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# RIGHT TO EDUCATION COUNTRY FACTSHEET

## KENYA

*This brief intends to assist practitioners to identify the key national policies relevant to the right to education, analyse their strengths and weaknesses and detect the gaps between policies and practice, in order to use the empirical data collected to define an advocacy strategy informed by human rights. The information collected here reflects what is publicly available; it is neither intended to be exhaustive nor to give an authoritative analysis of the situation in the country, but rather, to be a useful tool for the reflection on the right to education.*

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### THE RIGHT TO EDUCATION IN KENYA: A BRIEF ANALYSIS

#### 1. Education law and policy framework

Kenya has ratified most international treaties that protect the right to education, which form part of the country's laws. The Constitution of Kenya, in Article 53 (1) (b) state that every child has a right to free and compulsory basic education and Article 55 (a) the State shall take measures, including affirmative action programmes, to ensure that the youth access relevant education and training. Minorities and marginalized groups under Article 56 (b) have a right to be provided with special opportunities in the field of education.

To give effect to the Constitution, the Basic Education Act (No 14 of 2013) has been passed into law to regulate the provision of basic education and adult basic education in the country. The Children's Act also acknowledges and protects every child's right to education. Other education laws guarantee the implementation of the right to education.

In addition, Kenya adopted various general and specific policies on education. The most recent are the second Medium Plan Term of Vision 2030 (2013) and the Policy Framework for Education and Training (2012).

Kenya recognises that education is the key for empowering the most marginalised and vulnerable individuals in society and make efforts on an affirmative basis to enable these individuals to best exploit their life-chances alongside their other Kenyan peers through primary, secondary and tertiary education.

#### 2. Issues and challenges

Kenya has developed a comprehensive law and policy framework to protect and implement the right to education which is aligned with international human rights treaties. However the State faces challenges to enforce these laws and policies. For instance, sexual abuse, early marriages and pregnancies and gender stereotypes continue to affect girl's education. Also, even the State made free primary and secondary education, there are still some fees. Other issues are: high ratio of teacher to pupils, poor teacher remuneration, poor quality of education in public school, high drop-out and repetition rates, inadequate and uncoordinated funding with weak governance and financial management, geographical disparities, limited availability to teaching and learning material and limited community participation.

#### 3. Advocacy opportunities

- Pressure Kenya to ratify the Optional Protocol to the CESCR and the Optional Protocol to the CRC on a communication procedure - which allow individuals to submit complaints to UN treaties bodies – a well as UNESCO Convention against Discrimination in Education.
- Monitor the implementation of the 2013 Basic Education Act and the education policies recently adopted by Kenya and report on any gaps or violations.
- Advocate for more community participation and monitor school governance and education budget allocation.

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## I. INTERNATIONAL OBLIGATIONS

*The major UN conventions (listed below) each have provisions relevant to education, non-discrimination or access to justice, and they can all be signed up to by states, thereby obliging these to respect, protect and fulfil human rights. When States ratify international treaties, they legally commit to respect its provisions, and the concrete situation in the country can therefore be measure against the standards set in the treaty. The ratification of treaties further indicates that the right to education does not come out of a vacuum, but corresponds to international standards that many States have committed to enforce.*

*It is sometimes possible to bring complaints before national courts if these treaties are not respected by States. Some conventions, either in their core text or in optional protocols, also specify routes of individual complaints to the different committees of independent experts.*

<b>Instrument</b>	<b>Ratified</b>
<b><u>International Covenant on Economic, Social and Cultural Rights (ICESCR)</u></b>	01 May 1972
<b><u>Optional Protocol to the ICESCR</u></b>	Not ratified
<b><u>Convention on the Rights of the Child (CRC)</u></b>	30 July 1990
<b><u>Optional Protocol to the Convention on the Rights of the Child on a communications procedure</u></b>	Not ratified
<b><u>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict</u></b>	28 January 2002
<b><u>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</u></b>	09 March 1984
<b><u>Optional Protocol to the CEDAW</u></b>	Not ratified
<b><u>International Covenant on Civil and Political Rights (ICCPR)</u></b>	01 May 1972
<b><u>Optional Protocol to the ICCPR</u></b>	Not ratified
<b><u>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</u></b>	13 September 2001
<b><u>Convention on the Rights of Persons with Disabilities (CRPD)</u></b>	19 May 2008
<b><u>Convention relating to the Status of Refugees</u></b>	22 April 1954
<b><u>Convention on the Protection of the Rights of All Migrants Workers and Member of their families</u></b>	Not ratified
<b><u>UNESCO Convention Against Discrimination in Education</u></b>	Not ratified
<b><u>ILO C169 Convention concerning Indigenous and Tribal Peoples</u></b>	Not ratified
<b><u>ILO C111 Convention concerning Discrimination in Respect of Employment and Occupation</u></b>	07 May 2001
<b><u>ILO C138 Minimum Age Convention</u></b>	09 April 1979
<b><u>ILO C182 Worst Forms of Child Labour Convention</u></b>	07 May 2001

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<b><u>African Charter on Human and Peoples' Rights</u></b>	23 January 1992
<b><u>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights</u></b>	04 February 2004
<b><u>Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa</u></b>	Signed 17 December 2003
<b><u>African Charter on the Rights and Welfare of the Child</u></b>	25 July 2000
<b><u>African Youth Charter</u></b>	Signed 28 June 2008

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*The ratification information of the UN instruments can be updated using data on <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>; of the ILO instruments can be updated using the data on <http://www.ilo.org/ilolex/english/newratframeE.htm>; of the regional African instruments can be updated using the data on <http://www.au.int/en/treaties>; of the UNESCO Convention can be updated using the data on <http://www.unesco.org/eri/la/convention.asp?KO=12949&language=E&order=alpha>. See also <http://kenyalaw.org/treaties/treaties/subjects/International-Human-Rights>. For more information about each treaty, see the Right to Education Project Website: <http://www.right-to-education.org/page/international-law>*

## II. NATIONAL LAWS & POLICIES

*National laws and policies are important because they define concretely the framework of rights and obligations for actors in the country. The Constitution is the highest legislative norm; it sets out general principles to which all other national laws and policies have to adhere. It is usually the text where human rights, including the right to education, are or should be defined. If a policy or law does not respect the Constitution, it can usually be challenged before courts.*

*Laws and policies that are related to the right to education form a complex net that is useful to review to identify 1) to which extent it is in line with international standards, and 2) whether it matches the reality of education in a country.*

*The list of laws and policies presented below is not exhaustive; it gives an indication of the relevant existing policies and their relation with the right to education. It can constitute a basis for further research, and it should be considered critically together with the observations made by NGOs and international organisations.*

### 1. CONSTITUTION

The [2010 constitution of Kenya](#) recognizes that “**every person has the right to education**” (Article 43.1.f) and stipulates that “**every child has the right to free and compulsory education**” (Article 53.1.b). In addition, “every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitive labour” (Article 53.1.d).

Article 54.1.b provides that “**A person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.**”

According to the Constitution, the State shall put in place **affirmative action programmes** to ensure that the youth access relevant education and training (Article 55) and that **minorities and marginalised groups are provided special opportunities in education** (Article 56).

The Constitution also established a **Teachers Service Commission** (Article 237).

In addition, Article 27 guarantees **equality and freedom from discrimination**. It states:

- “(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.  
(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.  
(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.  
(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.  
(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).  
(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage...”

Articles 19 to 25 are general provisions on the Bill of Rights which detail the **State’s obligations**, including as regards **the resources allocated to implement the rights** (Article 20.5) and the **right to every person to institute court proceedings** claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened (Article 22).

The Constitution also established a **National Human Rights and Equality Commission** (Article 59) and provides that “every person has the right to complain to the Commission, alleging that a right or a fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened).

See the full text of the Constitution [here](#)

## 2. LEGISLATION

### a. The 2013 Basic Education Act

The [Basic Education Act](#) adopted in January 2013 guarantees the implementation of the right to free and compulsory basic education (Part IV). It provides for the establishment of pre-primary, primary and secondary schools, adult and continuing education center as well as special and integrated schools for learners with disabilities (Article 28).

Article 29 provides that “no public school shall charge or cause any parents to pay tuition fees for or on behalf of any pupil in the school”. Admission fee is also prohibited (Article 32).

Primary and secondary education is compulsory and parent who fails to take his or her child to school commits an offence (Article 30).

