

CHILD ABUSE

AND THE LAW

IN KENYA:

" NEED FOR A FRESH START "

**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT
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BY

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DEDICATION

" TO THE MOST BEAUTIFUL FLOWERS ON EARTH "

- THE CHILDREN

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LIST OF ABBREVIATIONS

U.N. - UNITED NATIONS.

UNICEF - UNITED NATIONS CHILDREN EDUCATION FUND.

UNDP - UNITED NATIONS DEVELOPMENT PROGRAMME.

CBS - CENTRAL BUREAU OF STATISTICS.

IMF - INTERNATIONAL MONETARY FUND

ANPPCAN - AFRICAN NETWORK FOR THE PROTECTION AND
PREVENTION OF CHILD ABUSE AND NEGLECT

NGO - NON-GOVERNMENTAL ORGANISATION

ILO - INTERNATIONAL LABOUR ORGANISATION

INTRODUCTION

Child abuse is the mistreatment of the child which mainly involves the infliction of physical harm, deprivation of basic needs, parental love and the infringement of the rights of a minor.

There are many forms of child abuse in the contemporary Kenyan society. The most prevalent are child labour, sexual assault, child battery, child abandonment, medical, educational and nutritional neglect, child prostitution, child marriages, exploitation of children in criminal activities and more shockingly, administrative mal-treatment of children accompanying their mothers in remand and in prisons.

The current laws on child abuse and welfare are socially and culturally outdated and to add insult to injury are appallingly lenient to abusers. In the informal sector, there are no legislative provisions against child labour. Unsound government policies have culminated in the stagnation of economic growth in Kenya and consequently mass orphanhood, homelessness, food insecurity and lack of education which are ingredients of child labour, juvenile prostitution and drug trafficking. The UNICEF report of 1993 on the 'State of World Children' reveals that governments

in developing countries involve only 10% of their budget to meet the basic needs of children, Kenya being no exception.

Consequences of child abuse are immeasurable and thus the law has to play a part in eradicating this evil which is destroying our future.

The objectives of this dissertation is to analyse the legal framework for the protection of children in Kenya, seek out the role played by parents, individuals, urbanization and the government in enhancing or diminishing child abuse and finally to recommend better and more protective laws concerning children.

1.1 INTRODUCTION

“As I have stated many times before, I am concerned with the increasing incidents of child abuse and neglect. Many children have lost their lives in fire incidents due largely to carelessness on the part of those who are responsible for their care. The youth who make up the majority of Kenyan population, have special needs which require special attention from us all. In an effort to check this undesirable trend, arrangements are underway to step up information and education programs in order to influence attitudes and behavior patterns towards children. Kenyans need to cultivate a sense of responsible parenthood, even in the face of pressing economic needs. But we shall need also to make the necessary provisions in our law to strengthen areas dealing with child abuse and neglect. My government will therefore propose some amendments to the Children and Young Persons Act so that the most urgent and serious child abuse incidents can be dealt with, where they occur without delay.”

Levi
Con

H. E. The President Daniel Arap Moi

Opening of Parliament

March 21, 1989

Child abuse and neglect suggest an overloaded concept, especially in our society where children are valued in many ways. In any given society, children are the single most valuable resource as they ensure the continuity of that particular society. For various reasons and in varying degrees, the lives of children are determined by other people. Parents, guardians, teachers the entire adult society has the responsibility for the quality of life of children. The concept contradicts people's perceptions about children. How can one conceive of children being abused and neglected in a society where a woman's status and entire life is centered on children? To the majority of our people, children are God's gift, their safety and survival are guaranteed even before they are born. Once children are born, their parents have the obligation to look after them. The responsibility is automatic and rarely if ever debated. This explains why the term 'abuse' does not exist in most languages spoken on the continent (Africa). The nearest translation from the majority of African languages is 'troubling a child' and children are not supposed to be troubled.

Child abuse and neglect appear in historical perspective. For example, in a biblical context, child abuse has been justified in certain religious practices. In the Old Testament, Abraham (in order to obey God's command) was ready to sacrifice his only son Isaac. At that time in history, any deluded or hallucinated parent could easily sought children for sacrifice in the name of God. The birth of Jesus created untold suffering because King Herod ordered all male children killed, the assumption being that Baby Jesus male would be killed in the process. All these historical occurrences explain the vulnerable status of children in any society.

Until the 17th century, children in Europe were actually treated like small adults. After about age four, children dressed, played games and participated in community festivities and celebrations just as adults. Adults and children were put in the same classes for education and often worked together in factories or cleaning chimneys. Child labour was exploited and their physical and mental health were in jeopardy. It took long and painful efforts to convince society that children constituted a special group which needed care and protection. It was indeed a major task for a few individuals to change the attitude of the majority that children were not adults and in fact had special growth and development needs.

What then is child abuse and neglect in our time?

In 1961 Henry Kempe and others considered child abuse to be parental acts which constitute a misuse or exploitation of the rights of parents or caretakers to control and discipline children under their care. Hence, it occurred when a parent or a caretaker knowingly misused the privileged position over the child to commit acts not in tune with societal norms and expectations. Above all, these pertained to acts detrimental to the health and well being of a child. This approach is centered around the child- parent relationship and it is seen as a family affair.

However, as interest and participation in this field became diversified, the above definition became broadened especially when conditions in developing countries were considered. Child abuse was seen to embrace many acts or omissions which are structural in nature. Thus children were considered abused or maltreated when their basic needs, such as food, shelter, education and security were not met because of prevailing conditions in society. This is known as extra-

familial of societal child abuse.

Children under the age of 18 years who lack reasonable care and protection from their guardians or parents may be considered abused⁵. Child abuse implies hostility and deliberately inflicted injury by the care giving adult⁶. It transcends the barriers of race and social class.

In Kenya, as in many African countries, not enough research has been done on the prevalence of the problem, but no country in the world can claim to have accurate data on such issues. Child abuse as wife battery and rape are secret activities. They all take place behind doors and as such are not observable by the general public. The trend seems to be that the more closely you look for child abuse, the more you will find. Child abuse often goes unrecognized by the health workers in Kenya⁷. The local dailies report everyday of children who have been abused in one way or another.

Child abuse can be broadly classified into physical abuse, sexual abuse, emotional abuse, educational and medical neglect and also nutritional neglect. It is important to emphasize that children have basic needs which require adequate attention if they are to live meaningful lives in adulthood. In civilized societies these are reflected in blue prints termed conventions and illustrated as rights. Such societies protect their children through observance of these rights and there are legal instruments deliberately created to safeguard them. Thus, to grow up normally, children have defined rights; for example

- a right to live
- a right to acquire a name and nationality
- a right to enjoy parental care, (and in fact a right to be born of/to parents, a

father and a mother).

- a right to proper food and medical care
- a right to education
- a right to be protected from all kinds of harm
- a right to moral upbringing
- a right to a culture

The list of children's rights as reflected on the International Convention of the Rights of a Child (1959)* is very long . The current International Convention of the Rights of the Child is very comprehensive. These instruments are actually a true reflection of how children should be treated in any society. Note that, virtually all countries have some legal provisions to not only safeguard the interests of children but also to protect them. The conditions under which some of the world's children are living in today are not included in the child rights list.

For example, there is nothing like:-

- a right to abandonment
- a right to paid labour and hazardous working conditions
- a right to child prostitution
- a right to death from starvation and battering

To have a home, nationality, food, shelter, medical care and education are basic rights of a child which cannot be compromised. Normal growth and development of a child depend entirely on the rights. Any person or conditions which deny or prevent a child from realizing these rights contribute to an abuse. Thus, child abuse may simply mean any act by a person group or society designed to inflict harm of a child or prevent a child from realizing normal growth and

development .

On the other hand, child neglect simply means the absence of efforts to provide conditions whereby a child will develop normally. Children never ask to be born. Hence a child rights are indeed basic. When we become silent observers and do nothing to enable children to grow and develop in apt circumstances, we simply become aiders and abettors of child neglect.

1.2 NATURE AND EXTENT OF CHILD ABUSE AND NEGLECT

Different forms of child abuse and neglect have been identified globally. For a long time, child abuse was assigned a narrow perspective. Often, its remedies were sought within family circles and structural adjustments to this problem were considered irrelevant by most people. However, if a broader explanation of child abuse is adopted, several forms emerge.

(a) Child Battering

Child battering is a form of child abuse characterizing a clinical condition of young children who have received severe physical abuse from parents or guardians. The concept of child battering was actually coined by Henry Kempe in 1961 at an annual meeting of the American Academy of Paediatrics. He hoped to create awareness of this condition among his colleagues. Kempe, himself a paediatrician, had confronted many cases of this nature and seriously looked for a concept that would appeal to his colleagues all over the world. i.e. The Battered Baby Syndrome.

This form of abuse is very common. It occurs when children are mercilessly beaten, leading to broken skulls, bones and other lesions. In Kenya, Dr. Bwibo has been the initiator of investigations into child battering. He has been able to identify conditions under which these children are admitted at our hospitals.

Examples are:-

- bruises on the face, limbs and trunk
- fractures of the limbs, ribs and skull

- Subdural hematoma associated with fits and other neurological problems.

- destruction of the end of long bones.

All these conditions, illustrate that physical harm or injury caused to such a child is indeed severe. Statistics show that often these children die¹⁰. The above examples only reflect cases which go to hospital. This form of abuse is very common. Children are beaten to death when parents fight and during parental discipline. A large number of children and babies fall and break their limbs or are burned to death because caretakers are too young to effectively take care of them. Many housemaids are still children themselves.

Severe forms of punishment inflicted on children in schools in the process of discipline are included here. For example, a case in point is in one whereby school children were made to crawl on a murrum path for many miles¹¹. The true picture of battered children is difficult to establish in any country since many cases are simply not reported or go undetected. This form of child abuse is actually related to the upbringing of a child which includes discipline. However, estimates from the developed world indicate that millions of children experience this form of abuse. For example, in 1966 it was estimated that 10,000 to 15,000 children in the United States were severely injured by non-accidental means, 25 - 30% were permanently injured and 5% died. Instances of child battering were more prevalent than typical childhood diseases¹².

The age of children who suffer from this form of abuse varies. Bwibo's studies indicate that some of the children are above five years old¹³. In Africa, Kenya included, childhood is often prolonged; hence, even those individuals of sixteen to eighteen years are still considered children and in fact are often

battered. Experts in this form of abuse have expanded its operational definition to include the neglected malnourished and those who fail to thrive⁴. Other authors simply call this type of abuse, physical abuse (less severe than battering). It is a condition of intentional and non-accidental use of physical force against children⁵. It is difficult to detect since most parents or guardians will always claim accidents and get away with it.

A common occurrence in the West is children being burnt on the buttocks with cigarettes or whipped with belts. In Kenya, caning children is a common culturally accepted practice. In the process of socializing with our children, we often reprimand them with caning. The concern is not with caning which takes place within the culturally prescribed way of disciplining a child. This form of punishment had an objective and was meant to be a stimulus directed to elicit a particular response or change of behavior from a child. However, the type of caning witnessed in present times is quite horrifying and hence abusive to children. For example, a father intending to take up a quarrel with his wife, directs his aggression at a child whom he brutally beats, using any form of instrument available (mothers do the same). Some parents brutalize their children in the name of drunkenness. This condition may appear trivial but a large number of children silently suffer under them. Studies on child labour show that many child workers experience physical injuries in their places of work.¹⁶

The majority of domestic are often beaten by their employers if they cannot perform their duties as expected¹⁷. Some employers, prefer child workers because 'they are easy to control', implying that they could easily discipline them often

through beatings.¹⁸

Files of children admitted to Kenyatta National Hospital (K.N.H.) between 1984 and 1988 with a diagnosis of battered baby syndrome were studied to find out the following.

- 1) Age
- 2) Sex
- 3) Nutritional status
- 4) length of stay in hospital
- 5) Who brought the child to hospital
- 6) Person battering the child
- 7) marital states of the mother
- 8) Outcome

Table 1: Age and Sex distribution of children with battered baby syndrome

Age	10-11 mths	12-23mths	2-5 yrs	6-10 yrs	Total
Male	11	1	2	2	16
Female	7	2	4	1	14
Total	18	3	6	3	30

The types of injuries identified ranged from slight bruising to multiple fractures. Some of the children had multiple forms of abuse. The most significant with more severe forms of abuse will be described under case histories. Fourteen children, mainly newborns were brought to hospital by police or neighbours after having been found abandoned in various stages of neglect and injury.

Table 2 Type of Injuries

Injury	Frequency
Multiple fractures, old and new	6
Foreign bodies (needles)	2
Bruising and bites	5
Burns	1
Neglect	1
Abandoned	14

Two thirds of battered children are usually in the age group 0-3 years. In the study 60% (18/30) of the victims were in their first year of life . The 30 victims were physically sound and there was no indication mental retardation apart from emotional withdrawal due to battering.

As a society becomes more sophisticated, the methods of child battering become more violent and refined.

Case Histories

Case 1

M.N. an 11-month old female child was admitted on 5/7/85 with a swollen right elbow. The child was reported to be cared for by a six-year old aunt who frequently beat her. On examination, she was found to have swelling of the right elbow joint and fracture was questioned . The child was sent for an X-ray . The X-ray revealed the presence of two needles in the soft tissues. These were

removed and the child discharged for home. The same child was readmitted on 13/8/85. This time the child had six needles in the right elbow, the left axilla and the left arm - both times the mother said she did not know how the needles got there.

Case 2

A.M. a four year old male child was brought to hospital by neighbours. The child had been beaten up the whole night. The child was left in the care of the step mother. On examination, the child had a swollen forehead, subconjunctival hemorrhage, bruises and healing scars all over the body. He also had burns on the right index and middle fingers.

Child battering is prevalent in our society and if nothing is done about it our children will be in a very vulnerable position and no one to rescue them.

b) Abuse of the Unborn Child

Events that take place from conception to birth are of profound consequence to the development of the unborn child in utero and subsequently of the child after birth and on the adult. There are practices that are likely to be injurious to the unborn child, hence abusive. There include the following:-

(i) Indiscriminate ingestion of drugs by expectant mothers :- That drugs can be tetragenic was poignantly brought to the surface with the cases of thalodamide and the limbless children born to mothers who used this drug at a certain stage in their pregnancy¹⁹. The practice of ingestion of tetragenic drugs in this country may be due to:

- Small print presentation of the warning not to prescribe a drug during pregnancy which is easily missed by an undersigning prescriber.
- Self - prescription by patient or family. The patient or family may be so familiar with what usually helps the patient that the same thing is bought regardless of the existence of a pregnancy.

