

**An evaluation of the role played by Kenyan
Independent churches in the protection of the
fundamental human rights of children**

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SUMMARY

This research aims to evaluate the role that Kenyan independent churches play in the protection of the fundamental human rights of children. It became apparent during the course of the research that Kenya's independent churches have numerous shortcomings that affect their ability to protect such rights.

The Kenyan independent churches are affected by the negative effects of an African traditional worldview. Among the effects of this worldview is the tolerance of female genital mutilation, polygamy and corporal punishment, practices that contravene the United Nation's Declaration on the Rights of Children.

The research further discovered that some of the Kenyan independent churches perpetuate the violation of the fundamental human rights of children with their gross misunderstanding of Scripture, especially the wisdom of Bible texts such as Proverbs 22:15. A literal application of Scripture and a tendency to lean towards casuistic ethics contribute to the misuse and misunderstanding of the Bible verses that touch on the human dignity of children.

The violation of the fundamental human rights of children is rampant in Kenya. The number of independent churches involved in protecting the fundamental human rights of children is very small. The few independent churches that offer child services offer relief services rather than embracing a human rights approach to serving children. Although the independent churches make out the majority and are the fastest growing among the churches, it is notable that mission churches such as the Catholic and Anglican churches are more involved in protecting the fundamental human rights of children when compared to the independent churches in Kenya. Kenyan independent churches furthermore suffer the effects of poverty coupled with illiteracy, a factor that affects their ability to champion the fundamental human rights of children as stipulated in the United Nations Convention on the Rights of Children. On the positive side, some social cultural values common among the independent churches, such as African communal solidarity and the extended family system, promote the well-being of children. However, overall the Kenyan independent churches have not successfully responded to the violation of the fundamental human rights of children. This inability remains a concern worthy addressing.

CHAPTER ONE

INTRODUCTION

1.1 AN EVALUATION OF THE ROLE PLAYED BY KENYAN INDEPENDENT CHURCHES IN THE PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS OF CHILDREN

(Key words: children, abuse, fundamental human rights, independent churches, child protection, legal instruments for children's rights.)

1.2 Formulating the problem

1.2.1 Background

In their Convention on the Rights of the Child, the United Nations (1991:2) defines a child as a person under the age of eighteen years, unless national laws fix an earlier age of majority. On the 20th of November 1959, the United Nations General Assembly under resolution 1386 XIV adopted the Universal Declaration of the Rights of Children. In recognizing that a child by reason of his physical and mental immaturity needs special safeguards and care, the regulation stipulated various rights of the child and called upon all persons, organizations and government to recognize these rights.

The huge number of children in Kenyan streets and those involved in child labour is a clear sign of the violation of these rights in Kenya. The UNCRC (2004:10) indicates that about 12% of households in Kenya consist of orphans looking after themselves, many of whom were orphaned by HIV/AIDS. The UNCRC (2004:16) further reveals that many communities allow children as young as eight years to be employed as house girls, herders and workers in plantations as means to boost their incomes.

Some cultures in Kenya have practices that encourage some of the worst forms of violation of children's fundamental human rights. In Kilifi, Kajiado, Busia, Kisumu and North Eastern Province of Kenya for example, child marriage is considered acceptable and normal. The child is often married off below the age of fifteen to men who could be in their 60's in exchange for money or a bride's price (Mwiti, 2006:136).

Female genital mutilation is widely practiced in Kenya, and the effects of this surgical operation on the women are medical, emotional and psychological (Gachiri, 2001:49). Research has shown that different communities in Kenya have their girls circumcised at any age between eight days and eighteen years, that is any time before marriage (Gachiri, 2001:89).

Mwiti (2006:71) reveals that death through house fires are on the increase. Police reports often indicate that the parents or guardians are away when fires break out, especially at night. Neglect of children as indicated by police reports is on the increase among Kenyan parents, a clear indication of the disregard for children's fundamental human rights. As stated by Mwiti (2006:15), neglect of children has contributed to drug abuse, begging and criminality among the children. The street children problem experienced in Kenya's urban areas is a result of child neglect. Shorter and Onyancha (1999:14) have the following description of street children in Nairobi:

“Their problems are further aggravated by lack of health care. By and large, there are no health care systems to serve their needs. The deplorable conditions under which they live expose them to illness such as respiratory infections, skin diseases, gastro-intestinal disorders, malnutrition, trauma and the dreaded HIV/AIDS.”

Between 1997 and 1999 it is estimated that Nairobi had over 60,000 street children, Mombasa 5,000, Kisumu 4,000 Malindi and Kilifi 2,500 each, while Kitale and Nakuru had 2,000 each (Shorter and Onyancha, 1999:16).

The alarming numbers of street children in Kenya's urban centers further raises the issue of child poverty, which is the root of adult poverty, as indicated by Vorster (2007:10). The street children grow up to form street families that remain poor. These street people resort to criminal activities in the urban areas.

Abortion denies children their right to life. The term abortion is medically used to refer to the expulsion of the baby from the womb when it is not big enough to survive outside (Karanja, 1994:4). Kenya has experienced serious abuse of children through abortion. When a teenager is assisted by an adult to secure abortion, both the teenage girl and the child in her womb are affected. The unborn baby is killed; the pregnant girl may die or suffer the physical, psychological, social and spiritual effects associated with abortion (Karanja, 1994:16).

In May 2004 in Nairobi shocking evidence related to abortion emerged when 15 fetuses in their varying stages of development were discovered dumped by the Mombasa roadside (Kamaara and Kamaara, 2005:45). Kahiga (2005:74) has the following conclusion regarding the unborn child:

“The new being is a human being in act and all rights due ought to be respected and granted. The right to life irrespective of the stage of development of the said being is a fundamental and intrinsically inalienable right. The fact that the new being is so vulnerable and incapable of self-defence or protection is no reason to annihilate it and deny it the enjoyment of life in fullness.”

As stated above, the fetus or the embryo that is being denied the right to life is a human being in one stage of life. Vorster (2004:126) maintains that destruction of the fetus or embryo is equal to taking a life and that it is a transgression of the sixth commandment since it is a human being and image bearer of God. The rights of the fetus should be considered and granted. In mid 2004 it was estimated that 300,000 abortions were being performed in Kenya annually (Chukwu, 2005:28). The mentioned children’s sufferings should provoke the church, and in particular the Kenyan independent churches, to examine their performance in order to find out whether the welfare of children is given adequate attention. Okoth (1996:61) defines an African independent church as any movement or organization whose inspiration was originally Christian, which either breaks away from the mission churches, or is founded independently and which is under African control.

According to Mwiti (2006:24) the church can help with some of the psychological, social and cultural issues that encourage child abuse. Some of the independent churches have furthered violation of the fundamental human rights of children through their theology. Baur (2001:497), commenting on the theology of African independent churches, had the following comments:

“The major problem seems to be that the very positive aspect of their theology tenets includes also the negative ones. For instance, the generally accepted authority of the Bible is approached from traditional African corresponding world of the Old Testament, accepting its patriarchal polygamy and legal taboos as divine dispensation. The lack of historical sense prevents realizing that the Old Testament has been overtaken by the new one.”

The theology embraced by most of the independent churches should be examined to find out whether it does encourage violation of fundamental human rights. Most of the independent churches

are spread all over Kenya, and ignorance and practices that violate the fundamental human rights of children have been noted among them.

Among the Agikuyu community, the African Pentecostal and African Orthodox Churches were formed as a result of the circumcision controversy in 1929. These two churches alone won about one third of the 2.5 million strong tribe in the 1960s, and so became by far the largest independent church in Kenya (Baur, 2001:381). When these independent churches were formed, members of the Presbyterian churches joined them when two Scottish doctors disapproved of female circumcision, chiefly on medical grounds (Baur, 2001:378). When many members of the mission churches left to join the independent churches, some mission churches began tolerating the practice in order to retain church members. Baur reveals that Catholic missionaries and many Anglicans had well been advised to tolerate the custom while forbidding only “immoral dances” (2001:378). The tolerance of female genital mutilation by some Kenyan independent churches has affected the fact that the practices could not be eradicated even in the modern times. A 1998 situation analysis shows that female genital mutilation is still practiced in over fifty percent of Kenya’s districts (Gachiri, 2001:47). The level of awareness and sensitivity to children’s fundamental human rights among members of Kenyan independent churches should be assessed with the purpose of strengthening it. Wako (1993:169) maintains that for a right to be exercised, the right must firstly be acknowledged, and should secondly be asserted and demanded, and lastly it should be enjoyed. A knowledgeable and sensitized independent church is likely to advocate and accord the children their fundamental human rights. An examination of the Kenyan independent churches’ capacity to combat the violation of the fundamental human right of children needs to be carried out with the purpose of enhancing it.

The services provided by the Kenyan independent churches should be evaluated to find out whether they are ‘right’ based or only ‘need’ based. Kwalla (1991:9) maintains that the critical determination of any successful child right protection action depends on the knowledge of the child right, empathy, professionalism, proper choice of investigation, language and planning.

1.2.2 PROBLEM STATEMENT

The Bible advocates the protection of the fundamental human rights of children. This view is strongly emphasized when the Bible maintains that orphans should not be taken advantage of (Exodus 22:22). Vorster (2007:216) points out that the human dignity of children is founded in their creation as the image of God, as is the case, according to the Christian faith, with all human beings.

When employers exploit children through child labour and when Kenyan tourism tolerates child prostitution, the fundamental human rights of children are violated. The UNCRC (2004:84) reports that there is increased commercial sexual exploitation of children and child pornography as part of sexual tourism in the coastal region of Kenya. Mwiti (2006:46) reveals that parental child battering, which involves various forms of physical injury, is common. Most of these parents use brutal acts to discipline their children. In Kenya, there have been various cases of child battering in institutions where a teacher has severely caned, beaten or hit a pupil using an object or their hands. A case is reported of a child who lost an eye after a teacher threw a stick at a group of pupils making a noise (Mwiti, 2006:51). Vorster (2007:215) states that corporal punishment in families and in educational institutions is still a major threat to children because it feeds on outdated religious ideas and cultural customs that hold to the idea that to inflict pain leads to obedience and discipline. Lane (1996:119) maintains that Proverbs does not mean that to beat our children is an absolute divine law that we are obliged to perform literally, he further says corporal punishment is likely to hurt children's dignity and self-respect and thus causes exasperation and bitterness against the inflicting parent, the very thing Paul warns us to avoid. If the independent churches are exposed to proper ethics they will be in a position to defend the fundamental human rights of children. Instilling sound theology and a broader knowledge of children's fundamental human rights among the Kenyan independent churches is likely to increase their capacity to protect these rights of children. Kibwana (1990:33) emphasizes the same notion in the following words:

“There are two instances of domestic or family life where inhuman treatment is practiced by people who may not be aware that their conduct amounts to inhuman treatment.”

If the independent church clergy takes the initiative to teach parents about children's fundamental human rights, cases of child abuse will decline and parents will raise concern when the fundamental human rights of their children are violated. Kibwana (1990:83) sheds light on the same topic in the following words:

“Before human rights protection in a country can be assured, several things should occur the citizens have to be aware what their human rights are, obviously, where the individual does not know his right, will not seek redress. Awareness on the part of the individual is thus a very important aspect of human rights protection. Also willingness to pursue human rights claims in courts of law constitutes another important factor in the protection of human rights.”

The most unfortunate thing about some of the Kenyan independent churches is the lack of training among the clergy. This problem of training has contributed towards Biblicism within the independent churches. Scriptures quoted out of context have been used to justify practices that violate the fundamental human rights of children. The following passages have been misused: Proverbs 13:24 “he who spares the rod hates his son,” Proverbs 22:15 “folly is bound up in the heart of a child, but the rod of discipline will drive it far from him.”

De Bruyn (2005:3) advises that every Biblical utterance should be viewed first in its immediate context and then in the context of the Bible as a whole.

The Bible commands the Christian community to participate in the alleviation of the miseries of the vulnerable children. The author of the book of James states that the religion that God accepts is to look after the orphans and widows in distress (James 1:27). Adeyemo (1986:171) emphasizes the same in the following words:

“The church has been invested with the power of the Holy Spirit and blessed with material resources, including scientific competence, and charged with the responsibility of healing wounded humanity. This takes the church out of its comfortable environment, and places it in market places, on the highways and byways, in ghettos, prison cells, in centers – wherever people are; people wounded and bruised by the scourge of sin and the violent brutality of man against man.”

When parents or the staff of institutions such as schools and prisons involve themselves in practices that violate fundamental human rights of children, churches should raise their voice. Collins (1988:296) is of the opinion that Scripture does not instruct us to abandon in self-defence or to stand by passively while our children are being abused. The United Nations (1991:8) maintains that making the protection of all children in accordance with the Convention on the Rights of the Child a living reality for every child in the world will require the concerted efforts of all: Governments, international organizations and non-governmental organizations. The independent churches in Kenya form some of the largest non-governmental organizations. Their contribution to the championing of children’s fundamental human rights can be quite significant. Nkurunziza (2006:134) further challenges the church in Africa to take the well-being of African children as paramount by identifying with the African Charter on the Rights and Welfare of the Child, which among others calls for the protection of children from work that interferes with the child’s physical,

mental, spiritual, moral or social development. If clergy and scholars from the Kenyan independent churches could be exposed to proper ethics regarding the fundamental human rights of children, then violation of these rights will reduce considerably. The focus of this research will be to make a thorough analysis of the effectiveness of the Kenyan independent churches in the protection of the fundamental human rights of children. The individual problems that will be researched are the following:

- In what ways have the fundamental human rights of children been violated in Kenya?
- Does the Bible provide any ethical basis for the protection of the fundamental human rights of children?
- Do the leaders of the Kenyan independent churches understand children's fundamental human rights as provided for in international legal instruments and the Kenyan laws?
- Are the clergy of Kenyan independent churches equipped with skills to identify common forms of violation of the fundamental human rights of children?
- Are the Kenyan independent churches faced with any specific challenges that hinder effective participation in the protection of the fundamental human rights of children? Are they endowed with strengths related to the protection of these rights?

1.3 AIM AND OBJECTIVES

1.3.1 AIM

The main aim of this thesis is to present a Biblical and international understanding of the fundamental human rights of children and to evaluate the general performance of the Kenyan independent churches in protecting these rights.

1.3.2 OBJECTIVES

The following objectives flow from the stated aim:

- To ensure the independent churches in Kenya are informed of the ways children's fundamental human rights are violated in Kenya.
- To study and outline any Biblical and ethical perspectives related to the protection of children's fundamental human rights that may be helpful to Kenyan independent churches.

- To provide scholars and the clergy of the Kenyan independent churches with the proper knowledge of children's fundamental human rights in the light of Kenyan laws and the international legal instruments.
- To equip the independent churches of Kenya with skills on how to identify and respond to the violation of the fundamental human rights of children.
- To examine the challenges and strengths of independent churches that relate to the protection of the fundamental human rights of children.
- To offer practical suggestions with the aim of empowering the independent churches of Kenya to effectively respond to the violation of the fundamental human rights of children.

1.4 CENTRAL THEORETICAL ARGUMENT

The Central theoretical argument of the study is that the Kenyan independent churches can effectively combat the violation of children's fundamental human rights if they are provided with proper ethics and exposed to the work of the United Nations human rights commission on the Rights of Children.

1.5 METHOD OF RESEARCH

- 1.5.1 The research will be a theoretical and descriptive study of Biblical and ecclesiastical material reflecting on the prescriptions relating to the topic.
- 1.5.2 The study will be a comparative literary study, and the exegesis of the Bible will be done grammatic-historically in light of the history of revelation.

1.6 CHAPTER DIVISIONS

- 1.6.1 Introduction
- 1.6.2 Violation of children's fundamental human rights in Kenya
- 1.6.3 Biblical ethical basis for the protection of the fundamental human rights of children
- 1.6.4 Children's fundamental human rights in the light of Kenyan laws and international legal instruments

- 1.6.5 The independent churches in Kenya and the violation of children's fundamental human rights
- 1.6.6 Challenges and strengths of the Kenyan independent churches that relate to the protection of the fundamental human rights of children
- 1.6.7 Findings and contributions

SCHEMATIC REPRESENTATION OF THE CORRELATION BETWEEN POINTS 2.2, 4 AND 5

| PROBLEM STATEMENT | AIM AND OBJECTIVES | METHODOLOGY |
|--|---|--|
| Violation of children's fundamental human rights is a huge problem experienced by children in Kenya, how effective are Kenyan independent churches in protecting these rights? | The aim of this study is to present a Biblical and international understanding of the fundamental human rights of children and to evaluate the general performance of Kenyan independent churches in protecting these rights. | The ethical study of the independent churches of Kenya is undertaken from within the reformed tradition. The study will be literary comparative study of relevant materials. |
| Does the Bible provide any ethical basis for the protection of the fundamental human rights of children? | To study and outline any Biblical and ethical perspectives related to the protection of the fundamental human rights of children. | Comparative literary study and exegesis of the Bible will be done grammatic-historically in light of the history of revelation. |
| How knowledgeable are Kenyan independent churches about the Violation of children's fundamental human rights in Kenya? | To inform independent churches in Kenya about the violation of children's fundamental human rights in Kenya. | Appropriate literary contributions will be researched. |
| Do clergy from Kenya's independent churches understand children's | To provide Kenya's independent churches and scholars with a proper | The Kenyan National Council for Children Services and the Human Rights Commission on |

| | | |
|--|---|---|
| fundamental human rights as stipulated in the Kenyan laws and the international legal instruments? | understanding of children's fundamental human rights in the light of the Kenyan law and the international legal instruments. | the Rights of Children's contributions on dealing with the violation of the rights of the child will be utilized. |
| Are the independent churches in Kenya equipped with the necessary skills to respond to the violation of children's fundamental human rights? | To equip the Kenyan independent churches with effective skills to identify different forms of violation and the necessary responses to these violations of children's fundamental human rights. | An examination of the background of Kenya's independent churches and the various ways of identifying and responding to the violation of children's fundamental human rights will be carried out utilizing appropriate literary contributions. |
| What are strengths and challenges of Kenya's independent churches that relate to the protection of the fundamental human rights of children? | To examine the strengths and challenges of independent churches that relate to the protection of the fundamental human rights of children. | Descriptive research will be utilized to outline the challenges and strengths of the independent churches that relate to the protection of children's fundamental human rights. |
| Are there measures that can be put in place to empower Kenya's independent churches for practical responses to the violation of children's fundamental human rights? | To offer practical suggestions with the aim of empowering the Kenyan independent churches to effectively respond to the violation of children's fundamental human rights. | An examination of some practical responses and initiatives that could enable independent churches to effectively respond to the violation of the fundamental human rights of children will be carried out. |

CHAPTER TWO

VIOLATION OF CHILDREN'S FUNDAMENTAL HUMAN RIGHTS IN KENYA

2.1 INTRODUCTION

In this chapter the situation of children in Kenya will be analyzed with the aim of exposing the ways in which children's fundamental human rights have been violated. A description of Kenyan government efforts to respond to the violation of children's fundamental human rights is offered, including an examination of the government policies regarding the rights of children in Kenya. Factors that contribute to the violation of children's fundamental human rights will be highlighted with the view of broadening the understanding of clergy from the Kenyan independent churches regarding the magnitude of the violation in Kenya.

2.2 CHILD WELFARE SERVICES IN KENYA

2.2.1 Definition of a child

According to the United Nations Convention on the Rights of the Child, the African Charter and the Children's Act 2001 of the laws of Kenya, a child is any person who is below the age of eighteen years (ANPPCAN, 2004:18).

2.2.2 Child protection service providers and their programmes in Kenya

It is estimated that Kenya has a total population of 34 million. The country has 2.4 million orphaned children, which include over 1.2 million children orphaned due to HIV/AIDS. There are 25 statutory children's institutions, and they take care of 3,500 children (NCCS, 2008a:11, 12). It is also estimated that there are 830 charitable children's institutions in Kenya. A large percentage of these institutions are unregistered and they provide avenues for child trafficking and abuse, including sexual and other violations of the fundamental human rights of children. (NCCS, 2008a:12).

2.2.2.1 Children's Department

The minister in charge of children's affairs appoints a director of children's services. The services of the department of children's services with regard to child protection include the following;

- National coordination of children's services
- Formulation of child protection policies
- Compiling a national report on the state of children
- Carrying out social inquiries on child abuse and neglect cases
- Rescuing children from distressing situations
- Prosecuting in court cases of child abuse and neglect
- Liaison with the United Nations organizations, local and international (NGOs) in delivering child protection services (ANPPCAN, 2004:43)

2.2.2.2 The National Council for Children Services

The council supervises all child welfare activities and advises the government on all issues affecting children. It formulates rules for the planning, financing and coordination of all child welfare activities. The council has twenty members and the chairman is appointed by the government. Other members include permanent secretaries from the ministry responsible for children, ministry responsible for education, ministry responsible for local authorities, ministry responsible for health, ministry responsible for finance and ministry responsible for labour, the Attorney General, the Commissioner of Police, six representatives from NGOs, three representatives from religious organizations and two representatives from the private businesses and the director of children's services. The members serve for three years, but can be elected for another three years (KAACR and Action Aid, 2005:9). The National Council for Children Services (2008b:39) cites its weaknesses as the following:

- Inadequate resources (Financial, human and non-human)
- Inadequate institutional support from the GOK ministries
- Lack of a bank account
- Lack of a research, monitoring and evaluation unit
- Lack of corporate communications officer
- Delay of the succession of the council chairperson

- Operational weaknesses and gaps in the Children's Act of 2001 and other relevant legislation
- Lack of field infrastructure and assets such as offices, vehicles, and furniture for children's officers

The weaknesses of the National Council for Children's Services imply the council is unable to effectively carry out its mandate and core functions such as coordination and the supervision of child rights and welfare activities in Kenya.

2.2.2.3 Public Children's Institutions

These are institutions that rehabilitate and take care of children.

- **Approved Schools**

The principal objective of approved schools is to instil discipline in children who are in need of it. The schools are therefore established for reception, maintenance and training of persons committed to them (Kabeberi, 1990:46).

Kabeberi (1990:46) points out that the major role played by approved schools include the provision of vocational training for children committed to them in an attempt to assist them to be economically independent and self-reliant once they complete their term. The schools also discipline the children through social training and provide religious education for the children in accordance with each child's religious belief(s).

- **Juvenile Homes**

These homes are normally occupied by children awaiting the decision of juvenile courts, for example abused or neglected children awaiting a custodial order to be granted to a fit person to be the guardian, or children who are petty criminals and are in need of rehabilitation, or children aged under sixteen years who have already been committed to the home for care and protection (Kabeberi, 1990:46).

However, Kabeberi (1990:46) laments the mix of innocent and criminal children in juvenile homes. Calling for different homes for these two categories of children, she maintains that innocent children get exposed to the wayward behaviours of criminal children.

- **Borstal Institution**

A Borstal institution is one where youth offenders are taken, meaning those aged between fifteen and eighteen years who have been found guilty of an offence punishable with imprisonment (ANPPCAN, 2004:42). Borstal institutions operate in a similar manner to prisons, as guided by the Prison Act. Before making a Borstal order, the court must first ascertain the availability of space. There must be provision of proper sanitation, food and water supply, clothing, bedding and educational training (ANPPCAN, 2004:42).

2.2.2.4 Charitable Children's Institutions

These are institutions in general established by religious bodies, private individuals and NGOs to undertake programmes for the care, protection, rehabilitation or control of children. Approval to run such programmes has to be granted by the national council for children's services through the area advisory council in the area where it will be located and operate (NCCS, 2007:35). The Child Welfare Society, which is a leading non-governmental voluntary organization, is a good example of this category.

2.2.2.5 Common shortcomings of the institutions offering children's services in Kenya

GOK and UNICEF (1999:41) indicate the following serious failures in delivery of children's services by Kenyan children's public rehabilitation institutions:

- Inadequate facilities for the separate confinement of juveniles and adult offenders.
- Inadequacy and insufficiency of rehabilitation programmes in institutions.
- Shortage of trained personnel, especially in the area of juvenile justice, medicine, psychology and psychiatry.
- Overcrowding in institutions.
- Insufficient systematic safeguards for complaints from detained juveniles.
- Inadequacy and insufficiency of semi-institutional, community-based and other institutional treatment programmes.

The institutions have not been keen to adequately promote preventive measures. For instance, the local government legislation does not legally recognize informal settlements and local governments

are therefore not legally required to provide them with basic facilities and services (GOK/ UNICEF, 1998:59). This renders the inhabitants of slum settlements vulnerable to harassment and exploitation.

The guiding rights and principles stipulated by the Convention on the Rights of the Child (CRC) and the African Charter on the rights and welfare of the child should be followed in running an institution. These are:

- The best interest of the child
- Non-discrimination
- The child's opinion, maximum survival and development (NCCS, 2007:57)

The NCCS (2007:70) reveals that some institutions use measures that amount to the physical and emotional abuse of the children under their care. Some institutions where children get abused include: prisons, police stations, remand homes, schools, charitable institutions, hospitals, religious institutions, corrective, rescue or rehabilitation centers (NCCS, 2007:48).

Some of the institutions are started with good intentions, but they lack a mission and policy statement (NCCS, 2007:65). This failure has led to mismanagement and lack of progress in the delivery of children's services in these institutions.

2.3 COMMON FORMS OF VIOLATION OF CHILDREN'S FUNDAMENTAL HUMAN RIGHTS IN KENYA

2.3.1 Use of corporal punishment

Corporal punishment or physical punishment is any action taken by a parent, teacher or caregiver that is intended to cause physical pain or discomfort to a child.

A recent report by Kenya Alliance for Advancement of Child Rights (KAACR, 2007:7) shows that according to over one hundred and thirty students interviewed, illegal and severe forms of corporal punishment remain wide spread. Of the sixty five teachers interviewed, only five teachers in one school indicated that corporal punishment is shunned in the whole school. According to the

findings, teachers who want to stop using corporal punishment have no alternatives and where there are, they lack the motivation to adopt them.

Some head teachers are only censured when the schools go on strike or when performance declines remarkably. The survey further found that the policies and legislation in place are not sufficient to protect children as they lack a clear enforcement mechanism.

On March 20, 2006 an irate teacher hit an eight year old standard two pupil with a bottle, breaking her nose. The pupil was admitted at Nakuru memorial hospital (KAACR, 2007:6). This is not an isolated case and it occurs all over Kenya, a country where corporal punishment was banned in Kenyan schools by Notice No. 56 of 2001. The notice outlawed legal Notice No. 40 of 1972 which had introduced corporal punishment to the nation (KAACR, 2007:6).

Two noteworthy cases are mentioned by Mwiti (2006:51). The first is of a child who lost an eye after a teacher threw a stick at a group of pupils making a noise. Although the child was compensated, his other eye began to weaken and the possibility of becoming totally blind was eminent. The other case is that of a fourteen year old boy who died after a teacher punched and kicked him. These incidences show that corporal punishment is still very rampant in Kenyan schools.

Parental child battering, involving various physical injuries, is also very common. A case is cited of a father who tied rags around his young boy's hands and doused them in paraffin and set the soaked rags on fire. The father had found out the son had stolen some money (Mwiti, 2006:48).

A survey carried out by the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN, 2005:17) revealed that physical abuse is frequently practiced.

The survey used a sample of two hundred and sixty seven respondents (out of a population of approximately sixty three thousand four hundred people) consisting of children, caregivers, parents, religious leaders, administrators, the children's court, the office of the president, personnel of children institutions, NGOs and other players in Ambira and Soweto in Nairobi. Interviews with parents, teachers and children were carried out in the two areas, seeking to discover the disciplinary measures that were most commonly used.

Various forms of “disciplinary” methods were found to be in use. In order of frequency they include: smacking (78%), pulling ears (68.6%), scolding (68.5%), cuffing (61.5%), forcing a child to kneel on a hard floor (45.9%), to stand in the sun (33.2%), requiring a child to remain motionless (30.3%), physical exertion (30.2%), pulling hair (29.6%), isolating a child in a confined space (29.1%), burning fingers (19.7%), washing a child’s mouth with soap (9.1%), denying the child the use of a toilet (9.0%). Major effects of corporal punishment were found to include physical injuries, mental injuries, a negative effect on children’s education, injured parent relationships and even death.

The survey also found that most respondents (83.9%) could not differentiate between physical punishment (used alternatively with corporal punishment) and discipline, though the majority of the parents (75%) interviewed knew corporal punishment as a way of disciplining children. The majority of the children interviewed (62.2%) said they would like the use of corporal punishment stopped. However, 54% of parents said that physical punishment should not be stopped. The following diagram clearly indicates the findings of the survey.

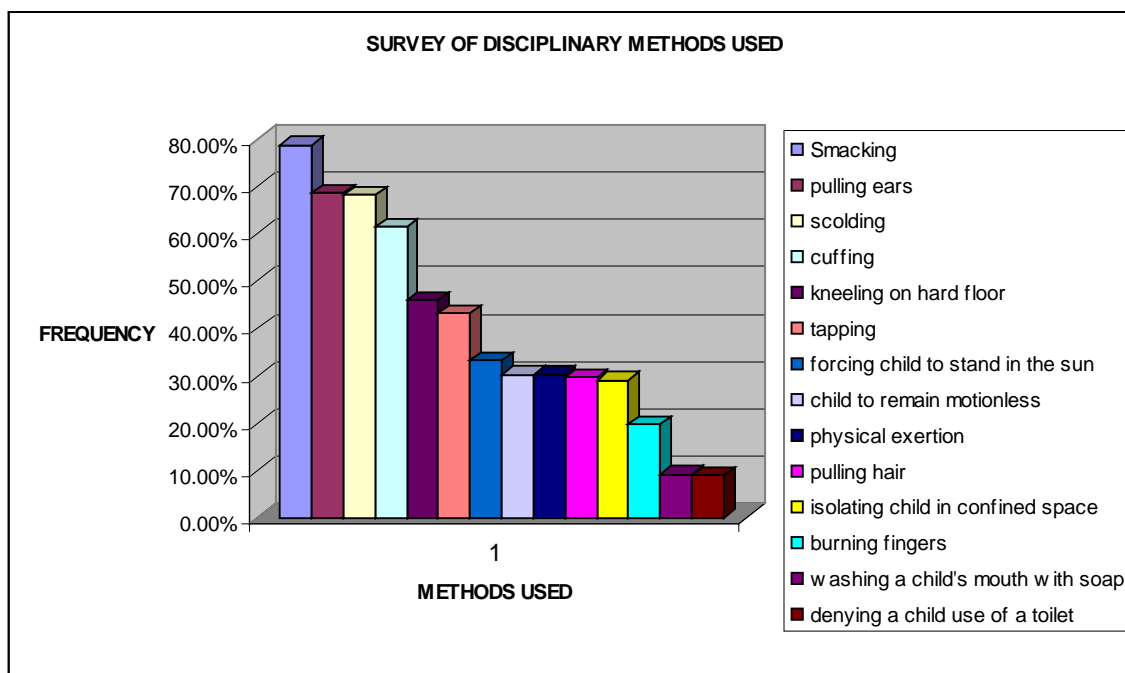


Figure 1: A survey of disciplinary methods common in Nairobi Source: ANPPCAN

The KAACR (2007:21), commenting on the Kenyan situation regarding corporal punishment, maintains that it continues because of the following factors:

- **Weak Policies and Legal Framework**

The argument is that although Kenya has progressed well by accepting the Convention on the Rights of Children, there are glaring gaps that leave offenders only subjected to the criminal procedures as captured in the penal code (Cap 63). Section 127(1) of the Children's Act states that anyone who assaults a child is guilty of a felony, while sub-section of 127(1) of the same states that nothing takes away the right of a parent, guardian or custodian of a child to punish a child reasonably. These gaps have therefore ensured that corporal punishment continues in schools and homes.

- **Lack of Collaborative Initiatives**

Most civil society organizations are concentrated in urban areas, while the government has few staff members attached to the children's department.

- **Poor Training of Teachers and Child Care Givers**

Most teachers claim that their training did not offer much in terms of alternative classroom management. They feel ambushed by the banning of the cane.

- **Negative Discipline Orientations and Practices**

The larger society still approves of corporal punishment as a necessary part of child rearing. Where teachers may be under the obligation to refrain from corporal punishment, other students, teachers, parents and police still perpetuate a culture of violence and domination.

The following KAACR (2007:14) diagram shows research findings on the favourite forms of punishment of teachers in Kenya:

| Favourite form of punishment | Reported usage | Percentage of usage |
|-------------------------------------|-----------------------|----------------------------|
| Caning | 20 | 30.76 |
| Manual labour | 15 | 23.08 |
| Counselling | 10 | 15.38 |
| Others | 20 | 30.76 |
| Total | 65 | 100 |

Table 1.1 Favourite forms of punishment of teachers *Source: KAACR*

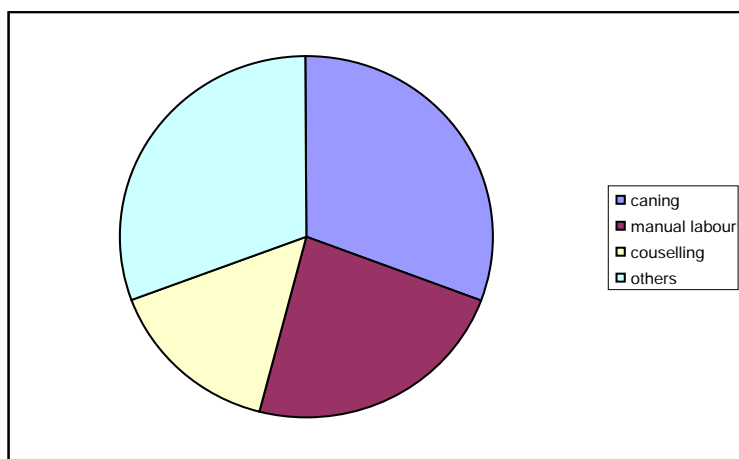


Figure 2 Favourite forms of punishment of teachers

Source: KAACR

Corporal punishment is widely practiced in schools and other learning institutions with cases of permanent injury or death reported in the press. Of the 65 teachers interviewed over thirty percent use the cane, while another 23% resort to manual labour. Only fifteen percent of teachers interviewed use guidance and counselling as an alternative.

2.3.2 Abusive Socio-Cultural Practices

Some parents, in accordance with strong cultural beliefs, force their children to undergo some rituals that can be labelled as maltreatment (Mwiti, 2006:56). In Kenya there are numerous cultural rituals that children undergo that amounts to a violation of their rights. ANPPCAN (2004:22) has cited the following cultural practices as abusive:

- Female genital mutilation (FGM) or circumcision
- Taboos related to certain foods and divisions of labour
- Gender bias (usually in favour of boys against girls)
- Infanticide
- Stigmatization of HIV/AIDS orphans, disabled children or unwanted babies, culturally believed to be a bad omen.
- Moranism, a practice in which boys stay in isolated places (bush or forest) for a certain period as requirement to attain manhood or become recognized warriors or adults. The practice denies them opportunity to attend school.

Among the mentioned abusive cultural practices the following are widely practiced in Kenya:

2.3.2.1 Female Genital Mutilation

Female genital mutilation (FGM) is often referred to as female circumcision. FGM was the term adopted by the Inter-African committee at a meeting in Addis Ababa, Ethiopia in 1999 as an accurate medically appropriate term (Save the Children Canada s.a:5)

The Population Council (2007:73) estimates that in year 2003, thirty two percent of Kenyan women had been genitally cut, compared with forty percent in 1998. It further states that in 1998 lay practitioners performed fifty percent of the procedures and the median age at the time of the cutting was eleven to twelve years. It also revealed that communal FGC occurs in many ethnic groups and seventeen percent of the Kenyan women were cut with a shared razor.

The following findings show FGM is still rampant in Kenya:

“The most common harmful cultural practice entails FGM with prevalence rate varying from fifty to one hundred percent in some areas. The initiation contributes to early marriages” (Save the children, Kenya, 2007:21).

According to the mentioned abusive cultural practices female genital mutilation is a major threat to the girl child since it constitutes fifty percent and above of abuses compared with others. Gachiri (2001:47) reveals that female genital mutilation is practiced in more than fifty percent of Kenya’s districts (fifteen out of sixty four districts). Gachiri (2001:47) provides the following findings of a FGM situation analysis in Kenya.

| Town | Percentage |
|--------------------|-------------------|
| Kisii | 97% |
| Maasai | 89% |
| Kalenjin | 62% |
| Taita Taveta | 59% |
| Meru/ Embu | 54% |
| Kikuyu | 43% |
| Kamba | 33% |
| Mijikenda/ Swahili | 12% |
| Luo/ Luhya | *3% |

* Most of these are married to tribes that practice FGM

Table 1.2 Circumcision among women aged between 15 and 19 among some Kenyan tribes (1998)

Source Gachiri (2001:47)

The data provided omits Samburu, Kenya Somalis, and Gabra, who an informant says circumcise 100% of their women (Gachiri, 2001:48).

2.3.2.1 Child marriage

Child marriage, which means to give or force a child into marriage, is a common practice in Kenya. This cultural practice, which is also referred to as early marriage, is known to have social effects and health consequences on girls (NCCS, 2007:116)

Mwiti (2006:137) reveals that in Kilifi, Kajiado, North Eastern province of Kenya and some parts of Busia and Kisumu, child marriage is considered acceptable. She points out that the determining factor is not the man's age or potency, but his wealth. The richer he is, the more brides he can pay dowry for. His wives become an indication of his worth.