“A school or a person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture.” (Article 34.2) and there is remedies if the admission is denied (Article 34.6).

Article 35 provides that pupils shall be given appropriate incentives to learn and complete basic education.

Article 36 prohibits against physical punishment and mental harassment to the child and article 38 against employment of a child of compulsory school age.

Article 39 lists the obligations of the government:

- (a) provide free and compulsory basic education to every child;
- (b) ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education;
- (c) ensure that children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing basic education;
- (d) provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms;
- (e) provide infrastructure including schools, learning and teaching equipment and appropriate financial resources;
- (f) ensure quality basic education conforming to the set standards and norms;
- (g) provide special education and training facilities for talented and gifted pupils and pupils with disabilities;
- (h) ensure compulsory admission, attendance and completion of basic education by every pupil;
- (i) monitor functioning of schools; and
- (j) advise the national government on financing of infrastructure development for basic education.

The 2013 Basic Education Act also regulates **private education** (Article 43 and Part VII) and provides an entire part on **special need education** (Part VI).

Part IX is about **quality education** and provides for the establishment of an Education Standards and Quality Assurance Council.

Part XI is about the **financing of basic education**.

## **b. The 2001 Children's Act**

The [2001 Children's Act](#) requires the government to undertake all the necessary steps to make available free basic education to every child.

Article 7 recognizes the right to education as follows: "(1) Every child shall be entitled to education the provision of which shall be the responsibility of the Government and the parents.(2) Every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the United Nations Convention on the Rights of the Child."

Article 5 states that "No child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection."

Article 8.(2) adds that "The Minister shall make regulations giving effect to the rights of children from minority communities to give fulfilment to their culture and to practice their own language or religion."

Article 12 concerning disabled children provides that "A disabled child shall have the right to be treated with dignity, and to be accorded appropriate [...] education and training free of charge or at a reduced cost whenever possible from harmful cultural rites, etc."

Besides, Article 22 concerns the enforcement of children’s rights and is states that “[...] if any person alleges that any of the provisions of sections 4 to19 (inclusive) has been, is being or is likely to be contravened in relation to a child, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress on behalf of the child.”

### **c. The 2003 Persons with Disabilities Act**

The [2003 Persons with Disabilities Act](#) established a National Council for Persons with Disabilities which represents the Ministries and is responsible for education. Among its functions, it has to formulate and develop measures and policies designed to

(i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services

(iv) recommend measures to prevent discrimination against persons with disabilities; (Article 7.1.b)

To the maximum extent possible, the Council has to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions; (Article 7.1.d)

According to Article 11 states” The Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities”, including the right to education (Articles 18 and 19).

Article 18 on education states:

“(1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and selfreliance.”

Article 189 on Special and non-formal education states:

“The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.”

### **d. Other laws**

The [2013 Kenya Institute of Curriculum Development Act](#) which establishes an Institute of Curriculum Development

The [2012 Teachers Service Commission Act](#) established a single employer and unified terms of service for teachers. This Act provides for the establishment of a Teachers Service Commission; provides for the registration of teachers, for regulating the teaching profession and for cancelling registration in cases of misconduct; it provides for the determination of remuneration of teachers; and for purposes connected therewith. (Website of the Teachers Service Commission: <http://www.tsc.go.ke/>)

The [1985 Universities Act](#) created the Commission for Higher Education that regulates university education in Kenya and it aims at making better provisions for the advancement of university education in Kenya and for connected purposes.

The [1980 National Examinations Council Act](#) established a body to administer national examinations. (Website of the National Examination Council: <http://www.knec.ac.ke/main/index.php>)

The [1980 Literature Bureau Act](#) established a Bureau to print and publish books and other educational materials.

The [1966 Board of Adult Education Act](#) established a Board which co-ordinates adult education activities.

### 3. POLICIES

#### a. Kenya Vision 2030

[Kenya Vision 2030](#) is a long-term development policy for the country. It identifies education as key within the social pillar to steer Kenya into middle-level income country in 20 years. According to this Vision 2030, “Kenya aims to be a regional centre of research and development in new technologies. This will be achieved through: (i) integrating early childhood education into primary education; (ii) reforming secondary school curricula; (iii) modernising teacher training; (iv) strengthening partnerships with the private sector; (v) developing key programmes for learners with special needs, (vi) rejuvenating on-going adult training programmes; (vii) revising the curriculum for university and technical institutes to include more science and technology; and (viii) in partnership with the private sector, the Government will also increase funding to enable all these institutions to support activities envisaged under the economic pillar.”

The [second Medium Term Plan \(MTP\) of Vision 2030](#) identifies key policy actions, reforms, programmes and projects that the Government will implement in the 2013-2017 period in line with its priorities, the Kenya 2010 constitution and the long-term objective of Vision 2030. According to the second MTP of Vision 2030, the government will continue strengthening access to universal primary education and to provide wider access to secondary education for all primary school leavers. It will also introduce universal access to computers starting with standard one in 2014, promote wider use of ICT as an instrument of instruction and training in schools, lower the student/teacher ratio by more recruitment of teachers, and provide more textbooks and teaching equipment to schools. Education in ASAL counties will be enhanced through special programmes. The government will increase support for policies and institutions devoted to promoting gender equity. It will fully implement policies for protection of rights for women, the handicapped and vulnerable groups and will strengthen education against female genital mutilation.

In the second MTP, the government recognises that significant progress was made under First MTP but **several challenges persist and in particular, quality**. The Government will therefore focus on addressing low enrolment in areas that remain below the national average, retain students in school up to 18 years, provide education more effectively through a digital platform, and match education and training with the demand for the skills required in the workplace. In addition, the Government will hire additional teachers in order to lower pupil-teacher ratio and improve quality as well as ensure that teachers devote the required time to teaching and learning.



The second MTP flags project to be implemented during the 2013-2017 period<sup>1</sup>:

**Mainstreaming of Early Childhood Development Education (ECDE):** This will involve: review of ECDE policy framework; establishment of ECDE resource centres in each of the 47 counties including three feeder schools in each of the nine pastoral counties; provision of capitation grants at KSh 1,020 (with adjustment for children with special needs for education) per child enrolled in public ECDE centres; and recruitment of 48,000 trained ECDE teachers (24,000 in first year and 6,000 in each of the four subsequent years). The government will also develop a framework for identifying children's inherent abilities and talents and aligning them to early childhood education and future professional training.

**Curriculum Review and Reform:** This will involve comprehensive curriculum review, reform and digitalization at all levels in response to the Constitution, national values (mentoring and moulding), talents nurturing and any other emerging issues in education. This will also involve establishment of competency assessment facilities in at least 10 centres every year over the plan period.

**Integrating Information, Communication and Technology into Teaching and Learning:** This will entail review of policy and institutional framework for ICT integration in E&T, procurement of ICT infrastructure for schools, carrying out capacity development for ICT Integration in E&T and facilitating integration of ICT in special needs education. The implementation of this programme will take into account the special needs of all those involved particularly learners and teachers.

**Laptop Programme:** The government will roll-out a laptop programme estimated to cost KSh 53 billion spread over the first three years in primary schools. The programme will include infrastructure (energy, security and connectivity), devices, content and building of teachers capacity.

**Establishment of Education Management Information System (EMIS) Centres:** In order to enhance transparency and accountability in the education system, EMIS centres will be established in all the counties. This will strengthen and harmonize EMIS and Education Financial Management Information System (EFMIS).

**Training of Artisans:** This will entail training a high number of artisans in-order to meet the high demand especially in the construction industry. Youth polytechnics and vocation training colleges will be expanded to provide students with adequate opportunities for pursuing modular based courses.

**Basic Education Infrastructure:** This will entail construction/rehabilitation of 46,000 classrooms and 92,000 toilets at ECDE level, rehabilitation of 3,000 classrooms in 1,500 primary schools, construction of 60 new classrooms in special needs schools, 10 new classrooms in existing rescue centers. At ACE, 4,400 classes will be constructed and equipped, 300 learning and resource centres and a Multipurpose Development Training Institute (MDTI) will be constructed, five MDTIs will be repaired and rehabilitated and 300 Alternative Basic Education (ABE)/Non Formal Education (NFE) secondary centres will be constructed. At secondary school level, extra classes will be constructed to ensure that each school has at least three streams as well as 600 new secondary schools, rehabilitation of 470 secondary schools, 20 special secondary schools will be constructed and 312 stalled education support programme projects will be completed. Kagumo diploma TTC will be rehabilitated while construction of Kibabii diploma TTC will be completed. In addition, five new diploma TTCs will be constructed, 18 TTCs will be rehabilitated, while a pedagogy/internship centre will be established. The government will ensure that all schools infrastructure have requisite energy networks/sources installed and accessible to all physically challenged persons through utilizing universal designs.

