



A GUIDE TO THE HUMAN RIGHTS ACT

A booklet for children rights growing
up in pastoralist communities

Empowering The Voiceless

Exploitation, abuse and discrimination are some of the vices rampant on children growing up in pastoralist communities. The young ones are denied that special protection that is essential to develop physically, psychologically, spiritually, morally and socially.

Some aged as young as five end up suffering from such retrogressive cultural practices as beading, female genital mutilation, early and forced marriages. Other children are affected by recurring inter-clan conflicts, sexual exploitation that at times result to crude and criminal abortions once the young girls deliver.

Babies who survive abortion become outcasts after birth. There have been incidents where the newborns are killed or simply thrown away to die. Children born with disabilities also fall in the same classification of being discriminated against owing to cultural beliefs.

This unique vulnerability facing girls in Samburu community is a major concern to Samburu Women Trust (SWT). Their work and aspirations is to advance the rights of these young ones with the focus being on special protection measures on those affected by child beading, early and forced marriage among the other harmful practices mentioned.

These silent cultural harmful practices, some of which have been thriving as the community watch in silence are gross human right violations and impact negatively on all aspects of a girl's life.

They denies a girl the joy of her childhood, disrupts her education, limits her opportunities, increases her risk to be a victim of violence and abuse, jeopardizes her health and therefore constitutes an obstacle to the achievement of nearly all the outlined Millennium Development Goals (MDGs) and remains a hurdle towards development of a healthy community.

There is growing recognition that harmful traditional beliefs and practices violate the human rights of women and girls. Most of them are pure violence and discrimination meted against the girls.

Traditionally, sons are more valued than daughters with many families among the pastoralists treating the girl as source wealth upon being married off. Even after marriage, the husbands do not treat their wives any better and their voices remain subdued.

SWT is currently working closely with schools administration to increase confidence and decision making abilities among the girl child.

Equipping the children with knowledge about their rights would go a long way in putting an end to perpetuation of such harmful practices that have been denounced by The Laws of Kenya, The

African Union Charter and the United Nations Convention on the Rights of the Child.



The Vulnerable Are Protected Under Kenyan Law

Being born and growing among the pastoralists poses a myriad of challenges to children. The affected minors are ignorant if their rights are violated and like any other child, the belief is that whatever their parents prescribe to them is for their own well being.

They remain ignorant if indeed there is a way they can raise a complaint or what they should complain about and if at all anyone would give them an ear. This ignorance has seen Samburu girls face such cruel acts as Female Genital Mutilation, early and forced marriage, beading resulting to sexual slavery and crude abortions.

According to The Constitution and The Laws of Kenya, those who perpetuate these acts commit offences and are liable to punishment. Girls who are out of school in spite of being school going age bear the brunt of these atrocities. Their parents fail to enroll them either because such facilities do not exist in their locality or the parents attach no

value to education.

The Kenya's Supreme Law - The Kenya Constitution 2010 is categorical on the rights of the child. The Laws of Kenya are equally clear on child protection.

- The Children's Act Chapter 41 of the Laws of Kenya defines who a child is and what their rights are. It clearly states that any act concerning a child must be to the best of their interests meaning that they should be given the first priority. Violation of the rights of children may earn persons convicted jail term, fines or both.
- The Prohibition of Female Genital Mutilation Act No 32 of 2011 clearly states that any person who performs the act of FGM on another person, in the process causes death of the victim or is party or aids the commission of the act is liable on conviction to imprisonment

for a term of not less than three years. In case of causing death in the process, a life in prison is the punishment provided for by the law.

- The Sexual Offences Act which falls under Chapter 62A of the laws of Kenya prohibits among others defilement, indecent acts with children, child sex tourism, child prostitution and child pornography with jail terms not below ten years. Over the years since 2006, the Act has undergone various amendments and the child has greatly benefited.

Besides protecting the child, The Kenya Constitution also spells other rights that are aimed at safeguarding the wellbeing of the child. For instance, two articles 53(1,b) and Article 46(1,a) states the right to education.

Article 53(1,b): Every child has the right to free and compulsory basic education

Laws on child right violation

Female Genital Mutilation

Female Genital Mutilation (FGM) or commonly known as female genital cut, comprises all procedures involving partial or total removal of the female genitalia or other injury to the female genital organs, or any harmful procedure to the female genitalia, for non-medical reasons.

