.6% per annum, with 19 million under-18 year olds and about 6 million under fives (see Table 1). There are many ethnic groups and the main religion groups are Catholic, Protestant, Evangelical and Muslim.

While Kenya's economy is much larger than other countries in eastern Africa, half of its wealth is concentrated in the top 10% of the population. The bottom 20% earns only 2.5% of the country's total income (The CRADLE 2002). The main economic activities are: trade, industry (mainly manufacturing and agro-processing), fishing, agriculture and pastoralism. As a seaport country, servicing the hinterland of Uganda, Rwanda, Burundi, southern Sudan and eastern Democratic Republic of Congo, Kenya earns significant foreign exchange from the goods destined for those countries in port and other taxes.

Kenya is currently following a liberal economic policy framework, with the government playing an enabling role and giving the private sector opportunities to allocate goods and services in the market. Together with Burundi, Rwanda, Tanzania and Uganda, Kenya is pursuing efforts towards an economic federation to create a common market for the east Africa region.

6.2 Situation of children

Children in Kenya face many different forms of violence, including physical and sexual violence and psychological and emotional abuse. These take the form of rape, defilement, early and forced marriage, female genital mutilation, abandonment, trafficking and exploitation, thereby exposing children to all

kinds of risks including HIV infection. Evidence suggests that the government and a host of NGOs have made a number of interventions to address the problems of violence against children. Nevertheless, available data paints a very grim picture, indicating that violence against children is on the increase, as shown in Table 3. Police data shows an increase in sexual abuse cases from about 2,000 in the 2002 to about 2,600 in 2006, making a cumulative total of some 12,600. Data from Kenyatta National Referral Hospital indicates that a total of 377 cases of sexual abuse against children and 59 cases of physical abuse were reported in the 2000-2005 period.

A survey by the African Network for Prevention and Protection against Child Abuse and Neglect (ANPPCAN 2001) of 501 children established that 43% were physically abused, 16% were forced to work full time, and 22% had been neglected by their parents. Another 8% were sexually abused, while 6% had been verbally abused.

The following table shows child abuse cases attended to at the Kenyatta National Hospital between 2000 and 2005. The Kenyatta National Hospital, based in Nairobi Kenya, is the oldest hospital in Kenya. It was founded in 1901 and is currently the largest national referral, teaching and research hospital in the country. The Kenyatta National hospital, with a capacity of 6,000 and bed capacity of 1,800, plays a major role in healthcare delivery in Kenya, East Africa and beyond. The hospital also participates in national health policy planning and operates on an annual budget of about 4.6 billion Kenyan shillings⁷.

Table 2: Child abuse cases attended to at the Kenyatta National Hospital 2000-2005

Category	2000	2001	2002	2003	2004	2005	Total
Neglect or abandonment	26	24	27	41	20	144	282
Physical abuse	7	9	8	5	5	25	59
Psychological abuse				1			1
Sexual abuse	83	73	87	69	13	52	377
Unspecified maltreatment	3	3		2		1	9
Total	119	109	122	118	38	222	728

⁷ See: <http://www.gvpedia.com/Kenya/Kenyatta-National-Hospital-Top-Healthcare.aspx>



Table 3: Number of reported child abuse cases in Kenya 2004–05

Year	2004	2005
Neglect	18,137	34,756
Abandonment	1,274	1,719
Assault	180	140
Sexual abuse	2,700	2,867
Child prostitution	100	162
Child brides and mothers	70	763
Harmful cultural practices	150	142
Abduction	120	106
Total	20,163	38,250

Source: Children’s Department Annual Returns 2004 and 2005

A 2001 survey by ANPPCAN Kenya Chapter indicated that children living in slum areas were more susceptible to abuse, especially sexual abuse, than their counterparts in more suburban communities. Sexual violence affects both boys and girls: the Nairobi Women’s Hospital’s gender violence recovery centre treated a total of 517 child survivors of sexual assault between April and September 2007; 456 (88%) were girls and 64 (12%) were boys (ANPPCAN Kenya 2001). Girls are at particular risk of sexual violence in school from teachers and male students. They are often insulted verbally, fondled, assaulted and even raped and defiled. Another report found that more than three-quarters of perpetrators of sexual violence against children are relatives (ActionAid International Kenya 2007).

Child sex tourism thrives on the Kenyan coast, with widespread acceptance and lack of action. A joint study released in July 2007 by UNICEF and the Kenyan government establishes that up to 15,000 children in four coastal districts are involved in casual sex for money and that almost 30% of participants (or victims) are children. (US Department of State: Bureau of democracy, Human Rights and Labour, March 2008).

A 2004 survey reported that over 60% of children had been or were being physically abused at school (Johnston 2004). This high prevalence of physical abuse against children was confirmed by studies carried out by ANPPCAN in 2005, where the major manifestations of physical violence (or ‘discipline’) included smacking (78.8%), pulling ears (68.8%) and cuffing (61.5%). Other corporal punishments included: forcing a child to kneel on a hard floor (45.9%), tapping (43%), forcing a child to stand in the sun (33%) and burning their fingers (19.7%) (ANPPCAN Kenya 2005).