**Technical, Vocational Education and Training (TVET) Infrastructure and Equipment:** This will entail establishment of technical training institutions in nine counties without public TVET institutions and will be done in conjunction with a rebranding and raising awareness programme for TVET to ensure increased

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<sup>1</sup> In Chapter 5 under [Education and Training](#), pages 71-77.

enrolment. The TVET institutions will also be provided with engineering and science equipment, and laboratories. This programme will be based on strong public private and community partnerships.

**Human Resource in Support of University Education:** This programme aims at strengthening human capital development for science, technology and engineering courses by training faculty at PhD and masters level. This will go hand in hand with provision of engineering and science equipment to the institutions as an initiative of addressing quality of education.

**Education in Arid and Semi-Arid Lands:** To enhance participation in ASALs, the following strategies will be put in place:

- Establish and operationalise the National Council on Nomadic Education in Kenya (NACONEK) in order to promote access, retention and quality education for nomadic communities;
- Recruit more teachers for schools in arid and pastoral counties so as to reach the desirable ratio at primary level of 1:25, and at secondary level of 1:40;
- Establish one computer laboratory in each ASALs primary school;
- Construct/rehabilitate 140 low-cost boarding schools in arid and pastoral counties. The programme will supplement the national infrastructure programme under NESSP;
- Construct 15 feeder schools in each of 14 arid and pastoral counties;
- Equip 600 low-cost boarding schools in 14 arid and pastoral counties;
- Designate and upgrade three TTCs as centres for Nomadic Education in order to provide teachers in nomadic communities with tailor-made professional support;
- Improve 100 existing mobile schools with logistics and teaching equipment;
- Develop curriculum support materials tailored to the needs of nomadic communities;
- Construct and equip one middle-level college in six ASALs counties so as to increase skilled manpower for the region;
- Increase the bursary allocation for learners in middle-level technical colleges in ASALs;
- Increase bursary scholarship for girls' education in arid and pastoral counties, channeled through the NorthernKenya Education Trust;
- Develop a costed implementation strategy for the adult literacy policy framework to guide its implementation in 14 arid and pastoral counties; and
- Establish 500 Adult and Continuing Education (ACE) centres in ASALs counties.

**School Health and Nutrition:** School health and nutrition will be provided to socio-economically disadvantaged and nutritionally vulnerable children, especially girls in pre-primary and primary schools in targeted ASALs districts and informal settlements in Nairobi and other large urban areas in-order to ensure that children are well fed, healthy and are able to learn. Specifically, the project will entail provision of school based health and enhancement of the provision of sanitary towel programme, hygiene education and providing midday meals to disadvantaged children. In addition, school milk programme will be re-introduced to boost the health of the pupils as well as the Home Grown School Meals Programmes (HGSMP).

**School Feeding:** The programme targets vulnerable children from food insecure communities in ASALs. This will support the Government's efforts in achieving universal primary education (MDG 2). In order to ensure sustainability of the School Feeding Programme, support will be provided to the current HGSMP, which provides mid-day school based meals to children in ASALs and gradually roll-out this programme in arid areas.

**Affirmative Action:** Affirmative action will be undertaken to correct cultural and historical gender imbalance, physical segregation and regional disparities in-order to promote equity in access to education. The sector will undertake a national survey on special needs and disabilities, identify and nurture talents, revive the most vulnerable children support grant programme, provide laboratory equipment grants and award bursary and scholarships.

**Enhancing Quality and Relevance of Education:** To enhance quality and relevance of E&T, skills and competencies mapping will be carried out and a national human resource development plan will be developed. Other projects will include teacher education, recruitment and management, modernization of teacher training, recruitment of more teachers, establishment of education standards and quality assessment council to oversee quality assurance and standards functions and automation of teacher management.

**Education Sector Governance:** This will involve reviewing and developing policies necessary to ensure that national government and county governments cooperate in management of education sector in harmony. In this regard, the sector will establish E&T governing bodies, develop and review education policies, establish county education data centres, undertake capacity building for E&T sector leadership and management and establish a ministerial monitoring and evaluation system.

**Technical, Vocational Education and Training (TVET):** This will involve: establishing a central admission service for TVET government sponsored students; establishing vocational training centre at constituency level and at least one technical college at county level; establishing a TVET authority; streamlining management and assessment of industrial attachment process; institutionalization of quality assurance and accreditation system and monitoring, evaluation, reporting and inspection in TVET; and establishing labour market information system and other survey instruments for data on actual employability of TVET graduates in partnership with industry.

**University Education:** This will focus on delivering University E&T system that is internationally competitive as envisaged in Kenya Vision 2030. It will involve expanding access and equity, improving quality and relevance and investing in human resource by enhancing institutionalization of excellence and increasing the level of research funding. Formalization of linkages of private sector with academia and the government through curriculum development will be enhanced.

**Education and Training Financing:** The sector will develop an E&T financing model that will allow and guide the participation of national government, county governments, development partners, Non State Actors (NSA), private sector and households. This will entail reviewing, operationalizing and enforcement of fee guidelines to protect parents, developing allocation criteria for sharing resources among E&T programmes in devolved governance system and developing a public private partnership policy on financing E&T.

## **b. Policy Framework for Education and Training – Reforming Education and training in Kenya (2012)**

The [2012 Policy Framework for Education and Training](#) aims at addressing issues related to quality, service delivery, curriculum, relevance, teacher development and management at all levels as well as trainers in the areas of technology and entrepreneurial skill development

## **c. Specific Education Policies**

The [2012 Policy Framework for Science, Technology and Innovation](#) aims at providing the national policy framework to acquire, develop and promote science, technology and innovation for national transformation to a knowledge economy. It aims to mainstream application of science, technology and innovation for national transformation to a knowledge economy. It aims to mainstream application of science, technology and innovation in all sectors and processes of the economy to ensure that Kenyans benefit from acquisition and utilisation of available capacities and capabilities to achieve the objectives of *Kenya Vision 2030*. However, Kenya acknowledges the challenge of lack of integration of culture in the formal education system which impedes cultural creativity and expression.

**The National Policy Framework for Nomadic Education (2010)** aims to enable Kenya's nomadic communities to access basic education and training. It is geared towards ensuring equitable access to education by children in nomadic areas, including disadvantaged and vulnerable groups.

**The National Adult and Continuing Education (ACE) Policy (2010)** provides guidelines for the use by current and potential providers in ACE, in order to harmonise the diverse ACE provision by different stakeholders and facilitate coordination.

**The Alternative Provision of Basic Education and Training Policy (2009)** provides guidelines to streamline the development and management of alternative channels that provide education and training, recognizing that all children, youth and adults are entitled to basic quality education as a right.

**The National Special Needs Education Policy Framework (2009)** aims at providing guidance to the Ministry of Education staff and other stakeholders in the provision of education to learners with special needs. It also aims at ensuring that learners with special needs fully participate and are treated equally in learning activities at all levels.

**The Gender in Education Policy (2008)** provides a planning framework for gender-responsive education at all level. It highlights key concerns in education including disparities, retention and transition rates, and persisting negative social-cultural practices and attitudes. The policy formalizes the rights and responsibilities of all people involved directly or indirectly in the education sector, and are further expected to contribute to the elimination of disparities.

**The Safety Standards Manuals for schools in Kenyan (2008)** presents a timely rallying point for Kenyans to reflect on child safety both in and out of schools. The manual aims at improving the quality of education and training at all levels. It provides standards and guidelines as regards safety on school grounds, in physical infrastructure and school environment, transportation, school-community relations as well as health and hygiene, food safety, drug and substance abuse, child abuse and disaster risk reduction. The manual also provides for monitoring and evaluation of the School Safety Programme.

**The Technical, Industrial, Vocational and Entrepreneurship Training Strategy (TIVET) (2008)** addresses challenges that affect the TIVET system, detailing strategic components dealing with issues of enhancing access and equity in TIVET for all; increasing capacity for delivery; improving and sustaining relevance of skills; improving institutional corporate governance; developing a unified policy and legal framework; promoting effective application of ICTs; establishing and strengthening collaboration linkages; institutionalizing effective research and development; diversifying sources and increasing funding; and addressing cross-cutting issues.