To ingest a drug during pregnancy which should not be ingested by an expectant mother is an offense against the child..

In the case of traditional medicinal herbs, whether some of these herbs could harm the unborn child is not known since many of these herbs still have to be studied scientifically. These herbs are used by both the rural and urban population but especially so in the rural areas. The whole question of appropriate dosage for traditional remedies is yet to be resolved. The fact that their effects on an unborn child are unknown makes the need for investigating them even more urgent.

ii) Habits

Cigarette smoking is one of the best documented variables as being harmful to the health of the individual with extensive effects on the respiratory, cardio-vascular and other systems. It has also been shown to be one of the important variables that negatively affect the growth of the child in utero in the 'small-for-dates' children who are small due to some stunting effect on their growth resulting in below average sizes at birth. The stunting probably goes beyond the physical to the mental spheres.

Excessive alcohol by an expectant mother has also been found to be

harmful to the growing foetus. The adult individual may consciously decide to ignore the health risks and continue to indulge in these habits. But if that adult is a mother, then her rights are infringing on the rights of the unborn child. In terms of possible injury that could be effected in the child. These habits are offenses.

(iii) **Nutritional Status**

While good nutrition is important throughout pregnancy particularly the protein component, it is very important in the last three months which is the period of the fastest brain growth. In many traditional cultures, many protein foods are taboos during pregnancy and even where there are no taboos the very familiar stories of 'nyama ya kuchoma at the bar' often implies that the expectant mother and her children do not benefit from these meat-roasting sprees. A spouse could therefore injure the unborn child by failing to provide or assist in providing sufficient proteins during pregnancy.

(iv) **The Health of the Mother**

A growing foetus is said to be 'a very successful parasite' in that it will continue to perspire even in rather debilitated individuals. There is however a limit. A mother who has got syphilis and other venereal diseases, a mother who has severe medical condition which is unattended to, may deliver a baby who has been offended by herself, her family or her society at large. A practice that seems quite common in some parts which has harmful effects on the child is wife-beating. Where wife beating is rampant consideration is not often made of the presence of a pregnancy. This may result in bleeding and even loss of the foetus. Few more

offensive practices exist that is more serious than this one both to the mother and the unborn child.

c) **Health: Offenses Against Children**

(i) Nutritional Neglect

In infancy and young childhood, a good balanced diet is probably the most crucial factor with respect to the growth and development of the infant and the young child. Failure to provide a good nutritional base is therefore one of the major offenses against children. A nutrition survey done in 1977 by the Central Bureau of Statistics (then in the Ministry of Finance and Planning) brings out the rather grim fact that there was only "about 2% in a community (in Kenya) without any protein energy malnutrition". This rather grim figure is even more grim with realization that poor nutrition status in childhood has been found to be associated with low resistance to infections and high death rates from disease not connected with high death rates in the well nourished child. These have also been associated with poor mental development, poor school performance etc.

(ii) Introduction of potentially dangerous feeding practices

Bottle feeding without the facilities of refrigeration and a very high standard of hygiene is no longer a matter of dispute with respect to its health hazards. These dangers of bottle feeding without the proper understanding and facilities for appropriate care have been the subject of many books and films pointing out that this is a leading cause of death, usually through infective diarrhoea and vomiting - the number one killer in most developing countries - And

yet one continues to see the glorification of and the pushing of this mode of feeding even in the very poor urban settings and rural areas. Glorifying practices that lead to high morbidity and mortality is surely an offense against the health and life of the victim. Today in Kenya, this practice is being discouraged and breast feeding encouraged.

(iii) Protection against preventable disease

There is a group of diseases for which prevention is possible by immunization. This includes diseases such as measles, whooping cough tetanus and polio. Measles and whooping cough are responsible for a very large percentage of death among infants and young children. They continue to be killers (also polio) long after vaccines are made available for their prevention.

Infants and children cannot take themselves to health facilities in order to benefit from this protection.

Is it not an offense to the health of children when we do not get them to benefit from this existing knowledge?

d) Sexual Abuse

Sexual abuse is an evil that most people would rather not talk about . Most people would rather leave all matters relating to sex to a child and take great pains to categorically state that such practices as child sexual abuse do not exist at all. In the west, such sexual abuse has been identified as very common. Parents, step-parents, close relatives and caretakers have been reported sexually abusing children under their care. Often the abusers are those known and familiar rather than strangers to the child²⁰.

Sexual abuse takes the form of defilement, rape, incest, assault or violation. Studies indicate that sexual abuse of children covers a range of experience from being talked to in an erotic way (no physical contact), exhibitionism, being fondled or full sexual intercourse. The age at which this abuse occurs varies from one place to another, but it ranges from a few months of age to fifteen years. The average age for sexual abused girls in Britain is ten years, while that for boys is eleven years, in the United States, the average age for boys is eight years. Perpetrators often engage children in more than one sexual act during the abuse period and most recent reports are of abusers who engage children in oral sex.²¹

Although sexual abuse of children often happens within the family it also occurs in other places, such as schools and correction institutions. Young girls are being hired by older men into sexual activities, sometimes exploiting the economic situation of these girls. Male teachers make girls of eleven to fourteen years pregnant. Young boys and girls indulge in sexual activities at too early an age. This has led to the controversial issue of whether or not to provide contraceptives for young people (actually children according to our definition of a child). In 1987, the entire country was shocked by a birth by a nine year old girl. In a child labour study in Kenya²², it was discovered that some employers and children of the household where children worked as maids actually sexually abused them. The same study also revealed that a large number of domestic child workers became child prostitutes in Nairobi. As early as 1979, there were a significant number of young girls who committed suicide because they had been sexually molested by

their parents who were also abusing alcohol.²³

Research in this area is very difficult. The families involved do not want to pursue the matter further in fear of the social stigma attached to such issues. Files of children admitted to K.N.H. between 1984 and 1988 with a diagnosis of rape were identified and studied to find out the following:-

1. Age distribution
2. Time lapse before seeking medical care
3. Assailant's relationship with patient
4. Type of injury sustained
5. Person who brought the child to hospital

Table 3: Age Distribution of Child Victims of Sexual Abuse.

Age	Frequency
0 - 11 months	1
12 - 23 months	2
24 - 59 months	2
5 - 9 years	6
10 - 15 years	8
15 - 19 years	3

Case Histories

W.K. was a four month old female. Her mother had left her sleeping in the house while she was busy cooking at 7.30 p.m. She went to check on the baby and found a strange man sexually assaulting her. The assailant tried to run away but was apprehended and taken into police custody. The baby on examination had a perineal tear which in two days broke down to form a rectal vaginal fistula. Fortunately, the injuries healed.

A nine year old, presented herself to the Wilson Airport Police at 11.30 p.m. after she had been sexually assaulted. She was brought to the hospital by the police and admitted to the acute Gynaecology ward via Casualty. Vaginal examination revealed profuse bleeding. Examination under anaesthesia revealed a pelvic hematoma with vault, vaginal and perineal tears. She was transfused with two units of blood.

e) Child Labour ✓

" The child should be protected from economic exploitation, performing any work that is likely to be hazardous to his or her health - or physical, mental, spiritual, moral or social development", says the UN Convention of the Rights of the Child. However, this is not the case as hundreds of our children enter the exploitative labour market.

For a long time, child labour was not considered child abuse but exploitation of children through work. Child labour also means different things to different people. For example, work which children do for socialization purposes is not child abuse. Children have to work to learn skills for adulthood. Without

work, adult roles would be meaningless to children. On the other hand, work which children do to earn a living when a large part of the adult population is unemployed is not only exploitative but abusive, since it is an infringement of some of the rights of a child. For example, a child who abandons education to work for wages in order to support himself and sometimes his family is indeed being abused.

In Africa, children always contributed and are still contributing to family labour. However, studies show that waged labour is detrimental to normal development of children²⁴. Such work is considered abuse. Most countries consider it illegal to employ children under a certain age and thus have a minimum age for formal employment. This ranges between fourteen and sixteen years as provided by the I L O. Similarly, countries have a minimum age for employment in hazardous work (fifteen to twenty one years), provided that certain safeguards are ensured²⁵. Most countries actually have legal provisions for children's welfare in such situations. However, with or without provisions, young children continue to work illegally and under difficult and dangerous conditions. According to I.L.O estimates, a large number of children work under exploitative conditions in developing countries. They work in industries, agriculture and domestic services. The working conditions are appalling. Children earn low salaries (if they ever get paid) and are exposed to chemicals, high temperatures, dust, sexual exploitation, accidents and inhumanely long working hours. Although paid work appears perhaps the only means of survival for some of these children, studies reveal nothing positive about it. The conditions under which children work are so demeaning, exploitative and hazardous that they negate any of the benefits. Child

workers often exhibit stunted growth, psychological (emotional) problems and delinquent behavior.²⁶

Child Labour in Kenya :-

In Kenya, Children are not actually working in the formal sector, and it seems that labour laws are effectively being enforced. However, a large number of children still work in domestic and agricultural settings, with major negative implications for their physical, emotional and moral development.²⁷

Financial problems facing most Kenyans has made minors take up manual jobs at an early age. This has resulted in child abuse and most businessmen and those in the agricultural sector recruit young children for cheap labour. The lack of financial power has also forced most parents to encourage their children to look for odd-jobs to sustain their families.

In Kericho, child abuse is on the increase compared to past years. The most notorious are the multi-national tea companies operating in the district. Young children take on plucking of tea and other available jobs which come their way at the estates in order to earn a living. Child labour is also rampant in saw mills in Londiani division and coffee plantations of Chilchila divisions, Kericho. Besides being house maids, many girls have also taken jobs in towns as bar maids who end up being prostitutes to beef up their earnings. Child labour is also rampant in Meru according to a 1992 report. The study found out that most of the children were involved in the lucrative miraa business in the area since 1977,

when the late President Jomo Kenyatta legalized miraa. The very young ones are usually paid in kind, being given food and a small bunch of miraa to chew after the day's business. "Most of these children work under difficult and dangerous conditions. They work from 6 am until late in the night without any breaks," says the study. Majority of the children are uneducated. The other areas of child labour are in mines, quarries, fishing, herding, hawking or working as house help.

A study showed that a large number of children who worked in the domestic sector as maids ended up in juvenile courts charged with stealing by servant or loitering with intent to prostitute. Circumcision among some communities have abetted child labour abuse because after the rites, the initiates feel that they are grown-ups and most drop out of school in search for jobs. During a recent child labour workshop held in Nyambene, Meru District, and attended by district heads of department and heads of NGOs, a report on a study that was carried out in 1992 was presented. The report shows that child labour was rampant in Meru to an extent that leaders and the community think that the problem was universal and unsolvable - 52% earning nothing at all.

Other studies show that children in child labour are in a competitive world of capitalism and since the wages of their labour are sometimes too little they supplement them by general thefts. According to a research done by I L O - I P E C and experts from COTU in 20 districts in the country , it was discovered that children between six and seventeen years old worked under dangerous conditions and were exploited. The research also discovered that number of children attending school dropped by between 2- 5% during the period 1990 - 1993.

over 40 tribes in Kenya, 12 still practice some form of female genital mutilation.

Even the mildest form of female genital mutilation poses serious immediate and long term health risks to the initiate. " Female circumcision deals with the most sensitive part of the body, the wound left behind is both physical and psychological." There are two types of circumcision;

(i) Excision - In this case, the clitoris and the adjacent parts of the labia minora are removed.

(ii) Infibulation - This involves sewing together of the two sides of the vulva.

Besides immediate blood loss, which if not stopped causes death, there are several long-term side effects of female genital mutilation. Common complications are repeated urinary tract infection, excessive growth of scar tissue, stones in the urethra and bladder caused by obstruction of menstrual flow leading to reproductive tract infections and infertility which has profound repercussions in a society where a woman's reproductive capacity is central to her existence. By far the most critical complications arising from female genital mutilation come during pregnancy. Often, the baby cannot move down the vaginal canal because the tough scar tissue surrounding the vagina cannot stretch as normal tissue does. Prolonged labour which is life-threatening to both mother and child is a common result.

More than 90% of births in Kenya take place at home by traditional birth attendants who may not be prepared to perform an episiotomy.

In Kenya, most people say that the practice is dying especially among those living in Nairobi and the urban centers. But those affected by the practice know that there is little hope of eradication in the future. The communities that circumcises their women believe that the practice will reduce promiscuity,

encourage personal hygiene, encourage a cohesive family unit and give the initiates freedom in decision-making. Among the Maasai and Samburu communities, the number of girls who are circumcised is almost 100%.

In 1982, President Moi officially banned female genital mutilation, but nearly 13 years later, the ban seems to have had little effect. Note that, there is no law that makes circumcision illegal.

The health risks involved in pursuance of this cultural practice are so immense that it becomes abusive to perform them on the girl child. Also, the psychological impact of the girl becoming an adult at ten or eleven years may be detrimental. In Kajiado, there are many early pregnancies after circumcisions because a girl is free to have sex with any man after she is circumcised and men take advantage of that.

Statistics show that 1 in every 100 women/girls who are circumcised die. This becomes a very big problem nationally which needs to be looked into.

Anthropological research on child abuse importantly emphasizes the need to "define" child abuse for cross cultural comparison²⁹ Should culturally appropriate but painful initiation ceremonies be called abuse?³⁰

On the whole, anthropological work would seem to support relativistically inclined child abuse theorists who define child abuse, for example as "when the child suffers non-accidental physical injury as a result of acts or omissions on the part of his parents or guardians that violate the community standards concerning the treatment of children."

(ii) Child Marriages

Under the **Age of Majority Act**,³¹ it is provided in section 2 that " a person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years." This means that a child is a person under the age of eighteen years. The law regards such a person as a minor, who is a person incapable of managing his own property among other things. The United Nations Convention on the Rights of the Child defines a child as anybody who has not attained the age of eighteen years.

Child marriages or under age marriages are therefore marriages where either of the parties has not attained the puberty age or the parties interested have not attained the legal age of majority. Child marriages, in the customary principles are justified and up to date, the communities that cherish their customs and traditions recognize such marriages and are not considered as against morals and religious belief of the African philosophy.