Street children (estimated at over 300,000 in 2001) frequently experience violence at the hands of police, local authorities and other law enforcement officials. It was noted that street children are often detained by police without sufficient cause, and subjected to brutal interrogation or even torture in order to elicit confessions. (ANPPCAN Kenya 2001) Children placed in correctional institutions are frequently mistreated and abused and at times detained with adults, leaving them at increased risk of physical and sexual abuse.

Child labour is very high in Kenya, especially in agriculture, forestry, mining, quarrying, manufacturing and construction. Other sectors where children are actively involved in work include wholesale and retail trade, restaurants and hotels, transport and communications, services and private households. A government estimate in 1998/99 indicated that a total of 926,541 children were involved in child labour.

6.3 Legal framework for eliminating violence against children

As a member of the United Nations, Kenya must adhere to The Universal Declaration of Human Rights. The country has also ratified the following international human rights instruments⁸ with direct bearing on children’s rights. They include:

- UNCRC (1990).
- The African Children’s Charter (2000).
- ILO Convention no 182 on Elimination of the Worst Forms of Child Labour (1999).
- Optional Protocol on the Involvement of Children in Armed Conflict (2002).
- ICCPR (1972).
- ICESCR (1972).

⁸ For more information on these instruments, see Section 3.1 (b).



- Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1987).
- CEDAW (1981).
- African Charter on Human and Peoples' Rights (1992).
- Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (1993).
- International Convention on the Elimination of All Forms of Racial Discrimination (2001).
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (2004).
- Rome Statute of the International Criminal Court (2000).

6.3.1 The new constitution (August 2010)

Although Kenya has made tremendous strides in the domestication of the many international treaties it is party to into national legal and policy structures, a lot still needs to be done to ensure these laws are implemented. However, the promulgation of the new constitution is expected to reinvigorate the national children's rights regime.

Article 29 protects every person from abuse, exploitation and violence — including corporal punishment — making Kenya only the second African state to legally protect children from all corporal punishment in all settings, including the home. The rights apply to all persons and all settings, public and private. Article 20 (application of the Bill of Rights) states that:

- 1) *The Bill of Rights applies to all law and binds all State organs and all persons.*
- 2) *Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.*
- 3) *In applying a provision of the Bill of Rights, a court shall:*
 - a) develop the law to the extent that it does not give effect to a right of fundamental freedom; and
 - b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
- 4) *In interpreting the Bill of Rights, a court, tribunal or other authority shall promote:*

- a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
- b) the spirit, purport and objects of the Bill of Rights.

The constitution confirms that the rights apply to children as to all persons. Part 3 of the Bill of Rights re-emphasises the application of specific rights to certain groups of persons, stating that this Part “shall not be construed as limiting or qualifying any right” (Article 52). Article 52 sets out children's rights (see Section 3.1b for more details)

6.3.2 The Children Act

This Act is a comprehensive catalogue of children's rights, with provision on the enforcement of these rights. It also makes provision in relation to children in need of care and protection (including orphans and other vulnerable children) and adopts a child-rights-approach to juvenile justice provisions. It also establishes institutional mechanisms for the implementation of children's rights which comprise government institutions, courts and a national council for children's services.

6.3.3 The criminal procedure code and the Criminal Law (Amendment) Act (2003)

Along with the constitution [Sections 77(1) and (2)], the criminal procedure code provides protection to any person accused of a criminal offence, including their rights to: defend themselves in court through a legal representative of their choice⁹; to examine in person or by legal counsel the witnesses against him or her; to be tried by an impartial court; and to have the right to appeal [Sections 347-379]. Although it is not explicitly mentioned, this may also be construed to apply to children.

The criminal procedure code also gives police officers the power to arrest without a warrant, a power that is sometimes abused by the police, who arrest young people and press trumped-up charges if they fail to cooperate in offering bribes. In such instances, the law fails to protect people, including children, who come into conflict with the law. The age of criminal responsibility is eight years old and this is too low.

Although both the criminal procedure and penal codes retain corporal punishment as a legally acceptable form of punishment, the issue has been at the centre of legal and sociological debate. In fact, corporal punishment was subsequently outlawed

⁹ Also criminal procedure code (Section 193). However, the accused is not entitled to legal representation at public expense except in capital cases [constitution, Section 77(14)].



by the Criminal Law (Amendment) Act, which came into force in 2003. More significantly, the repeal of corporal punishment as a form of punishment was a major credit towards the elimination of inhuman and degrading treatment, which is proscribed by virtue of Section 74 of the constitution.

6.3.4 Evidence Act Cap 80 (Amended 1989)

This chapter of the Evidence Act states that in cases of sexual abuse where a child is the victim, corroboration of the child's evidence is not mandatory. The provision shows clearly that a child is competent to testify in court unless their young age prevents them from understanding the questions or giving rational answers.

6.3.5 Sexual Offences Act (2006)

This Act domesticates the provisions of a number of conventions, including the UNCRC and the Protocol on Trafficking in Persons, especially Women and Children. Its main provisions address issues relating to:

- securing the protection of vulnerable witnesses (especially children) to provide a more accommodating atmosphere at trial;
- outlawing and punishing child trafficking and prostitution, by making it an offence to among others permit, procure or induce a child to engage in prostitution;
- pornography, including exposing children to pornography;
- the deliberate transmission of HIV or any other life-threatening sexually transmitted disease.