**The National Early Childhood Development Policy Framework (2006)** provides guidance to implement early childhood education. According to this policy, pre-school education is not compulsory; hence attendance in pre-school is not a prerequisite for joining Class 1 (i.e. the first grade of primary school). Pre-school education caters to children between the ages of 3.0 - 5.11 years (just under 6 years). In general this policy shall enhance the quality, accessibility and equitable distribution of services for children through more efficient partnerships and capacity building. More specifically, the objectives of the policy include: (a) To ensure that quality services for infants and children are accessible and affordable to all children, including the vulnerable, disabled and marginalized. (b) To promote and strengthen partnerships and collaboration among all stakeholders involved in provision of services and programs for children. (c) To mobilize resources to provide quality services to all young children. (d) To provide standards and quality assurance guidelines (benchmarks) to enhance quality and efficiency.

## 4. OVERVIEW OF SELECTED LAWS AND POLICIES

### a. Free and Compulsory Education

The 2010 Constitution guarantees to every child the right to free and compulsory education (Article 43.1.f). The 2013 Basic Education Act provides for free and compulsory primary and secondary education. It also explicitly prohibits tuitions fees. Free compulsory basic education is also guaranteed in the 2001 Children's Act (Article 7).

Free primary education was introduced in 2003 and free secondary education in 2008. The objective of this programme is to increase access to secondary education by providing more resources in line with the policy of providing 12 years of basic education as well as meeting the constitutional requirements to provide education to all her citizens. In addition, the State Party has introduced mobile schools in arid and semi-arid areas in Kenya<sup>2</sup>.

The State Party has banned extra coaching by teachers to reduce indirect cost to parents. This is notwithstanding parent's willingness to pay for extra coaching fees defeats the implementation of this policy<sup>3</sup>.

### b. Non-Discrimination

The 2010 Constitution guarantees equality and freedom from discrimination (Article 237). In addition, according to Article 56 the State shall put in place affirmative action programs to ensure that minorities and marginalized groups are provided with special opportunities in education.

The 2013 Basic Education Act guarantees access to education without discrimination and remedies if the admission is denied (Article 34).

The Kenya 2030 Vision has outlined strategies aimed at moving the country towards substantive equality measures to support regions and groups which have been historically disadvantaged on account of region or status. Under the Vision, education centres of excellence are being established in every constituency of the country.<sup>4</sup>

- **Gender equality**

The 2008 Gender in Education Policy provides guidance for implementing gender equality in education. The [National Gender and Equality Commission Act of 2011](#) emphasises on non-discrimination.

The State Party has through the Ministry of Education issued a circular that allows teenage mothers to go back to school. This circular although a way forward to ensuring that rights of adolescent mothers are respected, has been undermined by the stigmatization of young mothers which deters them from returning to school. The State Party however has made all necessary efforts to ensure that girls who are victims of unwanted and early pregnancies are not stigmatized nor denied re-entry opportunity by school administrators<sup>5</sup>.

Other measures targeted girls include the **provision of gender sensitive facilities** such as sanitary towels and building of toilets for girls in schools. The State Party has set aside Kenya Shillings three hundred millions (300 millions) for purchase of sanitary towels in the 2011/2012 financial year. In addition to ensuring access,

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<sup>2</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 310.

<sup>3</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 312.

<sup>4</sup> State Report submitted to the Committee on Economic, Social and Cultural Rights in 2013, [E/C.12/KEN/2-5](#), paragraph 32.

<sup>5</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 242.

retention and participation of girls in education, the State Party zero-rated the taxes on sanitary towels to make them cheaper and affordable<sup>6</sup>.

- **Persons with disabilities**

The 2010 Constitution provides that “a person with any disabilities is entitled to access educational institutions” and the 2013 Basic Education Act provides the implementation of special needs education (Part VI). The 2001 Children’s Education Act also the right to education and training free of charge for children with disabilities (Article 12).

The right to education of persons with disabilities is also guaranteed in the 2003 Persons with Disabilities Act (article 18).

The 2009 National Special Needs Education Policy Framework provides guidance in implementing education for learners with special needs<sup>7</sup>.

Between 2002 and 2008, the number of Special Needs Education Institutions increase from 926 to 1,574. Most of these institutions are units integrated into the normal primary schools. Further to this, the State Party has undertaken training of Teachers on Special Needs Education and targets to have at least one of these trained Teachers in all primary schools by 2015.

In addition, “the State Party has established 345 sub-district disability assessment centres and 52 district based Educational Assessment and Resource Services (EARS). In essence, these services have been taken close to the communities. However, the number of children taken for assessment and placed in education programs is still small compared to those whose parents have not taken advantage of these facilities. This is partly attributed to ignorance and apathy by parents.”<sup>8</sup>

Moreover, “the National School Health Policy 2009 has addressed the physical environment in schools, sports and leisure facilities. In addition there are guidelines for early identification and referral for children with disabilities and special needs. Community based rehabilitation programmes for children with disabilities are in place and guide lines being developed. The State Party offers special training at Kenya Institute for Special Education (KISE) for teachers who are eventually posted to both primary and secondary schools<sup>9</sup>.

Also, “ The State Party together with CSOs and National Council for Persons with Disability have regular awareness programmes for children with disabilities to reduce stigmatization, and at the same time encourage parents to seek medical and education services for their children. The awareness campaign has contributed to increased enrolment of children with special needs in primary, secondary and vocational training centres.”<sup>10</sup>

The Government is working towards increasing budget allocation towards the development of infrastructure for Special Needs Education<sup>11</sup>.

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<sup>6</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 324.

<sup>7</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 228.

<sup>8</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 225.

<sup>9</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 226.

<sup>10</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 227.

<sup>11</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 247.

- **Minorities and indigenous**

In each County, Kenya has upgraded designated secondary schools to the status of “national schools”, in order to improve access to education, particularly in remote areas. It has also introduced a quota system that provides special places in national schools for children from minority and indigenous communities, as well as mobile schools for children from pastoralist communities<sup>12</sup>.

In addition, the 2010 National Policy Framework for Nomadic Education aims at ensuring equitable access to education by children in nomadic areas.

- **Children in conflict with the law**

Kenya established rehabilitation schools under Part V, Section 47 of the Children Act 2001, to rehabilitate children in conflict with the law. The State Party currently has nine rehabilitation schools<sup>13</sup>.

- **Children with HIV / AIDS**

Campaigns against stigmatization of people living with HIV including children have been mounted by the Ministry of Education<sup>14</sup>.

- **Children affected by conflict**

Kenya in partnership with non-state actors have established Education facilities in the 2 main refugee camps (Kakuma and Dadaab). These facilities are meant to ensure that refugee children access and continue receiving quality education whilst upholding the principle of non-discrimination and equity to all children irrespective of race, country of origin, religion, sex or socio-economic status<sup>15</sup>.

Kenya has also established programmes in cattle rustling / militia prone areas and volatile borders such as the Kenya- Somalia, Sudan and Ethiopia aimed at ensuring children access quality education and their rights protected. Some of these initiatives include increasing security in the areas, disarmament programs in all the cattle rustling areas, peace and reconciliation dialogues among fighting groups<sup>16</sup>.

The recent Post Election Violence (PEV) that was experienced in the country had a negative impact on the education sector. However measures to mitigate the calamity were put in place to ensure that children affected by PEV continued to access education. Some of these measures included establishing temporary schools within the IDP Camps and later integrating the children into schools near the IDP camps<sup>17</sup>.

As families affected were resettled, the schools that were destroyed during the violence were reconstructed, 19 schools were fully reconstructed in areas such as Molo, Burnt Forest, Trans-Nzoia and Nyanza-Rift valley borders. The State Party ensured that all affected pupils and students registered and sat for their National Examinations<sup>18</sup>.

The State Party has worked in partnership with non-state actors, in areas such as Mt. Elgon region in conflict transformation and peace building initiatives targeting the local community as well as strengthening of the education sector these efforts are also being replicated in other regions that are prone to conflict<sup>19</sup>.

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<sup>12</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 419.

<sup>13</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 453.

<sup>14</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 250.

<sup>15</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 250.

<sup>16</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 330.

<sup>17</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 331.

<sup>18</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 332.

<sup>19</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 333.