Data from the Kwale District Education Office showing the primary school gross enrolment ratio shows more girls drop out of primary school as their age increases. Researchers point to the problem of child marriage in Kwale as accounting for some of this high drop-out rate (UNICEF/GOK, 2006:30).

The drop-out rate was 10.6% for boys and 12.3% for girls. Pupil drop-outs in Kwale peaks during the later years of primary school, reflecting the withdrawal of children from school due to early marriage or pregnancy. The following two figures from UNICEF/GOK (2006:30) indicate that early marriage affects the education of children, especially the girl child.

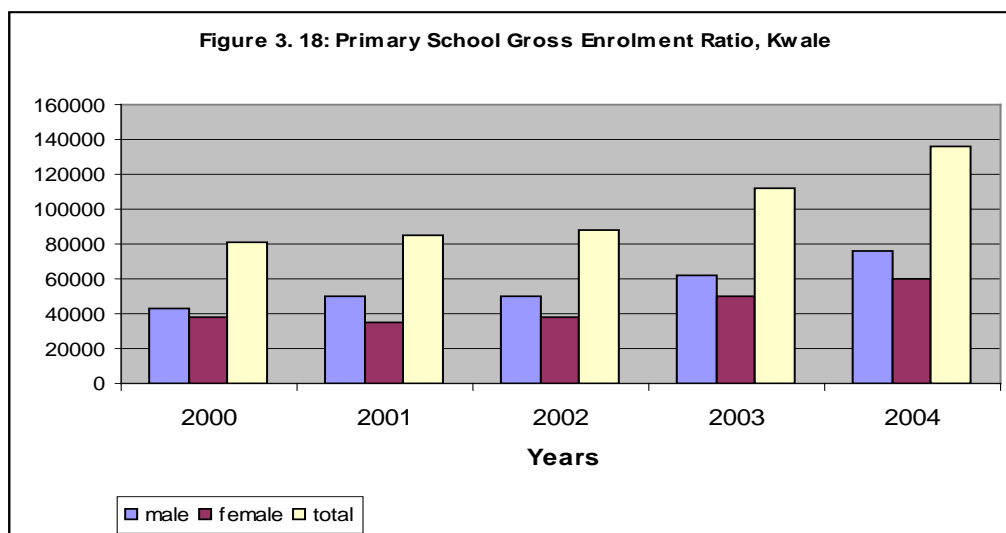


Figure 4: Primary school Gross Enrolment Ratio, Kwale

Source; UNICEF/GOK

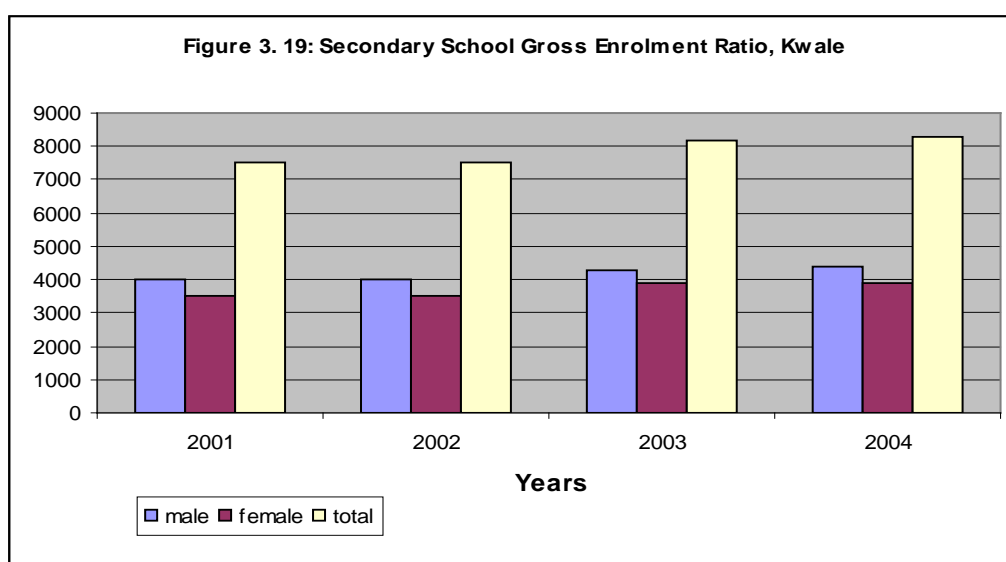


Figure 5 Secondary School Gross Enrolment Ratio, Kwale

Source UNICEF/GOK.

A fact-finding mission undertaken by the Child Rights Advisory, Documentation and Legal Center (CRADLE, 2003:30) in the Zimmerman estate in Nairobi unearthed a serious case of child marriage. A girl of fifteen years had been married to fifty six year old man as a third wife. She lived in a one-roomed house with her husband, the second wife and their six children. The five months pregnant fifteen year old child-cum-wife, her co-wife and husband shared one bed as revealed in the fact finding mission. When the matter was reported at Kasarani Police Station, the officers did not want to take action, arguing that the age of consent for sexual intercourse was fourteen years. They

suggested that an amicable settlement be reached out of court. The child was immediately rescued by CRADLE and the man was later arraigned in court with charges of subjecting a child to early and forced marriage under the Children's Act.

The National Council for Children's Services (2007:116) informs that the following health consequences are associated with early marriage:

- High health risks for both mother and child occasioned by pregnancy and child bearing during adolescence, especially for girls under fifteen years of age.
- Exposure to sexual and psychological abuse, especially from men in the "new" homestead.
- Ignorance due to young age and concealment of pregnancy due to embarrassment, leading to poor care of pregnancy, which may lead to inadequate prenatal care and malnutrition.
- Maternal mortality rates are higher among these adolescent girls in child marriage.
- Obstructed labour due to undeveloped uterus or malnutrition.
- Vesico-vaginal fistula-tear between vagina and bladder due to prolonged and unrelieved pressure in obstructed labour.
- Recto-vaginal fistula-tear between the rectum and the genital tract and high infant mortality rates. Studies show that children of teenage mothers are more at risk of death than in other groups.

The effects mentioned are clear indications that child marriage is a physical abuse of children, and the Kenyan government should increase the effort to fight the practice.

2.3.3 Child Labour

Child labour can be defined as the engagement of children under the age of eighteen years in the labour force to the detriment of their mental, physical, moral and social development (Manzi, 2004:107). Not all work done by children is necessarily unacceptable, but child labour by definition involves full-time work at an early age, working long hours in bad conditions and exposure to the undue physical, social and psychological stress of low wages. This occurs when the type of work involved hampers access to education, generally inhibits children's development or undermines children's dignity, such as in the case of slavery or bonded labour, or in the case of sexual exploitation (Shorter and Onyancha, 1999:53).

The following categories of child labour account for the worst forms of child labour in Kenya:

- **Street Work**

Street work is carried out by street children. A street child may be defined as a working child, and the purpose of the street work carried out by children is virtually always for their survival. This is mostly because street children are responsible for their own lives (Shorter and Onyancha, 1999:55).

Gichuru (1993:5) reveals the following concerning the Nairobi street children.

- Most of them come from single mothers whose husbands have abandoned their families, or from unmarried mothers, or
- Broken families, where the mother and the father have separated and abandoned the children, or
- Orphans who may have lost both parents in a social disaster such as an epidemic and who have not been accommodated in any institution or by an adoptive family, or
- Poor families: both parents may be alive and living with the children, but in a poor and miserable economic situation.

The factors highlighted by Gichuru make it apparent that most of the children on the street are victims of child neglect by their family members and society. A study conducted in Nairobi by Save the Children Kenya (2007:19) to discover factors impinging on children's rights showed that child labour is rampant in the streets of Nairobi, and children were noted to be involved in the following:

- Collection of scrap metal, plastics, bones (for making feed). Both boys and girls (some even as young as five years) are involved. The children miss school in the afternoons to collect scrap metal.
- Street-hawking by selling bananas, groundnuts, avocados and snacks.
- Children are used to ferry guns for gangsters from one point to another. This mainly involves boys and girls ages fifteen to eighteen years. The gangsters use them as they can carry dirty sacks that cannot be inspected by the police, and sometimes they carry them in school bags. It was reported that the police arrested twenty of them around November to December, 2005.

A study by Shorter and Onyancha (1999:5) on street children revealed that the street children engage in the following category of labour:

- Small girls engaged in begging while carrying their smaller brothers or sisters, a strategy calculated to evoke sympathy from members of the public. Disabled parents beg with children alongside them.
- Papers are collected from rubbish dumps and refuse tips, from business premises and offices. The collected papers are taken to middle men for recycling; the middle men notoriously exploit the children.
- Car washing and car guarding: the street children also called “parking boys” assist in helping motorists to find parking space in Nairobi’s congested streets.
- Carrying loads and running errands for people in exchange for a small fee.
- Washing toilets, swabbing verandahs and doorways.
- Unblocking clogged drainage systems, though not provided with protective clothing.
- Selling of carrier bags outside food stores.
- Shoe polishing.
- Some are used by criminals to engage in selling illicit alcohol, drug pushing and even pick-pocketing.

The situation of street child labour shows a problem with the policies regarding children in Kenya, and the society carries the blame. Gichuru (1993:5) echoes the same sentiment when he maintains that the society is responsible for the unequal distribution of resources and the care of the young. He laments that individualism has taken over the communal way of life, where the community as a whole was responsible for the upbringing of the young in a collective manner. Shorter and Onyancha (1999:16) states that in Nairobi the number of street children had increased from three thousand six hundred in 1989 to forty thousand in 1995, and to sixty thousand in 1997. He pointed out that in 1997 the figure quoted in Mombasa was five thousand, for Kisumu four thousand, for Malindi and Kilifi two thousand five hundred each, for Kitale and Nakuru two thousand each. The figures given indicate that the problem of street children, which results in street work, is on the increase. Unless drastic measures are taken to curb the problem, it will be increasingly difficult to eradicate child labour.

• **Child Domestic Workers**

Child domestic workers (CDWs) represent a special child protection concern worldwide. ILO estimates that domestic work is the largest employment category in the world of girls under sixteen years (Moloo, 2002:3). A child labour survey done by Save the Children Kenya (2007:32) indicates that domestic work is prevalent in Nairobi.

According to the report girls aged nine to ten years are often taken from Nairobi-Soweto slums in Kayole to work in the neighbouring Umoja, Dandora and Komarock estates. The girls are paid an average of one thousand five hundred to two thousand KES. In Umoja and Komarock the child workers are paid two thousand to four thousand KES. However, this only applies to older domestic house helps. The younger ones are paid less. The report further states that these child workers still end up getting exploited as many are not paid anything at all and if they complain they are dismissed or the employer accuses them of stealing. They are also overworked and in some instances sexually abused.

Domestic child workers are driven into this situation by poverty, some at a very young age. Moloo (2002:17) had the following observation after interviewing eighteen children:

- The majority of child domestic workers are between twelve and seventeen years old.
- The very young, under eight years, comprised three percent of the children.
- In Kisumu city the average age of the children interviewed was younger than in Nairobi and Mombasa, with half of them younger than twelve.

Moloo (2002:17) further provides an age distribution of child domestic workers in the table below:

| Age in Years | Area | | | | | | Total | |
|-----------------|---------|-------|---------|-------|--------|-------|-------|-------|
| | Nairobi | | Mombasa | | Kisumu | | | |
| | No | % | No | % | No | % | No | % |
| 5-8 | 2 | 3.0 | - | - | 3 | 7.0 | 5 | 3.0 |
| 9-11 | 11 | 17.0 | 4 | 9.0 | 17 | 41.0 | 32 | 22.0 |
| 12-14 | 16 | 25.0 | 17 | 40.0 | 17 | 41.0 | 50 | 34.0 |
| 15-17 | 33 | 52.0 | 17 | 40.0 | 2 | 5.0 | 52 | 35.0 |
| 18-20 | 2 | 3.0 | 5 | 11.0 | 2 | 5.0 | 9 | 6.0 |
| TOTALS | 64 | 100.0 | 43 | 100.0 | 41 | 100.0 | 148 | 100.0 |

Table 1.3 Age distribution of child domestic workers in Nairobi, Mombasa, and Kisumu

2.3.4 Sexual Abuse

Sexual abuse occurs when adults or older children exploit their power, authority or position and use children to gratify their own sexual needs (NCCS, 2007:45). In Kenya there are alarming statistics on the sexual abuse of children. According to Child Rights Advisory, Documentation and Legal Centre (CRADLE) (quoted by Mwiti, 2006:144) between March 2004 and September 31st 2004, the Nairobi women hospital, a gender recovery center, had attended to one thousand and ninety seven survivors of sexual abuse and domestic violence. Of these, forty percent were cases of sexual abuse of children.

Mwiti (2006:145) reveals that other statistics indicate that incest accounts for 74.9% of girls in urban areas. Forty percent of the abusers were fathers, followed by neighbours at twenty nine percent, other relatives at twenty three percent and teachers at eight percent. The age group highest at risk is between age five and twelve, constituting forty eight percent of reported abuse cases. Forty five percent of the incidences of abuse take place at the home of the abusers (Mwiti, 2006:145).

The World Health Organization (WHO) defines sexual abuse as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society (Save the Children Finland, 2007:19). There are many forms of sexual abuse that are prevalent among Kenyan children. This includes verbal sexual abuse where young girls face vulgar comments about their body parts, abusers exposing their genitalia to the children and children being forced to touch the genitalia of the abusers, exposure to pornography, touching and fondling, force to perform oral sex, rape and sodomy (Save the children Finland, 2007:19). The three tables below confirm that sexual abuse is serious and a common violation of children's fundamental human rights in Kenya. The large number of cases of the sexual abuse of children attended to at Kenyatta national hospital between 2000 and 2005 confirm that the sexual abuse of children is problematic. The Nairobi Women's hospital, as indicated in figure 5 and 6, attended to various types of child sexual abuse ranging from rape to defilement and sodomy.

| Category | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | TOTAL |
|--|------------|------------|------------|------------|-----------|------------|------------|
| Neglect/ abandonment | 26 | 24 | 27 | 41 | 20 | 144 | 282 |
| Physical abuse | 7 | 9 | 8 | 5 | 5 | 25 | 59 |
| Psychological abuse | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Sexual abuse | 87 | 73 | 87 | 69 | 13 | 52 | 377 |
| Unspecified Maltreatment syndromes | 3 | 3 | 0 | 2 | 0 | 1 | 9 |
| Grand total | 119 | 109 | 122 | 118 | 38 | 222 | 728 |

Table 1.4 Child abuse cases attended to at Kenyatta National hospital 2000-2005

Source: Kenyatta National Hospital (KNH).

Child abuse cases from April 2005 to March 2006

| Illustration | Number | Percentage |
|---|------------|--------------|
| Rape | 940 | 54 |
| Defilement | 426 | 24.87 |
| Sodomy | 74 | 4.3 |
| Non-penetrative sexual assault | 56 | 3.3 |
| Soft tissue injury | 92 | 5.4 |
| Alleged sexual assault (not conclusive) | 70 | 4.1 |
| Others | 60 | 3.4 |
| Total | 100 | 1,718 |

Table 1.5 Child abuse cases reported at Nairobi Women's hospital from April 2005 to March 2006

Source: Nairobi Women's Hospital

Numbers of children given psychosocial support, April 2005-March 2006

| Psychosocial support | No. of victims |
|----------------------|----------------|
| Rape | 447 |
| Defilement | 334 |
| Sodomy | 83 |
| Total | 791 |

Table 1.6 Number of children given psychosocial support at Nairobi Women's hospital from April 2005 –March 2006 (Source: Nairobi Women's Hospital)

Save the Children Finland (2007:19) reports that child prostitution has been on the rise in the past. The report reveals that UNICEF estimates that some ten thousand to thirty thousand Kenyan children are being exploited in the sex industry. This number could be an underestimation due to the lack of monitoring data, in addition to the social stigma and cultural inhibitions that discourage children from reporting abuse (Save the Children Finland, 2007:19). Studies reveal that there are many children involved in child prostitution in the country, but the number is hard to know due to the secrecy involved in the activity (Save the Children Finland, 2007:19).

2.3.5 Physical Neglect

Physical neglect can be defined as a state where a child, wholly dependent on his parent or guardian, is left uncared for (Mwiti, 2006:143). Child neglect is also explained as failure of a parent, guardian, caregiver, institution or other person charged with responsibility over a child to provide him or her with the basic necessities of life such as food, shelter, clothing, medical care and education. It includes the denial of the care and emotional support that are necessary for active socialization (ANPPCAN, 2004:22). Child neglect is a serious problem that needs attention of the government and other stakeholders in the protection of children. The following statement emphasizes the same:

“Because the abuse or neglect of children carries consequences that affect the entire community, the entire community has a legitimate right to take an interest in how children are treated by parents or as Article 19 says, “any other person who has the care of the child.” This can include the baby-sitters, teachers, social workers and the staff of children’s detention facilities. The protection against abuse and neglect that is supposed to be provided under Article 19 is wide- ranging and far-reaching. State parties are required to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” (Lundy, 1998:70).

Child neglect also occurs when children are left unsupervised in situations that present possible dangers, whether at home or elsewhere (NCCS, 2007:46).

Cases of children dying from deliberate fires are examples of child neglect in Kenya. Mwiti (2006:70) cites the following cases:

- Kibera: Baby, eight months old left alone by maid. The house catches fire and thirty six other rooms are razed.
- Chepkoo village, Baringo: Four children die in a house fire. Parents away.
- Lodwar: Five children, aged seven months to three years die in a house fire.
- Kibwezi, Machakos: Four children, ages two to seven years burn to death. Mother went to a dispensary leaving the children in the care of an old woman who woke up to find the thatched house on fire. The mother did not return until late at night. The old woman struggled to save the children, but two died in the burning house and two in hospital.
- Mathare, Nairobi: eighteen months old baby dies in a house fire. Only her legs could be identified. The rest of the body completely burnt to ashes.

Studies carried out by Save the Children Kenya (2007:32) indicate that child neglect and abandonment is common in Nairobi. The report states that in many situations, a couple stays together but as soon as the woman delivers, the man abandons her and starts living with another woman. Such betrayed women sometimes abandon their children. The report also reveals there are many girls who have babies and throw them away, reasoning that there are organizations that take such children in their fold. The high increase in the number of child domestic workers and street children one result of child neglect. In the three major cities of Kenya namely Nairobi, Mombasa and Kisumu, child domestic workers are widely used.

The report by Moloo (2002:19) reveals that employers do not adhere to any of the rules regarding minimum employment age. The report reveals that the children who were interviewed started work at a very young age. Of the one hundred and forty seven children who answered, over sixty percent had begun working before they were twelve, sometimes as young as five or six years, losing their right to a childhood at an extremely young age. This included all the boys in Kisumu and forty five percent of the boys in Mombasa. The presence and increased rate of child domestic workers is a demonstration of child neglect among Kenyans.

A report by the Government of Kenya (GOK, 2007:27) on the number of children working on the streets estimates that the number of children living on the streets of urban areas was two hundred and fifty thousand by 2002. The report states that the total number of children removed from the streets since 2003 and placed in different institutions and family reintegration programs was six

thousand. This clearly indicates the extent of child neglect in Kenya and the challenge faced by the government in removing the children from the street.

2.4 CONCLUSION

Violations of children's fundamental human rights continue in Kenya at an alarming rate. This disturbing situation calls for urgent measures to be put in place for the purpose of effectively curbing this violation. As already pointed out, the violation of children's fundamental human rights has harmful effects on children. These are effects that interfere with children's physical, mental, spiritual, moral, and social development. Violation of children's fundamental human rights therefore requires a multi-sectoral approach and trained personnel to enable effective response. Professionals such as the health workers, social workers, the police, the magistrates, the clergy and the community leaders should co-operate in this endeavor. Efforts should be made to ensure mechanisms have been put in place for the purpose of coordinating initiatives for removal, rehabilitation and re-integration of the children in need of special protection. These are children such as those in the street, children affected by harmful cultural practices such as early marriage, among other things. Regular studies should take place to find out the magnitude of the violation of children's fundamental human rights in Kenya. The independent churches of Kenya should endeavor to understand the magnitude of the violation of children's fundamental human rights in Kenya. A better understanding of the situation and the required remedy could help them to effectively participate in the eradication of the violation of the fundamental human rights of children.

CHAPTER THREE

BIBLICAL ETHICAL BASIS FOR THE PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS OF CHILDREN

3.1 INTRODUCTION

Although the Bible is not a scientific text book or work of reference for ethical or other problems (De Bruyn, 2005:4), the child's fundamental human rights are well protected. In this section I seek to reveal the Biblical position on ethical issues related to the fundamental human rights of children. De Bruyn (2005:4), in his attempt to differentiate ethics from Christian ethics, emphasizes the role of the word of God in Christian ethics. He describes ethics as the science that studies man's conduct and the specific norms according to which his conduct can be judged as being either good or bad. He describes Christian ethics as the science that studies man's conduct and evaluates it as being good or bad according to principles found in the word of God and the norms deduced from the Bible.

The objective of this chapter is to demonstrate a Biblically sound theology regarding children born and unborn, and with it the need for obedience of Biblical norms regarding the livelihood and general welfare of children. Christian ethics is deontological, and obedience is very important. Vorster (2007:19) emphasizes the same when saying the following:

“This obedience as the main quality of Christian lifestyle is the reason why Christian ethics was and should be, deontological in nature. The obedient life may not be reduced to mere pragmatism or hedonism. Christians have obligations and these God given obligations are the compass for ethical decision-making in the world. The Ten Commandments are central to the understanding of this obligations as they are prescribed in Ex. 20 and Dt. 5 and as they are interpreted and applied in the New Testament.”

One of the major challenges affecting the leaders and members of the Kenya's independent churches' ability to combat the violation of children's fundamental human rights is Bible interpretation. If the Bible has to serve as ethical resource there must be some disciplined method for understanding and explaining the meaning of Biblical texts. In most churches the Bible is consulted in a haphazard manner. If the text consulted seems understandable on the surface, it may

be used and have some influence. If the message of the text is not immediately apparent, it will be dismissed or perhaps not even discovered (Birch & Rasmussen, 1989:166).

Nthamburi (1995:20) points out that there are about one hundred and eighty indigenous churches in Kenya, which are generally not founded by theologians or clerics. They are mostly founded from the initiative of lay people who are concerned about the authenticity of the church. Many of them struggle to indigenize Christianity by incorporating an African traditional religious worldview. The lack of proper or any theological training has posed hermeneutical challenges, and as stated by Nthamburi most of these people are concerned only with the authenticity of the church, and are indigenizing Christianity by incorporating an African traditional religious worldview.

Adeyemo (1979:115) laments on the same, maintaining that the *literal grammatic and historical interpretation of the Bible cannot be maintained by the exponents of African Traditional Religion because they have allegorical interpretations to such an extent that the Biblical eschatological realities make little or no sense at all to the mind of the reader*. This chapter seeks to do a comparative literary study and exegesis of the selected Bible texts in a grammatical-historical manner in the light of the history of revelation. The texts under consideration are texts that relate to the protection of the fundamental human rights of children. Some of them are grossly misunderstood and through Biblicism misused to justify practices that violate the fundamental human rights of children.

3.2 BIBLICAL INTERPRETATION OF GENESIS 1:26-28

3.2.1 Introduction

This section attempts to trace the origin of the human dignity of children. Vorster (2007:216) maintains that the human dignity of children is founded in their creation in the image of God, as is the case with all human beings according to the Christian faith. He further asserts that this idea is central to the Biblical faith and the foundation of a Christian ethical perspective on the human dignity of people. Proper understanding of this text will contribute immensely to the protection of the fundamental human rights of children among the members of Kenya's independent churches.

3.2.2 Background and analysis of Genesis 1:26-28

The text recounts a creation account believed to have been given by Moses. It is accordingly authentic, historical and reliable (Unger and White ed 1978:71). In verse 26: “Let us make man”, the narrative presents God as calling on the heavenly court or the other two members of the trinity to centre their attention on this event. The plural form of the word God can be interpreted as a plural for majesty (Johnson, 1977:4). The words “in our image” distinguish man from the animals already created. Man stands on a much higher platform, for God made him a special image of His own eternity (Johnson, 1977:4). “Image” is used figuratively here, for God does not have a human form. Being God’s image means that humans share, though imperfectly and finitely, in God’s nature, that is, in His communicable attributes such as life, personality, truth, wisdom, love, holiness and justice (Ross, 1983:29). Anderson (1995:22) is of the opinion that the entire Godhead is involved in humanity’s creation. In his opinion the Trinitarian narrative takes specific Christological form in the first chapter of John’s gospel. Structurally John 1 echoes Genesis 1, but of particular significance is verse 3: “Through him all things were made; without him nothing was made.” Thus spirit is portrayed as central to the work, since he hovers over the waters in Genesis 1:2 (Anderson, 1995:22). Another school of thinkers, following Luther and Calvin and represented among modern theologians by Barth and Brunner, identifies the image not in substantialist but in relational terms. The relationalists hold that the original image consisted in a threefold manner: “being a communion established by God between humanity and Himself, between human being one to another and between human beings and created world” (Anderson, 1995:23).

In verse 27 of Genesis 1 it is stated that man was created in God’s image and that man was created male and female. The same pattern is found in Genesis 5:1-2a; When God created man - He created them male and female. The singular man is created a plurality, male and female (Sailhamer, 1981:38). Following this clue the divine plurality revealed in verse 26 is seen as an anticipation of the human plurality of the man and woman (Sailhamer, 1981:38).

The author did not consider it important to stress gender in his account of the creation of the other forms of life, but for humanity the phrase “male and female” is of some importance. The narrative stresses the fact that God created man as male and female (Sailhamer, 1981:38). Anderson (1995:26) points out that in verse 27 the imago is pictured both in corporate terms and in terms of the male–female relation. This relation is expressed in the term “one flesh”, which is not only a reference to the unitive character of sexual intercourse, but also a powerful metaphor for the intrinsic complementarity of the sexes.

In verse 28 “God blessed them”. Throughout the remainder of the book of Genesis and the rest of the Pentateuch, “blessing” remains a central theme. The living creatures were already blessed on the fifth day (verse 22). The blessing in this verse primarily relates to posterity: “Be fruitful and increase in number; fill the earth”. The blessing is tied to man’s seed and the notion of “life” (Sailhamer, 1981:38). God deliberately created humanity in two sexes so that they could be fruitful and to increase in number. In doing so God blesses sexual intercourse and indicates its importance and place in his plan (Wenham and Motyer, 2002:61). The imperatives “be fruitful” “increase” and “fill” should not be understood as commands in these verses since the introductory statement identifies as a “blessing”. Verse 26 “rule over” implies lordship, but not exploitation (Sailhamer, 1981:38). Man as God’s representative must rule his subjects as God does, in other words for their own good. Wenham (2004:61) points out that while legitimizing human use of the world resources, God gives no license for our abuse of his creation.

3.2.3 Gen 1:26-28 and the protection of the fundamental human rights of children

The text under consideration is vital in explaining the crucial position children occupy in the Bible. Vorster (2007:217) rightfully says that the special status of children in Scripture is determined by their creation in the image of God. Children, like all other image bearers, have a right to life. The text under consideration leaves no room for practices such as infanticide because children have a God-given right to life, regardless of their physical and economic conditions. Davis (1985:169) echoes the same position:

“The debate on the ethics of infanticide has been posed in terms of “sanctity of life” versus a “quality of life” perspective. The traditional western reverence for each life, irrespective of age, social class or condition of health reflects the Judeo-Christian doctrine of the creation of man as the image of God- a being of unique worth as a direct creation of the Almighty. In recent years, this “sanctity of life” ethic has been under wide attack.

Child homicide is common in Kenya. Mwiti (2006:49) defines this type of homicide as incidences where families or parents kill children for economic, religious, cultural or personal reasons. She reveals a case reported in Kenyan local newspapers where a man is reported to have killed his son in order to acquire the life insurance money he had deposited for the child. As image bearers

children deserve decent treatment. The text leaves no room for child homicide. The Biblical meaning of murder is aptly explained as follows:

“The Hebrew word rendered murder in the NIV actually means to kill unlawfully. This word is not only used to indicate the premeditated killing of a person (N. 35:16 -21) but also the accidental killing of a person (Numbers. 35:11, 22-28, Deuteronomy 19:1-13)”(De Bruyn, 2005:107)

Just as stated by De Bruyn, the creation of man in God’s image calls for great care over children. Many children in Kenya lose their lives as a result of the negligence of parents and those responsible for the children. Mwiti laments that cases of children dying from deliberate house fires are reported regularly in the press. These children, most of them between 1-7 years, are burnt to ashes or maimed for life. In Kenya the death of a child in a house fire is considered a type of a child abuse because carelessness and neglect on the part of the guardian or parent is often a contributing factor. Police reports often indicate that the parents or guardians are out at night when most fires break out (Mwiti, 2006:71).

The text under discussion echoes the sixth commandment, which refers to human life and in particular the protection of human life. Human life should be protected because man is the image of God. Being the image means that God is life, and therefore living man displays the image of God (De Bruyn, 2005:107). Children, being image bearers, should not be injured in any way either physically or emotionally. Harmful cultural practices such as female genital mutilation inflicted on children are not proper treatment for an image bearer. The following account brings this point home in a striking manner:

“The pain of the surgical procedure, done without any anesthetic, may cause psychological trauma. Severe blood loss may result. If this is uncontrolled it may be fatal. Bleeding of lesser degree results in anemia and the female circumcision wound is prone to bacterial infection. If this remains localized it causes pain and inflammation and possibly an abscess. If it becomes generalized it causes Septicemia which may be fatal. Tetanus is another complication which is often fatal. The use of non sterile instruments can cause the spread of viral infections like HIV/AIDS, hepatitis and genital infections. Wrong techniques used during the procedure may cause injury and scarring to the urethra and nerves. Obstruction to the urine flow, if total, can cause kidney failure and death” (Gachiri, 2001:49).

This piece on female genital mutilation relates the painful experience that a girl child is made to undergo. It is in disrespect of such a girl child's dignity as God's image bearer. As Gachiri indicates, the cultural practice of female circumcision may even cause death, which is a violation of the right to life and an elimination of an image bearer.

The creation of two sexes, male and female, and the blessing of their marriage implies that God designed marriage only for a male and female. Vorster (2007:245) maintains that because homosexual behavior is "contra naturam" to the Christian ethic, and therefore also the church, one cannot grant any legitimacy to a homosexual relationship or a homosexual marriage. Vorster (2007:231) also emphasizes that from the creational events it is clear that sexuality is intended for a man and woman within the security of a devoted marital relationship. He maintains that in Gen 1:28 people are neither forced to marry nor to have children, but the passage rather deals with the fulfilment of the cultural mandate. Vorster's argument is helpful in protecting children against adoption by homosexual couples. Children can never enjoy childhood in a gay marriage. Vorster (2007:224) rightfully states that civil authorities should be urged to be actively engaged in the prevention of adoption of children by homosexual couples.

The creation of male and female in God's image implies that females are image bearers just as males. The text under discussion provides a strong basis for the eradication of gender based discrimination. African male children are highly esteemed compared to girls. Apeh (1989:18) reveals that among the Igala tribe of Nigeria, while the father as the head of the house is the sole authority and expects everyone to report to him, male children, unlike female ones, have a more direct relationship with him and as such have unique responsibilities. Kevane (as quoted by Vorster, 2007:186) refers to the fact that the abortion of female fetuses is much higher than the abortion of male fetuses in Northern India and China. Vorster (2007:186) argues that this is due to the fact that the families prefer baby boys over baby girls. Vorster (2007:186) shares same sentiments and he laments that in Africa a survey shows that parents prefer boys. A family that has two sons may decide that they have no need for further children since they do not really value girls. While family with two girls may however decide to continue having children in the hope of having a boy.

The text under consideration is instrumental for the protection of unborn children. The chief theological ground for a strict anti-abortion stance is the conviction that every human being is made in God's image (Gen 1:27). Life-taking, like life-giving, is God's prerogative, and man needs a special mandate to end any human being's physical existence (Ferguson and Wright, 1995:2).

3.3 PSALM 139:13-18 AND THE PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS OF THE UNBORN CHILD

3.3.1 Introduction

In this section the objective is to trace the Biblical view of the unborn child. The dignity of the child, whether born or unborn, should be thoroughly protected. In order to do this, this section aims to give a Biblical meaning of human life.

3.3.2 Analysis of Psalm 139:13-18

Verse 13 begins with the emphasis on God's involvement by the use of an emphatic "you". This emphasis implies that only God is involved in the creation. The Hebrew word used for "create" has been commonly used to mean create in as used in Genesis 5:1 (Unger & White, 1980:85). The text begins by showing how it was God who controlled the very inception of life as well as the deepest evidence of life (Leopold, 1979:946). The phrase "my inward parts" in Hebrew literally means "kidneys" or "veins", and is often employed in a figurative sense as the seat of emotions (Anderson 1981:909). God was at work, weaving together the substances that make up a human being (Leopold, 1979:946). Knitting and weaving is figurative language that describes God's sovereign superintendence over the natural process of reproduction (Ross, 1983:892). This fact prompted the psalmist to break forth in praise over the thought of how marvelously he had been made (Ross, 1983:892).

In verse 15 David's "frame" refers to his skeleton, and his "unformed body" to the embryo (Ross, 1983:892 and Motyer, 2004:578).

3.3.3 Interpretation of Psalm 139:13-18

The text under consideration may be appropriate in dealing with the question of when human life begins. The text addresses the question of whether the embryo of fetus is a human living being and whether it has rights worth protecting.

In the Old Testament, the term "life" is explained as the idea of activity in contrast to the dormant or inert state of non-life (Genesis 7:211) (Douglas, 1977:735). Similarly, spirit or breath is the

principle that distinguishes the living from the dead (Job 27:3) (Douglas, 1977:735). Soul is common to man and beast, but its meaningful state is as a living thing. The term is used in Genesis 2:7, and therefore may simply mean life (Douglas, 1977: 735). In Psalm 139:13 the Psalmist implies that the development of a baby in the womb or uterus of a woman is the work of God. The same idea is echoed in the following passage:

“When man is now regarded as the work of God’s hands, this is at the same a further unfolding of the preceding line of thought, for what is being demonstrated is the fact that in his very being man shows both the omniscience and the omnipresence of God. The beginning is made by showing how it was God who controlled the very inception of life as well as the deepest evidences of life” (Leopold, 1979:946).

The text under consideration indicates God’s involvement with man from the time of pregnancy, and this involvement attributes value to the embryo or fetus (Vorster, 2004:24). Leopold (1979:947) rightfully states that the all-seeing eye of God rests on this new life that is far from ready to be seen by man: it rests on even the unseen days that this being live, and behold all that should transpire within those days. The same position is expressed by Motyer (2004:578) when he says: “Every embryo is a person, a creative possession of God with days planned ahead, a life ordained in heaven to be lived on earth.” Fowler (1984:141) also argues in support of the idea that the unborn are living human beings, and he has this to say:

“The presence of the image of God may also be assumed when the Bible refers to the sinful nature of the unborn. For if the unborn can be shown to have a moral nature, would this not be evidence in favour of them being in image of God?”

The words in Psalms 51:5 have been cited in this regard: “Surely I was sinful at birth, sinful from the time my mother conceived me.” This psalm describes the damnability of man from his own inception, and also gives the idea that the embryo is human from the outset (Vorster, 2004: 124). Other passages supporting the sinful and hence moral nature of the fetus include Psalms 58:3: “Even from the birth the wicked go astray: from the womb they are wayward and speak lies.”

Fowler (1984:145) points out that when the psalmist reflects on the amazing way God “knit” his body in a secret place, it shows the unborn and their relation to God. The words of Jeremiah 1:5 supports this: “Before I formed you in the womb I knew you. Before you were born I set you apart; I appointed you as prophet to the nations.”

Fowler (1984:144) further states that the Biblical writers did not use different words to label prenatal and postnatal life. The same Hebrew and Greek terms are often used to refer to both the born and unborn. For example Job 3:3 says: “Let the day perish wherein I was born and the night in which it was said there is man child conceived” (Fowler, 1984:144).

The term in Hebrew commonly translated as “child” or “boy” is used in Genesis 25:22 to refer to children struggling inside the womb of Rebekah (Fowler, 1984:144). The Greek word often used for infants and the newly born (Luke 18:15, 1 Peter 2:2, Acts 7:19) is used in Luke 1:41 and 44 to describe John the Baptist leaping in the womb of Elizabeth (Fowler, 1984:144-145). The idea that God attaches the same importance to the born and unborn child is expressed well by Davis (1985:49):

“Biblical texts assume a basic continuity between prenatal and postnatal life, and God’s love and concern for the unborn is not limited to the advanced stages of pregnancy, after some points of “viability” has been attained, His concern continues right from conception.”

In Psalms 139:16 the poet uses a Hebrew term to refer to himself as an “unformed substance” in order to relate God’s care for him during the embryonic stage, the first eight weeks after conception, long before the mother can feed life in the womb. Texts such as Job 10:8-13 and 31:13-15 also make the point that God and not some blind biological process is responsible for the creation of human life in the womb (Davis, 1985:149-150).

