GENDER AND CHILD RIGHTS IN EASTERN AFRICA

A survey of laws and policies on child marriage, economic exploitation and inheritance

ACPF

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The African Child Policy Forum (ACPF)

The African Child Policy Forum (ACPF) is an independent, not-for-profit, pan-African institution of policy research and dialogue on the African child.

ACPF was established with the conviction that putting children first on the public agenda is fundamental to the realisation of their rights and wellbeing, and to bringing about lasting social and economic progress in Africa.

ACPF's work is rights-based, inspired by universal values and informed by global xperiences and knowledge; and it is guided by the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and other relevant regional and international human rights instruments. Specifically, ACPF aims to contribute to improved knowledge on children in Africa; to monitor and report progress; to identify policy options; to provide a platform for dialogue; to collaborate with governments, intergovernmental organisations and civil society in the development and implementation of effective pro-child policies and programmes; and to promote a common voice for children in and out of Africa.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
AWP	Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa
Banjul Charter	African Charter on Human and Peoples Rights
Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice
CCC	Confident Children Out of Conflict
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
DHS	Demographic and Health Survey
DPA	Darfur Peace Agreement
EDPRS	Economic Development and Poverty Reduction Strategy
ESPA	Eastern Sudan Peace Agreement
FDRE	Federal Democratic Republic of Ethiopia
GTP	Growth and Transformation Plan
Havana Rules	UN Rules for the Protection of Juveniles Deprived of their Liberty
ILO 138	Convention Concerning Minimum Age for Admission to Employment, 1976 (No 138)
ILO 182	Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No 182)
ILO 189	Domestic Workers Convention, 2011(No 189)

ILO	International Labour Organization
INC	Interim National Constitution (Sudan)
MIGEPROF	Ministry of Gender and Family Promotion (Rwanda)
MOLSA	Ministry of Labour and Social Affairs
MoWCYA	Ministry of Women, Children and Youth Affairs (Ethiopia)
NALEAP	National Legal Aid and Awareness Programme (Kenya)
NCCS	National Council for Children's Services (Kenya)
NCHR	National Commission for Human Rights
NGOs	Non-Governmental Organization(s)
OVC	Orphans and Vulnerable Children
Palermo Protocol	Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children, 2000
PRSP	Poverty Reduction Strategy Paper
Riyadh Guidelines	UN Standard Minimum Rules for the Administration of Juvenile Justice
Slavery Convention	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957)
SCI	Save the Children International
SOA	Sexual Offences Act
Trafficking Convention	Convention for the Suppression of the Traffic in Persons and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
WHO	World Health Organization

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FOREWORD

Regional and international instruments including, the African Charter on the Rights and Welfare of the Child, and the African Women's Protocol, the Universal Declaration on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination Against Women, all systematically call for the right to equality and to equal protection by the law to everyone without distinction on any grounds, such as gender.

Despite African governments ratifying human rights instruments, gender based discrimination exists in many forms and occurs in most of our African societies. In addition, while gender based discrimination affects both boys and girls, girls are disproportionately represented in the adverse ramifications of gender-based social constructs, thereby significantly impairing their ability to enjoy their childhood, reducing their life chances, and generally undermining their human dignity.

The research conducted by African Child Policy Forum (ACPF) and Save the Children International (SCI) on gender and child rights in five countries namely, Ethiopia, Kenya, Rwanda, Sudan and South Sudan, investigates the level of legal protection of both girls and boys from practices such as child marriage, sexual and economic exploitation and inheritance rights, which are closely related to gender as a social construct. The report highlights the progress made by governments and other stakeholders towards ensuring the protection of children particularly girls from these discriminatory practices. The research further traces some good achievements that can be replicated to ensure the protection of children, highlights the failures and persisting challenges of each target country, documents the outstanding issues in terms of strategies, reforms and changes in social norms, and finally offers key recommendations to address these gender-based child rights violations.

The findings are critical and will inform the work on the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in its efforts to assist States Parties to prevent and eliminate child marriage, economic and sexual exploitation, and deprivation of inheritance rights not only in the surveyed countries, but in all African countries. It is, therefore, the Committee's hope that the findings will contribute towards the elimination of gender-based discrimination of children. Particularly, the report will be an important tool for the Committee in the execution of its mandate of collecting and documenting information regarding the situation of children, in order to make recommendations to governments. The research will guide the ACERWC in establishing gender based principles for the protection of both boys and girls from discrimination.

I am confident that child rights actors will find this report useful, as an advocacy resource that will catalyse legal and policy reform for the protection of our children.

ACPF and its partners therefore have an important task ahead; to extend the study beyond the five Eastern African countries. This will indeed contribute to the development of evidence based strategies on strengthening the legal and policy framework for addressing gender-based discrimination. Such an evidence base will in turn support the development of institutionalised programmes for protecting children from all forms of gender based discrimination.

Dr. Clement Mashamba
3rd Vice-President, African Committee of Experts on the Rights and Welfare of the Child (2013)

EXECUTIVE SUMMARY

Equality of genders, meaning that men and women, boys and girls, should not be subjected to discrimination based on gender, has to be central to any human rights discourse. The cultural and social attributes attached to being male or female have perpetuated deep rooted conceptions of inequality between men and women in the enjoyment of their human rights. In particular, women are discriminated against and denied equal opportunities to exercise their rights. Besides being a violation of human rights, gender-based discrimination has significant and deleterious consequences on the reduction of poverty, as well as the realisation of development milestones. Gender equality in the context of child rights, calls for gender sensitive child rights protection laws, policies and practices in terms of which, children, especially the girl child, are not discriminated in the enjoyment of rights solely on the basis of their sex. Gender equality, therefore, upholds a system where everyone, men and women, boys and girls, are accorded equal protection and opportunity in all spheres of activities.

There are international and regional human rights instruments which promote gender equality. The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa (Maputo Protocol) are the core instruments in this regard. The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child provide for child-specific provisions on gender equality. There are also notable efforts in African countries to harmonise the national laws and policies with the international and regional rights instruments. These efforts notwithstanding, gender-based violations of child rights are widespread in Africa. Customary practices and beliefs exacerbate discrimination against children (often girls) on the basis of gender. Early marriage, sexual and economic exploitation, and deprivation of inheritance rights are some of the more insidious manifestations and basis for gender based discrimination amongst children.

This Report analyses the findings of prior studies by ACPF on gender and child rights, focusing on the three thematic areas of child marriage; economic and sexual exploitation; and inheritance rights in five sub-Saharan countries of Ethiopia, Kenya, Rwanda, South Sudan, and Sudan. The country studies were supplemented with secondary research and analysis. However, variations in the scope and analytical depth of the respective studies as well as a general dearth of up to date and disaggregated data/information were major challenges in the development of this report.

The Report indicates that with the exception of South Sudan, the other countries are party to key international and regional instruments relevant for the protection of gender and child rights. At the national level, all the countries studied have express constitutional provisions addressing the three thematic areas. Major efforts have been made in the five countries in terms of laws, policies, and in practice to improve on gender and child rights in the areas concerned. The five countries have adopted varying national legal and policy frameworks and mechanisms to protect children's rights from a gender perspective. Ethiopia has a commendable legal framework however the policy framework fails to adequately address the three thematic areas. Kenya has a good legal and policy framework on/in all areas except for child labour. Rwanda mainly focuses on criminalisation and punishment for child marriage and sexual and economic exploitation. Sudan barely provides constitutional protection to children and does not provide for a legislative and policy framework that would ensure the realisation of its constitutional aspirations. Lastly, South Sudan's framework is still at a nascent stage with the present legal and implementation efforts being primarily driven

by international partners.

Child marriage is prevalent in all the target countries. Ethiopia has the highest prevalence rate of 49%, South Sudan follows at 48%, Sudan is third at 34%, Kenya at fourth position with 26%, and Rwanda at 13%. The factors that contribute to the high prevalence rate vary from one country to another, but poverty emerged as the main cause of child marriage in all the country studies. Gender stereotypes have had a negative effect on the education of girls, exacerbated their economic dependence, and perpetuated the vicious cycle of poverty among girls and women.

Economic exploitation of children often manifests through child labour practices which violate international standards related to the age at which a child can work and the type of work that such child can undertake. The main cause of economic exploitation of children as identified in this report is poverty. The HIV and AIDS epidemic has also orphaned a lot of children, who in the absence of a guardian or caregiver, are compelled to resort to child labour as the only option for economic survival. The state of child labour in the target countries is concerning, with data indicating that in Ethiopia, 52.1% of the total children population are part of an active workforce; while the percentages of children engaged in child labour in South Sudan, Sudan and Kenya are 58, 46, and 17.4 respectively. The causes of sexual exploitation of children are numerous, and include lack of means to provide for their subsistence needs. They include; the presence of pre-existing adult prostitution markets; prior history of child sexual abuse and child sexual assault; presence of large numbers of unattached and transient males in local communities (such as military personnel, truck drivers and conventioneers) among others; the promotion of child prostitution by parents, older siblings and boyfriends; the recruitment of children as 'sex workers' by organised crime units; and trafficking of children for sexual purposes. The consequences of sexual exploitation include early pregnancy, health risks such as fistula, HIV and STI infection, and even death. Sexual exploitation is significant in Ethiopia and Kenya, both of which are key tourist destinations. Predominantly, the malpractice is gender based, mostly affecting the girl child. The common factor in the countries where the statistics are available (Kenya and Ethiopia) is that poverty, failed child marriages and child trafficking are responsible for the sexual exploitation of children, especially girls. The statistics in the other three countries are not available.

The terrain of children's inheritance rights is highly complex and gendered. Inadequacies in the legal, institutional and judicial responsiveness contribute to the failure to vindicate inheritance rights of children in the target countries. Children encounter barriers such as inadequate information about their rights; inadequate capacity to face their alienators; inadequate time to follow-up before the property is totally alienated; and high cost of instituting title ownership procedures or litigation to recover alienated property. Customary laws also stand in the way of children's inheritance rights because they promote the deprivation of the right (especially of the girl child). Islamic laws on inheritance by children (as in Sudan) provide that a boy inherits twice as much as a girl and do not recognise inheritance by children born out of wedlock. These laws are at variance with the requirements of non-discrimination of children on the grounds of their birth or sex.

This report identifies a number of challenges that undermine the effective implementation of the legal and policy frameworks to protect the rights of children on the three thematic areas. Ineffective legal and policy standards characterised by gaps and insufficient resources count as primary challenges. Poverty, persistent cultural and religious dictates, weak punitive measures, inadequate data and systems of monitoring and evaluation are some of the other major challenges.

In terms of structure, the first chapter of the report sets out the contextual background, rational

and purpose of the report. Chapter two discusses the international and regional legal frameworks on gender and child rights in the three thematic areas. It also highlights the level of harmonisation of these international standards with national laws and policies in the target countries. In chapter three, the level of implementation of laws and policies on the three thematic areas in light of gender equality is discussed. Chapter four summarises the challenges in realising gender sensitive child rights on the selected thematic areas. The conclusion and recommendations are set out in the final chapter of the report.

A framework for analysing gender and child rights is annexed to the report. The Framework provides a prism for systematic analysis of national legal and policy systems to enable specific assessment of the gender responsiveness; gender sensitivity, and gender-accountability of national laws and policies. The Framework is useful for informing the development and implementation of gender-sensitive and relevant policies and laws (please refer to Annex 1, at the end of the report for the Framework).

Summary of recommendations

Based on the findings of the study, below is a summary of the key recommendations made to Governments in the target countries in order to entrench protection and promotion of child rights without gender discrimination:

1. There is need for constitutional, legislative and policy reform in the target countries in order to effectively protect girls and boys in the three thematic areas.
2. Judicial enforcement of children's rights needs to be accelerated. This can be realised by instituting laws and procedures that simplify the enforcement regimes including the adoption of special compliance procedures.
3. There is need for public sensitisation and awareness raising on gender and child rights, as well as building the capacity of various actors to redress gender-based violations of rights.
4. Facilitation of legal aid to enable victims of gender based violations to access justice especially in light of the magnitude of the impact of poverty on the aspects of rights discussed in this paper.
5. The place and authority of customary law must be clearly defined in the Constitution and legislation. Only customary laws that are consistent with written laws, especially the Constitution, and that do not promote gender-based or other violations of children's rights should be recognised.
6. There is need for improved data collection and information systems in order to identify vulnerable groups, inform policy and programming at all levels, and monitor systems to track progress towards the goal of preventing gender-based violations of children's rights. This includes collection of vital statistics for children.
7. Elimination of poverty is key in addressing the issues in the three thematic areas. Governments must also endeavour to allocate adequate resources for programmes and institutions working on gender and child rights.
8. Coordination at the national, international and institutional levels is imperative in the provision of a holistic approach to gender and child rights and promoting

exchange of best practices prevailing in other countries.

9. South Sudan should ratify and domesticate key international and regional human rights instruments.

10. There is need for the research which was conducted in five countries to extend to other countries in the region in order to synchronise solutions to common problems pertaining to gender and child rights.

CHAPTER 1
INTRODUCTION AND BACKGROUND

1.1 Introduction

Violations of child rights that are gender-based are widespread and persistent. They take many forms, including, child marriages, disinheritance, economic and sexual exploitation, among other harmful practices that are deeply rooted in socio-cultural beliefs that exacerbate gender inequality. Across Africa, many of these practices are largely hidden and clandestine. This leads to difficulties in detecting these practices, enforcing the national, regional and international laws that they contravene, and impedes efforts towards protecting and rehabilitating the children who are affected. Despite the significant progress that some African countries have made in putting in place the necessary legal and policy framework, children, particularly girls, continue to experience despicable violations based on gender discrimination. Evidence from the five countries in this study shows that there are indeed efforts to put in place polices, laws and mechanisms to improve the rights of girls in the thematic areas discussed. It is also evident that poverty, discriminatory customary or traditional laws and practices, religious beliefs, and limited political will in each of these countries, impedes the implementation and effectiveness of these laws and policies.

Given the centrality of gender – in terms of causes, attitudes and consequences - to many child rights violations, this report also recommends a framework for assessment on the implications of gender for child rights. The framework is intended to act as an instrument which deliberately considers how gender norms and practices are reflected, perpetuated or regulated, by the laws and policies of five countries across Africa. The synthesis report focuses on the selected gender themes in the context of the five counties, South Sudan, Kenya, Ethiopia, Sudan and Rwanda. The gender framework can potentially be applied more broadly.

1.2 Contextual background

Child marriages, child economic and sexual exploitation and child disinheritance occur across Africa. This is exacerbated by unequal power relationships between adults and children, which in some situations, may be considered as abusive. The long-term consequences for children, especially girls, are severe and contribute to long-term deprivation and poor outcomes for children in other aspects of life.

The CRC, CEDAW, ACRWC and the Maputo Protocol prohibit discrimination based on sex and provide that gender - as a criteria for socio-cultural analysis which determines the social attributes, opportunities and relationships associated with being male and female (girls and boys) - ought to be assessed in the context of these international legal standards. These legal instruments place an obligation on States to ensure that both girls and boys are treated equally.

Consideration of the specific violations; child marriages, deprivation of inheritance rights, economic and sexual exploitation, there are additional protocols and specific instruments that protect against these violations. Many countries in Africa have not yet ratified these specific instruments. For example, Sudan has not ratified a majority of international instruments such as the Maputo Protocol, the ILO Convention No. 182 on the Worst Forms of Child Labour, and the Hague Convention on International Child Abduction. Partial measures such as these indicate

that there is still scope for putting in place stronger legal frameworks that protect against gender related violations.

Many countries across Africa face considerable challenges in implementing the existing legal and policy frameworks. In many situations, customary or traditional law and religion are more influential than written law and sometimes in fact override written law. The non-codification of customary rules and lack of clarity on the limits and status of customary law within the national legal order exacerbates the challenges of realising gender non-discrimination. Religious law also often perpetuates inequality. For example, in Islam the girl child may only inherit up to half of the inheritance of the boy child.

1.3 Rationale

Child rights-violations, that are gender-based, are widespread across Africa despite the fact that many countries have put in place the relevant legal instruments to protect children which obligate States to ensure that children are not discriminated against on the basis of gender. Yet, it is widely recognised that gender is so frequently used as a basis for differential treatment of children in Africa. As a criterion for socio-cultural analysis–which determines the social attributes, opportunities and relationships associated with being male and female (girls and boys) - the concept of gender therefore, ought to be examined in light of international legal standards.

There have been few studies to review the progress and gaps that still exist in legal and policy reform relating to gender based child rights abuses. Furthermore, the studies that have been undertaken have not necessarily considered the scope, nature and causes of the problem in the context of the legal and policy frameworks that ought to protect children.

It is against this background that ACPF and Save the Children International identified gender and children's rights as an important research area. This research therefore analyses the legal and policy frameworks relating to children and examines the differential treatment of girls and boys in the laws, policies and programs of the selected countries in relation to child marriage, economic exploitation and inheritance. The gender and child rights research will help child rights actors including governments, to understand the impact of gender related laws, policies and practices on advancing child rights, and the factors that undermine them. The application and use of the proposed Gender Framework will further contribute to the understanding of gender-based violations with the intent to develop appropriate gender responsive laws, policies and programmes.