Legally, marriage is the voluntary union of one man and one woman for life to the exclusion of all others as per Lord Penzance in the case of **Hyde v Hyde**,³² section 2 of Matrimonial Causes Act (Cap 150) **Laws of Kenya**³³ is a replica of Lord Penzance's definition of marriage. Due to the importance of marriage and the need to protect the children therefrom, both the canon and common laws regarded marriage to be valid if it was contracted by parties who had attained the age of puberty i.e. fourteen for boys and twelve for girls. It could be avoided or ratified if either party was under the aforementioned ages and contracted a marriage. This remained the law until 1951 when Pearce J. in **Pugh v**

Pugh stated³⁴,

"Child marriages of common consent are believed to be bad for the participants and bad for the institution of marriage. It is morally wrong that persons of an age at which we believe them to be immature and provide their education should have the stresses, responsibilities and sexual freedom of marriage and the physical strain of child bearing . Acts making carnal knowledge of young girls an offense are an indication of modern views on this subject."

S.35 of Marriage Act (Cap 150) Laws of Kenya calls for marriage to be considered valid if parties to the marriage are sixteen years of age or if under that age, then there is parental consent to ratify such a marriage. The consent must or ought to be a free and voluntary consent because marriage is a relationship for life. The marriage age is paramount to help protect young ladies against reckless men who go round picking any girl and when apprehended for defilement, seek refuge in the exception provided by law, as was held in the case of *R V Harison and Others*³⁵. In the case of *R v Blacks*³⁶ counsel for the prosecution exhorted the jury to protect young girls from men like prisoners, who did not direct their minds to the age of young girls while having their carnal knowledge. The holdings above show the ill attitude the courts had towards child abuse, of which, child marriages is one of them and the need to protect children.

The practice of child marriages have far reaching effects on the children and the community at large. There are a number of causes of early marriages. These include early pregnancy, to facilitate education of brothers and therefore improve the educational social status of the girl's family, to improve the living standards of the family, as a source of wealth, and also as a bar to failure of

marrying.

However, the modern society considers such marriages as unique. As Dr. Gachukia, a scholar, laments, where a child or girl-child has been removed from school to marry, her educational right is curtailed because once engaged in the wifely duties, she cannot pursue high level education. This is a rampant situation in Kenya. Many medical practitioners express with lots of concern the many dangers that the girl-child wife is exposed to especially where the husband takes her to the sexual bed immediately without due regard to her age. An example, where the first wife or eldest wife has been denied male children, the customs allow her to bring in her young sister or a young girl from the clan so as to raise seeds for her house and herself too. It is logical that where the old man or the married man is in dire need of a male child, immediately the girl is brought and all the negotiations have been concluded, the girl is subject to sexual pain even if she is to adjust in future. If the girl child is fertile enough the short strenuous pain during physical birth of the child cannot be escaped.

Following an interview with Dr. Obwaka, gynaecologist, he highlighted several effects on the girl-child in cases where she conceives at an early age. The most obvious one is death of the girl-child at delivery time especially in rural areas where there are few clinics. This occurs when labour or obstructed labour happens to materialize at child birth because the birth canal is not adequate to facilitate a natural birth. Rapture of the uterus is highly probable when contractions at child birth occur as the pelvis is not fully developed to cope with the contractions.

The next health hazard is the severe cervical tear especially where the child is big

enough to pass through the birth canal. Following the cervical tear is the tear of the urethra, rectum and the anus or as well as the bladder. Cervical tear has the long term effect of spontaneous abortion if the girl is not attended to by a gynaecologist.

The exposure to children in child marriages to this type of health risks makes child marriages a form of abuse to children, child marriages also perpetrate sexual exploitation of children.

g) Child Abandonment

An abandoned child is one who has been deprived of the right to protection and assistance by a responsible parent, guardian or other adult person.

Child abandonment is a common form of child abuse especially in developing countries. It often involves categories of children born with some form of disability who are left in the hospitals after birth. Others are thrown away by parents who cannot face the fact that they have given birth to deformed children. Young girls conceal the fact that they have conceived before marriage by throwing newly born babies into dustbins and latrines. Such cases are reported in the newspapers very often. It is not rare to see such a headline " 4 month old baby found in pit latrine " or " Mother abandons her 1 week old baby " etc.

In Kenya, we are witnessing situations where parents with many children decide to abandon their babies because they cannot afford extra mouths in their already congested household. Some mothers who are abandoned by their husbands have difficulties in supporting the children and hence decide to abandon them. Also a

large number of children are abandoned because their mothers are jailed.³⁷

Most street children are victims of child abandonment³⁸. They are left to take care of themselves and are actually exposed to real danger. Child abandonment becomes a form of child abuse because of the effects that stem from this practice. The example of street children is the best illustration of the terrible effects of child abandonment.

Kenya Situation:

There is no part of Nairobi without street children who are hooked on drugs and other intoxicating substances such as glue, benzene, petrol, paraffin and paint thinners. Nobody seems to know exactly what to do with them. But their number is rising rapidly. Most of them are aged between five and twelve years. Social workers estimate that the national figure of the number of children using various addictive drugs and substances in Kenyan towns - especially in the slums - to be 300,000. Majority of them are smoking dangerous drugs including bhang, heroin and cocaine. Chances of them developing cancers of the throat, nose and oral cavity is high especially when these volatile substances are given to babies carried on the back of their six year old brothers. Article 34 of the Convention on the Rights of the Child demands that countries protect children from all forms of sexual abuse and exploitation. But African nations, Kenya included, are doing very little to curb the increasing number of child prostitutes and reduce sexual exploitation. According to social workers, 9 out of every 10 girls living in the streets either have a sexually transmitted disease or have been treated for one in the past. Even more horrifying is the discovery that 3 out of every 10 girls in the

streets have the HIV virus, while 4 out of every 10 have a combination of one or two sexually transmitted diseases. Street girls plunge into an intricate child prostitution ring that has rigidly spread to all parts of the country. Street children are more at risk of contracting AIDS because of their economic problems. The health problems haunting the street children are unlimited and a high percentage of them die before they graduate from begging in the streets to sorting out garbage dumps for items that may be sold or recycled. The street children hardly go to hospitals or seek medical care. They often get injured by the increasing number of people who seem to hate them and see them as a major nuisance and threat to the well being of the city. The level of psychological damage among the street children who are actually equated and treated as if they are mental cases to be kept in special institutions is unlimited and only a few experts tend talk about it.

Table 4 : Distribution of Street Children by Activities in Nairobi in 1990

Activities	No of respondents	Percent
Begging an Loitering	135	21.5
Ferrying luggage/working	38	6.0
Selling edibles	81	12.8
Collection and selling waste papers/bottles/plastic	29.3	46.2
Car parking/washing / guarding	61	9.6
Others	26	4.1
TOTAL	634	100.0

Table 5 : Study By Dr. Onyango

Problems Faced While on the streets

Problems	No. of Respondents	Per Cent
Lack of sleeping place	84	13
Poor weather condition/boredom	36	06
Harassment & Abuse	200	32
Hunger/Water	175	28
Poor Health	21	03
No Problem	88	14
N/A	30	05

TOTAL	634	101
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(h) Children in Especially Difficult Circumstances (CEDC)

(i) Children of imprisoned Mothers i.e. Children below the age of four years:-

These are the children allowed by law to stay with their mothers in prison basically because they biologically depend on them for breast milk and also to establish the relationship between mother and child. They remain in the prison as long as there are no suitable alternatives for their accommodation. In most cases relatives are unable to look after the children.

These children are faced with a number of problems that may affect them for the rest of their lives. They are in continuous physical contact with new admissions to the prisons of both adults and children who may bring with them contagious diseases e.g. Measles, whooping cough, etc. They may be faced with sexual abuse by prostitutes or other women especially if the children are males. Prisoners, especially those who have no children accompanying them, conduct themselves in an indecent manner and even use indecent language. This is harmful to the child's moral upbringing and it affects the child mentally and physically. On attaining the age of four, if there are no relatives willing to take him, he is moved to another institution and the child becomes institutionalized.

If the mother had not been sent to prison, the child may not have had to undergo the experiences described here. The Development Plan of 1989 - 1993 notes that confinement of young children with their errant mothers in police

stations and prison remand cells or abandoned at home while mothers are in prison can be traumatic to the children.

(ii) Children as Victims of Armed Conflict/Political Violence:

- Refugee Children

These should be considered as 'children in especially difficult circumstances' as they are suffering from starvation, malnutrition, displacement, some have lost their parents hence orphans. In general, they lack basic shelter.

In Kenya there has been an influx of refugees, the majority being children and women. Although there is no data available for the number of children, it is evident that they are many as highlighted by newspapers.

- Kenya Situation

Just as in the case of child abandonment, in the case of children being victims of political violence, the main concern is the effect of such abandonment or political violence and this is why political violence becomes a form of child abuse. Children who are victims of this type of child abuse become psychologically impaired forever.

The infamous political thuggery ravaging Rift Valley, Nyanza and Western provinces has left an indelible mark on the country. Eighteen months, after the clashes started, about 1,000 people died and 130,000 others were displaced according to National Election Monitoring Unit (NEMU). Somewhere lost within those statistics are the nation's children - young, vulnerable, innocent Kenyans who saw and experienced atrocities far beyond their years. Probably the most serious long term effect of the clashes is the revival, internalization and

perpetuation of tribalism. The unofficial policy of ethnic cleansing is slowly taking root. Children picked up the tribalistic messages of their elders and incorporated them into their lives. They were fearful and resentful of ethnic groups they perceived to have hurt them.

When children see a situation of injustice, the violence becomes incorporated into their value system. They want to hit back when they grow up. This perpetuates the violence and forms a generation of violent people. Seeing and experiencing the trauma of war so early in life will have a lasting impression on the children and it may retard their future growth. There is a tremendous psychological impact. Studies have shown that children who experience traumatic experiences never recover. Children grow up as cynics. They cannot concentrate or relate to others in a healthy way and they have many mental disturbances. They are robbed of a future. They perform badly for the rest of their lives and normally do not attain their full potential. Education of such children is the most affected. Many schools now have students of only one ethnic group while under - enrolment is a problem in many schools and overcrowding is a reality in others. Prior to the clashes, children of all ethnic groups would mix, play together and speak to each other in Kiswahili. " That behavior stopped immediately the clashes began", says a teacher at a school.

Children should not be subjected to the above situation. It is detrimental to their development and moral upbringing which are very important to the child. This unfairness towards the child is considered as child abuse.

1.3 CAUSES OF CHILD ABUSE

It is not enough to talk about forms of child abuse without discussing the causes. The causes of child abuse are multifaceted in nature and scope. Some of these factors are found in family situations, while others exist in the society.

(a) Stress

Studies in the West identify a stress factor as one of the indicators of child abuse. Stress is related to marital conflicts e.g. single mothers have a tendency to neglect their children especially after separation and divorce, while father - substitutes tend to physically or sexually abuse their step children. These situations exist in Kenya where the majority of neglected and abandoned children come from female - headed households. A large number of street children in our country do not know their fathers.

(b) Early Parenthood

Early parenthood and having large families also contribute to child abuse and neglect. Mothers who had their babies before they were twenty years were found to abuse their children. Large families have social and economic problems which generate stress.

In Kenya, teenage pregnancy is now a common problem. These mothers are obviously too young to adequately take care of their children. Research activities have ably demonstrated the problems young people face in this country in terms of abortions and early indulgence in sexual activities.

(c) Unemployment

Child abuse has also been associated with conditions of unemployment. The

majority of mothers who abuse their children are found to be in impoverished conditions. Situations of unemployment make a large number of mothers in this country indulge in illegal activities e.g. brewing beer, prostitution, trading without licenses and petty thefts. When these women serve prison sentences, their children become abandoned and suffer from neglect.

Large families coupled with problems of unemployment experience a scarcity of material resources. Families affected are unable to meet the basic needs of children and this leads to all forms of child abuse. For example an unemployed father who drinks himself beyond reasonable measure can easily sexually abuse his female children. There are many reported cases where this has happened.

Girls who get pregnant often drop out of school and for the most part are not equipped with skills to enable them get jobs in a competitive market. Soon the girls get involved in practices that make them pregnant, making this problem a vicious cycle. Thus unemployment is a major contributing factor to all forms of child abuse.

(d) Violence

Violence has also been identified as a major factor in child abuse. It can happen at different levels. There is violence which takes place within a family. This is devastating to family members, and its consequences appear endless. There is violence which takes place within the society. For example, armed conflicts, civil strifes and many forms of catastrophes. When these happen, children suffer. Situations of armed conflict cause havoc as the damage they do are colossal. In the process, children die or get displaced or are abandoned. Conflicts create suspicion

and mistrust among people and at their worst retard development. Peace is a pre-requisite for normal growth and development of children.

e) Transition

The pace of change in Africa has been rapid and this has not spared the African family.³⁹ The structure of the family is changing and new forms are emerging.

African women have nowadays to perform roles which they never performed in traditional society. A large proportion of our families in both rural and urban areas are now being headed by women.⁴⁰ The new roles cause a lot of stress to women as they endeavor to adjust. The support systems to enable these mothers to adjust are not readily available and in the process a large number of children suffer.

Many women work long distances away from home. They do not have effective alternative care for their children.⁴¹ In some situations nursery schools do not exist and where they do exist, few mothers can afford them. Adult helpers are too expensive for the majority of working mothers. As a result, a large number of working mothers resort to employing children. Substitute care is not the best for children. The relationship between the mother of the household and the maid will determine the quality of care the maid will give to the children. This leaves the children in a very precarious situation. Before these maids run away or are sacked, they go through a period of displacing their frustration on children, who end up abused, sometimes sexually.

New forms of families are emerging in our midst. The obvious one is the nuclear family. It is supposed to consist of a father, mother and their children (natural or adopted). In this family, love is the key factor. This arrangement

becomes fragile when love has waned and the family is literally dissolved. In our traditional society, the interests of the child was rested in the whole society. While we cannot set the clock backwards, we can acknowledge that our family structures are changing and children are likely to be abused. This fits well in the West where other forms of institutions have been established to attend to such eventualities. In our case such institutions have still to be created. In the mean time, our children are at the highest risk.

f) Effects of Environmental Degradation in Maternal and Child Health.

In spite of all the efforts at conservation, Kenya's situation borders on a catastrophe. The critical areas where Kenya is evidently being ground in the combat against environmental deterioration are; desertification due to increased pressure on agricultural land leading to encroachment in marginal lands, extensive and careless bush clearance and tree felling for timber, charcoal and wood fuel, and the use of inappropriate farming methods in areas of fragile ecology. As a result, there is massive soil loss throughout the country which has led to poor soils, low yields and hence food which in return contribute to ill health and malnutrition for the mother and her child.