- **Non formal education**

Non Formal Education is also among the 23 Investment Programs and seeks to increase access to quality basic education for children and youth who due to special circumstances are unable to attend formal schools. To achieve this, the State Party developed and enacted a policy on Alternative Provision of Basic Education Training (Non Formal Education) of 2009. The policy guides the sub-sector in its development and ensures that quality education and training is provided through registration of non-formal schools and non-formal education centres across the country. The policy seeks to establish an institutional framework and associated systems to promote inclusion and eradication of all forms of marginalization in this sub-sector. Currently the Non Formal Education Curriculum is already in place and being implemented<sup>20</sup>.

- **Technical and vocational education and training**

The State Party has developed a program on Technical Industrial Vocational and Entrepreneurship Training (TIVET). This is one of the Investment Programs under the KESSP. The objective of this program is “to reduce inequity in society through increased training opportunities for the female students, the disabled learners, and learners from poor households”. The enrolment in TIVET increased by 32.1% between 2008 and 2010<sup>21</sup>.

- **Targeted programme to vulnerable groups**

The Ministry of Education and other key line ministries in partnership with development partners and Civil Society Organizations have instituted measures to ensure that vulnerable children and children in need of care and protection access quality basic education. These measures include, **introduction of low cost boarding schools** that target children from ASAL regions, **mobile schools** that target children of pastoral communities and School Feeding Programs. **Rescue Centres and Charitable Children Institutions** have also been established to ensure that children in need of care and protection have an enabling environment to continue with their learning. **School feeding programs** were also introduced<sup>22</sup>.

- **Grant**

In 2007, the Ministry of Education established a grant program to support the OVCs in 3,215 primary schools. The Ministry had spent by 2010, Kenya Shillings 65.8 million. This grant has further been complemented by other initiatives such as PEPFAR Scholarship Funds, Cash Transfer Funds for OVCs, LATIF and the Constituency Development Funds for Scholarship<sup>23</sup>.

### c. Quality Education

The 2013 Basic education Act provides for the establishment of an Education Standards and Quality Assurance Council (Part IX)

- **Right to safe and non-violent environment**

The 2010 Constitution guarantees to every child the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitive labour” (Article 53.1.d). The 2013 Basic Education Act also prohibits against physical punishment and mental harassment

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<sup>20</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 320.

<sup>21</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 321.

<sup>22</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 322-323.

<sup>23</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 327.



The National Children’s Policy (NCP), 2008 Section 53 (l) prohibits corporal punishment for children in all settings. Corporal punishment has been outlawed in schools through a circular from Ministry of Education (MoE), Legal Notice No. 56 of 2001. In addition, Article 29 (e) and (f) of the Constitution of Kenya prohibits corporal punishment and cruel, inhuman or degrading treatment. In addition, the Kenya launched the Framework for the National Child Protection System for Kenya; a National Child Protection Committee has been established to look into ways of eradicating corporal punishment in Kenya<sup>24</sup>.

The 2008 Safety Standards Manual for Schools in Kenya provides guidelines as regards child safety both in and out school.

The [Prohibition of Female Genital Mutilation Act, 2011](#) protects the rights of the girl child against FGM.

- **Status and training of teachers**

The Constitution established a Teachers Service Commission to be an independent body (Article 237), which is regulated through the 1967 Teachers Service Commission Act.

According to the 2013 Basic Education Act, the State has to provide human resource including adequate teaching and non-teaching staff (Article 39.d)

- **Respect for the view of the child**

The Constitution of Kenya guarantees respects of the views of all its citizens which by extension include children. Under chapter 4, article 37 every person has the right to peaceful and unarmed to assemble, to demonstrate, to picket and to present petitions to public authorities. Currently there are children assemblies in the 47 counties across the Republic established and supported by the Ministry of Gender, Children and Social Development. Child right clubs and children voices as reported in the second State party report continue to flourish in primary and secondary schools throughout the Republic of Kenya. In the year 2009/10 and 2010/11 the State Party allocated twenty million Kenya Shillings (ksh.20M) annually to the children Assemblies<sup>25</sup>.

The State Party through the AACs at the location, districts and county levels, will continue to coordinate and carry out awareness programmes on the right of the child to participation as elaborated under the Constitution of Kenya. The State Party will continue to nurture and strengthen all children assemblies in the country and promote their expansion in every school<sup>26</sup>.

- **Sexual education**

The State Party through the Ministry of Education has designated teachers who offer counselling in schools to prevent unwanted pregnancies. Reproductive health (Sex Education) is taught in primary and secondary schools as part of Social Studies and Ethics<sup>27</sup>. In addition, the National School Health Policy (2009) addresses issues relating to FGM and early/forced marriages to students in schools<sup>28</sup>.

- **HIV / AIDS**

HIV and AIDS information has been including in primary teacher training curriculum and the school syllabus<sup>29</sup>.

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<sup>24</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 132, 134.

<sup>25</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 120-121.

<sup>26</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 124-125.

<sup>27</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 243.

<sup>28</sup> State Report submitted to the CRC in 2013, [CRC/C/KEN/3-5](#), paragraph 255.

<sup>29</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 247.

- **Human Rights Education**

Kenya in partnership with non-state actors has developed a Peace Education Curriculum which is aimed at fostering peaceful co-existence, national unity, patriotism and nurturing children as agents of peace<sup>30</sup>.

#### **d. Minimum Age**

- **Minimum age of employment**

The Basic Education Act prohibits against the employment of a child of compulsory school age (Article 36).

In addition, the [Employment Act No. 11 of 2007](#) defines a child as a person who has not attained the age of eighteen years. Section 53 of the Act prohibits the worst forms of child labour. Section 56 (1) of the Act provides that, “No person shall employ a child who has not attained the age of thirteen years whether gainfully or otherwise in any undertaking”. A child of between thirteen years of age and sixteen years of age may be employed to perform light work which is- a) Not likely to be harmful to the child’s health or development; and b) Not such as to prejudice the child’s attendance at school, his participation in vocational orientation or training programmes<sup>31</sup>.

In addition there is a National Action Plan on Prevention of Child labour, 2004-2015. Through the Steering Committee on Child Labour, is working with ILO to develop a national children’s database<sup>32</sup>.

- **Minimum age of marriage**

The Constitution (Article 45.2) and the Children’s Act (Articles 14 and 125.g) prohibit **early marriage** under the age of 18. In addition, the [Marriage Bill 2013](#) seeks to consolidate all marriage laws in Kenya to further remove any discriminatory provisions with respect to boys and girls.

- **Minimum age of criminal responsibility**

The State Party in 2010 constituted a taskforce consisting of stakeholders from the State and Non-State actors to review the Children Act 2001 and inter alia to raise the age of criminal responsibility from 8 to 12 years. The recommendations are now with Kenya Law Reform Commission<sup>33</sup>.

## **5. STATE COMMITMENTS FOR THE NEXT YEARS<sup>34</sup>**

The State Party will continue to support basic education in general and in particular increase the number of teachers in every school in order to comply with the MOE regulations on ratio of pupils to teachers (40:1). More funds will be invested in infrastructure development to decongest overcrowded facilities at primary school level and improve the learning environment for children. Emphasis will be placed on improvement of infrastructure in Special Needs and Early Childhood Education.

The State Party will pay special attention to provinces with low enrolment, retention and transition rates. This will include development of a special strategy to increase hardship allowance to attract and retain qualified teachers in arid and semi-arid areas, develop effective mechanisms that will attract deployment of female teachers to ASAL area, expansion of mobile schools, and reduction of conflict related occurrences including improved food security in arid and semi-arid areas and informal settlements. In addition the State Party shall

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<sup>30</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 329.

<sup>31</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 82-83.

<sup>32</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 380, 382.

<sup>33</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraph 81.

<sup>34</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 360- 363.

continue to support the construction of low cost boarding schools in ASAL regions as outlined in the Alternative Provision of Basic Education and Training Policy (2009).

There will be continuous awareness programmes by the State Party and non-state actors on retrogressive cultural practices that undermine the rights of children and especially the girl child. Special attention will be given to the enforcement of the Prohibition of FGM Act (2011) on eradication of FGM. The State Party will ensure enforcement on the prohibition of any hidden costs imposed by school administration and Parents Teachers Associations. This is in line with provisions of the Constitution Article 53(1) (b) that states, every child has a right to free and compulsory basic education.