1.4 Purpose and scope of report

ACPF led the research in the five Eastern African countries – South Sudan, Ethiopia, Kenya, Sudan and Rwanda – to review the existing laws, policies, and practices with respect to three specific areas; child marriage, economic and sexual exploitation, and inheritance rights. The report aims to specifically

(a) Determine the status of harmonisation of relevant international and regional instruments in the target countries;
(b) Assess the extent to which harmonised standards in the thematic areas in these countries are implemented;
(c) Identify key weaknesses and challenges in the protection of children from gender based discrimination;

(d) Inform policy makers, advocacy groups as well as debates on the gaps in laws, policies and practices, in relation to child rights and gender;
(e) Identify advocacy issues and tools for promoting gender-friendly, gender-oriented and non-discriminatory messages in target countries that take the best interests of the girl child into account in the thematic areas; and
(f) Chart the way forward.

The study is limited to an evaluation of the laws and policies, and some practices that contribute to or work towards the elimination of gender based discrimination in the thematic areas. The research focused only in five countries in Eastern Africa, yet these practices are neither exclusive to Eastern Africa nor entirely representative of the situation in other countries across the region.

1.5 Methodology

The report is a synthesis of research compiled from desk based research. The country reports drawn from five country studies were supplemented with further research material for the comparative analyses. The findings of the country reports were validated at a workshop with key child rights stakeholders from all the five countries.

1.6 Definition of concepts

The following definitions were adopted throughout the study:

Sex is the classification of people as male or female. At birth, infants are assigned a sex based on a combination of bodily characteristics including: chromosomes, hormones, internal reproductive organs, and genitalia.

Gender is the socially defined set of roles, rights, responsibilities, entitlements, and obligations of females and males in societies. The social definitions of what it means to be female or male vary among cultures and change over time. Gender identity is an individual's internal, personal sense of being male or female.

Gender equality concerns the equal treatment of males and females in society, and involves working with men and boys, women and girls to bring about changes in attitudes, behaviours, roles, and responsibilities at home, in the workplace, and in the community. Genuine equality means more than parity in numbers or laws; it means expanding freedoms and improving overall quality of life so that equality is achieved without sacrificing gains for males or females.

The phrase **'gender and child rights'** as used in this Study depicts the relationship between the concept of gender and child rights. It includes the implications of the social construction of 'gender' on the realisation of child rights without gender-based discrimination.

1.7 Conceptual framework for gender and child rights legal and policy analysis

The gender research focuses analysed available information to systematically analyse the legal, socio-political, judicial and institutional environment, systems, behaviours and practices that facilitate or hamper the fulfilment of the rights of children in three specific areas of child marriage, economic and sexual exploitation, and inheritance rights.

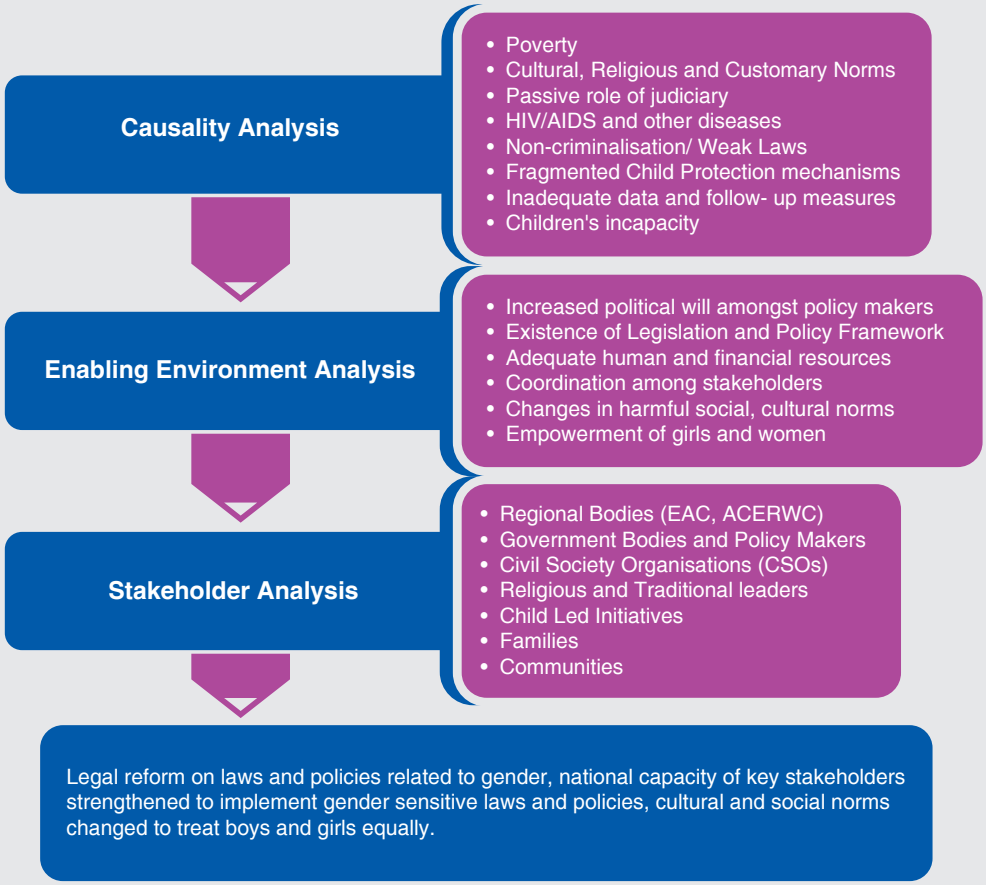
Analysis of the extent, nature and causes: the research will examine the (immediate, underlying and root) causes of gender based inequities in the

context of the three thematic areas. This assists in the understanding of the barriers and constraints that impede the implementation of legal and policy frameworks that aim to protect children.

Analysis of the enabling environment: the research further examines the broader policy, legal, and social norms which influence the protection of children from child marriage, economic and sexual exploitation, and violation of inheritance right. This includes the existence of standards, as well as an analysis of structures and mechanisms, the availability of allocated resources and the capacity to implement these laws.

Stakeholder analysis: The roles and relationships of state and non-state actors, as well as rights holders in the protection of children from gender based discrimination in the three areas.

Figure 1: Conceptual Framework for Legal analysis



1.8 Limitations

There are a number of limitations to this work including:

- The Country Reports, from which much of this analysis is derived, did not have a similar scope or comparable analytical depth. Consequently, synthesising the findings of the country reports was challenging and necessitated further research. There was limited up-to-date data in some of the countries resulting in disproportionate depth of analysis from one country to another.

- There was a general dearth of up-to date information related to gender and child rights in the five countries. The absence of case law from most of the study countries undermined an evaluation of the role of the judiciary in ensuring the implementation of the relevant national and international standards.
- There is considerable overlap amongst the three themes, particularly between child marriage, and economic and sexual exploitation.
- The country reports from which this synthesis is drawn did not define poverty which is therefore considered (inappropriately) as a homogeneous concept across the five countries. Poverty is still identified as central to gender inequality, both as a cause and consequence.

CHAPTER 2
GENERAL PROTECTIVE FRAMEWORKS ON GENDER AND CHILD RIGHTS

The five countries have legal, policy and institutional frameworks in place that promote child rights. These frameworks potentially determine the extent to which children are protected from gender based discriminatory practices. In general, the normative framework on gender and child rights is set out in international and regional treaties. These treaties are translated into national laws including Constitutions, comprehensive child laws or various laws that address specific issues but which apply to children. The laws are implemented through policies and programmes designed to achieve the level of protection accorded in the law. This chapter sets out the normative framework within which gender and child rights are addressed at the international, regional and national levels in the respective countries.

2.1 International and regional framework on gender and child rights

There are a number of international and regional human rights instruments that address the thematic areas of this Report. All the countries in the study have ratified or acceded to various human rights instruments including those that specifically focus on children and gender. These instruments include the CRC, CEDAW, ACRWC, and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).

Status of ratification and domestication or incorporation

Table 1 below summarises the status of ratification of the relevant child rights instruments in the five countries in this Report. There is variation in the degree of ratification across the countries implying that the normative standards for protection of children from child marriage, economic and sexual exploitation and deprivation of inheritance rights, varies from country to country.

Table 1: Treaty Ratification Status and Internalisation Technique

	Treaty	Ethiopia	Kenya	Rwanda	Sudan	South Sudan
1	Convention on the Rights of the Child	Acceded 14 May 1991	Ratified 30 July 1990	Ratified 24 Jan 1991	Ratified 3 Aug 1990	Not Party
2	Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child pornography	Acceded 25 March 2014	Signed 8 Sept 2000, not ratified	Acceded 14 March 2002	Acceded 2 Nov 2004	Not party
3	Optional Protocol to the Convention on the Rights of the Child on involvement of children in Armed Conflict	Ratified 14 May 2014	Ratified 28 Jan 2002	Acceded 23 Apr 2002	Ratified 26 Jul 2005	As above
4	Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children	Acceded 22 June 2012	Acceded 5 Jan 2005	Ratified 26 Sept 2003	Acceded 2 Dec 2014	As above
5	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	Not party	Not party	Acceded 26 Sept 2003	Not party	As above
6	ILO Convention 138 on Minimum Age for Admission to Employment	27 May 1999	9 Apr 1979	15 Apr 1981	7 May 2003	As above
7	ILO Convention 182 on Worst forms of child Labour	2 Sept 2003	7 May 2001	23 May 2000	7 Mar 2003	As above
8	Hague Convention on International Child Abduction	Not party	Not party	Not party	Not party	As above
9	Hague Convention on Inter country Adoption	Not party	Acceded 12 Feb 2007	Acceded 28 March 2012	Not party	As above
10	Hague Convention on Parental responsibility and Protection of Children	Not party	Not party	Not party	Not party	As above
11	Convention on the Elimination of all Forms of Discrimination against Women	Ratified 2 March 1981	Ratified 9 March 1984	Ratified 10 Sept 1981	Not party	As above
12	African Charter on the Rights and Welfare of the Child	Ratified 11 May 2001	Ratified 25 July 2000	Ratified 2 Oct 2002	Ratified 30 July 2005	As above
13	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003	Ratified 25 June 2004	Ratified 8 Oct 2010	Signed 1 June 2004	Signed 30 June 2008	As above
Internalisation technique		Monist	Dualist	Monist	Dualist	Dualist

Source: http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en and www.ilo.org (Accessed 15 October, 2012)

General protection standards on the thematic areas in international and regional child rights and related instruments

Several international and regional instruments address gender and child rights generally, and some have specific provisions that pertain specifically to child marriage, economic and sexual exploitation and deprivation of inheritance rights. The following sections generally examine the standards contained in the relevant international and regional human rights instruments in relation to each of these areas.

Child marriage

UNICEF defines child marriage as a union in which a girl lives with a partner as if married before the age of 18 years.[1] According to UNFPA,[2] child marriage (also known as forced marriage) is defined as 'any marriage carried out below the age of 18 years, before the girl or boy is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.' Child marriage involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious or customary laws. Child marriages or forced marriages are forms of harmful practices, which are common across Africa. Such marriages are, in most instances, rooted in customary, traditional, cultural or religious values. Several studies, both scientific and social, attest to the fact that value based discrimination is systemic and universal.[3] By their nature, child marriages often affect the girl child and are inherently discriminatory and violent in nature towards children.

There is universal consensus and emphasis that child marriage, whether it is practiced as part of a custom, tradition, culture, or religion, is an obnoxious and abhorrent practice and is harmful to children.[4] Key International and regional (general) human rights as well as child focused instruments have addressed the issue of child marriage considerably and as a matter of concern. The 1948 Universal Declaration of Human Rights (UDHR), for instance, states that men and women of full age have a right to marry and found a family.'[5] The UDHR further stresses that entry into marriage must entail the free and full consent of all the intending spouses.[6]

While child marriage is not explicitly addressed under the CRC, except in as far as it is integral to a tradition that is harmful to children, or is a means of exploiting children. Under Article 24(3) of the CRC, States parties are required to 'take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.' This sub-article has to be

1. UNICEF (2005).Early Marriage: A harmful traditional practice: A statistical Exploration. NY, USA http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf. Forum on Marriage and the Rights of Women and Girls, 2001, Sexual Exploitation and the human rights of girls.
2. The Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children. (1993) Newsletter, December 2003,
3. Ras-Work, Berhane (2006), 'The impact of harmful traditional practices on the girl child'. United Nations, Division for the Advancement of Women (DAW)/UNICEF, EGM/DVGC/2006/EP.4, p. 2
4. Harmful traditional practices have been defined as all practices done deliberately by men on the body or the psyche of other human beings for no therapeutic purpose, but rather for cultural or socio-conventional motives and which have harmful consequences on the health and the rights of the victims. As such, these practices do negatively impact often irreversibly on the life of the girl, the spouse, the mother, the husband or their family members; it is therefore a societal phenomenon. These practices which have remote and mysterious origins, and are based on absurd and vague reasons, amount to violence against women and they have proved difficult to eliminate. See Kouyaté M (2009) Harmful Traditional Practices Against Women and Legislation. United Nations, EGM/GPLHP/2009/EP.07, p. 2
5. Article 16 (1) of the 1948 Universal Declaration of Human Rights (UDHR).
6. Article 16(2) of the UDHR.

read in light of Paragraph 12 of the Preamble of the CRC which acknowledges the importance of traditions and cultural values. While it is noted that not all practices and traditions are harmful in nature, there is need to systematically identify practices that notwithstanding the values they entrench, are harmful in nature to society, especially women and children. Article 36 of the CRC provides for the protection of children from all forms of exploitation prejudicial to any aspect of the child's welfare.

The Committee on the Rights of the Child has consistently recommended that States increase the minimum age of marriage, and has further advocated that such minimum ages be the same for boys and girls. While discussing adolescent health and development in the context of the CRC, the CRC Committee emphatically observes that:

> "The Committee is concerned that child marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV and AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States Parties. There are also non-health-related concerns: children, who marry, especially girls, are often obliged to leave the education system and are marginalised from social activities.
>
> Further, in some States Parties, married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States Parties review and, where necessary, reform their legislation and practice to increase the minimum age of marriage with and without parental consent to 18 years, for both girls and boys."[7]

The CEDAW's approach to child marriage is to not give legal effect to betrothal and marriage of children. The CEDAW further urges States Parties to adopt necessary measures including legislation specifying a minimum age of marriage and making registration of marriages in an official registry compulsory. In Article 5, the CEDAW urges States parties to modify the social and cultural patterns of conduct of men and women, with a view to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. The CEDAW Committee has strengthened this stance by recommending amongst other things that the minimum age for marriage of both men and women should be 18 years and that 'marriage should not be permitted before they have attained full maturity and capacity to act.[8]

The ICESCR and ICCPR also emphasise consent in marriage. The ICESCR provides that 'marriage must be entered into with the free consent of the intending spouses'.[9] Child marriage also violates the provision relating to the equal enjoyment of economic, social and cultural rights for both men and women under Article 3; the highest attainable standard of physical and mental health under Article 12(1); and to the right to education under Article 13. Article 23(3) of the ICCPR provides that 'no marriage shall be entered into without the free and full consent of the intending spouses.'

7. Committee on the Rights of the Child, Comment No.4, Paragraph 20 (2003), available at http://www.unicef-irc.org/publications/pdf/crcgencommen.pdf , (Accessed on July 1, 2012).
8. UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, available at: http://www.unhcr.org/refworld/docid/48abd52c0.htm [Accessed on July 17, 2012].
9. Article 10(1).

The ACRWC also urges States to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of children, in particular, customs and practices prejudicial to the health or life of the child. Significantly, the Charter mentions child marriage and betrothal of boys and girls as practices that ought to be outlawed in national legislation. With respect to harmful practices, the ACRWC prohibits customs and practices that are discriminatory to the child on the grounds of sex or other status, and prohibits child marriages and the betrothal of girls and boys through effective action.[10] Article 21(2) obligates States Parties to prohibit child marriage and the betrothal of boys and girls and to take effective action, including legislation, to specify the minimum age of marriage as 18 years and to make registration of all marriages in an official registry compulsory.

The ACRWC's position concurs with the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages[11] and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, which oblige States Parties to specify the minimum age of marriage and prohibit marriages which are entered into without the free and full consent of both parties. The Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages obligates States Parties to take legislative action to specify a minimum age of marriage, which in any case shall not be less than 15 years.[12] In addition, no marriage is to be legally entered into except where a competent authority has granted its dispensation as to age, for serious reasons, in the interest of the intending parties.[13] Of the five countries covered by the Report, only Rwanda has ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.[14] The Maputo Protocol reiterates this position by providing that marriage shall not take place without the free and full consent of both parties and that the minimum age of marriage for girls is 18 years.[15] Of the five countries, Ethiopia ratified the Maputo Protocol 2004; Kenya ratified it in 2010; and Rwanda in June, 2004[16]. Sudan and South Sudan are not parties to the Maputo Protocol.

The Vienna Declaration and Programme of Action urges the effective protection and promotion of rights of the girl child.[17] It also urges States to repeal existing laws and regulations and eliminate customs and practices which discriminate against and cause harm to the girl child. The Beijing Platform for Action[18] calls upon Governments to among other things eliminate harmful attitudes and practices, take appropriate measures to address the root factors of forced marriages and to enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the prospective partners. The instrument also urges States to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age of marriage, and to raise the minimum age of marriage where necessary.