Over the past decade forests have shrunk to half of their original size due to deforestation, causing nearby wells to dry up. Women's average daily journeys to fetch water, fuel and fodder have increased by more than an hour. Pressed for time, their workday in the fields shortens, family income falls, and they have both less food to cook and less time to do it. Less food means malnutrition, making the livelihood of maternal and children under age of five morbidity and mortality

higher⁴²

Pollution of the environment, whether air, land or water can also cause maternal and under - five child deaths.

Two cases of pesticide poisoning are reported in Nairobi hospitals daily giving an annual estimate of 2,184 for the country.

Localized sources of toxic air, such as smoky indoor fires, gas cookers, vehicles, cigarettes, spray cans, can cause indoor air pollution, which affect children mainly through respiratory diseases. According to a recent study by a team of doctors, acute respiratory infections cause nearly one-third of all under-five deaths.

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CHAPTER 2

KENYA'S LEGAL FRAMEWORK AS
REGARDS CHILD PROTECTION

THE RIGHTS OF A CHILD

There is a history of the development of these rights. Since the turn of the century there has been growing international concern for the recognition of children as human beings with special needs which entitle them to special care and attention. Prior to this, national legislations did not recognize that children had special rights or needs, but rather the legislation concentrated more on protecting the society from delinquent children i.e. by institutionalizing them. The League of Nations, however, set the wheel in motion by adopting a number of conventions. These included the 1921 Convention against Traffic in Women and Children ; the 1924 Geneva Convention on the Declaration of the Rights of the Child; the Guardianship of Minors Agreement of July 20, 1926 and the 1933 and 1934 agreements on the repatriation of minors who have evaded the authority of their parents or guardians. The 1924 Geneva Declaration was the first step towards protecting children's rights on the international level. The declaration which recognized that " mankind owes to the child the best that it has to give" was a response to the sufferings children underwent after the First World War.¹

After the Second World War and the formation of the United Nations Organization, efforts were undertaken to rehabilitate those children who were victims of the war through the establishment of UNICEF, whose scope of operation has since then

expanded. In December 1959, the UN General Assembly gave recognition to the Rights of the Child by adopting the Universal Declaration of the Rights of the Child.²

The Declaration recognized that the child needed special safeguards and attention due to his/her physical and mental immaturity.

Further, the Declaration called upon member states of the U.N to recognize the Rights of Child and strive to have them recognized through whatever means, including legislation. The Declaration embodied these rights in ten principles which were an expansion of those embodied in the 1924 Geneva Declaration. The rights embodied provided special protection of children ; right to a name and nationality; right to social security; rights of handicapped children ; right to parental love; right to education, right to priority, protection and relief; protection against exploitation, and protection against discrimination. The 1959 U.N Declaration, thus hastened the international recognition and awareness of children's rights. These include the U.N Universal Declaration of Human Rights;³ Declaration on the Protection of Women and Children in Emergency and Armed Conflict; the Covenant on Civil and Political Rights;⁴ Covenant on Economic, Social and Cultural Rights⁵ and UN Declaration on Social and Legal Principles Relating to the Protection of Welfare of Children. It was, however, the U.N declaration that 1979 was the International Year of the Child, on the 20th anniversary of the 1959 Declaration, that initiated the preparation of the present U.N Convention on the Rights of the Child. This

convention was adopted by the UN General Assembly of the 20th of November 1989.⁶ The rights provided for in the convention may be grouped into four major categories of protection, development, participation and survival.

Rights of Protection

These include protection from discrimination (Art 2); from all forms of abuse (Art. 19, 33); from economic and sexual exploitation (Art.32,33,34,35 & 36); protection of name and nationality and preservation of identity (Art. 7,8). Under the convention, state parties are called upon to ensure that forms of abuse and exploitation are prevented through legislative, administrative or other means. The right to protective of one's identity is perhaps the most unusual right, being one that has never been protected under other human rights treaties. This article was proposed by Argentina which has experienced "disappearance" of children during political repressions.

Rights to Development

These rights include the right to parental love and care (Art 5, 9, 10, 18); right to education (Art 28, 29); right to health (Art 24); right to adequate standard of living (Art 27); protection of children without families and adoption (Art.20,21); right of access to information (Art.17); and right to recreation (Art 31).

These rights seek to ensure that children develop well, mentally, physically and socially. The enjoyment of some of these rights may be hampered by economic constraints, traditional laws and practices etc.

Rights of Participation

These rights include right of expression (Art. 12, 13); freedom of thought, conscience and religion (Art. 14); freedom of association (Art. 15); right to protection from interference with privacy (Art. 16)

The convention for the first time does clearly bring out that children too are entitled to enjoy these rights. The protection of children of minorities or indigenous populations (Art.30) is also a new feature in human rights treaties. The idea behind this provision is to ensure that such children are not denied the right to enjoy their own culture, religion or even use their own language.

Rights of Survival

This category is concerned with the child's life being protected and ensuring that the child survives through proper health ad nutrition. These rights include the right of life (Art. 6); right to health and health services (Art. 24, 25) and the right to adequate standard of living (Art. 27). Whereas legislation should provide for these rights, their enjoyment will largely depend on the capability of the government to provide the means of enjoying.

The rights recognized by the Convention and the principles enunciated therein represent a goal to which all of us should aim. They do not represent a standard which is immediately attainable or indeed one the fulfillment of which can be achieved on a once -

and-for-all basis. The Convention merely provides standards by which the advancement of a state in providing for the protection and welfare of its children can be measured. It lays down what the international community considers each state should strive to give its children.

The African Charter: is it necessary?

The Organization of African Unity (O.A.U) drafted and adopted a special African Charter on the Rights and Welfare of the Child. The Charter restates the fundamental objectives of the U.N Convention of the Rights of the Child, while taking to heart the uniqueness of Africa, its traditional and cultural values. It is the first regional instrument to be based on the Convention. Unlike the Convention on the Rights of the Child, the Charter also defines responsibilities that the child should have towards family, society and the State.

The U.N General Assembly in various resolutions has repeatedly affirmed the value of regional arrangements to promote and protect human rights.⁷

It has been considered that each region, with its own unique culture, traditions and history, is best placed to handle and resolve its own human rights situation. Also, each region has its own unique rights, problems or priorities which it would want to address. For example, in Africa, we may not as yet be concerned with whether children conceived through A.I.D (Artificial Insemination by Donor) or I.V.F (in vitro fertilization) have a

right to know the truth about the origins, whereas in Europe this could be a priority issue.

CHILD CARE LEGISLATION IN KENYA

Since the law addresses itself most of the time to adults, where do children come in? Children actually have a fundamental unspoken role in the concerns of the law. The latest census in Kenya was carried out in 1989 and children;

(i.e. 0 yrs.- 17 yrs. 11 months) were 11,731,284. The total population of Kenya was

21,443,636. It is therefore quite fair to say that the population of children is not less than 55% i.e. most people in this country are children.

There are a number of implications as a result. First, the responsibilities for protection and care of these children. The discharge of these responsibilities is a legal question. This boils down to parental rights, parental obligations, children's rights and children's obligations. Secondly, welfare issues i.e. provision of education, health care facilities and safe environment . Thirdly, cultural order. Children become a challenge to the cultural order.

The bottom line question in the concerns of Child Law is how to sustain the measures of care, protection and management of such a substantial population. Thus, the protection of children and other young persons from neglect, ill-treatment or abuse is a subject which is important and of great concern for the law. Yet, the task of trying to

make legal provisions wide enough to cover the ever increasing number of ways in which abuse to and of children can be achieved does not cease to be enormous and complex. At all events, there exists a body of law directed at protecting and/or combating the incidence of abuses. What seems necessary is to see that the provision of these laws are carried out and that where they fall short of what is needed, amendments or new provisions be enacted to enhance the protection of young persons.

The duty of protecting children extends beyond just the parents and guardians. It is also attached to those who have assumed a relation in **loco parentis**.

PROTECTION AND DISCIPLINE OF CHILDREN

The principal enactment aimed at the protection and discipline of children and young persons is the **Children and Young Persons Act**⁸ (hereinafter called 'The Children's Act'). The following discussions will centre mainly on Part III of the Act which deals with the protection ^{and} discipline of children and juveniles.

For purposes of the Act, a child is in need of protection or discipline-

- a) who has no parent or guardian, or has been deserted by his parent or guardian, or is destitute or a vagrant; or
- b) who cannot be controlled by his parent or guardian; or

- c) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or
- d) who is falling into bad associations or is exposed to moral or physical danger; or
- e) who is being kept in any premises which, in the opinion of a medical officer are overcrowded, insanitary or dangerous; or
- f) who is prevented from receiving education, or is a habitual truant; or
- g) who frequents any public bar or gambling house, or who is found buying or receiving or in possession of any drug which is deemed to be dangerous or habit forming; or
- h) who is found begging or receiving alms or inducing the giving of alms, whether or not there is any pretence of singing, playing or performing.

S.23 of the Children's Act provides for the penalty for cruelty to and neglecting children or juveniles. The section provides **inter alia** as follows:-

S.23 (1)- If any person who has the custody charge or care of any child or juvenile;

- a) willfully assaults, ill treats, neglects, abandons or exposes him or causes or permits to be assaulted, ill-treated, neglected, abandoned or exposed in any manner likely

to cause him unnecessary suffering or injury to health (including injury to or loss of sight, hearing, limb or organ of the body, and any mental derangement) or

b) by any act or omission, knowingly or willfully causes that child or juvenile or conduces to his becoming in need of protection or discipline, he shall be guilty of an offense and liable to a fine not exceeding^{??} or to imprisonment for a term not exceeding^{??} or to both such fine and imprisonment.

Provided that the court at any time in the course of proceedings for an offence under this sub-section may direct that the person charged shall be charged with and tried for an offence under the Penal Code, if the court is of the opinion that the acts or omissions of the persons charged are of a serious aggravated nature.

From the above, we can see that the law recognizes and is concerned with various forms of child abuse described in chapter 1 .eg child abandonment, child battery, child sexual abuse, the problem of street children, etc.

The Problem of Definitions

In order for S.23 to become operative, two elements must be shown. First, that there is a person who has custody, charge or care of another. Secondly, that the other person is a child or juvenile.

S.21 of the Act sets out the circumstances under which any person is said to have

charge or care of a child or juvenile. Any person who is the parent or guardian of a child or juvenile or who is legally liable to maintain him is deemed to have care of that child or juvenile. So is any person to whose charge a child or juvenile is committed by any person who has the custody of him. Similarly, where any person has actual possession or control of a child or juvenile, or where any person employs a child or juvenile who is not resident with his parent or guardian, such a person will be deemed to have care of that child or juvenile.

It is clear that this provision not only covers parent and guardians but also persons who stand **in loco parentis**. A person is usually said to stand **in loco parentis** when he or she puts himself in the situation of a lawful parent by assuming the obligation incidental to the parental relation without going through the formalities necessary for legal adoption. It is submitted that it can include total strangers to the child or juvenile, provided such a person has actual or constructive possession or control of a child or juvenile in such circumstances as would morally oblige him to take responsibility for such child or juvenile.

Who is a child? When we speak of child abuse, who in particular are we talking about? There are many laws touching on children and these laws don't have a common definition of 'child'. Generally, a child is anyone below age of eighteen years, but local statutes say different things. There is difficulty because child is referred in different terminologies in the various statutes e.g. child, juvenile, minor, young person, infant. There are implications arising out of these terminologies. Generally, these terms refer to different age segments. This is not empty of legal effect.

The **Age of Majority Act**⁹ defines a person under eighteen years as a minor. Here, the terms child and minor mean the same things. **The Children's Act** gives different age categories for the purpose of defining a child and for different purposes. Under S.2, a 'child' is a person under the age of fourteen years. A 'juvenile' is a person aged between fourteen - sixteen years. A 'young person' is a person aged between sixteen - eighteen years. The **Employment Act** defines a child as a person below age of sixteen years¹⁰. All marriage laws are concerned as regards the parties to a marriage. The different family law systems have different stipulations as to age. Under the African Customary law, all groups have their own provisions concerning . Marriage and maturity of parties. There is no firm rule on marriage age. Islamic law has always taken the position that marriage comes at a certain age of the child i.e. the stage of puberty which is twelve - fourteen years. The **Marriage Act**¹¹ permits children to get into marriage once they attain sixteen years however one must get permission from parent if under the age of twenty one years. The **Hindu Marriage and Divorce Act**¹² stipulates that the age of sixteen is the minimum age of marriage for girls and eighteen for boys. The **Matrimonial Causes Act**¹³ determines the fact of childhood on basis of racial attributes. Different age categories have been prescribed for different races e.g. S.2 defines an African child as a person who has not yet attained the age of sixteen in the case of males and in the case of females, thirteen years. The implication here is that African girls mature into adulthood at thirteen and boys at sixteen. But in case of all other races a child is an unmarried person who has not yet attained the age of majority.

It is evident from the above that there is not uniformity in the provisions of the statutes. This is a serious disadvantage in the present law. This law is not consistent in achieving the four goals of child law. These disparities create room for failure to achieve

goals of child survival, development and protection. This is because the convention requires all people under eighteen to be given a special regime of laws. The moment this is qualified, these rights are taken away. To reduce the age, one takes away the basis of such rights. Statutes like the Employment Act offer protection only to children under the age of sixteen years. This means that children above sixteen years have no protection in industrial work. If a child is defined as an unmarried person as per Matrimonial Causes Act, this means that married children have no protection. In cases where marriage determines entry into adulthood there is not objective yardstick. This compromises the childhood of a child and it takes away rights of childhood which the child may claim. When we speak of abolition of child marriages we should in essence be saying that there should be no marriage of girls who are below the age of eighteen years. Uniformity of the law is very important for its effective implementation. Hence, there has been attempts since the 1990s to unify the law relating to the definition of 'child'. This would create a clear scheme of development, remove situations of negative subjugation, suffering, lack of protection, etc.

The present Children's Bill if passed would remove this confusion .

It is noteworthy also that although S.2 of the Children's Act clearly defines the upper age limit as to what can be considered a child, it seems often to argue at precisely what point in conception a foetus becomes a child recognized by law. This is a matter on which our law remains painfully silent, yet it is a matter where importance can never be over-emphasized especially when we talk about 'offenses' against children. The standard of proof in the event of a prosecution for an offense is very high, the requirement being that all particulars of the charge, the essential ones at any rate, must be proved beyond

any reasonable doubt. It follows therefore that anyone embarking on a prosecution under S.23 of the Children's Act must prove the existence of the child beyond reasonable doubt and in the construction of a will of post humous child **en ventre sa mere** at the time of the testator's death may ordinarily be included in the term 'children' even though, it is submitted, at the time of testator's death the mother may not be aware of the pregnancy.