6.3.6 The Employment Act (1976)

Section 2 [Chapter 226] defines a child as a person under the age of eighteen and makes it a crime to employ a child, whether gainfully or otherwise, in an industrial undertaking, including with machinery, except for training and learning purposes [Chapter 514, Sections 25 and 27]. The Act also empowers enforcement officers to withdraw a child from employment if that employment is by an undesirable person (i.e. an employer whose behaviour is known to be unbecoming and unacceptable in society), or if it is dangerous, immoral or likely to be injurious to the health of the child. It also requires an employer of children to maintain a register indicating the date of entry and exit from employment and to ensure regular medical examinations of the child.

6.3.7 Draft Counter Trafficking in Persons Bill (2009)

This Bill aims to institute policies to eliminate trafficking, especially of women and children, and to establish the necessary institutional mechanisms for the protection and support of trafficked persons. Its principal objective is to recognise and protect the equal rights and inherent dignity of all humans as enshrined in the international human rights instruments ratified by Kenya related to trafficking (see 6.3).

6.4 Achievements

As already discussed, legislation has been developed in Kenya to domesticate some of the provisions of the international instruments aimed at protecting children from abuse. The main achievement has been the new constitution and the enactment of the Children Act 2001, which brought together a number of legislative provisions on children. Other laws such as the Sexual Offences Act offer more protection to children by levying stiffer penalties against sexual offenders. The Children Act also created children's courts and conferred jurisdiction on magistrates to hear cases involving children as children's magistrates.

The government has also set up a national steering committee to combat trafficking in persons in Kenya. This committee, which is currently being convened by the department of children's services, brings together ministries, departments and agencies that deal with different aspect of trafficking with several civil society organisations.

6.5 Gaps in the existing legal framework

6.5.1 Children Act and the Children Act Amendment Bill

Although the Children Act came into force in March 2002, legal practitioners have raised concerns about some of its provisions and have called for a review. This led to a Draft Children Act Amendment Bill (2008) which is awaiting presentation to the attorney general and subsequently parliament. This attests to the fact that the Act has some limitations that need to be addressed.

The draft Bill seeks to amend the Children Act to enhance the protection of children from abuse while in custody: as well as providing for the creation and establishment of child protection



units, it seeks to enhance the protection offered to young child offenders by requiring that in addition to being kept separate from adult offenders, they should also be kept separate from older children. The same provision further requires that children with disabilities be held in facilities that adequately cater for their special needs [Section 11 of the Amendment Bill which seeks to amend Section 18 of the Children Act].

Section 56 of the draft Bill introduces the concept of diverting children who have been charged with non-capital offences from the criminal justice system in instances where they are inter alia first offenders and acknowledge responsibility for commission of the offence. This is borne out of the realisation that there is need to prevent the stigmatisation of child offenders and to shield children from other adverse consequences that could flow from subjection to the criminal justice system [Section 183(5)]. The draft Bill also introduces various alternatives to incarcerating children, which include: cautioning; requiring the child to apologise and/or pay compensation to the person he has wronged; and community service.

The Amendment Bill proposes a new definition for the term ‘place of safety’: Section 2(f) says that a *“place of safety includes any institution or other place that is suitable for temporary care of children”*. This could be due to the fact that there are not enough institutions around the country to provide shelter to children. It also seeks to repeal and replace Section 73 of the Children Act by granting access to children’s institutions thereby affording greater protection to children in the justice system. Section 24 (7) of the Amendment Bill provides that: *“A children’s court may on the application of any person or on its own motion visit any children’s institution and assess the condition and the circumstances of the children in the institution and may arising from such assessment make any order which it considers to be in the best interest of the child”*.

6.5.2 Sexual Offences Act

Since its enactment in 2006, not all police stations, prosecutors and courts have copies of the Act. As a result, people continue to be charged under the repealed sections of the penal code. There has also been a general debate as to the impact of the stiffer punishments contained in the Act since there is no evidence to show that this has deterred would-be abusers and thus reduced the number of cases.

6.5.3 Trafficking of children

Although the sale and trafficking of children is prohibited by the Children Act and the Sexual Offences Act, anecdotal reports suggest that trafficking is still common, though it remains hidden. Trafficking in children is not a specific offence in the penal code, which talks instead of child stealing, abduction and kidnapping, and contains a chapter on offences against morality that cover aspects of trafficking. Sections 254-266 of the penal code outlaw kidnapping, abduction, concealment and slave trade, which are all avenues for child trafficking. It is clear that existing laws on child trafficking must be more aggressively enforced; stronger legislation is also needed to address the issue.

6.6 Policies to end violence against children

The government is in the process of developing a number of key policies to improve the situation of children in the country and address the issue of violence against them.

The Ministry of Justice and Constitutional Affairs and the Kenya National Commission on Human Rights are currently developing a national policy and action plan on human rights by virtue of its being a signatory to the Vienna Convention on Laws and Treaties of 1969. Consultations have taken place in the provinces of Central, Nyanza, Western and Rift Valley and arrangements are underway for consultations in the Eastern, Coast, North Eastern and Nairobi provinces. One of the major problems that has come up during the public hearings so far is that violence against children is a major problem all over the country and needs to be addressed urgently, particularly sexual violence in the school environment.