10. Article 21 (1) & (2).
11. Opened for signature and ratification by the General Assembly Resolution 1763 A (XVII) of 7 November 1962 and entered into force on 9 December 1964.
12. 1366th Plenary Meeting of 1 November 1965.
13. Ibid.
14. Ratified on 26 September 2003.
15. See Article 6.
16. See http://www.achpr.org/instruments/women-protocol/ratification/. (Accessed on 22 August 2013)
17. Paragraph 49.Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.
18. Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, 15 September 1995. Online at http://www1.umn.edu/humanrts/instree/e5dplw.htm (Accessed 24 September 2012).

Most child marriages are arranged, based on the consent of parents, and often fail to ensure the best interests of the girl child. Other forms of child marriage are done through abduction. This traditional practice is common in parts of Ethiopia whereby girls are kidnapped and raped to be forcefully married. Child marriage also compromises the development of girls by resulting in early pregnancy and social isolation, with little education.[19] This has immense physical, intellectual, psychological and emotional impact on both boys and girls. It is worse for girls who, in addition, will almost certainly mean premature pregnancy and childbearing, and most likely, a lifetime of domestic and sexual subservience.[20]

Box 1: Child Marriage: Brainstorming

Early or forced marriages violate children's rights and act as a vector for other forms of violations such as sexual abuse or violence, economic exploitation, violations of the right to health and life through child-birth related complications that threaten the life or health of child mothers. Child marriage hampers access to education, burdens child spouses with duties of a wife, mother or father, and exposes them to untimely physical hazards that come with pregnancy and child birth. The right to be protected from harmful traditional practices; the rights to be heard on matters that affect a child's life; the right to be free from labour and sexual exploitation; and the right to access education are equally violated. All such violations are against the best interests of a child.

Protection from sexual and economic exploitation: Child exploitation is a rampant but often neglected form of child abuse. Commercial sexual exploitation of children is even more insidious and affects the lives of tens of millions of children worldwide. In either form, sexual abuse of children involves violation of children's sexuality and sexual integrity (often by adults) with adverse effects on the child's heath, wellbeing and dignity. When it entails a benefit to the adult or third party, such abuse constitutes exploitation. Commercial sexual exploitation therefore entails both abuse and exploitations and couples these with a monetary benefit that accrues to the abuser or third party. Some of the children are in the 'employment' of well-organised trafficking networks in child and adult sex, at least some of whom also engage in the sale of illegal drugs, money laundering and other criminal activities. Sexually abused children are often 'employed' as sex workers, that is, as prostitutes or as subjects of pornography or both.[21]

Sexual exploitation of children: Sexual abuse has become rampant across the globe. Criminal child sex trafficking networks have burgeoned and while traditionally girl children were the common victims of sexual exploitation, boy children are also increasingly victimised, sometimes for economic purposes. The CEDAW calls for the suppression of all forms of sexual exploitation of women.[22]

The Committee on Rights of the Child (CRC Committee) notes that more than 100 million children are forced into jobs destroying their health or preventing them from going to school, and that in

19. UNICEF, Child marriage, A Harmful Traditional Practice: A Statistical Exploration, 2005, available at http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf (Accessed on 3 July, 2012).
20. UNICEF, Supra note 4.
21. Charlotte Bunch "The intolerable status quo: violence against women and girls" (1997) UNICEF.
22. Article 6, CEDAW.

some cases, their conditions amount to slavery.[23] Article 34 of the CRC enjoins States Parties to commit to protect children from all forms of sexual exploitation and sexual abuse,[24] including: inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.[25]

Articles 19 and 34 of the CRC similarly provide for and stress the need for protecting children from sexual exploitation and sexual abuse. Article 19 obliges States Parties to take '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 ...' The CRC Committee has further explained the term 'sexual abuse' to include the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; use of children in commercial sexual exploitation; use of children in audio or visual images of child sexual abuse; child prostitution; sexual slavery; sexual exploitation in travel and tourism; trafficking (within and between countries); sale of children for sexual purposes; and forced marriage.[26]

To further buttress the protection provided under the CRC, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography identifies the gender dimension of the problem by positing that a number of particularly vulnerable groups, including girl children, are at a greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited.'[27]

The ILO defines commercial sexual exploitation of children to include the use of girls and boys in sexual activities remunerated in cash or in kind (commonly known as child prostitution) in the streets or indoors, in places such as brothels, discotheques, massage parlours, bars, hotels, restaurants and similar places. It also includes the trafficking of girls and boys and adolescents for the sex trade; child sex tourism; the production, promotion and distribution of pornography involving children; and the use of children in public or private sex shows[28].

ILO Convention No. 182 addresses the problem of commercial sexual exploitation of children. It considers 'commercial sexual exploitation of children an abhorrent violation of the human rights of children and adolescents and a form of economic exploitation similar to slavery and forced labour, which also implies a crime on the part of those who use girls and boys and adolescents in the sex trade.'

At the African regional level, the ACRWC recognises the involvement of children in sexual activities as being detrimental to their survival and development, and therefore enjoins states parties to the

23. The Committee on the Rights of the Child, CRC/C/20, 4th Session, Annex VI, 4 October, 1993 available at http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/exploit.pdf (Accessed on July 3, 2012).
24. Article 34, CRC.
25. Ibid.
26. Committee on the Rights of the Child, CRC, The Right of the Child to be Free from All Forms of Violence, General Comment 13 (2011) .
27. Preamble, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (2002).
28. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipec/documents/sitestudiocontentelements/wcms_ipec_con_txt_2867_en.pdf

Charter to protect children from all forms of sexual exploitation.[29]

Economic exploitation of children: Economic exploitation is a form of abuse that uses children for economic gain, and often at the expense of a child's physical wellbeing and denies the child an opportunity to enjoy other rights. A number of international and regional instruments recognise the need to protect children from all forms of economic exploitation. The CRC urges States Parties to recognise 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.'[30] In order to advance this protection, States parties are required to take the necessary legislative, administrative, social and educational measures.[31] These measures may take the form of providing minimum age for employment, setting appropriate regulations for hours and conditions of employment and prescribing appropriate penalties that can guarantee effective observance of these requirements.[32]

Although the CRC seeks to address economic exploitation of children, it provides no definition for the term "economic exploitation." Appreciating this fact, the CRC Committee has shed light on its meaning by noting that the term combines two distinct elements: 'economic' and 'exploitation'. The Committee further indicated that 'economic' implies the idea of a certain gain or profit through the production, distribution and consumption of goods and services. 'Exploitation' means taking unjust advantage of another for one's own advantage or benefit. It covers situations of manipulation, misuse, abuse, victimisation, oppression or ill-treatment.[33] While providing the above explanation, the CRC Committee warned against a possible categorisation of all activities with an economic element as economic exploitation. Therefore, apart from a prevailing economic element – as in such instances as child labour, child pornography or the use of children for criminal activities- the situation must manifest an exploitative nature that affects the human dignity of the child or the harmonious development of the child's personality.[34]

The ACRWC mirrors the provisions of the CRC and also calls for the protection of children from all forms of economic exploitation.[35] It requires that children must not perform any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.[36]

In addition to the above instruments, the ILO Convention Concerning Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labour[37] draws a reference to the CRC in its Preamble and underscores the need to adopt international as well as national actions to prohibit and eliminate the worst forms of child labour.[38] States Parties to this Convention are also required to prohibit and eliminate, *inter alia*, the practice of engaging children in work which, by its nature

29. Article 27(1) ACRWC.
30. Article 32 (1) of the CRC.
31. Ibid, Article 32(2).
32. Ibid, Article 32(2).
33. CRC/C/20, 4th Session, Supra note 22.
34. Ibid.
35. Article 15 (1) of the ACRWC.
36. Ibid, Article 15 (1).
37. ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).
38. See Preamble. Ibid.

or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. Economic exploitation of children entails work that would certainly harm their health, safety, or morals and hence should fall within this category of worst forms of child labour.

The Protocol to the Convention Against Transnational Organized Crime on Prevention, Suppression and Punishing of Trafficking in Persons, especially Women and Children also prohibits trafficking in persons and the consequential exploitation that comes from it. It urges States parties to adopt legislation that criminalises trafficking in persons and child trafficking and exploitation of victims. Other than also urging for international cooperation between States, the Protocol urges States to provide for care and protection of survivors of trafficking.

The discussion on child labour in Africa must be understood in the context of child work. There are instances which call upon children to work for a living or to support households they head. The ACRWC also calls upon children to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need.[39] Therefore, not all work that children are involved in is exploitative.

Inheritance rights: Inheritance refers to the succession of property or other kind of human possessions from one person to another. In most cases, children inherit from their parents, relatives or guardians. Succession practices are, to a large extent, subject to social norms and practices which are in turn gender discriminatory.

The UDHR, ICCPR, ICESCR, CRC, CEDAW and the ACRWC call for equality before the law and equal protection of the law for everyone without distinction on the basis of sex. Hence, any form of inheritance law that favours boys over girls or excludes the latter is contrary to the universally accepted principle of equality. Seized with the task of further expounding the scope of Article 3 of the ICCPR, the United Nations Human Rights Committee (UNHRC) noted that 'women should also have equal inheritance rights to those of men...'[40] The CEDAW Committee has also stated in Recommendation No. 21 on Equality in Marriage and Family Relations that laws and practices that discriminate against women in inheritance contravene the CEDAW and should be abolished.[41]

Whereas the CRC and the ACRWC do not explicitly call for equality in the context of inheritance, the general equality requirement can be interpreted to apply to all the provisions of the Conventions including inheritance rights. Unfortunately, in many countries a lot remains to be done to translate these principles into practice. Indeed, the driving force behind discrimination against women runs deeper than the rule of law. Hence, CEDAW calls upon States parties to 'modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.[42] This is an onerous aspiration but one that needs to be realised to ensure the protection of women and girls in the context of inheritance.

39. Article 31(a).
40. General Comment No. 28 of the United Nations Human Rights Committee (2000), available at http://www1.umn.edu/humanrts/gencomm/hrcom28.htm (Accessed on 3 July 2012).
41. Paragraph 35, Gen. Rec. 21, adopted by the CEDAW Committee at its Thirteenth session (1994), available at http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm (Accessed on 13 July, 2012)
42. Center on Housing Rights and Evictions, Supra note 39.

2.2 Harmonisation of international and regional standards with national laws and policies

There are two main approaches adopted by states in the domestication of treaty standards; a monist or dualist approach. A monist approach implies that international instruments ratified by the country are applicable in the country without the need for further measures to domesticate the treaty. In a dualist approach, duly acceded or ratified treaties require domestication to form an integral part of national law and may not be directly cited in judicial proceedings unless such 'domestication' has been done. Ethiopia and Rwanda have a monist approach to treaty incorporation, while Kenya, Sudan, and South Sudan have a dualist approach.

National legal, policy and institutional frameworks on gender and child rights Constitutions: All five countries have either incorporated or provided room for the domestication of child rights standards in relevant international and regional human rights treaties. The Constitutions from all five countries have Bills of Rights which refer to children's rights. In Kenya, the Bill of Rights instructs the State to pass legislation to fulfil the rights contained in international treaties and conventions signed by Kenya while in Rwanda; the Bill merely incorporates human rights instruments as an integral part. The five Constitutions prohibit any form of discrimination (including those in the thematic areas) that leads to violation of rights including the rights of the girl child. The next box puts a summary of Constitutional provisions of the five countries on gender based discrimination.

Box 2: Constitutional Provisions against gender based discrimination

The Ethiopian Constitution considers human rights instruments ratified by Ethiopia as an integral part of municipal law, affirms non-discrimination, and demands equality without any discrimination based on sex.[43] The Kenyan Constitution also bars discrimination based on sex, among other grounds, and states that 'every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.' Rwanda's Constitution discourages discrimination and provides for a strong platform for gender mainstreaming in all sectors. The Rwandese Constitution also establishes a Gender Monitoring Office and a National Council of Women[44] both of which would be instrumental in the protection of children within the areas covered in this Report. The Constitution of Sudan guarantees the rights of the child as provided in the international and regional conventions ratified by the Sudan.[45] Notably though, the federal states have their own Constitutions which include provisions dealing specifically with the legislative and legal frameworks of child welfare and protection in all areas. For instance, the Interim Constitution of West Darfur State also provides in Article 5(5) that the 'State shall protect child rights as enshrined in regional and international human rights treaties ratified by the Sudan.' Peace agreements, which were accorded constitutional status, also provide a legal constitutional framework for child protection.

43. Article 25 and Article 35(3) of the FDRE Constitution.
44. According to Article 185, the role of Gender Monitoring Office is essentially to monitor and supervise on a permanent basis compliance with gender indicators of the programme for ensuring gender equality and complementarity, and to submit to various organs recommendations relating to the program for the promotion of gender equality and complementarity for national development.
45. Ibid, at paragraphs 53, 54.

The Constitution of South Sudan contains a provision that government and the private sector must consider the best interests of the child. In addition, the same Constitution provides for supremacy of the Constitution citing that all laws and customs contradicting the provisions of the Constitution are invalid. The Comprehensive Peace Agreement (CPA) of 2005, the Darfur Peace Agreement (DPA) of May, 2006 and the Eastern Sudan Peace Agreement (ESPA) all contain many provisions and protocols providing protection for the rights of the child.

Legislation: All countries, albeit varying, have legislation in place to protect children from child marriage, economic and sexual exploitation and regulate inheritance rights. (See Table 2).

Table 2: Legalisation that deals with thematic areas in the target countries

Country	Legislation
Ethiopia	Criminal Code and the Civil Code. In relation to the thematic areas of children's rights of the Report, the revised Family Code and Federal Criminal Code criminalise child marriage and sexual and economic exploitation of children while the Civil Code governs succession issues amongst other things.
Kenya	The Children's Act of Kenya as enacted in 2010 provides for the basic legislative framework for the protection of the rights of children in Kenya. It places a responsibility on the State to respect, protect and fulfil its child rights obligations and it domesticates the CRC and the ACRWC. Part II of the Act provides *'safeguards for the rights and welfare of the child'* and lays out the core principles of the CRC. The Children's Act is complemented by the Marriage Act, the Sexual Offences Act, the Sexual Exploitation Act, and the Counter Trafficking Act of 2011 which respectively address child marriages and sexual exploitation of children, amongst other things.
Rwanda	The 2001 Law on Child Protection not only gave children rights but also endowed them with a set of responsibilities, and criminalised specific acts which victimise children. The Law on Child Protection contains explicit provisions regarding child marriage (Articles 47 to 50) and child exploitation (Article 18 and Articles 39 to 42). On inheritance matters, the 1999 Law on matrimonial regimes, liberalities and successions (which predates the 2003 Constitution) can be seen as a landmark in Rwanda's evolution in respecting gender equality in inheritance matters
South Sudan	The 2008 Child Act[46] of South Sudan offers protection to children's rights. The Act contains provisions pertaining to non-discrimination; the best interests of the child; children's right to life, survival and development; and respect for the views of children as enunciated by the CRC and the ACRWC.

46. Act No. 10 of 2008.

Table 2: Legalisation that deals with thematic areas in the target countries (Cntd.)	
Country	**Legislation**
Sudan	The Labour Act of 1997, the Public Health Act of 1975 the Juvenile Welfare Act of 1983, the Sudanese Nationality Act, 1994 (as amended 2011), Refugee Act of 1974, Personal Status of Muslims Act of 1991 and the Criminal Act of 1991.[47] Each of these laws contains provisions on child rights.[48] The Child Act, 2010 repealed the Child Act, 2004 and brought the legal framework closer in line with the 2005 Interim National Constitution of the Sudan (INC 2005) and CRC obligations.

Policy frameworks on gender and child rights:

The national legal framework is complemented by national polices and strategies and plans of actions, where necessary, to ensure effective implementation of rights of children. However, these policies are not binding obligations for the State. Policies have been put in place in all the five countries which strengthen the implementation of the legal framework (Table 3).

Table 3: Policy Frameworks on gender and child rights in the target countries	
Country	**Legislation**
Ethiopia	• The Growth and Transformation Plan (GTP) (2010/11-2014/15). • The Rural Development Policies and Strategies (2003). • Ethiopia's Development and Social Welfare Policy • National Plan of Action on Sexual Abuse and Exploitation of Children (2006-2010). • Draft National Action Plan on the Elimination of the Worst Forms of Child Labour • Ethiopia's Guidelines for the Care of Children Deprived of a Family Environment • Violence against Children Policy
Kenya	• The Gender Policy in Education (2007) • The Return to School Guidelines • National Plan of Action on Violence against Children • Kenya Education Sector Programme
Rwanda	• National Integrated Child Rights Policy • The Vision 2020 (Vision Umurunge) • The Economic Development and Poverty Reduction Strategy (EDPRS) • Common Performance Assessment Framework
South Sudan	• South Sudan Maternal, Neonatal and Reproductive Health Strategy (2008-2011)
Sudan	• Women Empowerment Policy (2007) • National Plan on Combating Violence (2005)

47. Committee on the Rights of the Child Consideration of Reports submitted by States Parties under article 44 of the Convention, Periodic reports of States parties due in 1997, CRC/C/65/Add.17 6 December 2001, paragraph 20.
48. The relevant aspects of these laws related to children rights in Sudan will be covered in details in each section of the Reports, in particular those rights related to citizenship and nationality, labour rights, criminal laws, refugee law, etc.