In the American case of **State v Atwood**¹⁴ it was held that, for purposes of inheritance, the phrase 'person living at the death' of one may be construed for many purposes as including a child **en ventre sa mere**. Similarly, an American court in **Hornbuckle v Plantation Pipe Line Co.**¹⁵, held that a plaintiff who sustained injuries while still in his mother's womb which caused him to be born with a deformed right foot, ankle and leg could recover damages against the defendant. The defendant drove a motor vehicle so negligently that it collided into the vehicle in which the plaintiff's mother was driving who then was pregnant.

It is however doubtful that the foregoing sense of the term 'child' could be adopted in the event of a prosecution under S.23 of the Children's Act. How could anyone have custody, care or charge of any person who is at the time in the mother's womb? How does anyone prove beyond reasonable doubt that a two-day old zygote is a person?

Child destruction (marginal note of the Penal code (cap 63) refers to it as 'killing of unborn child') is an offense which makes guilty of felony any person who when a woman is about to be delivered of a child, prevents the child from being born alive by

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any act or omission of such a nature that if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child. Before any person can be convicted under that provision it must be proved that the child was capable of being born alive. In this case e.g. a week old pregnancy is not protected under that law because it could easily be argued that whatever else it may have been it could not have been a child. In England, under the Infant Life (Preservation) Act, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more is prima facie proof that she was at the time pregnant of a child capable of being born alive. This proposition would be of a highly persuasive authority in our courts in the matter.

Specific Offenses

HEALTH

An area which is inevitably of great concern for gynaecologists and other medico-legal enthusiasts is one related to habits of pregnant women which may be harmful to foetal development e.g. cigarettes smoking. These habits are not in themselves prescribed by law and are not consequently offenses. General speaking therefore, anyone indulging in them is not thereby rendered liable to prosecution albeit that the health of the child in utero may thereby be jeopardized, unless of course the act, attempt or omission falls clearly within one or more of the specified offenses such as abortion or an attempt thereto. For it is a principle of natural justice that laws be specific and not so general as to enable any act, attempt or omission to be included therein.

(ii) Protection against Dangerous Drugs and Food

The **Liquor Licensing Act and Traditional Liquor Act** make it an offense to knowingly sell or deliver liquor or permit it to be sold or delivered to any person under the age of eighteen years¹⁶. They thus offer some protection to children against alcoholic beverages which have been established to be detrimental to their healthy development.

The Food, Drug and Chemical substances Act and the Dangerous Drugs Act which provides for the prevention of adulteration of food, drugs and chemical substances and the control and regulation of importation, exportation, manufacture, sales and use of dangerous drugs do not specifically distinguish children as a vulnerable target group. It is also to be noted that whereas these two pieces of legislation address themselves to hard drugs such as opium, over-the-counter drugs which constitute a much bigger problem for child health care are not covered.

The most notable and progressive legislative intervention in this area is the recent adoption of the Kenya Code for Marketing of Breastmilk substitutes which was recently ratified by the National Standards Council and was gazetted under the standards Act¹⁷. Research has conclusively indicated danger posed by breastmilk substitutes and the superior nutritional value of breastfeeding¹⁸. The international value has also recognized the unethical marketing techniques of these substitutes by transitional corporations¹⁹. It is the hope that the code shall be effectively enforced.

(iii) Provision of Health Services

Health legislation targets on the child only to the extent that it provides for small pox vaccinations and handling of children by persons suffering from venereal diseases. Protection of children from diarrhoea disease, malaria, measles, malnutrition, etc. are covered under the Public Health Act. However, there is no law directly ensuring the child's access to medical services. True, the National Hospital Insurance Act ensures post-natal child health care but inexplicably provides that 'no benefit shall be paid in respect of treatment received by a child within ten days of the birth of that child' thereby leaving unprotected a critical period of infancy. The thrust of this legislation thus conditions the interests of the child on the contributor. Similarly, there is no law directly requiring or ensuring primary immunization for children.

(iv) The Nexus between Maternal and Child Health

The mother has important biological and sociological functions in child birth, weaning and ensuring the proper growth and development of the child. In this respect, the most glaring inadequacy in the law as it relates to the mother is the duration of maternity leave. The **Employment Act** under S.7 (2) provides that:

" A woman employee shall be entitled to two months maternity leave with full pay. Provided that a woman who has taken two months maternity leave shall forfeit her annual leave in the year."

This clause exhibits a particularly chauvinistic and punitive perception of a vital biological process, of reproduction. More than that, research has established that the minimum cut-

off point for effective breastfeeding is four months. The child of the working mother is hereby legally denied access to nutritious food and thus exposed to questionable breastmilk substitutes.

2. EDUCATION

Education is increasingly recognized as an important area calling for innovative forms of protection of the child. Given the importance of education in the development process, paucity of specific laws on child education is significant.

The **Education Act** is essentially an administrative legislation²⁰. Although the Presidential Directive of 1979 for the first time ensured free education for the first years of schooling, there is no legislative requirement / enactment requiring compulsory attendance. Under the Education Act, 1944 of Britain, there is provision for compulsory education ~~for~~ education which is in accord with the proposition by the UN that it is an inherent right of every person to obtain an education.

The first problem in this area is therefore simply that of access to an important 'good' and 'service.' Once the access is gained however there are at least five areas in which the child needs protection.

First, the imbalance between male and female children enrolled in our educational institutions is sufficiently glaring to call for some form of affirmative legal intervention in favour of female children beyond the formal declaration of equality of

opportunity. No such law presently exists.

Secondly, there is not direct legal basis of corporal punishment, a practice prevalent in our educational institutions except the nebulous implied but generally unsupervised disciplinary and chastisement powers of school authorities. The impact of this practice are equally nebulous in its educative or disciplinary function while there is ample evidence to suggest detriment to the child's welfare.

Thirdly, there are several administrative requirements imposed by school authorities which limit access of socio-economically disadvantaged children to education and which have no legal basis whatsoever. e.g. Requirement of school uniform as a pre-requisite to school attendance. Legislative protection would conclusively clarify national priorities in this regard.

Fourthly, the perennial issue of the exploitative text book market should be settled in a conclusive manner. The ad-hoc approach as to pricing leave ample room for corrupt and unscrupulous merchants to profiteer to the detriment of children. Related to this issue is the fifth issue, that is, the question of private schools.

Education a fundamental human right of the citizen is increasingly becoming a lucrative venture for private speculators. A comprehensive regulatory and certification legal require is long overdue to replace the permissive discretionary powers placed on the Ministry of Education.

The Kenya's Education Act provides among other things:-

"The Minister **may** prescribe minimum standards for health and safety of pupils and for satisfactory environment for education."

The word **may** should be replaced with **shall**, and means of providing the minimum standards defined to include promoting health, special education for the handicapped, social deviants, sex education and treatment of disease. The Minister would then provide an adequate school health programme.

Under S.23 of the Children's Act, a parent may be prosecuted for wilful neglect of his child but only where such neglect is of a manner likely to cause such a child unnecessary suffering or injury to health (including mental derangement) or wilful acts or omissions causing a child or juvenile to become or conducing his becoming in need of protection. In other words if the result of the neglect is simply that a child is deprived of a chance to go to school, this section does not apply. The point seems to be emphasized by the fact that, as regards education, a child is said to be in need of protection under S.22 (f) only if he is prevented from receiving compulsory education.

There is still doubt that S.22 (f) is misplaced as it marked reference to compulsory education in a country which the same is not compulsory. It is submitted that an amendment to this particular provision debating the word 'compulsory' would be desirable. Likewise S.23 ought to be amended to provide that wilful omission by any person to provide a child in his custody, charge or care with the means to seek education

where such means are available would be an offense punishable under the section.

Safeguards could always be put to ensure that the provision is abused to the detriment of the parent. A provision could be made to the effect that if such parent has been unable otherwise to provide such education, the burden shall be upon him to show that.

3. SEXUAL ABUSE

There are three aspects of this offense. They are defilement, sexual assault and incest. These three aspects present very difficult problems in terms of prescription. As stated in chapter one, there is a lot of secrecy as far as this form of abuse is concerned. This is because many offenses in this category are committed by people close to the child and parents do not want to reveal this, therefore the police do not know about it. This amounts to involuntary protection of criminals.

There are laws against offenses of this category. S.144 of the penal code provides that it is an offense to unlawfully and indecently assault any woman or girl. Indecent assault includes physical acts, words, sound or gestures that intrude into the privacy of the woman or girl. However, this protection is given to girls under the age of fourteen years. At fourteen years and above it is argued that consent may be given so that whereas the girl was under fourteen consent is irrelevant, the defendant in the latter case is given a chance to prove consent. This means that girls between the age of fourteen to eighteen years are not protected. Defilement is an offense that applies to children under fourteen. Just as in the previous case, this means again that a child between fourteen to eighteen years old is not protected because in a defilement suit, consent is irrelevant. If the

defendant can show that the child was her spouse, then he is not liable. Once again we see a loophole in the law.

When you compare defilement and rape, one would imagine or assume that defilement is a more serious crime than rape and therefore its sanctions more serious than those of rape. In our law, paradoxically, it is quite the opposite. The sanction for rape is life imprisonment plus hard labour with or without corporal punishment. The sanction for defilement is fourteen years imprisonment with hard labour plus corporal punishment. We can therefore see that our law treats defilement slightly. It is submitted that the sanction should be as that of rape unless it is shown that the abuser was mentally ill.

The incestuous relationship has been narrowly defined. The customary version which covers even persons who may be considered distant relatives should be upheld.

It is submitted here that in any case involving a sexual assault on any child the investigators should not only investigate the report relating to the attack, but also carry out inquiries to establish whether or not sufficient protection had been given to the child by the person for the time being having custody, charge or care of such a child immediately prior to the attack. And if it is revealed that no adequate care had been exercised by such person, a prosecution under S.23 of the Children's Act should follow.

4. EMPLOYMENT / CHILD LABOUR

The regulation of the employment of children and young persons is provided for under Part IV of the Employment Act. Under the provisions of this part, no child or juvenile can lawfully be employed whether gainfully or otherwise, in any industrial undertaking except where such employment is made under a deed of apprenticeship or indentured learnership lawfully entered into under the provisions of the Industrial Training Act. To do so is an offense punishable by fine which increases in the case of a second or subsequent offense.

‘Child’ is defined as any individual, male or female, under sixteen years of age.

‘Industrial undertaking means (1) mines, quarries and other works for the extraction of any substance from or from surface of the earth (2) any factory within the meaning of Factories Act (3) constructions, reconstructions, maintenance, repair, alteration or demolition of building, railway, tramway, harbour, dock, pier, canal, inland, waterway, road, tunnel, bridge, viaduct, etc. (4) transport of passengers or goods by road, rail, inland waterway including handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand.

The Minister is empowered to declare any employment excluded from the provisions for the Part relating to industrial undertakings if he sees it fit so to do, having regard to the nature of the work involved in any employment carried on in any industrial undertaking.

- It is sad to note that the penalty provided is by most standards extremely lenient. One would perhaps have liked to see a stiffer penalty provided for, especially as there is doubtlessly an increase in the blatant flaunting of this provision by persons, more often

than not, who have the financial capability to absorb this soft punishment quite comfortably. Provision for mandatory imprisonment in case of a third or subsequent offense would be a much more appropriate and deterrent penalty.

Part V of the Employment Act then goes on to make further provisions relating to the employment of children and young person. Subject to the provisions of the Industrial Act relating to contracts of apprenticeship or indentured learnership, it is an offense for any person to employ a child or to cause any child to be employed or being the parent or guardian or other person having for the time being the charge or control over a child, to allow such a child to be employed, otherwise than under a verbal contract of service. This provision is presumably aimed at ensuring that a child is not tied down by or written contract which may not well be in his interests. Subject also to cases of serious emergency, when public interest demands it, in which case the Minister is empowered, by publishing a notice in the Gazette to require otherwise, - no juvenile shall be employed between the hours of 6.30 p.m. and 6.30 a.m. in any industrial undertaking. However the Minister may, after consultation with a Labour Advisory Board - constituted pursuant to the provisions of the Act - authorize an employer in writing to employ young persons upto the hour of midnight or from the hour of 5.00 a.m. subject to such conditions as the Minister may determine.

Part V of the Employment act seems to omit a provision which was of utmost importance in the now repealed Women, Young Persons and Children Act. That Act provided **inter alia** that it was unlawful for any person to employ or cause to be employed, any child below the age of thirteen years in circumstances which are calculated or are likely to cause, or do cause the child to reside away from his parents. If the child

was above the age of thirteen years he could be employed only in accordance with the terms of a permit in that behalf granted by the Labour Officer and with the consent of an authorized officer in the prescribed form. In the case of a female an additional provision was that the parent of such a child must have given approval to an authorized officer to such employment. In relation to a female child who was married and was living with her husband, the expression 'parent' was construed as meaning husband. When the aforesaid consent has been given it could still be rescinded by the express desire of the parent for the return of the child. In my submission, the additional protection that those provision give to children has been taken away by their omission in the new Employment Act. It would appear that, as long as any child is not employed in any industrial undertaking, except where permitted by law, such child can be employed away from his or her parents. This happens commonly especially with respect to 'ayahs' in the urban centres. The phenomenon seems widely accepted for obvious identifiable economic interest. The enforcement of the provisions of any law ultimately pre-supposes co-operation by the public in general.

It is submitted that the Act does not go far enough

The following could be considered;

a) Street Trading.

Unscrupulous persons, in order to avoid the payment of tax would easily recruit children to carry out street trading on their behalf at a small fee. In the realm of

organized crime, this can be conceived. Our legislation should therefore provide for the prohibition of street trading for children except where they have been employed by their parents with definable limits.

b) Entertainment and Performances

Provisions should also be made for the regulation of the employment or participation of children in any entertainment or performance in connection with which any charge whether for admission or not, is made to any of the audience, so that any person who causes or procures a child or being a parent or guardian allows him to take part in an entertainment in contravention of the provision would be guilty of an offense. There then could be a proviso that this could properly be done only on a license issued for this purpose. Further, it shall be the duty of the promoters to show that the premises within which the performance is taking place are not licensed for the sale of any intoxication liquor or for gambling.