The department of children’s services has been spearheading a process to develop a national policy on children, with ongoing national consultations. There have been concerns from several quarters about the manner in which this has been carried out, but it is hoped that once finalised, the policy will form a basis upon which all interventions relating to children, and to violence against children in particular, will be anchored.



6.7 Gaps in policies

It is worth noting that Kenya scores highly in developing a number of laws, despite some weaknesses noted above. However, most of them lack the firm policy frameworks on which they should be anchored; they have been passed without the prerequisite policy papers to support them. This points to the need to develop policies to complement existing legislation and maintain or entrench what has been achieved to protect children against exploitation, violence and abuse. To address this however, the government is currently working on a national children policy, aimed at filling these gaps.

6.8 The way forward

In addition to the suggested recommendations provided for Kenya in Box 6, the following steps should also be taken:

- All legislation dealing with issues pertaining to violence against children must be harmonised and made to conform to the Children Act, which embodies the most child-beneficial provisions drawing directly from the UNCRC and the African Charter with regard to violence against children. The Children Act should also be reviewed regularly to capture emergent jurisprudence. More laws are also required that augment the Children Act, in particular with regard to violence against children.
- Available laws should be operationalised, effectively implemented and enforced.
- Children's magistrates and children's courts should only handle children's cases to ensure the speedy disposal of cases involving children. The jurisdiction of the children's courts should be harmonised and enhanced to deal with children charged with capital offences. Courts, children's officers and police officers should be encouraged to always uphold the principle of the best interest of the child when dealing with child-related cases.
- The government should hasten the creation of a national legal aid scheme to ensure greater access to justice for children in need of care and protection of the law and children in conflict with the law.
- The government and the community at large should hold perpetrators of violence against children accountable through effective and transparent complaint, monitoring, investigation and redress mechanisms. Investigations into instances of violence against children should be thorough and prompt, with appropriate action taken against those responsible, including counselling, probation, suspension and termination of contract. Of the perpetrators, such as teachers, care workers, etc. Where appropriate, criminal charges should be brought against perpetrators.
- Changes in law and jurisprudence should be promptly communicated to judicial officers, the police and other duty bearers.
- The Draft Bill to Combat Trafficking in Persons should be enacted. There is also a need for a national policy to combat trafficking in persons in Kenya upon which to anchor this Bill. This is preferable to the present plan to only develop a national plan of action.



7. Uganda's policies and legislation framework

7.1 Background information

Up to 60% of Uganda's 29 million people are under 18 (see table one). The population is growing at 3.2% annually (UNICEF 2009), adding one million children per year. Since the 1980s Uganda has been implementing macro-economic reform policies, liberalising and stabilising the economy and promoting investment. The country has enjoyed buoyant economic growth in the last two decades, with average GDP growth per annum exceeding 6% and inflation at less than 10%. There has been growth in all sectors of the economy, which has continued to diversify. Non-traditional exports — such as flowers, fish and fruits — have become major earners of foreign exchange, which increased from US \$35 million in 1991 to US \$147 million in 1998 (MoFPED 2002). The fishing sector alone contributed an estimated 6% or US \$130 million to GDP in the financial year 2001/02 (MoFPED 2004).

With high levels of economic growth, the population living in absolute poverty has reduced from 56% in the 1990s to 31% in 2007 (UBOS 2006). Uganda's gross national income based on purchasing power parity was US \$1,500 per capita in 2005 (World Bank 2007 p287) —that's higher than neighbouring Kenya (US \$1,170) and Tanzania (US \$730).

While these figures suggest an improved economic situation for the population, there is a feeling in the country that the situation of the very poor is getting worse and that the benefits of economic growth are mainly reaching those who are well connected to persons in power. Furthermore, issues such as protection of the most vulnerable are yet to be given special priority; people in conflict-affected areas in particular have far poorer conditions compared to the national average.

7.2 Situation of children

Uganda's rapid population growth has meant that welfare is poor for many children whose parents or guardians have limited means to adequately cater for the needs of an increasing number of dependants. For this reason, child neglect (failure to provide) and abandonment are highest among the cases of child abuse reported to the police's child and family protection units in war-affected areas (Walakira and Opio 2006).

Maternal mortality has reduced from 505 per 100,000 live births in 2001 to 435 in 2006 (Walakira and Opio 2006). Enrolment in primary schools has reached 80%, rising from 3 million in 1997 to a phenomenal 7.6 million in 2003 (MoES 2004 p4). However, such achievements are overshadowed by the huge proportion (65%) of children who are vulnerable and have insufficient support — orphans; out of school; labourers; idle children; those living in poor or child-headed households; those with adult responsibilities, including household heads, or married children; and children with disabilities. The number of orphans is increasing and now exceeds 2,000,000. Such figures are further compounded by the growing amount of evidence on violence against children, which continues unabated in many communities (Save the Children Uganda 2007).