Ethiopia has an impressive number of policies, strategies and national action plans that aim to support the protection of girls from child marriage, protect children from economic and sexual exploitation and regulate inheritance rights. For example, the Growth and Transformation Plan (GTP) places a high priority on the commitment to improve access to education in particular by girls' enrolment.[49] The Rural Development Policy and Strategy address the existing gender inequality in respect of development and urges rectification not only for the sake of women *per se*, but also for the sake of national development.[50] The Policy underscores that the harmful traditions that impede equality of women in education should be eliminated, and women's educational qualifications should be progressively equalled to men.[51] Ethiopia's Development and Social Welfare Policy emphasises the protection of children from malpractices such as child marriage and acknowledges poverty and economic marginalisation of families as factors that contribute to economic exploitation of children. The National Plan of Action on Sexual Abuse and Exploitation of Children[52] as well as the Draft National Action Plan on the Elimination of the Worst Forms of Child Labour in Ethiopia also emphasise the need to protect children from economic exploitation. The Growth and Transformation Plan (GTP), albeit indirectly, addresses economic exploitation of children by tackling poverty, the major cause of economic exploitation of children. Ethiopia's Guidelines for the Care of Children Deprived of a Family Environment and the Violence against Children Policy is relevant to protecting children from sexual exploitation. The Development and Social Welfare Policy explicitly states that all efforts shall be made to eliminate all forms of discrimination against girl children and to protect them from all social and cultural pressures to which they are subjected on account of their sex.

Kenya's policy framework in relation to child marriage, economic and sexual exploitation and the right to inherit is more limited. The Gender Policy in Education adopted in 2007 encourages children to go to school as a means to prevent child marriage, sexual abuse and economic exploitation. The Policy provides a framework for planning and implementation of gender responsive education sector programmes, including the proposed measures to increase equality in education between men and women, the establishment of gender and education units and measures to address gender-based violence and sexual harassment in education. The Return to School Guidelines also seek to enhance access to education for girls particularly those who have discontinued their education. Kenya has also adopted a National Plan of Action on Violence against Children in order to curb the perpetration of all manner of violence targeted towards children.

Rwanda has an extensive child policy framework. The National Integrated Child Rights Policy aims at having one single comprehensive policy, presenting a vision for all children's issues, across all thematic areas of concern, including OVCs. The Vision 2020 developed in 1998-99, is a long-term development framework that highlights the aspirations of the Rwandese population from 2000 to 2020. It does not specifically address any of the themes of the Report, though it can be regarded as a broad roadmap that would inform subsequent specific policies on child marriage, economic and sexual exploitation and inheritance rights. The Economic Development and Poverty Reduction Strategy (EDPRS) provides a medium term framework for achieving long term development goals

49. FDRE, Ministry of Labour and Social Affairs, National Plan of Action on Sexual Abuse and Exploitation of Children (2006-2010).
50. Government of the FDRE, Rural Development Policy and Strategies (2003).
51. Ibid.
52. FDRE, Ministry of Labour and Social Affairs, National Plan of Action on Sexual Abuse and Exploitation of Children (2006-2010).

and broadly reflects gender and youth. It is less concise on direct child protection measures [53] except for economic exploitation, whereby one of the explicit priorities of the EDPRS is to eliminate child labour.[54] However, the monitoring framework of the EDPRS does not contain any indicator for child labour. The current seven year Government Program (2010-2017) explicitly dedicates one of its programs to gender development. Programmes under the Good Governance Pillar set out the government's commitment to remove all obstacles against women's development. However, no specific actions are provided by the Government Program regarding protection of children from child marriages, sexual and commercial exploitation, or deprivation of inheritance rights. Other policies specific to the current discussion include the 2011 Integrated Child Rights Policy, the National Gender Policy, the Child Labour Action Plan, and the 2003 National Policy for Orphans and Other Vulnerable Children.

South Sudan and Sudan do not currently have adequate child policy frameworks with respect to these three themes of gender-based child rights. The country study on Sudan indicated that Sudan had adopted plans related to children but these were not evident in the report. In accordance with the State's general policy aimed at combating violence, and pursuant to the INC 2005, a National Plan on Combating Violence against the Woman and Child was adopted. South Sudan's legal framework for children's rights is seemingly still weak. Its 2008 Maternal, Neonatal and Reproductive Health Action Plan provides an action plan for addressing gender based violence in the country. The policy framework is nevertheless still weak in tailoring effective strategies to implement children's rights.

Institutional framework: Institutions responsible for the implementation of laws and policies are required to put in place the necessary strategies for enforcement. All five countries have general and specific institutions that have a bearing on the implementation of children's rights, including gender-based child rights. However, similar to laws and policies, the multiplicity of such institutions and mechanisms, without clear mandates leads to potential duplication of efforts. In most countries, the institutional framework is championed by the relevant ministry in charge of children's rights.

Ethiopia does not seem to have child specific institutions. Instead, children's rights are within the purview of the Federal Ministry of Women's, Children and Youth Affairs (MoWCYA). In Kenya, the Ministry of Gender, Children and Social Development, Ministry of Labour and the Ministry of Education are the main government departments dealing with matters relating to children. The Ministry responsible for children is also the parent ministry for the National Council for Children Services (NCCS), that was created under section 32 of the Children's Act and mandated to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects relating to children rights.

The Kenya National Commission on Human Rights also has a mandate to, among other things, undertake 'monitoring, investigating and reporting on the observance of human rights in all spheres of life in the Republic...'.[55] The Commission also creates awareness through advocacy on issues of human rights including children's rights. Another institution is the National Gender and Equality Commission which was established under the National Gender and Equality Commission

53. The above mentioned measures aiming at health and educational improvements will of course also contribute to the protective framework for children, albeit rather indirectly.

54. Ministry of Finance and Economic Planning, EDPRS 2008-2012, 2007, Paragraph 4.174.

55. Section 8 ,The Kenya National Commission on Human Rights Act,2011

Act.[56] Its functions include the promotion of gender equality and freedom from discrimination in accordance with the Constitution, and ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality non-discrimination and relating to special interest groups. Furthermore, the Area Advisory Council (AACs) established by the Children's Act deal with various issues affecting the rights and welfare of children. Whenever cases of disinheritance are identified, AACs act as a referral point from appropriate agencies to deal with them. Kenya also has a constitutional Human Rights Division in the High Court created by the Constitution for judicial enforcement of human rights,

In Rwanda, the Ministry of Gender and Family Promotion (MIGEPROF) has the mandate to develop policies and programmes for children and ensure their implementation. The MIGEPROF is a key child rights institution in Rwanda. It has recently delegated responsibility for ensuring child protection to the National Child Commission (NCC). The other institutions in charge of children's rights include: the National Commission for Human Rights (NCHR) and an Observatory of the Rights of the Child within the NCHR. The Observatory, amongst other things, ensures compliance with the rights of the child; prevents and deters violations of the rights of the child, and advocacy. The Ministry of Public Service and Labour (MIFOTRA) coordinates activities related to the prevention of the worst forms of child labour while a Consultative Committee on Child Labour composed of Government and non-governmental stakeholders gives opinions on preliminary drafts of laws and policies in areas of prevention and rehabilitation of child victims of the worst forms of child labour.

The Ministry of Gender, Child and Social Welfare in South Sudan is the main Government institution mandated to regulate and supervise activities related to children, including monitoring violations of children's rights. There is also a Child Commission created under the Child Act. The Commission is empowered to investigate complaints about violations of rights of children and to monitor compliance at all levels of Government in South Sudan. The Human Rights Commission monitors the application and enforcement of the rights and freedoms enshrined in the Transitional Constitution, investigates human rights violations, and monitors Government compliance with international and regional human rights treaties.

In Sudan, the National Human Rights Commission, which was established in 2009, is a key institution in the implementation of children's rights. Its creation was a very important step towards strengthening the framework for promotion and protection of human rights in Sudan. There is also a National Council for Child Welfare reinforced by decentralised local structures known as States' Councils for Child Welfare.

56. See Act No. 15 of 2011.

CHAPTER 3
STATUS OF IMPLEMENTATION OF LAWS AND POLICIES IN THE THEMATIC AREAS

The five target countries have made considerable efforts to sufficiently legislate for gender and child rights, especially with respect to child marriage, sexual and economic exploitation and deprivation from inheritance. Country peculiarities, including the availability of resources, customary beliefs and laws, and political climate, may determine the extent to which the laws and policies may be implemented. This is even more relevant where the precise status of customary law within the legal system is unknown. This chapter examines in more detail the extent to which the five countries have operationalised the relevant legal and policy frameworks, and the factors that undermine their implementation with the context of the broader causes and extent of the problem.

3.1 Child marriage

Child marriages often result from an arrangement between families and are negotiated when the child is very young or when the child is not ready to give consent. This is commonly known as 'child betrothal,' a practice that is common in most African societies including religious communities. Another form of early or forced marriage is practiced through kidnapping or abduction. In some instances, kidnapping and forced marriage is perpetrated together with the parents who conspire with the 'abductors'. Child marriage is primarily involves the girl child.

Causes and consequences

The main reasons for early or forced marriages are socio-economic and traditional beliefs. In keeping with social traditions, many societies and families intend to safeguard a girl's virginity and hence acquire a higher bride-price. In many customs, traditions or cultures, virginity raises the girl's family's social status as well as the prospective dowry price. Virginity is given the highest priority and is often verified by female relatives before marriage.[57] In Ethiopia, for example, parents consider child marriage as a measure against potential 'disgrace' before their girl child shames herself and the family by losing her virginity before marriage. In some parts of Ethiopia, children (mainly girls) who do not marry early enough are stigmatised and often referred to as '*komo-ker*', translated as 'unwanted.' Similarly, in Sudan, girls are also married off early because of the perception that the older they get, the less the likelihood of finding male suitors.

Poverty is another socio-economic cause of child marriage. Marriage is a reduction in liability and a source of wealth for the family. In South Sudan, for example, customary law in the current context was greatly shaped by people's experiences during decades of war. Civil war altered familial structures and gave rise to new customs, such as an increasing reliance on bride wealth as a source of family income.[58] In Sudan, the Committee on CRC has expressed concerns that children resort to prostitution or are forced into child marriage as a means of survival in exchange

57. OHCHR ,Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children. http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf (Accessed on 13 August 2015)

58. Sommers, M. and S. Schwartz (2011) *Dowry and Division*: Youth and State building in South Sudan, United States Institute of Peace (*USIP*), Washington, DC. http://www.usip.org/sites/default/files/SR_295.pdf.(Accessed 13 August 2015)

for food, money or basic goods.[59] In some areas of Sudan, traditionally, a girl is considered ready for marriage on the advent of menstruation and since the bride's family customarily receives a substantial bride-wealth from the groom's family in accordance with the marriage agreement, the pressure to marry off a family's girls is ever present, not least in a situation of economic hardship. The increasing importance of girls as sources of income for families reduces their ability to access educational opportunities.

Traditional beliefs play a large part towards the continuity of child marriage. In Rwanda, case law has shown that parents and community leaders fail to report known cases of child cohabitation, given their traditional beliefs which are recognised as a factor for the continuity of child marriage in the country. In South Sudan, parents also show a similarly complacent attitude, and even tended to be aggressive in defence of child marriage. The country study disclosed a situation where parents actually threatened violence against State authorities who attempted to follow-up on a reported case of child marriage.

There are multiple consequences of child marriage which can be severe, particularly for girls. These consequences include: domestic violence and rape; undesired, unplanned or early pregnancy; unsafe termination of pregnancy; inadequate antenatal care leading to high risk delivery, vesico-vaginal fistulas (likely resulting in death of the expecting young mother); and the loss of education. Therefore, early and forced marriages directly violate the child's rights to life, health and education. The World Health Organization (WHO) describes 'fistula' as 'the single most dramatic aftermath of neglected childbirth'[60]. In Ethiopia, a hospital has been set-up to deal only with 'obstetric fistula', a consequence of early sexual intercourse and childbirth. It is estimated that 33% of young women suffering from 'fistula' come from the Amhara Region, and often victims of child marriage. Maternal deaths related to early pregnancy and childbirth are an important component of mortality worldwide, accounting for 70,000 deaths each year.[61]

Child marriage leads to lower education achievements for girls, eliminating the possibility for these girls to reach their full potential and gain economic employment. Girls may even be taken out of school for purposes of marriage. After marriage, a girl's access to formal or informal education is severely limited due to her domestic responsibilities, child bearing and cultural or customary attitudes that view marriage and education as incompatible. In Ethiopia, for example, Pathfinder International study found that 78% of non-married girls attend schools as compared to 8.9% for married ones.[62] Uneducated girls are less likely to get economic employment which limits their potential to break the vicious cycle of poverty that affects them. The practice devalues the girl child as she is perceived as a "commodity to gain wealth", sometimes to the benefit of the boy child in the family. Child marriage robs a girl of her childhood necessary for physical, emotional and psychological development.[63]

59. Consideration of Reports submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention of the Rights of the Child on the Sale of children, Child Prostitution, and Child pornography, CRC/C/OPSC/SDN/CO/1 21 June 2007, paragraph 17.
60. As quoted in Janet Hatcher Roberts & Carol Vlassoff "The female client and her health-care provider" International Development Research Centre, Canada (1995) p27.
61. UNICEF State of the World's Children (2009) Available at http://www.unicef.org/protection/57929_58008.html (Accessed on 22 August 2012)
62. Path Finder International, Supra note 100.
63. UN Office of the High Commissioner for Human Rights, Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children, August 1995, No. 23, Online at: http://www.unhcr.org/refworld/docid/479477410.html [accessed 26 February 2012]

Prevalence of child marriage

Child marriage is practiced in all five countries under study with variation across the different countries (Table 4).

Table 4: Gross child marriage prevalence rates in five target countries

Country	Period range	General Prevalence rate	Age range
Kenya	2000 – 2010	26%	Married by age of 18
Rwanda	2000 – 2010	8%	Married by age of 18
Ethiopia	2000 – 2010	41%	Married by age of 18
Sudan	2000 – 2010	33%	Married by age of 18
South Sudan	None	52%	Married by age of 18

Source: *UNICEF State of the World's Children Report, 2014*

Ethiopia has the highest child marriage prevalence rate and according to Pathfinder International, 'the country is known for one of the most severe crises of child marriage in the world.'[64] The figures on child marriage vary from region to region but in some parts of Ethiopia, as many as 65% of girls marry before they attain the full age of 18 years compared to their male counterparts. In some extreme cases, girls could be married as early as 7 years of age. A 2006 report by the Ethiopian Women Lawyers' Association noted that child marriage had a national prevalence of 54.6%. Several ethnic groups in the South and South West of Ethiopia practice child marriage with an occurrence rate between 50-80%. A Demographic Health Survey (DHS) conducted in 2005 indicated that, for example, in Amhara region, the women interviewed who were between 45- 49 years were married, on average, when they were just over 13 and a half years old; those who were 20-24 years old were married on average when they were just over 15 years old. Although the prevalence of Child marriages is showing a declining trend, there appears to be no significant change in the median age of first marriage by girls even in the recently released data of Ethiopian Demographic and Health Survey (2011).

In Rwanda[65], there are no statistics on the age and number of children who marry early although the Country Report contends that 'recent figures have nevertheless shown that child marriages are declining.'[66] Better education has been cited as a very efficient factor in preventing child marriages.[67] The 2010 DHS Report on Rwanda shows that among women with no education, the median age of marriage is 20.1 years, while it is 21.4 years for those with a primary education and 23.6 years for those with a secondary education. Child marriage and forced marriages are a common occurrence in South Sudan. 45% of girls between the ages of 16 and 18 years are

64. Path Finder International, Causes and Consequences of Child marriage in Amhara Region (2006) available at http://www2.pathfinder.org/site/DocServer/PIE_final_report_early_marriage_11-30-06__to_printer__2_.pdf?docID=8141 (Accessed on 6 July, 2012)
65. According to Rwandese law, any marriage with a person below the age of 21 years is illegal and a criminal act. The minimum age of child marriage in Rwanda is commendably above the international and regionally prescribed minimum age of 18 years.
66. See above, Chapter 3.Country specific information, on the 2005 and 2010 DHS.
67. UNICEF, Child marriage: A Harmful Traditional Practice, 2005, 27.

married in South Sudan, and 7.3 % of girls get married before age 15 years.[68] Meanwhile, in Kenya, in the Nyanza province, where child marriage is relatively common, one out of three women aged between 20 and 24 years got married by the age of 18 years.

Strategies to prevent child marriage

There are several mechanisms and stakeholders that may be involved in preventing child marriage and where necessary, manage existing cases and some of their consequences. However, some preventive measures tend to prove inadequate in the face of poverty, culture or tradition.