5. CRUELTY AND EXPOSURE TO DANGER

S.23 of the Children's Act provides a penalty for cruelty and neglecting children and juveniles. Cruelty here has the meaning of endangering the life of the child or exposing him to possible bodily injury or jeopardizing his health. Subsection (2) of the same provides that for the purposes of the section a person having custody, charge or care of a child or juvenile shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical and

/or lodging for him. This provision is a dead letter. It is hardly enforced and that may be an indication either of condonation by or a complacent attitude of the authorities in this regard. The penalty provided is far too lenient having regard to the gravity of the offence. A stiffer deterrent penalty would be more desirable.

The section also makes it an offence for any person by an act or omission, knowingly or wilfully to cause a child under his care to fall into bad associations or be exposed to moral danger.

Presumably, then, no offence will have been committed where the same result has been achieved owing to negligence, albeit unwilling, on the part of the parent. If that is so, then the section does not provide sufficient cover to children who are then exposed to great moral danger such as being able to attend any public bar where intoxicating liquor is sold, buying or receiving any drug which may be dangerous or habit forming, going into brothels and associating with any person there at etc. It would have been better in my submission for individual offences to be provided for in separate sections so as to cover all these areas.

It could be argued that other statutes cater for these other areas and there need not be duplication. For instance, it may be asserted, protection against the corrosion of children's morals or against children, juveniles or young persons falling into a habit of drinking is accomplished by S.30 of the Liquor Licensing Act. It is submitted that this provision is deserved more in breach than in compliance therewith. There is little doubt that many bars in Nairobi not to mention those in rural areas, do not discriminate as

required by this section and sell liquor quite freely and openly to all and sundry.

2.2

RECOMMENDATIONS

- (1) There should be a uniform law applicable to all children irrespective of their background for all purposes.

- (2) Existing legal regimes are permissive in character, empowering public officials and authorities to discretionarily take certain measures in protecting the child's interest. A more mandatory approach would not only facilitate enforcement through administrative legal interventions but provide concrete guidelines for conduct to officials not familiar

with the demands of child welfare.

(3) The thrust of existing legislation is punitive of adult rather than protective of the child. This is obvious from the inspectorial nature of enforcement mechanisms. Quite apart from the fact that there are quantitatively very few inspectors to ensure compliance, the interest of the child is normally forgotten in the over-zealousness to prosecute the adult. Legislation in this area should focus more deliberately on the welfare of the child. In this respect, trained welfare officers would be more relevant than labour or health inspectors.

(4) The Dangerous Drugs Act and The Food, Drug and Chemical Substances Act should be more specific in singling out children consumers as the most vulnerable target group. They should also be widened to include a variety of over-the-counter drugs and foods which are progressively identified as dangerous to health generally and to maternal and child health in particular.

(5) The Food, Drug and Chemical substances Act and The Trade Descriptions Act²¹ should be urgently amended to ensure effective implementation and enforcement of the Kenya Code for Marketing of Breastmilk substitutes.

(6) The Employment Act should be amended to increase maternity leave to at least four month including paid annual leave and to include the other recommendations aforementioned.

- (7) The National Hospital Insurance Act Regulations should be amended to extend coverage to the first ten days of child birth.
- (8) Corporal punishment of children should be explicitly abolished.
- (9) Corroborating of evidence of children especially in cases of rape and defilement should be limited to assessment of six years and below and even so, there should not be technicalities which end in acquittal of otherwise guilty persons.
- (10) The provision to the offense of abduction and defilement i.e. "The accused is not guilty of the offense provided that he has had reasonable cause to believe that the girl was or is above the age of sixteen years " should be repealed.
- (11) Poor police investigations especially in sexual offenses in which an accused may be charged with defilement instead of rape - in this respect, the law should confer powers in a magistrate to substitute a charge or conviction for the offense revealed.
- (12) There is no provision providing penalty against parents who abuse their children. A custodial sentence would be unrealistic more so because parents who abuse their children may themselves be in need of medical help. This would tend to be the case where parents act in certain ways as a result of depression, stress etc. In such a case medical evaluation is necessary in arriving at solutions in collaboration, with other law enforcement agencies. There should be a legal provision therefore that requires all parents who abuse their children to seek professional help. Also there should be a legal requirement for child
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counselling services to be spread out in the country within the ambit of the government departments.

(13) As concerns sexual abuse there should be a minimum sentence provided i.e. 15 years imprisonment. Subsequent offenders should be hanged.

(14) The law should make it a legal requirement to report inspected cases of child abuse.

(15) The law should discredit customs which are detrimental to the child e.g. child marriages.

(16) Recommendations of amendment of legislation that were sensitive had in the past been stifled by radical parliamentarians e.g. on matters of marriage, illegitimacy, the Affiliation Act.

A forum for parliamentarians might be necessary before recommendations are made if any amount of success is to be achieved.

(17) Family court / panels :- Ideally, such a court should be composed of elderly people e.g. retired teachers who have wide and varied experience in various professions. Such a court is recommended to protect any bias on the part of the presiding magistrate against the child, such that the fate of the child does not rest in at the mercy of only one person.

2.3

THE CHILDREN BILL: An Overview - With Special Reference to the Girl Child

The United Nations Children's Fund had asked Members of Parliament in early 1993 to pass a comprehensive child law Bill before the commemoration of the African Child Day on June 16, 1993²². The Unicef information director, Mr. Greg Owino wanted the occasion to be celebrated with the enactment of a child law as 'a benchmark to child survival'.

On June 26, 1993, the Attorney General Mr. Amos Wako called for the revision on the laws relating to children since they were outdated²³. He said that the problems which children currently faced did not exist when the laws were enacted.

It is now two years later and a comprehensive child law enactment has not been

passed. The Children Bill, 1995 has undergone its second reading in Parliament and if everything goes according to plan the long awaited Child Law should be effective by the end of the year. So what changes should be expected for the Kenyan child once the law is effected?

The new legislation embodies the rights of the child offering direct solutions and legal procedure for problems affecting children. It merges existing acts to make its implementation easier. Unlike in the old law that pegged the age of a child on circumstances, the draft legislation recommends maximum age of a child is eighteen years. It has also made specific recommendations to make it easier to foster or adopt children and for the administration of children's services. Once passed, it will tackle the policy and administrative issues of the child.

However, as the children's Bill 1995 went through its second reading in April 1995, its failure to address the specific circumstances of the girl-child in Kenya was conspicuous as was the absence of critical analysis of the Bill.

The girl-child has been touted as one of Kenya's critical concerns. Her cause has been lobbied internationally for inclusion in the United Nations Conference for Women and yet in the new bill on children's right, the girl -child is not mentioned. Critical issues which affect the development of girls have been recited numerously. Education of girls, discrimination against girl - children and more so those with disability the establishment of a legal age for marriage the exchange in mortgage of girl-children in payment of debts child labour specifically as it relates to young girls who are used widely as domestic

workers are prime examples that have been enumerated. In spite of this, none of these issues are addressed in the present Bill.

In the touchy area of cultural practices harmful to girls, it may be more difficult to enact laws e.g. female circumcision and child marriages, because a variety of views are held by different sections of the Kenyan community. The law is only a codification on issues on which there is consensus in the community. You cannot impose the law, otherwise it will be difficult to implement. However, it is time for the government to take a stand. When it comes to culture, the law might never solve the problem, but there should be a legal instrument to give guidance where violence against girls is evident.

The whole area of service provision for children in general and girls in particular has not been addressed at all. It is possible that the structure of the Bill has been deliberately structured to leave room for interpretation. The Bill may have been drafted to accommodate issues where financial capacity or resources would hamper the provision of services. However, even in the small area of language use, the Bill carries the same failing as other laws in assuming that the masculine pronouns by implication refer to a girl, again failing to emphasize the special circumstances of girls.

The Children's Bill 1995 is positive in that it represents the first attempt to consolidate the various acts as a step towards implementing the International Convention of the Rights of the child. Yet, there is little evidence of any change in the body of the various acts.

The premature establishment of the National Council of Children's Services is questionable. The inter-linkages between this body and the implementing arms of government have not yet been thought through and defined. These bonds are under and the council appears to run parallel to other government efforts. The Council which is to comprise nine permanent secretaries and senior government officers working nine alongside an equal number of representatives of NGOs engaged in child welfare activities is charged with planning financing and co-ordinating. Considering that members of the council have heavy responsibilities wherever they are employed, this raises legitimate questions as to the capacity of this council to execute all these responsibilities. The Council's responsibility for negotiating donor funding and co-ordination and controlling the receipt and disbursement of all funds for child welfare activities, may prove to be a dangerous bottle-neck.

In this respect and elsewhere the new Children's Bill appears to emphasize controls of delivery processes rather than focusing the welfare of children at the heart of all planning. Little has changed in this law which still appears to lay emphasis on the child as a criminal. The laws still need to be amended to make parents accountable to children courts. Parents have been allowed to use the excuse of poverty as a panacea for abandoning their parental responsibility to guide their children who often end up in courts on charges of vagrancy, loitering or prostitution. The biggest weakness of the Bill is that it fails to provide avenues for ensuring implementation e.g. The recent example of where child labourers recently found working in salt factories at the coast were removed rather than the factory owners being charged²⁴. In its present form the Bill flounders in its attempt to address the challenging circumstances faced by children and particularly girls in Kenya. Passed without amendment, the Children Bill 1995 will have failed to affirm this

society's commitment to the future of its children.

FOOTNOTES

1. C.P. Cohen, " The Human Rights of Children, " 1983, 12 Capital University Law Review.

Also see C.P. Cohen " United Nations Convention on the Rights of the Child",

Introductory Note; 1990 I.C.J. review Pg. 36

2. Resolution 1386IV; 14 UN GAOR Supp. (No. 16) UN Doc A/4059 (1959)

3. (1948) Articles 25 (2) and 26

4. (1976) Article 23,24

5. Came into effect 3rd January 1976
6. UN Doc A/44/736 (1989)
7. Resolution 34/171 of 17th December 1979, 35/197 of 15th December 1980; 36/154 of 16th December 1981, 37/171 of 17th December 1982 and 39/115 of 14th December 1984
8. Laws of Kenya Cap 141
9. Laws of Kenya Cap 33 S.2
10. Laws of Kenya Cap 226
11. Laws of Kenya Cap 150
12. Laws of Kenya Cap 157
13. Laws of Kenya Cap 152
14. 54 Or. 526 102 / 295
15. 93 S.E (2nd) 727 Ga (1956)

16. Laws of Kenya Cap 121 S.30 (2) and Cap 122 S.27 (i) (d) respectively
17. Laws of Kenya Cap 496
18. Recommendations of " Kenya National Workshop on Infant Feeding Practices" Kenya
Medical Research Foundation (1983)
19. WHO / UNICEF Code for Marketing of Breastmilk Substitutes
20. Laws of Kenya Cap 211
21. Laws of Kenya Cap 505
22. Daily Nation April 16 1993
23. Sunday Nation June 27 1993
24. Daily Nation May 23 1995

CHAPTER 3

PLANNING APPROACHES
'FROM WORDS TO ACTION'

3.0

INTRODUCTION

The theme of this chapter is to enable us plan strategically for the future. We have to refer to the factors contributing to situations nationally and internationally. The re-acceleration of progress for children is contingent upon international action not only to resolve debt crisis but also to allow a return to economic growth. Even a return to economic growth, difficult as this will be to achieve, is not enough. Progress for children and their families - also depends on learning the harsh lessons of recent years in which the poor have suffered most in bad economic times just as they have benefitted least in good economic times.

What is now required is a commitment to real development - a development which unequivocally puts people first, in good times and in bad, and takes as its central purpose the task of enabling all families to meet their own and their children's essential needs. It is generally agreed that there is need to simultaneously address symptoms and causes affecting children. For sustainable long term development we need to focus and act on causes of those symptoms. Investing in their development today by meeting their most obvious needs and attending with all wisdom and resources at our command to their physical, mental and emotional development - is the only level of action which both meets pressing human needs of today and leads to the pre-emption and solution of what may

otherwise become the almost insoluble problems of tomorrow.

3.1

FUTURE DIRECTION

As indicated previously on services to children, existing services have been curative, focusing mainly on institutionalization and the legal machinery involving legal institutions. These legal institutions focus on protection and discipline, while other institutions are mainly the children's homes. The problem has continued to grow in spite of these institutions. The future therefore, needs a different orientation and two broad approaches are advocated:

a) Preventive measures covering:

- improved basic services outreach

- capacity building at community and family levels.

- re-orientation towards prevention at policy/legal levels .

- advocacy for children's rights.

b) Improved outreach for existing services to:

- focus on rehabilitation, counseling and family contact.

- institutional capacity building for appropriate services.

- improve outreach to children who are victims of any abuse

through education, health, improved economic capacities and shelter, improved care and protection; start rescue centres.

1. Preventive Measures

Whatever the forms of abuse as identified in Chapter One, possibilities for preventive measures should be explored. To broadly improve access to basic services provided by either Government or NGOs should be the major goal. This is particularly important for education, health care and shelter. As government resources remain severely limited, measures that focus on community - based, cost effective approaches need to be explored. Majority of the children who are abused are in fact street children.

A detailed analysis of street children indicate the following:

- The majority are primary school dropouts (71%) and the major reason for dropping out is lack of money for school requirements (43%); family - related problems (11%) and being expelled possibly for bad behavior or related problems (24%).¹

- Another common feature is that the majority are from very poor families in slum areas which are often women-headed households.

This indicates economic deprivation and lack of economic support and maintenance by their fathers. A related finding is that many street children working to support their families. Also related to economic deprivation is the inadequacy of shelter and a degrading environment. Clearly, the phenomenon is strongly associated with economic, social and environmental factors. Thus, a study on street children by ANPPCAN (1991) clearly indicates that the majority of street children families are characterized by:-

- Single parenthood

- Low income

- Lack of developed skills

- Unemployment

- Large family sizes

- Poor sanitation and inadequate clean water supply

- Inaccessible roads with temporary inadequate shelter, serious overcrowding and hostility, lack of lighting.

- Absence of recreational facilities.

To compound an already bad situation, the same ANPPCAN study found that a large number of street children's parents are often victims of authorities' evictions, demolitions and harassment by municipal or city askaris. It was also found that efforts by NGOs working in slum areas such as Undugu Society of Kenya also get thwarted when authorities undertake such action.

