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COURSE TITLE: RIGHTS OF CHILDREN AND PROTECTION

COURSE CODE: ECD 222

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PURPOSE OF THE COURSE

This course will help the learner intellectualize Rights of the child. It will equip the learner with the essential knowledge, skills and attitudes towards, the significance of the rights of the child, child abuse and child protection.

COURSE DESCRIPTION

This course entails definition of terms and concepts used in Child rights, Rights of the child, Myths and facts of child abuse, risk factors for child abuse and neglect, types of child abuse, Child protection, child protection policy, Corporal punishment, and positive approaches to discipline

TEACHING/LEARNING METHODOLOGIES

This course will be offered and/or undertaken through tutorials, group discussions, group and individual assignments, presentations, interactive questions and answers, micro-teaching lessons, peer teaching and e-learning interactive forums. The learner will be required to go through this training module, make notes based on the objectives of the course and attempt the questions given at the end of every lesson. Tutorial classes will be organized by the university where the lecturer will take the student through the course. The purpose of tutorials is to help the learner conceptualize the course. It is, therefore, important to study the module before attending the tutorials. Further reading in this area of curriculum is encouraged. However all information gathered should be within the course description and objectives.

COURSE ASSESSMENT AND EVALUATION

Learning will be assessed through sit in Continuous Assessment Tests (CATs), Take Away Assignments and a Main Examination. The CATs will constitute 30% and the Examination 70%

MODULE ORGANIZATION

This module is organized in form of lessons. In every lesson an introduction is given. The introduction shows what the lesson constitutes. This is followed by the lesson objectives. Then, the learner is taken through the lesson content. The content may be sub-divided into sub-topics depending on the nature of the topic in a lesson. A summary of what has been learnt is given. At the end of the lesson the learner is given activities. These activities are in form of questions and practical. It is good to note that this is not a text book. The content is therefore in form of lecture notes. Further reading from text books is recommended. A list of books to refer to is given at end of the module.

COURSE CONTENT

This unit covers the following:

- ❖ Rights of the child
- ❖ History of child Rights
- ❖ The UN convention of Rights of the child
- ❖ Rights of the child in Kenya
- ❖ The Children Act Cap 586- Laws of Kenya
- ❖ Child abuse
- ❖ Child protection
- ❖ Corporal punishment

COURSE OBJECTIVES

- ❖ Discuss the Rights of the child
- ❖ Discuss the UN convention of the Rights of the Child
- ❖ Analyse the Children Act Cap 586- laws of Kenya
- ❖ List categories of child abuse
- ❖ Identify abused children
- ❖ Describe various methods of child protection
- ❖ Discuss the African Charter

LESSON ONE: INTRODUCTION TO CHILD RIGHTS

Objectives

By the end of this session, you should be able to:

- a) *Explain the terms, child.*
- b) *Discuss the various needs of children*

1.1 Definition of the term Child

A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier. According to Cornell University, a child is a person, not a *sub person*, and the parent has absolute interest and possession of the child, but this is very much an American view. The term "child" does not necessarily mean minor but can include adult children as well as adult nondependent children

1.2 Addressing the needs of children

Governments must be sensitive to the rights of all their citizens—not just to those of children—but the world community recognizes that priority should be given to protecting children's rights. There are many reasons for singling out children's rights in a separate human rights Convention:

- ❖ **Children are individuals:** Children are neither the possessions of parents nor of the state, nor are they mere people-in-the-making; they have equal status as members of the human family.
- ❖ **Children start life as totally dependent beings:** Children must rely on adults for the nurture and guidance they need to grow towards independence. Such nurture is ideally found in adults in children's families, but when primary caregivers cannot meet children's needs, it is up to society to fill the gap.
- ❖ **The actions, or inactions, of government impact children more strongly than any other group in society.** Practically every area of government policy (for example, education, public health and so on) affects children to some degree. Short-sighted policymaking

that fails to take children into account has a negative impact on the future of all members of society by giving rise to policies that cannot work.

- ❖ **Children's views are rarely heard and rarely considered in the political process.** Children generally do not vote and do not otherwise take part in political processes. Without special attention to the opinions of children—as expressed at home and in schools, in local communities and even in governments—children's views go unheard on the many important issues that affect them now or will affect them in the future.
- ❖ **Many changes in society are having a disproportionate, and often negative, impact on children.** Transformation of the family structure, globalization, shifting employment patterns and a shrinking social welfare net in many countries all have strong impacts on children. The impact of these changes can be particularly devastating in situations of armed conflict and other emergencies.
- ❖ **The healthy development of children is crucial to the future well-being of any society.** Because they are still developing, children are especially vulnerable—more so than adults—to poor living conditions such as poverty, inadequate health care, nutrition, safe water, housing and environmental pollution. The effects of disease, malnutrition and poverty threaten the future of children and therefore the future of the societies in which they live.
- ❖ **The costs to society of failing its children are huge.** Social research findings show that children's earliest experiences significantly influence their future development. The course of their development determines their contribution, or cost, to society over the course

1.3 What Every Child Needs

To become a healthy, happy adult, every child needs:

- ❖ **Interaction** - Consistent, long- term attention from caring adults.
- ❖ **Touch** - Holding and cuddling does more than merely comfort children, it also helps their brains grow.
- ❖ **Environment** - A safe, healthy living and growing environment is vital. It should be free of lead, loud noises, sharp objects, unclean areas, and other hazards.

- ❖ **Communication** - Talking with your child builds verbal skills needed to succeed in school and life. It also helps children learn to relay their feelings of anger, jealousy, and frustration to adults.
- ❖ **Relationships** - A stable relationship with parents and other caregivers buffer stress from children.
- ❖ **Self- Esteem** - With respect, encouragement, and positive role models from the very beginning. Children can develop wonderful self- esteem that will assist them in life forever.
- ❖ **Quality Care** - When you cannot be with your child, quality care from a trained professional can make all the difference in the world.
- ❖ **Play** - Helps your child explore his/ her senses and discover how the world works. Playing with others help children learn to share and be part of a team; it also stimulates creative thinking.
- ❖ **Reading** - To your child from the very beginning (even while still in the womb) will show the importance of reading and creates a lifelong love of books and the written word.
- ❖ **Music** - Expands your children's world and teaches them to sing songs and play instruments. It also helps develop their logistical skills and usually enhances their science and math learning.

Lesson activities

Discuss various needs of children

LESSON TWO: CATEGORIES OF CHILDREN IN DIFFICULT CIRCUMSTANCES

Lesson Objectives

1. List various categories of children who need care and protection
2. Discuss various factors that increase a child's vulnerability

2.1 Categories of children who need care and protection

- Orphans / abandoned children
- Children whose parents/guardians who have been imprisoned or unable to provide for them
- Children who are homeless and beggars
- Children in bad company
- Those who are being prevented from accessing education
- A girl likely to be forced into female circumcision/ early marriages
- Child forced to practise customs which are harmful to the child
- Child kept in an overcrowded, and unhealthy places
- Children exposed to domestic violence
- A child who is pregnant
- Child who is terminally ill/ disabled
- Child who is engaged in using drugs / any harmful substance
- Who does work which would harm them or interfere with their education
- Victims of sexual offences or living with a person who is convicted with sexual offence
- Children made homeless during war or natural disasters

2:2 Factors increasing a child's vulnerability

A number of studies, mostly from the developed world, have suggested that certain characteristics of children increase the risk for abuse.

Age

Vulnerability to child abuse – whether physical, sexual or through neglect – depends in part on a child’s age. Fatal cases of physical abuse are found largely among young infants.

In reviews of infant deaths in Fiji, Finland, Germany and Senegal, for instance, the majority of victims were less than 2 years of age. Young children are also at risk for non-fatal physical abuse, though the peak ages for such abuse vary from country to country. For example, rates of non-fatal physical abuse peak for children at 3–6 years of age in China, at 6–11 years of age in India and between 6 and 12 years of age in the United States. Sexual abuse rates, on the other hand, tend to rise after the onset of puberty, with the highest rates occurring during adolescence. Sexual abuse, however, can also be directed at young children.