The Scriptural view of the untimely death of an unborn portrays the high value the Bible attaches to the unborn. For example, the prophet Amos prophesied against the sons of Ammon:

“Because he ripped open the pregnant women of Gilead in order to extend his borders.”Amos1:13. The ripping open of pregnant women shows lack of respect for human life, both the unborn child and the mother (Fowler, 1984:145).

3.4 EXODUS 21:22-25

The text under consideration will be analyzed to find the true meaning of the passages. Different views will be explored:

3.4.1 The Background of Exodus 21:22-25

The text under consideration is one of the laws on bodily injuries, and it specifically relates to injuries to pregnant women. This situation describes men who are fighting and one of them somehow unintentionally strikes a pregnant woman so that her labour is immediately induced. This law envisions two alternatives. If “she gives birth prematurely and her children come out” and “if there is a serious injury” (Kaiser, 1981:432).

The woman’s husband would determine the nature of the punishment and the judges would make a final disposition of the matter (v 22). The judges are included in the penalty process in order to prevent excessive sums being extracted from the guilty man (Davis, 1985:224). If on the other hand death did follow, the death penalty applied. The rationale behind the severe punishment of the man who brings about the death of the woman is stated in verses 24 and 25. The principle of *Lex Taliones*, a well-known principle in the ancient near-east, is designed to bring equitable punishment in relation to the nature of a particular crime (Davis, 1985:226). In verse 24 the arrangement of the members is obvious and in verse 25 the fire, the sword or other sharp instruments inflict the injuries. It is expressly stated in Numbers 35:31, 32 that no satisfaction, exploitation or redemption should be taken for the penalties of murder and manslaughter (Murphy, 1979:255).

3.4.2 Interpretation of Exodus 21:22-25

Hoffmeier (1994:56) warns that most translations of verses 22-25 leave the reader with a false impression, which has led in turn to the wrong application of this passage to the abortion issue. He is of the opinion that the law in these passages deals with the result of a pregnant woman being struck accidentally by two men who are fighting, resulting in what most English translations will call a miscarriage. He further adds that verse 23 has been used by pro-abortionists, their argument being the fact that the issue is how the “mother” was affected, which they take to imply that the fetus really does not matter. It is not considered a human and therefore do not have human status.

Davis (1985:151) maintains that linguistic evidence of the text itself does not support the “miscarriage” translation. The appropriate Hebrew verb when used alone as in this case refers to a live birth, not miscarriage (Gen 25:25, 26; 38:28-30, Jeremiah 1:5; 20:18). He further states that same verb is used for a still birth only when accompanied by an expression such as “to die” as in numbers 12:12 and Job 3:11. The term used in Exodus 21:22 means “child”, including the newborn

child, whereas for “embryo or unformed” fetus a different word that is not used in the text will be used. He maintains that the specific Hebrew word for “miscarriage” (Exodus 23:26; Hosea 9:14) is not used. According to him the better translation of the passage takes it to refer to a premature live birth, not a miscarriage.

Geisler (1971:219) uses this text to support the view that the unborn baby is not considered fully developed and therefore causing its death is not considered murder (i.e. the taking of an innocent human life) since in the case of killing a baby, child or adult, the life of the murderer would be demanded (Ex 21:12). Some protestant theologians who share Geisler’s theory argue that the fetus is a potential person rather than an actual person. They argue that while a fetus demands care and respect at any stage of its existence, its claim to life is proportional to its stage of development. Ferguson and David (ed 1988:2) sound an alert that this theory doesn’t easily square with the Bible’s stress on personhood, and such a continuum is by no means simple to apply.

Kaiser (1981:432) points out that in this text it is the only instance in the Torah where involuntary manslaughter calls for the death penalty. Generally the guilty party received refuge from the “avenger of blood” and was not put to death (Deuteronomy 19:4-10). Injury to the unborn is the only exception. The reason seems to clearly be that God places a high value on the unborn and the law always expresses concern for those least able to defend themselves.

Vorster (2004: 124) rightfully maintains that Exodus 22:21 prescribes a punishment for the one who harms a pregnant woman to such an extent that she has a miscarriage. The view held by Geisler (1971:219) and those who hold his school of thought that a fetus is a potential person rather than an actual person, is wrong and unbiblical when considered in the light of Psalm 139:13-16. Davis (1985:153) echoes the same views:

“The equation of personhood with certain states of consciousness could be extended to argue for the killing of the comatose, the senile and the mentally retarded. As has been seen in reference to Psalms 139:13-16 God values human life long before the emergence of human consciousness; God loved David well before David became conscious of that love. A person in the proper sense exists from the earliest moments of human existence. Personhood denotes not merely conscious, postnatal humans, but all members of the human species; those are genetically distinct human entities with their own unique life trajectory and developmental future. Rather than saying that the unborn

represent “potential human life” it is more accurate to say the unborn represent actual human life with great potential.”

3.4.3 Ethical Perspectives

The text indicates that the unborn are protected in Scripture and abortion is Biblically unacceptable. Geisler (1971:219-223) wrongfully describes artificial abortion as a man-initiated process through which one takes a potential human life. He maintains that such abortion is not murder because the embryo is not fully human, it is an undeveloped person. He uses that view to justify the following categories of abortion:

- Abortion for therapeutic reasons.
- Abortion for eugenic reasons.
- Abortion after conception without consent.
- Abortion after conception by incest.

Vorster points out that the Christian view of man is based on man’s likeness to God. Man being the image of God, his life may not be taken. He further argues that this principle grants the embryo and fetus intrinsic value. Lee (as quoted by Vorster, 2004:125) argues as follows:

- The fetus is identical to, that is, one and the same entity, as the being who is later rational and self-conscious.
- The being that is later rational and self-conscious is at that later time, intrinsically valuable.
- If a thing is intrinsically valuable, then it is intrinsically valuable from the moment it exists.
- So, the being that is later rational and self-conscious is intrinsically valuable from the moment it exists.

According to this argument the embryo has value. The embryo and fetus, being human, is viewed by Christian anthropology as an image bearer of God. Destruction of the embryo or fetus is therefore equal to taking a life and is a transgression of the sixth commandment (Vorster, 2004:126). Mother Teresa describes abortion as war against the innocent child, murder by the mother herself. She further states that through abortion the mother does not love but even kills her own child to solve her own problems, and further adds that by abortion the father is told that he does not have to take responsibility at all for the child he has brought into the world (Collins,

1995:297). Vorster (2004:127) in his argument for the protection of unborn child offers the following advice:

“The Biblical and ethical information on abortion indicates that legislation of abortion on request is in contradiction with the government’s task to protect the right to life. The right of the mother to choose is absolutised. In a Christian theory of human rights, one right can never become absolute, because then the delicate balance between different rights and the relation between right and obligation is lopsided.”

De Bruyn (2005:119) argues for abortion where rape has occurred, and he cites the following reasons as acceptable for abortion.

- The woman or girl contributed in absolutely no way to the intercourse. It was against her will and it was forced on her despite her resistance.
- Resistance against an attacker is justified. In the case of rape, not only the assailant is an intruder, but his sperm as well.
- Rape and the resulting pregnancy can inflict life-long pain and serious spiritual as well as physical damage, even if the child is given up for adoption.

Davis (1985:155) maintains that even in the event of rape, it could be argued that it is right and in the woman’s best long-term interests not to have an abortion. He argues that it is the rapist who should be punished, not the innocent child conceived as a result of the rape. He points out that in the Mosaic Law it was commanded: “Fathers shall not be put to death for their children, nor children put to death for their fathers; each is to die for his own sin” (Deuteronomy 24:16). Davis (1985:155) further states that by not having an abortion in such a case, the woman avoids the psychological and spiritual problems arising from the guilt involved in the taking of innocent human life. She also avoids the risks of endangering her future reproductive capacity.

Vorster (2004:127) sheds light on the same issue by arguing that in some cases abortion should be allowed. He refers to a situation where the mother, or the child or both are in danger. In such a case it would be proper to adopt consequential ethics and agree that the situation here determines action to be taken. Vorster (2007:12) elsewhere in comparing consequential ethics and deontological ethics maintains that *consequentialism, despite its deficiencies, may be used as a suitable theory in cases of moral conflicts*. He points out that sometimes the ethicist has to choose

not only between right or wrong, but between “bad” and “worse” on account of the consequences an act may have. The passage implies that the unborn child has a high value in the sight of God.

3.5 AN EXPOSITIONAL ANALYSIS OF SOME PASSAGES FROM THE BOOK OF PROVERBS THAT RELATE TO THE VIOLATION OF CHILDREN’S FUNDAMENTAL HUMAN RIGHTS

3.5.1 Introduction

The following discussion attempts to pin down a proper Biblical understanding of child discipline with the objective of correcting the erroneous view that corporal punishment is a mandatory vital element in child rearing. Passages from the Book of Proverbs are some of the most abused passages by parents within independent churches of Kenya. Misunderstanding of these passages has contributed to inhuman rearing practices among parents in Kenya’s independent Churches.

3.5.2 Proverbs 22:15: “Folly is bound up in the heart of a child, but the rod of discipline will drive it far from him”.

Nelson expository dictionary explains foolishness as stupidity. The Hebrew word refers to the act of violating God’s law or “sin”. The word describes the way a young person is prone to act, although it also describes the activities and lifestyle of the man who ignores the instruction of wisdom (Proverbs 5:23).

Lawson (1980:599) is of the opinion that folly and sin dwells in young and old. This foolishness dwells in the heart of children and makes their way forward strange, for the understanding is darkened, the will perverted and the affections sensualized. He further points out that only God can loose the bonds of sin and drive foolishness away from the heart.

“Discipline” in Hebrew is moral correction which includes spanking, verbal correction and other forms of discipline (Buzzel, 1983:954.)

3.5.3 Proverbs 22:6: “Train a child in the way he should go and when he is old he will not turn from it.”

The child presumably is in the young years. The phrase “in the way he should go” shows that there is a standard to which he should adhere, and he would have to be young for change for the better to still be possible (Horton, 1995:422). The consequence is that when he is old, he will not depart from it (Horton, 1995:423). Proper training of a child will endure throughout the life of that child. In this passage the second clause provides the consequences of the first. The imperative is “train” and so the training must be with purpose (Ross, 1991:1060). Lawson (1980:586) rightfully states that correction alone is not adequate in training; the training must be carried out prayerfully and with purpose.

3.5.2 Proverbs 23:13-14. “Do not withhold discipline from a child if you punish him with the rod, he will not die. Punish him with the rod and save his soul from death.”

The idea is that continued use of “discipline” is encouraged since the one punished will not die. The discipline will help the child live a full life. If he dies (prematurely) it will be a consequence of not being trained. This death might be a moral, social or physical death (Ross, 1991:1070). The pain caused by spanking may make the parent and the child think the child will die, but that’s not so. The punishment will actually deliver him from death (Buzzell, 1983:956).

Lawson’s (1980:626) opinion is that parents are here required to give due correction to their children with their own hand and not to entrust that office entirely to others; at the same time they are forbidden from withholding discipline from their children, even when they are under the care of others. He maintains that if teachers are employed to instruct children, they must have the power of correcting and no offence must be taken at them for correcting children. The same view is expressed in the following words:

“It is rare opportunity which is given to parents. No sphere of influence which they may acquire can be like it: it may be wider but it can never be so intense or so decisive. A father who abdicates the throne on which God has given him, or turns it into dishonor must one day answer for his base renunciation before the eternal father. A mother who uses the authority over her sons which God has given her merely to gratify her own vanity and selfishness and to retain a love which she has ceased to deserve; or one who

wantonly throws away the authority because its exercise makes large demands upon the spirit has much to answer for at the divine judgment-seat” (Horton, 1995:423)

Lane (1996:118) suggests that corporal punishment should be rare and restrained for it to be effective and not counter-productive. These passages from Proverbs should not be taken literally without paying attention to the basic principles of interpretation. Vorster (2008:78) in his description of the common characteristics of religious fundamentalism names the misuse of Scriptures as one of the key characteristics. This means that a source or text is used in a literalist way irrespective of its cultural, historical, or literary background. Those who apply these texts without considering the culture and time context of the passages continue violating children’s fundamental human rights. This right is commonly violated through corporal punishment. Vorster (2007:215) rightfully points out that corporal punishment is common in families and educational institution and he maintains that it feeds on outdated religious ideas and cultural customs that hold to the idea that to inflict pain leads to obedience and discipline. If the problem of “scripturalism” in the independent churches of Kenya has not been addressed, corporal punishment, which is a violation of children’s fundamental human rights, will continue to occur as a result of the misuse of the texts under consideration.

3.5.5 Common abuses emanating from the wrong interpretation of the texts under consideration

The passages under consideration reveal the purpose and design God envisages for children. They are supposed to be nurtured and not abused at home. Strauss reinforces the same notion in the following statement:

“God gives parents to children to help build the qualities into them that will prepare them for a most useful and satisfying life. Modern psychologists, sociologists and educators agree that our children are what we make them. They are the sum total of what we contribute to their lives. The training we provide will affect their ability to get along with other people, the genuineness of their Christian testimony and services, the calibre of work they do, the quality of home they establish and almost every other area of their lives” (Strauss, 1975:22)

As already suggested by Strauss, care must be exercised in parenting, and proper understanding of the Biblical teachings regarding child discipline, correction and training must be sought. Violence

is often unleashed on the children by parents who pretend to be disciplining them. The following abuses occur under the auspices of child discipline.

3.5.5.1 Emotional Abuse

Some family members do not suffer from physical abuse, but they suffer emotional abuse that occurs frequently. Collins (1995:278) points out that words can hurt, especially if they demean, intend to cut and focus on the victim's weakness. He maintains that verbal emotional abuse wears down the victim, especially children. The word "foolishness" has been commonly applied when children do not perform as per the expectations of demanding parents. Draper (1971:8), commenting on the passage "fathers do not embitter your children or they will become discouraged" (Col 3:21), advises that a parent is required to be understanding and compassionate towards the child. He cautions parents against making children act like adults before they are ready. One of the major abuses of children is said to be in the form of extreme pressure for children to do better and better in school. It is said that the tension induced is more than they can cope with. Kisuke (1986:54) mentions an example of a child that was pressurized and broken down under stress after failing an important examination. His father refused to talk to him or see him. Later, he was hospitalized and treated for a mental breakdown.

3.5.5.2 Child labour

Children are forced to do more work than they can handle. Some parents force children to do much work, either as a way of discipline or training. Kisuke (1986:54) points out that a child's work can become child exploitation if it prohibits that child's access to a school education and recreation. She maintains that long hours of work for children deprive them of normal childhood development. Parents who have no proper understanding of the text under consideration punish children to the extent of victimizing them. Parents let children work as shepherds or coffee and tea pickers as a way of disciplining them. Their idea of work is also interfered with.

3.5.5.3 Physical Abuse

Corporal punishment is singled out as one of the major problems facing children in the developing world (Vorster, 2007:210). The misunderstanding of the passage in Proverbs regarding corporal punishment has led to the abuse of children at homes and institutions of learning. During the days of the Jewish authors children were taught through beating, and it was the standard practice in child

teaching. However, in Colossians 3:21 and Ephesians 6:4 Paul disapproves of excessive discipline (Keener, 1993:552). Physical abuse of children taking place in homes through corporal punishment is against the Paul's teachings regarding family. The same mistaken approach to child discipline is addressed in the following passage:

“Corporal punishment in families and in educational institutions is still a major threat because it feeds on outdated religious ideas and cultural customs which hold to the idea that to inflict pain leads to obedience and discipline. There is no scientific proof of this point of view. On the contrary, children coming from a culture of violence tend to perpetuate this culture because they believe that violence is the way of solving problems. Here indeed violence breeds violence” (Vorster, 2007:215).

The manner in which passages from Proverbs supporting corporal punishment are handled needs to be evaluated. If the Bible has to serve as an ethical resource there must be some disciplined method for understanding and explaining the meaning of Biblical texts. The Bible is the complex record of the Biblical communities in their relationship to God over a period of more than 1500 years, and as such the Bible could not be expected to be a self-interpreting document (Bruce and Larry, 1989:166). For the Bible to truly become available as a resource for the Christian moral life, its passages must be understood as thoroughly as possible, both within the literary form through which they communicate to us and in the concrete historical circumstances that produced them (Bruce & Larry, 1989:168). With this understanding the Proverbs cannot be used as a text book to convey Biblical support for corporal punishment. Vorster (2007:8) echoes the same opinion when he maintains that in hermeneutics and ethics the interpreter should be careful not to derive ethical principles from Biblical parts without consulting the whole message. He points out that Biblical texts must be understood in the light of the total message of Scripture.

3.6 A DISCUSSION ON SOME NEW TESTAMENT PASSAGES THAT SUPPORT THE CONCLUSION THAT THE BIBLE PROVIDES THE ETHICAL BASIS FOR THE PROTECTION OF CHILDREN'S FUNDAMENTAL HUMAN RIGHTS.

3.6.1 Matthew 19:13- 15

3.6.1.1 Context of the Passage

Immediately following the discussion of marriage, divorce and the single life, Jesus returns to the subject of children. The place of these events appears to have been Southern Perea, in some house (Mark 10:10), and the time a few days before the triumphal entry (Broadus, 1886:401). Children in Jesus' day were often brought to rabbis and elders to be blessed, customarily by placing hands on them (Genesis 48:14, Numbers 27:18, Matthew 9:18, Mark 10:16) (Carson, 1984:420). Children were similarly brought to Jesus as a rabbi or a prophet. He did what the people desired, he took the children in his arms and blessed them (Mark 10:16) "The disciples rebuked them". The synoptic parallels show that "them" refers not to the children, but to those who brought them (Carson, 1984:420). Broadus (1886:401) says "them" in Matthew might mean either the children or those who brought them, but in Mark and Luke it becomes clear that it is the latter, which is obviously appropriate (Broadus, 1886:401).

The disciples may have rebuked the people not because they thought this was not the right thing to do, but because they did not want the privacy of the Messiah the King to be interrupted (Broadus, 1886:401). There is the view that the expression in verse 14 "do not hinder" is an echo of a primitive baptismal formula, because this verb refers to baptism elsewhere (Acts 8:36) 10:47). The verb occurs twenty three times in the NT and only five of these relate to baptism (Carson, 1984:421). There is also the opinion that although the word "hinder" was used as a technical term for baptisms, the incident by itself is not a blueprint for baptism (Swift, 1984:840). It becomes clear from Scripture that Jesus does not want the little children prevented from coming to him (v.14), not because the kingdom of heaven belongs to them, but because the kingdom of heaven belongs to those like them. From what Jesus says it becomes clear that He receives them because they are excellent objects for a lesson in the kind of humility and faithfulness he finds acceptable (Swift, 1984:840). Verse 15 "placed his hands on them" Mark adds that "he took the children on his arms put his hands on them and blessed them". His blessing to them means that he prayed that they might be blessed (Broadus, 1886:404).

3.6.1.2 Homiletical and Christian Ethical Response

Although children were cherished within Judaism, they were thought in some way to be negligible members of society. Their place was to learn, to be respectful and to listen; but two deeper insights suggest themselves: (1) the preceding pericope (vv 3-12) implicitly stresses the sanctity of the family, and (vv 13-12) continue by saying something important about children; and (2) in 18:1-9 children serve as models for humility (Carson, 1984:420). Since entrance to this kingdom requires that men become childlike in faith, the disciples would do well to be more gracious to actual children (Kent, 1977:963). Poole, 1963:90), commenting on the same passage, presents a valid argument on the importance of childhood:

“From this text the divines will prove the baptism of children, because theirs is the kingdom of heaven. Which whether we understand of the church and the dispensation of the grace of Christ under the gospel, v12 that the gospel is made up of infants as well as more adult persons, or that the grace of Christ under the gospel verse12 remission of sins through the blood of Christ doth belong to some children as well as the grown persons; or the kingdom of Glory v12 –children shall go to heaven as well as grown persons. The argument is well drawn from this text: Those who have a right to membership are to be baptized; or those who have a right to the kingdom of glory may be baptized.”

The above quoted passage promotes the value of the child in the Bible. The act of Jesus provides the justification to treat children similar to the other members of their community. The churches that baptize children have found the texts discussed to be very important when it comes to according the children same human dignity as adults. Vorster (2007:219), commenting on the children and the monopoleuric covenant that God erected with his people Israel, points out that the stipulation regarding the treatment of children include the practice of circumcision in the Old Testament and baptism in the New Testament.

The Lord Jesus is presented in these passages as a defender of children. When the disciples attempted to drive the children away (verse 14) Jesus was indignant. This is the only occasion where a Greek word implying anger is used (Swift, 1984:872). The example of Jesus is an important lesson for today, particularly in cultures where children are expected to be seen and not heard. His words also underline the importance of children’s ministry (Kapolyo, 2006:1150). Jesus’

actions of welcoming the little children exemplify the care that parents and teachers should take with children who are under their protection.

Robertson (1980:152) states that in Israel circumcision was usually applied to infants eight days of age. He points out that circumcision symbolized inclusion in the covenant community established by the initiative of God's grace. He maintains that the fact that children were circumcised at a young age as a sign of inclusion in the covenant demonstrates the high regard for children. In the same manner Jesus receives children in his kingdom and identifies with them. Hanks (1988:121) advocates baptism for children as a way of inducting them in the covenant. He maintains that children are baptized because they are organically a part of the church. They belong to the historical development of God's covenant and they all receive the outward sign of the covenant.

- **Christian Ethical Response**

The church should be on the forefront when children are denied their rights. Like Jesus when children were barred from reaching him, the church should be a voice for the children. Wiseman and London (2004:86) put it better in the following words:

“Sometimes advocacy is merely offering a program to inform people about what is happening in our communities that harms children. At other times, it is taking the part of a child who needs someone for him or her in school or in the community, or may be it means calling attention to harmful bureaucratic practices of social service agencies that deal with foster care or adoption.”

Vorster (2007:223) echoes the same concern when he emphasizes that Christianity has a high regard for the human dignity and the fundamental rights of children. He exhorts Christians and churches to be vocal protestors in favour of children in distress. Richard & Joe (1995:82) suggest that many troubled families will be grateful when they find a church that does the following:

- Offers hope for what families can become.
- Provides advocacy for families.
- Confronts abusive behavior.
- Offers training and information about marriage.
- Helps families aspire to be all that they can be.

Dobbins (1989:120) strengthens the same argument:

“The family of God must become a surgical family for those whose families are broken.” The church needs to come up with programmes that can bring healing to families since healthy families produce happy secure children. Collins (1995:288) point out that family members; especially children, who witness abuse are dramatically affected. They are more likely than others to abuse drugs and alcohol, run away from home, engage in delinquent behavior or engage in immoral or assaultive sexual behaviour. When family members are involved in supportive worshipping body of believers healing is better (Collins, 1995:288).

The church should strive to ensure children’s physical and spiritual healing in her ministry of healing, in other words their salvation. According to its Biblical usage, salvation is a comprehensive term denoting all the benefits, physical or spiritual, that are graciously bestowed on humans by God. In Hebrew and Greek the verb used for both physical and spiritual healing reflects the Bible’s holistic view of salvation. In Hebrew it is expressed as peace, referring to personal wholeness and well-being in every sphere (Alexander and Brian, 2000:762). In pursuing this goal of ensuring the well-being of all people, the church should take children’s well-being into consideration.

3.6.2 Ephesians 6:1-4

3.6.2.1 Background of Ephesians

The epistle of Ephesians was written by Paul sometime between 60 and 62 A.D (Mac Arthur, 1986:11). Mac Arthur (1986:11) states that because the phrase “who are at Ephesus” is not found in many early manuscripts, and because there is no mention of a local situation or an individual believer, many scholars think this letter was an encyclical intended to be circulated among all the churches in Asia minor, including Ephesus. Origen stated that the words “at Ephesus” were not in the manuscripts that he knew, the same claim is made by Basil and Jerome of the fourth century (Tasker, 1963:17).

3.6.2.2 Ephesians 6: 1-4, Paul addresses parent-child relationships

Verse 1 reads “Children, obey your parents in the Lord, for this is right.” Here “children” do not refer particularly to young children, but to all offspring. Sons and daughters still under their parents’ roof have to obey and honor them. “Obey” literally means “to hear under”, that is, to listen with attentiveness and to respond positively to what is heard. Children should in other words put themselves under the authority of their parents (MacArthur, 1986:311).

The basic reasons for children to obey and honor their parents are simply that it is right. ‘Right’ refers to that which is exactly just and righteous, that which is exactly as it should be, because everything God commands is right (MacArthur, 1988:312). Jewish and Greco Roman writers unanimously agreed that children needed to honor their parents, and, at least until they were grown up, needed to obey them (Keener, 1993:552). Verse 2 reads “honor your father and mother which is the first commandment with a promise”. Paul quotes the fifth commandment of the Decalogue (Ex 20:12) which enjoins children to honor their parents. Honor should go beyond obedience to the attitude of the heart that produces obedience (Homer, 1971:107). Different scholars have different views of the promise. Tasker’s (1963:105) opinion is that the promise should not be taken in an individualistic sense or as a literal promise of longevity. He states that in any generation it can be seen that the strength of family life and the training of children to habits of order and obedience are the means and the marks of the stability of a community or nation. When respect for parents fails, the community becomes decadent. Dale (1897:384-385) seems to echo the same sentiments:

“The promise was a national promise, it was not an assurance that every child that obeyed his parents would be prosperous and would live good old age; it was a declaration that the prosperity, the stability and the performance of the nation depended upon the reverence of children for their parents. The discipline of the family was intimately related to the order, the security and the greatness of the state. Bad children would make bad citizens. If there was a want of reverence for parental authority, there would be a want of reverence for public authority. If there was disorder in the home there would be disorder in the nation; and national disorder would lead to destruction of national life.”

Warren (1986:161) is of the opinion that the Christian child who honors his parents can expect two blessings: It will be well with him and he will live long on the earth. He also points out that this does not mean that everyone who died young dishonored their parents. He maintains that Paul is

stating the principle that when children obey their parents in the Lord, they will escape a good deal of sin and danger, and in this way avoid the things that could threaten their lives.

3.6.2.3 Paul warns parents against abusing their children

“Fathers do not exasperate your children”. Even though in Greek ‘fathers’ usually referred to male parents; it was sometimes used for parents in general (Mac Arthur, 1986:316). Because a father was by far the dominant figure in the household of that day, he was the parent who would most often provoke his children to anger, but a mother is obviously capable of doing the same, and she is no more justified in doing it than is a father (Mac Arthur, 1986:316). Keener (1993:580) reveals that most ancient fathers and educators beat their children as a matter of course. Like a minority of ancient moralists, Paul advocates a more gentle approach to child rearing. Paul seems to be emphasizing the same in Colossians 3:21 “Fathers do not embitter your children, or they will become discouraged. Warren (1986:12) is of the opinion that discouraged children are fair prey for Satan and the world. He maintains that when a child does not get “ego–strength” at home, he will seek it elsewhere. Richard tries to explain the meaning of not exasperating a child:

“Don’t over irritate or exasperate them. Don’t force them to drastic action. Instead of nagging treat them as human beings, respect their ideas and don’t expect unreasonable things from them” (Richard, 1995:105).

“Bring them up in the training and instruction of the Lord”. As Mac Arthur (1986:319) puts it, the positive command to parents is for them to bring up their children in the discipline and instruction of the Lord. Discipline in Greek refers to the systematic training of children. Fathers have to embrace this way of training their children and have to thereby create an atmosphere that will make obedience an easy and natural matter, namely the atmosphere of love and confidence (Hendriksen, 1988:172).

3.7 CONCLUSION

Proper interpretation of the passages related to creation such as Genesis 1:26-28 provides a solid foundation for the protection of children’s fundamental human rights. The text affirms that the human dignity of any person is based on their creation in the image of God. Children are also created in the image of God and it is unethical to violate their fundamental human rights in any manner.

Children born and unborn deserve protection, and as indicated in Psalms 139:13-18, life begins in the womb of the mother during pregnancy. In this case the fetus and embryo should be viewed as image bearers with human dignity. It is unethical to carry out abortion on request since the unborn children are also protected in Scripture and their destruction can be equaled to taking a life, which is a transgression of the sixth commandment.

Proper caution is needed when dealing with wisdom literature such as “Proverbs” to ensure that no violation of children’s fundamental human rights occurs when carrying out child discipline. This violation is likely to occur when texts in Proverbs are quoted out of context rather than doing a comparative literary study and exegesis in grammatical-historical way in light of the history of revelation.

Ministers of the Gospel should be vocal in defending children. Jesus welcomed little children when his disciples rose against them, church leaders should do as Jesus did. The apostle Paul addresses children’s concerns, he advises parents on how to relate with to children. In his letters he prohibits any treatment of children that may amount to abuse, which is a clear demonstration of his child protection gesture. The conclusion is that the Bible strongly favors protection of the fundamental human rights of children, and in it there is a prohibition of the violation of these rights.

CHAPTER FOUR

CHILDREN'S FUNDAMENTAL HUMAN RIGHTS IN THE LIGHT OF KENYAN LAWS AND THE INTERNATIONAL LEGAL INSTRUMENTS

4.1 INTRODUCTION

The objective of this chapter is to study and identify the Kenyan national laws and the international legal instruments that protect the fundamental human rights of children. A description and analysis of the United Nations Convention on the Rights of the Child will be provided. The independent churches in Kenya cannot effectively respond to the violation of children's fundamental human rights unless they are well exposed to the national and international instruments that protect these rights.

4.2 AN ANALYSIS OF SOME KENYAN LAWS PROVIDING FOR CHILD RIGHTS AND CHILD PROTECTION

The main challenge experienced by Kenyans, and especially clergy from the independent churches, when dealing with child protection is the lack of proper and adequate information on legal issues that pertain to child protection. Adequate information on the Kenyan laws will enable the clergy to identify violations of children's fundamental human rights.

Kenyan law offers protection to the child from the time of its conception until the attainment of the age of majority, which is age 18 (Kabeberi, 1990:9). Although the Kenyan law is child minding, Kenya has a multi-tiered and multi-sourced system of laws, with the constitution being supreme. Other sources of laws include acts of the parliament of Kenya, certain acts of the parliament of the United Kingdom, doctrines of equality and status of general applications in force in England as of the 12th of August 1897 with certain qualifications, and Africa customary laws (Save the Children Finland, 2007:18). This factor at times tends to interfere with the protection of the fundamentals rights of children in Kenya, for example the legal age for marriage differs due to the fact that Kenya has four family law systems. These systems are Africa customary, Islamic, statutory and Hindu (Kabeberi, 1990:9). African customary laws are applicable to those Africans who lead a customary way of life. Under customary law, one becomes of maritable age after undergoing an initiation ceremony (Kabeberi, 1990:12). The customary law has been used by some Kenyan tribes to justify early marriage just because different tribes carry them out.

In defining a child there are various definitions in Kenya of a child that set out the different ages of a child for the purpose of their operation. Any person who falls within the age categories prescribed by the different acts is thus a child (Kabeberi, 1999:10). Under the Age of Majority Act, it is provided in section 2 that a person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years (Kabeberi, 1990:10).

The Matrimonial Causes Act defines “African” children as girls below 13 years and boys below 16 years. All other ethnic groups are considered children if they are unmarried and are below the age of majority (Black, 1991:25). This act discriminates between children, and although Kenya has made numerous steps in her attempt to protect children, legally there is much to be done in addressing the numerous gaps in the laws protecting children. The customary law to some serves as a motivation to engage in female genital mutilation and early marriage. This is because generally under customary laws one becomes of maritable age after undergoing an initiation ceremony. This takes place at a very early age, long before 18 years (Kabeberi, 1990:12). Female genital mutilation and child marriage is a violation of the fundamental human rights of children. Another Kenyan law that interferes with the rights of children is the Islamic law. Under Islamic law, one has the capacity to marry once he or she has reached the age of puberty. This may be on the attainment of an age between 12 and 14 years (Kabeberi, 1990:12). Marriage under this law is in accordance with the principles of the Koran. This law undermines the Kenyan definition of a child, which clearly states that a child is any one below age 18 years. The Kenyan communities practicing the Islamic faith may not see any violation in having a child of 12 or 14 years married off.

Marriage within the Hindu community is governed by the Hindu Marriage and Divorce Act (Chapter 157 of the laws of Kenya) which provides under section 3(1) that the minimum age of marriage for females is sixteen years, whilst that of males is eighteen years (Kabeberi, 1990:12). The mentioned inconsistencies in Kenyan Law has for a long time provided a fertile ground for the abuse of the fundamental human rights of children. Unless the Kenyan laws are thoroughly scrutinized with the aim of identifying the flaws that disadvantage children, the laws meant to protect, will favour abuse.

4.2.1. The penal code (Caps 63 Laws of Kenya)

The penal code defines criminal offences in Kenya and their penalties. It is important because it contains offences that amount to child abuse, and as such deter people from committing these (NCCS, 2007:30). The penal code is also important because it sets the age at which a child can be held responsible for committing a crime (NCCS, 2007:30). Section 14 of the penal code (Chapter 63 of the laws of Kenya) provides that a child below eight years is (Kabeberi, 1990:11) immune from criminal responsibility, but this presumption may be overruled by the production of evidence that the child aged between 8 and 12 years knew what he or she was doing at the time of the commission of an offence (Kabeberi, 1990:11).

The fact that the definition of a child is any one below the age of 18 implies that there is a need to address the age of criminal responsibility, which still remains at 8 years. This should be adjusted upward (Save the Children, Finland, 2007:19). The penal code also forbids the imposition of the death sentence on a child, which is a major step in protecting the child's right to life. The right to life is also extended to the unborn child with the prohibition of abortion unless the life of the mother is threatened (UNCRC, 2004:84). The right to life is enhanced in penal code section 211, which provides that where a death sentence is passed in respect of a pregnant woman, the sentence should be submitted with an alternative sentence of life imprisonment (Kabeberi, 1990:9).

The penal code imposes a duty to those in charge over people unable to provide for themselves with necessities of life to provide such necessities. The failure to do so would result in a charge with an offence under section 216 of the penal code. These necessities of life include food, medical care and shelter (Kabeberi, 1990:32). Children fall within this category of persons who are unable provide for themselves with the necessities of life due to the fact that they are incapacitated by their age (Kabeberi, 1990:32).

The code also protects the child against slavery, trafficking and abduction. The penal code defines abduction as the act by any person who by force compels or by deceitful means induces another person to go from any place (UNCRCGOK, 2004:84). The penal code provides under section 143 that it is an offence for anyone to unlawfully take away an unmarried girl under the age of sixteen years from the custody or protection of her parent or lawful guardian without their consent (Kabeberi, 1990:17). Girls are abducted for various purposes, including forcible marriages, prostitution and even cheap labour. Section 174 of the code further makes it an offence for a person

to deprive either a parent or guardian of the custody of a child under the age of fourteen years. This is the offence of child stealing, which is punishable by a term of seven years imprisonment (Kabeberi, 1990:17).

4.2.2. The Criminal Law Amendment Act

This act became fully enacted in the year 2003 to amend the penal code, the Evidence Act and the Criminal Law Procedure Act. The act protects children against sexual offences in the following way:

- The amendment of the Evidence Act (section 124), removing the requirements of corroborations in cases of sexual offences where children of tender years (under 10 years) are victims.
- A magistrate can convict an accused person based on the evidence of such a child without that evidence being supported by other evidence so long as he/she believes the child's evidence is true (NCC, 2007:31).

The Criminal Law Amendment Act ensured removal of consent by the Attorney General to Prosecute in cases of incest. It further raises the age of sexual consent from 14 to 16 years for girls and set stiffer penalties for defilers, namely a maximum of 14 years to life imprisonment (Save the children Finland, 2007:19). This Act is appropriate in dealing with different forms of sexual abuse of children, especially concerning the age of consent. It should still consider the definition of a child according to the UNCRC. This will discourage adults who use money to influence school going children of below 18 years into sexual exploitation. If the age of consent is 16 years of age, it means adults, and especially those who engage in sex tourism with children below 18 years, are not guilty provided they have secured the consent of the children.

4.2.3. Employment Act (chapter 229 of the Laws of Kenya)

Employment Laws recognize the disabilities of a child and provide against his or her exploitation in the labour markets. The Employment Act (chapter 229 of the Laws of Kenya) recognizes that a person who has not attained the age of sixteen years is a child for the purposes of being engaged in any industrial undertakings (Kabeberi, 1990:11). However, the act allows children to be employed in industrial undertakings that are classified as an apprenticeship or an indentured learnership if

these are contracted within the provisions of the Industrial Training Act (chapter 237 of the Laws of Kenya (Kabeberi, 1990:11).