The implications of this in terms of preventive measures are that there is need to address problems of economically deprived or poor families in slum areas in our urban centres. This calls for an integrated approach to the provision of basic services including education, health, water and sanitation as well as addressing capacities for economic survival. More specifically and directly, action is required to stem school drop-out rates for children from slum areas. Another viable approach is to provide support to informal schools. While not necessarily trying to create a parallel system of education, informal schools in poor slum areas could be encouraged with the aim of promoting them slowly, over time, through community efforts, to become full formal schools. This can be done

through:-

- providing land.

- providing teachers, at least one head teacher who can work toward promoting the school.

- providing regular supervision by school authorities without the threat of closure due to inadequacy of services.

A practical example of this approach are the Opening Learning Schools (O.L.S) by the Institute of Psychological and Educational Research (IPER) founded in 1972.

Aware of these realities faced by street children, IPER developed an appropriate innovative model of education that would be effective as well as acceptable to the average street child. These schools first initiated in 1989 came to be known as "Opening Learning Schools". These schools are not dependent on infrastructure facilities. They are often held on the pavement in the park, in some local clubrooms or somebody's courtyard. In short, wherever the children are.

The fundamental principle underlying the O.L.S is "to take the school to children where they are". These schools through education and vocational training aim at freeing the children from ignorance, superstition, psychological and social handicaps which act as the major barrier to their progress and development.

O.L.S. are located in areas with large concentrations of street children, sometimes on the open street, sometimes under the sheds in parks and sometimes in local clubs.

The teaching process in these schools is based on what is known as the Open Learning Mode. This is a modified version of the well known method of Distance Education specially adapted to the needs of street children at the primary level of education. The Open Learning Mode combines.

- a) Print materials
- b) Face to face teaching

Self instructional printed lessons are handed over to the children at the teaching site. The teacher then demonstrates how to work out the lessons often using pictures, flash boards and other forms of visual aids. The basic principles of teaching is not to work out the entire lesson, but to teach the children to work on them independently. Surveys and records reveal that the majority of street children have not been immunized against diphtheria, polio and measles, skin diseases, stomach disorders and even serious ailments like asthma and TB which are quite common among these children. Doctors make regular visits to the centers to conduct routine medical check ups and treat sick children.

A Nutritional Development Program under the project is carried out through regular supplementary feeding in the form of providing the children with dry food packs. IPER DROP-IN CENTER :- IPER set up in 1993 a drop-in center for children. It is open from 8.00 a.m. to 8.00 p.m. during which time these children aged between 3-15 years come and go. The Center has a multi-faceted program catering to the varying needs of these children. Classes are held in small batches for children on basic literacy, numeric and other subjects of primary course as well as on pre-vocational skill training in some crafts like cutting, sewing and embroidery. A number of indoor games are provided for recreation. A paediatrician visits the centers twice a week.

Besides these, IPER has also been running since 1988 a number of centers which function in the late afternoon. The schools are specially intended for those street children and working children who work part-time like vendors and car washers and are free to attend the schools in the late afternoon. Major programs comprise functional literacy, health cure, social and cultural development and nutritional supplementation.

2. Local Capacity Building

In analyzing processes that render children to become victims of abuse, it is emerging that many of these families are casualties of social change.² These include:

- the changing nature of the African family, including the breakdown of extended family support.

- urbanization processes.

- lack of family support for widows, divorcees, women and men separated from husbands or wives, and women who never married but have children and in a few cases men who fathered children out of wedlock in cultures where men are custodians of such children.

As stated in Chapter One, these social changes have resulted in diminished community and family child care support. Many children are casualties of this lack of mutual support including:

- orphans, including AIDS orphans

- neglected and abused children

- abandoned babies and children

- children of imprisoned parents

(i) Strengthening family and community capacities should include:

- encouraging childless couples to adopt children instead of resulting in divorce or polygamy. This includes strengthening present adoption systems and procedures which are said to take too long.

- establishing alternative family care for children of prisoners.

- encouraging more utilization of extra mural penal employment for petty offenders by both the courts as well as the prison authorities - In this case, petty offenders can be convicted to serve community services instead of being put to prison.

Such services would help promote community support and soften attitudes towards offenders while enabling the offender to continue taking care of his/her children.

(ii) The issue of AIDS orphans requires special attention. While many AIDS victims in urban areas are taking their children back to rural areas, there are many urban residents who have broken contact with rural areas. Infact many street children have their grandmothers for family as the whereabouts of the mother is unknown. For this reason therefore, the need for urban community support for AIDS orphans is important.

Community - managed centers, adoption and fostering should be encouraged.

Establishment of helping services for parents with AIDS could be promoted at community level. As far as possible, such families should be helped within their own communities.

Although various treatments have been developed for AIDS - related illnesses in the industrialized world, they are neither practicable nor affordable in Africa at the present time.

Nevertheless, there is much that can be done to contain the spread of infection by:

- AIDS- prevention education.
- improving the safety of national blood supplies
- increasing the availability of condoms
- improving infection control procedures in health care settings.

(iii) Rapid urbanization is transforming the horizon for millions of African children. Urban populations have been growing at a much faster rate than those in the countryside, challenging governments to provide adequate services for those who believe a better future can be found in towns and cities. In Nairobi, the population grew more than sevenfold between 1950 and 1980, and thus the strain has been extraordinary. Capital spending on water and sewerage fell from US\$ 28 per capita in 1981 to US\$ 2.50 in 1987 and maintenance spending on these services declined from US\$ 7.30 to US\$ 2.30.³ Extreme pressure on urban services has placed families and children, in particular, under acute stress. There is need for Kenya to take measures on improved management of the urbanization process. There is need to study the process in order to identify measures that can be taken at both ends i.e. rural and urban. Land tenure issues in our informal squatter settlement areas are part of this issue of management of the urbanization process because landlessness also forces men to move to urban areas. One of the principal challenges facing Heads of State and government in Africa today is to manage their cities better and create secure, healthy environments supportive of their inhabitants' struggle for prosperity. One response to that challenge, in Ethiopia, has been the formation of an International Coordinating Committee for Welfare and Development (ICC) established in 1977 to address poverty in Addis Ababa. Perhaps, a similar organization should be formed in Kenya to check the urbanization process and to oversee its management. All ICC activities demand full community participation in all phases of a program's development and implementation- an approach that has saved time, safeguarded against the waste resources through duplicated efforts and assured the co-operation of the communities which ultimately run and benefit from the infrastructure

created.

(iv) The increasing nuclearisation of the African family needs to be addressed in relation to building family capacities for mutual support for children. This could be done through:

- increased education and awareness about the issue
- creating a better enabling environment for self-employment within our urban centers e.g hawking and trading by-laws that facilitate rather than constrain efforts towards improved family capacities for support and sharing.

(v) One of the most important common factors uniting today's means of protecting lives, health and growth is that almost all of them are able to be put at the disposal of families by a community health worker with only a few months of training. A well-trained, well-supervised and well-supported community health worker can, for example, help to provide family planning information and services; advise on pre-natal care and safe birth practices; inform families of the advantages of breast feeding; organize immunization and record-keeping services; diagnose acute respiratory infections and prescribe antibiotics; teach oral rehydration therapy and the proper management of diarrhoeal diseases; promote home hygiene and diseases prevention; organize growth monitoring sessions; promote today's knowledge about the special feeding needs of the young child; organize protection against malaria; distribute the most essential drugs and medicines; provide vitamin A, iodine and iron supplements where necessary; and refer

more difficult health problems to more qualified health professionals.

In short, they can demystify today's basic health knowledge and put it at the disposal of communities. And if they are supported in that task by the full range of today's communications capacities, schools and teachers, religious leaders and local government officials, the print and electronic media, retail outlets and professional organizations, NGOs and women's groups, then the trained health worker can be the central span of the bridge between present knowledge and present need. There are many problems involved in the deployment of large numbers of community health workers in their recruitment and retention, in their career structure and motivation, in their regular training and supervision, and especially in the organization of the essential referral services. But such problems can be and have been overcome when the political commitment has been sustained and when the financial resources have been made available.⁴

Some nations have already begun the process of finding the necessary funds from their own resources. In most cases, this is almost certainly going to mean an increase in the proportion of government expenditure allocated to nutrition, primary health care, clean water, safe sanitation, basic education, and family planning services. UNICEF strongly supports the United Nations Development Program's suggestion that at least 20% of government spending should be allocated to these direct methods of meeting priority human needs.⁵

In practice, such a shift in present patterns of resource allocation will not be easy to bring about. All governments, including the Kenyan government, however well-intentioned, have limited room for maneuver as political pressures push them against the walls of economic constraint. Currently, our government and those of the other developing countries are spending over one third of their combined budgets on the repayment of debt and on financing of the military.⁶ But even in the face of all such pressures, it should be possible to allocate 20% of government spending to the task of helping the poor meet their needs for food, water, sanitation, basic health care, family planning and the education of their children.

3. Policy/Legal Re-Orientation Towards Prevention

In order to achieve some of the preventive measures mentioned above, some measures of re-orientation in the policy/legal framework may be necessary. Beyond the issue of child rights which is covered by a multiplicity of laws, protection, discipline and rehabilitation are the major guiding principles in existing policies and operations of both Government and NGOs. The child rights and curative measures provided in law may have a bearing on the basically curative services currently provided by both government and NGOs. It is recommended, therefore, that policy/legal issues address themselves to causal, preventive and rehabilitative measures.

4. Improve Outreach and Focus on Existing Services: Systems Abuses

When the problem of child abuse was first identified, it was perceived to occur largely within families. Since then, the concept has been extended to include abuse that occurs in the context of out-of-home care and broader societal systems. Three types of abuse were identified and this included institutional abuse, program abuse and system abuse.⁷

Institutional abuse included abuse as a result of:- any system, program, policy, procedure or individual interaction with a child in placement that abuses, neglects or in detrimental to the child's health, safety or emotional and physical well-being or in any way exploits or violates the child's basic rights.

By program abuse, it is meant abuse that occurs when "programs operate below accepted service standards or rely upon harsh and unfair techniques to modify behavior".

Systems abuse is defined as abuse that is "perpetuated not by a single person or agency, but by the entire child care system stretched beyond its limits".⁸

Another definition of system abuse in a report by the National Association of Young People in Care⁹ is abuse that occurs when 'any action (that) undermines the security that generates happiness, by any authority or administration charged with a duty of care towards the young person.' This definition is based on the U.N Convention on

the Rights of the Child and it has the distinct advantage that it 'links the issue of poor practice with that of the quality of care children in care should be able to expect.' It also has a positive orientation towards the child's development, growth and security rather than a negative orientation towards the child protection. System abuse can undermine children's physical, socio-emotional or intellectual development, but it is most likely to have an impact on their emotional adjustment.

In order to avoid systems abuse, the factors that contribute to systems abuse should be eradicated.

General Principles:

How to detect and avoid systems abuse

PRIMARY PREVENTION

- Are policies, procedures and practices routinely reviewed for their practical impact on children and revised in the light of this?
- Does the agency/organization routinely seek children's views about their needs and their experience of the system/agency/service?
- Has the agency/organization developed a charter of children's rights?

Does it have mechanisms to ensure that their procedures and practices match the charter?

- Does the agency/organization organize its services to take account of children's need for timely, sensitive, appropriate, accessible and continuity of services?
- Is the agency/organization able to take account of the differences between children and cater for the needs of individual children?

Staffing

- Are there adequate and appropriate procedures for the selection of staff/carers to work with children?
- Are staff who work with children adequately trained?
- Do staff and carers who work with children receive appropriate professional support and supervision?

Resources/Services

- Do staff have adequate resources available to them to allow them to meet their

responsibilities?

- To what extent does the agency/organization take account of the child's family and community and provide support for the key individuals concerned with the child?

- When children are referred from an agency to another, what procedures ensure the proper co-ordination and continuity of service?

SECONDARY PREVENTION

Monitoring and Review

- Does the agency/organization have a current profile of its clients and of their career and a system for keeping this up-to-date?

- Is research conducted to evaluate the effectiveness of its services?

- Does the agency/organization review its services to ensure that the services:
 - a) are adequate?

 - b) are appropriate?

- c) are accessible geographically and culturally are known to its staff and clients?
- d) are properly co-ordinated so that children do not 'fall between the gaps'?
- e) cover the range of children who need them?

Participation

- Are there adequate mechanisms for community participation in decision-making and review processes?
- Are there adequate mechanism for staff participation in decision making and review processes?

TERTIARY PREVENTION

- Is the complaints mechanism reactive or pro-active in operation?

Does it wait for complaints to be brought to its attention or is it alert and active in relation to likely problem areas?

- Is there adequate protection for people who complain?

PRIMARY, SECONDARY AND TERTIARY PREVENTION OF SYSTEMS ABUSE:

WHAT ORGANIZATIONS CAN DO

Primary Prevention

Staffing:-

- Organizations have adequate staff for their responsibilities, with staff being properly qualified and trained for their role.
- Organizations provide appropriate professional support, supervision and training for all field staff.

Resources:-

- Organizations have adequate resources for their responsibilities, with these resources being available as and when required.

- Staff and clients are made aware of the resources available to them.

Policy Development:-

- Policy is developed with input from staff, clients and community.
- Policy is child centered and appropriate for the age and stage of development of children and young people involved.
- Organizations develop a charter of children's rights, and ensure that their policies match the charter.

Services:-

- Services are designed to increase the skills and resources of the clients, families and communities with whom they interact.
- Services are co-ordinated between different agencies, with clear responsibilities for care management and continuity of care.
- Organizations invest in research into the effectiveness of their services, and effective ways of dealing with the problems with which they are dealing.

- Organizations develop standards for their services based on the child's need for timely, sensitive, appropriate and accessible services.

Secondary Prevention

Review:

- All organizations conduct regular reviews of their services based on the goals of the organization and to its standard of care.
- The results of reviews are published.

Tertiary Prevention

Investigation of Complaints

- All complaints are dealt with fairly, quickly and the results are made public.
- The investigation of complaints consider systemic as well as individual causes of problems.
- Where necessary, complainants are given protection from those against whom they complain.

- The results of complaints are made public.

Existing services with few exceptions are mainly curative with institutionalization of children being the major activity. If preventive measures are to be given preference, then clearly there is need to re-direct many operations. Both Governments and NGOs need to address issues that cause child abuse as discussed under preventive measures above.

Also in need of attention is rehabilitation and counseling. Studies show that approved schools which offer both academic studies and training are succeeding, though no data are available on how successful the children are when they leave the institution, thus lack of continuity of services. A major criticism of approved schools is lack of a link between children and their families. This should be addressed.