Gender of the child

In most countries, girls are at higher risk than boys for infanticide, sexual abuse, educational and nutritional neglect, and forced prostitution. Findings from several international studies show rates of sexual abuse to be 1.5–3 times higher among girls than boys. Globally, more than 130 million children between the ages of 6 and 11 years are not in school, 60% of whom are girls. In some countries, girls are either not allowed to receive schooling or else are kept at home to help look after their siblings or to assist the family economically by working. Male children appear to be at greater risk of harsh physical punishment in many countries. Although girls are at increased risk for infanticide in many places, it is not clear why boys are subjected to harsher physical punishment. It may be that such punishment is seen as a preparation for adult roles and responsibilities, or else that boys are considered to need more physical discipline. Clearly, the wide cultural gaps that exist between different societies with respect to the role of women and the values attached to male and female children could account for many of these differences.

Special characteristics

Premature infants, twins and handicapped children have been shown to be at increased risk for physical abuse and neglect. There are conflicting findings from studies on the importance of mental retardation as a risk factor. It is believed that low birth weight, prematurity, illness, or physical or mental handicaps in the infant or child interfere with

attachment and bonding and may make the child more vulnerable to abuse. However, these characteristics do not appear to be major risk factors for abuse when other factors are considered, such as parental and societal variables.

Caregiver and family characteristics

Research has linked certain characteristics of the caregiver to child abuse and neglect. While some factors –including demographic ones – are related to variation in risk, others are related to the psychological and behavioural characteristics of the caregiver or to aspects of the family environment that may compromise parenting and lead to child maltreatment.

Family structure and resources interfering

Physically abusive parents are more likely to be young, single, poor and unemployed and to have less education than their non-abusing counterparts. In both developing and industrialized countries, poor, young, single mothers are among those at greatest risk for using violence towards their children. In the United States, for instance, single mothers are three times more likely to report using harsh physical discipline than mothers in two-parent families. Similar findings have been reported in Argentina, Studies from Bangladesh, Colombia, Italy, Kenya, Sweden, Thailand and the United Kingdom have also found that low education and a lack of income to meet the family's needs increase the potential of physical violence towards children, though exceptions to this pattern have been noted elsewhere. In a study of Palestinian families, lack of money for the child's needs was one of the primary reasons given by parents for psychologically abusing their children.

Family size and household composition

The size of the family can also increase the risk for abuse. A study of parents in Chile, for example, found that families with four or more children were three times more likely to be violent towards their children than parents with fewer children. However, it is not always simply the size of the family that matters. Data from a range of countries indicate that household overcrowding increases the risk of child abuse. Unstable family environments, in which the composition of the household frequently changes as family members and others move in and out, are a feature particularly noted in cases of chronic neglect.

Personality and behavioural characteristics

A number of personality and behavioural characteristics have been linked, in many studies, to child abuse and neglect. Parents more likely to abuse their children physically tend to have low self-esteem, poor control of their impulses, mental health problems, and to display antisocial behaviour. Neglectful parents have many of these same problems and may also have difficulty planning important life events such as marriage, having children or seeking employment. Many of these characteristics compromise parenting and are associated with disrupted social relationships, an inability to cope with stress and difficulty in reaching social support systems. Abusive parents may also be uninformed and have unrealistic expectations about child development. Research has found that abusive parents show greater irritation and annoyance in response to their children's moods and behaviour, that they are less supportive, affectionate, playful and responsive to their children, and that they are more controlling and hostile.

Prior history of abuse

Studies have shown that parents maltreated as children are at higher risk of abusing their own children. The relationship here is complex, though and some investigations have suggested that the majority of abusing parents were not, in fact, themselves abused. While empirical data suggest that there is indeed a relationship, the importance of this risk factor may have been overstated. Other factors that have been linked to child abuse – such as young parental age, stress, isolation, overcrowding in the home, substance abuse and poverty – may be more predictive.

Violence in the home

Increasing attention is being given to intimate partner violence and its relationship to child abuse. Data from studies in countries as geographically and culturally distinct as China, Colombia, Egypt, India, Mexico, the Philippines, South Africa and the United States have all found a strong relationship between these two forms of violence. In a recent study in India, the occurrence of domestic violence in the home doubled the risk of child abuse. Among known victims of child abuse, 40% or more have also reported domestic violence in the

home. In fact, the relationship may be even stronger, since many agencies charged with protecting children do not routinely collect data on other forms of violence in families.

Other characteristics

Stress and social isolation of the parent have also been linked to child abuse and neglect. It is believed that stress resulting from job changes, loss of income, health problems or other Aspects of the family environment can heighten the level of conflict in the home and the ability of members to cope or find support. Those better able to find social support may be less likely to abuse children, even when other known risk factors are present. In a case–control study in Buenos Aires, Argentina, for instance, children living in single parent families were at significantly greater risk for abuse than those in two-parent families. The risk for abuse was lower, though, among those who were better able to gain access to social support.

Child abuse has also been linked in many studies to substance abuse though further research is needed to disentangle the independent effects of substance abuse from the related issues of poverty, overcrowding, mental disorders and health problems associated with this behaviour.

Community factors

Poverty

Numerous studies across many countries have shown a strong association between poverty and child maltreatment. Rates of abuse are higher in communities with high levels of unemployment and concentrated poverty. Such communities are also characterized by high levels of population turnover and overcrowded housing. Research shows that chronic poverty adversely affects children through its impact on parental behaviour and the availability of community resources. Communities with high levels of poverty tend to have deteriorating physical and social infrastructures and fewer of the resources and amenities found in wealthier communities.

Social capital

Social capital represents the degree of cohesion and solidarity that exists within communities. Children living in areas with less “social capital” or social investment in the

community appear to be at greater risk of abuse and have more psychological or behavioural problems. On the other hand, social networks and neighbourhood connections have been shown to be protective of children. This is true even for children with a number of risk factors – such as poverty, violence, substance abuse and parents with low levels of educational achievement – who appear to be protected by high levels of social capital

Societal factors

A range of society-level factors are considered to have important influences on the well-being of children and families. These factors – not examined to date in most countries as risk factors for child abuse – include: The role of cultural values and economic forces in shaping the choices facing families and shaping their response to these forces. Inequalities related to sex and income – factors present in other types of violence and likely to be related to child maltreatment as well cultural norms surrounding gender roles, parent–child relationships and the privacy of the family.

Child and family policies – such as those related to parental leave, maternal employment and child care arrangements.

The nature and extent of preventive health care for infants and children, as an aid in identifying cases of abuse in children.

The strength of the social welfare system: that is, the sources of support that provide a safety net for children and families.

The nature and extent of social protection and the responsiveness of the criminal justice system.

Larger social conflicts and war.

Many of these broader cultural and social factors can affect the ability of parents to care for children –enhancing or lessening the stresses associated with family life and influencing the resources available to families.

Lesson Activity

Discuss various factors that contribute to a child's vulnerability

LESSON THREE: CHILD RIGHTS

Lesson Objectives

1. *Define the term child Rights*
2. *Discuss the enforcement of child rights*

3.1 Children's Rights

Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to the young, including their right to association with both biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. Other definitions include the rights to care and nurturing.

Rationale

As minors by law children do not have autonomy or the right to make decisions on their own for themselves in any known jurisdiction of the world. Instead their adult caregivers, including parents, social workers, teachers, youth workers and others, are vested with that authority, depending on the circumstances. Some believe that this state of affairs gives children insufficient control over their own lives and causes them to be vulnerable. Researchers have identified children as needing to be recognized as participants in society whose rights and responsibilities need to be recognized at all ages.