The following is a detailed explanation of the Act (ILO/IPEC, 2004:17):

- It allows for the employment of members of the same family in an industrial undertaking (Mining, quarrying, transport industry, construction, working in a factory, among others) unless there is danger to the life, health or morals of the employees.
- It does not apply to any technical school or an institution that is approved by a public authority.
- The Act prohibits the working of children in any open cast mining or sub-surfaces mining that is entered by means of a shaft, and employing a child otherwise than through a verbal contract is an offence.
- Unless there is a serious emergency and the minister for labour gazettes that there is a demand for women and children to work, no child shall be employed between the hours of 6.30 pm and 6.30 am in an industrial undertaking. However, an employer can be authorized to extend the time to midnight or from 5 am.
- Any person employing a child shall keep and maintain a register containing among other particulars the age or date of birth of the child and the date of entry into and leaving the employment.
- A labour officer may by notice in writing served upon the employers, terminate or cancel any kind of contract of employment entered between the child and an employer (Other than contract of apprenticeship and indentures learnership). This can happen if the officer believes that the employer is an undesirable person or that the nature of the employment is dangerous, immoral or hazardous to the health of the child.

The Employment Act needs to be reviewed in order to address the main labour issues affecting children. The following weaknesses are clearly associated with the Employment Act, (ILO/IPEC, 2004:19):

- By the age of 16 years many children in Kenya have not completed schooling.
- It does not address the employment of children in Kenya's agricultural sector and in the privacy of domestic homes where the phenomenon is more rampant than in industries.
- There is no lower age limit for apprentices and indentured learners.
- Penalties are extremely lenient.

- There is lack of clarity about what employer's registers ought to include.
- A medical officer estimating the age of a child on the basis of appearance leaves much room for error.
- The act does not indicate many benefits for the child apart from salary.
- The fact that children can be employed in bars, hostels, restaurants, clubs or as tour guides where liquor is sold for as long as the Commissioner has given consent is a gross infringement of the rights of children. They deserve protection from environments that are not conducive to their overall development.

The mentioned weaknesses have contributed to child abuse in the country. Child labour in the agricultural and tourism sectors is rampant. A fine of 100Ksh is an equivalent of 12 US dollars. The fact that the government is not in hurry to review the act is an indication that the country's commitment to protect the fundamental human rights of children is wanting.

4.2.4. Marriage Act

As stated earlier, for the purpose of marriage, the definition of the child is varied for the purposes of the more than 40 ethnic communities. Under customary law maritable age is attained through initiation to adulthood. This takes place at diverse ages. For Muslims following Islamic law, qualifications to marriage is attained with puberty. The Hindu Marriage and Divorce Act defines the maritable age for girls as 16 years while a boy qualifies at 18 years.

The multiplicity of definitions of the child in Kenyan laws has posed a great challenge to the elimination of violation of children's rights. The Marriage Act has yielded ground to some communities who practice the early marriage of children. Black (1991:25) shows that the manner of defining the law in Kenya and its various communities has also resulted to numerous grounds for discrimination against children in Kenya. Children in some Kenyan communities are well protected, while in other communities they are less protected.

Under section 35 of the Marriage Act, (Chapter 150 of the Laws of Kenya) a person who has attained the age of sixteen years and over is capable of contracting marriage, but he or she requires the consent of the parents or guardian before the marriage is celebrated (Kabeberi, 1990:12). In Kenya girls of 16 are school-going children with some still in the primary school. This law has not helped those children who drop out of school to get married with the consent of their parents. In coastal areas, especially among the Digo Communities who are African Muslims, research indicated

that girls drop out of school at upper primary and secondary level to get married. Early marriage has adversely affected the secondary school enrolment. Early marriage violates the developmental rights of these children. Considering the health problems associated with early marriage, we also witness the violation of the children's survival rights.

The Marriage Ordinance (the forerunner to the present Marriage Act) was enacted in 1902, while the Native Christian Marriage and Divorce Act) was first enacted in 1904 to enable African Christians to contract an English type of marriage (Kimondo, 1997:2). In this marriage, which is under the current statutory laws, the intended spouse must have attained the age of 16 years, with parental consent required where the intended spouse is younger than 16. A person will be guilty of an offence when he or she contracts a marriage with someone who is under aged without securing consent (Kimondo, 1997:9)

4.2.5. Traditional Liquor Act and the Liquor Licensing Act

The Liquor Licensing Act (Chapter 121 of the laws of Kenya and the traditional Liquor Act (chapter 122 of the laws of Kenya) Section 30(2) and 27(1) (d), respectively provide that no person shall knowingly sell or deliver liquor to be sold to a person under the age of or apparent age of eighteen years (Kabeberi, 1990:3). Liquor in this sense includes all alcoholic beverages produced by distillation.

These two acts require that if the one selling alcoholic beverage suspects a person to be under the age of eighteen years, he should demand identification of such a person to determine his or her age (Kabeberi, 1990:13). The acts are crucial in preventing children from becoming alcoholic. The acts prescribe to the child age as defined by the UNCRC, namely below age 18. It is worthy to note that some of the school-going youths are above 18 years. There should be a clear policy that no school-going persons should be allowed to purchase and consume alcohol. It is also not clearly stated what happens when the seller does not suspect that the buyer is under age. The act is critical in ensuring that the survival and development rights of children are not violated by engaging them in alcoholism.

4.2.6. HIV/AIDS Prevention and Instruction Act 2006

This act provides for compulsory instruction on prevention and modes of transmission of HIV/AIDS to all educational institutions (LRF, 2007:8). This act is important in ensuring children's

survival rights are not violated through ignorance. The act has enhanced the capacity of children to escape contracting HIV/AIDS. This is a big step in ensuring children, who are the future parents, live longer to take care of their children. HIV/AIDS has rendered many children orphans, with some being infected orphans.

4.2.7. The Traffic Act

The Traffic Act (chapter 440 of the laws of Kenya) under section 33(1) provides that no driving license or provisional driving license may be issued to persons who are under the age of sixteen or under eighteen years of age unless where a license is sought for motor cycles (Kabeberi, 1990:13). The act protects children from harming themselves by driving too early. It remains the responsibility of the parent, guardians or anybody in possession of the motor vehicle or motor cycle to ensure the child has no opportunity to drive the car. It will be an act of negligence if one lets a child to drive the car.

4.2.8. The Law of Succession Act

The Law of Succession Act (chapter 160, laws of Kenya) was enacted in 1972 (effective from 1981) (NCCS, 2007:31). This act deals with inheritance. Under the act, dependents may include children born out of wedlock and in cases of polygamous marriage, a past wife. Dependent children also include those not yet born at the time of death of the father so long as they are subsequently born alive. Children that the father has recognized or accepted as his own are also entitled to inherit (Kimondo, 1997:28). Under the act children who are disinherited have the right to apply to court for provision (NCCS, 2007:31).

Although a child can inherit property, the property and contract laws provide limited capacity to a child in matters of property management. Guardians (where the parents are dead) or a close relative may manage the property on behalf of the child. On attaining the majority age a child is presumed to be capable of managing the property (Kabeberi). The Act seeks to protect the child's right to own property and the resources of the parent. Orphaned children can suffer when the dead parents' properties are seized by greedy relatives.

4.2.9. The Guardianship of Infants Act

In most Kenyan communities custody of children on divorce, irrespective of the age, automatically went to the father unless the dowry or bride's price was returned (Kimondo, 1997:19). The position has been changed, because the Guardianship of Infant Act (chapter 144 Laws of Kenya) now requires that the court places as a primary consideration the welfare of the child, irrespective of custom (Kimondo, 1997:19). The court decision in 1978 clarifies that an infant should be given to the mother irrespective of customary law. Custody can not go to the father unless it is shown that the mother cannot provide good parenting (Kimondo, 1997:19). The guardianship of infants act does, under section 6, give both parents an equal right to apply to the court for custody. Before awarding custody to either of the parents, the court has to firstly consider the welfare of the child, secondly, the conduct of the parents, and lastly the wishes (if any) of both parents (Kabeberi, 1990:22).

In situations where there is a child of tender years (below seven years) the court normally awards custody to the mother on the basis that the mother is best able to look after a child who is still in an infant stage and is fully dependent on her for survival. There are also various instances when the court may issue a split custody order according to which one parent is given the physical possessions of the child and has the right of care and control.

The other parent may be given legal custody of the child, and it is this parent who makes all decision regarding the child. The parent denied the physical custody may be granted rights to visit the child at regular intervals. Where the physical custody is awarded to the mother, she is entitled to maintenance from the father of that child until the child attains the majority age (Kabeberi, 1990:22-23).

The act has demonstrated the government's commitment to ensuring children's material and emotional needs continue to be met even after divorce or separations. Child welfare is taken into consideration in making custody decision. Here the law takes the position of the Convention on the Rights of the Child.

According to the Separations and Maintenance Act under section 3(1) of the subordinate courts (Separation and Maintenance Act) (chapter 153 of the laws of Kenya), a married woman may apply to the court for a separation and maintenance order on various grounds, including that her husband has been guilty of persistent cruelty to her or her children, or of wilful neglect to provide reasonable

maintenance for her or her children, whom he is legally liable to maintain (Kabeberi, 1990:24). Here children are protected from physical, emotional and psychological abuse. Children who experience and witness domestic violence suffer the effect for long time. Section 4(b) of the act implores the court to order that the applicant wife be awarded legal custody of any child from the marriage aged below sixteen years. This includes children from the marriage and children born of the wife fathered by another man before the mother's marriage. Such children are entitled to maintenance by their stepfather until they attain the age of sixteen years or the mother dies, whichever occurs first (Kabeberi, 1990:24). This act, despite its efforts to protect the child, appears to discriminate against the children from the marriage.

The provision contains an uncomfortable discrepancy with respect to the children from the marriage, who the father continues to maintain even after attaining the age of sixteen years, and those children born to the mother before marriage, whose maintenance ceases on the attainment of sixteen years. This calls for the reform of the law regarding maintenance of children by their adoptive fathers. There lacks an equivalent provision regarding those children brought into the marriage by the father, mothered by another woman (Kabeberi, 1990:24). The Legitimacy Act (Cap 145), which sought to protect children born out of wedlock, has not functioned in protecting these children. The withdrawal of the Affiliation Act in 1969 saw the end of the legal duty on the part of natural father.

The Affiliation Act provided the mother of a child born out of wedlock with the right to apply for a court order compelling the putative father to the child to maintain the child. The sole responsibility of rearing such a child now lies with its mother (Kabeberi, 1990:31). The lack of policy on how to deal with children born out of wedlock and their parents has contributed to child neglect. This is evident from the huge number of street children in Kenya. The majority of Kenyan street children come from single families headed by unmarried mothers. The men who father these children naturally should be held responsible. The GOK and UNICEF (1998:41) support the same view:

“The present legal position as embodied in the marriage Act, the subordinate Courts has ignored Children born out of wedlock the law has continued to be demanding on children born out of wedlock and often refers to them as illegitimate. The lack of an effective law protecting such children has had an effect of stigmatizing them for the rest of their lives The lack of affiliation law is concerned about the pregnancy of the girl and not the child born out of wedlock, the compensation goes to the father of the girl and not the girl. The unfavorable position of children born out of wedlock has a negative

effect on the moral and social fibre and there is need for intervention to address the phenomenon”

4.2.10. The Adoption Act

Adoption may be defined as the legal method of creating a relationship between a child and its adoptive parents. It ends the relationships between a child and its natural parents and creates a similar relationship between the child and its adoptive parents (Kabeberi, 1990:38). Adoption services are offered as community based interventions that target abandoned and orphaned children and provide them with alternative families (GOK & UNICEF, 1998:56). It is different from foster care, which is a temporary relationship between a child and its natural parents (Kabeberi, 1990:38). Adoption law in Kenya is contained in the adoption Act (Chapter 143 of the Laws of Kenya). The objectives of this act are to facilitate the making and registration of adoption orders: to provide for the registration and control of adoption societies and other persons connected with the adoption of children, and to restrict the making or receipt of payments in connection with the adoption of children (Kabeberi, 1990:39). In Kenyan law the following has to be in place for an adoption to take place:

- The child must be at least six weeks old and declared free for adoption.
- An adoption order in favour of the persons adopting must be made by a court.
- Anybody who goes against this provisions section is liable to imprisonment for a term not exceeding six months or to a fine of not more than ten thousand shillings, or both (KAACR & Action Aid Kenya, 2002:27).

Kenyan Children who are adopted fall into the following categories:

- Unwanted children who are either born out of wedlock or born from young girls unable to maintain them.
- An abandoned child who may be found thrown into a pit latrine or rubbish dump, indicating that the mother does not want child.
- Children whose parents are close relatives and the customs of the parents prohibit the child from living in the community.
- Orphans whose close relatives are unable to take care of them.

- Ill-treated and neglected children whose parents either refuse or are unable to care of them, and children whose parents are either physically, emotionally or financially incapacitated of their children (Kabeberi, 1990:40).

The government has put in place resources to ensure that children's rights are not violated through adoption services. There are people who cannot adopt a child unless under special circumstances, and others who cannot adopt at all. The following persons cannot adopt a child unless there are special circumstances for an adoption order to be made.

- Sole male applicants in respect of a female child.
- A sole female applicants in respect of a male child
- An applicant or joint applicants who has or have both attained the age of 65 years.
- Sole foreign female applicant (NCC, 2007:40).

For the purpose of protecting the best interest of children, the following persons are strictly prohibited from adopting a child:

- A person who has been charged or convicted before of a child abuse offence, or
- Is a homosexual, or
- Joint applicants who are not married.
- Is a sole foreign male applicant (NCCS, 2007:40).

International adoptions can be conducted in respect of a child when two spouses who are not Kenyans apply, even when they are not in Kenya, provided that legal requirements are met (NCCS, 2007:41). For adoption to be effected legally, there has to be a sole applicant or two spouses, where each or one of them is at least 25 years old, and at least 21 years older than the child (NCCS, 2007:40).

This condition is appropriate to ensure that the people adopting a child are of proper and mature age to care for a child. Before issuing an adoption order the court has to be fully satisfied that the applicant has not received or agreed to receive any payments with respect to the issue of the adoption application. Giving or receiving of any payment or reward in connection with adoption application amounts to an offence under section 29 of the Adoption Act. Thus a person found guilty of committing such an offence shall be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding four thousand shillings (Ksh. 4,000) or to both (Kabeberi, 1990:42) The

restriction and prohibition from earning money by securing a child adoption is vital in preventing the abuse of children for financial gain. It is instrumental in preventing commercialization of adoption services. However, there are certain payments that are permissible under the act. These include payment that the court orders in respect of maintenance of an infant placed at the disposition of the society, and payment made by a parent or guardian to an adoption society for an infant who has not yet been adopted. Payment made to an advocate with respect to the application and court representation and any voluntary payments or contributions by an adoption parent, parent or guardian made to an adoption society are also permissible (Kabeberi, 1990:402-43). An adoption order has the effect of transferring all rights, duties and responsibilities over a child to the adopter as if the child was born inside a lawful marriage. In effect the parent, guardian or person having parental responsibility before the adoption relinquishes all rights, duties and responsibilities (NCC, 2007:41).

4.2.11. The Sexual Offences Act (2006)

This act protects children from all forms of sexual violence and abuse. It holds the following broad protection for children:

- Enhancing the age of a sexual consent for both boys and girls to 18 years.
- Protection for male children in the area of sexual offences. The previous laws were weak in the area of protecting male children (NCC, 2007:31).

The act is more specific on the different forms of sexual abuse from which children need protection. The following violations are addressed in the Act:

- Defilement
- Sex Tourism
- Prostitution
- Pornography
- Trafficking for sexual exploitation
- Incest; and
- Sexual harassment (LRF, 2007:13).

The act offers various safeguards for the child survivor of a sexual offence while giving evidence in court. For instance, the act allows a child who is too traumatized to testify through an intermediary

(LRF, 2007:13). It also stiffens penalties for sexual offences by creating minimum terms of imprisonment (NCCS, 2007:31).

The law is a demonstration of Kenya's commitment to protect the rights of children. However, one clear challenge is the fact that there are difficulties in enforcing the act. One of the major steps that need to be taken is to ensure that enforcement agencies like the police and local chiefs are aware of the act and understand its application. For instance, although children's rights are part of the police-training curriculum at Kenya's police training college, the training only forms a small part of the curriculum and there is usually no refresher training or follow up (Jones, 2006:20). There is also an obstacle arising from the fact that the police training college is only for new cadets and does not address the information gap that exists with police officers who are currently active and no longer in the training system (Jones, 2006:20). Training for the old and new police, as well as for the lawyers handling children's cases, remains a vital and unaccomplished goal. There is a need for the government to provide this training in order to make the Sex Offence Act of 2006 more relevant for children.

4.2.12 The Refugee Act 2006

The Refugee Act makes provision for the recognition, protection and management of refugees, and it reflects the broad principle captured in the international legal instruments relating to the rights of refugees (Save the Children Finland, 2007:40). Kenya has a large number of children who come from neighbour countries. This act is crucial in providing protection to the children. It has very particular protection measures enriched under section 23 for refugee women and children. It requires a child in need of refugee status or who is considered a refugee to be offered appropriate protection and assistance whether accompanied or not.

4.2.13 The Constitution

The Constitution of Kenya is a written constitution originally enacted on 12 December 1964 so as to establish a Republic with a president as head of state (Tudor, 1988:4). The Constitution is supreme and takes precedence over all other forms of law, written and unwritten. Kibwana (1990:1) points out that the fundamental human rights under the constitution of Kenya are in chapter five of the constitution. Kibwana (1990:1) further states that the chapter can be divided into the following four categories:

- Rights to life and what sustains life
- Rights relating to liberty and security of persons
- Rights dealing with the communication of ideas and
- Rights regarding protection under the law.

The Kenyans Constitution describes the rights contained in chapter five of the constitution as fundamental rights, freedoms and protections. The rights are described as fundamental because the existence of a society can hardly be conceived without them (Kibwana, 1990:5). The following are the listed protection rights (ECJP, 2000:35):

- Protection of the right to life
- Protection of the right to personal liberty
- Protection from slavery and forced labour
- Protection from inhuman treatment
- Protection from deprivation of property
- Protection from arbitrary search or entry.
- Provisions to secure protection of law
- Protection of freedom of conscience
- Protection of freedom of expression
- Protection of freedom of assembly and association
- Protection of freedom of movement
- Protection from discrimination on grounds of race etc.

The above bill of rights offers protection for the safeguarding of the individual rights and freedoms of Kenyans, including children (NCCS, 2007:30). The overall framework for the protection of children's rights is provided by the constitution, which guarantees the enjoyment of the mentioned individual liberties (GOK/UNICEF, 1998:32). One serious concern is the fact that there is no specific reference to children in the constitution. Children have been accorded blanket protection (GOK/UNICEF, 1998:32). However, the right of the child to special treatment and protection is provided for in the other laws that derive from the constitution (GOK/UNICEF, 1998:32). Section 70 of the constitution entitles every Kenyan to the enjoyment of these rights and embodies the principles of equality of all persons in Kenya. These are further protected by section 84, which establishes a constitution to protect against the breach of the fundamental rights and freedoms set out in section 70 to 83 of the constitution (GOK& UNICEF, 1998:32). Kabeberi (1990:60) points

out that the constitution of Kenya, which protects the individual from discrimination by virtue of section 82, should be amended to include age and sex as additional grounds for protection. She argues that although section 82 does protect the child against discrimination on grounds of race colour, creed or religion, a child is not likewise protected by virtue of age and sex.

As pointed out, these loopholes in the constitution give way to all sorts of instances where a child is denied his or her basic needs by reasons of age. The necessary amendment should be effected and the constitution should have a provision dedicated to the child citizen. Improvement of this constitution in relation to child rights would help in sensitizing the nation to the rights of children.

4.2.14 Children Acts 2001 (Cap 586, Laws of Kenya)

The Children Act No. 8 of 2001 was mainly passed to provide for similar provisions as the UNCRC. Kenya has been a signatory to UNCRC since 1990, and this means the government agreed with the contents of this convention (KAACR & Action Aid Kenya, 2002:2). The act combines into one law a number of laws that affect children, such as the Children and Young Persons Act, the Guardianship of Infants Act, and the Adoption Act (KAACR & Action Aid Kenya, 2002:IV). The act mirrors the provisions of the CRC, the African Charter and other instruments on the rights and welfare of the child (NCCS, 2007:31). Part I of the Act gives the legal definition of various terms, phrases and sections in the act. Some key definitions include:

- A child as any human being under 18 years
- Child abuse is defined to include physical, sexual, psychological and mental injury
- Parent means the mother or father of a child and includes any person who is liable by law to maintain a child or is entitled to his custody.
- Early marriage means marriage or cohabitation with a child or any arrangement made for such marriage or cohabitation
- Female circumcision is the cutting of part or all of the female genitalia, and includes the practices of clitoris excision, infibulations or other practices involving the removal of part or the entire clitoris or labia minora of a female person (NCC, S 2007:32).

The act is also important in clarifying definitions of key issues that affect Kenyan children. The mentioned issues have remained ambiguous in the constitution and the previous laws. However, the many definitions of a child in different laws has contributed to the eradication of child abuse. In part two where safeguards for the rights and welfare of children is addressed, the role of the

government and families in protecting the rights of children is mentioned, and the rights are outlined as follows:

- Inherent right to life
- Right to education
- Right to religious education
- Right to health and medical care
- Protection from child labour and armed conflict
- Children should not be recruited in armed conflict or take part in hostilities
- Right to a name and nationality
- Right of children with disabilities to be treated with dignity
- Protection from child abuse
- Protection from harmful cultural rites
- Protection from sexual exploitation
- Protection from drugs
- Leisure and recreation
- Torture and deprivation of liberty, and
- Right to liberty (KAACR and Action Aids Kenya, 2002:4, 5).

As stated earlier, the act is intended to give effect to the principles of the convention on the rights of the child, as well as the welfare of the child. The outlined rights are a reflection of Kenya's commitment to abide by the UNCRC in protecting the rights of children. The Act reflects the ideals of the African Charter on the rights and welfare of the child where duties of the child are specified.

The following are indicated as duties of the child:

- To behave in a way that makes the family and community live in unity
- To respect parents and other members of the family, members of the community and those people who are older than the child
- Serve the community by their talents and abilities
- Preserve and strengthen positive cultural practices (KAACR & Action Aid Kenya, 2002:6).

The act has clearly pointed out the responsibilities and the rights of a parent over a child. Responsibilities of a parent refer to the duties, rights, powers and authority that a parent has by law

over the child's property in a manner consistent with the evolving capacities of the child (NCC, 2007:33). The duties include maintenance of the child and provision of adequate diet, shelter, clothing and medicine. They also have to ensure the child is not left to suffer or is abused in any way (KAACR & Action Aid Kenya, 2007:7).

The rights of a parent over a child also include determining the name of a child, administering the property of a child, providing social, moral and religious guidance, arranging for or stopping emigration out of Kenya, and burying or cremating a child upon death (NCC, 2007:33). The act has therefore helped parents to understand their rights and limits when dealing with children. Children are also able to demand their rights and when denied to seek justice. Kenya has numerous cases of a child abuse and neglect at family level. Parents who fail to abide by the act face the full consequences of breaking the law. To enforce the rights of children the act stipulates that any person who alleges that the rights of a child have been, are being or are likely to be contravened may apply to the High Court for redress on behalf of the child (NCC, 2007:32). The act states that any person who is convicted of having infringed the rights of a child shall be liable to a term of imprisonment not exceeding twelve months, or to a fine not exceeding a thousand Kenya shillings or both fine and imprisonment (NCCS, 2007:33). Although this is a general unspecified penalty for violation of children rights, there are other specific penalties for particular crimes that amount to the violation of children rights. The act also mentions specific violations of some of the rights of children. The following rights serve a good example for this:

- **The right to life**

The Children's Act section 190(2) outlaws the sentencing of a child to death. A death sentence can also not be imposed on a pregnant woman due the unborn child's right to life (LRF, 2007:8). The act has taken a major step in recognizing the importance of the unborn child, and the child in general. It also agrees with the international covenant on civil and political rights (1966), which obligates states that retain the death penalty not to impose it on a person less than eighteen (18) years of age at the time the offence was committed (LRF, 2007:8).

- **Right to medical care**

The Children's Act provides that every child shall have the right to health and medical care, the provision of which shall be the responsibility of the parents and the government (ANPPCAN,

2008:20). The act served a noble purpose in ensuring that the government implements the provision of free medical care to children under the age of five years in all public hospitals (LRF, 2007:8).

- **The right to protection against torture**

Section 18(2) of the Children's Act outlaws torture, cruel treatment, punishment, unlawful arrest, or deprivation of liberty where children are concerned. Chances of torture and related abuses are further minimized given that this legislation prohibits state authorities from compelling children to give testimony or confess guilt (Save the Children Finland, 2007:32). In the past it was a common idea to have people and children apprehended and tortured to have them confess guilt. The act in section 191(2) bans corporal punishment for child offenders, but the same form of punishment is legal under section 36 of the Borstal Institution Act, which houses juveniles between 15 and 18 years of age. Corporal punishment is also not banned in the home (Save the Children Finland, 2007:32). The weakness of the act with regard to this issue further appears when section 127 of the act maintains that nothing takes away the right of a parent, guardian or custodian of a child to punish a child reasonably (KAACR, 2007b:17). Section 127 of the act is used by parents, teachers and other personnel of institutions dealing with children to inflict different forms of corporal punishment on children.

- **The right to protection from sexual exploitation and abuse**

The Children's Act maintains that children have the right to protection from sexual exploitation and abuse, including prostitution and involvement in pornography. The act also maintains that a child shall be protected from sexual coercion and the use of child prostitution inducement coercion to engage in any sexual activity or to be exposed to obscene materials (LRF, 2007:13).

- **The right to protection from drugs**

The act has described the issue of drug abuse among Kenyan Children in a more comprehensive way. Section 16 of the act provides that children have a right to protection from the use of narcotic and psychotropic drugs, and from being involved in their production or distribution (LRF, 2007:12).

The act defines a child as anyone under 18 years of age and maintains that even inducing a child to take drug is an offence (NACADA, 2006:1). Substances such as alcohol, cigarettes and other chemical substances are categorized as drugs (NACADA, 2006:1).

- **The Children's Act and the offence of neglect**

The act provides for the offence of neglect, which prohibits wilful neglect, ill treatment and cruelty towards children by their parents and other caregivers. The offence attracts imprisonment for a maximum of two years and fine of up to Kshs. 200,000 (UNCRC, 2004:84). In the past such offences carried Kshs. 5,000 or six months imprisonment under the Children and Young Persons Act in section 23 (Kabeberi, 1990:33).

- **Protection of the law**

The act establishes a children's court to handle children's legal matters (Save the Children Finland, 2007:11). In the Children's Act sections 73-79 and part XIII, the role and procedures of this court is set out as the following:

- The special court established will manage children's and related matters, whether the child is in conflict with the law or in need of care and protection. These courts, called Children's Courts, hear both civil and criminal proceedings related to children.
- There is a right of appeal to the High Court and the Court of Appeal.
- Cases relating to children should be heard in camera (private).
- Courts should appoint a guardian to protect the best interests of children when an advocate does not respect the child.
- The identity of children before courts should be protected and not known to the general public either by name or face.
- The words "conviction" and "sentence" should not be used in respect to any decision made by the Children's Court (LRF, 2007:15).

The act outlines ways of dealing with children who are in conflict with law and means to deal with child offenders (NCCS, 2007:41). The child offender is not supposed to be subjected to the same treatment as an adult when there is a finding of guilt by the court. The following methods are recommended:

- Setting the child under probation or
- Placing the child with a fit person who may be a relative or a charitable children's institutions willing to take care of the child or

- Committing the child to a rehabilitation school if the child is between 10 and 15 years or
- Ordering the offenders to pay a fine, compensation or costs or
- Committing the child to a Borstal Institution or
- Placing the child under the care of a qualified counselor
- Placing the child in an educational or vocational training programme
- Making a community service order
- Not subjecting a child offender to corporal punishment
- Not ordering a child to imprisonment or a detention camp
- Not sentencing a child to death (NCCS, 2007:4).

Despite the steps to enact the law, children are still charged with minor offences that relate to poverty, such as petty theft (CRADLE, 2003:26). The number of children's courts and magistrates is small, leading to the holding of children in police cells and remand homes (GOK and UNICEF, 1998:88). There is much that needs to be done to achieve fairness when it comes to children's protection under the law.

4.3 CHILDREN'S FUNDAMENTAL HUMAN RIGHTS IN THE LIGHT OF INTERNATIONAL LEGAL INSTRUMENTS

An international legal instrument refers to laws that apply to more than one country (NCCS, 2007:24). In the past the application of the law was exercised at a national level. Every country or community had its own conception of human rights. For instance in Athens, rights were accorded only to adult male property holders who were natives of the territory controlled by the city of Athens. Women, slaves, foreigners and children were explicitly excluded from consideration (Lundy, 1998:1).

Western conceptions of human rights seem to go back only as far as the eighteenth century with the Bill of Rights in the United States of America and the Declaration of the Rights of Man at the start of the French revolution (Lundy, 1998:1). Concerning children, in the pre-United Nations era the rights of children were seen primarily in the context of measures to be taken against slavery, child labour trafficking and prostitution of minors (UN, 1991:1). With time various international instruments documents evolved. This section seeks to bring to light some of these key international instruments.

4.3.1 The Geneva Declaration on the Rights of the Child 1924

The International concern for the rights of the child is said to date back to this Geneva Declaration of the Rights of the Child (ANPPCAN, 1989:41). The declaration has been a guide to private and public action in the interest of children ever since (UN, 1991:1). It can also be described as a reflection of the standards and values that all nations should aim to achieve in relation to the rights of the child. It states that mankind owes the child the best means and necessities for his development (ANPPCAN/ISPCAN, 2004:15).

4.3.2 The Universal Declaration of Human Rights 1948

The declaration was the first document drafted after the formation of the United Nations to recognize human rights (NCC, 2007:24). On 10th December 1948 the United Nations Assembly proclaimed the declaration (Vorster, 2004:8). The declaration had been accepted by vote, with 48 states in favour, none opposed and 8 abstentions (Lundy, 1998:5). In 30 straight forward articles the declaration sets out all the major principles of human rights, which became the standard elements of all human rights debates and agreement in the years to follow (Lundy, 1998:5). The declaration was also an improvement on the 1924 text. In this regard it adopted ten basic principles of child welfare protection, among them entitlement to education and to special care and assistance (ANPPCAN/ISPAC, 2004:15). The declaration can be termed as a major breakthrough in that era, and especially after the Second World War, which ended in 1945.

As stated in that declaration children should be accorded special care and assistance. Major lessons must have been learned from the war and the holocaust. Children suffered a major blow during the world war and what followed. However, one of its limitations is that the issue of child rights was not raised (ANPPCAN/ISPCAN, 2004:15). This implies that if any service is offered it is not as a child right, but mere charity. The document was furthermore a resolution of the United Nations General Assembly (Vorster, 2004:8). This means the countries were under no obligation to adhere to the declaration until they signed and ratified the declarations.

4.3.3 The Declaration of the Rights of the Child 1959

On 20 of November 1959, the United Nations General Assembly under resolution 1386 XIV adopted this declaration. The move was a result of the international concern over human rights abuses that largely affected children, and the devastating effect of war on children (Kabeberi,

1990:3). It recognizes that a child by reason of physical and mental immaturity needs special safeguards and cares. This declaration stipulates various rights of the child and calls on all persons to recognize these rights and equally to strive to have these recognized by the national laws (Kabeberi, 1990:3). The declaration is viewed as the revised verses of the 1924 declaration (NCCS, 2007:24). The following are some of the principles spelled out in the declaration:

- The child must be protected beyond and above all considerations of race, nationality or creed.
- The child must be cared for with due respect for the family as an entity.
- The child that is physically or mentally challenged must be taken special care of.
- The child must enjoy the full benefits provided by social welfare and security (NCCS, 2007:24).

This declaration was the first international instrument exclusively devoted to children's rights (NCC, 2004:24). It introduced the principle of the best interest of the child to guide all those who would be involved in making decisions that would ultimately affect children (NCCS, 2007:24). The declaration can be regarded as a milestone in providing a basis for a rights-based protection of children. The right not to be discriminated against on any ground is provided to children, and children with disabilities receive attention above all.

4.3.4 The International Covenant on Civil and Political Rights 1966

The covenant requires state parties to recognize that every child shall have without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor on the part of his family, society and the state (Lawyers committee for human Rights, 1991:69). With reference to the protection of children the covenant prescribes that the death sentence shall not be imposed for crimes committed by persons below eighteen years of age and for pregnant women (NCCS, 2007:24). The covenant has serious implications for the protection of the child offender's right to life. This is because children under 18 years are considered incapable of making sound decisions on mature choices. By sparing the life of pregnant women the unborn child's right to life is acknowledged. It also has implications for parenting. The covenant also maintains that juvenile offenders ought to be separated from adults in remand or prison (NCCS, 2007:24). The covenant appears to be the first international legal instrument to provide clear guidelines on how to handle child offenders. The covenant also recognizes the right of the child to a name, nationality and registration immediately after birth (Lawyers committee for human rights, 1991:69).

4.3.5. International Covenant on Economic, Social and Cultural Rights (ESC) 1966

This covenant requires the ratifying states to protect children and young persons from economic and social exploitation (ANPCAN/ISPCAN, 2004:18). The ratifying governments are required to ensure that employment of children in work that is harmful to their morals and health, dangerous to life or likely to hamper their development is made punishable (ANPPCAN/ISPCAN, 2004:16). The covenant is the first major international legal instrument to address economic exploitation of children in a detailed manner. The covenant requires the states to set age limits below which child labor should be prohibited (Lawyers Committee for Human right, 1991:68). The setting of age as earlier stated is very crucial in dealing with child labour. In Kenya for example the definition of a child is contained in different acts for the purpose of meeting their legal objectives. The Employment Act (Cap 226 Laws of Kenya) protects children less than 16 years of age from employment in an individual undertaking except when it takes place within a family setup or when it is a form of training (NCCS, 2007:26) Children are engaged in other forms of child labour in Kenya like agricultural mining, domestic work and security. The ESC was an important covenant in dealing with this challenge. It was adopted and opened for signature on December 16th 1966 (Lawyer Committee for Human Rights (1991:68). Other issues addressed by this covenant are survival issues. The covenant maintains that the rates of still births and infant mortality should be reduced (NCCS, 2007:25). The covenant was the first one to address the developmental rights of the child by providing for the right to free education (NCCS, 2007:25).

4.3.6. International labour conventions on child labour

In tackling child labour the international labour organization (I.L.O) has come up with important covenants governing different aspects of child labour (NCCS, 2007:29). A convention is an official agreement between courtiers or leaders, and international conventions are internationally respected rules about how countries should treat their citizens and one another. If a country supports the rule, it signs or ratifies the convention, thereby making it legally binding (ILO/IPEC, 2004:9). The I.L.O conventions applicable to the employment of children and young person mainly specify a standard minimum age and define conditions of right work. The following are some of the major conventions.

- **I.L.O convention number 138 on the minimum age of entry to employment**

This convention was adopted by the I.L.O in 1973 to deal with minimum age of employment (NCCS, 2007:29). The convention calls for states to specify the minimum age under which no person can be admitted into employment (NCCS, 2007:29). As earlier stated, different countries have their laws and ways of setting their minimum age for children to be engaged in labour.

The convention sets the minimum age at 15 years as the age of completion of compulsory education (NCCS, 2007:29). In Kenya a compulsory education extends to class 8, which is the final year of primary education. Most children complete the 8 years program at age 12-15 years. That means in some countries children complete their compulsory education then find themselves in a dilemma, not in school and not able to engage in labour activity. That is why a country like Kenya encourages such children to be engaged in training or apprenticeship.

- **I.L.O convention No. 182 on worst forms of child labour and recommendation 190**

This convention prohibits and calls for immediate action for the elimination of the worst forms of child labour (ILO/IPEC, 2004:1). The convention has cited the following as the worst forms child labour (ILO/IPEC, 2004:13):

- All forms of slavery such as sale and trafficking of children, debt bondage forced or compulsory recruitment of children for use in armed conflict.
- Using, procuring or offering a child for prostitution or for the production of pornography or pornographic performances.
- Using a child for illicit activities and in particular the production or trafficking of drugs.

- **Recommendation 190**

This document was produced to provide governments with guidelines on how to effectively come up with programmes that drive towards the elimination of the worst forms of child labour (NCCS, 2007:30). The document provided the following recommendations (NCCS, 2007:30):

- Government should identify and denounce the worst forms of labour
- Action should be taken to prevent children from being victims

- Attention should be paid to younger children, girl children, and also address issues of hidden work situations and disabled children.

The document further talks about hazardous work and mentions the categories of such work (NCCS, 2007:30). Hazardous work includes:

- Any work that exposes a child to physical, psychological and/or sexual abuse.
- Working underground, in water, dangerous heights, confined places, working with dangerous equipment, machinery or tools or transporting heavy loads.
- Working in an unhealthy environment.
- Working in particularly difficult conditions e.g., long hours of work (NCCS, 2007:30).

The detailed description of the categories of child labour is very important in addressing the problem of child labour. The countries and communities that may endanger children unknowingly are able to examine themselves in the light of the convention and Recommendation 190.