The State Party is working on implementing key recommendations from the Taskforce Report on the Re-alignment of the Education Sector to the Constitution that was released on March 2012. Among the key recommendations include:

- a) Overhaul of the current Education Act
- b) Integration of ECDE to the Basic Education in line with Constitutional requirements
- c) Decentralization of administrative Education units to the County level
- d) Revision of the Education Curriculum to enable strengthening of skills, talents and competencies of learners
- e) Strengthen the Monitoring and Evaluation systems and mechanisms within the Ministry of Education

## 6. REMEDIES & CASE-LAW

### a. Available remedies for violations of the right to education

#### DOMESTIC

- The [Constitution of Kenya](#) (2010) protects the right to education in articles 43.1.f, 53.1.b, 54.1.b, 55.a and 56.b. Other rights related to the right to education are also protected (see section XX).

Article 22 grants every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. Article 22 also sets out the rules of standing, allowing individuals to bring cases in the public interest and also of associations to institute proceedings in the interest of its members. Article 23 grants the Courts of Kenya the authority to uphold and enforce the Bill of Rights. This includes the power to grant appropriate relief. With regards to economic and social rights, article 20.5 on interpretation, sets out the State's obligations to progressively realise economic and social rights. Lastly, article 59 establishes the [Kenyan National Human Rights and Equality Commission](#), which is granted the power to receive complaints, undertake investigations and take remedial action.

#### REGIONAL

- [The African Committee of Experts on the Rights and Welfare of the Child.](#)
- [The African Commission on Human and Peoples' Rights.](#)
- [The African Court of Human and Peoples' Rights.](#)

#### INTERNATIONAL

- [UNESCO procedure](#) for human rights violations in UNESCO's fields of mandate.
- [ILO procedure](#) in the cases of those conventions which Kenya has ratified.

- Kenya has accepted the jurisdiction of the [International Criminal Court](#).

For more information, see: <http://www.claiminghumanrights.org/kenya.html?L=0> which is a useful source of information about international remedies for human rights violations.

## b. Case-law

*Case-law provides examples of violations of the right to education, as well as interpretation and clarification of international and national laws guaranteeing the right to education.*

The justiciability of economic, social and cultural rights in Kenyan courts is assured in terms of specific Constitutional provisions which provide that international human rights treaties and conventions ratified by Kenya form part of the country's laws (Article 2 (6) of the Constitution of Kenya, 2010. (State Report submitted to the CESCR in 2013, [E/C.12/KEN/2-5](#), paragraph 32). Here below are relevant decisions.

- In [Michael Mutinda Mutemi v Permanent Secretary, Ministry Of Education & Ors](#) [2013] eKLR, Petition No. 133 of 2013, the High Court of Kenya determined that the government had failed to demonstrate concrete policy measures, guidelines and the progress made towards the realisation of economic rights and particularly the right to education. The Court stressed that the government should set out clear policies that are indicative of their appreciation that socio-economic rights are here to stay. It also asserted - in line with developments in case-law both in Kenya and other jurisdictions - that the defence of progressive realisation may not be here for too long.
- In [Institute for Human Rights and Development in Africa \(IHRDA\) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v Kenya](#) [2011] communication 002/2009, the African Committee of Experts on the Rights and Welfare of the Child found a violation of the right to education of children of Nubian descent: "The affected children had less access to educational facilities for the fulfilment of their right to free and compulsory primary education than comparable communities who were not comprised of children of Nubian descent. There is de facto inequality in their access to available educational services and resources, and this can be attributed in practice to their lack of confirmed status as nationals of the Republic of Kenya. Their communities have been provided with fewer schools and a disproportionately lower share of available resources in the sphere of education, as the de facto discriminatory system of resource distribution in education has resulted in their educational needs being systematically overlooked over an extended period of time.<sup>28</sup> Their right to education has not been effectively recognised and adequately provided for, even in the context of the resources available for this fulfilment of this right" (para 65).

### III. STATISTICS AND DATA

#### 1. PARTICIPATION IN EDUCATION

			1991	1999	2002	2009	2011 Regional Average
<b>Pre-Primary enrolment</b>	GER (%)	Total	35	43	43	<b>52</b>	18
		M	...	43	43	<b>52</b>	18
		F	...	43	42	<b>52</b>	18
<b>Primary Enrolment</b>	GER (%)	Total	98	91	92	<b>113</b>	101
		M	100	92	94	<b>115</b>	105
		F	97	90	89	<b>112</b>	98
	NER (%)	Total	...	62	62	<b>84</b>	77
		M	...	62	62	<b>84</b>	79
		F	...	63	62	<b>85</b>	75
<b>Secondary enrolment</b>	GER (%)	Total	...	39	41	<b>60</b>	41
		M	...	39	42	<b>63</b>	45
		F	...	38	40	<b>57</b>	37

Source : [UNESCO-UIS](#) / Symbol used : ... Data not available

*Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Ratios (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. The GER may be greater than 100% when students younger or older than the official age for a given level of education are enrolled in that level. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.*

The number of Public ECDE centres increased from 32,043 to 38,523 % between 2005 and 2008. The number of teachers increased significantly by 18.8 percent from 78, 230 in 2008 to 92,955 in 2009 with the number of trained ECDE teachers increasing from 50,973 to 73,012 between 2005 and 2010.

Since the introduction of free primary education in 2003, there has been a significant increase in enrolment. The enrolment of boys is more compared to the enrolment of girls. Across all the eight (8) provinces enrolment has been on upward trend across both the genders since 2005 to date. However disparities still exist in the ASAL, which the State Party is addressing through the Policy on Nomadic Education (2009). This policy, seeks to facilitate increased resources to marginalised areas.

The State Party has increased the number of secondary schools to ensure equitable access by many children. From 2002 the number of schools increased from 3,667 to 6,566 in 2008<sup>35</sup>.

<sup>35</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 342-343, 345.

## 2. PROGRESSION AND COMPLETION IN EDUCATION

School life expectancy (years)	(2009)	11.0
Percentage of repeaters, primary (%)	(2005)	6
Survival rate to grade 5 (%)	(2004)	81
Primary to secondary transition rate (%)	(1981)	70

Source : [UNESCO-UIS](#)

Transition of students from primary to secondary education has significantly improved from 57.3% in 2005 to 72.5% currently. There has been a low transition among girls to high schools compared to boys. However, the year 2008 and 2009 recorded high transition for girls. Since the introduction of Free Day Secondary Education in Public Secondary School the enrolment has increased from 1,180,267 in 2007 to 1,701,501 in 2010. Kenya is taking measures to improve girl child secondary education in particular performance of girls in Science, Mathematic and Technology (SMT) through provision of grants for construction of laboratories and supply of equipment to girls' schools. This is part of a direct implementation of the Gender Policy in Education (2007) which seeks to ensure that girls receive equal opportunities with boys<sup>36</sup>.

## 3. RESOURCES FOR EDUCATION

<b>Pupil / teacher ratio (primary)</b>	(2009)	47
<b>Public expenditure on education</b>		
as % of GDP	2010	6.7
as % of total government expenditure	2010	23.7
<b>Distribution of public expenditure per level (%) – 2006</b>		
Pre-primary		0
Primary		55
Secondary		27
Tertiary		16
Unknown		3

Source : [UNESCO-UIS](#)

The budget expenditures in the education sectors have increased since 2005. In 2005/2006 the total budget expenditures was Ksh11, 580.9 billions this increased to Kenya shillings. 33,549.3 million in 2010/2011<sup>37</sup>.

In 2010 the State Party implemented an employment policy of contract teachers which led to 13,960 being deployed in primary schools, with each of the constituencies in the country recruiting 60 trained primary school teachers. Generally there was an increase in teachers from 171,033 in 2005 to 184, 873 in 2010 a percentage increase of 8.1 %. Majority of the teachers had P1 qualification constituting 52.7 % followed by approved teachers at 25 %.

In the secondary schools the number of teachers increased from 47,435 in 2005 to 53,047 in 2010 which represents an increase of 11.8 %. Contract teachers in 2010 were 4,200. Graduate teachers represent majority of the teachers in secondary schools representing 84.4 % which is seconded by the approved graduate teachers at 14.4 %. There was a decrease in the number of approved and SI/Diploma teachers due to the

<sup>36</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 344.

<sup>37</sup> State Report submitted to the Committee on the Rights of the Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 311 and 341.

encouragement of teachers to pursue higher education and get promotion by the Teachers Services Commission<sup>38</sup>.