3.2 Historic definitions of children's rights

Consensus on defining children's rights has become clearer in the last fifty Years. A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition". According to some researchers, the notion of children's rights is still

not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection for children in state care; ensuring education for all children regardless of their origin, race, gender, disabilities, or abilities, and; health care and advocacy.

3.3 Types of rights

Children's rights are defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights. Rights tend to be of two general types: those advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency.

These have been labelled as the **right of empowerment** and as the **right to protection**.

One Canadian organization categorizes children's rights into three categories:

- **Provision:** Children have the right to an adequate standard of living, health care, education and services, and to play and recreation. These include a balanced diet, a warm bed to sleep in, and access to schooling.
- **Protection:** Children have the right to protection from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behaviour, and acknowledgment of the evolving capacities of children.
- **Participation:** Children have the right to participate in communities and have programs and services for themselves. This includes children's involvement in libraries and community programs, youth voice activities, and involving children as decision-makers.

In a similar fashion, the Child Rights Information Network, or CRIN for short, categorizes rights into two groups:

- **Economic, social and cultural rights**, related to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. Included are rights to education, adequate housing, food, water, the highest attainable

standard of health, the right to work and rights at work, as well as the cultural rights of minorities and indigenous peoples.

■ **Environmental, cultural and developmental rights**, which are sometimes, called "third generation rights," and including the right to live in safe and healthy environments and that groups of people have the right to cultural, political, and economic development.

Amnesty International openly advocates four particular children's rights, including the end to juvenile incarceration without parole, an end to the recruitment of military use of children, ending the death penalty for people under 21, and raising awareness of human rights in the classroom.

Human Rights Watch, an international advocacy organization, includes child labour, juvenile justice, orphans and abandoned children, refugees, street children and corporal punishment

Children's rights

Wikipedia, the free encyclopaedia Scholarly study generally focuses children's rights by identifying individual rights. The following rights "allow

Children to grow up healthy and free

- Freedom of speech
- Freedom of thought
- Freedom from fear
- Freedom of choice and the right to make decisions
- Ownership over one's body

Other issues affecting children's rights include the military use of children, sale of children, child prostitution and child pornography.

3.4 History of child rights

The 1796 publication of Thomas Spence's *Rights of Infants* is among the earliest English-language assertions of the rights of children. Throughout the 20th century children's rights activists organized for homeless children's rights and public education. The 1927 publication of *The Child's Right to Respect* by Janusz Korczak strengthened the literature surrounding the field, and today dozens of international organizations are working around the world to promote children's rights.

Opposition

The opposition to children's rights far outdates any current trend in society, with recorded statements against the rights of children dating to the 13th century and earlier. Opponents to children's rights believe that young people need to be protected from the adult centric world, including the decisions and responsibilities of that world. In the dominate adult society, childhood is idealized as a time of innocence, a time free of responsibility and conflict, and a time dominated by play. The majority of opposition stems from concerns related to national sovereignty, states' rights, and the parent-child relationship. Financial constraints and the "undercurrent of traditional values in opposition to children's rights" are cited, as well. The concept of children's rights has received little attention in the United States.

International law

The Universal Declaration of Human Rights is seen as a basis for all international legal standards for children's rights today. There are several conventions and laws that address children's rights around the world. A number of current and historical documents affect those rights, including the 1923 Declaration of the Rights of the Child, drafted by Eglantyne Jebb and her sister Dorothy Buxton in London, England in 1919, endorsed by the League of Nations and adopted by the United Nations in 1946. It later served as the basis for the Convention on the Rights of the Child.

Convention on the Rights of the Child

The United Nations' 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. Its implementation is monitored by the Committee on the Rights of the Child. National governments that ratify it commit

themselves to protecting and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community. The CRC is the most widely ratified human rights treaty with 190 ratifications. Somalia and the USA are the only two countries which have not ratified the CRC. The CRC is based on four core principles, namely the principle of non-discrimination, the best interests of the child, the right to life, survival and development, and considering the views of the child in decisions which affect them (according to their age and maturity). The CRC, along with international criminal accountability mechanisms such as the International Criminal Court, the Yugoslavia and Rwanda Tribunals, and the Special Court for Sierra Leone, is said to have significantly increased the profile of children's rights worldwide.

Vienna Declaration and Programme of Action

Vienna Declaration and Programme of Action urges at Section II, all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. And calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty. It further urges all states, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse. This gave an influence to adoptions of Optional Protocol on the Involvement of Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

3.5 Enforcement of child rights

A variety of enforcement organizations and mechanisms exist to ensure children's rights. They include the Child Rights Caucus for the United Nations General Assembly Special Session on Children. It was set up to promote full implementation and compliance with the Convention on the Rights of the Child, and to ensure that child rights were given priority during the UN General Assembly Special Session on Children and its Preparatory process. The United Nations Human Rights Council was created "with the hope that it could be more objective, credible and efficient in denouncing human rights violations worldwide than the highly politicized Commission on Human Rights." The NGO Group for the Convention on the Rights of the Child is a coalition of international non-governmental organisations originally formed in 1983 to facilitate the implementation of the United Nations Convention on the Rights of the Child.

Many countries around the world have children's rights ombudspeople or children's commissioners whose official, governmental duty is to represent the interests of the public by investigating and addressing complaints reported by individual citizens regarding children's rights. Children's ombudspeople can also work for a corporation, a newspaper, an NGO, or even for the general public.

United States law

Children are generally afforded the basic rights embodied by the Constitution, as enshrined by the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause of that amendment is to apply to children, born within a marriage or not, but excludes children not yet born. This was reinforced by the landmark US Supreme Court decision of *In re Gault*. In this trial 15-year-old Gerald Gault of Arizona was taken into custody by local police after being accused of making an obscene telephone call. He was detained and committed to the Arizona State Industrial School until he reached the age of 21 for making an obscene phone call to an adult neighbour.

In an 8–1 decision, the Court ruled that in hearings which could result in commitment to an institution, people under the age of 18 have the right to notice and counsel, to question witnesses, and to protection against self-incrimination. The Court found that the procedures used in Gault's hearing met none of these requirements.

There are other concerns in the United States regarding children's rights. The American Academy of Adoption Attorneys is concerned with children's rights to a safe, supportive and stable family structure. Their position on children's rights in adoption cases states that, "children have a constitutionally based liberty interest in the protection of their established families, rights which are at least equal to, and we believe outweigh, the rights of others who would claim a 'possessory' interest in these children. Other issues raised in American children's rights advocacy include children's rights to inheritance in same-sex marriages and particular rights for youth.

German law

A report filed by the President of the INGO Conference of the Council of Europe, Annelise Oeschger finds that children and their parents are subject to United Nations, European Union and UNICEF human rights violations. Of particular concern is the German (and Austrian) agency, Jugendamt (German: Youth office) that often unfairly allows for unchecked government control of the parent-child relationship, which have resulted in harm including torture, degrading, cruel treatment and has led to children's death. The problem is complicated by the nearly "unlimited power" of the Jugendamt officers, with no processes to review or resolve inappropriate or harmful treatment. By German law, Jugendamt officers are protected against prosecution. Jugendamt (JA) officers span of control is seen in cases that go to family court where experts testimony may be overturned by lesser educated or experienced JA officers; In more than 90% of the cases the JA officer's recommendation is accepted by family court. Officers have also disregarded family court decisions, such as when to return children to their parents, without repercussions.

Germany has not recognized related child-welfare decisions made by the European Parliamentary Court that have sought to protect or resolve children and parental rights violations.