4.3.7 United Nations Minimum Rules on Administration of Juvenile Justice (Beijing Rules 1985)

The set of rules was the first international legal instrument to provide detailed guidelines for the protection of the rights with respect to a child offender (ANPPCAN, 2004:16). The United Nations adopted the rules in 1985 (ANPPCAN, 2004:16). The aim of the rules is that every child accused or found guilty of having infringed on penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth (ANPPCAN, 2004:16). The Beijing rules generally call for the following:

- The presumption of innocence until proven guilty
- The child should be informed promptly of the charge
- To have the matter determined without delay
- The right to legal presentation and assistance
- It calls for diversion as an alternative to court proceedings
- It calls for the enhancement of the child's dignity at all times and that the child is rehabilitated and reintegrated into society (NCCS, 2007:25).

The rules are very important when it comes to child protection. There are countries that are notorious for their blindness for human rights when it comes to dealing with offenders. Children in such countries stand protected by the Beijing rules. The rules have been incorporated in the UNCRC and African Charter on the rights and welfare of the child (ANPPCAN, 2004:16). These rules are binding upon ratification by any country.

4.3.8 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

The Riyadh guidelines urge states to come up with programs that would ensure that juveniles are prevented from indulging in delinquency (NCCS, 2007:25). The guidelines served the noble purpose of improving the ability of some countries to address the root cause of juvenile delinquency. In Kenya the phenomenon of street children provides a good example of how poverty may affect children's character and upbringing. The same notion is echoed the following:

“Street children and children of the poor families in general form the vast majority of those children who drop out of school. This children lack both the material and psychological support to enable them to continue their education. Most of them come from unstable family back ground and therefore enjoy little support from their parents (shorter & Onyancha, 1999:104)

The Riyadh guidelines also serve as encouragement to the nations to pay attention to the developmental rights of children. The guidelines suggest some of the following programmes (NCCS, 2007:25):

- Empowerment of the family socially and economically
- Educational curriculum that enhances the moral well-being of children
- Community-based initiatives that tap into youth potentials and steer them away from crime (NCCS, 2007:25)

Considering the role played by parents in protecting children, the guidelines points out to government policy makers to attend to the poverty of children at family level. There are also many children who leave schools because the schools are less child friendly in terms of methods of teaching and even the learning environment. The Riyadh guidelines advocate for proper educational curriculums since this makes schools more child friendly.

4.3.9. United Nations Rules for Protection of Juveniles Deprived of their Liberty (JDL Rules)

The JDL Rules call for the protection of children who have come into conflict with the law and have to be deprived of their liberty (NCCS, 2007:25). The rules are critical in securing help for those children in the hands of persons or institutions meant to accord them justice. A report by UNICEF (2004:89) indicates how children in Kenya stay in over-crowded remand cells. The report also indicates that children are taken to Borstal Institutions to be rehabilitated.

The law allows for children in Borstal homes to be accorded corporal punishment. The JDL rules call for the deprivation of liberty to be used as a last resort (NCCS, 2007:25). The same is echoed by the Kenyan Children's Act under the Child Offender Rules, which state that the child has the right to expeditious resolution of matters (UNCRC, 2004:88). Where the case is not completed within 3 months the case is dismissed to allow the children to go back to school (UNCRC, 2004 88).

4.3.10. The United Nations Conventions on the Rights of the Child (UNCRC)

The process of coming up with the UNCRC began in 1979 (NCCS, 2007:25). The convention on the rights of children was adopted by consensus in the United Nations General Assembly on 20th November 1989 (Shorter & Onyancha, 1999:40). An unprecedented total of 61 countries signed the convention on 26 January 1990, the first day it was opened for signatures, and with receipt of over 20 ratifications on September 1990 the convention entered into force (UN, 1991:2).

The Centre for Human Rights in Geneva, which is the United Nation's secretariat for all human rights activities, called the conventions on the rights of the child "the most complete statement of child rights ever made" (Lundy, 1998:25). The convention takes the ten principles of the 1959 Declaration on the Rights of the Child and expands them to 54 articles of which 41 relate specifically to the rights of children covering all aspects of life (Lundy, 1998:25). Lundy (1998:25) rightfully maintains that the UNCRC, as the most recent expression of international concern for children, serves as a unique benchmark for the assessment and an understanding of the situation of children in any country in the world. Proper understanding of the implementation of the UNCRC enables states to protect the fundamental human rights of children effectively. The same position is echoed in the following description of the UNCRC:

“Encompassing the whole range of human rights – civil political economic social and cultural the convention recognizes that the enjoyment of one right cannot be separated from the enjoyment of others, It demonstrated that the freedom a child needs to develop his or her intelligence, moral and spiritual capacities. It calls for among other things a healthy and safe environment, access to medical care and minimum standards of food clothing and shelter (UN, 1991.3).

Lundy (1998:25), in a detailed description of UNCRC, points out that the convention is more than just a document for use by international experts, diplomats and child welfare theorists. She maintains that the convention has a practical side because it is directly oriented at taking specific measures, establishing carefully defined standards, and making a determined effort to change the conditions in which most of the world’s children live. The UNCRC has therefore led to specific measures being put in place by nations like Kenya, which domesticated the UNCRC and incorporated in its children’s act. This has already impacted in the manner child related policies are crafted and implemented. The following are some key characteristics of the UNCRC:

- It is comprehensive and it guarantees children their civil, political, economic, social and cultural rights.
- It is universal and consequently applies to all children of the world irrespective of their situations, communities and traditions.
- It is unconditional. It calls on all governments, even those without resources, to take action to protect children rights.
- It is holistic, it asserts that all rights are essential and equal (UNICEF, 2007:26).

The difference between UNCRC and the previous declaration is major one. This difference is explained as follows:

“Resolution and conventions are two different sources of international law. Resolution by their nature are not formally binding upon member states but they merely reflect the general desire of the member states to achieve common purpose and as such do not impose any obligations on individual states to implement them. On the other hand Conventions which are international agreements (Bilateral or multilateral), do impose obligations upon the members states who ratify them to ensure effective implementation.

In order for conventions to commence operation they must be ratified by specified number of member states“(Kabeberi, 1990:8).

No resolution can match the CRC. The UNCRC is the world’s most widely recognized human rights instrument (LRF, 2007:4). Almost all member countries of the UN apart from Somalia (which has no central government to ratify) and the largest economy, the United States of America, have signed the convention (LRF, 2007:4).

In addition to setting standards for dealing with children, the convention establishes new ethical principals for dealing with children (LRF, 2007:4). These principles and standards uplift the welfare of children globally. The convention recognizes that not all governments have the resources necessary to ensure all economic social and cultural rights are met immediately. However, it commits them to making those rights a priority and ensuring the rights to the extent possible (UNICEF, 1998:11). As recognized by the convention, a country like Kenya may experience many challenges when it comes to according children these rights. One major challenge is limited resources, but although Kenya may lack adequate resources to facilitate the rights of children, her politics will need to be examined to see whether it measures up to the expectations. UNICEF explains this as follows:

“Fulfilling their obligations sometimes requires states to make fundamental changes in national laws; Institution plans, policies and practices to bring them into line with the principles of the convention. The first priorities must be to generate the political will to do this. As the drafters of the convention recognized, real change in the lives of children will come about only when social attitudes and ethics progressively change to conform with laws and principles (UNICEF, 1998:11).

Therefore the convention needs to be accompanied by a change in social attitude and ethics to conform to laws and principles, for instance Kenya has domesticated the entire UNCRC, but that has not adequately transformed the welfare of children in Kenya. Serious violations of children’s fundamental human rights are still rampant.

4.3.10.1 Guiding principles of the United Nations Convention on the Rights of Children (UNCRC)

- **Definition of the child (UN, 1991:14)**

The convention sets the standard definition of children to be those persons who are below 18 years of age (UN, 1991:14). However, the convention also recognizes that in some states, the age of the majority may be attained earlier, as dictated by the different cultures (AHRC, 1997:27). In the same manner the age of majority also varies according to the assumption of responsibility as provided by the law of the specific countries. For instance, in some states persons who are fifteen years old will be liable for their criminal acts and can engage in employment (AHRC, 1997:27). There are other states, like Kenya, which allow entry into marriage of persons below eighteen years of age under circumstances that can be viewed as a challenge to the implementation of the Convention.

- **Non-discrimination**

Article 2 of the convention protects the child against discrimination (UN, 1991:14). This right applies regardless of race, sex, language, religion, political or other opinion, national, ethnic or social origin, place of birth or status (UN, 1991:14). Article 2 of the convention makes the point that the protection from discrimination also applies in relation to the situation of anyone in the child's family. Thus we find in paragraph 2 of the article the stipulation that children may not be discriminated against on the basis of anything that parents, guardians or other relatives may think, say or do (Lundy, 1998:29).

The convention also takes into consideration the principle of respect for differences and identifies areas in which states need to take positive action to promote the rights of children from groups that have traditionally been disadvantaged and marginalized.

This requirement is found in Article 30, which specifically stipulates that any child of ethnic, religious or linguistic minorities or indigenous origins should be able to enjoy his or her own culture, to profess and practice his or her own religion and to use his or her own language (Lundy, 1998:30).

- **Best interest of the child**

Article 3 paragraph one states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administration authorities or legislative bodies, the best interests of the child shall be primary (UN, 1991:14).

- **Effective implementation and maximum extent of available resources**

Article 4 points out that states parties have to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention (UN, 1991:15). The second sentence of article 4 further states that with regard to economic, social and cultural rights, state parties shall undertake to extend their available resources where needed within the framework of international cooperation (UN, 1991:15). The drafters of the convention realized the economic constraints existing in many developing states that signed the convention. The attitude intended to be generated by the second sentence of article 4 is that state parties should not use the inadequacy of their resources to derogate from their obligation to the convention. Instead, priority must be given to programmes affecting the economic, social and cultural rights of children within the jurisdiction of a state party (AHRC, 1997:34).

4.3.10.2 Rights under the convention on the rights of children

- **Survival and development rights**

- **Right to life**

Article 6 of the convention provides the standard guarantee of the right to life for all children (Lundy, 1998:30). These rights require states to take positive action to promote the survival of children, as well as measures to facilitate the full development of the child in both education and establishment of social structures that promote the overall integration of children into society and protect them from harm (Lundy, 1998:30). The survival of children can be promoted through immunization campaigns to prevent the spread of infectious disease or support for adequate nutrition, among others.

One of the key issues arising from Article six (part 1) is the question of “when life begins”. While every state recognizes all persons’ inherent right to life, the interpretation of the paragraph remains

diverse. In the Philippines for instance, protection of human life extends to the person in the womb as Article II, section 12 categorically mandates the state to protect the life of the mother and the life of the unborn from the moment of conception (AHRC, 1997:37). In Kenya the penal code prohibits abortion unless the life of the mother is threatened (GOK, 2004:84). In Kenya the right to life is extended to the unborn and this is demonstrated by the provision in penal code 211, which provides that where a death sentence is passed with respect to a pregnant woman, the sentence should be substituted with an alternative sentence of life imprisonment (Kabeberi, 1990:9).

➤ **Right to adequate standard of living**

Article 27 of the convention addresses the child's right to adequate standard of living. The article recognizes the role of the state and parents in ensuring the child is accorded this right to a standard of living adequate for his or her moral and social development (UN, 1991:41). According to the convention, state parties are expected to assist parents and others responsible for the child to implement this right and in case of need are supposed to provide material assistance and support programmes particularly with regard nutrition, clothing and housing (UN, 1991:32).

The following points to the importance of the mentioned position of the Article 27:

“In most developing countries poverty affects most families and a toll heavily on the children poverty restricts the enjoyment of the economic rights depriving children of the rights to food, adequate clothing and humane shelter. Children are pushed to the streets to fend for themselves and become easy prey of evil influences. At an early age this children are robbed of their childhood and innocence because of the harsh life they have to struggle against” (AHRC, 1998:41).

The government is not supposed to watch as children suffer where the parents are unable to meet their children's needs. Governments should put some measures in place to provide the basic needs. Kenya, just like other developing countries, has many children on the streets. The presence of street children is an indication that although the Kenyan government has domesticated the CRC, there is a lot more to be done. Domesticating the CRC should be accompanied by putting measures in place to ensure the fundamental human rights of children are protected, as stipulated in the convention.

➤ **Right to health**

Article 24 addresses the right of a child to a standard health. The following statement in the article elaborates this right well:

“State parties recognize the right of the child to the enjoyment of the highest attained standard of health and to facilitate for the treatment of illness and rehabilitation of health, state parties shall strive to ensure that no child is deprived of his or her right of access to such health care service (UN, 1991:30).

In Kenya attempts have been made to accord children this right. The public Health Act (chapter 242 of the Laws of Kenya) makes it mandatory for parents to vaccinate their children against diseases such as whooping cough, polio, tetanus or diphtheria within the early years of childhood (Kabeberi, 199:34).

Although the law is there, full implementation of article 24 is yet to be realized. The convention maintains that “state parties shall pursue full implementation of this right” (AHRC, 1997:42).

➤ **Right to Parental Care and Support**

In article 5 the convention emphasizes children’s right to parental care. The principle is that both parents have joint primary responsibility for bringing up their children and that the state should support them in this task (Jahangir and Doucet, 1993:74). The convention not only points out the role of parents in caring for their children, but even points out the rights of extended family members to care for the children. State parties are required to accord the parents and guardians the necessary assistance to ensure they uphold this right of children. The convention directs states to intervene where a child is separated from parents either through death or imprisonment by ensuring the living parent takes care of the child.

➤ **Right to social security**

Article 26 addresses the right to social security. This right is supposed to be granted in accordance with the national law (AHRC, 1998:52). The article further states that the benefits should be granted appropriately, taking into account the resources and the circumstance of the responsibilities for the maintenance of the child (UN, 1991:32). This article implies that the right to social security should

be granted, but that the prevailing circumstances should determine to what extent the right can be attained. This is in recognition of the fact that some poor countries are unable for instance to provide free education and medical services to their children because of their economic challenges.

4.2.10.3. Protection Rights

- **Right to a name, Nationality and Identity**

According to article 7 all children should be registered at birth and issued with a birth certificate that provides the primary evidence of their existence (Lundy, 1998: 109). This registration at birth also entitles them to services provided by the state and to participation in the life of the community as citizens (Lundy, 1998:109). The article points out the right of the child to know who the parents are, and also the right to be cared for by their parents (UN, 1991:16). The convention in this article grants an adopted child the right know about his or her parents, among other things (Lundy, 1998:109).

Children are well protected in this article, and the mentioned measures such as registration and knowledge of parents ensures children are not stateless and can be easily traced when stolen, lost or even when in danger of trafficking or in emergencies. Article 8 clearly illuminates the element of protection. The following describes the article in better words:

“This article combines an obligation not to deprive a child through death or imprisonments by ensuring the living parent takes care of the child of nationality name and family relations, along with an obligation to act positively to restore a name which has been lost (for example by refugees children separated from their families (Lundy, 1998:109).

- **Protection from Child Abuse and Maltreatment**

The convention defines child abuse as a crime committed by the parents or legal guardians, or any other person who has the care of the child or is exercising control over the person of the child (AHRC, 1997:71). According to article 19 state parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s) legal guardian(s) or any other person who has

the care of the child (Jahangir and Doucet, 1993:74). Lundy (1998:112) maintains that this article emphasizes the importance of preventing child abuse. It relates to Article 20, which deals with the reasons for which children may be removed from the care of parents, and article 39, which deals with the provision of rehabilitation services for the victims of abuse.

- **Protection from Sexual Abuse and Exploitation**

Article 34 specifically deals with the following three occurrences:

- Sexual abuse, where children are victims of rape and sexual assault,
- Child prostitution, which refers to the commercial activity where children are used to offer their bodies to satisfy the lust and desires of clients,
- Pornography where children are used in shows, movies, prints and commercial advertisement as objects of sex without physical contact (AHRC, 1997:75).

The article states that national and bilateral measures should be taken to prevent sexual abuse (UN, 1991:37). The measures should prevent the following:

- The inducement or coercion of the child to engage in any unlawful sexual activity,
- The exploitation of children in prostitution and other unlawful practices,
- The exploitative use of children in pornographic performances and materials (UN, 1991:37).

- **Protection from dangerous drugs**

Article 33 of the convention presents the child's right to protection from the use of narcotics and psychotropic, drugs and from being involved in their production or distribution (Jahangir and Doucet, 1993:84). The article contains the following statement:

“State parties shall take all appropriate measures including legislative, administration social and educational measures to protect children from the use of children in the illicit production and trafficking of such substances (UN, 1991:37).

The article clearly points out that it is the duty of the state to protect children from drug abuse. This could be done through advocacy and punishing those who make drugs available to children.

- **Child Abduction, sale, trafficking and Illicit transfer**

For the purposes of the convention, abduction simply refers to the kidnapping of children, in other words taking them away against their will or without their consent or with deceit, regardless of the motive (AHRC, 1997:99).

Article 35 in this case addresses the problem by maintaining that state parties have the obligation to take all appropriate national, bilateral and multilateral measures to prevent abduction, the sale or traffic in children for any purpose or in any form (Lundy, 1998:118). The same position is echoed in Article 11, which maintains that state parties shall take measures to combat the illicit transfer and non-return of children abroad (AHRC, 1997:99). The convention further enhances this protection right in article 10, paragraph two. This article states that a child whose parents reside in different states shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contact with both parents (UN, 1991:19). The convention further acknowledges the right of the child and his or her parent to leave any country, including their own, and to enter their own country. (UN, 19991:19). Here the convention seals all gaps that may be used to deny the child this particular protection.

- **Other forms of exploitation**

Article 36 of the conventions states that state parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare (UN, 1991:39). The convention in this article recognizes that there are numerous forms of child exploitation, and it is a catch-all phrase to cover those forms of abuse and exploitation that are not included in the previous enumerations (AHRC, 1997:103).

- **Children in Emergency Situations**

Children in emergency situations are those children who are already in a situation of danger and require immediate aid and relief (AHRC, 1997:104). Children caught in situation of armed conflict for instance suffer from consequences of hostilities and would have to be evacuated. The same goes for a child refugee who is forced to flee his or her country to escape persecution (AHRC, 1997:104). Article 3 states that in all actions concerning children, whether undertaken by a public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the

best interest of the child shall be a primary consideration (ISCA, 2000:208). This implies that children in emergencies will be well taken care of if treated in the light of this article's exhortation.

- **Children in Armed Conflict**

Article 38 of the convention pays special attention to the protection of children in situations of armed conflict. In this article state parties are directed to refrain from recruiting persons who have not attained 15 years of age. The article further states that in recruiting among those persons of between age 15 and 18, the oldest should take priority (UN, 1991:40). Article 38 further exhorts state parties to take all feasible measures to ensure protection and care of children who are affected by armed conflict (UN, 1991:40).

- **Refugee Children**

Article 22 of the convention calls for provision of appropriate protection and humanitarian assistance to children. This human treatment is supposed to be accorded even to those refugee children whose parents cannot be traced (UN, 1991:27). The article is a major help to refugee children, and as Lundy (1998:113) observes, these children need access to health care, education and other elements of humanitarian assistance. Under article 20 & 21, if family members cannot be found, refugee children are supposed to be accorded the same treatment as nationals of the country concerned (Lundy, 1998:114).

- **Children deprived of a family Environment**

The UNCR addresses the rights of this group of children in article 20. The article states that "A child temporarily or permanently deprived of his or her family environment or in whose own best interests cannot be allowed to remain in that environment shall be entitled to special protection and assistance provided by the state" (AHRC, 1997:108). The following category of children form the group of children deprived of a family environment:

- Abandoned children, meaning children rejected by their parents, thus denied of care and protection either due to poverty or mere irresponsibility.
- Neglected children who are denied care and protection within their household. This could be due to poverty, parental negligence or ignorance.
- Orphaned children who have lost at least one parent.

- Children of imprisoned mothers who do not accompany their mother into prison. The majority lack caring relatives and often suffer loneliness and labour exploitation among other's woes.
- Street children who live and work on the streets with few or no ties to their families (UNICEF, 1998:53-5).

➤ **Children in conflict with the law**

Article 37 of the convention addresses the rights of children in conflict with the law in a very detailed manner (ISCA, 2000:217). In article 37 children in conflict with the law are protected from torture, inhumane treatment, capital punishment and life imprisonment (UN, 1991:39). The article points out that children deprived of liberty shall be treated with humanity in a manner that takes into account the needs of persons of his or her age. The child is in these circumstances supposed to be separated from adults and is entitled to contact and parental unity (UN, 1991:120). The article further states that a child deprived of liberty should have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent independent or other impartial authority, and to prompt decision on any such action (UN, 1991:120). The ideas in article 37 are enhanced in article 40 of the convention. In this article a child accused of having infringed the penal law has the following guarantees:

- To be presumed innocent until proven guilty according to law.
- To be informed promptly and directly of the charges against him or her.
- To have the matter determined without delay by a competent and impartial authority or judicial body in accordance to the law in the presence of legal or other appropriate assistance.
- Not to be compelled to give testimony or to confess guilt.
- If considered to have infringed the penal law, to have this decision and any measures imposed in consequence these of reviewed by a higher competent, independent and impartial authority or judicial body according to the law. To have the free assistance of an interpreter if the child cannot understand or speak the language used.
- To have his or her privacy fully respected at all stages of the proceeding (ISCA, 2000:218).

- **Protection from economic exploitation**

Some children work, and they are protected by this article. Working children find themselves in difficult circumstances because of the possibility of exploitation (AHRC, 1997:137). Exploitation of

these children is imminent because of their original status and their vulnerability (AHRC, 1997:137). Article 32 of the convention seeks to protect children in this category, and states:

“State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” (Jahangir and Doucet, 1993:82).

The convention directs states (represented by governments) to establish minimum ages for employment that are in accordance with the ages established for compulsory education, and to establish and enforce standards for all employment of anyone below the age of 18 (Human Rights Watch, 1995: 181). The states are further directed in article 37 to provide for appropriate penalties or other sanctions to ensure the effective enforcement of the article (UN, 1991:37).

- **Participation Rights**

- **Right to Opinion**

This provision finds clear application in matters involving family affairs and children. The child may be silenced within the family setting, and thus denied the right to voice his/her concern.

Article maintains that state parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child (UN, 1991:20).

The convention here concerns itself fully with the child’s right to participation when it comes to decisions or measures being taken in relation to child’s life. The following description of participation helps clarify the right to opinion as a participation right.

“Child participation is a process of a child development that provides an opportunity for children to be involved in decision making on matters that affect their lives and to express their views in accordance with their evolving capacities Child participation recognizes children are not a passive, powerless target group, but rather capable communicators, who can effectively engage in activities within their communities” (UNICEF/NCCS, 200:1).

In article 12, paragraph 2, the convention further addresses the right of the child to be heard in any judicial and administrative proceedings affecting the child (UN, 1991:20). As a result of this article, standard practice in many countries that have ratified the convention is that when a court or other competent authority makes a decision about where a child would live, the views of the child must be taken into account (Lundy, 1998:111). This article expands that principle to apply to “all matters affecting a child”. The views expressed by any child should be assessed in terms of the child’s ability to understand the issue and form an opinion (Lundy, 1991:111).

➤ **Right to freedom of expression**

In article 13 of the convention it is stated that the child shall have the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds (UN, 1991:20). The only restrictions on children's freedom of speech, as with adults, relate to the protection of others from libel or slander, or for the protection of public safety and general morality (Lundy, 1998:111).

The free expression of children, however, is not absolute. The child’s right to free expression must be balanced with his or her responsibility to respect the dignity, personality, privacy and peace of mind of their neighbors (AHRC, 1997:178).

➤ **Right to freedom of thought, conscience, and Religion**

This right is contained in article 14 of the convention. State parties are required to respect the rights of parents to provide guidance in this regard (Jahangir and Doucet, 1993:71). In this article there is recognition of the parents’ role in forming ideas and beliefs. Although parents can guide the beliefs of children as children grow and develop the ability to think for themselves, they are supposed to be given increasing freedom to make up their own minds (Lundy, 1998:111).

As indicated in article 14 the freedom to think, to believe and to adhere to a religious organization is absolute and cannot be interfered with. However, the freedom to act in accordance with such beliefs may be subjected to limitations when it interferes with public order, public safety or the enjoyment of the rights of others (AHRC, 1997:178).

➤ **Right to freedom of Association and peaceful assembly**

Article 15 points out *that state parties recognize the rights of the child to freedom of peaceful assembly (Human Rights Watch, 1995:54)*. As stated in this article, children have right to gather in groups, clubs and organizations, either on their own initiative or with support and encouragement from adults (Lundy, 1998:111). There is the same provision of protection that any such association should not infringe the rights and freedom of others (Lundy, 1998:111). As stated in paragraph 2 of article 15, no restriction may be *placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in the interest of national security or public safety (Human Right Watch, 1995:54)*.

➤ **Right to privacy**

This right is well stated in article 16, which states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honor or reputation (UN, 1991:23). In countries like the Philippines the law tasks the prosecutor to limit the publication of information, photographs or artistic renderings that may identify the victim of child abuse while their cases are heard in chambers of judges (AHRC, 1997:183).

Article 15 paragraph 2 points out that the child has the right to the protection of the law against interference with his or her privacy or against attacks against his or her honor or reputation (UN, 1991:23). This implies that the state has an obligation to ensure the child has this right. Even the state is prohibited from interfering with the privacy of the child or his or her family (Lundy, 1998:112). It refers back to non-discrimination protection in article 2, which protects children and their families alike (Lundy, 1998:112).

➤ **Protection of the Rights of Indigenous children**

The right of indigenous peoples to enjoy their own culture is recognized in international conventions (AHRC, 1997:140). Children of indigenous people need this protection, it is common to find discrimination extended to them because of their culture. Article 30 of the convention says the following regarding indigenous children.

In those states in which ethnic, or religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her culture, to profess and practice his or her own religion, or to use his or her own language” (UN, 1991:36).

➤ **Protection of the Rights of Disabled Children**

Article 23 comments widely on the rights of disabled children. Disabled children belong to one of the most vulnerable sectors of society and if no measures are put in place to address their plight, their rights end up grossly violated.

Children with disabilities can be described as those who are mentally retarded, physically handicapped or even mentally ill (AHRC, 1997:142). The convention pays attention to the foundational concerns touching on the livelihood of disabled children. Some of the major concerns are the enjoyment of a decent life, dignity and participations of a disabled child in the community (UN, 1991:28). The convention further recommends that the assistance extended to the disabled child in the form of services shall be free of charge. Such services include health care services, rehabilitation services, preparation for employment and recreation opportunities (UN, 1991:28). The CRC takes into consideration the health challenges faced by in the effort to address the concerns of disabled children, as indicated in the following paragraph:

“State parties shall promote, in the spirit of international co-operations the exchange of appropriate information in the field of preventive health care and medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling state parties to improve their capabilities and skills and widen their experience in there areas. In this regard, particular account shall be taken of the needs of developing countries (Lundy, 1998:114).

The CRC recognizes the need to assist the disabled child by encouraging exchange of information and co-operation in attending to the needs of disabled children at international level. The developing world, by cooperating with developed world, can benefit. As Lundy (1998:114) puts it, this article is one of three which specially notes the importance of international cooperation (development assistance) in the provision of services that will fulfil the rights of children. She

maintains that bilateral (country to country) development assistance, as well as programmes undertaken by multi-lateral agencies should incorporate components explicitly directed to fulfilling the rights of children with abilities.

- **Development Rights**

- **The Right to information**

Article 17 points out that the state parties shall ensure that the child has access to information and material from a diversity of national and international sources. In the article the importance of information that promote social, spiritual and moral well-being and physical and mental health is emphasized (Lundy, 1998:112). The article mentions the need to encourage the production and dissemination of children's books (Lundy, 1998:12). There is also a special provision in this article for the mass media to provide both a channel for communication and a source of information for children of minorities or indigenous children. Lundy (1998:112) says that state parties are instructed in the article to encourage the development of appropriate guidance for the protection of the child from information and material injurious to his or her well-being (AHRC, 1997:151). This concern is crucial and when addressed can help alleviate the negative impact the media has on children. The negative media effects felt by children are emphasized in the following:

“For at least in the past few decades, physicians have been raising concerns about the media's impact on children and many have come to see it as a public health issue on our children (Steyer, 2002:194).

Radio, television, magazines, and newspapers are easily accessible to children and could readily influence their susceptible minds (AHRC, 1997:151). The reference to article 18 in connection with protecting children from harmful information points to the key role of parents in providing that protection (Lundy, 1997:112). Steyer (2002:189) holds parents responsible for their children's exposure to media:

“In addition to limits on the quantity of media, set limits on the type and content of the media products that your child can use. One of the most important issues is age appropriateness. Although this can be a complex issue, general principles of age-based development hold true. In other words if you are the parent of a four- year-old, a

movie rating indicates that the film is for children six and older, pay attention to other rating”

State parties have the responsibility to ensure that children are protected from harmful media effects. This can be done for example by creating a film and television review and classification board. Such a board can be mandated to approve or disapprove, or delete objectionable portions of motion pictures, television programmes and publicity materials, which includes advertisements that are objectionable (AHRC, 1997:152).

- **Rights to education**

The UNCR tackles the right to education in a detailed manner. Article 28 exhorts state parties to make primary education compulsory and to provide it freely to all (UN, 1991:34). The article in paragraph b also tells state parties to encourage the development of different forms of secondary education, and to provide financial assistance to the needy children who may be disadvantaged economically to the extent of missing learning opportunities (UN, 1991:34). The convention here also recognizes the rights of children such as those who are forced to live and work in the streets by reason of poverty, juvenile delinquents and indigenous children. Such children can immensely benefit from different forms of secondary and even primary education, such as non-formal education (AHRC, 1997:153). The CRC further addresses the issue of higher education by encouraging state parties to ensure that it is accessible to all children (UN, 1991:34). The discipline issue in schools is also raised by the convention. An improper approach to child discipline in schools has contributed to high school dropout rates in many countries. Article 28 points out that state parties should take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity (Human Rights Watch, 1995:179). This implies that all forms of child abuse in schools are contrary to the expectations of the convention.

- **Rights to leisure, recreation and cultural activities**

The convention recognizes that children should be given opportunities to use their leisure time creatively. The convention maintains that state parties should recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child (UN, 1991:36). The state should encourage the conduct of activities that will strive to develop children’s social, physical and intellectual growth (AHRC, 1997:162). The responsibility to enable the child to attain the right to leisure and to take part in cultural activities also lies with the parents. The parents

should encourage their children to join community activities by giving them the opportunity to form or join social, cultural, educational, recreational, civic, or religious organizations or any other useful community activities (AHRC, 1997:162). The state should also promote physical education and encourage sports programmes in order to ensure that the right to leisure and recreation is accorded to children (AHRC, 1997:163).

4.4 Conclusion

Children's fundamental human rights are well addressed in the Kenyan laws and the international legal instruments. There are a number of weaknesses cited in Kenyan legal system when it comes to protection of the fundamental human rights of children, such as the several statutes relating to children. Different laws regarding marriage such as Hindu, Muslim and African customary laws with their different definitions of children affect the rights of children. According to the Kenyan laws the age of consent allows persons who are defined as children (between 16 years and 18 years) to consent to sexual intercourse. There is a need to harmonize the laws so that the age of consent is in line with the Children's Act, which maintains 18 years. The penalties for child abusers are not stiff enough to deter culprits. Despite the weaknesses mentioned, Kenya has taken some major steps and has domesticated the Convention on the Rights of the Child. The independent Churches of Kenya can be effective in championing the fundamental human rights of children if they take keen interest in learning, understanding and observing Kenyan laws and the international legal instruments that protect these children's rights.

CHAPTER 5

THE INDEPENDENT CHURCHES IN KENYA AND THE VIOLATION OF CHILDREN'S FUNDAMENTAL HUMAN RIGHTS

5.1 INTRODUCTION

This chapter focuses on the background and the characteristics of the Kenyan independent churches with the aim of demonstrating how it negatively affects their ability to protect children against the violation of their fundamental human rights. The chapter exposes the different forms of violation of children's fundamental human rights. When a child is abused, either physically or emotionally, the fundamental human rights of the child are being violated. As Kibwana (1990:5) points out, the following rights contained in chapter five of the Kenyan constitution are fundamental:

- Right to life
- Protection against slavery and forced labour
- Protection from discrimination
- Right to secure protection of the law
- Freedom of movement

The rights are considered fundamental because the society cannot exist without them (Kibwana, 1990:5). The rights of children can be classified into four main categories: life and survival rights, development, protection and participation rights (LRF, 2007:8). Violation of these fundamental rights takes different forms, which are worth explaining.

5.2 THE BACKGROUND OF THE INDEPENDENT CHURCHES AND HOW IT RELATES TO THE VIOLATION OF THE CHILDREN'S FUNDAMENTAL HUMAN RIGHTS

This section attempts to demonstrate that independent churches have not been able to adequately protect the fundamental human rights of children by highlighting the core limitations.

5.2.1 Historical Background

As Mugambi (1989:21) puts it, a study of church history in isolation from secular events distorts that history. Similarly, the history of the independent churches has much to do with the general history of the church in Kenya. Between AD 1500 and 1800 the first contact between African Kenyans and the Europeans Christians occurred along the Kenyan coast. The contact failed to establish any lasting Christian churches because when the Portuguese came to east Africa, they were not interested in spreading Christianity. The main interest was trading with Asia, and the east Coast of Africa provided calling ports for the ships destined for India and the Far East (Mugambi, 1989:22).

On Saturday afternoon, 7th April, 1498 Vasco Da Gama, a Portuguese explorer, anchored off Mombasa near where Fort Jesus stands today. After Vasco Da Gama confirmed that there were extensive gold fields along the East Coast in the hands of hostile forces, Lisbon decided to take adequate steps to ensure that the Portuguese had the monopoly of such riches. He captured Kilwa and Mombasa after heavy fighting (Nthamburi, 1995:8).

The Portuguese began constructing in Mombasa and by 1599 Francisco Da Gama reported that the church in Mombasa was nearly completed. Augustinian missionaries who had begun the work also tried to evangelize, and they reported that 600 people had been converted (Nthamburi, 1995:4).

Another major factor that influenced the coming of missionaries to Kenya was the partitioning of Africa by the Berlin conference (1884/85). Missionary societies tended to follow their national flag in mission as they felt the need for maximum protection. For instance, the granting of the royal charter to the imperial British East Africa Company (I.B.E.AC) in 1888 had a direct bearing on the expansion of the protestant missionary activities. Sir William Mackinnon, the company's director, encouraged the missions to extend their work into the interior, particularly where the company could ensure their safety (Nthamburi, 1995:10).

The establishment of the British East Africa protectorate and the building of Uganda railway, which began in Mombasa in 1895, reaching Nairobi in 1899 and Kisumu in 1901, provided the impetus to other missions into the interior (Nthamburi, 1995:10).

The church missionary society (CMS), which was founded in 1799, sponsored the first missionary to East Africa, Dr. Ludwig Kraft, a German. This was in 1844, the year commonly considered to be the beginning of the second missionary initiative from Europe to East Africa (Mugambi, 1989:30).

The Christian missionary enterprise in East Africa was very closely linked to the campaign for the abolition of the slave trade. Dr. Livingstone said that other explorers argued that the slave trade should be replaced by legitimate “Commerce and Christianity.” This legitimate commerce was to be based on the production of cash crops such as cotton and coffee, which would supply raw materials for factories in Europe. Commercial consideration was tied up with evangelical zeal (Mugambi, 1989:30). The circumstances linked with the coming of mission churches to Kenya played some role in the formation of independent churches. The African population identified the missionaries with the colonial masters and their rule, nationality, culture and religion (Gehman, 1987:30).

Mbiti explains this as follows:

“The Bible is used more and more by Africans as a weapon by which to reclaim authority from Christians from elsewhere in the world and overseas centres such as Rome (Vatican), Hamburg, London, New York, Geneva, Athens (Mbiti, 1986:42).”

5.2.2 Definition and Characteristics of the independent Churches of Kenya

Okoth (1996: 61) defines an independent African church as any movement or organization whose inspiration was originally Christian, which either breaks away from the mission church or is founded independently and which is under African control.

It is estimated that there are about one hundred and eighty indigenous or independent churches in Kenya. Generally these churches were founded from the initiative of lay people who were concerned about the authenticity of the church. Many of them struggled to indigenize Christianity by incorporating the African traditional religious worldview (Nthamburi, 1995:20). The following statement echoes the same sentiment:

“The Western missionaries in their endeavor to convert the Gikuyu, believed that they had to get rid of all their traditional customs and beliefs which were termed unchristian. Vigorous attacks were waged against practices like dances, polygamy and circumcision. It was the latter practice, particular female circumcision which generated

so much controversy and conflict between the Gikuyu and the protestant churches led by the Church of Scotland missions, that finally led to the break away by some Gikuyu Christians in 1929 who formed their own independent Churches” (Ndungu, 1998:95).

There are four major categories of independent churches in Kenya (Murray, 1991:129-133):

- **Nationalist Churches**

These are churches that emerged from the political, educational and cultural struggles of 1920's and 1930's. They also emerged as a result of dissatisfaction over the type of education offered by mission and government agencies, anxiety over land, and resentment of attempts at forced cultural changes (prohibition of female circumcision and polygamy). Africans who had been members of mission churches left and formed churches independent of mission control. Some of these churches are the African Independent Pentecostal Church and the Orthodox Church of Kenya, among others.