Instruments: The Ethiopian Constitution affirms the need to abolish sex discrimination and demands 'to live together on the basis of equality and without any discrimination based on sex.'[69] One significant achievement of the new law is the raising of the minimum age of marriage for women from 15 to 18 years. This not only abolishes legal recognition of child marriages but also gives effect to the right to equality. Accordingly, the Revised Family Code provides that '[n]either a man or a woman who has not attained the full age of 18 years shall conclude marriage.'[70] Regional Governments have also adopted new Family Codes that, more or less, mirror the Revised Family Code of the Federal Government.[71] The Ethiopian Criminal Code (Proclamation No 414/2004) also criminalises and punishes abettors (persons involved in the solemnising, contracting, permitting or serving as witnesses to unlawful marriages, such as child marriages) to child marriages, that is, marriage concluded with children below the legal minimum age of 18 years. The crime will be aggravated if the child is within a much younger age group.[72] Under Article 648 of the Criminal Code , conclusion of marriage with a minor other than in accordance with the Code is punishable with imprisonment not exceeding 3 years where the age of a victim is 13 years or above; and with imprisonment not exceeding 7 years, where the victim is below 13 years.

Of the five countries, Kenya and Ethiopia but more so Kenya, are the only ones with a comprehensive legal regime that prohibits child marriage in the Constitution and other child legislation. Box 3 restates the position of the Kenyan Constitution on child marriage.

Box.3 Kenyan Constitution and Child Marriage

The Kenyan Constitution rejects customs that promote child marriage by stating that any customary law that is inconsistent with the Constitution is void to the extent of the inconsistency. Child marriages are inconsistent with the Constitution since the Constitution indirectly prohibits child marriages by referring to marriage as an affair of adults based on free consent and by defining a child as anyone below 18 years.[73] Article 45(3) buttresses the point by advocating for equality in rights between the parties to a marriage. The provision effectively excludes children from marriage because they have no capacity to consent to a marriage. Article 44(3) also provides that 'a person shall not compel another person to perform, observe or undergo any cultural practice….'

68. Save the Children, A post-independence agenda for action, at 5.
69. Emphasis added preamble of the FDRE Constitution, also see Article 25, and Article 35 (3) of the FDRE Constitution.
70. Article 7(1) of the Revised Family Code
71. Only two regions are yet to enact their respective family laws-Gambella and Somali.
72. See Article 647, The Criminal Code.
73. See Articles 45(2) and 260 respectively.

The Kenyan constitutional provisions are supported by the Children's Act which offers specific legal protection to children. The Children's Act defines 'early marriage' as marriage or cohabitation with a child or any arrangement made for such marriage or cohabitation.[74] A child who has been subjected to marriage is considered by the law to be in need of care and protection.[75] The courts in Kenya have been empowered to nullify child marriages and place the survivors under proper care and return them to school. Section 125(2) of the Children's Act further provides guidance to the court on how it should deal with children and provides that 'if a court is satisfied that a child brought before it is in need of care and protection, it may, if the child is subjected to child marriage, make an order rendering the marriage null and void *ab initio*.' The Marriage Act of 2014 adopts the 18 years minimum age for marriage. The Kenyan Sexual Offences Acts (SOA) gives impetus to the legal framework by the defining a child in similar terms as the Constitution and Children Act. By so doing, the Act brings the definition in line with international human rights standards. This therefore places the age of sexual consent in Kenya at 18 years thereby providing protection for children from sexual abuse which means that any person who has sexual intercourse with a child within 'a marriage' not only commits an offence under Sections 14 and 20 of the Children Act, but also the offence 'defilement' under the SOA (section 8).

Rwanda is one of the rare countries in Africa which has adopted a higher minimum age of marriage - 21 years - above the common international minimum of 18 years. Rwandese law makes the distinction between child marriages, premature marriage and forced marriage. A child marriage in Rwanda is a marriage where one party is below the legal minimum age of 21 years while a premature marriage is a marriage where both parties are below the age of 21 years and both lack the capacity to consent. Forced marriages (whether early or premature) occur where there is no consent as a result of coercion and duress. In all categories, consent is vitiated. In the first two cases, absence of consent is presumed as a result of the circumstances involved (earliness and prematurity) while in the last, force or absence of consent is the vitiating factor. This age requirement may be waived by the Minister responsible for Justice where there are serious reasons. In line with the observations made above regarding consequences of child marriage, it should be observed that the CRC provides that nothing in the Convention prevents a State Party from adopting provisions that are more conducive to the realisation of the rights of the child which may be contained in national legislation.[76] The provision of a higher minimum age of marriage exemplifies a classic case of application of this principle. However, Rwanda's Civil Code further distinguishes between marriages of persons below the international minimum of 18 years and marriages of persons below the national minimum of 21 years for purposes of punishment only and not for determining early or forced child marriage.[77] It is interesting to note that a marriage between persons below 21 years is illegal under the Civil Code and criminalised under the Child Protection Code. The more salutary thing about the Rwandese formula is that abettors of early or forced child marriages are equally punished.[78] It is an aggravating circumstance if the abettor is a parent or guardian of the child.[79]

Since seceding from Sudan in July, 2011, South Sudan has ratified a few international human

74. See section 2.
75. See section 119.
76. See Article 41.
77. See Article 48, Civil Code.
78. Imprisonment of between 6 months and 5 years and a fine of between 20,000 and 100,000 francs.
79. Imprisonment of between 1 year and 5 years and pay a fine of between 40,000 and 100,000 francs.

rights treaties.[80] It joined the International Labour Organization (ILO) in April, 2012 and is currently in negotiations regarding the eight additional protocols, including the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182, which prohibits extreme forms of child labour. It has not, however, formally adopted any of the additional protocols yet. In light of the non-ratification of a number of international and regional child rights standards relevant to child rights, there is limited protection against child marriage. Forced and child marriages exist, but the minimum age of marriage is not expressly set in national law. Hence, the statistics vary from source to source. It is indicated above that in some instances the prevalence of child marriage for girls between 16 and 18 is 45%. According to UNICEF however, the rate is 39 % of South Sudanese girls aged between 15 and 19 years and 7.3 % of girls under age 15 years.[81] Both statistics are high, and reflect a common belief in many South Sudanese communities as in the case in the Muslim communities in Sudan that girls are ready for marriage at the onset of menstruation.[82]

Though the minimum age is not set, South Sudanese law contains prohibitions against early and forced marriages. For instance, Article 15 of the Transitional Constitution protects the right to found a family, and[83] prohibits subjecting children to negative and harmful cultural practices which affect health, welfare or dignity.[84] Article 23 of the Child Act provides for the right to protection from child marriage and other similar vices. The Penal Code Act provides for an offence punishable with imprisonment not exceeding 10 years or a fine for kidnapping or abducting a woman with intent to compel her to enter into marriage.[85] Article 26 of the Child Act provides that every female child has the right to be protected from forced and child marriage, and calls upon all levels of government and society to adopt measures that 'ensure that child marriages and other harmful cultural and social practices are abolished.'[86] The laws do not define 'early' marriage. In addition, the Transitional Constitution reserves the right to found a family to people of marriageable age, but it does not expressly define a minimum age of marriage.[87]

The Penal Code further deepens the ambiguity and section 247(2) to (3) states:

> (2) A consent given by a man or woman below the age of 18 years shall not be deemed to be consent within the meaning of subsection (1) [the definition of rape], above.

80. Human Rights Watch, "Prison is Not For Me": Arbitrary Detention in South Sudan, at 57 (Jun., 2012), available at http://www.hrw.org/sites/default/files/reports/southsudan0612_forinsert4Upload.pdf. Alier Deng Rual confirmed that South Sudan had not ratified either the CRC or the ACRWC as at the time. Interview with Alier Deng Rual. South Sudan has since ratified the CRC and a few other international instruments.
81. UNICEF, Children in South Sudan, (n.d.) http://www.unicef.org/esaro/Children_in_Sudan_summary_sheet_final.pdf; see also Voice of America News, "South Sudan's Ticking Youth Time-Bomb," April 7, 2011. (reporting that the 2008 South Sudan census estimated that two in five girls marry before age of 18 years and 11 %% marry before age 15 years).
82. Interview with Child Protection Office, United Nations Mission in South Sudan (UNMISS) (Mar. 2010); cf. GBV in South Sudan; see also Ating Benson Okello, "Eligible for marriage at the onset of menstruation," The Niles (May 21, 2012), available athttp://www.theniles.org/articles/?id=1170.
83. Transitional Constitution, pt. II, § 15.
84. As above, Article 1(1)).
85. See Article 273.
86. Child Act, Ch. II, § 26 ("no female child shall be expelled from school due to pregnancy or motherhood or hindered from continuing her education after 1 year of lactation").
87. The chairperson of the Human Rights Commission has called for legislation prohibiting the marriage of girls age 16 and below, but such legislation has not yet been drafted. 'South Sudan Human Rights Commission Condemns Forced Marriages, Sudan Tribune (Mar. 8, 2011), available athttp://www.sudantribune.com/South-Sudan-s-human-rights,38222.

(3) Sexual intercourse by a married couple is not rape, within the meaning of this section.[88]

The exception of rape for married couples may be understood to mean that men are permitted to have forcible sexual intercourse with their wives even if they are minors with marriage as the canopy and there is no minimum age for sexual consent among married couples. As such, these provisions are inconsistent with international human rights law pertaining to forced and child marriages.

Sudan has a rather complicated legal framework governing child marriage, which is inconsistent with international and regional standards on the matter. There is a standard for Muslim communities and another for non-Muslims. In Muslim communities, the culture encourages child marriage and supersedes international and regional standards. According to Sudanese laws, the basis for marriage is maturity determined by puberty when an individual is presumed to have become fully rational and discerning and, hence, is considered intellectually, mentally and physically mature.[89] Maturity is marked at two levels: the first level being the appearance of outward signs of puberty, including pubic hair and, in the case of girls, menstruation and the ability to conceive; whereas the second level is the attainment of full legal age.[90] According to the Personal Status of Muslims Act of 1991, the minimum marriageable legal age for Muslims is 10 years and there is no difference between girls and boys with regard to the legal marriageable age. There is a difference, however, in that, for the marriage of a discerning young girl, the law additionally requires that the judge must give his permission that the husband must be deemed suitable and the dowry must be equal to that of her peers. This requirement, according to Sudan's reports, is stipulated out of concern for girls and in order to prevent any form of exploitation.[91] Accordingly, Article 34 of the Personal Status of Muslims Act of 1991 stipulates that a guardian may give a mature woman in marriage if she consents to the husband and to the dowry.[92] Article 40 of the Act, nevertheless, permits the marriage of a person of discretion. In accordance with Article 40(2), discretion is acquired at 10 years of age.[93] A 10 year-old male is therefore permitted to marry if it is demonstrated that the marriage is likely to be in his interest. A guardian may not, however, give a 10 year-old girl in marriage without the consent of the judge, which is based on the considerations of advantage and good reason, provided that the husband is suitable and the dowry equals that of the girl's peers.[94]

In Non-Muslim communities, the law is not too different as a very low minimum age qualifies for child marriage. Marriage of non-Muslims is regulated by the Marriage of Non-Muslims Act of 1926. This law stipulates that the legal minimum age of marriage for non-Muslims is 15 years for boys and 13 years for girls. A competent court may invalidate a marriage entered into under Article 10 of the Act by a male under 15 years of age or a female under 13 years of age.[95] As for minors, the Act stipulates that consent is required for marriage. Article 29 provides that if either one of the couple to be married is under 21 years of age and is not widowed or divorced, it is essential

88. See Penal Code, Chapter XVIII, § 247.
89. Second Periodic Report, 2001, paragraph. 30.
90. Children's Rights in the Sudan an Analysis Based on the CRC Reports, Save the Children Sweden, September 2006, p 14.
91. Second Periodic Report, 2001, paragraph 54.
92. Ibid, paragraph 36.
93. Ibid,
94. Ibid,
95. Consideration of Reports submitted by States Parties under article 44 of the Convention, Periodic reports of States parties due in 1997, Committee on the Rights of the Child, CRC/C/65/Add.17 6 December 2001, paragraph 37

to obtain the written and signed consent of the father, or of the mother if the father is deceased, delinquent or outside the country, or of the guardian if both parents are deceased, delinquent or outside the country.

Therefore, it is evident that there are three main approaches to the prohibition of child marriage. In Africa, there are countries that criminalise the practice, countries that ban or invalidate marriages below the minimum age, and those that prescribe a minimum age of marriage without criminalising or banning the practice per se. Prohibition and criminalisation of child marriage is therefore an addition to setting the minimum age of marriage. Table 5 summarises the approaches taken by the five countries included in the study.

Table 5: Legal approaches to child marriage in the target countries

Country	Legal Approach to Child Marriage
Ethiopia	Child Marriage is criminalised Articles 648 and 587 of the Criminal Code (2004)
Kenya	Child marriage is criminalised Sections, 2; 14; 20; 22; 119; 125 (2) (g) of the Children Act, 2010
Rwanda	Child Marriage is criminalised Article 26 Constitution 1993 Articles 47 -50 of the Law Against Violence Act, 2001
South Sudan	Child marriage is criminalised Articles 23 and 26 (1) of the Child Act, 2008 Article 273 of the Penal Code Act, 2008
Sudan	Law is silent on the consequences of child marriage

Policy measures for protecting against child marriage: Policies here play a great role in harnessing the law through activities that promote thorough awareness creation and the management of the consequences of child marriage. In Ethiopia for instance, the Growth and Transformation Plan (GTP) which commits to improve access to education and to enhance the level of effort in addressing issues that limit children's (particularly girls) enrolment[96] is significant since child marriages have a direct and negative impact on children's opportunity for education.

In Kenya, there are few policies centred on educating the girl child or causing them to return to school so that they do not fall victim to child marriage. One such policy is the Return to School Guidelines and the Gender Policy in Education. The Kenya Education Sector Support Programme (KESSP) 2005-2010 was aimed at, among other things, undertaking community empowerment and sensitisation on cultural practices which inhibit girls' access to education, including forced and child marriage. The second phase of KESSP was overtaken by the 2012 Education Policy Framework which still recognises the need to discourage such practices.

In Rwanda, the National Policy on Orphans and Other Vulnerable Children of 2003 recognises children married before the legal age as vulnerable children. Under the heading, Health, Survival and Standard of Living, the State is required to take specific measures for providing sexual and

96. FDRE, Ministry of Finance and Economic Development, Growth and Transformation Plan (GTP) (2010/11-2014/15).

reproductive health education to children at appropriate ages. Such measures include raising awareness amongst adolescents on their rights to be protected against underage marriage. The principal aim of developing the overarching National Integrated Child Rights Policy in Rwanda was to have one single comprehensive policy which presents a vision for all children's issues, across all thematic areas of concern, hence including OVCs. However, the Strategic Plan for the Integrated Child Rights Policy only refers briefly to the Articles 49 and 50 of the 2001 Law on child protection relating to the punishment of parties to child marriages and abettors thereof, without mentioning child marriage. The logical framework of the plan does not contain a single activity explicitly related to child marriage, which is in sharp contrast with the policy itself.

Institutions: Institutions, both state and non-state, play a vital role in legal and policy implementation, monitoring, raising awareness and reform at all levels, including strategies on the basis of experiences and lessons learnt in the process. The judiciary is also an important institution for enforcing laws to protect children from child marriage.

State institutions Ethiopia and Sudan have poor state institutional frameworks on child rights promotion and protection. The mandate of the Kenya National Commission on Human Rights (KNCHR) includes, among other things, 'monitoring, investigating and reporting on the observance of human rights in all spheres of life in the Republic'. KNCHR is also mandated to create awareness through advocacy on issues of human rights including children rights. Also a more gender specific institution, the National Gender and Equality Commission was established under the National Gender and Equality Commission Act[97] whose functions include promotion of gender equality and non-discrimination relating special groups including children; ensuring the State's compliance with duly ratified treaties and conventions; and to monitor and enhance affirmative action implementation policies as contemplated in the Constitution.' the Ministry of Education, and the Ministry of Gender, Children and Social Development have also been undertaking awareness raising activities against forced child marriages of girls in Kenya.

In Rwanda, institutions have a general mandate on child rights promotion and are not specific to child marriage. However, their mandates inextricably cover child marriages. The main institution seems to be the independent NHRC. Neither its general responsibilities - the promotion and defence of human rights nor the more specific responsibilities - sensitisation, education and monitoring include child rights - make mention of any functions relating to child protection. The 2001 Law on Child Protection makes provision for the NHRC to develop strategies to follow up the protection of the rights of the child. This has led to the creation of the Observatory of the Rights of the Child in 2006 within the NHRC. The Observatory has a generic mandate: to ensure compliance with the rights of the child; establish data on the status of the rights of the child; prevent, deter violations of the rights of the child; and advocacy for the rights of the child. Members of the Observatory have been trained on monitoring of violations and are expected to produce periodic reports. So far neither the NHRC nor the Observatory has been tested in relation to their mandates.