Activity

i. Discuss the contributions made by the following:

- *German law*
- *United States law*

- *Vienna Declaration and Programme of Action*
- *Convention on the Rights of the Child*
- *International law*

LESSON FOUR: CHILD PROTECTION

Objectives

- a) Discuss child protection by various bodies*
- b) Outline various groups of children that require protection*
- c) Give ways that can be put in place to protect children*

UNICEF uses the term ‘child protection’ to refer to preventing and responding to violence, exploitation and abuse against children – including commercial sexual exploitation, trafficking, child labour and harmful traditional practices, such as female genital mutilation/cutting and child marriage. UNICEF’s child protection programmes also target children who are uniquely vulnerable to these abuses; such as when living without parental care, in conflict with the law and in armed conflict. Violations of the child’s right to protection take place in every country and are massive, under-recognized and under-reported barriers to child survival and development, in addition to being human rights violations. Children subjected to violence, exploitation, abuse and neglect are at risk of death, poor physical and mental health, HIV/AIDS infection, educational problems, displacement, homelessness, vagrancy and poor parenting skills later in life.

The **Convention on the Rights of the Child** (1989) outlines the fundamental rights of children, including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation and abuse, and from physical or mental violence, as well as ensuring that children will not be separated from their family against their will.

Millennium Development Goals

Child protection issues intersect with every one of the Millennium Development Goals (MDGs)– from poverty reduction to getting children into school, from eliminating gender inequality to reducing child mortality. Most of the MDGs simply cannot be achieved if failures to protect children are not addressed. Child labour squanders a nation’s human capital and conflicts with eradicating extreme poverty (MDG 1); armed conflict disrupts

efforts to achieve universal primary education (MDG 2); child marriage leads to the removal of girls from school and thus prevents gender equality (MDG 3); children separated from their mothers, particularly if they remain in institutional settings, are at greater risk of early death, which hinders efforts to reduce child mortality (MDG 4); female genital mutilation/cutting undermines efforts to maternal health (MDG 5); and sexual exploitation and abuse hamper efforts to combat HI V infection (MDG 6). In addition, environmental disasters make children vulnerable to exploitation and abuse, hence the need for environmental sustainability (MDG 7). Overall, protecting children requires close cooperation between different partners, which consolidates the need for a global partnership for

4:1 Preventing child abuse and neglect in Kenya

In 1996, a coalition was formed in Kenya with the goal of raising public awareness of child abuse and neglect, and improving the provision of services to victims. An earlier study in four areas of Kenya had shown that child abuse and neglect were relatively prevalent in the country, though no organized response systems existed. Members of the coalition came initially from key government ministries as well as from nongovernmental organizations with community-based programmes. They were subsequently joined by representatives from the private sector, the police and judicial system, and the main hospitals. All coalition members received training on child abuse and neglect. Three working groups were established, one to deal with training, one with advocacy and the third with child protection. Each group collaborated with specific governmental and nongovernmental bodies. The working group on training, for instance, worked in conjunction with the Ministries of Education, Health, Home Affairs and Labour, running workshops for school staff, health professionals, lawyers, social workers and the police. The advocacy group worked with the Ministry of Information and Broadcasting and various nongovernmental organizations, producing radio and television programmes, and also collaborated with the press in rural areas.

Importantly, children themselves became involved in the project through drama, music and essay competitions. These were held initially at the local level and subsequently at district, provincial and national levels. These competitions are now a regular activity within the Kenyan school system.

The coalition also worked to strengthen the reporting and management of cases of child abuse and neglect. It assisted the Department for Children of the Ministry of Home Affairs in setting up a database on child abuse and neglect and helped create a legal network for abused children, the “Children Legal Action Network”. In 1998 and 1999, the coalition organized national and regional conferences to bring together researchers and practitioners in the field of child abuse and neglect.

As a result of these various efforts, more Kenyans are now aware of the problem of child abuse and neglect, and a system has been established to address the needs of victims and their families.

4.2 Prevention of child abuse

This includes these measures:

- A support-group structure is needed to reinforce parenting skills and closely monitor the child's well-being.
- Visiting home nurse or social-worker visits are also required to observe and evaluate the progress of the child and his/her caretaking situation.
- The support-group structure and visiting home nurse or social-worker visits are not mutually exclusive.

- Empower children by teaching them Rights of the child.
- Parents should make sure that their child's day-care centre is licensed and has an open-door policy regarding parental visitation.
- Enhance Public-awareness programs regarding child abuse and neglect.
- Create good pupil/child teacher relationship
- Report cases of abuse to the necessary authority
- Show love and care especially to the affected children
- Avoid entrusting them to strangers
- Create a safe and friendly environment
- Provide the child with necessary basic needs.
- Child offenders should face the law seriously to minimize cases of child abuse
- Parents, Guardians teachers and adults should be perfect role models

- Educate the community on consequences of child abuse

Activity

- i) *What measures can be put in place to ensure child protection?*

LESSON FIVE: CHILD ABUSE

Objectives

- a) Write various definitions of child abuse by various scholars**
- b) Discuss categories of child abuse**
- c) Highlight various symptoms of abused children**

5.1 Definition of child abuse

Wikipedia encyclopaedia defines **Child abuse** as the physical, sexual or emotional mistreatment or neglect of a child.

In the United States, the Centres for Disease Control and Prevention (CDC) and the Department for Children And Families (DCF) define child maltreatment as any act or series of acts of commission or omission by a parent or other caregiver that results in harm, potential for harm, or threat of harm to a child.

Child abuse can occur in a child's home, or in the organizations, schools or communities the child interacts with. There are four major categories of child abuse: neglect, physical abuse, psychological/emotional abuse, and child sexual abuse.

Different jurisdictions have developed their own definitions of what constitutes child abuse for the purposes of removing a child from his/her family and/or prosecuting a criminal charge.

According to the *Journal of Child Abuse and Neglect*, child abuse is "any act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation, an act or failure to act which presents an imminent risk of serious harm".

Child abuse is more than bruises and broken bones. Other types of abuse, such as emotional abuse or child neglect, also leave deep, long-lasting scars. Ignoring children's needs, putting them in unsupervised, dangerous situations, or making a child feel worthless or stupid are also child abuse. Regardless of the type of child abuse, the result is serious emotional harm .

By learning common types of abuse and where to get help, you can make a huge difference in a child's life

5:2 Myths and facts about child abuse and neglect

MYTH # 1: It's only abuse if it's violent.

Fact: Physical abuse is just one type of child abuse. Neglect and emotional abuse can be just as damaging, and since they are more subtle, others are less likely to intervene.

MYTH # 2 : Only bad people abuse their children.

Fact: While it's easy to say that only "bad people" abuse their children, it's not always so black and white. Not all abusers are intentionally harming their children. Many have been victims of abuse themselves, and don't know any other way to parent. Others may be struggling with mental health issues or a substance abuse problem.

MYTH # 3: Child abuse doesn't happen in "good" families.

Fact: Child abuse doesn't only happen in poor families or bad neighbourhoods. It crosses all racial, economic, and cultural lines. Sometimes, families who seem to have it all from the outside are hiding a different story behind closed doors.

MYTH # 4: Most child abusers are strangers.

Fact: While abuse by strangers does happen, most abusers are family members or others close to the family.

MYTH # 5 : Abused children always grow up to be abusers.

Fact: It is true that abused children are more likely to repeat the cycle as adults, unconsciously repeating what they experienced as children. On the other hand, many adult survivors of child abuse have a strong motivation to protect their children against what they went through and become excellent parents.

5:3 Types of child abuse

A broad definition of child abuse implies purposeful and serious injury inflicted upon a child by a caregiver.

Four broad categories are generally recognized:

1. Neglect
2. Physical abuse
3. Sexual abuse and;
4. Emotional abuse (2005 national data).

5.3.1 Child neglect

Child neglect is the most frequently reported form of child abuse (63% of all cases) and the most lethal.

Neglect is defined as the failure to provide for the shelter, safety, supervision, and nutritional needs of the child. Child neglect may be physical, educational, or emotional. The assessment of child neglect requires the consideration of cultural values and standards of care as well as the recognition that the failure to provide the necessities of life may be related to poverty.

Physical neglect includes the refusal or delay in seeking health care, abandonment, inadequate supervision, expulsion from the home, or refusal to allow a runaway to return home.