## 4. LITERACY RATES

Literacy rates		1990	2007	2001 Regional average
Adult (15 +) %	Total	...	72.2	59.1
	M	...	78.1	68.1
	F	...	66.9	50.6
Youth (14-24) %	Total	...	82.4	69.5
	M	...	83.2	75.6
	F	...	81.6	63.7

Source : [UNESCO-UIS](#) / Symbol used : ... Data not available

For more information, see Kenya profiles on:

- [UNESCO Institute for Statistics \(UIS\)](#)
- [EFA GMR World Inequality Database on Education \(WIDE\)](#)
- [World Bank EdStat](#)

See also recent Statistics in the [Kenyan second Medium Term Plan \(MTP\) of Vision 2030](#) (pages 71):

The progress achieved under the first MTP 2008-2012 include:

- Enrolment in early childhood education increased by 40 % from 1.72 million in 2008 to 2.4 million in 2012;
- Transition rate from primary to secondary education increased from 64 % in 2008 to 77 % in 2012;
- The number of students enrolled in university education increased by 103 % from 118,239 in 2008 to 240,551 in 2012

## IV. ISSUES AND CHALLENGES

There has been increase in the enrolment rates across all levels in the recent years but **retention and transition rates of girls has been low compared to boys**. This contributed by a number of factors such as harmful cultural practices, gender stereotypes giving education preference to boys, poverty and early pregnancies<sup>39</sup>.

Although the government provides free primary and day secondary education **whereby the tuition fees is waived, schools still charge levy fee** for other services posing a hindrance to the participation of girls and boys particularly those from poor households<sup>40</sup>.

Retrogressive cultural practices such as FGM/C, early marriages, and early pregnancies affect the health and education of girls leading to high dropout and low transition rates<sup>41</sup>.

<sup>38</sup> State Report submitted to the CRC Child in 2013, [CRC/C/KEN/3-5](#), paragraphs 348 and 350.

<sup>39</sup> State Report submitted to the CRC Child in 2013, [CRC/C/KEN/3-5](#), paragraph 351.

<sup>40</sup> State Report submitted to the CRC Child in 2013, [CRC/C/KEN/3-5](#), paragraph 358.

**The ratio of teachers to pupil is still relatively high.** This, coupled with long hours of work by teachers and poor remuneration contribute to the poor quality of education in public schools<sup>42</sup>.

Other challenges include<sup>43</sup>:

- Inadequate and uncoordinated funding with weak governance and financial management;
- Inadequate number of pre-primary and day care centres and care givers;
- Limited availability of teaching and learning materials;
- Limited community participation;
- Low morale of teaching staff due to poor remuneration;
- Poor enforcement of guidelines and standards;
- High drop-out and repetition rates;
- Cultural prejudice and negative attitude towards children with special needs and Orphans and Vulnerable Children; inadequate data on number of children with special needs; inadequate tools and skills for assessing and identifying learners with special needs, inadequate funding, and inadequate facilities and teachers;
- Geographical disparities in quality, equity, affordability and access to education;
- Inadequate integration of values, attitudes and patriotism in education curriculum;
- Inadequate ICT skills in teaching and learning;
- Land availability for construction and expansion of education facilities

## V. RELEVANT OBSERVATIONS AND RECOMMENDATIONS FROM CSO, NHRI AND INTERNATIONAL HUMAN RIGHTS BODIES

*The observations and recommendations made by civil society organisations (CSO), national human rights institutions (NHRI) and international human rights bodies provide a critical view of the laws and policies in a country, and can constitute a useful tool to identify the gaps related to the right to education. They also give arguments for national advocacy, and can be useful forum to mobilise people and drive change on the right to education.*

*CSO monitor the implementation of the right to education at national level and provide useful information on the concrete reality, including the violations that may occur. In the context of the reporting to UN human rights bodies, they often provide recommendations and give the point of view of civil society and affected people.*

*At the national level, independent monitoring bodies, such as national human rights institutions, can also make recommendations on human rights, normally giving a neutral domestic perspective on the state of human rights in a country.*

*The performance of States to respect their obligations is also reviewed by other States through Universal Periodic Review (UPR), which is a peer review mechanism taking place at the Human Rights Council. The recommendations made in this context, are often rather general, but carry a significant political weight. The analysis made by UN human rights bodies related to treaties which States have ratified provide more specific recommendations, and constitute one of the most authoritative sources of critical analysis on human rights in a*

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<sup>41</sup> State Report submitted to the CRC Child in 2013, [CRC/C/KEN/3-5](#), paragraph 357.

<sup>42</sup> State Report submitted to the CRC Child in 2013, [CRC/C/KEN/3-5](#), paragraph 357.

<sup>43</sup> [Second Medium Term Plan \(MTP\) of Vision 2030](#), pages 73-74.



country.

Other international mechanisms, such as UN Special Rapporteurs, and UN Agencies (including UNESCO, UNICEF, ...) can be another useful source of information.

## 1. RELEVANT INFORMATION FROM CIVIL SOCIETY ORGANISATIONS

Information can be found on the website of civil society organisations directly, from the Summary of stakeholders' information compiled by the UN for the UPR available [here](#), from the shadow reports submitted to the Committee on the Rights of the Child, available on [Child Rights Connect website](#) as well as from shadow reports submitted to other UN treaties bodies.

**CRIN** reported about Sexual abuse in Kenyan schools. A study conducted between 2003 and 2009 revealed that 12,660 girls were sexually abused by their teachers, yet only 633 teachers were charged with sexual offences. Furthermore, 90 per cent of sexual abuse cases involving teachers never reached the Teachers' Service Commission, responsible for monitoring and implementing teachers' codes of conduct. More information [here](#)

The **Global Coalition to Protect Education from Attack (GCPEA)** reports about attacks on education in 2013. At least two attacks occurred along the Somali border. In one incident in February, an IED was set off at the Garissa primary school, where a campaign rally for a presidential contender was scheduled to be held the following day. In another incident, a teacher was among six people killed during attacks in Damajaley and Abdisugow villages in May; the Kenya National Union of Teachers subsequently asked teachers to flee border-town schools for their safety in the absence of adequate protection. There were also allegations that extremist groups were recruiting young militants in Kenya, in some cases in schools where students were reportedly being indoctrinated. In addition, a library, an administration building and various offices at Kamwero Primary School were also set alight by bandits raiding villages in parts of Baringo county in early April. At least nine schools in the area were shut down as a result of these raids and more than 2,000 students reportedly dropped out of school. More information [here](#)

## 2. RELEVANT RECOMMENDATIONS FROM UN HUMAN RIGHTS BODIES

The relevant observations and recommendations made by UN agencies on the human rights situation in Kenya can be found in the [Compilation of UN information prepared for the UPR](#). In addition, the OHCHR offers the possibility [here](#) to do advanced search amongst all the UN human rights recommendations made on Kenya.

**Note that most of the following recommendations were made before the adoption of the new Basic Education Act in 2013 and most of them may not be relevant anymore.**

### a. UN Universal Periodic Review recommendations

<b>Last review</b>	06 May 2010 - A/HRC/15/8 – can be checked <a href="#">here</a> .
<b>Next report</b>	January-February 2015 - can be checked <a href="#">here</a> .

Advanced search of the UPR recommendations can be made using the website of the NGO UPR Info on [www.upr-info.org/database](http://www.upr-info.org/database) which includes a [research guide](#). The table below is an extract of the most relevant recommendations made to Kenya at the UPR. "Action type" is an assessment made by UPR-Info of the specificity of the action recommended, raking them on a scale from 1 (minimal action) to 5 (specific action).