South Sudan has panoply of state institutions with a general mandate on children's affairs, but these face resource constraints. The constraints were compounded in 2012, when the Legislative Assembly passed an austerity budget in an attempt to forestall an

97. Act No. 15 of 2011.

economic crisis. The austerity budget cut Government spending across the board, but it is likely to have a particularly damaging impact on institutions involved with child rights.[98] In South Sudan, the Ministry of Gender, Child and Social Welfare is the main government institution mandated with the regulation and supervision of activities related to children, including monitoring violations of children's rights. Its programming efforts give special attention to the particularly vulnerable groups of street children and orphans. The Child Commission is mandated to monitor compliance of all levels of Government in South Sudan with the CRC and to investigate violations of children's rights. But four years after the Child Act was passed, the Child Commission has not been established. The Human Rights Commission is an independent Commission established by the Transitional Constitution and the 2009 South Sudan Human Rights Commission Act. The Human Rights Commission is established to monitor the application and enforcement of the rights and freedoms enshrined in the Transitional Constitution; to investigate human rights violations; and to monitor Government compliance with international and regional human rights treaties and conventions.

Non-state institutions: Some of the International NGOs striving to minimise the incidence of child marriage in Ethiopia include Pathfinder International, Ethiopian Women Lawyers' Association, and Save the Children (UK, US, Sweden). These INGOs devote resources towards the eradication of child marriage. Also, with a view to advance this objective, many of the NGOs have adopted strategies and developed concrete activities targeted at tackling the incidence of child marriage. They do so by mobilising the community, providing training and information to the public (including women, youth, religious and community leaders) through electronic, audio-visual and print media on the harmful effects on child marriage. These efforts have yielded fruits. For instance, as a result of the work done by Pathfinder International in collaboration with the Ethiopian Women Lawyers' Association and the Ministry of Justice, more than 9,000 children in Amhara region and some 3,000 children in Tigray region were saved from Child marriages in 2005.[99] Through the awareness efforts of both Government and NGOs, best practices have evolved in various parts of Ethiopia that respond to the need to abolish child marriage. A case in point is the requirement in parts of the Amhara region to seek approval from selected community elders before celebrating a marriage. Health workers are also playing a role in educating the community on the harsh effects of child marriages and the need to abolish them.

In Kenya, international NGOs such as World Vision, AMREF and Child Fund Kenya, amongst others, have made efforts to implement programmes geared at curbing child marriage in Kenya. Strengthening Community Partnership & Empowerment (SCOPE), an organisation based in Killifish County, Coast Province with the support of USAID, is currently implementing a project that seeks to identify best practices to prevent child marriage. The goal of the project is to develop and implement culturally-appropriate programs to delay the age of marriage in Killifish County by increasing awareness and education at the community level on the negative effects of child marriage. The project thus seeks to empower families so they do not give up their daughters to child marriage including

98. Interview with Regina Ossa Lullo, Director General for Gender and Welfare, Ministry of Gender, Child and Social Welfare, Government of South Sudan (Jul. 6, 2012).

99. Alemu, B., Child marriages in Ethiopia: Causes and Health Consequences (2006), available at http://smartsite.kit.nl/net/KIT_Publicaties_output/ShowFile2.aspx?e=1417

seeking to recruit mentors for the girls from the local communities.[100] UNFPA is also assisting several organisations that are combating child marriage. One such organisation is the rescue centre in Nark called Tasaru Ntomonok Girls Rescue Centre.[101] The centre offers training and reconciles girls with their parents and communities. Churches like the Seventh Day Adventist have also played a role. The church runs a programme known as the Kajiado Rehabilitation and Education Centre which among others things seeks to provide education, recreation, and income generating activities to the *Maasai* girls who would otherwise never attend school due to child marriage and female genital mutilation (FGM).

In South Sudan, a good number of Non-State Actors with a general mandate on children's issues operate. Intergovernmental organisations and NGOs complement Government work in protection for children. The UNICEF Country Program addresses the following major areas: health; nutrition; water and sanitation and hygiene (WASH); basic education; gender equality; child protection; strategic communication and policy; and advocacy and social protection. UNICEF was also involved with the drafting of the Child Act, 2008, South Sudan's major legislation prescribing children's rights. The United Nations Mission in the Republic of South Sudan (UNMISS), in addition to its mandate on peace keeping, is in charge of the"[facilitation of] a protective environment for children affected by armed conflict, through implementation of a monitoring and reporting mechanism. International Non-governmental Organisations (INGOs) such as Save the Children"[102] and the International Committee of the Red Cross (ICRC) are organised at national level in a child protection sub-cluster and at the state level in child protection working groups.

There is a dearth of documented initiatives by NGOs working on combating the scourge of child marriage in Sudan and Rwanda.

Role of the judiciary in enforcement: Courts are primarily empowered to vindicate citizens' rights that have been violated by applying the law and pronouncing the appropriate remedies (civil cases) or sanctions (criminal cases). However, there are neither specialised complaint procedures, special courts nor specially trained magistrates, and, at the same time, there is persistent poverty, obnoxious traditional or cultural practices and customs which continue to resist and defy written laws as well as complacent attitudes (especially silence) of parents and guardians who are either abettors of violation of gender and child rights or actual violators thereof.

There is no data or research available on the number of suspects prosecuted for child marriage. The few that are reported are often never concluded or settled out of court among the community members without involving courts. This can be attributed to the ignorance on the illegality of child marriage. However, amongst the five target countries in the Report, Rwanda seems to be the only country that has successfully prosecuted perpetrators of early child marriages. The country brief discloses two such cases. In both cases, the girls were below 17 years and this constituted an aggravating circumstance under Rwandese law, since the normal punishment applies to marriages of persons below 21 years of age. In both cases, we see that prosecution and judicial police were

100. See http://www.scopekenya.org/news/scope-joins-population-council-to-delay-early-marriage (Accessed on 11th July, 2012).

101. See http://www.unfpa.org/public/news/pid/2202. Accessed on 21 July, 2012

102. Save the Children UK, South Sudan Profile, available at http://www.savethechildren.org.uk/where-we-work/africa/south-sudan

determined to bring to justice any person who induced minors into child marriage. Not only the Police and prosecution but also the community, local authorities and parents were keen to combat the practice as can be seen in the first case (RP 0246/09/TGI/GIC). However, the second case (RP 0078/11/TGI/RSZ), reveals a major cause of child marriages, namely traditional beliefs of some parents who are complacent to the practice simply by not reporting cases.

3.2 Economic and sexual exploitation

The main form of economic exploitation of children is through child labour which violates ILO Convention No. 138 on Minimum Age of Employment and the ILO Convention No. 182 on the Worst Form of Child Labour. Under economic exploitation, the gist of exploitation is the economic or financial benefit that the child confers on the recruiter or employer. Strictly speaking, child work is not prohibited *per se*. In other words, not all involvement of children in economic activities necessarily constitutes exploitation. The ILO Conventions allow a child above 14 years to be admitted into employment involving non-hazardous work but prohibits situations manifesting an exploitative nature which affects the dignity of the child or the harmonious development of the child's personality.[103] Certain types of 'work' will automatically qualify as worst forms of labour such as the use, procuring or offering of a child for prostitution; for the production of pornography or pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs etc.

Child sexual exploitation is a form of sexual abuse of children which sometimes takes a commercial form leading to commercial sexual exploitation of children (CSEC). CSEC appears to be even more insidious than child labour and affects the lives of tens of millions of children worldwide. Some portion of these children are in the 'employment' of well-organised networks of traffickers in the child and adult sex industry, at least some of whom also engage in the sale of illegal drugs, money laundering activities and other criminal activities.[104] The nature of economic exploitation of children varies from place to place. Some of the activities are also considered to be gender-specific. Thus, girl children will be subject to a different form of economic exploitation as compared to boy children. The girl child that lives in the rural parts of the country often performs different tasks such as washing, cooking, fetching water, and taking care of young siblings. She is also involved in productive activities which many boys are also involved. But the number of girls engaged in household work is twice that of boys.

3.2a Economic Exploitation

Causes and consequences

Poverty is the main cause of economic exploitation of children in all five countries. As a last resort, children leave home in search of family income. The incidence of poverty in the countries under this study is particularly high. According to the Government of Kenya Report titled *"Interim Poverty Reduction Strategy Paper 2000–2003",* 'in 1972, it was estimated that about 3.7 million Kenyans lived in poverty (defined as an income level of less than US$1 per day). As of 2013, about 43.5% of

103. The Committee on the Rights of the Child, CRC/C/20, 4th Session, (1993) available at http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/exploit.pdf (Accessed on 6 July, 2012).

104. Estes, E '2001) 'The Sexual Exploitation of Children: A Working Guide to the Empirical Literature'. Philadelphia: University of Pennsylvania, p. 1

the population were considered poor.[105] In Sudan, an overall 46.5%% of the population live below the poverty line.[106] Poverty rates are substantially lower in urban areas, where 24% are below the poverty line, compared to rural areas where 55% live in poverty.

In South Sudan, civil war has also exacerbated child labour. Children who were orphaned as a result of the war unable to go to school were forced into the labour market. In Ethiopia, poverty and economic marginalisation of families are leading factors driving children into a state of economic exploitation.[107]

The size and causes of the phenomenon of children living or working on the street also determines the magnitude of the child labour market.[108] Inherently, economic exploitation of children is hazardous to the health of the child and causes disruption of education. The gender dimension is present but not very pronounced as in the case of sexual exploitation where girls are traditionally the main victims of trafficking, incest, rape and sexual abuse. Child labour impacts upon the education, survival and development of children.

Prevalence

Child labour is a widespread problem in all the five countries - with the exception of Sudan and Rwanda where data and statistics are scanty or unavailable (Table 6). As evidenced in Ethiopia and South Sudan, although both sexes are involved, girls are the most affected and earn lower wages for their labour.

Table 6: Prevalence of Economic Exploitation in the target countries

Country	General Prevalence rates (2000 – 2008)
Ethiopia	84%
Kenya	6.1%
Sudan	46%
South Sudan	58%
Rwanda	8%

In Ethiopia, in 2001, a survey by the Ministry of Labour and Social Affairs, the Central Statistics Agency and the ILO showed that about 84 % of the country's children are engaged in activities that may be regarded as child labour. The survey found that 52% of children are involved in productive activities, more than 80 % of them (12.6 million) below the age of 15 years. Almost 90% of them come from the rural areas. More girls than boys do housekeeping work, and more boys than girls participate in income generating activities. The case of child domestic workers deserves particular attention. Female child domestic workers have the longest working hours at more than 49 hours

105. World Bank Poverty and Equity: Kenya available at http://povertydata.worldbank.org/poverty/country/KEN

106. World Bank Data available at http://data.worldbank.org/country/sudan.

107. FDRE, Ministry of Labour and Social Affairs, Ethiopia's Development and Social Welfare Policy (1996)

108. Ibid, p. 27

a week,[109] and even higher in Addis Ababa.

In Kenya, it is estimated that 1.3 million children are engaged in activities regarded as child labour. The survey revealed some risky forms of child labour where 15,000 children were engaged in activities that are unsafe and risky for young persons, e.g. fishing, mining and quarrying, building and construction, and road transport. There were no reported cases of worst forms of child labour such as slavery or recruitment of children for use in association with armed forces. There were also no statistics indicating disaggregation on the basis of sex for the 1.3 million children engaged in child labour. The 2001 ILO survey indicates that among working children in Kenya between 5-14 years, approximately four out of every five are employed in the agricultural sector, 2.3 per cent are employed in the industrial sector and the remaining 15.4 per cent work in services. A similar pattern can be observed among the age sub-categories 5-9 and 10-14. Girls are more likely than boys to be employed in services (23.2 per cent vs. 8.7 per cent) and less likely to be employed in the agricultural sector.[110]

Children's involvement in employment remains an important policy concern in Rwanda. An estimated 8% of children aged 7-15 years, over 180,000 children in absolute terms, were in employment (i.e. involved in economic activities) in 2008. Rwandan legislation sets the general minimum working age at 16 years, with no exceptions for light work; all 7-15 year-olds in employment, therefore, are to be considered as being engaged in child labour.[111]

In Sudan, according to data provided by the Ministry of Labour in 1996, children between 6 and 9 years of age were working, which was an equivalent of 46% of all children in this age group. Among children between 10 and 14 years, 54% boys and girls were working. The CRC Committee expressed concern at the fact that many Sudanese children, including children of less than 15 years, regularly work and bear heavy responsibilities within the family. The CRC Committee was concerned that some children are victims of economic exploitation and work in very poor conditions, for long hours and in dangerous and abusive conditions with very low wages.[112]

South Sudan is characterised by very high rates of child labour; low levels of participation in education, even for the 10-14 years and 15-24 years age cohorts. 58% of children between 10 -14 years are in the labour market. Three out of five youths are already part of the labour force by the age of 10 years.[113] Most but not all of the children performing economic activity constitute 'child labour' in the legal sense; the South Sudan Child Act of 2008 sets the minimum age for the admission of a child to paid employment at 14 years[114], but sets a lower minimum age of 12 years for 'light work'. 35% of all children aged between 10 and 14 years are in work exclusively while almost 11% of the same age group attend school and work at the same time.

According to the Child Act, light work constitutes work that is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of

109. Wolde Giorgis, supra note 127.

110. International Programme on the Elimination of Child Labour (IPEC) 2002. ILO Kenya Country Profile available at: http://www.ilo.org/ipecinfo/product/download.do?type=document&id=7801.

111. Understanding children's work and youth employment. Report on Child Labour and Youth Employment in Rwanda. Country Report (2011). http://www.ucwproject.org/attachment/child_labour_Rwanda20110630_120902.pdf

112. CRC Committee Concluding Observations: the Sudan CRC/C/15/Add.190 (2002).

113. Guarcelo F, Lyon S, and Rosati FC "Labour market in South Sudan" Working Paper (2011)

114. See section 25.3.

the child to benefit from school.[115] The gender dimension of child labour is pronounced. Girls are mostly exposed to economic exploitation at home with other women.[116] 84% of South Sudanese women are employed in agriculture, forestry, fishing, mining or households.[117] Families often force girls to prioritise their domestic duties above their education, at which point it becomes an unlawful form of child labour and is prohibited by the Child Act.

Strategies to address economic exploitation

Instruments: Except in South Sudan, all the target countries have signed both ILO Conventions No. 138 and No. 182. Both conventions contain non-discrimination and labour related provisions. Ethiopia and Kenya have constitutional provisions on labour focusing on children in addition to national labour laws. The Ethiopian Constitution makes provision On children so that they do not get into the labour market. Article 41 (5) of the Constitution, which requires the State, 'within available means, to allocate resources to provide rehabilitation and assistance to ...children who are left without parents or guardians.'[118] If this commitment is adequately discharged, the State can safeguard children without parents or guardians from becoming victims of economic exploitations.The minimum age for the admission of children into employment varies between Rwanda and Kenya, having the highest range (16-18 years). However, the 2003 OVC Policy in Rwanda defines 'working children' as those below the age of 18 years thereby pushing the minimum working age from 16 to 18 years. In such cases, the law overrides the policy. The other countries have basically adopted the ILO minimum age of 14 years. With regard to work which may be termed hazardous, circumstances of each county vary depending on the labour market type and the minimum protective standards required for that particular work. But there are common denominators like work which affects the child's physical and mental health and morals as well as long hours of work with low wages.

The Constitution of Ethiopia provides for the right of the child 'not to be subjected to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being,'[119] To give effect to the international or regional and national constitutional commitments, the Labour Proclamation categorically prohibits the employment of children below the age of 14 years.[120] An employer who wishes to hire the services of child workers between the ages of 14 and 18 years –referred to in the Proclamation as Young Workers- is legally required to provide special protection to these children. It protects children from performing work whose nature or the circumstances under which it is to be carried out is harmful to the life or health of the young worker. In addition, the Criminal Code punishes trafficking in children for the purposes of forced labour,[121] over tasking children that results injury to the health, well-being, education or physical or psychological development of the child, [122] enslaving

115. Ibid, p. 24

116. Ministry of Gender, Gender-Based Violence and Protection Concerns, at 13.

117. SSCCSE, Statistical Yearbook, at 85.

118. Article 41(5) of the FDRE Constitution

119. Article 36(1)d of the FDRE Constitution

120. Article 89 (2) of the Ethiopian Labour Proclamation No. 377/2003, hereinafter the Labour Proclamation.

121. See Article 525.

122. See Article 576(2).

children,[123] and dereliction of parental duty to bring up a child.[124] Current policy reforms are also geared at strengthening the fight against child labour.

Kenya's constitutional provisions recognise the need to protect children from economic and sexual exploitation in accordance with the international instruments that now form a part of the national legislative framework. The Constitution recognises labour rights of every citizen[125] and provides safeguards for the protection of children from hazardous or exploitative labour of children[126]. The right of children to be protected from economic exploitation is safeguarded under Part II of the Children's Act. It is worth noting that the Children's Act does not define economic exploitation and the section does not make a distinction between child labour and economic exploitation and uses the terms interchangeably. This means that the Children's Act permits the employment of children above 16 years but below 18 years of age and that there is no blanket prohibition with regard to the employment of all persons below the age of 18 years. There is no mechanism in place that would provide adequate protection from economic exploitation or child labour. The penalty for the worst forms of child labour is a minute fine of 200 Shillings or imprisonment for 1 year. This penalty has been increased to 500 Shillings with the same term of imprisonment if the child sustains bodily injury or dies as a result of the violation of the law by the employer.