- **Secessionist Churches**

These are independent churches that originated from a clear-cut schism or split from a mission founded church over some question of policy or leadership. The resulting church usually covers a geographical area formerly occupied by the mission church, encompassing a total congregation. A church by the name African Christian Church and Schools, which was formed in 1947 by members and adherents of the African Inland Mission in the Southern Fort Hall District, is a good example.

- **Revival Pentecostal Churches**

These churches practice baptism by immersion and hold that the Christian must receive the baptism of the Holy Spirit, marked by a charismatic gift. Anglican Christians in Fort Hall who were influenced by the Rwanda Revival Message formed “Arata a Roho” (Friends of the Holy Spirit).

- **Spirit Churches**

These churches reject western education, clothing, amenities, medicine and they seek guidance only from the Scriptures and the Holy Spirit. Examples of this are Akurino, Aroti (Dreamers), Anabii (Prophets). The largest churches today are Holy Ghost Church of East Africa, The Kenya

Foundation of the Prophets Church, the Holy Spirit Church Zayuni, the African Mission of the Holy Ghost Church and God's Word and Holy Ghost Church.

Most of the independent churches have practices that further the violation of children's fundamental human rights. In Kenya it is common to hear of governmental intervention in cases where church members are taken to court for failing to take their children to hospital. This is common with Spirit churches. Among the rights considered by the UN Convention on the Rights of the Child and the African Union Draft Charter on the Rights and Welfare of the Child, the following are commonly violated by members of independent churches (Mwiti, 2006:21):

- The right to proper food and medical care. Every parent is expected to make sure that the child is well fed and that treatment for illness is immediately sought.
- Every child has a right to be protected from all kinds of harm. These include all forms of economic exploitation and social cultural practices injurious to the child. When some of the independent churches insist on embracing female genital mutilation, the fundamental human rights of the girl child are being violated.

Every child has a right to moral upbringing. In every society there are various harmful social and cultural practices that encourage the development of an immoral value system. In every society morality is defined by the cultural norms and practices of its people and a clearly defined value system reduces confusion and insecurity in the child. Kenya's independent churches that insist on practices like polygamy and immoral traditional dances do not provide children with the proper atmosphere for moral growth. These parents do not serve as good role models.

Mbiti (1986:18) voices his concern over the situation of the African independent churches. He laments that their growth results in a kind of Christianity arising of and rooted in African life, resulting in a kind of folk religion, a folk church that merges imported traditions and thought with local needs and traditions. The following description of independent churches points out a great weakness:

“Some of the churches resemble very much the mission churches from which they broke off. Some have moved a considerable distance in their life and thought from the normal form of Christianity, are wrapping themselves up with more or less excessive local culture and traditional religion. Many of the Christian in the independent churches still belong at the least nominally or even actively to their original churches, but attach

themselves to one or more local independent churches for particular purposes and occasions, such as healing sessions and festivals” (Mbiti, 1986:16).

5.2.3 The impact of the African traditional worldview on the Kenyan independent churches’ response to the fundamental human rights of children

Kato (as quoted by Adeyemo, 1979:209), the late General Secretary of the Evangelical Association of Madagascar (EAM), notes that the pride in culture and the undue respect for African Traditional Religion is leading some church men astray. Most members of independent churches have great reverence for their traditional religion and this is because the majority of the independent churches are influenced by the African traditional worldview. A worldview is the central systematization of the conception of reality to which the members of the culture prescribe (largely unconsciously) and from which their value system stems. The worldview lies at the very heart of culture, touching, interacting with and strongly influencing every other aspect of the culture (Kraft, 1980:53). The worldview of any culture presumably originates in a series of agreements by the members of the original group concerning their perception of reality and how they should regard and react towards that reality (Kraft, 1980:53). The majority of the members of the independent churches of Kenya refer to themselves as Christians, but their lifestyle is shaped by the African traditional worldview. The following statement echoes this:

“It is common in Africa, for instance for the people to conduct a formal Christian wedding in the church and then go to the village for the traditional celebrations. In the long run, when pagan customs are practiced in secret, they combine with public Christian teachings to form Christopaganism – a syncretistic mix of Christian and non Christian beliefs” (Hiebert, 1994:185).

5.2.4 Key Factors that Promote the African Traditional Worldview among members of the Kenyan Independent Churches

5.2.4.1 Bible Translation

When Africans had the Bible translated into their mother tongue, the majority detected a basic conflict between what missions taught and what they felt the Scriptures taught regarding what were to them major points of conflict, namely the traditional customs such as polygamy (Mbiti, 1986:30). The translation of the Bible is also associated with the origin of the African theology in Kenya. In

1929 the African Inland Mission Field Council in Kenya appointed two men to translate the Nandi Bible: Stuart Bryson, the African Inland Mission missionary, and Samuel Gimnyinge, the Nandi pastor. For ten years these and other Nandi believers worked on the translation and in May 1939 the British and foreign Bible Society printed the whole Nandi Bible, the first vernacular Bible in Kenya (Gehman, 1987:29).

Mbiti (1986:31, 32) points out the complications that developed as a result of Bible translation:

“The translation of the Bible into an African language provides a high degree of authority by means of which Christians can fashion their thinking and life. That is the authority which penetrates deep into their spiritual, social, cultural and recreational welfare. It gives them a form of liberation from ready-made and imported Christianity, a liberation to generate the kind of Christianity which more fully embraces the totality of their existence. They lean more and more on the Scriptures as the basic guide of their life, more or less as if no time gap existed between their life today and contemporary world of the Bible. For some Christians, this liberation finds expression in the formation of independent churches.”

The wrong position taken by most of the independent churches can only be corrected through exposing the leaders to proper training, especially on Bible interpretation. The majority of the leaders use the concept of African theology to perpetuate their heresies. Gehman (1987:30) makes a poignant statement when saying:

“The task of thinking through our Christian faith and applying the divine truth to our cultural context is both desirable and necessary. But unless a house is built on solid foundations it will crumble with the passage of time. The house to be built is a Christian theology in Africa. The foundation to be laid is our methodology whereby we develop Christian theology in Africa.”

Mbiti (1986:20) supports this argument as well by pointing out that authentic African Christianity can only evolve out of interaction between the gospel of Jesus Christ and the total life of the people, and this is an on-going process. He further maintains that African Christianity should bear both local and universal imprint.

5.2.4.2 Improper Hermeneutical Approach

The mistaken hermeneutical approach of the independent churches has led them to think the Bible supports the traditional worldview. Vorster (2007:9) maintains that the interpreter should distinguish between descriptive and prescriptive parts in Scripture. He points out that sometimes Scripture describes a historical event or customs. In this case a mere description or survey cannot be used as a justification.

Exegesis, which is a critical explanation or analysis of passages of Scripture, is lacking among the independent churches. Exegesis is the Biblical word used to indicate the process of critically explaining a text, drawing out its meaning (Bruce & Larry, 1989:166).

5.3.2.3 Uncritical Contextualization

Contextualization means that the Word must dwell among all families of mankind today as truly as Jesus lived among his own kin. The goal of contextualization is to enable, in as far as it is humanly possible, an understanding of what it means that Jesus Christ authentically experienced each and every human situation (Gilliland, 2000:225). Most independent churches have gone astray in the process of contextualization of the gospel. Proper contextualization must challenge people individually and corporately to turn from their evil ways. Some African scholars and missionaries end up supporting independent churches' status quo through improper contextualization. Proper approach for the same is given in the following:

“The beginning point is to study the people concerned. The key to communication and path ways to the human heart and spirit lies in the culture. The assumption is that people know best their own culture; world-view themes, symbols, myths are repositories of truth for all people. While this is true, unless discernment about a culture is brought to the word for affirmation or judgment the contextualization exercise can become distorted and misleading (Gillilan, 2000:227).

African theological scholars who sympathize with independent churches, and even some western missionaries, have tended to approve African traditional practices of independent churches blindly. Hiebert (1994:185) maintains that uncritical contextualization of the Gospel overlooks the fact that there are corporate and cultural sins, as well as personal transgressions. He further stresses that sin

is found in the cultural beliefs and is exhibited as group pride, segregation against others and idolatry.

Independent churches whose pastors do not engage in proper exegesis of the Bible and whose members are not exposed to the study and interpretation of Scripture are victims of uncritical contextualization. If Christians continue with beliefs and practices that stand in opposition to the gospel, these in time mix with their new found faith and produce various forms of neopaganism (Hiebert, 1994:185). The truth is neopaganism is already established among many independent churches, and it is experienced in different African traditional practices.

5.3.2.4 Illiteracy

Just like other parts of Africa, illiteracy is a common challenge facing leaders and members of most independent churches in Kenya. Mbiti (1986:42, 43) echoes the same:

“It needs to be pointed out that, even though African Christianity is Biblically grounded, many of its 236 million Christians cannot read and write. Literacy rates range from 7% to 85% of the population in different countries of Africa. This means in effect that for millions of Christians the Bible is personally a closed book, except for what they hear or retold to them. However that does not deter some lay preachers, both men and women from doing their work of spreading and explaining the Christian message even when they themselves cannot read or write.

As stated by Mbiti, illiteracy among the leaders of the church is common. Most of the independent churches were founded by the illiterate lay readers who managed to attract a large following of uneducated people. Illiteracy implies they cannot properly interpret the text. They hear from those who read Scripture for them. This explains why there is much allegorical preaching in most of the independent churches. Most of the independent churches embrace the African traditional worldview because of a lack in education. Adeyemo (1979:79) states that the literal grammatical and historical interpretation of the Bible cannot be maintained by the exponents of African Traditional religion because they have given allegorical interpretations to such an extent that the Biblical eschatological realities make little or no sense to the mind of the reader.

5.2.5 African Traditional Practices that Amount to Violations of Children's Fundamental Human Rights

Kenyan independent churches are highly influenced by the African traditional religion and its practices. The churches need to be sensitized to reject what is unchristian in their culture by evaluating African traditional practices in the light of Biblical view of children and the United Nation Commission for Children Rights UNCRC. Mbiti (1975:14) states that since African religion belongs to the people no individual member of the society concerned can stand apart and reject the whole of his people's religion. To do so would mean to cut himself off from the total life of his people. Even if the individual is converted to another religion this should not mean abandoning his African Religion and other religions, the convert retains much of his cultural and religious background as long as he remains with the traditional set of life.

If Kenya's independent churches will continue drawing their values from the African traditional religion it would be difficult to eradicate cultural practices that undermine the human dignity of children. Nthamburi (1995:55) also laments that most indigenous churches in contrast to historical churches incorporated African religious ethos into their churches. Independent churches need to be cautioned against embracing African culture blindly, they need to be informed of some unBiblical African traditional cultural practices that undermine and violate the fundamental human rights of children.

5.2.4.1 Abortion

Among the Kamba community of Kenya, abortion was sometimes practiced if an unmarried girl became pregnant (Gehman, 1987:60). This practice is not only common among the Kamba people but it is also practiced among the Samburu communities of Kenya. This view is contrary to the Biblical position of the unborn and the Christian view of man. Vorster (2007:125) clarifies this point in the following;

“The Christian view of man is based upon mans likeness to God. Man is the image of God, and therefore his life may not be taken. This principle grants the embryo and fetus intrinsic value “

From a theological point of view, abortion is a violation of human life. It interferes with the sacredness of sex and its purpose of responsible love and parenthood (Nwaigbo, 2005:102). The

human life view of the independent churches members should not be allowed to be shaped by the African traditional worldview, but by the Bible.

5.2.4.3 Child Homicide

This is the case where families or parents kill children for economic, religious, cultural or personal reasons (Mwiti, 2006:49). Mbiti (1971:155) reveals the same about African traditional Societies in the following:

“The killing of twins and triplets where and when it occurred, must not be judged purely on emotional reactions however the severally the practice should be condemned on ethical grounds. From the point of view of the corporate community such births were experienced as heralds of misfortune. The people concerned experienced them as a threat to their whole existence, as a sign that something wrong had happened to cause the births and that something worse still would happen to the whole community if the “evil” were not removed. So they killed the children for the sake of the larger community to cleanse, to “save” to protect the rest of the peoples.

The presence of practice of homicide among some of the adherents of African traditional worldview is further confirmed by Mugambi and Kirima (1976:18). They have stated that in traditional Chagga community uncircumcised youths were not allowed to reproduce. If they did so they were often punished or executed or their child was killed.

Kamba Traditional Society did not view a child immediately born as human. Mbiti (1971:156) reveals that the child is given a name after the third day or the fourth day; the father hangs an iron necklace on the Childs neck after which it is regarded as a full human being and as having lost contact with the spirit world. Before that the child is regarded as “object” belonging to the spirits (Kiimu) and if it should die before the naming ceremony the mother becomes ritually unclean and must be cleansed.

Davis (1985:191) correctly advises that human life is sacred because God made man in his own image. (Gen 1:26, 28). He further points out that from the perspective of Judeo-Christian tradition, the taking of human life-for whatever motive is strictly forbidden in Scripture (Exodus 20:13).

Among the rights considered by the UN convention on the rights of a child 1991 is the right to life, correctly stated in the following:

“Every child has a right to life and His right shall be protected by law. No one therefore should murder, starve or do any deliberate action that causes the death of a little one. No child should therefore live with a constant threat to his survival (Mwiti, 2006:19).

Vorster (2007:217) emphasizes the importance of new born baby by pointing out that in the covenant community of Israel it was given a name immediately after birth. He maintains that a child was not merely an “it” but a person among persons.

5.2.4.4 Corporal Punishment

Corporal punishment or physical punishment is defined as any action taken by a parent, teacher or care giver that is intended to cause physical pain or discomfort to a child. It is also the application of punishment to the body. It may involve the use of an object such as ruler, belt, wooden, spoon, and extension cord among other items. (KAACR, 2007:5)

Corporal punishment is a highly adored rearing practice in the African traditional society. The following describes the disciplining process of the Luo people of Kenya:

“Formal training discipline begins as early as the seventh month at the time when the child may put some dirty object to its lips. Thus a mother finding her child with soil in its mouth may slap it gently as she removes the soil, or hands of the child may be tapped with anything convenient. A child crawling towards the fire would be immediately pulled away and sometime it might be frightened with glowing end of a burning twig in order to impress the danger upon its mind (Ominde, 1977:8).

Physical punishment in African tradition society is practiced by anybody senior to the child. Kayongo-male and Onyango (1984:19) point out that traditionally, a child was socialized by the whole community in the sense that he could be corrected or disciplined by any adult if he misbehaved. He maintains that the most striking characterization of socialization in the African family is the large number of agents of socialization as opposed to family system where only the parents are involved in socialization of their children.

Ominde (1977:22) reveals that in Luo families, a young girl is at the mercy of everyone except her younger brothers and sisters. When disobedient she is whipped with a stick. The corporal punishment practiced in schools reflects this attitude. Corporal punishment of children violates children's human rights to physical integrity and human dignity as upheld by the United Nations convention of the Rights of the child (KAACR, 2007a:3).

The following statement clearly describes the physical effects of corporal punishment.

“As the effectiveness of corporal punishment decreases with use; so its severity must be systematically increased. Parents and teachers, as they become desensitized to what they are doing and frustrated by the diminishing returns, move from light slaps to hard blows. Children may suffer injuries arising from corporal punishment that need medical attention, leave permanent damage and can cause death (ANNPPCAN, 2005:33).

Traditionally on additional to beating children were also denied food as a way of disciplining those who misbehaved (Kayongo –male and Onyango, 1984:22) The denial of food and corporal punishment also results to psychological injuries. These psychological injuries may be suffered in the long and short term. This may include the following, physical violence, depression, aggression, criminal and antisocial behavior in later childhood (ANNPPCAN, 2005:34).

5.2.4.5 Female genital Mutilation

Female genital mutilation (FGM) also referred to as female circumcision, (FC) female cutting (FC) refer to the practice involving the cutting and removal of parts of the female sexual organs for reasons which are cultural but not medical or ethical (Gachiri, 2001:14).

FGM is deeply rooted in culture and occurs for a variety of reasons depending on the community where it is practiced. Some of the reasons focus on tradition often in this case it is justified as a rite of passage from childhood to adulthood. Those who embrace this practice consider it a way of passing on positive values to girls and women. (Kunhiyop, 2008:293) According to the World Health Organization (As quoted by Gachiri, 2000:33) FGM practice comprises the following procedures:

- **Type I**

Clitoridectomy – excision of the prepuce with or without excision of part or the entire clitoris.

- **Type II**

Excision- Excision of all the clitoris with partial or total excisions of the labia minora (small lips at the opening of the genitalia.) At times even part of the labia majora (large lips) are removed.

- **Type III**

Infibulation –This is the third and most severe form of female genital Mutilation. The procedures involve the excision of the clitoris/labia minora and at least two thirds or the whole of the labia majora. The two sides of the vulva are then sewn together to close up the opening of the vulva. A small opening is left for normal bodily functions of urination and menstruation.

- **Type IV**

Unclassified- This includes:

- Pricking, piercing, or incising of the clitoris and or labia
- Cauterization by burning of the clitoris and surrounding tissues scrapping of the tissue surrounding the vaginal orifice or cutting of the vagina.
- Introduction of corrosive substance or herbs into the vagina to cause bleeding for the purpose of tightening it.
- Unclassified type also includes any other procedure involving partial or total removal of the external female genitalia or other injury to female genital organs whether for cultural, religious or other non-therapeutic reasons.

Noel (1970:73) gives this disturbing disruption of female genital mutilation ceremony among the Nandi people of Kenya in the following:

“The girl and their instructors go to the woods to cut down a tree ceremoniously and each girl brings back a piece. The girl put on decorations and in the evening there is a dance for the warriors and a beer- drink for the elders which goes on until late then

when men and children are excluded the rites continue inside the house. Each clitoris is tied at its base with a piece of animal's gut and each girl is given nettles with which she handles her breasts and vulva. They sing songs and learn secret things. At dawn they come out, dance, and distribute refreshments. Then they go aside and form a circle. The woman operator who is often a Ndorobo (the hunting people indigenous to the area who are mixed in among the Nandi) goes to the middle with the stool and knife, the virgin still at the stool, the others on the ground. Once the clitoridectomy is done there is much jubilation on behalf of the brave and the women rush on the men who are waiting news a little distance off".

Mbiti (1971:166) states that in the same Nandi circumcision ceremony, girls before undergoing the FGM were forced to sleep with boys 10 years old, the girls were not supposed to have sexual intercourse with the boys. At the later stage the girls would be examined for virginity and if any are found to have lost their virginity they may be speared to death while virgin ones receive gifts of cow or sheep.

The effects are extremely dangerous ranging from psychological effects to physical health risks like hepatitis B, HIV/AIDS, haemorrhage, chronic pelvic infections, and chronic urinary infections (Kunyahop, 2008:296). Population council (2007:74) indicates the following regarding FGM in Kenya;

- In the year 2003 32 percent of the women had been cut, compared with 40% percent in 1998.
- Partial or total removal of clitoris and removing of the clitoris and some or all of the labia minora (inner vaginal lips) are the most common forms of FGM in Kenya.
- Some Kenyan ethnic groups for example the Borana, Rendile, Samburu and Somalia and those with less schooling may engage in removal of the clitoris and some of all parts of the labia minora as well as suturing of the labia majora.
- The although even today FGC is done is Central Kenya ethnic identity, signify a girls entry into womanhood, the Kalenjin and Kikuyu who are mostly Christian and tend to be more educated and wealthier than others are abandoning the practice but the Abagusii who share these attributes still practice FGC widely (96 percent)

Female Genital Mutilation is a violation of the fundamental human right of the children's harmful traditional or customary practice. The following words underscore the same correctly:

“The impact of all types of FGM/C on girls and women is wide-ranging and the practice compromises the enjoyment of human rights including the right to life, the right to physical integrity, the right to the highest attainable standard of health (including with maturity, reproductive and sexual health) as well as the right to freedom from physical or mental violence, injury or abuse. The practice is also a violation of the rights of the child to development, protection and participation” (UNICEF, 2005:15).

UNICEF (as quoted by Mwiti, 2006:57) suggests six key essentials that can contribute to cultural transformation and abandoning of the practices.

- Increasing awareness of human rights and empowerment of girls and woman
- Increasing community awareness on harmful results of the practice
- Motivating united social action to abandon the practice.
- An explicit public affirmation of this commitment
- A process of diffusion that spread this decision
- An environment that enables and supports this change.

5.2.4.6 Early Marriage

Early marriage means marriage or cohabitation with a child or any arrangement made for such marriage or cohabitation (NCCS, 2007:15) Mwiti (2006:88) points out that giving or forcing a child into marriage sometimes to a man old enough to be her grandfather is common child abuse in Kenya. She laments that statistics indicate that girls in rural areas are more likely to be married by the time they turn 18, than their peers who live in urban areas. She correctly maintains that this practice is fully supported by some communities because of their traditional and cultural orientation. Studies have shown that in Kenya early marriages take different forms. NCCS (2007:15) points the following categories of child marriage:

- Promissory marriage: the girl is betrothed before she is born
- Child marriage: a girl under the age of 10 years is married officially to a boy little older than the girl. She may then stay at her home until she is of age to consummate her marriage, time when she moves to her husband or she may be sent to her husband’s home to be under the care of her in-law until when she is ready to consummate and take up her responsibilities.
- Early adolescent marriage: takes place between 10 and 15 years of age. Negotiation may be between two families

- Late adolescent marriage: Takes place between 16 and 20 years. In some communities, girls around this age are known to be kidnapped and married against their will.

Mwiti (2006:88) reveals the pains of children experiencing early marriage in the following:

“In one community a 13 year old girl was withdrawn from school and forced into marriage. She conceived straight away before her 14th birthday. During childbirth and in her 14th birthday under a mid-wife, she was in great pain for three days at the end of which she gave birth to still born baby. The child’s emotional trauma was unbearable because she felt that she had failed as a woman to bring forth a living baby. Admitted to hospital the child bride was unkempt and could no longer control her bladder because of torn tissues during labor. Her bladder automatically emptied itself into her birth canal. She was embarrassed and sick.

Child brides are denied the love and family care of their parents. Due to the early sexual experiences in marriage, at such tender age, they are traumatized. Some of these marriages break up with the child brides ending up as destitute in the street or as barmaids and possibly sex workers (UNICEF, 1998:53) Mwiti (2006:136) reveals that the cultural practice of early child marriage is common in Kilifi, Busia, Kisumu and most parts of the North eastern province of Kenya. UNICEFF (as quoted by Mwiti, 2007:136) states that in the Kilifi area of Kenya for example, children are married off when they are as young as six years old to men who could be in their sixties. The determining factor is not age or potency but his wealth. The richer he is the more brides he can pay dowry for. His wives become an indication of his worth (Mwiti, 2006:136) National Council for children’s services (NCCS, 2007:116) reveals the following as reasons for early marriages before marriage:

- To preserve and ensure virginity before marriage
- To control promiscuity
- Economics: parents get dowry or bride price
- Allows parents to choose spouses for daughters or children
- Development of social status- especially for the father and the “old men” marrying young girls.
- To ensure continuity of family before parents pass on
- Fulfilment of cultural or traditional rites: e.g. in some communities a girl must get married after her first menses or immediately after FGM.

5.2.4.7 Child Labour

African traditional family has embraced practices that amount to child labour. Mwiti (2006:136) states that abusive cultural practices include child labour, she points out that in most societies children are expected to baby sit other children and help in household chores. The African traditional view of children in relation to labour is depicted in the following:

“Having children brought social prestige. A numerous progeny entailed economic wealth because there were clear advantages in having a large family in labour intensive economy. Children were also an economic investment in view of future marriage alliances and the acquisition of bride wealth in patrilineal family systems. So in traditional Africa, it was not only desirable but necessary to have large household of children.”(Shorter and Onyancha, 1999:28)

As indicated above children were important in the provision of labour alongside the many wives in the polygamous family. This African traditional view of children as contributed to the abuse of children through child labour. The following UNICEF (in Mwiti, 2006:89) research findings classification correctly defines child labor:

- When children 5 to 11 years of age during the week preceding the survey, did at least one hour of economic activity and domestic work combined.
- When children 12 to 14 years of age did at least 14 hours of economic activities and domestic work combined.

In Kenya ,the department of children’s services (as quoted by Shorter and Onyancha, 1999:52) defines child labour as the engagement of a child under sixteen years of age in the labour force to the detriment of his/her education, mental, intellectual, physical or moral development and social well-being.

According to the mentioned definitions child exploitation takes place in many Kenyan homes especially in the rural. Mwiti (2006:95) points out that the Geneva-based defence for children international suggests that a child is exploited when:

- Excessive profits are extracted from his labour

- His labour is used in such a way that there is a possibility of physical or mental suffering or damage the child.
- The child is denied liberty or right to be united with his family.

Mwiti (2006:95) commending on the same maintains that when a child is denied the right to spontaneous play and activity and when their normal childhood is denied for the purpose of labour and production, this can be termed as exploitation. Vorster (2007:211) points out that child labor is especially prevalent in rural areas where the capacity to enforce minimum age requirements for schooling and work is lacking. He further states that families in developing families support child labour because children serve as main contributors to family income. These happen mostly in the rural areas and my view is this child labour is motivated by the cultural mindset that children are supposed to be trained to be responsible through engaging them in work. Bansikiza (2004:146) commenting on rural child labour states that rural child laborers are in most cases unpaid family workers who help out either on the farm or in actual domestic chores. She points out that child labour in the rural setting is at the peak during planting, weeding and harvesting seasons. This is the time when even school pupils absent themselves from classes to attend to farm work. The argument for it is rural children generally form part of the family labour force and share the produce with adult household members. (Bansikiza, 2006:146)

Korir (2004:163) points out those children who work to maintain themselves or their families are easy prey to child labour. She maintains that such children normally forfeit the opportunity to go to school or even if they ever went to school, these strenuous and exploitative labour activities leave them with little time to study, enjoy their childhood or benefit fully from educational opportunities.

5.2.4.8 Polygamy

Polygamy is the term used to denote a marriage where there are more than two partners. Polygamy is a very popular practice in African tradition marriage systems. Mbiti (1975:106) mentions this as one of the many marriage cultural practices in the following:

“ Additional customs are found in Africa societies such as marrying several, inheriting the wife of a deceased brother(or husband of a deceased sister) arranging for the wives of important or long absent husbands to have children by close relatives or friends, and so on”.

Although polygamy is not a violation of children's fundamental human rights its practice indirectly contributes to some aspects of children suffering, child neglect by parent is a common feature in polygamous marriage. The same is correctly explained in the following:

“In the process of acquiring the second wife the family often suffers because of extra-marital relations. Often especially in the towns, the children hardly see their father who appears to be too much involved gratifying his immediate needs. The mother very much left to her own resources in this process, develops hostility towards the children as most of the time she is expected to be with them” (Kayongo-Male and Onyango, 1984:65).

Eitel (1986:152) also points out that economic strain are keenly felt by children in polygamous family where their education and other basic needs are unmet because of the economic impact on the polygamous union. The bigger family which in most cases is unplanned has led to children dropping out of school and even to some leading street life. Kayongo- male and Onyango (1984:65) point correctly that the following effects are observed on some of the children in polygamous families.

- Frustrations manifested through suicide attempts. This has happened in a situation where a father has been very concerned about his children and suddenly acquires another wife and denies his children the love and the care he used to give them.
- Alcohol and drug abuse: The children are expected to call the new woman their “mother” and this creates conflict in the children forcing them to become deviant.
- Discrimination of children: Most men in Africa tend to love children according to how they love the mother. Thus the mother that is loved most is advantaged in that her children are also loved and will be cared for by the husband. This explains the phenomenon in polygamous homes in Africa that children of first wives sometimes tend to do poorly to and hence are less successful compared to children of other wives.

The cultural practices of having many wives has contributed to HIV/AIDS orphans in the country, this is due to marital unfaithfulness associated with polygamous marriage, the view is well supported in the following :

“The fathers in a polygamous family which produces many children may be too busy and not have sufficient time to invest in raising the children well. Satisfying the sexual desire of many wives takes a lot of physical energy which may affect a man's health.

Furthermore the inability of the man to meet the sexual needs his wives may cause them to develop interest in other men. Looking outside the marriage for satisfaction demoralizes the whole family, endangers the husband whose life may be threatened by competing men and exposes the family to the hazards of infectious diseases caused by promiscuity (Apeh, 1989:58).

In polygamous marriage the wives may engage in secret prostitution as to cater for their financial needs. This problem coupled with the marital unfaithfulness due to unmet sexual desires has contributed to HIV/AIDS leading to an alarming increase of orphans.

Article 27 of the Convention on the Rights of the Child guarantees “ *the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development*” (Lundy, 1998:62) Polygamy contributes to many factors such as poverty among the mentioned challenges that hamper the protection of children’s fundamental human rights.

5.3 SOME SKILLS TO IDENTIFY AND RESPOND TO THE COMMON FORMS OF VIOLATION OF CHILDREN’S FUNDAMENTAL HUMAN RIGHTS

Acquiring the necessary skills in identifying and responding to the common forms of violation of the fundamental human rights of children is critical in championing these rights. Members of the Independent churches of Kenya cannot respond to the violation of the fundamental human rights of children unless they are equipped with necessary skills to identify and respond to violation.

5.3.1 Violation of life and survival rights

Violation of life and survival rights takes place in different ways. This category of violation may result from activities of an individual or the state. If the policies of a state lead to activities that may lead in death of a child a violation of the said right takes place. The government has a sole responsibility of ensuring the above right is not violated. The following emphasizes the same.

“The right to life means that, with very few exceptions, life should not be taken away. The international covenant on civil and political Rights (1966) obliges states that retain the death penalty not to impose it on a person less than eighteen (18) years of age at the time the offence was committed. The constitution of Kenya and the children Act upholds this position. The children Act, section 190(2) outlaws the sentencing of a child to

death. A death sentence cannot be imposed on a pregnant woman due to the right of the unborn child (LRF, 2007:8)

UNICEF (2007:1) indicates that about a third of all child deaths in Kenya occurring in the first months of life, are linked with inadequate care during pregnancy and birth. UNICEF further points out that about a half of all births in Kenya occur without skilled attendance. The government failure to increase funding to the health section and especially on child survival program amounts to violation of the survival rights. Other mentioned primary causes of child death are malaria, diarrhoea, respiratory infections and HIV and AIDS, with malnutrition as an overlying factor in 50-60% of deaths (UNICEF, 2007 :I)

Article 24 of the CRC states that the child has a right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness (LRF, 2007:8) Kenya committed itself to spend on health in the Abuja Declaration, but the Kenya government budget allocation in 2007/8 did not commensurate with increase in government revenue over the same period,. The share of health in the overall government budget stagnated at around 7.3% (UNICEF, 2007:2). Failure to allocate adequate resources towards protection of survival rights by states could be viewed as a form of violation of this right

The convention on the rights of children provides for the application of readily available technology for the provision of adequate nutritious food and clean drinking water (LRF, 2007:8) when any state, parents and guardians fail to participate in ensuring that children have quality shelter and are well nourished, the life and survival right is violated. The following signs and symptoms of child neglect can be associated with the violation of life and survival right

- Poor personal hygiene
- Constant fatigue
- Malnourishment
- Illness such as anaemia and Kwashiorkor
- Inappropriate /or inadequate clothing (NCCS, 2007:48)

The clergy and the members of the independent churches can alleviate the violation of the children's right to life by identifying and engaging in actions that prevent child mortality as well as maternal mortality. They could encourage pregnant mothers to visit hospitals for prenatal clinic and discourage them from seeking services of the untrained birth attendants. They could continue

raising their voices when the government is not offering adequate services that prevent violation of the right to life. When the state fails to build hospitals and even failing to provide adequate health facilities and drugs the churches can raise their voices. In addition to identifying children in danger of losing their lives due to violation of survival rights the churches can also seek for funds to build clinics and maternity wards.

5.3.2 Violation of the right to education

The Convention on the Rights of the Child recognizes the right of every child to at least primary education. Article 28 of the convention is directed to the development of the child's talent, mental and physical abilities (Black, 1991:27). The main indicators that a state is keen on protecting the developmental right of the child is the commitment to put adequate resources in this right. It should be noted that failure to engage in activities that promote the right is an indicator that the state is violating this right. Failure to allocate adequate funds to promote education of children is a violation of the right to education. For example in Kenya despite the free primary education initiative declaration in 2003 there were 1.7 million children (1.5 million of them between 6-14 years of age) who were not able to access education through the formal schools system in year 2004. These included children mainly from pastoralists communities in the northern districts where recurrent drought had accentuated the problem of school dropouts and children living in low income urban neighborhoods where the supply of school places are not enough (UNICEF, 2007:18).

Early Childhood development and education of children with disabilities section are the lowest in the government ministries priorities as reflected in their budget share (UNICEF, 2007:18). Early childhood development in regions like north eastern Kenya is only 19.7 percent and the casual factors include of poor house olds, community awareness on the value of school, readiness of program, distance to ECD centres, availability of school feeding programmes and loss of parents (especially through HIV/AIDS) among others (UNICEF, 2007:18). UNICEF (2007:21) point out the following to be challenges affecting achievement to education for children in Kenya

- Child labour ; a critical factor that interferes with schooling in Kenya and is common among provinces where there are commercially viable plantations such as in Eastern, Coast and Central Kenya
- Cultural Traditional Practices and early marriages. These are some of the harmful traditional practices which hinder the education of girls. In communities where FGM is practiced most

girls leave school early to get married. According to available estimates almost 13 percent of girls who leave school do so due to early marriage.

- HIV/AIDS orphan hood .Children drop out of school either to take care of their parents who are sick or managing household chores where their parents died due to HIV/AIDS.
- Drought and famine .In arid and semi arid areas where drought and famine are common, school attendance is often lower than in other parts of the country, In the Northern parts of Kenya, children do not often attend school due to famine.
- In adequate learning materials. In some parts of the country children learn in the open due to lack of facilities while some sit on the floor due to lack of seats.

The development right may further be violated when state or parents fail to fund education of children leading to poor education access. Failure to access education by children demonstrates violation of children's development right. The following indicate the same:

- A small number of children enrolled in school,
- Children inability to access secondary school.(Save the children Finland, 2007:28)

There are multiple factors that contribute to the violation of this development right of children as indicated in the following:

“Difficult in maintaining the public financing of education, however may jeopardize the progress already made towards guaranteeing all children access education, customary laws and traditional practices among certain groups add further complexities. The seasonal movements of nomadic people, early childhood marriages or the belief that educating girls is a wasted investment are some of the factors which deprive children of the right to education (Black, 2007:27).

The above named factors i.e under financing, customary laws , traditional practices and gender discrimination count when it comes to violation of the right to education. As stated by Abagi and Odipo (1997:14) the following two factors, namely education policies and institutional factors affect completion rates in education. The following Kenyan cited example emphasizes the same.

“According to the cost –sharing policy the burden of paying teachers lies with the government while erecting physical structures and purchasing instructional related materials are the responsibility of communities and parents. Most parents are not in a

position to meet these costs. It is estimated that about 4.2 million primary school children are in need of text books, whose cost would be Ksh 3,960.6 million. However, only 3% of this amount is provided. As a result lack of text books hinders many children from attending school regularly: In the end, these children give up education, yet despite the recognition of the acute need of text books by the ministry of education over 90% of the government's recurrent expenditure pays teachers salaries, while only 1% and 1.5% are allocated text books and the school feeding and milk programme, respectively (Abagi & Odipo, 1997:15).

The independent churches can respond to the violation of the right to education first and for most by addressing some of the harmful cultural practices that undermine the right to education. Practices such as FGM and early marriage should be eradicated. Efforts should be made to identify children who are not in school especially orphans and lobbying for the construction of more schools and allocation of bursaries for secondary schools.

5.3.3 Violation of the Right to parental love and care.

Living in a happy family that offers parental love and care is of a paramount importance in the growth and balanced development of children. According to Article 5, 7, 9 and 19 of the UNCRC a child is entitled to parental love and care. (LRF, 2007:19) Section 6 of children Act of the laws Kenya states that children have a right to live with their parents, unless this is not in the best interest of the child. (LRF, 2007:19) In case the parents are separated a child is entitled to maintain contact with both parents since they have joint primary responsibility. (LRF, 2007:19). The following category of children suffer violation of the right to parental love and care

- Children of imprisoned mothers
- Street children
- Abandoned children
- Orphaned children
- Children in armed conflicts
- Child brides (GOK and UNICEF, 1998:54).

Any activities that may cause a child to be separated from the parental care and love amount to violation of the said right. Parents and the state can cause violation of the said right if they engage in activities that violate the right or if one party like the state fails to prevent factors causing the

violation. The independent churches could come with family enrichment seminars and teach parents on good parenting practices. Parents who have abandoned their children can be counselled to care for their children where necessary some can be prosecuted for neglecting their children. The Kenyan independent churches professional can involve themselves more actively in the policy making process for the purpose of promoting this right.