There is a lack of quantitative data that comprehensively captures the magnitude of violence against children in Uganda. This is complicated by the fact that violence against children manifests itself in several forms, some of which are not easily discernible. Notwithstanding, available data from police and several studies show that physical and sexual violence are the most pronounced.

One study on violence against children shows that forms of physical abuse experienced by children include: pushing, shaking, restraining, kicking, slapping, hitting, punching, beating, assault, burning, maiming and child sacrifice (Save the Children in Uganda 2007). Physical abuse in schools includes beatings from teachers, other forms of cruel corporal punishment and bullying by teachers and bigger children, and sexual abuse. In one ACPF study in Uganda, 94% of girl respondents said that they were physically abused; of these, 96% were beaten with an object, 89% faced verbal sexual abuse, 53% were indecently sexually touched, 42% were raped and 11% were forced to perform oral sex (ACPF 2006b). Another study found that sexual abuse and child neglect comprised more than 70% of the cases reported to police (Walakira and Opio 2006). Other common forms of violence against children, many of which go unreported, include: child sacrifice (Walakira 2008a); child trafficking; forced participation in armed conflict; emotional



violence; and child abuse within the justice system. A study of war-affected districts of Uganda — Lira, Apac, Bundibugyo and Kasese — found that defilement, rape, indecent assault, child neglect and abandonment were the top cases recorded at police stations (Walakira and Opio 2006). Other studies found that 76% of Uganda's children had experienced sexual violence including: being touched; receiving unwanted attention; exposure to adults having sex; being forced to touch adults to arouse sexual intentions; and being forced to have sex (Na-

ker 2006). Other studies found that children are commercially sexually exploited (Walakira 2006) or trafficked, while an ILO study revealed that many children working in bars, restaurants and lodges are sexually exploited (ILO 2007).

Many of these forms of violence against children represent clear criminal acts, as shown in Table 4. They are also often results of procedural and institutional processes, such as violence in the justice system experienced by children in conflict with the law (Save the Children Uganda 2007).

Table 4: Crimes involving children handled by the police force's child and family protection units in war-affected districts of Uganda

Nature of offence	2003		2004		2005			
	Apac	Lira	Apac	Lira	Apac	Bundibugyo	Kasese	Lira
Defilement	124	177	153	217	299	36	38	297
Rape		22		13	1			6
Indecent assault		3		7				15
Murder	1							
Child neglect/failure to provide		375		434		45	95	418
Child desertion/abandonment		24		27		2	12	17
Assault		310		71	4	4		97
Other penal code offences	3	18	2	3	1			10
False pretence					2			
Missing and abandoned children		47		36			12	32
Domestic violence		50		65				96
Child abuse (general)						2	44	
Drug abuse							36	
Idle and disorderly	1				1	1		
Theft	2		2		4	22		
Simple robbery			2					
Theft of bicycle	1							
Stealing cattle						12		
Criminal trespass						1		
House breaking and theft			1		1	1		
House breaking								
Arson						1		
TOTAL	132	1,026	160	873	313	127	237	988

Source: Walakira and Opio. (2006):14

The conscription of children in the armed forces has also been documented in Uganda, although it has been noted by the authorities that this is not a deliberate policy and has often been due to the falsification of age by either children or their parents. The 21-year rebel war has left many children dead in crossfire, maimed, slaughtered, forced to kill

and even buried alive. This war with its attendant consequences has displaced more than 1.8 million people, according to United Nations Office for the Coordination of Humanitarian Affairs (UNCHOA 2005, p2) and more than 20,000 children have been abducted (Uganda Human Rights Commission 2004c).



Table 5: Children in the armed forces (Uganda)

Area	Estimated number of children in the armed forces		
	Arrow militia	LDU militia	UPDF
Katakwi	27		2
Kaberamaido	20		
Soroti	83		
Madi Opei Camp (Kitgum)		200	
Pajimo (Kitgum)		300	
Kitgum Town Council			4
Pader		500	68
Total	130	1,000	74

Source: Uganda Human Rights Commission (2004b)

7.3 Legal framework to end violence against children

Uganda is signatory to many international instruments¹⁰ put in place to respect, protect and fulfil the rights of children and keep them safe from harm or violence. These include:

- UNCRC (ratified 1990);
- African Charter on the Rights and Welfare of the Child (ratified 1994);
- ILO Convention no 182 on the Elimination of the Worst Forms of Child Labour (ratified 2000);
- Optional Protocol on the Involvement of Children in Armed Conflict (ratified 2002);
- Optional Protocol on the Sale of Children Child Prostitution and Child Pornography (ratified 2002).

The UNCRC is the overarching international instrument for the realisation of children's rights. Uganda ratified it in 1990 and committed to take measures to implement its provisions. The government has made commendable progress in passing national laws that reflect many of the provisions of the UNCRC, including in the constitution and the Children Act Cap 59. Nevertheless, the findings of interviews with different officials in the government, law and justice sectors, conducted for this report, suggest that many of these laws are not implemented effectively.

International instruments are not self-executing unless corresponding national legislation is put in place, and Uganda has an extensive legal and institutional framework for respecting, protecting and fulfilling the rights of children, including against violence. The framework is the outcome of concerted efforts by the government and its partners, including civil society and donors which

have resulted in the domestication of some international laws into national law.