Educational neglect includes the allowance of chronic truancy, failure to enrol a child of mandatory school age in school, and failure to attend to a special educational need.

Emotional neglect involves a marked inattention to the child's needs for affection, refusal of or failure to provide needed psychological care, spousal abuse or parental substance abuse in the child's presence, and permission of drug or alcohol use by the child.

Child Abuse and Neglect Types, Causes, Long-Term Effects.

5.3.2 Physical child abuse

Physical abuse is the second most frequently reported form of child abuse (16% of all cases). This form of mistreatment is defined as wilful (as opposed to accidental) physical injury inflicted upon the child. Physical abuse can be the result of punching, beating, kicking, biting, burning, shaking, or otherwise harming the child's body. The parent or caretaker may

not have intended to hurt the child; rather, the injury may have resulted from excessive disciplinary efforts or physical punishment.

There exists a significant controversy regarding physical methods of discipline (for example, spanking) and their relationship to more orthodox forms of physical abuse. A unique form of physical child abuse is Munchausen syndrome by proxy. In this situation, a parent will purposely either invent symptoms or falsify records (for example, fever) resulting in unnecessary tests, hospitalizations, and even surgical procedures. This psychiatric illness of the parent(s) requires a high index of suspicion, and its consideration is part of the investigation of any child with recurrent complaints that are not supported by physical or laboratory findings.

5.3.3 Emotional child abuse

Isolated emotional abuse is the least frequently reported form of child abuse (7% of all cases). This form is felt to be markedly underreported since it can be difficult to detect and document. However, since it is a component of all forms of child abuse, it is the most pervasive of all the previously listed forms of child abuse. There are several categories of emotional abuse and they may occur as unique experiences or together in the same child. They include

1. Rejecting (for example, refusing to acknowledge the child's worth and emotional needs),
2. Isolation (denying the child social experiences: locking child in the closet is an extreme example),
3. Terrorizing (verbal assault with or without weapons),
4. Ignoring (refusing to show affection),
5. Corrupting (reinforcing destructive, antisocial, or sexually exploitative behaviours),
6. Verbal assault (extreme sarcasm, name calling, public humiliation), and
7. Over-pressuring (criticism of age-appropriate behaviours/skills as inadequate).

Emotional child abuse is also sometimes termed psychological child abuse, verbal child abuse, or mental injury of a child.

5.3.4 Sexual child abuse

Sexual abuse is the third most frequently reported form of child mistreatment (10% of all cases). Experts believe that sexual abuse may be the most underreported type of abuse

because of the secrecy or "conspiracy of silence" that so often characterizes these cases. A generally accepted definition of sexual abuse is that of a child involved in sexual activity for which consent cannot be given, is outside of the victim's developmental age, is unable to comprehend, and/or "violates the law or social taboos of society." Examples include fondling and any form of genital, anal, or oral genital contact with a child that is unwarranted. These acts may occur whether the child is clothed or unclothed. Non-touching child sexual abuse would include exhibitionism, voyeurism, and the involvement of a child in prostitution or pornography.

5:4 Warning signs of abused children

5.4.1 Warning signs of emotional abuse in children

- Excessively withdrawn, fearful, or anxious about doing something wrong.
- Shows extremes in behaviour (extremely compliant or extremely demanding; extremely passive or extremely aggressive).
- Doesn't seem to be attached to the parent or caregiver.
- Acts either inappropriately adult (taking care of other children) or inappropriately infantile (rocking, thumb-sucking, tantrums).
- Physical, mental and emotional development lags
- Sudden speech disorders
- Continual self-depreciation ('I'm stupid, ugly, worthless, etc.')
- Overreaction to mistakes
- Extreme fear of any new situation
- Inappropriate response to pain ('I deserve this')
- Neurotic behaviour (rocking, hair twisting, self-mutilation)
- Extremes of passivity or aggression

5.4.2 Warning signs of physical abuse in children

- Frequent injuries or unexplained bruises, welts, or cuts.
- Is always watchful and "on alert," as if waiting for something bad to happen.
- Injuries appear to have a pattern such as marks from a hand or belt.

- Shies away from touch, flinches at sudden movements, or seems afraid to go home.
- Wears inappropriate clothing to cover up injuries, such as long-sleeved shirts on hot days.
- Unexplained recurrent injuries or burns
- Improbable excuses or refusal to explain injuries
- Fear of medical help or examination
- Self-destructive tendencies
- Aggression towards others
- Fear of physical contact - shrinking back if touched
- Admitting that they are punished, but the punishment is excessive (such as a child being beaten every night to 'make him study')
- Fear of suspected abuser being contacted

5.4.3 Warning signs of neglect in children

- Clothes are ill-fitting, filthy, or inappropriate for the weather.
- Hygiene is consistently bad (unbathed, matted and unwashed hair, noticeable body odour).
- Untreated illnesses and physical injuries.
- Is frequently unsupervised or left alone or allowed to play in unsafe situations and environments.
- Is frequently late or missing from school.
- Constant hunger
- Poor personal hygiene
- Constant tiredness
- Emaciation
- Untreated medical problems
- No social relationships
- Compulsive scavenging
- Destructive tendencies

5.4.4. Warning signs of sexual abuse in children

- Trouble walking or sitting.
- Displays knowledge or interest in sexual acts inappropriate to his or her age, or even seductive behaviour.
- Makes strong efforts to avoid a specific person, without an obvious reason.
- Doesn't want to change clothes in front of others or participate in physical activities.
- An STD or pregnancy, especially under the age of 14.
- Runs away from home.

- Medical problems such as chronic itching, pain in the genitals, venereal diseases
- Other extreme reactions, such as depression, self-mutilation, suicide attempts, running away, overdoses, anorexia
- Personality changes such as becoming insecure or clinging
- Regressing to younger behaviour patterns such as thumb sucking or bringing out discarded cuddly toys
- Sudden loss of appetite or compulsive eating
- Being isolated or withdrawn
- Inability to concentrate
- Starting to wet again, day or night/nightmares
- Become worried about clothing being removed
- Suddenly drawing sexually explicit pictures
- Trying to be 'ultra-good' or perfect; overreacting to criticism

5.5: The consequences of child abuse

Health burden

Ill health caused by child abuse forms a significant portion of the global burden of disease. While some of the health consequences have been researched others have only recently been given attention, including psychiatric disorders and suicidal behaviour. Importantly,

there is now evidence that major adult forms of illness – including ischaemic heart disease, cancer, chronic lung disease, irritable bowel syndrome and fibromyalgia – are related to experiences of abuse during childhood. The apparent mechanism to explain these results is the adoption of behavioural risk factors such as smoking, alcohol abuse, poor diet and lack of exercise. Research has also highlighted important direct acute and long-term consequences.

Similarly, there are many studies demonstrating short-term and long-term psychological damage. Some children have a few symptoms that do not reach clinical levels of concern, or else are at clinical levels but not as high as in children generally seen in clinical settings. Other survivors have serious psychiatric symptoms, such as depression, anxiety, substance abuse, aggression, shame or cognitive impairments. Finally, some children meet the full criteria for psychiatric illnesses that include post-traumatic stress disorder, major depression, anxiety disorders and sleep disorders. A recent longitudinal cohort study in Christchurch, New Zealand, for instance, found significant associations between sexual abuse during childhood and subsequent mental health problems such as depression, anxiety disorders and suicidal thoughts and behaviour.

Physical, behavioural and emotional manifestations of abuse vary between children, depending on the child's stage of development when the abuse occurs, the severity of the abuse, the relationship of the perpetrator to the child, the length of time over which the abuse continues and other factors in the child's environment.