Act No 32 of 2011 states that any person who performs the act of FGM on another person, in the process causes death of the victim or is party or aids the commission of the act is liable on conviction to imprisonment for a term of not less than three years.

In case of causing death in the process, a life in prison is the punishment provided for by the law.

- **Procuring a person to perform female genital mutilation in another country**

A person commits an offence if the person takes another person from Kenya to another country, or arranges for another person to be brought into Kenya from another country, with the intention of having that other person subjected to FGM.

- **Use of premises to perform FGM**

A person who knowingly allows any premises, for which that person is in control of, or responsible for, to be used for purposes of performing Female Genital Mutilation commits an offence.

- **Possession of tools or equipment**

A person who is found in possession of a tool

or equipment for a purpose connected with the performance of female genital mutilation, commits an offence.

- **Prohibition of Female Genital Mutilation**

Failure to report commission of offence, a person commits an offence if the person, being aware that an offence of female genital mutilation has been, is in the process of being, or intends to be, committed, fails to report accordingly to a law enforcement officer.

- **Use of derogatory or abusive language**

Any person who uses derogatory or abusive language that is intended to ridicule, embarrass or otherwise harm a woman for having not undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation, commits an offence and shall be liable, upon conviction, to imprisonment for a term not less than six months, or to a fine of not less than fifty thousand shillings, or both.

Sexual Offences

Chapter 62A of the Laws of Kenya contains The Sexual Offences Act. This section prohibits among others-defilement, indecent acts with children, child sex tourism, child prostitution and child pornography with jail terms of not less than ten years.

Law on defilement, Cap 62A (8)

A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

- A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
- A person who commits an offence of defilement with a child between the age

of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

- A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

Protecting Those Below 18 Years

It is globally agreed that a child is anyone who has not attained the age of 18. However, this factor is totally ignored when dealing with children growing up in pastoralists' areas.

Being married off or being beaded at the age of 10 is a normal occurrence. When such decisions are made by the adults, it is not out of the expected benefits that will go towards improving the well being of the minor. On the contrary, the adults stand to gain by getting the bride prize in case of forced marriage and deriving sexual pleasure from the minor in the beading case.

The minors are also forced into child labour where their parents give them out to herd goats for neighbours or relatives in exchange of small favors that does not benefit the child who should be in school laying a foundation for his/her future. A number of these harmful cultural practices found among the Samburu community have been denounced by the African Charter on the Rights

and Welfare of the Child of which Kenya is a signatory to the African Union initiative.

African Charter On The Rights And Welfare Of The Child

Chapter One: Rights And Welfare Of The Child

Article 1: Obligation of States Parties

- State parties shall recognize that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

- For purposes of this Charter a child means every human being below the age of 18 years.

Article 3: Non Discrimination

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

Article 4: Best Interests of the Child

- In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

Article 5: Survival and Development

- Every child has an inherent right to life. This right shall be protected by law.

Article 11: Education

- Every child shall have the right to an education.
 - * State parties to provide free and compulsory basic education;
 - * States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

Article 13: Handicapped Children

- Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self reliance and active participation in the community.

Article 14: Health and Health Services

- Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

Article 15: Child Labour

- Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.

Article 19: Parent Care and Protection

- Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents.

No child shall be separated from his parents

against his will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child.

Article 21: Protection against Harmful Social and Cultural Practices

- States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
 - * Those customs and practices prejudicial to the health or life of the child; and
 - * Those customs and practices discriminatory to the child on the grounds of sex or other status.
- Child marriage and the betrothal of girls and boys shall be prohibited and effective action,

including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

- States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

Article 27: Sexual Exploitation

- States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
 - * The inducement, coercion or encouragement of a child to engage in any sexual activity.

Standing Up Locally And Globally For The Child

Children rights continue to be violated among the pastoralists, yet very few people dare raise a voice against it. They hide under the cocoon of culture as the children bear the brunt. Child beading is a form of exploitation that continues to thrive in the belief that it bring about social order.

That morans (community warriors) can only be tamed by allowing them to turn young girls into sex slaves is a practice that is outdated and has been denounced internationally.

In the Samburu community, the morans abuse the girls sexually with the full knowledge of the minor's parents. These acts of sexual pleasure sometimes result to the girls getting pregnant and are forced to undergo a painful abortion.