7.3.1 The constitution (1995)

The supreme law of the land provides for the protection and promotion of 'fundamental and other human rights and freedoms' (Chapter 4) to all people, including children. The constitution took into account the provisions of Article 19(1) of the UNCRC regarding violence against children. Article 24 of the constitution guarantees respect for human dignity and protection against inhuman treatment, while Article 34 further delineates the rights of children, including the right to: be cared for by their parents or those entitled by law to bring them up; basic education and medical treatment; protection against hazardous work (for children under the age of 16); be kept in lawful custody separately from adults (for child offenders). It also accords special priority to orphans and other vulnerable children.

As a solid foundation for championing the rights of children, the constitution is being used as a benchmark for the revision of any contradictory provisions in national legislation that infringe on the rights of children, such as corporal punishment in the Penal Code Act Cap 120, which was amended in 2007, in a bid for it to conform to the constitution. This has however not been achieved as will be shown below. The constitution also fills a gap by offering guidance where specific laws on children are still lacking. For example, the definition of defilement has been changed to include both male and female children, in line with the principle of non-discrimination. However, this guidance has its limitations when it comes to law enforcement; so while its successful impact on other laws cannot be discounted, this success is yet to percolate to the subsidiary laws, particularly when it comes to their implementation.

¹⁰ For more information on these instruments, see Section 3.1 b).



7.3.2 Children Act Cap 59 (2000)

Formerly the Child Statute (1996), this Act is a consolidation of several laws affecting the rights and welfare of children. Although some laws — for example, on adoption and care — were revised and consolidated, interviews with officials in the Uganda Law Reform Commission suggested that, rather than revise the substance of the Child Statute, the revision into the present Act merely reorganised and renumbered sections.

In its present form, the Children Act Cap 59 provides for the rights of the child in Part II, Section 5(1). It states that it is the duty of parents, guardians or any person with custody of a child to ensure that the child receives education and guidance, immunisation, an adequate diet, clothing and shelter. Section 5 (2) specifically addresses the protection of children from discrimination, violence, abuse and neglect; Section 6 bans subjecting a child to social or customary practices that are harmful to their health, while Section 7 generally prohibits the employment of children or their engagement in any activity that may be harmful to health, education or mental, physical or moral development. Other provisions include:

- the creation of the family and children court (Part IV), with jurisdiction and elaborate procedure;
- care and supervision orders (Part V);
- underlining the special role of probation and welfare officers to investigate and enforce order (Sections 32 and 40, part V);
- addressing issues of foster care placements (Part VI) and adoption (Part VII);
- addressing issues of children in conflict with the law (Part X);
- creating positions on local government committees responsible for child-related issues.

The implementation of the Children Act has increased awareness about child rights and has had an impact on increased funding for primary education, primary healthcare and the creation of child-friendly institutions in the law and justice sector institutions. However, it does not currently address other issues, including the protection of children against violence (see 7.4 for further discussion of these issues).

7.3.3 The Penal Code Amendment Act (2007)

This is related to other laws that have a direct bearing on child rights. The Act was amended in 2007 to cater for a number of issues that directly

affect children, such as sexual abuse, including defilement, child-to-child sex and indecent assault. The repeal of Section 129 broadened the definition of violence, and provided equal protection for boys and girls. Besides sexual violence, the Act also criminalises abduction; child trafficking; the sexual exploitation of children; child stealing; and commercial sexual exploitation¹¹. Conviction in any of these cases carries a maximum sentence of seven years.

7.3.4 The Magistrates Courts (Amended) Act (1997 amended 2007)

Section 40 gives jurisdiction to courts presided over by grade I and II magistrates to handle cases involving children that do not carry a death sentence. Hence, they can handle cases of defilement that carry a life sentence, but not cases of aggravated defilement that carry a death sentence. Widening the jurisdiction of lower-level magistrates to handle cases involving children should reduce delays and many child victims will receive justice within a shorter time.

7.3.5 The Police Act 1994 (amended 2000)

Chapter 303 empowers the police to institute criminal proceedings before a magistrate, apply for summons, warrants and search warrants, or undertake any other legal process as may be necessary against a person charged with an offence. While the work of the police is commendable in respecting and protecting the rights of children, individual police officers are sometimes perpetrators of violence against children in the process of arrest and detention.

7.4 Gaps in the existing legal framework

Many of the laws that are meant to benefit children in Uganda give the impression that children are guaranteed protection before the law and could be enjoying a remarkable protection against violence. However, while there has been remarkable progress in some areas over the last 20 years, others still require considerable improvement. This is particularly true with respect to the implementation of the laws, as we discuss in this section.

7.4.1 Children Act

Section 88 of the Children Act sets the minimum age of criminal responsibility at 12 years which, as already highlighted, is considered too young for legal culpability, by child rights activists.

¹¹ These sections use the term prostitution, without specifying age differences for those involved.