5.6 Health consequences of child abuse

Physical

- Abdominal/thoracic injuries
- Brain injuries
- Bruises and welts
- Burns and scalds
- Central nervous system injuries
- Disability
- Fractures
- Lacerations and abrasions

- Ocular damage

Sexual and reproductive

- Reproductive health problems
- Sexual dysfunction
- Sexually transmitted diseases, including HIV/AIDS
- Unwanted pregnancy

Psychological and behavioural

- Alcohol and drug abuse
- Cognitive impairment
- Delinquent, violent and other risk-taking behaviours
- Depression and anxiety
- Developmental delays
- Eating and sleep disorders
- Feelings of shame and guilt
- Hyperactivity
- Poor relationships
- Poor school performance
- Poor self-esteem
- Post-traumatic stress disorder
- Psychosomatic disorders
- Suicidal behaviour and self-harm

Other longer-term health consequences

- Cancer
- Chronic lung disease
- Fibromyalgia
- Irritable bowel syndrome
- Ischaemic heart disease
- Liver disease

- Reproductive health problems such as infertility

Causes of child abuse deaths

The most lethal form of child abuse is neglect. Deaths from neglect can, for example, be caused by accidents due to lack of supervision or abandonment or from the failure to seek medical attention for an injury, illness, or condition.

Fatal injuries from mistreatment can and do result from many different acts. Children may die from severe head trauma (injury), shaken baby syndrome, trauma to the abdomen or chest, scalding, burns, drowning, suffocation, poisoning, starvation, etc.

5.7: Treatment of abused children

Steps which are often taken to correct child abuse are as follows:

- The safety of the abused child and any other potential victim of abuse in the household is paramount. Removal of the victim and placement in protective custody in a group home or foster care is often necessary.
- Effective Guidance and counselling for the child, and family, is essential to deal with the associated emotional and psychological stress and trauma.
- In the event of neglect, establishing realistic expectations of the child's needs and capabilities is required.
- Those who have abused drugs, alcohol, and other substance should be taken for rehabilitation.
- Law-enforcement evaluation is performed, followed by the filing of charges, court appearance, and (if found guilty) sentencing as indicated. Paedophiles (people who have sexually abused children) often require intense psychological and pharmacological therapy prior to release into the community because of the high rate of repeat offenders.
- Seek medical attention
- Implement the Children's Act
- More Homes and orphanages need to be put up to take care of abandoned children.

Activity

- i) *Highlight the symptoms one would observe in an abused child*
- ii) *What are health implications that an abused child is likely to suffer from?*
- iii) *Outline various categories of child abuse*

LESSON SIX: THE UN CONVENTION ON THE RIGHTS OF THE CHILD.

OBJECTIVES

- a) *Discuss the Rights of the child according to the UN convention.*

Article 1 Definition of a Child

A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

Article 2 Non-Discrimination

All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.

Article 3 Best interests of the child

All actions concerning the child shall take full account of his or her best interests. The State shall provide the child with adequate care when parents, or others charged with that responsibility, fail to do so.

Article 4 Implementation of rights

The State must do all it can to implement the rights contained in the Convention.

Article 5 Parental guidance and the child's evolving capacities

The State must respect the rights and responsibilities of parents and the extended family to provide guidance for which is appropriate to his or her evolving capacities.

Article 6 Survival and development

Every child has the inherent right to life, and the State has an obligation to ensure the child's survival and development.

Article 7 Name and nationality

The child has the right to a name at birth. The child also has the right to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them.

Article 8 Preservation of identity

The State has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity. This includes name, nationality and family ties.

Article 9 Separation from parents

The child has a right to live with his or her parents unless this is deemed to be incompatible with the child's best interests. The child also has the right to maintain contact with both parents if separated from one or both.

Article 10 Family reunification

Children and their parents have the right to leave any country and to enter their own for purposes of reunion or the maintenance of the child-parent relationship.

Article 11 Illicit transfer and non-return

The State has an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or third party.

Article 12 The child's opinion

The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.

Article 13 Freedom of expression

The child has the right to express his or her views, obtain information, make ideas or information known, regardless of frontiers.

Article 14 Freedom of thought, conscience and religion

The State shall respect the child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance.

Article 15 Freedom of association

Children have a right to meet with others, and to join or form associations.

Article 16 Protection of privacy

Children have the right to protection from interference with privacy, family, home and correspondence, and from libel or slander.

Article 17 Access to appropriate information

The State shall ensure the accessibility to children of information and material from a diversity of sources, and it shall encourage the mass media to disseminate information which is of social and cultural benefit to the child, and take steps to protect him or her from harmful materials.

Article 18 Parental responsibilities

Parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child-raising.

Article 19 Protection from abuse and neglect

The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate programmes for the prevention of abuse and the treatment of victims.

Article 20 Protection of a child without family

The State is obliged to provide special protection for a child deprived of the family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background.

Article 21 Adoption

In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, and only with the authorization of competent authorities, and safeguards for the child.

Article 22 Refugee children

Special protection shall be granted to a refugee child or to a child seeking refugee status. It is the State's obligation to co-operate with competent organizations which provide such protection and assistance.

Article 23 Disabled children

A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.

Article 24 Health and health services

The child has a right to the highest standard of health and medical care attainable. States shall place special emphasis on the provision of primary and preventive health care, public health education and the reduction of infant mortality. They shall encourage international co-operation in this regard and strive to see that no child is deprived of access to effective health services.

Article 25 Periodic review of placement

A child who is placed by the State for reasons of care, protection or treatment is entitled to have that placement evaluated regularly.

Article 26 Social security

The child has the right to benefit from social security including social insurance.

Article 27 Standard of living

Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has adequate standard of living. The State's duty is to ensure that this responsibility can be fulfilled, and is. State responsibility can include material assistance to parents and their children.

Article 28 Education

The child has a right to education, and the State's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity. School discipline shall be consistent with the child's right and dignity. The State shall engage in international co-operation to implement this right.

Article 29 Aims of education

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.

Article 30 Children of minorities or indigenous populations

Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language.

Article 31 Leisure, recreation and cultural activities

The child has the right to leisure, play and participation in cultural and artistic activities.

Article 32 Child labour

The child has the right to be protected from work that threatens his or her health, education or development. The State shall set minimum ages for employment and regulate working conditions.

Article 33 Drug abuse

Children have the right to protection from the use of narcotic and psychotropic drugs, and from being involved in their production or distribution.

Article 34 Sexual exploitation

The State shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.

Article 35 Sale, trafficking and abduction

It is the State's obligation to make every effort to prevent the sale, trafficking and abduction of children.

Article 36 Other forms of exploitation

The child has the right to protection from all forms of exploitation to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.

Article 37 Torture and deprivation of liberty

No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Both capital punishment and life imprisonment without the possibility of release are prohibited for offences committed by persons below 18 years. Any child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so. A child who is detained shall have legal and other assistance as well as contact with the family.

Article 38 Armed conflicts

States Parties shall take all feasible measures to ensure that children below 15 years of age have no direct part in hostilities. No child below 15 shall be recruited into the armed forces. States shall also ensure the protection and care of children who are affected by armed conflict as described in relevant international law.

Article 39 Rehabilitative care

The State has an obligation to ensure that child victims of armed conflicts, torture, neglect, maltreatment or exploitation receive appropriate treatment for their recovery and social re-integration.

Article 40 Administration of juvenile justice

A child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, takes the child's age into account and aims at his or her re-integration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defence. Judicial proceedings and institutional placements shall be avoided wherever possible.

Article 41 Respect for existing standards

Wherever standards set in applicable national and international laws relevant to the rights of the child are higher than those in this Convention, the higher standard shall always apply.