In Rwanda, the 2007 Labour Law does permit a child, who is a person below the age of 18 years[127] to be employed under the condition that the child's rest between two working periods is of a minimum duration of twelve consecutive hours.[128] The worst forms of labour under the 2009 law include: involving children in slavery or similar practices; child trafficking; replacing grown-ups in forced labour; the recruitment, use, procuring or offering of a child for prostitution or for the production of pornography or for pornographic performances; and work which is likely to harm the health, safety or morals of a child. The law also prohibits employment of children in a service not proportionate to their capacities. Article 168 prescribes the penalties for the worst forms of child labour, by referring to the Penal Code: a person found guilty of subjecting children to the worst forms of child labour shall be liable to a term of imprisonment ranging from 6 months to 20 years and a fine of 500,000 to 5,000,000 Rwandese francs or to one of these penalties.

The South Sudanese Constitution protects children from being subjected to exploitative practices or abuse, from being required to serve in the army, or permitted to perform work which may be hazardous or harmful to his or her education, health or well-being.[129] The Constitution further provides that all levels of Government shall accord special protection to orphans and other vulnerable children, and child adoption shall be regulated by law. However, children in South Sudan are engaged in various forms of unlawful child labour, defined as work that "harms or exploits [children], whether physically, mentally, morally, or by preventing [them] from education."[130] Despite the provisions of the Child Act that seek to protect children under the age of 14 years from all forms of economic exploitation, many children who should be in schools instead work in homes, on farms, on city streets, or are associated with armed forces.

123. See Article 596(3).

124. See Article 659.

125. See section 41.

126. See section 53(1) (d).

127. Article 1, 45th definition, 2009 Labour law.

128. Article 4, second paragraph, j Article 5, 2009 Labour Law.

129. Article 17(1)

130. Child Act, Ch. I, & 5.

The first piece of legislation on child labour in Sudan was promulgated in 1930.[131] Current legislation endeavours to set the minimum age at which the child may be employed and the maximum number of hours which the child may work. Laws also lay down the health and administrative checks required for employment, determine wages payable for child labour and specify the jobs and industries in which children may not be employed. The laws also endeavour to strike a balance between the child's need to work in order to train or earn an income and the child's physical, mental, behavioural, educational, health, mental, spiritual and social needs. All children must undergo a full medical examination prior to employment and thereafter at regular intervals and employers must post a copy of the legal regulations on child employment clearly visible in the workplace. Employment of children in hazardous activities is forbidden.

Policies that protect against economic exploitation: Policies on child labour differ between countries depending on the degree of the phenomenon in terms of type and prevalence. Countries with more vulnerability such as Ethiopia have a commendable policy framework although it is not fully implemented. Meanwhile, no policy measures to prevent or fight against child labour in Sudan and South Sudan are reported.

The Development and Social Welfare Policy in Ethiopia mentioned before incorporates child labour as one of the significant policy issues deserving an overall framework of interventions. Supporting families with a view to improving their economic capacity is underlined as one intervention strategy. This strategy, the policy emphasises, helps to mitigate one of the factors forcing children to child labour.[132] The National Plan of Action for Children, another strategy document developed by Ministry of Labour and Social Affairs, emphasises the need to protect children from economic exploitation by also underscoring the need to advance children's right to education. The Growth and Transformation Plan (GTP), albeit indirectly, addresses economic exploitation of children by tackling poverty –a major cause for economic exploitation of children. The National Plan of Action on Sexual Abuse and Exploitation of Children[133] as well as the National Action Plan on the Elimination of the Worst Forms of Child Labour in Ethiopia could have a significant role in the protection of children from economic exploitation. These policy documents require strong political will to have the effect of informing and influencing all relevant legislation and legislators on the issues of sexual exploitation of children and child labour. But it remains that the presence of such documents facilitates further protection of rights.

In Kenya, the Government has put in place a National Child Labour Policy that is meant to ensure protection of all children from all forms of harmful child labour practices. It provides for both preventive measures needed to reduce the flow of vulnerable children to the risks of becoming child labourers, and protective strategies needed to rescue or withdraw the existing stock of child labourers; facilitate their recovery and reintegration; and prevent them from re-entering work. The National Action Plan for the Elimination of Child Labour in Kenya (2004-2015, revised in 2008) seeks to prevent and eliminate child labour in Kenya by 2015. The Plan seeks to achieve this by addressing the root causes of child labour in Kenya such as poverty, weak government institutions

131. Followed by the Domestic Servants Act of 1955, the Workforce Act of 1974, the Industrial Security Act of 1976, the Self-Employment Act of 1981, the School Health Act of 1974, the Juvenile Welfare Act of 1983, the Child Welfare Act, the Industrial Apprenticeship Act of 1974 and the Education Regulation Act of 1992. Some of the general laws also contained special provisions on children.

132. Ibid

133. FDRE, Ministry of Labour and Social Affairs, National Plan of Action on Sexual Abuse and Exploitation of Children (2006-2010).

and limited access to education. It also seeks to accelerate awareness raising on the part of law enforcement.

In Rwanda, the 2003 OVC Policy sets forth objectives and strategies specifically relating to 'working children', who are defined as people under the age of 18 years who work in conditions likely to harm their health and development and that hamper their access to education. However, the 2003 OVC Policy for the period 2007-2011 does not provide specific activities with regard to 'working children'. These children are only targeted indirectly, for instance under Activity 3.2.5, which provides legal support to 65,000 OVCs. According to the Economic Development & Poverty Reduction Strategy, 2008 - 2012, priority was given to the elimination of child labour, by implementing a child labour survey and subsequently formulating and implementing a child labour policy.[134] This survey was carried out and published in 2008. It provided key statistical details on child labour in Rwanda.[135] The 2011 Strategic Plan for the Integrated Child Rights Policy contains a logical framework which contains two activities directly aimed at child labour: one is to develop time bound programmes to eliminate child labour, while the other aims at establishing a National Task Force on Child Labour.[136] The Plan promises to hold employers accountable and to penalise them for violating the Policy and related laws.

Institutions

State actors: Despite the widespread problem of child labour in all five countries, the institutional framework to ensure the effective implementation, follow-up and monitoring is relatively weak. In Ethiopia, the Constitution provides that the duty to see effective observance of this guarantee rests on all citizens, organs of state, political organisations as well as other forms of associations[137], hence, the protection of children is not left merely for the state machinery of enforcement but to other non-state actors such as individual citizens as well as civil society organisations.

With respect to State actors in Kenya, the elimination of child labour is the responsibility of, among others, the Ministry of Gender, Children and Social Development (MGCSD), Ministry of Labour and the Ministry of Education, the main child rights institutions. The MGCSD conducts quarterly inspections and investigations on issues of child labour, however, is faced with inadequate financial and human resource to undertake this obligation adequately. The Ministry of Labour is responsible for monitoring the implementation of the Employment Act. The Ministry has labour inspectors who have power to terminate an employment agreement between a child and employer in any labour situation. No data on the number of inspections undertaken with regards to child labour is available including cases that might have been prosecuted pursuant to such inspections.

Non-state actors: There are also a number of non-state actors involved in the fight against economic exploitation. For example, the Kenya National Union of Teachers (KNUT) and ILO/IPEC run a project on Elimination of Child Labour which started in September, 1999. The project aims at eradicating child labour in Kenya by using the already established KNUT

134. Ministry of Finance and Economic Planning, Economic Development and Poverty Reduction Strategy 2008-2012, 2007, paragraph 4.174.

135. Ministry for Public Service and Labour, Rwanda National Child Labour Survey, 2008. See above.

136. Respectively activities 5.1.2 and 5.1.3 under outcome 5 "Child abuse, exploitation and violence against children eliminated."

137. Article 9(2) of the FDRE Constitution

organisational structure to raise awareness amongst the teachers, education officials, parents and the general public on problems associated with child labour, and to build their capacity to fight the problem. ANPPCAN Kenya projects also seek to contribute to eradication of child labour through establishing pilot child labour free zones in selected severely affected urban and rural districts in Nairobi and Nyanza Provinces. They also conduct advocacy for the rights of children and support access to basic education by contributing towards the effective elimination of child labour in Usigu Division, Bondo District, Siaya County.[138]

The role of the judiciary: enforcement: Prosecutors in all five countries rarely pursue crimes of economic exploitation of children. In Ethiopia, however, recent attempts by the Federal Police to investigate and prosecute perpetrators of labour trafficking crimes are commendable strides to control child labour.[139] It was this effort that led to the sentencing of a woman by the Federal High Court for taking 13 girls from the Tigray Regional State for domestic servitude. The Federal High Court convicted the woman and sentenced her to 6 years imprisonment.[140]

3.2b Sexual Exploitation

Sexual exploitation of children can cause serious repercussions on the children's health or physical development. Cognisant of this, many countries bring into play international, as well as national laws, to protect children from sexual exploitation of any kind. Sexual exploitation of children grossly undermines the dignity of the child and is a morally outrageous and reprehensible violation and destruction of the child. It actually shows the extent to which society itself is morally debased and destructive to its very foundations.[141] The Declaration adopted at the First World Congress against Commercial Sexual Exploitation in 1996 noted a heightened contemporary disdain against the practice:

> 'The commercial sexual exploitation of children is a fundamental violation of children's rights. It comprises sexual abuse by the adult for remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery'.[142]

Causes and consequences

Patterns of child sexual exploitation appear to be fuelled by a number of very intricate factors emanating from society's circumstances such as: the use of 'sex' by children on their own to provide for their subsistence needs; the presence of adult prostitution markets and 'demand'; communities with a chronic history of child sexual abuse leading to its normalisation; poverty;

138. See http://www.anppcankenya.co.ke/index.php?option=com_content&task=view&id=77&Itemid=85. Accessed on 23 September, 2012

139. United States Department of State, Supra note 128.

140. Ibid.

141. Ibid.

142. Paragraph 5, Stockholm Declaration and Agenda for Action (1996), available at www.focalpointngo.org/yokohama (Accessed on 11 July, 2012)

the presence of large numbers of transient males in communities-including military personnel and truck drivers; the promotion of child prostitution by parents, older siblings and boyfriends; the recruitment of children as 'sex workers' by organised crime units and, increasingly, illegal trafficking of children for sexual purposes both within Africa and globally. Increasing numbers of street children and orphans as a result of HIV and AIDS have also led to increasing numbers of children engaged in the commercial sex market.

The prevalence of child marriage is also a contributing factor that leads to the sexual exploitation of children. Children engaged in commercial sex work are commonly found to be victims of early child marriage who later separate and get caught up in sexual exploitation.[143] Communities with higher child marriages incidentally have higher prevalence rates of children in sexual exploitation.

As with other gender-based violations, poverty remains one of the key causes of sexual exploitation. Children, particularly orphans, will be forced to make ends meet by exposing themselves to sexual exploitation. It is estimated that close to 40% of children engaged in prostitution, for instance, are exposed to this practice either to support themselves or their parents.[144] The consequences of sexual exploitation are manifold and include: early pregnancies together with all the health risks that come along such as difficult birth, fistula, infection with HIV or other STIs and death.

Prevalence of sexual exploitation of children

There are limited statistics on the prevalence of sexual exploitation in the five target countries. Only Ethiopia and South Sudan report statistics. In both South Sudan and Ethiopia, poverty, failed child marriages and child trafficking are the main causes for the sexual exploitation of children. The market for sexual exploitation of children is commonly associated with tourist destination countries such as Ethiopia and Kenya although there is limited data to substantiate this. There are reports of an increase in the prevalence of sexual exploitation of the boy child; however there is no study or data substantiating such observations either.[145]

In Ethiopia, a study found that the majority of girls exposed to commercial sexual exploitation (69.6%) started commercial sex work between the ages of 13 and 15 years; 22.9% of them started the work when they were as young as 12 years old (the lowest reported age); and only 15.5% were over the age of 15 years at the time of first entry into commercial sex work.[146] Studies also found that the level of sexual exploitation of children in the form of prostitution takes different forms. Thus, some children engage in commercial sex in nightclubs, bars and brothels, while others simply stand on street corners waiting for men to pick them up.[147]

The state of sexual exploitation in South Sudan is evident in a 2007 survey on psychosocial trauma in Juba County, in which 41.9% of women reported that they had witnessed the rape of other

143. Ayode, Situational Analysis on Victims of Child Trafficking and Labour Exploitation in Traditional Weaving: In Some Selected Suburbs of Addis Ababa, available at http://www.dol.gov/ilab/grants/sga11-06.pdf (Accessed on 15 July, 2012).

144. Save the Children Denmark, Child Labour in Ethiopia with Special Focus on Child Prostitution (2004), available at http://www.childtrafficking.com/Docs/sc_denmark_2004_child_labour_in_ethiopia_1.pdf (Accessed on 11 July, 2012).

145. Hagos, B., Sexual Abuse and Exploitation of Boy Children in Addis Ababa (2008), available at http://www.etharc.org/resources/download/finish/33/101 (Accessed on 11 July, 2012)

146. Ayode, Supra note 131.

147. Peebles, G., Hurt and Abused Children in Ethiopia (2012), available at http://www.countercurrents.org/peebles130412.htm (Accessed on 10 July, 2012).

women.[148] Since the signing of the Comprehensive Peace Agreement (CPA) and the end of the war in 2005, prostitution has become an increasingly profitable trade in South Sudan. It is mostly concentrated in urban and town settings, where economic migrants, soldiers, and expatriate aid workers provide a steady demand for sex work. According to CCC, the majority of adult sex workers in Juba are migrants from the neighbouring countries of Uganda, Kenya, Ethiopia and the DRC.[149] The study notes that most child prostitutes, however, are South Sudanese girls fleeing various forms of abuse at home.[150] Of an estimated 2,000 to 2,750 sex workers in Juba, 470 to 500 are thought to be children.[151] In South Sudan, some parents abet their children's participation in sexual exploitation. Children are also exposed to the sex trade through their mothers who work as prostitutes as well. In one brothel, researchers were told that there were at least 80 children aged 12 years old and below living there. Some of the older girls were already becoming involved in prostitution. According to CCC, '[t]he daily exposure to the sexual activities of adults, including their own mothers, creates an environment in which this comes naturally,' as part of survival strategies.[152]

Strategies to address sexual exploitation

Instruments: The Ethiopian Constitution furnishes protection from these forms of inhuman or degrading treatment by prohibiting trafficking in persons for whatever purpose. The Constitution also provides safeguards to children from sexual exploitation.[153] The Criminal Code of Ethiopia criminalises the sexual exploitation of children. For instance, procuring children to engage in prostitution even with their consent or keeping them in a brothel for purposes of prostitution is punishable with imprisonment not exceeding five years, and fine not exceeding 10,000 Birr.[154] Similarly, procuring prostitution of another is specified as a criminal offence.[155] The Criminal Code also seeks to protect children from sexual exploitation by specifying severe penalties on those who conduct sexual outrages on children.[156]

Kenyan law does not seem to specifically address sexual exploitation of children. However, this is indirectly covered in the definition of child labour given that, in some instances, sexual exploitation is a form of economic exploitation and both vices, often, have similar consequences. There are several provisions within the Employment Act (2007) which deal with worst forms of child labour whose definition encompasses sexual exploitation. Under section 2, worst forms of child labour include the employment, engagement or usage in slavery or practices similar to slavery, such as the sale and trafficking of children, procuring or offering of a child for prostitution, for the

148. Isis-Women's International Cross-Cultural Exchange (Isis-WICCE), Women's Experiences during Armed Conflict in Southern Sudan, 1983- 2005: The Case of Juba County, Central Equatoria State (2007), available at http://www.isis.or.ug/index.php?option=com_docman&task=doc_details&gid=115&Itemid=89.

149. The CCC study estimates that about two-thirds of the sex workers in Juba are of foreigners. Ibid.

150. The researchers found about 200 underage sex workers (12 to 17-years-old) and young sex workers (18 to 25-years-old) at 1 brothel in Juba. The underage girls, all South Sudanese, lived together in 1 big lodge, which they called the luak, a Dinka word for cattle-byre. Ibid.

151. Ibid. at 29 (these estimates are based on cursory counts of the number of rooms in the main brothel areas and on estimates by the sex workers themselves).

152. Ibid.

153. Article 24(2) of the FDRE Constitution

154. Article 635(b) of the Criminal Code of Ethiopia.

155. Article 634 of the Criminal Code of Ethiopia

156. Article 626, 627 of the Criminal Code of Ethiopia.

production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.'

The 2009 Labour Law in Rwanda considers sexual exploitation a worst form of labour. The law therefore prohibits the recruitment, use, procuring or offering of a child for prostitution or for the production of pornography or for pornographic performances and work which is likely to harm the health, safety or morals of a child.[157] It is interesting to note that unlike in Kenya, for example, child labour and sexual exploitation are severely punished in Rwanda almost to the same extent or more than in Sudan. Article 168 of the Rwandese Labour Law prescribes the penalties for the worst forms of child labour, by referring to the Penal Code: a person found guilty of subjecting children to these worst forms of child labour shall be liable to a term of imprisonment ranging from 6 months to 20 years and a fine of 500,000 to 5,000,000 Rwandese francs or to one of these penalties.