This is a situation that diminishes the chances of the girl getting education and still may bring about lifelong health complications like sepsis and secondary infertility.

United Nations Charter on Children Rights

Everyone under 18 years of age has all the rights in this convention.

The convention defines a 'child' as a person below the age of 18, unless the laws of a particular county set the legal age for adulthood younger. The committee on the Rights of the Child, the monitoring body for the convention, has encouraged states to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

The convention on the rights of the Child

Article 19 (Protection from all forms of violence)

Article 34 (Sexual exploitation)

Article 36 (Other forms of exploitation)

Article 3 (Best interests of the child)

- The best interests of the child must be a top priority in all actions concerning children.

Article 4 (Protection of rights)

- Governments must do all they can to fulfil the rights of every child.

Article 6 (Survival and development)

- Every child has the right to life. Governments must do all they can to ensure that children survive and grow up healthy.

Article 12 (Respect for the views of the child)

- Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

Article 18 (Parental responsibilities; state assistance)

- Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must help parents by providing services to support them, especially if the child's parents work.

Article 19 (Protection from all forms of violence)

- Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else who looks after them.

Article 23 (Children with disability)

- A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an active

role in the community. Governments must do all they can to provide free care and assistance to children with disability.

Article 24 (Health and Health Services)

- Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food and a clean environment so that children can stay healthy. Richer countries must help poorer countries achieve this.

Article 27 (Adequate standard of living)

- Every child has the right to a standard of living that is good enough to meet their physical, social and mental needs.
- Governments must help families who cannot afford to provide this.

Article 28 (Right to education)

- Every child has the right to an education. Primary education must be free. Secondary education must be available to every child.
- Discipline in schools must respect children's human dignity.
- Wealthy countries must help poorer countries achieve this.

Article 32 (Child labour)

- Governments must protect children from work that is dangerous or might harm their health or education.

Article 34 (Sexual exploitation)

- Governments must protect children from sexual abuse and exploitation.

Article 36 (Other forms of exploitation)

- Governments must protect children from all other forms of exploitation that might harm them.

The United Nation Convention on the Rights of Children (UNCRC) sets out four pillars of Children Rights. These are Survival, Development, Protection and Participation rights of children. The pillars are echoed in the African Charter on the Rights and Welfare of the Child (ACRWC) and domesticated through the Children Act 2001 and the 2010 Constitution.

Child Participation is a process of child development that provides an opportunity for children to be involved in decision making on matters that affect their lives and to express their views in accordance with their evolving activities. This participation recognizes that children are capable communicators, who can effectively engage in activities within their communities.

The Kenya Children's Assembly (KCA) was formed with the objective of empowering children with knowledge and skills on children rights and responsibilities.

Its guiding principles are:

- Children First
- Inclusion
- Child Friendly
- Children Rights
- Representative

Its key functions include addressing issues of child participation in all situations that affect and shape the well being of a child. The assembly also aims to enhance and strength the child's participation in Kenya's decision making process.

The concept of Children Assemblies aims at inculcating in children principles of child participation. The KCA creates a mechanism for children to engage in policy dialogue and to influence on issues affecting from the local to the national level.

There are three levels of the Children Assemblies which include National, County and District/ Constituency.

a) National

The KCA at the National level will be composed of 141 members (3 drawn from each county with a 1:2 or 1/3 gender representation rule) and the Secretariat (The secretariat will be drawn from Department of Children's Services and Children Assemblies stakeholders) one President, Deputy President, Speaker and Clerk

b) Regional

Other devolved Children's Assemblies will have 44 members with 1:1 gender representation; 40 representatives from administrative units covered by the assembly, one Governor, One Deputy Governor, One Speaker and One Clerk.

There shall be fair representation in all administrative units within an assembly area of jurisdiction.

All children who wish to participate in the assemblies must have consent from their parents/guardians and must be aged above seven and below 18.

In view of the child rights violations among the pastoralist communities, SWT makes the following recommendations;

- Improve access to information within the affected counties with child beading practices for pastoral women and girls to know their fundamental rights
- Enhance development of girl-child beading legislation per county and at national level
- Improve status of women participation and leadership both in county and national government.
- Promote dialogue within the local communities for effective openness to eliminate the silent harmful unspoken practices with respect to indigenous cultural structures
- Increase girl-child enrollment and access to schools



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