Article 42-54 Implementation and entry into force

The provisions of articles 42-54 notably foresee;

- the State’s obligation to make the rights contained in this Convention widely known to both adults and children.
- the setting up of a Committee on the Rights of the child composed of ten experts, which will consider reports that States Parties to the Convention are to submit two years after ratification and every five years thereafter. The Convention enters into force - and the Committee would therefore be set up – once 20 countries have ratified it.
- States Parties are to make their reports widely available to the general public.
- the Committee may propose that special studies be undertaken on specific issues relating to the rights of the child, and may make its evaluations known to each State Party concerned as well as to the un General Assembly.
- in order to “foster the effective implementation of the Convention and to encourage international co-operation”, the specialized agencies of the un (such as ILO, WHO and UNESCO) and UNICEF would be able to attend the meetings of the Committee. Together with any other body recognized as “competent”, including NGOs in consultative status with the un and un organs such as UNHCR, they can submit pertinent information to the Committee and be asked to advise on the optimal implementation of the Convention.

Activity

- i) In your own words discuss the rights of the child by the UN convention***

LESSON SEVEN: THE AFRICAN CHARTER (ACERWC) African Committee of Experts on the Rights and Welfare of the child

Lesson Objective

Discuss the African charter

The Charter of the Organization of African Unity recognizes the paramount of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

In line with the Declaration on the Rights and Welfare of the African Child (AHG/ ST.4 Rev.I) the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child.

They noted with concern most needs of African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/ she needs special safeguards and care.

They recognized that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality. The child should grow up in a family environment in an atmosphere of happiness, love and understanding. Due to the needs of his physical and mental development a child requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security, therefore the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child agreed on the following Rights of the child:

7.1: Rights and welfare of the child

Article 1: Obligation of States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.
3. 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

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

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/ her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Article 5: Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

3. Death sentence shall not be pronounced for crimes committed by children.

Article 6: Name and Nationality

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

Article 8: Freedom of Association

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

Article 9: Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought conscience and religion.
2. Parents and, where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.
3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of Privacy

No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

Article 11: Education

1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

- (a) The promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) Fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;
- (c) The preservation and strengthening of positive African morals, traditional values and cultures;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
- (e) The preservation of national independence and territorial integrity;
- (f) the promotion and achievements of African Unity and Solidarity;
- (g) The development of respect for the environment and natural resources;
- (h) the promotion of the child's understanding of primary health care.

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

- (a) Provide free and compulsory basic education;
- (b) Encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
- (c) Make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
- (d) Take measures to encourage regular attendance at schools and the reduction of drop-out rates;
- (e) Take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. 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.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Article 12: Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13: Handicapped Children

1. 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.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) to reduce infant and child mortality rate;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to ensure the provision of adequate nutrition and safe drinking water;
 - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
 - (e) to ensure appropriate health care for expectant and nursing mothers;
 - (f) to develop preventive health care and family life education and provision of service;
 - (g) to integrate basic health service programmes in national development plans;
 - (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
 - (i) to ensure the meaningful participation of non- governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
 - (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15: Child Labour

1. 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.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International

Labour Organization's instruments relating to children, States Parties shall in particular:

- (a) provide through legislation, minimum wages for admission to every employment ;
- (b) provide for appropriate regulation of hours and conditions of employment ;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection Against Child Abuse and Torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.

2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment , and follow - up of instances of child abuse and neglect .

Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.

2. States Parties to the present Charter shall in particular:

- (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/ her liberty is subjected to torture, inhuman or degrading treatment or punishment ;
- (b) ensure that children are separated from adults in their place of detention or imprisonment ;
- (c) ensure that every child accused in infringing the penal law:
 - (i) shall be presumed innocent until duly recognized guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him , and shall be entitled to the assistance of an interpreter if he or she

cannot understand the language used;

(iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

(d) prohibit the press and the public from trial.

3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reform at ion, re- integration into his or her family and social rehabilitation.

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protect ion of the Family

1. The family shall be the natural unit and basis of society. it shall enjoy the protect on and support of the St at e for its establishment and development .

2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parent Care and Protection

1. 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 parent s 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.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation result s from the act ion of a Stat e Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.

4. Where a child is apprehended by a State Party, his parent s or guardians shall, as soon as

possible, be notified of such apprehension by that State Party.

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child and shall have the duty:

- (a) to ensure that the best interests of the child are their basic concern at all times-
- (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development ; and
- (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures;

- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;
- (b) to assist parents and others responsible for the child in the performance of child – rearing and ensure the development of institutions responsible for providing care of children; and
- (c) to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against Harmful Social and Cultural Practices

1. 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:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

2. 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

1. 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.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24: Adoption

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate

persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;

(b) recognize that inter - country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child 's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) ensure that the child affected by inter - country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) take all appropriate measures to ensure that in inter - country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

(e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

(f) establish a machinery to monitor the well- being of the adopted child.

Article 25: Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) shall take all necessary measures to trace and re- unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child 's upbringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.

2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

Article 27: Sexual Exploitation

1. 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 :

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- (b) the use of children in prostitution or other sexual practices;
- (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffick of children for any purpose or in any form , by any person including parents or legal guardians of the child;
- (b) the use of children in all forms of begging.

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non- custodial sentence will always be first considered when sentencing such mothers;

- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a m other shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such m others;
- (f) the essential aim of the penitentiary system will be the reform at ion, the integration of the m other to the family and social rehabilitation.

Article 31: Responsibility of the Child

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

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist t hem in case of need;
- (b) to serve his national community by placing his physical and intellectual abilities at it s service;
- (c) to preserve and strengthen social and national solidarity;
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute t o t he moral well- being of society;
- (e) to preserve and strengthen the independence and the integrity of his country;
- (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.

Lesson activity

Discuss the African Charter

LESSON EIGHT: RIGHTS OF A CHILD IN KENYA

Kenya has a population of 15 million children, constituting 54 per cent of the total of 28 million. Over 12.6 million Kenyans, majority of who are children, live in absolute poverty.

Kenya ratified the Convention on the Rights of the Child (CRC) on July 31, 1990. The enactment of the Children's Act of 2001 gives effect to the obligations of Kenya under the CRC and the African Children's Charter. Since its ratification, Kenya has been working to implement its ideals in domestic legislation concerning childcare and protection.

Kenya's formal child protective system has been developing since the country's independence in the early 1960s. Legislation addressing children's issues is in place since then and includes the Children's and Young Person's Act, the Guardianship of Infants Act, and the Adoption Act.

These statutes remained in legal force up and until March 2002, when the new Children's Act of 2001 was enacted. For these 40 plus years, there has also been a Children's Department, which is a part of the Ministry for Home Affairs and is specifically tasked with dealing with issues of implementation of childcare and protection and juvenile justice. For example, the

Department operates childcare and protection institutions, such as rehabilitation centres for children considered as being in need of care and protection. Furthermore, there are children's courts all over the country, with magistrates specifically assigned as children's court magistrates. The Nairobi Children's Court, however, remains the only physically separate, child-friendly court in the country. All children's courts are courts of first instance, which means that they fall under the High Court in the court structure. Finally, the private sector (nongovernmental organisations) runs foster care and reception centres and programs that cater to children without family care. These must be registered with the Children's Department.

Below is a discussion on six thematic issues discussed in a state report to the UN Convention on Rights of the Child in March 2001 with concern to *education, juvenile justice, refugee and internally displaced children, children with disabilities, children of pastoralist communities and street children.*

Education:

The cost - sharing policy, under which parents contribute up to 65 per cent of Schools' recurrent costs, has a seriously limiting effect on access to education. Up to 46 percent of school- age children (5- 14 years) are out of school. The net enrolment rate is estimated to be 60 per cent . Pre-school enrolment has stagnated at 35 per cent for the last 10 years, largely because poor families cannot afford to send their children to school. The non -formal education sub- sector is yet to be effectively linked to the formal structure so that its products are absorbed in the mainstream education system.

It is recommended that pre-school and primary education must be made free and compulsory, and expanded to attain universality. The policy on non- formal education should focus on redirecting its recipients to the formal system. NGOs should press for free and compulsory education and supplement State efforts in the development and financing of the sector.