5.3.4 Violation of the right to protection from economic exploitation

The following hazardous occupation and activities of children cited in Bangladesh are some of the indicators of violation of the children's right to be protected from economic exploitation (Petto, 1997:172-173)

- Children work as bus helpers and providers of other transportation services hence facing daily hazards because of the dangers of falling off the rear of the vehicles, or being side swiped by other vehicles. In addition they experience long hours of exposure to the exhaust fumes of city traffic.
- Children working in tannery and other factories are exposed to hazards directly from the chemical materials giving rise to skin irritations, as well as possible damage to lungs when inhaled, and other health hazards.
- Some of the children work as tannery workers using tools and machinery that cause serious injury. In addition they sometimes slip and fall from the roof when putting leather out to dry.
- In the repair shops these working children are exposed to welding equipment without protective goggles or other safety equipment.
- In glass factories, blacksmith shops and other shops that use furnaces the working children are exposed to excessive heat, as well as hot materials and sparks.
- Children engaged in sex work face direct hazards to physical health through threat of STDs, HIV/AIDS and risk of pregnancy (for which risky abortion are commonly sought). In addition there is the intrinsic social damage because of the strong social stigmatization attached to this occupation. The young sex workers are also exposed to great risks of physical damage and harassment by customers, police and others.

The Bangladesh case study of working children provides very clear example of some of the worse forms of the violation of development right through economic exploitation. Independent churches in Kenya and other stake holders should consider engaging in activities geared towards elimination of child labour through community based programmes. Measures for prevention of child labour should

include micro financing of parents especially single mothers who neglect their children because of financial constraints leaving them to be economically exploited. Measures should be put in place to ensure children economically exploited are rescued and rehabilitation has taken place.

5.3.5 Violation of the rights of children in collision with the Law.

Article 37 of the CRC maintains that states shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It is also stated in Article 37 (b) that no child shall be deprived of his or her liberty unlawfully or arbitrarily (Lundy, 1998:118) These rights are also contained in Kenyan laws stating that where any child is deprived of liberty, she or he must be separated from adults unless it is considered to be in the child's best interests not to do so. (LRF, 2007:11). Example of violation of the said right is provided in the following statement.

“In Kenya, children stay in police custody and remand homes for long, which is unlawful deprivation of their liberty.. Children are also frequently held, unlawfully, with adults in the same cells at police and prison cells. The situation of girls is particularly desperate as inappropriate handling and sexual abuse occur while being processed in the Justice system” (LRF, 2007:11).

As pointed above, the manner the keeping of children in police custody and remand home occur is a violation of their right to protection. The use of torture for the purpose of obtaining confessions from children is also a form of violation of the protection right. It is a torture to the child (ANPPCAN, 2008:30).

In Kenya youthful offenders aged between 15 and 18 years, who have been found guilty of an offence punishable with imprisonment are taken to a borstal institutions. Borstal institutions operate in a similar manner to prison as guided by the prison (ANPPCAN/ISPCAN, 2004:42). Before making a borstal order, the court must first ascertain availability of space. There must be a provision of proper sanitation, food and water supply, clothing, bedding and educational training (ANPPCAN AND ISPCAN, 2004:42). Failure to provide the above can be viewed as a violation of the protection right.

A clear example of the violation of the rights of the children in collision with the law is shown in the following;

“Law enforcement officers demonstrate brutal attitude towards street children and abuse and exploit the children with impunity. The children are often taunted, scolded, manhandled and beaten at the time of arrest. Once arrested the children are held under deplorable conditions in crowded police station cells without toilets or bedding, with little food and inadequate supplies of water. Often they are mixed with adults who mistreat and even sexually abuse them (ANPPCAN, 2008:12).

In order to improve conditions for children at police stations child protection units should be set up at the police stations (LRF, 2007:12). These units if well staffed with competent trained officers will ensure child offenders’ rights are not violated. Welfare measures need to be put in place to prevent Juvenile Crime (LRF, 2007:12) Most child offenders are a result of poverty and neglect by parents. If the problems such as child neglect and poverty can be addressed the number of child offenders can be reduced. Good parenting practices and poverty eradication programs can be initiated for the purpose of reducing child offenders most of which are petty thieves.

5.3.6 Violation of the rights to protection from drug abuse

CRC Article 33 provides that children have a right to protection from the use of narcotic and psychotropic drugs and from being involved in their production or distribution (LRF, 2007:12). When children are exposed to drugs by allowing them to purchase or providing them with the drugs their rights are being violated. The following statement affirms the signs and reality of drug abuse among youth in Kenya;

“There is an increase in drug abuse by young people. The police noted that drug abuse is very rampant and most of the time leads to criminal activity like mugging and stealing. Drugs like heroine, bhang and brown sugar are readily available” (Save the children, Finland, 2007:3).

There are cases when adults also use children to transport and sell drugs which is a form of violation of protection of children against drug abuse (LRF, 2007:12) Children engage in drug abuse through such exposure and also due to lack of commitment on the side of the state. The following affirms the same.

“In Kenya, 20 per cent of drug and substance abusers are between the ages of 10-24 years and 44;1 per cent of these are aged between 15-19 years. The most widespread

used drugs are those that alter moods .Alcohol is widely abused by teenagers in Kenya because it is readily available and the law that prohibits sale of alcohol to minors is friendly to offenders (LRF, 2007:120).

The following consequences of drug and substance abuse may be helpful in identifying children victims of drugs abuse.

- Slowing down of the brain area that controls judgment and thought i.e. conscience
- Releasing the inhibitions, which usually guards behavior? This makes the user less restrained, more relaxed, at first feels usually free easy
- Affecting the motor functions of the body: wobbling, staggering, not able to work, slurred and heavy speech, and double vision
- Violence
- Loss of interest in school
- Lung and liver diseases (NACADA, 2006:29)

These effects serve as common characteristics of drug abuse among young and old alike. While the mentioned effects are more of healthy oriented effects, Wature (2004:28-29) comes up with more elaborate signs of young people abusing drugs. He provides the following characteristics.

- Hostility towards parents, brothers and sisters.
- Immorality i.e. engaging in a pre-mature sexual behaviors
- Cases of rape and incest
- Frustrations
- Change in sleeping patterns (one may sleep the whole day or night)
- Criminal tendencies i.e. stealing money from parents to buy drugs, delinquency.
- Blood pressure, headache, fainting and hallucination.

Violation of this protection right can be adequately confronted by coming up with serious penalties for those who sell abused drugs and alcohol to under age. States should endeavor to be signatory to various international conventions and protocols that relate to drugs (NACADA, 2006:6). Governments and Churches and other Non governmental organizations should come up with effective public awareness programmes to sensitize the public and the parents on the abuse of drugs.

States and Churches should initiate rehabilitation centres where parents can take their affected children.

5.3.7 Violation of the right to Protection from physical abuse

According to article 19 of CRC, States parties should take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence. This includes injury or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents(s), legal guardian(s) or any other person who has the care of the child.(Lundy, 1998:112). The world health Organization defines physical abuse as the intentional use of physical force against a child which results in or has likelihood of resulting in harm of the Childs health, survival, development or dignity (ANPPCAN, 2008:11). In many cases physical abuse is distinguished as punishment and the most common forms of the physical abuse are beating with objects, punching, kicking, burning and hard work (ANPPCAN, 2008:11). The following are common forms of physical abuse

- **Corporal Punishment**

Corporal punishment is any action taken by a parent, teacher and care giver that is intended to cause physical pain or discomfort to a child (KAACR, 2007a:5). Corporal punishment may involve the use of an object such as ruler, belt, wooden, spoon, extension cord, slippers, stick, rubber horse, stone and wire hanger among others (KAACR, 2007a:5) The perpetrator of physical abuse includes parents, teachers, siblings and other relatives (ANPPCAN, 2008a:11). In Kenya, corporal punishment is widely practiced in schools and other learning institutions with cases of permanent injury or death reported (KAACR, 2007a:14)

- **Female genital mutilation**

Female genital mutilation violates girls and women's human right denying them their physical and mental integrity, their right to freedom from violence and discrimination and in the most extreme cases "their right to life" (UNICEF, 2007) The following effects are associated with FGM:

- Extreme pain, shock and haemorrhage,
- Blood poisoning, gangrene,
- Tetanus and acute urinary retention (NCCS, 2007:113).

- Article 4(2)(3) of CRC calls on all governments to take all effective and appropriate measures with a view abolishing traditional practices prejudicial to the health of children such as traditional practices which include FGM (NCCS, 2007:113).

- **Sexual abuse**

WHO and UNCRC Article 4 define sexual abuse to include any involvement of a child in sexual activity that he or she does not fully comprehend, enable to give informed consent to or for which the child is not develop mentally prepared or else that violates the laws (ANPPCAN, 2008:16) Sexual abuse is also defined as the use of a child for the sexual pleasure and gratification of an adult or another child. This includes penetration of vagina by the male's penis (defilement, rape or incest or penetration of the anus (sodomy). It also includes inserting a finger or object in a Childs vagina or anus, indecent assault, oral sex and even bestiality (ANPCAN/SPCAN, 2004:19). Signs and symptoms of sexual abuse include the following,

- Broken hymen in the case of females,
- Injuries such as tears, bruises scratches, burns or bite marks,
- Lax anal muscles in the case of sodomy,
- Sexually transmitted infections
- Pregnancy
- Abortion
- Recto – vaginal fistulae
- Difficulties in walking (ANPPCAN/ISPCAN, 2004:20).

Parents and guardians should be trained on the “index of suspicion: signs to enable them prevent abuse (CRADLE & Care, 2006:57). This is because most incidences of sexual abuse occur within homes majority of the perpetrators being relatives and other people commonly known to children. Children should be empowered to protect themselves against abuse (CRADLE and Care, 2006:57). This measure is important in ensuring that the children can contribute to their safety even in the absence of parents and guardians. Awareness campaigns to make the public aware of their rights and the law with regard to sexual offences (CRADLE and Care, 2006:57). Training the police and judicial officers on the provisions of the sexual offences to ensure effectiveness in investigations and prosecution (CRADLE and Care, 2006:56). Reporting immediately to the nearest police station is an important step in responding to sexual abuse. ANPPCAN and ISPCAN, 2004:25). As one makes arrangement to take the child to the hospital preserving evidence like clothes and other

materials that might support legal action should be given the first priority when sexual violence takes place (ANPPCAN/ISPCAN, 2004:25).

5.3.8 Violation of the right to protection from discrimination

Children have a right not to be discriminated against on grounds of origin, sex, religion, customs, language, opinion, color, birth, social, political, economic or other status ,race, disability, ethnicity, residence or local connection (LRF, 2007:15).

In many African societies children are discriminated against when they have disability, adopted, are albinos, orphaned or even infected with HIV/AIDs (LRF, 2007).

According to Article 2 of the UN Convention on the Rights of persons with disability “Discrimination on the basis of disability” means any distraction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis, with others, all of human rights and fundamental freedoms in the political economic, social, cultural, civil or any other field (NCCS, 2007:109). In many homes, such children are hidden from the public and many cannot access education and other programs services.

The following statements confirm the concern over child discrimination in Kenya

“In Kathangacheni, Tharaka district, culturally girls are required to graze cattle and get married and hence they do not prioritize other rights such as the right to education. Many people in Tharaka look at disabled children as bad omen hence they miss out on school” (Save the children Finland, 2007: 23).

The following are common forms of gender discrimination of children;

- From birth and even before, as seen by selective abortion if girls are less valued than boys,
- Within the family in cases where girls learn the inferior position and stereotyped roles deemed acceptable for girls and are given less food and fewer economic resources than boys.
- When girls are denied access to education , recreation and other opportunities,
- When girls shoulder disproportionate burden of domestic work and child care and are denied equal right to own property,

- When girls are denied equal participation in decision making,
- When in schools girls are exposed to teachers ,curriculum, textbooks and teaching methods that reinforce gender stereotypes and discriminatory practices,
- In communities, if girls and are subjected to violence and abuse that is tolerated and goes unpunished and are left out in decisions that define the conditions in which they live (UNICEF, 2007:40).

Discrimination of children is highly prohibited by UNCRC. As already mentioned children with disabilities are common victims of discrimination. Article 23 of UNCRC expressly addresses the rights of children with disability and calls for the protection of “a full and decent life, in condition which ensure dignity, promote self-reliance and facilitate the child active participation in the community’ (NCCS, 2007:111) There should be effort to serve disabled children ranging from small scale efforts to major initiatives supported by national governments and international NGOs. In these efforts centers for serving disabled children should be established. Civil society members and national leaders should advocate for increased resources allocation to children with disabilities (Save the children, Finland, 2007; 38). Parents of disabled children can alleviate the problem of their disabled children, if given educational information about disability in their children.

5.3.9 Violation of the right to Protection from Emotional and Psychological Abuse

Emotional and psychological abuse is described by WHO and also in the UNCRC as the failure by parents or caregivers of children to provide a developmentally appropriate or supportive environment. This may occur occasionally or in a patterned way and may include restriction of movement, patterns of belittling, blaming, threatening, frightening, discriminating against or ridiculing and other non- physical forms of rejection or hostile treatment (ANPPCAN, 2008:14) .However it is important to note that any form of child abuse causes negative emotional feeling. The following statement confirms the same.

“Abandonment is the dissertation or withdraw of any form of support to a child. Such a child lacks the basic needs like food, shelter, clothing education, health care and love. This adversely affects his/her proper development thus causing emotional abuse (ANPPCAN/ISPCAN, 2004:21).

Emotional abuse may include repeated belittling or insulting a child, while psychological neglect may touch on attention (ANPPCAN, 2008:144). Other forms of emotional abuse may include

persistently withholding love and affection, constantly shouting at, threatening, and persistently being overprotecting to the extent that the child is not allowed to mix with other others. NCCS 2007:45). The following signs may serve as proper indicators for identifying a child experiencing emotional abuse.

- Insecurity,
- Social Isolation,
- Eating disorders such as over eating or lack of appetite,
- Bed wetting,
- Aggressive or violent behaviour,
- Sleeping disorders such ,
- Depression,
- Low self esteem,
- Poor school performance,
- Self harm behavior such as attempts to commit suicide. (ANPPCAN/ ISPCAN, 2004:21).

Emotional and psychological abuse of children should be eradicated. Parents and teachers should be given adequate training as a preventive measure to this form of violation of children's fundamental human right. Depending on the degree of abuse victims of this category of abuse should be given some form of service such as counselling. Removing the victim from abusive parent or guardian coupled with specific criminal penalties for offenders can serve as good measure of dealing with the violation of children right to protection from emotional and psychological abuse (ANPPCAN/ISPACN, 2004:21).

5.3.10 Violation of the rights of children in disaster situations

In hardship situations such as war, civil strife, famine, poverty and other natural calamities such as floods and earthquakes children suffer most owing to their vulnerability (LRF, 2007:15). The same opinion is emphasized and elaborated in the following:

“Children in the midst of armed conflict and natural disaster such as drought, floods and earthquakes have the same needs and rights as children in stable countries (UNICEF, 2004:2.

In Article 38 the UNCRC urges governments to take all feasible measures to ensure that children have no direct part in hostilities (LRF, 2007:16). It is estimated that half a million children are currently serving in government armed groups in 85 countries worldwide, more than 300,000 of these are actively fighting in more than 35 countries (LRF, 2007:16). The same fact is reflected in the following:

“According to minority rights group, in the course of the civil war that divested Guatemala from 1960 to 1996, some 250,000 Maya children are thought to have been orphaned and many witnessed the violent death of one or both parents. Maya children were regarded by the Guatemalan military as potential revolutionaries and rape was used as an instrument of terror against Maya girls. Maya boys were forced to serve as members of the state sponsored. “Civil patrols” and had to patrol their own communities and participate in army offensive against their own people. Children were also recruited into the ranks of the revolutionary guerrillas and some are known to have been killed in comb (UNICEF, 2003:13).

The same experiences have been faced by children in Somalia and have included physical injury, death, torture, rape, the witnessing of atrocities, and separation from parents (UNICEF, 2003:13). Children are forcibly recruited into armed groups, either to fight or to provide support and girls are usually at risk because in most cases they are forced to provide sex to soldiers (UNICEF, 2003: 13). Torture, defilement, malnutrition and intimidation are common experiences of both boy and girl child soldier (LRF, 2007:16). The international Criminal court has listed the recruitment of children into armed conflict and rape as crimes against humanity (LRF, 2007:16).

Governments have a responsibility to ensure the protection, treatment, recovery and social reintegration of child survivors of armed conflict. (LRF, 2007:15). (UNICEF 2004:7-15) has pointed out the following measures as crucial response.

- Vaccination, provision of drugs and emergency health kits.
- Nutritional monitoring and surveillance
- To monitor, advocate against, report and communicate on abuse and various exploitation
- Prevent the separation of children from their care givers and facilitate the identification, registration and medical screening of separated children particularly those below five years of age and adolescence girls.

- Monitoring, reporting and advocating against instances of sexual violence by military forces, state actors, armed groups among others.
- Setting up temporarily learning spaces with minimal infrastructure.
- Provide post rape care kits including post exposure prophylaxis for HIV to health centers.

In case of armed conflict UNICEF (2004:13) further recommended the following:

- Monitoring, reporting and advocating against the recruitment and use of children in any capacity during armed conflicts
- Seeking commitments from state parties to refrain from recruiting and using children in armed conflict
- Negotiating the release of children who are recruits and introducing demobilization and reintegration programs

5.3 *CONCLUSION*

For the independent churches in Kenya to effectively respond to the violation of children's fundamental human rights they have to understand and address the cultural practices among them that undermine protection of children's fundamental human rights. For effective championing of protection of children's fundamental human rights independent churches will need to have a comprehensive understanding on how to identify and respond to violation of children's fundamental human rights. With adequate skills to identify forms of violation the churches can influence policy and law makers by lobbying for better laws and even lobby for adequate financial resource budget to facilitate efficient service delivery.

CHAPTER SIX

CHALLENGES AND STRENGTHS OF THE KENYAN INDEPENDENT CHURCHES THAT RELATE TO THE PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS OF CHILDREN

6.1 INTRODUCTION

The objective of this chapter is to study and outline the weaknesses and some positive aspects of the Kenyan independent churches that relate to the protection of children's fundamental human rights. The churches have a potential in addressing the plight of children in Kenya but they are faced with numerous challenges that affect their ability to protect the fundamental human rights of children. In this chapter the general participation of Kenyan independent churches in eradicating violation of children's fundamental human rights will be discussed. Attempts have been made to compare the response of the independent churches to children's fundamental human rights to that of mission churches and in particular the catholic and the Anglican church of Kenya. Attempts have been made to examine some of the children programmes undertaken by some of the independent churches to find out whether they relate to the protection of the fundamental human rights of children.

6.2 THE INDEPENDENT CHURCHES IN KENYA AND THEIR RESPONSE TO THE VIOLATION OF THE FUNDAMENTAL HUMAN RIGHTS OF CHILDREN

The church together with the state are better placed in eradication of violation of children's fundamental human rights. A data by Shorter and Onyancha (1999:115) showing the groups helping children in the Nairobi area in 1998 provided the following details:

- There were two hundred and eighty nine groups helping children in Nairobi.
- Seventy of these groups were church based.
- Out of the seventy groups only eight groups were indigenous or independent churches.

According to the data, the independent churches were not actively engaging in children's services in Nairobi. A recent directory developed by Koinania Advisory Research and Development services (KARDS), reveals that out of 83 organizations that are responding to human trafficking and sexual exploitation of children 21 of them are religious in nature, 16 of them being mission church based.

None of the organizations or the program is owned or run by independent churches (KARDS, 2009:74).

Despite the increase of indigenous churches, very little appears to be taking place when it comes to social transformation ministry. Kenya is estimated to have 80.00% of its population as Christians, with 12.00% traditionalists. The Catholics are estimated to be eight million (8,000,000) while protestants are numbering ten million seven hundred and seventeen thousand five hundred (10,717,500). Out of the ten million seven hundred and seventeen thousand five hundred (10,717,500) protestants, it is estimated six million five hundred and fifty five thousand eight hundred and twenty (6,555,820) are independents (<http://www.olkoumere.org/en/memberchurches/regions/africa/kenya.html/>). The figures indicate independent churches are leading in protestant churches membership, this implies they have a bigger potential in transforming the welfare of children countrywide.

6.2.1 An Examination Of Some Independent Churches In Kenya And Their Approach To Protection Of The Fundamental Human Rights Of Children.

6.2.1.1 Africa Brotherhood Church

Africa Brotherhood Church (ABC) was started by indigenous Africans and officially launched on 8th April 1945 under the leadership of Simeon Mulandi its founder and early promoter (Sandgren, 1999:170). From its inception African Brotherhood Church has continued to engage in education and health programs that and relief program for the needy in the community. (Sandgren 1999:183). The program has primary health care and HIV/Aids projects, education project , widows and orphan support projects (Sandgren, 1999:189). From the given data it is clear that African brotherhood church a leading independent church is involved in helping children and addresses the violation of the fundamental human rights of children. Intervention at this level is a remedy to situation which causes children to drop out of school systems, to run away from home or be denied their rights because of poverty. Intervening in the situation of widows can be viewed also as preventive measure since in most cases children of poor widows are more vulnerable. Their program is less involved in championing the protection of some of the children in need of special protection such as street children in harmful cultural practices, among others. Their programs also do not appear to include advocacy which is key indicator of effective response to the violation of the fundamental human rights of children.

6.2.1.2 Redeemed Gospel Church

This church was begun in the year 1974; the founder is Bishop Arthur Kitonga. The church is an independent church with its headquarters at Mathare. Mathare is the largest ghetto in the city of Nairobi (Ronkei, 1986:181). The church is addressing issues of child abuse (physical, sexual violence and child labour). The church has projects which recruit street children who undergo rehabilitation for one year and thereafter they are sponsored for education at various levels. The church is therefore engaging in advocacy and rehabilitation of children.

Redeemed gospel church is one of the independent churches concerned with the protection of the fundamental human rights of children in some of the following areas (Redeemed Gospel Church. 2009). ‘Redeemed Gospel Church Development program’
<http://www.redeemedgospel.org/children.html> (date of access, 28 July 2010).

- Designing and packaging projects on child right advocacy targeting abused children and launching the projects.
- Carrying out sensitization of community members on child rights and disseminating the children law.
- Identifying, selecting and training community child monitors who will be key in identifying abused children and paralegals that will link the children with necessary support.

This Kenyan independent church has attracted financial support from Tear fund and World vision (Ronkei, 1986:186). The church can therefore be cited as a good example of indigenous church potential in combating violation of children’s fundamental human rights.

6.2.1.3 Africa Israel Nineveh Church

The African Israel Nineveh Church founded in 1942 by David Zakayo Kivuli, is a member of world council of Churches as well as the National Council of Churches of Kenya (Nthamburi: 1991:17). According to the World Council of Churches website (World council of churches. 2010 African Israel Nineveh church. [http://www.oikoumene.org/gr/memberchurches/regions/africa/african israel-nineveh-church.html](http://www.oikoumene.org/gr/memberchurches/regions/africa/african%20israel-nineveh-church.html) date of access: 28 July 2010). The Church claims to have membership of 500,000. The church further claims to be operating more than thirty primary schools and sixty nursery schools. The church claims also to be running HIV/AIDS programmes and counselling services. The church is involved in children services but there seems to be no clear programmes

guided by United Nations convention on children's rights. They do not seem to come out clearly on the issue of protecting the fundamental human rights of children.

6.2.1.4 African Christian Church and Schools

The church known by the name "Africa Christian Church and Schools" began in 1947 when Kikuyu (one of the main ethnic groups in Kenya) pastors and elders from African Inland Mission in southern Fort hall district differed with missionaries over institutions for higher education. (Murray, 1991:131). According to the World Council of Churches 2010 website (<http://www.oikoumene.org/en/memberchurches/regions/africa/kenya.html> date of access: 28 July 2010). This church has elementary and secondary schools. The church has a Bible college that's trains the ministers to the diploma level. The church is also involved in the fight against HIV/AIDS. The church also has four health centers.

African Christian Church and schools has programmes that address the plight of children but there is no clear indication that the church has children's fundamental human rights protection programmes. As Gitari (1993:96) correctly states *'A Christian cannot just stop with problems like feeding the hungry, caring for refugees, or healing the sick. A Christian must go beyond that to the root cause of the hunger, the refugee problem, the disease.'* The church is not involved in any meaningful advocacy for the purpose of eradicating specific violation of the fundamental human rights of children.

6.2.1.5 The African Church of the Holy Spirit

According to the World Council of Churches 2010 ([http:// www.oikoumene.org/gr/memberchurches/african-church-of-the-holy-spirit](http://www.oikoumene.org/gr/memberchurches/african-church-of-the-holy-spirit) html date of access:28 July 2010) the African Church of the Holy spirit came into being in 1927, as a result of the split in the Friends African Mission. It is also stated in the same web that the church runs several schools and is involved in relief work in the border region between Kenya and Sudan.

6.2.1.4 The Deliverance Church

Deliverance Church was started in 1970 under the leadership of Joe Kayo. Within the same year the first leadership change occurred with Bishop William Tumusing taking over as the leader of the Church (ACM, 2004:110). The church is involved in education projects for primary school

children, combating of HIV/AIDs, political issues such as constitutional Review process and poverty eradication (ACM, 2004:111).

6.2.2 The Catholic Church and the Anglican Church of Kenya Child Protection Programmes

6.2.2.1 The Anglican Church of Kenya

According to the Anglican Church of Kenya 2009, St Nicholas Community Centre (web) (<http://www.ackkenya.org/st-nicholas.html> date of access 28 July 2010) the Church has proper projects in fighting for the needs and fundamental human rights of children. The church has a center called St. Nicholas Community Centre. The centre hosts orphaned children, children collected from the streets, suffering children from the poorest of the poor, helpless and abandoned children. As stated in the same website St. Nicholas Community Centre also works for the right of the children to:

- Freely express their opinions.
- Participate fully in plays and recreation.
- The right to information.
- Proper spiritual development.

The Anglican church of Kenya has many other programs that aim at responding to violation of children's fundamental human rights. In the coastal city of Mombasa the church is involved in eradication of human trafficking and commercial exploitation of children through their organization named Pwani Christian Community Services and their Barani centre.(KARD, 2009:102). The church is actively involved in advocacy, rescuing of children in need of protection and provision of shelter to the orphaned and vulnerable children (KARDS, 2009:102).

6.2.2.2 The Catholic Church in Kenya

The Catholic Church in Kenya unlike the independent churches comes out with clear known position regarding the fundamental human rights. Ruwa (2001:13) states it correctly in the following:

“The Catholic Church has also openly participated in the social political life of Kenyans and it emphasized that it would support a political system which respects human right and authentic gospel values.”

The Catholic Church in Kenya has been keen to oppose practices that undermine the fundamental human rights of children born and unborn. Makumba (2009:14) a catholic priest confirms the same in the following:

“These prohibitions are based on the desire to promote human dignity by outlawing those practices and behaviors injurious to it. The church has always felt obliged to protect the rights of the oppressed across the ages. It is in the light of this that the congregation for the doctrine of the faith felt obliged to reiterate both the dignity and the fundamental and inalienable rights of every human being, including those in their initial stages of existence.”

Makumba’s comments are echoed by Ruwa (2001:24) another catholic priest who points out that the church has to participate in matters political, by assuming the role of the promoter and protector of human rights with the aim of sustaining human dignity. It is worthy noting that just as stated by Ruwa (2001:24) the human dignity issue is paramount in the teachings of the Catholic Church in Kenya the same is well explained in the following:

“The catholic church elaborates and teaches on important social doctrine focusing on the person rights at every stage of life and in every situation. The church’s moral teaching has two poles: the salvation of souls and respect for human dignity” (Mejia and Etchegaray, 2001:14).

The catholic initiative to protect the fundamental human rights of children is also very developed. They have numerous orphanages and protection programmes run in Kenya. The church organizations have a multi approach in their response to the violation of the fundamental human rights. St Martin one of the catholic church organization is assisting children with disability, carrying out human rights awareness campaigns, street children rehabilitation program, alcohol and drug abuse counselling and saving and micro credit (Keulen and Pipinato, 2008:64-65). The Kenya catholic peace and justice commission has a program that addresses the fundamental human right of children, the program covers a range of activities such as prevention, prevention, education and advocacy. Catholic organization such as Jesuits refugee services Kenya chapter, sisters of our lady

of mercy, koinonia community among others are fully involved in the championing of children's fundamental human rights (KARDS, 2009:74).

6.2.2 Summary

Comparing the activities of the independent churches of Kenya responses to the violation to children's fundamental human rights to that of the mission churches we get some major discrepancies. While the mission churches appear to perform their role with clear understanding of the right based programming the few Kenyan independent churches responding to the violation of children's fundamental human rights appear to be embracing relief approach rather than human right approach. As demonstrated by the Redeemed Gospel Church and the Africa brotherhood church programs, if the capacity of most of the independent churches can be enhanced most of them can effectively respond to the violation of the fundamental human rights of children.

6.3 SOME KEY FACTORS HAMPERING PROPER RESPONSE TO VIOLATION OF CHILDREN'S FUNDAMENTAL HUMAN RIGHTS AMONG INDEPENDENT CHURCHES IN KENYA

6.3.1 Poverty

Independent churches are widely established among the poor people in Kenya. The majority of these churches are in the rural areas and urban slums, where the majority of the poor and unemployed Kenyan's live. The churches are very many and closely located in small make shifts and few big structures. A good example of independent churches experiences may be drawn from the Redeemed Gospel Church an Independent Pentecostal Church. The church has established several branches throughout the country, with Mathare as its headquarters (Ronkai, 1986:181). Mathare Valley is not only the largest ghetto in the city of Nairobi, but also the filthiest and most crowded inhabited area. It brings together a conglomeration of the destitute, the uneducated, the unemployed, widows, orphans, and the poverty stricken and hopeless (Ronkei, 1986:181). With this kind of challenges the independent churches clergy majority who are also economically disadvantaged are unable to engage in any activity which may help children. The majority of the members of independent churches clergy embark on the ministry of prayer and evangelism rather than holistic ministry. Vorster (2007:67) while expounding on the causes of poverty, mentions the problem of high population densities in less developed areas and the problem of prolonged drought and hunger. These two problems have adversely affected the independent churches clergy ability to

combat children's abuse. The problem is further aggravated by lack of fundraising skills. The fact that the community where they serve suffers insufficient resources does not mean they cannot appeal for resources from elsewhere.

The majority of independent churches are faced with poverty which is coupled with the problem of HIV/AIDS scourge. The scourge increase children who have to survive under the care of poor sick parents, such children are forced to care for their sick parents and experience or even witnessing the experience of their dying parents. Psychological pain of living with dying parents and the vulnerability resulted by being orphaned is unbearable to affected children.

The same is emphasized by (Vorster, 2007:212) in the following:

“Millions of children, adolescents and young people orphaned, made vulnerable or living with HIV are in urgent need of care and protection. If rates of HIV infection and AIDS –related deaths continue to rise the crisis will persist for decades even as prevention and treatment programmes expand. This reality poses a powerful threat to the resources of countries already plagued by perennial poverty. In the end children will be the powerless victims”.

As started earlier some Kenyan independent churches can effectively respond to violation of children's fundamental human rights if they can get resources and have their capacity build. Lack of resources and training has renders these churches ineffective.

6.3.2. The Independent Churches Formation Background

The manner and the factors leading to the formation of most of the independent churches in Kenya have affected the performance of these Churches. The Churches have been found to lack the capacity to address the social challenges in their respective communities and especially the children's sufferings. Mbiti (1978:184) criticizes their formation in the following.

“Another major problem facing Christianity in Africa is the large number of Church divisions, denominations, groups and sects. Many were imported from abroad. Many were started by African Christians themselves, partly because they did not wish to remain indefinitely under the domination of foreign missionaries, partly because of

personal wishes for power, partly because of wanting to make Christianity reflect African culture and problems, for various other reasons.”

As portrayed by Mbiti above, there seems to be self ambitions, especially when personal wishes for power becomes a driving factor in forming these independent Churches. Because of this problematic background most of these independent Churches struggle for long engaging in religious activities that do not focus on the transforming their communities. Mugambi (1995:152) describes the situation better when he states that the proliferation of Christian denominations in Africa is creating a situation whereby Christianity has become like a commodity for advertising to African consumers. What comes out clearly is the truth that some of these Churches may not be having properly developed vision statements, mission statements and strategic plans aiming at transforming their communities. Churches that are not motivated by the passion to care for the lost and needy may not respond to the problems of children effectively. These Churches may not be relied on to combat the violation of children’s fundamental human rights. Munene (2000:76) in her contribution to the journal of African cultures and religion laments the motivation of some of the African instituted Churches leaders are economic gain, material benefit and striving for social status. She adds that this factor seem to create continuous wrangles in this Churches. As Munene observes, these are some of the main issues affecting the performance of independent Churches when it comes to their role in evangelization and social economic transformation of the society. The Kenyan independent churches are supposed to play their role in uplifting the standard of community members and especially the children. Mugambi (1995:152) stresses the importance of this role in the following:

“There has been rejoicing in some quarters that Africa is becoming increasingly Christian without appreciating the fact that at the same time, Africa is becoming increasingly poorer and marginalized. Can we rejoice in the prayerfulness of Africans without expressing concern that Africa’s religiosity seems not to help Africans to overcome the natural and socio-structural factors that dehumanize them? If evangelization in Africa does not help Africans in the social reconstruction of their environment, such an enterprise is like salt that has lost its taste” (Matt. 5:13-16).

Kenyan independent Churches formation affects the Churches performance in the area of leadership structures. Most Churches lack proper leadership structures and there is no mentoring. A pastor may own the Church as a personal property. If a pastor leaves nothing is left. Most of the independent Churches are faith Churches and therefore the success is based on the chairman or the senior pastor,

if he dies or leaves, nothing is left, (Gifford, 2001:161) also the Churches do collapse and others suffer decline because of succession wrangles. This leadership and management challenges have affected most independent Churches ability to engage in activities that protect fundamental human rights of children.

6.3.3 Inadequate Education

One of the major challenges faced by the Kenyan independent churches is lack of proper education especially at the leadership level. The majority of the founders of these Churches and those in leadership position are less educated in secular and even in Christian education. This challenge implies that such Churches may not be able to adequately handle violation of the fundamental human rights of children. Waruta (1989:86) points out the following:

“There is no question that it is education that will bring about lasting changes in our societies whether such changes will be for better or for worse. Even the Church and its theology will stagnate and die if African Christians do not employ their energies to the task of the education of its leaders.”

As Waruta has pointed out, the education of leaders is paramount if their respective Churches will make any significant contribution in the transformation of the societies. Gifford (2001:178) reveals the pathetic situation of most independent Church leaders in the observation he made in Uganda when a television evangelist visited the country and invited them:

“A huge crowd attended all receiving a copy of Angley’s latest book. Many of these pastors had little theological education and might possess no books at all.”

The Ugandan situation is faced by Kenyan independent Church pastors who of late are showing interest in education which has become unaffordable to them. Lack of adequate education has caused some of the independent Churches clergy to draw their membership from illiterates who can hardly read or write. Most of these Churches are grouped according to ethnic groups and they use vernacular (Munene, 2000:76). Oosthuizen (1968:261) raises concern over the usage of vernacular in spreading the gospel. He provides the following advice:

“If the gospel has to be preached in a vernacular surrounding, students should learn to think about encounter of the gospel with that environment in the vernacular.

Theological literature in the vernacular is however, the great difficulty and for this both African and non African languages should be used as language media. The African language brings the students into contact more realistically with his own world, and the European language brings him into contact with the riches of theological literature”.

This problem of grouping in ethnic groups and using vernacular languages has isolated the independent Churches from the professionals who could help them in the task of transforming the communities, the well up educated members of the respective communities opt to keep off the Churches. The majority of the independent Churches members therefore remain to be the poor and illiterate people in the community. For a long time independent Churches members and their leaders did not show healthy attitude towards education. As earlier stated, most of the independent Churches and especially Spirit Churches show no interest in western education. They rejected western education and opted to seek guidance only from Scriptures and the Holy Spirit (Murray, 1991:129). This trend of the independent Churches has affected children’s rights and especially development right. It has been a common thing to have some of these independent Church members taken to court either for failing to take their children to school or to the hospital to seek medical help. Low level of education among the independent Church members and the clergy has adversely affected their ability to champion the fundamental human rights of children.

6.3.4 The Literist Use of Biblical Texts

Murray (1991:133) in his description of the independent churches in Kenya states that most independent churches seek guidance only from the Scriptures and the Holy Spirit. Mbiti (1986:32) also voices concern that the independent churches learn more on the Scriptures as the basic guide to their life, more or less as if no time gap existed between their life today and the contemporary world of the Bible. This improper approach to Scripture usage may be termed as scripturalism. Vorster (2008:46) in description of scripturalism states that *a source of a text is used in a literalist way irrespective of its cultural, historical or literary background*. He further points out that scripturalism is also heavily dependent on the usage of proof texts .The effects of scripturalism are indicated in the following words of Burkle (1997:223).

“This challenge in interpretation of Scriptures has contributed to misunderstanding of Biblical position on issues of child discipline, take for example the child abuse occurring through corporal punishment is based on the wrong understanding of wisdom literature especially the Proverbs such as Proverbs 23:13-14. Practices such as

polygamy which do not favour children have been practiced on the basis of wrong understanding of the Old Testament Bible literature”.