Recommendation	Recommending State	Response	Action type
Establish a human rights education system for members of the police and detention and prison staff, together with systems for the full and independent investigation and regular punishment of human rights violations by such personnel	Czech Republic	Accepted	5
Undertake more effective measures to address the problems of impunity, violence and trafficking in women and girls, including through the strengthening of law enforcement and the judicial system and intensive media and education programmes aimed at increasing public awareness on the rights of women	Malaysia	Accepted	5
Develop education policies that ensure quality education, particularly for the poor, marginalised and vulnerable segments of its population, and request international assistance to that end	Bolivia	Accepted	4
Develop and implement a specific education policy which would cover all children with special needs	Ireland	Accepted	4
Formulate an educational policy aimed at combating illiteracy, with particular emphasis on the education of the girl child	Niger	Accepted	4
Strengthen its educational policy to guarantee the required quality of education, accessible to all members of its population, especially the marginalised and most vulnerable groups	Slovakia	Accepted	4
Place emphasis on linking the objective of poverty eradication to those of eliminating child labour and increasing school enrolment	Sudan	Accepted	4
Undertake a study on child labour at the national level with the support of the International Labour Organization and other partners to look at the issue of child labour, and enact as quickly as possible legislation focused on the prevention of child labour and the removal of its victims from the workplace, as well as their rehabilitation, social reintegration and education	Uruguay	Accepted	3
Continue to develop programmes and measures aimed at ensuring quality and free education and health services for its population	Cuba	Accepted	2
Include in the national action plan for the promotion and protection of human rights continued attention to and focus on children and an emphasis on ensuring their right to health and education	Saudi Arabia	Accepted	2
Continue human rights education and training	Senegal	Accepted	2
Seek the support of the international community and cooperate with it to formulate policies aimed at further broadening access to free and compulsory education, particularly for children from poor households	Indonesia	Accepted	1

## b. UN Human Rights Treaty Bodies

*The full recommendations relevant to the right to education can easily be found by using this [tool](#) developed by the OHCHR.*

### COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)

*Past and future sessions of the CRC can be found on <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.*

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<b>Last review</b>	21 June 2007, <a href="#">CRC/C/KEN/CO/2</a>
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<b>Next review</b>	Due 2016, State report submitted in March 2013, <a href="#">CRC/C/KEN/3-5</a>
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In the report submitted in March 2013 (Chapter 9), Kenya informs about the follow up actions taken since the last review.

### COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

*Past and future sessions of the CESCR can be found on [here](#).*

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<b>Last review</b>	01 December 2008, <a href="#">E/C.12/KEN/CO/1</a>
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<b>Next review</b>	Unknown, State report submitted in July 2013 <a href="#">E/C.12/KEN/2-5</a>
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In the report submitted in July 2013, Kenya informs about the implementation of the right to education since the last review (paragraphs 188-197).

### COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW COMMITTEE)

*Past and future session of the CEDAW Committee can be found on <http://www2.ohchr.org/english/bodies/cedaw/sessions.htm>.*

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<b>Last review</b>	5 April 2011, <a href="#">CEDAW/C/KEN/CO/7</a>
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<b>Next review</b>	State Party Report due 01 Feb 2015
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32. The Committee urges the State party to enhance its compliance with article 10 of the Convention and to raise awareness of the importance of education as a human right and the basis for the empowerment of women. To this end, it urges the State party to:

(a) Ensure equal access of girls and women to all levels and fields of education, take steps to overcome traditional attitudes that in some areas may constitute obstacles to girls' and women's education, address girls' dropout rates and strengthen its policy on the readmission to school of pregnant girls and young mothers;

(b) Strengthen awareness-raising and training of school officials and students, sensitization of children through the media and the establishment of reporting and accountability mechanisms to ensure that perpetrators of all sexual offences against schoolgirls are prosecuted; and,

(c) Enforce a zero tolerance policy with respect to sexual abuse and harassment in schools and ensure that perpetrators are punished appropriately.

## c. Other relevant UN bodies

*The analysis of the human rights situation in Kenya made by UN agencies, including the right to education, can be found in the [Compilation of UN information](#) prepared for the UPR. For more information, see [UN Office at Nairobi](#).*

ILO supervisory bodies regularly report on the ILO conventions to which Kenya are State Party. Search [here](#) for more information. In its most recent [Observation](#) - adopted 2013, published 103rd ILC session (2014) - CEARC noted with concern that according to the 2009 National Census, nearly 4 million children of school-going age were out of school, which implied that the number of children in or at risk of child labour could be higher than the 756,000 reported in the 2008 Child Labour Analytical Report.

## VI. ADDITIONAL RESOURCES

Additional information on education law and policies in Kenya can be found on government websites:

- Ministry of Education: <http://www.education.go.ke/>
- Kenya Law: <http://kenyalaw.org/kl/>

Information can also be found on UN agencies websites:

- UNESCO-International Bureau of Education provides an education profile which includes laws and policies: [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf)
- UNESCO- IIEP / Planipolis provides downloadable education laws and policies: [http://planipolis.iiep.unesco.org/format\\_liste1\\_en.php?Chp2=Kenya](http://planipolis.iiep.unesco.org/format_liste1_en.php?Chp2=Kenya)
- UNFPA provides country profile including information on education and child marriage: <http://www.devinform.info/mdg5b/profiles/>

See also:

- Right to Education Project website, which provides resources on the right to education in Kenya: <http://www.right-to-education.org/resources/country/58>
- Education Policy and Data Center, which provides data on education: <http://www.epdc.org/country/kenya>
- GCPEA, which provides information on education under attacks: <http://www.protectingeducation.org/country-profile/kenya>
- Elimu Yetu Coalition (EYC), Global Coalition Education Member, which provides information about education in Kenya: <http://www.elimuyetu.net/>
- Wikipedia page on education in Kenya: [http://en.wikipedia.org/wiki/Education\\_in\\_kenya](http://en.wikipedia.org/wiki/Education_in_kenya)

Analysis on the right to education in Kenya can be found in:

- *Gender and Education in Kenya and Re-alignment of Education to the Constitution*, Geoffrey Wango, Mercy Musomi and Carolyn Akinyi, 2012  
[https://profiles.uonbi.ac.ke/gwango/files/gender\\_and\\_education\\_and\\_realignment\\_of\\_education\\_to\\_the\\_constitution.pdf](https://profiles.uonbi.ac.ke/gwango/files/gender_and_education_and_realignment_of_education_to_the_constitution.pdf)
- *Kenya New Constitution and Education: Education in Kenya Under the New Constitution*. Geoffrey Wango, 2011: <https://profiles.uonbi.ac.ke/gwango/publications/kenya-new-constitution-and-education-education-kenya-under-new-constitution>

For statistics see:

- UNESCO Institute for Statistics (UIS):  
[http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF\\_Language=eng&BR\\_Country=4040&BR\\_Region=40540](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=eng&BR_Country=4040&BR_Region=40540)
- EFA GMR World Inequality Database on Education (WIDE):  
<http://www.education-inequalities.org/countries/kenya#?dimension=all&group=all&year=latest>

- World Bank EdStat: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/EXTDATASTATISTICS/EXTEDSTATS/0,,contentMDK:22614780~menuPK:7196605~pagePK:64168445~piPK:64168309~theSitePK:3232764,00.html?KEN,105>

Useful information about human rights and children rights in Kenya can be found on the website of these human rights organisations.

- Amnesty International: <http://www.amnesty.org/en/region/kenya/report-2013>
- Human Rights Watch: <http://www.hrw.org/africa/kenya>
- CRIN: <http://www.crin.org/en/library/countries/kenya> and <http://wiki.crin.org/mediawiki/index.php?title=Kenya>

The office of the High Commissioner on Human Rights also provides relevant information on human rights in Kenya: <http://www.ohchr.org/EN/countries/AfricaRegion/Pages/KEIndex.aspx>

## VII. HUMAN RIGHTS JARGON

Acronym	Full name	Comments
CEACR		ILO Committee of Expert on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	A treaty legally binding for the States that have ratified it and which defines States' obligations regarding the human rights of women, which include economic, social and cultural rights.
CESCR	UN Committee on Economic, Social and Cultural Rights	The UN Committee made of international experts that gives interpretation of the International Covenant on Economic Social Cultural Rights and examines individual complaints made before the OP-ICESCR.
CRC	UN Committee on the Rights of the Child	The UN Committee made of international experts that gives interpretation of the Convention on the Rights of the Child.
ESCR	Economic, social and cultural rights	Rights defined by the ICESCR, including the right to education.
ICESCR	International Covenant on Economic Social Cultural Rights (1966)	A treaty legally binding for the States that have ratified it and which defines States' obligations regarding economic, social and cultural rights.
OP-ICESCR	Optional Protocol to the International Covenant on Economic Social Cultural Rights	Treaty that opens an international individual complaint mechanism for victims of violations of economic, social and cultural rights in countries that ratify it.
OHCHR	Office of the High Commissioner for Human Rights	The main UN agency for human rights.
UDHR	Universal Declaration of Human Rights (1948)	A non-legally binding text agreed upon by all members of the United Nations and that defines all human rights.
UPR	Universal Periodic Review	A system created by the UN Human Rights Council in 2006 sot States to peer-review the human rights records of all 192 UN Member States once every four years.