Juvenile Justice:

Up to 85 per cent of the children who go through the Kenyan juvenile justice system do not deserve to be exposed to the criminal justice process. Consequently, more harm than good is done to them . Also, the system is not child- friendly. Personnel do not possess specialised child- handling skills. Emphasis is laid on institutional care, which is not always appropriate as proved by the frequent wrongful placement of children in Approved Schools. The institutional facilities hold two to three times their capacity, and most are in squalid conditions.

It is recommended that a social catchment policy be put in place to rescue and re- direct children in need of care and protection before they enter the criminal justice system. The Judiciary should urgently train the personnel throughout the juvenile justice system on more child- sensitive practices and procedures. The residential facilities should be refurbished as a matter of priority. Closer Government - NGO collaboration is highly recommended in the provision of legal assistance to children within both the criminal and civil justice systems.

Refugee and Internally Displaced Children:

By close of the year 2000, Kenya was host to 46,974 child refugees (23 per cent of the total 206 106 people sheltered in the country). There are currently no special child- focused measures in the refugee handling programmes.

1991/ 2 and 1997 *ethnic* clashes in parts of Western, Rift Valley and Coast regions displaced an estimated 300 000 people, over 50 per cent of who were children. This exposed the government's incapacity to protect Kenyans endangered by armed conflict. The government was not only slow in providing protection to non-combatants, but its post -clashes intervention has also been limited. Today, a decade since the clashes first erupted, many families are yet to be permanently resettled, with harrowing effects on their children.

It is recommended that the resettlement programme should be hastened to provide lasting relief to the affected children. The government should develop a rapid- reaction emergency strategy to guard against future crisis, and to facilitate fast intervention in conflicts resulting in disruption of settled community life. The strategy should include mechanisms for community - based peace building, conflict resolution and reconciliation. The donor community should help build the capacities of the government and NGOs to effectively deal with the dual challenges of internal conflict and refugees.

Children with Disabilities:

There are an estimated 1.5 million children with disabilities in Kenya. These children are most neglected in terms of policy efforts and direct programming.

The 1998 report by a commission appointed to look into laws on persons with disabilities offers nothing to children. The draft Bill the commission recommended is silent on critical issues like provision of basic education and health, and the problem of child concealment.

It is recommended that a multi-sectorial intervention approach be adopted focusing on preventive care, increased resource allocation to special education, integration into ordinary schools and special programmes for those with multiple disabilities. The draft Bill on Persons with Disabilities should be reviewed, enacted and implemented expeditiously. The population of persons with disabilities should be computed precisely to facilitate effective planning. NGOs must continuously lobby for the required policy and legislative action, and supplement the government 's efforts in provision of basic services.

Children from Pastoralist Communities

It is recommended that more resources be allocated for children of pastoralists and innovative efforts made to increase their access to education, health services and supplementary nutrition, with special attention to the girl-child.

Economic empowerment for the communities is essential. NGOs should supplement government efforts by supporting education, health, feeding and security programmes.

Street Children:

Conservative estimates indicate that 300 000 children live and work on the streets in Kenya, with over 50 per cent of them concentrated in and around the capital Nairobi.

Though there is still no exact data on their population and distribution, it is clear that their numbers are increasing rapidly owing to poverty, HIV/ AIDS and the collapsing family structure. The ethnic clashes sharply pushed up the numbers. Not only are street children locked out of the social services mainstream, but also their very basic right to life is at risk with each passing day. Police harassment, sexual molestation, economic exploitation and the serious risk of disease stalk them daily. The street children problem remains a serious national challenge.

It is recommended that the government should immediately declare the street children problem a national challenge and institute special policy and legislative action as a matter of priority. The government in collaboration with NGOs must come up with community and family re- integration programs to divert the children from streets. The long- term target in all these efforts must be the primary causal factors of poverty, HIV/ AIDS, unemployment , the high cost of education and the disintegration of the family-care systems.

Activity

- i. *Discuss the six thematic issues as reported in the UN convention report on Rights of the Child in March 2001*

LESSON NINE: THE CHILDREN ACT CAP 586 – LAWS OF KENYA

Objective

- a) Recognise the Law enacted to promote the well-being of children in Kenya.*
- b) Identify the responsibilities of children*
- c) Highlight the Rights of the parents*

Introduction

The Children Act Cap 586 is a law enacted to promote the well-being of children in Kenya. The Act addresses the rights of a child, is entitled to and the role of the Government and parents in protecting these rights. The Act sets out the general roles and responsibilities of parents in ensuring the well-being of the child.

It also provides for establishment of institutions dealing with children and gives guidelines on issues of children's welfare, legal aid, custody and care of children, foster care, guardianship and adoption.

9.1 The rights of the child

- Children have a right to life: The Government and family are responsible for ensuring the child's survival and development
- Children have a right to be protected from discrimination based on origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic, or other status, race, disability, tribe, residence, or local connection
- Children have a right to education. Both the Government and parents responsible for providing education. Every child is entitled to free education. Every child is entitled to free basic education, which is compulsory in accordance with Article 28 of the United Nations Convention on the Rights of the Child.
- They also have a right to religious education and parents are expected to guide them on issues to do with religion

- Children have a right to live and be cared for by parents. However, if the Government finds it in the best interests of the child to separate him from his parents, then it can do so
- Child have a right to health and Government and parents will be responsible for providing the child with medical care
- They must be protected from economic exploitation and any work that is harmful to their health, physical, mental, moral or social development, or which could interfere with their education
- They must not be recruited into war. The government will make sure children affected by war or natural disasters are cared for and helped to lead a normal life
- Every child has a right to a name and identity. The Government will protect and assist children who have lost their identity
- Children with disabilities must be treated with respect. They should be given the medical care they require and education and training free of charge or at a reduced cost, where possible
- Children must be protected from abuse, neglect or slavery
- Nobody should subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development
- Children must be protected from sexual exploitation, prostitution, inducement or coercion to engage in any sexual activity and exposure to obscene materials
- Children must be protected from use of harmful drugs, including alcohol and tobacco, products, and being involved in their production, trafficking or distribution
- Children must also be protected from torture, cruel, punishment or unlawful arrest or jailing from adults in custody. If a child is arrested and detained, he may get legal and other assistance from the Government where appropriate. He must be allowed contact with his family
- No child should be subjected to capital punishment or life imprisonment, and a child offender must be separated
- Every child shall have the right to privacy, subject to parental guidance
- The children have a right to play, have leisure and participate in cultural activities

9.2 Duties and responsibilities

9.2.1 The child

A child is any human being under the age of 18 years. In relation to duties and responsibilities, the child's age is taken into consideration in expecting him to meet these responsibilities. The child is required to:

- work for cohesion of the family
- Respect his parents, superiors and elders at all times, and assist them in case of need.
- He has a responsibility to preserve and strengthen the positive cultural values of the community in his relations with the members of the community

9.2.2 The parent

Parent refers to the father or mother, or any other person who has been given the responsibility to maintain a child or has been given custody of the child. Parental responsibility is defined as all duties, rights powers, responsibilities and authority which by law the parent has in relation to the child or the child's property. A parent is required to:

Maintain the child by providing

- Education and Guidance
- Adequate and balanced diet
- Clothing
- Safe and conducive shelter
- Medical care
- Protect the child from neglect, discrimination and abuse

Rights of the Parent

The parent has the right to

- Name the child
- Guide the child in religious, moral, social, cultural and other values

- Appoint a guardian for the child where necessary
- Take care of any property the child may have for the child's benefit
- Has a right to prevent the child's travel out of the country
- If a child dies the parent have a right to arrange the burial or cremation
- If a child's father and mother were not married before or after the birth of the child, they have equal parental responsibility for him/her.
- When a child's parents are not married to each other at the time of the child's birth, the mother shall have parental responsibility at the first instance. The father may apply to court for parental responsibility or he may agree with the child's mother to get parental responsibility

Activity

- i) *Differentiate between the rights of the parent and rights of the child as stated by the Laws of Kenya.*

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