Services by remand homes are difficult to evaluate but 67% of street children, in the study by ANPPCAN quoted earlier, had been to a remand home. This contact between remand homes and street children needs to be evaluated.

A thorough study of children's homes by NGOs is recommended. Cases of sexual abuse and inadequate care are common, but the extent is not known. With 110 children's homes with about 8,000 children, operations of these homes including more stringent requirements in their registrations ought to be given more attention. Although the Children's Department has the legal mandate to register children's homes, private individuals and NGOs have used various legal and non legal mechanisms to register

homes. These include the Society Act and the Ministry of Culture and Social Services mechanisms for registering self-help groups. Overall, the policy of institutionalization should be reviewed. The newly established District Children Advisory Committees can be used to formulate and develop community based mechanisms for dealing with child abuse.

3.2

PAST EFFORTS TO TACKLE THE PROBLEM

That the Kenyan Child based NGOs have and continue to do a good job in trying to protect child rights and therefore contributing to the prevention and protection against child abuse and neglect is beyond question.

All the child based NGOs in the country address at least one aspect of child abuse and neglect and have several successful programs. Although there are no programs that deal specifically with issues of child abuse and neglect, certain activities of both the government of Kenya and several other development agencies have in the past tried to address the problem.

Other than handling reported cases of child abuse and neglect, the Probation and Children's departments both in the Ministry of Home Affairs and National Heritage also run institutional based child care services such as juvenile homes, baby homes and approved schools that serve child neglect and abandonment cases among others. Local development organizations like the Child Welfare Society of Kenya, run programs that directly or indirectly address the problem of child abuse and neglect. The Adoption Program started in the 1970's by the Child Welfare Society of Kenya for instance, targets abandoned children especially from the unmarried mothers, while the Fostering Program, which is as old as the society itself aims to provided temporary care to children without care / homes.

Under the I L O support, the society has also started two programs; The Street Girl; and the Street Working Child; as part of its rehabilitation program targeting children in difficult circumstances who form a great part of the target group of abused and neglected children.

The Undugu Society of Kenya is another local NGO that directly or indirectly runs programs that address issues of child abuse and neglect. Through the Parking Boys Program started in 1973 and the Street Girls Program started in 1991, different services that serve the various forms of child abuse and neglect are offered. These include family counseling services on family violence against children at family level; medical support for abused and injured street children; and legal aid and protection against child abuse and neglect with assistance from organizations such as FIDA and Kituo Cha Sheria. The Undugu Program on Rehabilitation, Child Care and Community Mobilization also indirectly tackle the problem of child abandonment and neglect.

International Organizations such as Save the Children Fund (U.K.) and World Vision, Kenya have no programs that directly address the problem of child abuse and neglect, however, the two organizations focus on education sponsorship and provision of primary health care to disadvantaged groups of children. Save the Children Fund (U.K.) for instance has two ongoing such projects - (i.e. Starehe Boys Educational Sponsorship and Kibwezi Primary Health Care for the Disabled) while World Vision, Kenya, is yet to start a project on the Girl Child in Soweto, Tana River and in Sagala.

The UNICEF on going programs focus on 'children in especially difficult

circumstances' and are therefore targeted to assist eleven categories of children who are thought to be more vulnerable than others. Out of the eleven categories, four directly and indirectly relate to the problem of child abuse and neglect. The two categories on the UNICEF program that directly relate to child abuse and neglect are the abandoned/neglected children and the battered/abused children. The other two that indirectly address the issue includes child prostitution which addresses street children and the working house-maids.

The 1994 - 1998 UNICEF Plans are that abandoned/neglected and battered/abused children will be supported through advocacy programs aimed at creating public awareness and capacity building of the district and lower level Children Advocacy Committees. On the other hand, rehabilitation and protection programs are planned by UNICEF during the 1994 - 1998 period to address the problems facing street children and the working housemaids.

Practical Example of Program on Child Labour - that can be used in Kenya.

It was in 1982 that the International Labour Organization (I L O) issued a memorandum to its member organizations insisting upon introducing some effective measures to alleviate the suffering of child workers. India being one such country took cognizance of the fact and IPER was one, of the institution that was invited to develop a suitable project for meeting the needs of child workers.

As a result it was in April 1983 that IPER launched its Holiday School Project for child workers, an innovative plan specially developed for these children with subsidy from the Ministry of Labour, Government of India. Since then, the project has proved to be immensely successful and highly popular amongst child workers as a most suitable medium for delivering some of their vital needs.

The prime objectives of the Holiday School Program are:-

- To develop a healthy outlook towards life and adequate motivation in child workers.
- To acquaint them with the basic concept of health care and inculcate the habits of personal and community hygiene in them.
- To provide opportunities for meaningful activities and develop regular study habits in them.
- To provide them with minimum level of education essential for living in a modern society.
- To introduce them into the cultural mainstream of the country through participation in social and cultural activities.

In order to attain these objectives, an action oriented program has been worked out. The program consists of the following components:-

- Imparting education at least upto primary stage.
- Providing health care services through regular medical check up, diagnostic facilities and free supply of medicines.
- Arranging supplementary nutrition to combat undernourishment.
- Humanizing child labour by improving working conditions and the environment of work places of these children.

Besides serving as the medium for imparting systematic education, these schools also act as the central point for delivering some vital services to working children like health care.

Incidentally, the syllabus followed in Holiday Schools is the same as followed in primary schools run by government or other educational bodies in the state. This makes it possible for children to gain admission into secondary schools of the state after they pass from Holiday schools.

Holiday schools are held in the very premises where public and municipal schools are held as the latter remain closed over the weekend thus doing away with the need for additional infrastructure. By attending these schools, the children identify themselves as part of the general schooling system and gain both self confidence and contentment. One remarkable fact about Holiday schools is the elimination of text books which have been replaced by what are known as 'individualized lessons'

The entire course of study or a particular subject is divided in the form of a number of printed lessons known as 'units' which the child works out individually often without the help of the teacher.

FOOTNOTES

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CHAPTER 4

CONCLUSIONS

Several reasons which broadly can be divided into social, economic and political are attributed to these increased cases of child abuse and neglect. The influence of colonialism and the resultant development in Kenya that came with exposure to formal education and the Western way of life has resulted in the creation of nuclear families where children are primarily the concern of their biological parents and not the entire community as was the case in the traditional African society. Communities have therefore ceased to be concerned about the welfare of children in general, whereas the immediate family has also ceased to account to the community for the way it brings up its children. The result of this breakup of the traditional African family setup is that children who for one reason or another cannot be cared for by their parents have found themselves neglected, thus making them vulnerable to all forms of child abuse such as child labour, child prostitution, physical abuse etc.

The escalating cost of living that is the result of an ailing economy and the effects of the Structural Adjustment Programs (SAPs) imposed on many Third World countries including Kenya by the IMF and the World Bank, have further aggravated the already serious issue

of child abuse and neglect. As the cost of living has sky-rocketed, a majority of Kenya's urban poor, the greater proportion of whom live in slum communities, characterized by stark poverty, a hostile environment and large families with irregular, very low and sometimes no income at all, have simply abandoned their responsibility towards their children. The introduction of cost sharing in the education system and other social services has not helped matters either. Preliminary estimates by the Central Bureau of Statistics (CBS) based on the 1989 census data, for instance, estimated the proportion of children not attending school at 21.83% for males and 21.45% for females . This figure however is thought to be conservative, given especially, that the official school going age in Kenya is six years and above, thus ignoring the pre-school ages of three to five years. As parents struggle to make ends meet and as the school drop-out rates continue to rise, many children have found themselves neglected thus making them victims of child abuse and neglect, by their own parents who at times project their frustration on the children.

The AIDS scourge and the resulting stigmatization that society attaches to the disease, is yet another factor that has worsened the already grave situation of child abuse and neglect in Kenya. Individuals, community and at times even institutions tend to

discriminate against children whose parents die of AIDS, often leaving the children to fend for themselves, hence child labour and the creation of child headed families. Even in occasions where the children are accepted in an institution of destitutes, cases of discrimination in the provision of care by both workers and fellow children have been cited, and this all in total disregard of the fact that the children themselves might not be HIV positive .

Events on the political front especially the ethnic clashes that have seen whole communities unsettled has created internally displaced people, the majority of whom are women and children. Investigation by ANPPCAN Kenya, have revealed that most of these displaced people live in the most deplorable conditions with poor sanitation and inadequate or no shelter at all, thus making the children especially vulnerable to the vulgarities of weather and therefore to disease. Further, this displacement has interfered with the schooling of children, thus denying them the right to education.

All in all, the social, political and economic changes that have taken place in Kenya over the past few years have adversely affected the Kenyan people, resulting in gross cases of child abuse and neglect as is evidenced by the high incidences of physical and psychological

abuse that comprise of things like defilement and rape, child labourers, street children and even AIDS orphans.

Challenges

Given the above scenario, one of the main challenges today is how to prevent and protect a child against abuse and neglect within the emerging family structures and the changing roles of both the family and the community. The urban community as opposed to the traditional African community where everybody was somehow related to everybody else, is defined more by geographical factors and is often diversified, comprising of people different socio-cultural backgrounds within which there is no communal responsibility.

Another challenge lies in protecting the rights of the child within the context of HIV/AIDS epidemic. There is need to protect such children from societal stigmatization that often results in abuse and neglect for those whose parents have died of AIDS while for those children who are themselves HIV positive, the challenge is in having to protect them against discrimination not just from society but even from health workers.

Yet another challenge lies in the protection of the right of the child in families that are extremely poor and who cannot afford to provide their children even with the basic necessities of life such as food, clothing and shelter.

The other challenge lies in protecting the rights of internally displaced children as well as those refugee children from neighboring countries who have sought asylum in Kenya. This is especially so given that this category of children live in camps where the basic social fabric either do not exist or are simply lacking.

Legal Aspect

For the law to function effectively in a society, the general populace must first be educated as to what in general terms the law is. The general level of literacy must necessarily be upgraded for this purpose.

For effective protection of children it is imperative to spell out clearly what the term 'child' means. The present law indicates when one ceases to be a child by expiry of time but not when one should be deemed to have been constituted a child for the purpose of the laws

protecting children. There should be a legal provision indicating when a child comes into legal existence and that the moment of conception may be the operative time.

The present law is not enforced. This is particularly so with regard to ;

a) s.23 of the Children and Young Persons Act relating to punishment of those guilty of cruelty and / or neglect of children and

b) the provisions on Employment of Women and Juveniles Part iv of the Employment Act relating to employment prohibited to children and the formalities required before engaging children in salaried employment . It is recommended that the above provisions of law should be enforced by the public officials concerned.

Even if the present law was vigorously enforced, there would be undesirable gaps due to its inadequacy. To fill such gaps, certain additions and modifications to the present laws are necessary.

Specifically, the law should;

- a) prohibit street trading by children.
- b) regulate the participation of children in entertainments and performances likely to corrupt their morals.
- c) penalize the willful omission or neglect to educate children.
- d) prohibit sale of cigarettes and alcohol to children under the pain of severe penalties.
- e) prohibit the entry of children into licensed betting premises, and
- f) treat indecent violations of children's physical integrity more severely.

The present laws unfortunately adopt a constrictivist attitude to the term 'offense'. Excluded from its purview are several practices and omissions injurious to the mental and physical health of children.

Examples included habits like uninformed ingestion of drugs, smoking and alcoholic indulgence by pregnant women, malnutrition, lack of sound moral education in the light of biological urges etc. In

understanding the term child in the of biological urges etc. In understanding the term child in the broad sense indicated above, it should be possible for the legislature to delineate what rights children should have under the law. Conversely, the obligations of those responsible for such malpractices and / or omission should be spelt out.

Generally, the law ought to be expounded to ensure greater and more effective protection of children . This is not to say that we do not have protection of children in the circumstances. I think that there is relatively reasonable protection.

The problem seems to be a general apathy or reticence towards the diligent enforcement of the law which exists for such protection. Perhaps a machinery needs to be set up whereby if any person has a belief, on reasonable and sufficient ground, that a child is being mistreated or is exposed to danger or cruelty, that such a person may file a report with the police who should then initiate investigations into the matter with a view to prosecuting the offender, if any. Reasonable protection against any proceeding in damages should be placed to ensure that the person who so files a report is not precluded from making a genuine report. Whatever the case, what seems important

now is to see the existing legal provisions for the protection of children enforced diligently.

Economic and Social Action

There should be equitable distribution not only of our wealth but means of production having regard always to the economics of the exercise. There must also be a labour office of dedicated and diligent law enforcement officers, well remunerated to avoid their being corrupted on a large scale.

In a word, the general standard of living must be raised albeit within the capabilities of our economy. This means there must be a national ethos, a general morality; the country as a whole must have a conscience. Children have rights among which is a right for them to expect protection from harm from themselves and adults. Adults of this nation must prove themselves worthy of the trust placed on them by the young folk.

All in all the issue of child abuse and neglect in Kenya is a national problem that has been identified and whether directly or indirectly several efforts have been and continue to be made by both

(i) Preventive and Protective Programs

These will be:

Programs need to be developed along two distinct broad areas:

to discuss issues of child abuse and neglect.

c) Promoting and organizing conferences, seminars, study groups etc.

children.

p) Educate the national opinion on the interests and well being of all

parties.

among child based NGOs the Government and other interested

a) Organizing and improving information exchange and co-operation

be done by:

children of all races and creed from any form of child abuse. This can

The main objectives should therefore be to prevent and protect

international to address the issue.

the government and the Development agencies whether local or

(ii) Rehabilitation Programs

Preventive and Protective Programmes

The preventive and protective programmes will address those issues that lead to Child Abuse and Neglect. These will include the following programmes;

- Specific target group public awareness campaigns to address the issue of child abuse and neglect.

- Establishment of a legal unit to offer legal representation to victims of child abuse and neglect

- Lobbying with policy makers to include the issues of child abuse and neglect in the development plan as a priority agenda to be addressed.

- Advocacy for the rights of the child in general and girl child in particular.

Rehabilitative Programmes

These will seek to address the after effects of child abuse and neglect such as trauma. These will be damage control programmes addressing the after effects of child abuse and neglect, and will include the following ;

- A programme to address the issue of internally displaced children who are the victims of ethnic clashes as well as refugees

- Family and community based programmes for the rehabilitation of street children in general and the female street girl in particular.

- Programmes to address the flight of children affected by HIV/AIDS epidemic

- Programme to eradicate the problem of child labour and where not possible to improve the work environment.

POST SCRIPT

At the time this work was completed, the Children Bill, 1995 had not been enacted.

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