There are many loopholes in guardianship, and provisions for guardianship are implied rather than specific. For example, the Children Act does not define how guardianship can be attained, nor does it specify the rights and duties of a guardian. While the Act does require that a child can only be adopted after three years of fostering under the supervision of a prohibition and welfare officer, and that a non-Ugandan national wanting to adopt a Ugandan child cannot do so unless he or she has stayed in the country for at least three years, interviews in some studies have indicated that people can easily acquire guardianship for the purposes of abusing children, engaging them in illicit activities, trafficking or sacrificing them for organ sales (Save the Children in Uganda 2007, ANPPCAN 2004).

7.4.2 Penal Code Amendment Act

a) *Corporal punishment*: while the amended Penal Code Act has abolished corporal punishment and accordingly amended Sections 286 and 287 and repealed Section 288, the law does not affect the beating of children at school or at home as a form of punishment, which means that beating continues more or less unabated. As such, corporal punishment has not actually been abolished as envisaged by the constitution. A directive by the ministry of education bars teachers from hitting pupils (Maloba 2007), but it has had only limited impact since it is neither a policy nor law.

b) *Sexual abuse*: the Amended Act provides a landmark achievement in protecting all children against sexual abuse: the repeal of Section 129 has broadened the definition of defilement to include both sexes, rather than just girls. The use of the words 'sexual acts' instead of 'intercourse' captures not only penetration of the vagina, mouth or anus, however slight, of any person by sexual organ but also the unlawful use of any object or organ by a person on another person's sexual organ¹². A clause for aggravated defilement [Section 129(4)] has been introduced, punishable by the death penalty. The fact that magistrates' courts can now handle cases of defilement (but not aggravated defilement) promises faster handling of cases and easier access to victims in districts and lower levels.

Amendments notwithstanding, it remains apparent that defilement cases often fail during the investigation and presentation of evidence stages. This is due to a range of reasons including corruption, ignorance, a lack of facilitation to law enforcement, a lack of birth certificates to ascertain

age, and the requirement for a surgeon to confirm defilement, which at US\$20,000 (US \$12) is often beyond the reach of many victims, who are usually very poor.

7.4.3 Most vulnerable children

While laws provide for the protection of all children, there are categories of children whose needs are not being met due to poverty or a lack of commitment from carers or the government. The most vulnerable include children who are: on the streets; affected by conflict; living with HIV or AIDS; at risk of HIV; or exposed to other risky behaviours. Existing legislation either fails to pay adequate attention to these children or is weak in addressing their concerns.

7.4.4 Lack of implementation

There are many reasons why implementation of existing laws is ineffective, including: limited awareness about the law by law enforcers and children's carers; severe under-funding for probation and welfare officers; as well as inadequate resource allocation to other institutions, including childcare institutions, magistrates' courts, the ministry of gender, labour and social development, judicial institutions and local government.

7.5 Policies to end violence against children

7.5.1 National policy on orphans and other vulnerable children (2004)

This policy earmarks the following areas for intervention: socio-economic security; food and nutrition security; care and support; mitigating the impact of conflict; education; psychosocial support; health; and child protection. Using the human rights-based approach to programming, families and communities are the first line of response, and there is an emphasis on the participation of vulnerable children and families, and delivering integrated services through decentralisation. A five-year plan of action — *the national strategic programme plan of interventions on orphans and vulnerable children 2005/06-2009/10* — was developed to operationalise the implementation of the policy on orphans and other vulnerable children (MoGLSD 2004). However, funding has mainly been mobilised from donors, making continuity of implementation at the end of each donor's funding period a problem.

¹² Penal Code (Amendment) Act, 2007, Acts Supplement No..4 to the Uganda Gazette No. 43 Volume C dated 17/ 08/ 07, Entebbe: UPPC, by order of Government, p 4.



7.5.2 Universal primary education policy (1997)

There has been a tremendous increase in primary school attendance since the introduction of universal primary education in 1997. Primary school enrolment has risen from around 3 million pupils in 1997 to about 7.5 million in 2003 and more than 7.6 million in 2005 (UBOS 2006; UBOS 2005). However, primary school attendance is being undermined by the high school dropout rates due to cost and distance to school. In interviews girls indicated that the absence of separate toilet facilities discourages them from attending school, especially during menstruation. Both girls and boys also cited physical insecurity, hunger, violence and the fact that primary education is not compulsory (MoGLSD 2004). The increase in school enrolment has not been matched by progress in stemming violence within the school system.

7.6 Gaps in existing policies

There is currently no comprehensive policy or strategy to address violence against children in Uganda, and existing policies have been developed in piecemeal form and lack harmonisation and integration. The issue of violence has not reached a level where it attracts public debate¹³, and the comprehensive institutional framework for addressing the rights of children is not fully utilised.

In some cases, initiatives to end violence against children have not even made it to policy stage. For example, the ministry of education and sports has passed two circulars (in 1997 and 2006) concerning corporal punishment in schools. However, because the cabinet did not endorse them, they have remained as directives, and while serving as a deterrent, they have not stemmed the use of the cane in the school system.

In general there are many gaps in the implementation of existing policies. For example, although there is a constitutional court ruling that bans corporal punishment, it does not stop beatings in schools and homes; and while the penal code provision on assault can be used to address this form of violence, the ineffectiveness of police and bureaucratic processes discourage people from reporting such cases to police. Similarly, although rules on children's home have been developed and appended

to the Children Act, these are not enforced. Owing to the lack of a functional inspectorate unit in the responsible ministry, many children's homes have been opened without adequate authorisation; they admit children without court orders separate them from their families and hold them in perpetuity. In such cases, child abuse sometimes occurs.