Vorster (2007:9) contributes to the same discussion by emphasizing the need to distinguish between the descriptive and prescriptive parts of the Scriptures. The literist use of Scripture by the members of the independent Churches has led to misuse of literature wisdom to justify corporal punishment which is a violation of children’s right to protection from physical abuse. Vorster (2007:214) in his condemnation of corporal punishment has the following to say;

“Corporal punishment in families and educational institutions is still a major threat because it feeds on outdated religious ideas and cultural customs which hold to the idea that to inflict pain leads to obedience and discipline. There is no scientific proof of this point of view.”

As stated by Vorster the corporal punishment in families and educational institution feed on outdated religious ideas. Among the independent churches this outdated idea that to inflict pain leads to obedience and discipline is a result of their literist use of Biblical texts such as Proverbs 22:15.

“Folly is bound in the heart of a child, but the rod of discipline will drive it far from him.”

6.3.5 Effects of traditional African worldview

As earlier stated much of the traditional worldview is retained in many independent Churches. Mbiti (1991:190) reveals that African Christians broke off from mission Churches and formed their own Churches where they are able more freely to incorporate traditional African customs into their Christian life. Scholars who sympathize with African Christianity should be careful to see that wrong traditions and belief do not find way into the Church. Bitek (1970:7) gives the same caution in the following

“The African scholar must endeavor to present the institution of African peoples as they really are. Western scholars had to justify the colonial system, hence the need for the myth of the “primitive”. The African scholar has nothing to justify but he must guard over-reacting in the face of the arrogance and insults of western scholarship. This is

already happening in the field of religious studies where African deities have all the attributions of the Christian God.”

As hinted in Biteks comments, African worldview coupled with African traditional religion has found its way into some independent Churches. Such Churches are like the neo traditional ones, which are Churches with a syncretic component from Christianity and the Bible (Shorter and Njiru, 2001:15) Hiebert (1994:185) laments of the christopaganism which is common in some independent Churches. The effects of this christopaganism combined with some negative African traditional practices have affected performance of some independent Church clergy in protecting children rights. Mbiti (1986:16) points out these effects of African traditional culture in the following;

“Some of the Churches resemble very much the mission Churches from which they broke off. Some have moved a considerable distance in their life and throughout from the normal form of Christianity, are wrapping themselves up with more or less excessive local culture and traditional religion.”

The harmful cultural practices common in Kenya are child marriage and female genital mutilation. As earlier stated, the practices such as female circumcision and polygamy led to the breakdown by some Gikuyu Christians to form their own independent churches that embrace these practices. Some members of some of these independent churches still engage in practices that amount to violation of fundamental human right of children. Kunhiyop (2008:296) in his discussion on African Christian ethics, points out that the practice of female genital mutilation still continues even among professing Christians by many Africans despite the international criticism of the practice.

The practices accompanying traditional circumcision of boy child amounts to emotional and physical abuse. Mbiti (1978:93) in the following description of circumcision of African boy child explains how this circumcision is done to ensure the operation is very painful;

“Since often no pain killing herbs or other preparations is done. The initiated youths are taken into seclusion in the woods for periods from few days to several months, or even longer in some cases”.

The practice is going on in Western Kenya and parts of Northern Rift Valley among the pastoral communities. The young men being circumcised are covered with white wash as symbol of circumcision among their people. These African instituted churches have helped to further the

harmful cultural practices among the people especially in the rural areas. The characteristic of these churches is further described in the following

“African institute churches survive in Kenya today. They continue to satisfy people at a certain level of society. Their members are relatively unsophisticated, people who remain on the margins of modern society and who maintain firm links with their own ethnic tradition” (Shorter and Njiru, 2001:15).

The beliefs and customs borrowed from African traditional society by some members of the Kenyan independent churches negatively affect their response to violation of the children’s fundamental human right. Tarimo (2005:21) points out that” one’s religious faith influences ones perception of reality as well as one’s judgment and commitment. Members of the Kenyan independent churches have been adversely affected by the African beliefs and customs up to date. Some members of Kenya independent churches continue with practices such as female genital mutilation, corporal punishment and painful dangerous traditional methods of boy child circumcision. The Traditional African worldview has impacted negatively among some clergy and members of independent churches and these effects are manifested in different harmful cultural practices among the members of the Kenyan independent churches.

6.3.5 Casuistic Ethics

Most of the Kenyan Independent Churches are not able to respond properly to violations of the fundamental human rights of children due to the effects of their casuistic ethics. Vorster (2008:60) states that:

“Casuistic ethics point to a legalistic ethical system that is not controlled by applying principles in every new situation, but which provides a fixed recipe for moral conduct”.

As stated by Vorster, casuistic ethics aims to control life with moral laws and denies the individual the right of freedom of choice when it comes to the management of their behavior. Oosthuizen (1968:72), in his description of Pentecostal independent churches, points out this legalism as a characteristic of many independent churches. Most of the independent churches portray this legalism in their strict dress code, denial of certain foods and even rejection of medication.

Cava (2010:124) in his discussion on religious abuse of children sheds light on the same subject. He points out that in religious abuse the child is forced to accept the religious views of the parent or guardian to the exclusion of any other belief. Any behavior by the child not in line with the parents' rigid religious zeal is met with punishment and abuse.

Murray (1991:133), in his condemnation of the character of some of the Independent churches in Kenya, laments that some churches like the Spirit type of the independent churches reject western education, clothing, amenities and western medicine. There are cases in Kenya where government agencies have been forced to intervene to rescue children from parents who have failed to take their children to hospital. Most of these churches rely only on prayers for healing and they reprimand those members of their churches who break their law by seeking medication. In these churches women cannot wear trousers and cannot seek services of a beauty therapist. This legalistic approach of parenting dictates what a girl child may wear, and the child has no right of choice. Vorster (2008:63) points out that casuistic ethics usually result in a culture of rigid moralism where there is no room for any form of pluralism, differences of opinions on morals, or diversity in conduct. The detrimental effects of casuistic ethics among members of some independent churches in Kenya are felt by children when their life and survival rights are violated. When some of the independent churches discourage their members from taking their children to hospitals, these children's survival rights are violated.

6.3.6 Fundamentalism

For Independent Churches in Kenya to effectively champion the fundamental human right of children they must first deal with their problem of fundamentalism. Vorster (2008:14) correctly defines fundamentalism in the following:

“An attitude that is rooted in a complex world and life view, determined to establish a rigid orthopraxis”.

Most of the independent churches were formed from the desire to gain independence from mission control. Murray (1991:132) argues that the Kenyan independent churches partly emerged from political, educational and cultural struggle. Members that pioneered independent churches had their own worldview that differed from that of the missionaries, and they wished to form their churches where they could engage freely in their cultural practices such as female genital mutilation and polygamy, among other practices. Mbiti (1986:42) correctly argues that among the independent

churches the Bible was used as a weapon from which to gain the lost authority from Christians elsewhere in the world. Mbiti and Murray's description of the independent churches and their motivation to found these churches reveal the fundamentalism present among most of Kenya's independent churches. The fundamentalism of the independent churches renders them unable to combat violation of the fundamental human rights of children because in their zeal to protect their identity they end up violating these children's rights. This violation takes place through traditional initiation rites where boys are circumcised without any painkillers or proper nursing services. Girls undergo the painful female genital mutilation, which adversely affects their health. Vorster (2008:62) correctly argues that fundamentalists tend to hold strong views on the necessity of discipline and will give preferentiality to corporal punishment and other forms of authoritarian disciplinary action. As mentioned earlier, corporal punishment among other severe forms of punishment are common among members of the independent churches. The rigidity of most members of the independent churches has caused them to disregard the United Nation Convention on the Rights of the Child by branding the prescriptions foreign. Fundamentalism is a challenge that independent churches in Kenya need to overcome in order to effectively champion the protection of the fundamental human rights of children.

6.3 SOME POSITIVE ASPECTS OF KENYAN INDEPENDENT CHURCHES RELATED TO THE PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS OF CHILDREN

6.3.1 Kenyan Independent Churches are Positively Influenced By The High Regard For Children Held By African Traditional Society

In the African society, children are treasured. Every family desires to have as many children as possible. Wanyoike (1974:75) describes this passion to have children:

“So great was the desire to have children that when a man married several wives and finally discovered that he could not give them children he would marry a divorced mother in the end who would bring her children into his home. They became his children and everyone else in that home tried to live as if they were all one family.”

This positive attitude contained in the African worldview has helped in reducing the number of children on the streets, especially in the rural areas. The majority of the independent churches are in the countryside, where their impact is heavily felt. Ousthuizen (1968:50) in his fair description

of independent churches states that some of them take the form of a welfare society, and they also wish to restore some aspects of the African religion. This attitude to children is also explained by Mbiti (1991:112), who maintains that to Africans children prolong the life of their parents and through them the name of the family is perpetuated. He points out that this is the main purpose of producing children. Mbiti further demonstrates the African tradition's high esteem of children in the following:

“Marrying of several wives and the practice of inheriting the wife of a deceased brother (or husband of a deceased sister are all for the purpose of getting children who are highly treasured” (Mbiti, 1991:112).

Some aspects of African traditional society embraced by Kenyan independent churches can be relevant in the protection of the fundamental human rights of children. As stated by Oosthuizen (1968:72) the “Nativistic” kind of independent church takes the form of a welfare society. This caring attitude can be helpful in ensuring that the development and survival rights of children are granted. This strength of the Kenyan independent churches is portrayed in the east African churches' revival movement. Gatu (2006:44) states mutual responsibility and mutual care as one of the major characteristics of the east African Revival movement. Most Kenyan independent churches have this practice, which has helped them to meet basic needs among the members.

The African traditional society embraces “extended family”, a popular family system among the members of the independent churches, especially in the rural areas. Shorter and Njiru (2001:15) in their description of the independent churches state that the churches recruit their members from given ethnic communities and provide a fairly intense experience of community at a time when the scale of social relationship is becoming enlarged. These churches have recreated the traditional solidarity which Tarimo (2005:165) maintains provides insurance against total impoverishment of physically disabled members of the family. The term “extended” arises from the fact that the structure of the extended family brings together distant relatives tied together by a network of blood relationships (Tarimo, 2005:163). The extended family system provides a network of relationships through which its members assume responsibilities towards one another (Tarimo, 2005:163). This African solidarity commonly embraced by clergy and members of the independent churches is relevant in the upkeep of the orphaned children, widows and the poor members of their churches. Family members in the extended family system do extend help to their distant needy relatives with ease. In Kenya members of independent churches gather to raise school fees for children and even

to pay medical bills, even to finance burial. The African idea of sharing, common among members of Kenyan independent churches, is echoed by Vorster (2004:193):

“There are many positive laudable principles for lifestyle and morality in African spirituality. The contribution of African spirituality to moral renewal includes values such as co-operation, respect, self respect, tolerance, love, honesty and sharing”.

As argued by Vorster, for the case of African solidarity there are “many positive principles” in independent churches that can be relevant in ensuring that the rights of the child are not violated. The values mentioned are critical in championing the fundamental human rights of children. Vorster (2004:19) further stresses that African traditionalism can be regarded as a positive development because it reveals many positive aspects of African morals, such as the strong sense of community rather than individualism. This strong sense of community, among other principles, has remained strong pillars for the protection and development of children in the African traditional society. As Eitel (1986:87) explains, culture is considered to contain both good and bad elements, and the good ones should be maintained while the bad ones are replaced.

6.4.2 High Growth Rate Of The Independent Churches In The Rural Areas

Independent churches remain the fastest growing churches in Kenya. Although studies indicate this growth is only a geographical and numerical growth, it is still a significant growth. Daneel (1970:9) also notes that in Africa since the end of the last century Christianity has been characterized by rapid growth in membership of the African independent churches. There are numerous independent church clergy in different parts of the country leading large and small sized churches. The potential of these clergy and the congregations cannot be underestimated. The clergy and their congregations can play a major role in championing the fundamental rights of children. Mugambi (1995:225), commenting on the role the church can play in the society, points out that in Africa, the church remains the most influential and the most sustainable social institution, especially in the rural areas. He further states that “churches have a permanence which transcends particular national boundaries and generations of leaders.” As Mugambi argues, churches and their leaders are more permanent in their respective areas. The independent church clergy are not like project managers who manage a project and then exit after completion of the project. The independent churches clergy are in their respective areas permanently; their churches are in the respective areas where they multiply rather than decrease. Their numerical strength and the fact they are easily accepted among the various communities makes them able to carry out advocacy. If well trained they are able to influence

members of their respective communities to abandon practices that amount to violation of the fundamental human rights of children. Tarimo (2005:21), commenting on the role of religion in social transformation, points out that religion contributes to the advancement of knowledge, especially in the areas of virtues and ultimate truth. The independent churches can promote protection of children's fundamental human rights by teaching proper ethics in their localities of ministry.

Tarimo's (2005:182) argument that activities of churches are closer to the people than other institutions backs the idea that independent churches can play a very important role in eradicating violations of the fundamental human rights of children in the rural areas.

6.5 CONCLUSION

Independent churches are numerous and still the fastest growing churches in Kenya. However, they are the least involved in the protection of the fundamental human rights of children. The few independent churches involved in child programs offer to them relief services rather than child right focused services. The mission churches handle more work of protecting the fundamental human rights of children than the Kenyan independent churches. The challenges of the independent churches in protecting the fundamental human rights are numerous and some of the independent churches are actively perpetuating the violation of the rights they are supposed to be protecting by embracing harmful cultural practices, casuistic ethics and the literalist use of Biblical texts. Some positive aspects of the Kenyan independent churches that can be utilized in the protection of the fundamental human rights of children have been found to be their high growth rate and the positive aspects in traditional African culture such as the African communal solidarity and extended family system.

CHAPTER SEVEN

CONCLUSION: FINDINGS AND CONTRIBUTIONS

7.1 INTRODUCTION

Each chapter of this study has addressed some aspects of fundamental human rights of children and the independent churches in Kenya. This chapter seeks to summarise the main findings of the study and to make suggestions that can help enhance effectiveness in the protection of the fundamental human rights of children in Kenya. The content of this chapter is organized under two main headings: *“The findings of the study; and steps to be taken towards enhancing protection of children’s fundamental human rights among the Kenya’s Independent Churches”*

7.1 FINDINGS

The following section briefly states the findings of each chapter in a systematic way.

7.2.1 Chapter 1

The objective of chapter one was to state clearly what the research proposal entailed and to provide the framework for the proceeding chapters. In order to provide the basis for the study, the proposed title was defined and the key words for the research provided. A detailed account of the background to the problem underlying the issue being researched was provided. It was noted that violation of the fundamental human rights of children is a serious problem in Kenya and the Kenyan independent churches cannot effectively combat the violation of children’s fundamental human rights because of the following three reasons:

- The effects of the African traditional worldview that has caused some of these churches to engage in cultural practices that violate the fundamental human rights of children.
- Lack of sound ethics and Christian theology on human dignity of children as taught in the Bible.
- Challenges in interpretation of Bible texts, which cause the clergy to misuse the Bible to justify practices that violate the fundamental human rights of children, such as corporal punishment.

By way of a hypothesis, chapter 1 presupposed that Kenyan independent churches can protect the fundamental human rights of children if they are provided with proper ethics and exposed to the work of the United Nations Commission on the Rights of Children.

7.2.2 Chapter 2

The objective of this chapter was to present the situation analysis of children in Kenya with regard to their fundamental human rights. In the course of the chapter, it was revealed the number of Kenyan children in need of special protection is more than what institutions both statutory and voluntary can take care of. This implies that the majority of the children in need of care and protection continue to experience denial of their fundamental human rights.

One of the important findings was that the weak policies and legal framework has contributed to a high rate of child abuse in Kenya. This is evidenced by the continued physical abuse of children in schools through corporal punishment, which is associated with poor training of teachers and child caregivers.

Another major finding was that some African traditional practices amount to violation of fundamental human rights of children. FGM and early marriages were among the mentioned practices. These practices are prevalent in Kenya and they relate to how most of the independent churches treat children, especially those that draw their values from the African traditional worldview.

7.2.3 Chapter 3

The objective in this chapter was to demonstrate that sound Biblical theology regarding children coupled with proper interpretation of Scriptures is key to protecting children's fundamental human rights. The chapter further does a comparative literary study and exegesis of selected Bible texts, in a grammatic-historical way in light of the history of revelation. The texts addressed were those that relate to the protection of the fundamental human rights of children.

One major conclusion was that the dignity of children is based on the fact that they are created in the image of God, thus implying that their fundamental human rights should be protected.

The study also reveals that God's involvement with man includes the pregnancy duration and this involvement attributes value to the embryo or fetus, a basis for prohibition of abortion.

Another major finding was that wrong interpretation of the wisdom literature that deal with child training can further the violation of the fundamental human rights of children, especially when the wrong understanding and the use of rod is adopted. The research found out that Jesus served a good example of those who respect children by identifying with them. It was concluded Jesus was indignant when the disciples tried driving away children who wanted to approach him.

The study revealed that Paul, in his advice to parents, cautions them against abusing their children. This abuse may be emotional or physical "fathers do not exasperate your children" (Eph 6: 4). The Bible was found to provide a platform to the church to raise their voice and champion the protection of the fundamental human rights of children.

7.2.4 Chapter 4

The objective of this chapter was to expose the national and international instruments that protect the fundamental human rights of children. The study sought to support the notion that the independent churches in Kenya cannot effectively respond to the violation of children rights in Kenya unless they are well exposed to the Kenyan laws that protect the fundamental human rights of children. The study found that there are numerous laws, including the Kenyan constitution, that protect the fundamental human rights of children. The study revealed the weaknesses in the Kenyan legal systems when it comes to protecting children from a legal point of view. Some of the legal pitfalls noted were such as inconsistencies in the laws like the age of maturity and other ages stipulated by statutes for the purpose of their operation. The study also notes that there is limited capacity to enforce the laws. The study further found that penalties for crimes against children are not severe enough to prevent offenders from committing crimes against children. The study also noted with concern that the law enforcers are not adequately trained on violation of the fundamental human rights of children. The study dealt comprehensively with the international legal instruments on child protection. It was also noted that some elements of Kenyan laws are not in line with the United Nation's convention, especially when it comes to parental care and responsibility. The parent has the freedom to inflict physical pain on the child through corporal punishment.

7.2.5 Chapter 5

In chapter five the research dealt with different forms of violation of children's fundamental human rights and the possible skills that can help in identifying these violations. In this chapter the historical background and a detailed description of independent churches in Kenya was provided. It was demonstrated that the African traditional worldview has negatively affected the Kenyan independent churches' ability to protect and embrace children's fundamental human rights in the light of UNCRC. In this chapter fundamental human rights such as developmental, survival, protection and participation rights were highlighted, and ways in which these rights are denied were discussed. The chapter sought to demonstrate a wide range of violation of these laws while highlighting the key indicators that characterize violation. For the Kenyan independent churches to abandon practices that amount to violations of children's fundamental human rights they will need a proper understanding of forms of violation. Also, for the Kenyan independent churches to engage in advocacy or to lobby for better laws and policies, they will need to understand specific ways in which children's fundamental human rights are violated. They will need to be equipped with skills that can enable them to authoritatively state that children's fundamental human rights are being violated.

7.2.6 Chapter 6

In chapter six the research dealt with weaknesses and some positive aspects of the Kenyan independent churches that relate to the protection of the fundamental human rights of children. The positive aspects of the Kenyan independent churches are identified as African solidarity and the extended family system. These two were pointed out as some of the African traditional values that may contribute to the betterment of children's lives, especially orphans and vulnerable ones. Independent churches lean towards African socio-cultural values, such as communal rights and African solidarity as opposed to individualism, a major strength of the independent churches. Another potential of Kenya's independent churches is based on the fact that they are still the fastest growing churches in Kenya.

The weaknesses of independent churches are mainly based in their limitations associated with poverty, illiteracy and inadequate theological education, and were found to hamper their ability to protect the fundamental human rights of children. The small number of independent churches involved in children services was found to be offering relief services as opposed to the mission churches, which are actively involved in advocacy, rescue and rehabilitation of children whose

fundamental human rights have been violated. The independent churches in Kenya were also found to be seriously affected by an African cultural worldview, which cause some of them to tolerate practices such as female genital mutilation and early marriage, among others. The churches were described as weak in protecting the fundamental human rights of children since some of them engage in harmful cultural practices. The study revealed that the inability to interpret Scriptures appropriately has left the independent churches clergy with allegorical preaching approach. This allegorical approach of interpreting passages of the Bible has hampered their ability to understand the Biblical position on human dignity and the proper Biblical teachings on childhood. Physical abuse of children was identified as a common form of violation, which is related to wrong interpretation of Scriptures, especially the wisdom literature.

7.3 CONTRIBUTIONS

This study set out to evaluate the role played by Kenyan independent churches in the protection of fundamental human rights of children. The study was based on the assumption that Kenyan independent churches have failed to effectively respond to violation of children's fundamental human rights. That clergy and members of these churches can effectively combat the violation of children's fundamental human rights if they are provided with proper ethics and exposed to the work of the UNCRC. Based on the study findings the following conclusions were drawn.

7.3.1. Violation of Children's fundamental human rights in Kenya

Violation of the fundamental human rights of children is rife in Kenya and it is on the increase at a disturbing rate. Although Kenya has ratified the United Nation's Convention on the Rights of Children, the weak policies and legal framework continue to allow the violation of these rights. There are glaring gaps that make those who violate the rights of children to only be subjected to the criminal procedures as captured in the penal code. These gaps have ensured continual violation of the children's right to protection from physical abuse that is perpetrated by teachers and parents in schools and homes. Violation of the fundamental human rights of children carries consequences that affect the entire community and it calls for everybody in the community to take an interest in the eradication of the violation of children's fundamental human rights. The study concluded that there is need of regular studies to find out the magnitude of the violation the fundamental human rights of children in Kenya.

7.3.2 Biblical ethical basis for the protection of the fundamental Human Rights of Children

The study comes to the conclusion that most of the independent churches, owing to lack of proper theological education, cannot understand and appreciate the role of the Scripture in protecting the fundamental human rights of children. The study concludes that proper exposure and understanding of the Biblical passages that relate to creation, such as Genesis 1:26-28, provide insight into how the Bible seriously addresses the issue of human dignity. The educational challenges faced by the clergy and layman in independent churches imply that they face serious problems when interpreting Scripture. Allegorical interpretation of Scripture is a common problem with the clergy of the independent churches, a factor which contributes to their members' abuse of children because of wrong interpretation of wisdom literature such as Proverbs 22:15. The study concludes that in the Bible the fundamental human rights of born and unborn children are well protected and the Christian ethic being a deontological ethic, is key to ensuring born and unborn children's rights are protected.

7.3.3 Children's fundamental human rights in the light of the Kenyan laws and the international legal instruments

The study concludes that the clergy and the members of the Kenyan independent churches can effectively respond to violations of the fundamental human rights of children if they are well informed on the Kenyan Laws and the international legal instruments that protect these rights. The independent churches can engage in effective advocacy only when well exposed to legal instruments and the national policies regarding protection of children and their fundamental human rights. The Kenyan legal system contains inconsistencies in existing statutes, something that affects its effectiveness in protecting the fundamental human rights of children. There are also areas of Kenyan laws that are not in line with the United Nation Convention on Children's Rights, especially in the area of parental care and responsibility. The study therefore concludes that the Kenyan legal system does not adequately respond to the violation of children's fundamental human rights. If the clergy and the members of the independent churches are well exposed to the national and international legal instruments that protect children's fundamental human rights, they can campaign for amendments of the laws and promote protection of children's fundamental human rights.

7.3.4 The independent churches in Kenya and violation of children's fundamental Human Rights

The independent churches in Kenya are grossly ineffective in their response to the violation of the fundamental human rights of children. This is because although they live with the reality of this violation of the fundamental human rights of children, some of the Kenyan independent churches tolerate abusive social cultural practices such as female genital mutilation. The study concludes that the clergy and members of the independent churches in Kenya cannot combat violation of the fundamental human rights of children unless they are well equipped with skills to identify different forms of violation of these rights. The lack in adequate skills to point out what constitutes violation of the fundamental human rights of children amounts to a poor response to violation among clergy and members of independent churches in Kenya. The study concludes that violation of fundamental human rights can take different forms as a result of multiple factors, such as government inefficiency in development, legal policies, parents, clergy and community in general. If the members of independent churches can be knowledgeable enough on how to respond to different forms of violation of these rights, the number of violations can soon decrease. The ability to tackle violations effectively also ensures that children get proper help when involved in abuse, and thus reduces the effects of the violation. Effective response would ensure proper measures are in place to ensure preventative and curative measures are put in place.

7.3.5 Strengths and challenges of the independent churches that relate to protection of the fundamental human rights of children

Although the independent churches are weak in addressing the violation of children's fundamental human rights, they have some positive aspects especially relation to African culture that may be helpful in protecting the fundamental human rights of children. In this regard the study concluded that not everything in African culture can be regarded as harmful to the well-being of children. In fact, some of the African-socio cultural values can promote human rights and well-being of children. Examples include the African communal solidarity and the extended family system. As concluded in the study, the strong sense of community solidarity embraced by the clergy and members of the independent churches promotes the well-being of children, a good gesture towards protecting the fundamental human rights of children. The African morals associated with the African worldview, especially those that favour marriage stability, can be viewed as strengths that favour the protection of children's fundamental human rights.

Kenyan independent churches are numerous and the fastest growing in the country, but despite the high growth when compared with the mission churches, they are the least involved in the protection of the fundamental human rights of children. The few Kenyan independent churches involved in children welfare services only provide relief and they are unable to come up with rights based programmes. Poverty, coupled with inadequate education, render Kenyan independent church clergy and their members ineffective in learning and implementing the United Nations Convention on the Rights of the Child.

If Kenyan independent churches do not watch out against some harmful cultural practices, they may continue perpetuating violation of fundamental human rights of children in the guise of being loyal to their cultures. The members of the Kenyan independent churches that insist on practicing harmful cultural practices such as early marriage, female genital mutilation, traditional boy child circumcision, corporal punishment and polygamy contribute towards the violation of children's fundamental human rights. These common cultural harmful practices among some members of Kenyan independent churches imply that the churches are very weak in championing the fundamental human rights of children. The Kenyan independent churches' ability to protect the fundamental human rights of children is also hampered by casuistic ethics, fundamentalism and literalist use of Biblical texts, something that negatively affects their understanding of proper Biblical teaching about children.

7.3.6 PRACTICAL SUGGESTIONS

The following suggestions can improve the effectiveness of the Kenya's independent churches in the protection of children's fundamental human rights.

- **Establishment of Non-Denominational Theological Colleges To Train clergy from Independent Churches In Kenya**

The clergy and members of independent churches need opportunities to study at theological colleges that can provide them with a proper theology regarding children. Their inability to interpret Scripture appropriately has resulted in their allegorical preaching and misunderstanding of numerous passages of Scripture that relate to human dignity of children. This problem has contributed to practices that promote the violation of the fundamental human rights of children. Para-church organizations and the national church bodies like national church councils should consider initiating Bible training centres and colleges that offer theological training to these

clergymen. Most independent churches in Kenya regard the mission church theological colleges with suspicion and often they seem to have competing attitude toward mission churches and their training institutions. Christian non-governmental organizations are well accepted by most of the independent churches. These Christian non-governmental organizations like World Vision, Tear Fund, Mustard Seed Foundation among many others, can take the lead in initiating capacity building amongst the independent churches clergy and their members through training. Organizations like Campus Crusades with their colleges like the Nairobi International School of Theology can develop programs and curricula that meet the specific theological training needs of the independent churches in Kenya. The same approach can be applied by church bodies like the Association of Evangelicals in Africa, who initiated the Nairobi Evangelical Graduate School of Theology.

Theological faculties at universities can play a role in training members of the independent churches in Kenya. They can take the example of North West University of South Africa, which has partnered with medium sized colleges serving in remote places to meet the training needs of untrained clergy and missionaries.

The universities and their Christian theology scholars can develop curricula that include social transformation training to enhance the capacity of these churches. The curriculum can include areas of training such as children's rights, welfare issues, leadership, and homiletics, counselling and systematic theology.

Christian non-governmental organizations can also identify some independent churches and assist them to come up with their own training institutions. Through capacity building initiatives, they can help them with trainers and training materials.

Some independent churches, like the Africa Brotherhood Church, has a Bible training institute, some major independent churches can be assisted to develop their own institutions, especially the large independent churches.

- **Enhancement Of Literacy Level Of Clergy And Members Of Independent Churches In Kenya**

The clergy and the members of independent churches in Kenya can protect the fundamental human rights of children if their illiteracy level is raised. The ability to read and right is key to the

understanding of the child's fundamental human rights and the articles in the United Nations Convention on the Rights of the Children. Most of the independent churches are in the rural areas and the remote areas that are at risk of being marginalized. The government of Kenya should endeavor to extend adult literacy programmes to these areas. Charitable organizations should assist some of the independent churches to develop adult literacy programmes in their churches. Ensuring the churches have both formal and non-formal schools for children may also help in enhancing literacy level among them. Mission and other charitable organizations can play a critical role in producing education to children of most independent churches members by initiating schools in respective marginalized areas. This education will help them shed some of the harmful cultural practices such as FGM and early marriage. As the children grow they will change the society and the worldview in some of the independent churches. The children will be transformed into responsible child minding members of the independent churches.

- **Economic Empowerment Of The Clergy And Members Of The Independent Churches In Kenya**

Poverty has grossly affected the effectiveness of Kenya's independent churches when it comes to the protection of children's fundamental human rights. This poverty is felt in the church and at family level. The members are unable to finance any meaningful children's program. They cannot carry out advocacy, hold seminars or even purchase relevant learning materials that provide them with important information regarding fundamental human rights of children. Most of their members are ignorant because of poverty at family level, which has resulted in a lack of education and information. The poverty at family level continues to recycle itself as children grow up to be poor adults who raise their children in the same poverty. The government should embark on a serious poverty eradication program especially in the rural and slum areas where the majority of the independent churches are planted. Appropriate capacity building programmes should be introduced such as technical training, agricultural training and micro-credit projects that aim at enabling the rural poor and slum dwellers to earn a living. Charitable organizations and other international donors can find ways of partnering with independent churches with a view to improving the economic condition of the members of these churches. Charitable organizations could improve the lives of these church members by enhancing the capacity through micro enterprise training. The independent churches can be helped to come up with church based micro credit programmes that target the poor church women and the youth. The churches can also have their clergy equipped with project management skills to enable them to manage their church based poverty eradication projects.

- **Regular Child Protection Training For Clergy And Members Of The Independent Churches In Kenya**

Considering the high growth rate of independent churches in Kenya, which results in numerical strength, the need to train them in child protection is urgent. The training can be organized in seminar form or workshops where the clergy and some of their prominent members are invited. This training can cover issues ranging from child development to national and international legal instruments that relate to child protection. The clergy could be provided with paralegal training, which can enable clergy to raise concern and report child abuse to the authorities. Just in the same manner that organizations like CLAN, ANPPCAN and UNICEF have carried out training for policeman, judiciary staff and teachers, they should consider organizing training for the clergy of the independent churches. These regular training sessions and workshops can also influence the independent church clergy and the members to drop some of the harmful cultural practices they embrace and can bring tremendous change in their worldview with regard to children. A well trained independent churches clergy can teach the members on children's fundamental human rights and even initiate appropriate child protection programmes. The government of Kenya should also seek to ensure the clergy and the members of the independent churches are trained in child protection. The government can facilitate the training of the clergy even at the community level through the provincial administration. Relevant learning materials like books, newsletters and journals relating to child protection can reach a good number of the clergy through the area chiefs and assistant chiefs in the provincial administration. This literature can be critical in exposing the Kenya's independent church clergy and their members to the fundamental human rights of children.

- **Engaging Clergy and Members of the Independent Churches in Child Protection Initiatives**

The clergy and the members of the independent churches can play a vital role in curbing the violation of the fundamental human rights of children especially in the densely populated urban slums and the marginalized rural areas. The government and international agencies dealing with child welfare should consider engaging them as reliable partners. The clergy of the independent churches are readily available for social services in their areas of operations. Since there are many churches in the community their buildings could be used for training. With proper training some of their clergy or the members can serve as volunteer child protection officers or children officers. These trained clergy and members can also be assisted to set up child crisis desks or hotlines in their

churches where cases of violation of children's fundamental human rights and other abuses can be reported.

These independent church clergy can report cases of neglect, abuses, and even monitor and report cases of children who are not attending school.

The churches can play a vital role in protecting children during emergencies like violence, clashes and natural calamities before the government and international agencies staff intervene in such disasters. The clergy is usually already there to intervene, since most of them are part of the community.

The government and international donors should consider channeling aid to the community child protection and development programmes through some of the able independent churches. Some of them can be assisted to set up children clinics, children centres and sponsorships programs and even children orphanages.

- **Punitive Measures against Kenyan Independent Churches That Continue To Perpetuate Violation of Children's fundamental Human Right**

The study noted that some independent churches have continued to embrace practices and teachings that undermine human dignity of children. Early marriages, female genital mutilation and even failing to take children to the hospitals when sick are some of the common harmful practices perpetuated by some of these churches. The government should be strict enough to de-register or ban such independent churches. The government could even arrest the leaders of some of the churches and prosecute them for child abuse.

7.3.7 FURTHER RESEARCH

Inevitably research such as this raises as many questions as it answers. This has been the case in this study evaluating the role of Kenya's independent churches in protecting the fundamental human rights of children. Accordingly some line of further research can be identified.

It was difficult to establish the exact number of Kenya's independent churches that engaged in child welfare programmes. It is therefore highly recommended that further research be carried out in

future in these lines so as to show a clear picture of the growth of the independent churches and the nature of the child welfare programmes undertaken by the independent churches.

Due to difficulties of access and the dispersed nature of literature, it was not possible to adequately compare the Kenyan independent churches child welfare programmes with those of the mission churches. It is recommended that in future, research dedicated to comparing the church child welfare programmes of the two types of churches. The study established that one of the major factors accounting for continued violation children's fundamental human rights in Kenya is the Kenyan legal system, which under the constitution exists in a plural manner allowing the child to be defined differently, for example customarily, or according to religion. There is need to do further research on this area for the purpose of eradicating all legal loopholes that account for violation of children's fundamental human rights. The study further noted that policy issues that range from the problem of untrained personnel such as law enforcers to uncommitted personnel who lack the zeal to prosecute child abuses is hampering eradication of child abuse in Kenya. There is therefore need to research further on the same area for the purpose of eradicating the violation of the fundamental human rights of children.

The overall aim of the present investigation has been to add to what is already known about Kenya's independent churches and the protection of fundamental human rights of children in Kenya and Africa at large. It is hoped that some contribution has been made and that the findings, conclusion and suggestions have some influence on future activities and policies in the field.

7.3 CONCLUSION

The investigations and argumentation affirm the central theoretical argument of this study: "Kenyan Independent Churches can effectively combat the violation of children's fundamental human rights if they are provided with proper ethics and exposed to the work of the United Nations human rights Commission on the Rights of Children."

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ANNEXTURE A

A LETTER FROM THE MINISTRY OF GENDER, CHILDREN AND SOCIAL DEVELOPMENT



MINISTRY OF GENDER, CHILDREN AND SOCIAL DEVELOPMENT

Telegrams: "APPROVED", Nairobi
Telephone: Nairobi 2228411 ext 30040
E-mail: children@homeaffairs.go.ke
customercare@homeaffairs.go.ke
Fax: Nairobi 310574 & 2248827
www.homeaffairs.go.ke

DEPARTMENT OF CHILDREN'S SERVICES
HEADQUARTERS
JOGOO HOUSE "A"
TAIFA ROAD
P.O. BOX 46205-00100
NAIROBI

DCS/RESEARCH/Vol.II (61)

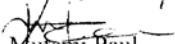
5th January, 2010.

The District Children's Officer,
Nairobi Province.

RE: Leonard M. Wambua

Kindly assist Leonard M. Wambua of NorthWest University South Africa, Potchefstroom campus. He is writing a Phd desertation on "evaluation on the role played by Kenyan Independent Churches in the protection of the fundamental human rights of children." Kindly avail any useful data relevant to his research.

Thank you,


Mutemi Paul,

For: Director Children's Services

ANNEXTURE B

A LETTER FROM THE NATIONAL COUNCIL FOR CHILDREN'S SERVICES

THE NATIONAL COUNCIL FOR CHILDREN'S SERVICES

Tel/Fax: +254-20-310257
E-mail: nccs@nbn.net.co.ke
When replying please quote



RE-INSURANCE PLAZA, 5TH FLOOR
TAIFA ROAD,
P.O. Box 6446-00100
NAIROBI

Ref. No.
NCCS/RESEARCH/Vol. I (31)

Date: 5th Aug, 2009 20.....

The officer In-charge
The National Council for Children's Services

RE: LEONARD M. WAMBUA

I ask you to assist Leonard M. Wambua of Northwest University of South Africa who is doing a research on "evaluation of the role played by Kenyan independent churches in the protection of the fundamental human rights of children."

Thank you,

Mr. Josephat Kalinge,

**NATIONAL COUNCIL FOR
CHILDREN'S SERVICES
P.O. BOX 6446 NBI.**

For: Head of Secretariat,

The National Council for Children's Services.

ANNEXTURE C

Map of Kenya