7.7 Achievements

This study reveals that the Ugandan government and its partners have made considerable progress in the realisation of child rights, demonstrated by laws and policies that have been developed over time focusing on the protection of children. National legislation — including the constitution, the Children Act and the Penal Code Act — reflect concerted efforts towards the domestication of the UNCRC, the African Charter and other international treaties and commitments on children's rights. Significant among these is the upward revision of the minimum age of criminal responsibility in Uganda to 12 years, in compliance with both international and regional standards.

However, although various policies and programmes signal the government's commitment to translate laws into practice, implementation remains a challenge.

7.8 The way Forward

In addition to suggested recommendations already provide in Box 7, the following steps should also be taken by Uganda towards eliminating violence against children:

- Key actors need to focus on the gap between the existence of laws and policies on the one hand and their limited implementation on the other.
- The need for increased funding to key institutions such as children and family courts and child protection units cannot be overemphasised as this is key to the efficient implementation of the Children Act
- There must be a focus on coordinating and monitoring as well as capacity building and awareness raising on the part of all rights holders and duty bearers (including law enforcement agencies) about existing laws and policies.

¹³ Interview with the director of ANPPCAN.



8. Conclusions and Recommendations

This review of the legal and policy frameworks for responding to violence against children in Ethiopia, Kenya and Uganda has made some interesting revelations. All three countries have made significant efforts in ratifying most of the key international treaties, including the UNCRC, the ICESCR, the ICCPR, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the African Charter. As members of the United Nations all three countries have also accepted The Universal Declaration of Human Rights. These instruments guarantee the realisation of rights for all persons, including children. In all three countries, ratification has been followed by fair progress towards domestication in national constitutions and the formulation of several complementary laws to respect, protect and fulfil the rights of children.

All the countries have developed general policies to respond to the needs of children, particularly in the area of education. Uganda and Ethiopia have more explicit policies on child welfare — particularly regarding vulnerable children (Uganda) and family welfare (Ethiopia) — with accompanying plans of action: Uganda's national strategic programme plan of interventions for orphans and other vulnerable children and Ethiopia's plan of action for children and plan to establish civil registration and vital statistics systems. Kenya is on an encouraging path, with the promulgation of its new constitution in August 2010 and other initiatives to harmonise national laws and policies with international and regional principles and standards.

However, there is a lack of up-to-date knowledge on existing and repealed laws among duty bearers and right holders in all countries, owing to limited dissemination. This is accompanied by a lack of adequate transparent systems for reporting cases of violence, investigating these and holding perpetrators responsible. Response mechanisms for child victims of violence are lacking at national, regional and local levels; services for victims are thin on the ground; and civil society lacks significant government support.

Despite efforts to create a legal and policy framework to support the realisation of children's rights, it remains apparent that the situation of children in these countries with respect to violence and general welfare leaves a lot to be desired. In

certain aspects, there seems to be deterioration as the gap between the existence of laws and their implementation widens further, particularly in situations of war, disaster and given the lack of funding for child protection units in the judiciary, police and local governments. As a consequence, children are increasingly suffering from all forms of violence, including sexual abuse, child trafficking, forced conscription into the armed forces, physical abuse, commercial sexual exploitation, child sacrifice, emotional abuse and neglect. Furthermore, both national governments and civil society need to do more to protect the basic rights of the most vulnerable children: those who are HIV positive or otherwise affected by HIV and AIDS; children who are living on the streets; those affected by conflict; and those who are working with hazardous labour.

Therefore based on the findings of this study the following recommendations are made:

- There is an urgent need to address the gaps between laws and policies on one hand, and their implementation on the other. This calls for increased funding and capacity building for child protection units in the law and justice system, including family and children courts, police and other related departments.
- There should be wider dissemination of laws and policies concerning the rights of children among right holders and duty bearers. Wherever possible, the laws should be translated into local languages.
- There is need to speed up the process to gazette international instruments within national laws where it is mandatory and to harmonise contradictory provisions within the laws.
- A specialised and institutionalised mechanism should be established to monitor and document incidences of violation of children's rights. Governments in the three countries should establish effective and confidential complaint procedures for children and their families and ensure that complaints are promptly and thoroughly investigated and acted upon.
- National guidelines on alternative forms of positive discipline need to be developed and adapted to the national socio-cultural environment.
- Guidelines need to be developed for handling children in conflict with the law, to protect their



rights during detention. This should include allowing them access to medical care; ensuring they are detained separately from adults; and giving them full information on their rights. The governments need to explore the possibility of utilising community-based approaches as much as possible when handling children in conflict with the law.

- It is very important to develop a comprehensive policy or strategy to address violence against children in all three countries to complement these laws in place.

- Interventions for protecting children against child labour and juvenile delinquency should include: investment in strengthening parenting skills; supporting income-generation activities for children and their parents; ensuring access to quality social services; and empowering children as social actors. The programmes should reflect the four basic principles of the UNCRC: non-discrimination; the best interests of the child; survival and development; and participation.



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