The legal framework for addressing sexual exploitation in South Sudan is still too weak. National laws are non-existent and the country is not party to key human rights instruments. Only the Constitution so far presents a basis for punishment of sexual exploitation. The Constitution provides that in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the paramount consideration will be the best interests of the child.[158] The South Sudanese Constitution further protects children from subjection to exploitative practices or abuse, and from the requirement to serve in the army or to perform work which may be hazardous or harmful to his or her education, health or well-being.[159] Beyond these flamboyant constitutional promises, there are no laws or policies to transform them into justiciable provisions.

Sudanese legislation categorically prohibits prostitution and immoral behaviour, as well as the production, publication, distribution or use of obscene books and photographs.[160] The Second Sudanese State Party Report to the CRC Committee argues that owing to the preventive and deterrent laws in place, sexual abuse and exploitation are non-existent in the society.[161] The country's Initial Report does not mention sexual exploitation and abuse but the Second State Party Report states that offences in which children are used to perpetrate immoral acts are a rare occurrence owing to the religious background of Sudanese society and the upright conduct which prevails.[162] However true the assertion may be, the 'rare occurrence' confirms a flicker of the practice and perhaps even more.

In 2007, the CRC Committee remarked that the offences contained in Article 3 of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Pornography are not all adequately covered under Sudan's legislation.[163] In particular, it was concerned that under the

157. Article 72, 2009 Labour law

158. Article 17(2)

159. Article 17(1)

160. Children's Rights in the Sudan an Analysis Based on the CRC Reports, Save the Children Sweden, September 2006, p 14.

161. Second Periodic Report, 2001, paragraph 427.

162. Consideration of Reports submitted by States Parties under article 44 of the Convention, Periodic reports of States parties due in 1997, Committee on the Rights of the Child, CRC/C/65/Add.17 6 December 2001, paragraph 378.

163. Consideration of Reports submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention of the Rights of the Child on the Sale of children, Child Prostitution, and Child pornography, CRC/C/OPSC/SDN/CO/1 21 June 2007, paragraph 17.

Criminal Act of 1991, the sale of children is only considered an offence complementary to other offences, although a provision prohibiting sale or exchange of children is contained in the Child Act. Thus, recently, the CRC Committee while, commending Sudan's efforts to address and criminalise child sexual abuse and harassment in the Child Act (2010), expressed concerns that the sexual abuse of children remains widespread in reality although it is largely unacknowledged within the family context, expressing concerns about vulnerability of girls to the abuse.[164] It recommended that Sudan should take effective measures to protect children from sexual abuse; thoroughly investigate cases of child sexual abuse, and prosecute offenders. The Committee further called upon Sudan to ensure that professionals involved in the care of potential and actual child victims of sexual abuse receive adequate training in child protection, counselling and child rights, paying particular attention to vulnerability.[165]

In Sudan, legislation makes it clear that all sex offences are punished with the maximum penalties. The Child Act, 2010 prescribes sanctions for such crimes in Chapter IX which prohibits exploitation of children in prostitution and pornographic materials.[166] In particular, the Child Act punishes rape of children; sexual harassment of children; production, circulation, publication, import, export exhibition, sale or possession of pornographic materials relating to children; and employment of children for the purpose of sexual activities.[167] Rape of children under the Act is punishable with the death penalty or a jail term not exceeding 20 years and with a fine[168] while sexual harassment and employment of children for sexual activities are punishable with imprisonment for a term not exceeding 15 years and with a fine.

In Kenya, under the 2007 Employment Act, no punishment for either child labour violation or sexual abuse exceeds 500 Shillings or a year's term of imprisonment. Such derisory forms of punishment do not have a deterrent effect as is the case in Rwanda and Sudan. The punishment under Ethiopian law (imprisonment of up to five years) is less stringent than the one under Rwandese or Sudanese law but definitely higher than that the Kenyan penalty.

Policies that address sexual exploitation: Ethiopia and Rwanda appear to be the only countries amongst the five target countries which have more or less specifically addressed sexual exploitation in policy. Kenya combines sexual exploitation and economic exploitation under one policy and addresses them together while Sudan, Rwanda and South Sudan have no policies on sexual exploitation. In Ethiopia, the National Plan of Action on Sexual Abuse and Exploitation of Children (NPASE)[169] as well as the Draft National Action Plan on the Elimination of the Worst Forms of Child Labour in Ethiopia, when adopted, shall have a significant role in the protection of children from economic exploitation. These instruments can have a significant role in the protection of children's rights if accompanied by strong political will.

Rwanda's main policy document to fight against sexual exploitation is the 2003 OVC Policy as complemented (to a lesser extent) by the 2011 NICRP. The 2003 OVC Policy also contains objectives and strategies for children who are sexually exploited or abused. The OVC Policy aims

164. Concluding Observations, Sudan (CRC/C/SDN/3-4) at its 1560th and 1561st meetings (see CRC/C/SR.1560 and CRC/C/SR.1561), Consideration of reports submitted by States parties under article 44 of the Convention, Committee on the Rights of the Child, Fifty-fifth session, 22 October 2010, paragraph 83.

165. Ibid, at paragraph 84.

166. See Article 45 of the Child Act.

167. Article 45 (a) (b) (c).

168. Article 86 (1) (e).

169. FDRE, Ministry of Labour and Social Affairs, National Plan of Action on Sexual Abuse and Exploitation of Children (2006-2010).

and strategies focus on developing preventive mechanisms for sexual exploitation of children, ensuring enforcement of laws and providing support services for victims. These have been concretised in the Strategic Plan for Orphans and Other Vulnerable Children (OVC), which projects the actual implementation of the 2003 OVC Policy for the period 2007 - 2011 and proposes a good number of activities relating to sexual exploitation. The 2011 NICRP does not focus on sexual exploitation of children but all the same refers to it as being "intolerable" and directs that all forms of sexual abuse of children, including pornography and prostitution are prohibited and punishable by law. Any sexual offense against a child will be treated in accordance with laws related to rape of children and will be severely punished.

In Kenya, since the law does not specifically address sexual exploitation and treats it as a worst form of child labour, the same policy framework applicable to child labour applies to it. Meanwhile, Sudan does not seem to admit that sexual exploitation takes place on its soil (although there has been proof to the contrary by the CRC Committee as seen above). Perhaps, this explains the absence of policy on the subject. In South Sudan, there is no policy framework just as the legal framework on the issue is scanty.

Institutions: In general, the institutional framework on sexual exploitation in the five countries is weak.

State actors and non-state actors: In Ethiopia, the main institutional actors are the Ministry of Labour and Social Affairs and the FDRE Ministry of Women's, Children and Youth Affairs (MoWCYA). These ministries have been instrumental in the preparation and adoption of Ethiopia's Guidelines for the Care of Children Deprived of a Family Environment. The institutions advance the protection of children from sexual exploitation. It was the Ministry of Labour and Social Affairs that adopted these Guidelines in 2001. In 2009, the then MoWCYA revised and updated the Guidelines. It emphasises the Government's responsibility to provide appropriate non-institutional or institutional alternative care to children denied of family environment. It further makes it the duty of the Government to regulate and supervise the provision of alternative care to children and ensure the safety, well-being and development of the children who are receiving alternative care.[170]

In Kenya, there is some state and non-state institutions addressing economic and sexual exploitation, however, they predominantly focus on child labour and rarely on sexual exploitation, if at all.

In Rwanda, there is a central institution for the promotion and protection of children's rights – MIGEPROF. MIGEPROF established the NCC pursuant to the Child Protection Act, to which it has delegated its functions on child protection. MIGEPROF is entirely responsible for child protection activities including protection against economic and sexual exploitation and has demonstrated its effectiveness through its significant achievements. These achievements include raising greater awareness, training, creation of sub specialised institutions. Rwanda's Report on the Optional Protocol to the CRC on Sale of Children, Child Prostitution and Child Pornography of 2010 refers to these of activities undertaken by MIGEPROF.

Judicial enforcement: Rwanda, Kenya, Ethiopia and Sudan have respectively criminalised

170. FDRE, Ministry of Women's Affairs , Alternative Childcare Guidelines on Community-based Childcare, Reunification and Reintegration Program, Foster Care, Adoption and Institutional Care Service (2009).

sexual exploitation within relevant national legislation. However, the extent to which this criminalisation has been operationalised is not certain in the absence of case law statistics. Complainants of sexual exploitation rarely report incidences and as a consequence, these matters hardly go to court. Victims themselves, children engaged in commercial sex, are engaged as a result of poverty. In cases where children are coerced into commercial sexual exploitation by trafficking networks or other organised criminal networks, they are often silenced and threatened and therefore rarely report incidences. Furthermore, some parents or guardians are complicit and in these circumstances, children cannot report. This creates challenges for a study like this one to have access to reliable statistics, given the problem is likely to be severely under-reported.

3.3 Inheritance rights

In reality, children in Africa are unable to protest violations on their inheritance due to legislative inadequacies. Most laws fail to fully specify children's rights or the means to enforce them. Most authorities are unresponsive to demands for enforcement and the courts are ineffective in offering substantive remedies.[171] In general, children are not in a good position to use either customary law or statutory law to their advantage because of barriers which they commonly encounter such as limited information about their rights; impaired capacity to face alienators; inadequate time to follow-up before the property is totally alienated; and the cost of instituting title ownership proceedings or instituting legal action to recover alienated property.[172] The customary law rules which hinder inheritance by children are also discriminatory against the girl child.

Causes and consequences of violations of inheritance rights

The legal and institutional aspects of children's property and inheritance rights in Africa are highly complex and gender-based. This is because this system is obscured by socio-religious and cultural influences that create a biased and discriminatory system against the girl child. The boy child is seen as the perpetuator of family wealth while the girl is seen as the dissipater. The discrimination regarding inheritance rights is often associated with the patriarchal nature of the different traditional and customary norms that different ethnic groups use regarding succession, which are short of recognising the principle of non-discrimination. Property inheritance is therefore considered patrilineal, moving from father to son. In Islam, the practice is similar but less radical. The girl child is allowed to inherit but only half of the boy's share. This section assesses the extent to which laws, polices, and customary norms protect the girl child's inheritance rights in the five target countries. Violation of inheritance right perpetuates and exacerbates poverty for girls and young.

Prevalence of violation of inheritance right

There is very limited information and reliable statistics on the prevalence of violation of inheritance right.

Strategies

Instruments: The Civil Code of Ethiopia lays down rules regulating testate and intestate succession.

171. Rose, L. (2006) 'Desk Study on Children's Property and Inheritance Rights and Their Livelihoods in the Context of HIV and AIDS in Southern and East Africa'. FAO, p. 3.

172. Ibid.

In the event of intestate succession, the deceased's property devolves upon the deceased's heirs-at-law. The children of the deceased are the first group of legal heirs to be called to his succession, [173] and regardless of age, sex, or nationality of heirs, each receives an equal portion of the succession.[174] Despite this, in practice, customary laws pertaining to inheritance often discriminate against women in general.[175] As a result, the FDRE Constitution makes a specific provision to allow women the equal enjoyment of inheritance of property.[176] Thus, as outlined in the country's Development and Social Welfare Policy, all efforts shall be made to eliminate all forms of discrimination against girl children and to protect them from all social and cultural pressures to which they are subjected on account of their sex .[177]

Kenya's legal and policy framework against gender-based violations of inheritance rights is supported by a judiciary that is bent on ensuring the best interests of the child through the unfettered application of the rule of law in the face of enduring customary law rules. Nevertheless, the girl child's inheritance right is still often violated as compared to the boy child. The Constitution of Kenya, 2010 guarantees equality and protection from discrimination for all, including children. The omnibus provision with respect to children places the best interests of the child as paramount. The Constitution takes a more specific stance with respect to inheritance by children by guaranteeing the right to everyone either individually or in association with others. The Law of Succession Act (Cap. 160) is the main law on inheritance rights in Kenya. This law extensively protects women and children's inheritance rights. The Act is particularly interesting on two accounts.

First, the Act specifically provides under section 3(2) that for the purposes of succession, a child or children *'...include a child conceived but not yet born (as long as that child is subsequently born alive).'* This implies unborn children are already considered in inheritance. Second, the same section protects children born within and outside wedlock. The Ethiopian law also takes a similar position. In Rwanda and South Sudan, children born out of wedlock are also allowed to inherit under the law on the same basis as children born within wedlock, although there is practical resistance to this legal principle. The Law of Succession Act in Kenya states that the father must have *'expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed parental responsibility'.* However, the section does not state whether this condition applies to the natural child of the wife as well.

Children from polygamous unions are recognised in the Law of Succession Act as having the right to inherit. This provision has received judicial acceptance in the Kenyan Court of Appeal.[178] Section 40(1) of the Law of Succession Act deals with intestate succession in a polygamous context, it provides that *'where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.*

173. Article 842 (1) of the Civil Code of Ethiopia

174. Article 837 cum Article 842 (2) of the Civil Code of Ethiopia; Article 834 cum Article 2 of the Civil Code of Ethiopia

175. Ashenafi, M., Tadesse, Z., Women, HIV and AIDS, Property and Inheritance Rights: The Case of Ethiopia (2005). Available at: http://www.unwomen.org/wp-content/uploads/2012/07/EP-legislating-for-womens-marital-property-rights-in-the-context-of-HIV.pdf (Accessed 10 July, 2012).

176. Article 35 (7) of the FDRE Constitution

177. Ministry of Labour and Social Affairs, Ethiopia's Development and Social Welfare Policy (1996)

178. Irene Njeri Macharia vs. Margaret Wairimu Njomo& Another, Court of Appeal at Nairobi Civil Appeal No. 139 of 1994 [1996] eKLR

However, despite the fact that section 35(1) (a) guarantees the right of the surviving spouse to be absolutely entitled to the household and personal effects, there are instances and certain communities and cultures where relatives of the deceased person forcefully acquire these effects and further evict both the surviving widow and her children from any property which the deceased left behind.

Section 46 of the Law of Succession Act places a duty on the police and administrative officers to offer protection to a deceased person's property. However, they do not have adequate resources to undertake this mandate effectively. Cases of violations of inheritance rights of children often take place but the relevant officers mandated to handle such cases are usually not aware of it. Ignorance of the procedure on the part of complainants and poverty are other challenges that obscure the search for redress. There are few organisations that offer legal aid on inheritance matters but they too are overwhelmed.

There are a number of policies which ensure that inheritance rights of children in Kenya are respected. The Government adopted a National Plan of Action for OVC's that seeks to ensure that all children in Kenya, who are orphaned or vulnerable, are protected and supported in order to achieve their full potential. It identifies seven priority strategic areas as key for OVC interventions and among them is to 'strengthen the capacity of families to protect and care for OVC' with activities and develop mechanisms for protecting inheritance rights of OVC through training on memory books, will writing and legal provisions such as the role of public trustees, sensitising ill parents to identify guardians for their children, develop training programmes for NGOs and other service delivery agencies on succession planning.' The Plan highlights that one of the challenges facing orphaned children is that when children lose their parents, often they lose their inheritance rights as well.

Further policy measures to curb such child violations are the Cash Transfer Programme for Orphans and Vulnerable Children and the National Legal Aid and Awareness Programme (NALEAP). The latter is quite important because it is a tool for enhancing children's capacity to seek restitution through legal proceedings. NALEAP provides an avenue through which children who cannot afford legal services can seek assistance where they are under threat of losing their inheritance right. Some of the issues that have been addressed through NALEAP include among others matrimonial property disputes, widow eviction from matrimonial home and disputes arising from cultural restrictions on women's access to land and other resources.[179]

In Rwanda, the Civil Code was revised in 1999 to enhance the gender-based perspective of inheritance rights. Part Five of the Code deals with Matrimonial Regimes, Liberalities and Successions. Article 50 of the Code states that children will equally inherit without discrimination based on sex or age. However, orphaned children, especially those born out of wedlock have experienced difficulties in claiming their property rights, as the law of 1999 does not provide adequate protection or because guardians do not respect the rights of their wards.[180]

The main policy document on inheritance in Rwanda is the 2007 Strategic Plan on OVC. This Plan proposes two activities specifically targeted at the issue of succession. Under the specific

179. The Seventh Periodic Report of the Government of the Republic of Kenya on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Para 79

180. See L. ROSE, "Orphans' Land Rights in Post-War Rwanda: The Problem of Guardianship and Inheritance", Development and Change 36(5): 911–936 (2005).

objective 3.2, the Plan assures OVCs of protection from abuse, exploitation, property dispossession, stigma and discrimination. It has been proposed that a low level literacy manual on Property Dispossession and Succession be developed and Child Protection Networks and local leaders in each cell on Property Dispossession and Succession Planning be trained. Under the heading of "Family and alternative care", the 2011 NICRP gives specific attention to the issue of deprivation of inheritance rights, expressly stating that 'children's right to property inherited from their biological and adoptive parents will be respected. No person is allowed to take over the property or inheritance of children. Guardians or relatives who attempt to take over property and inheritance of children will be penalised.'

With the strongly patrilineal nature of South Sudanese society, widows and orphans are particularly susceptible to having their rights to inheritance abused by the husband's family. There is currently no comprehensive legislation in South Sudan that details with appropriate procedures for the intestate succession except the Transitional Constitution which protects the inheritance rights of women and children, stating that, 'Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased.'[181] The Constitution further states that children have the right to be free from discrimination and not to be subjected to negative and harmful cultural practices which affect their health, welfare or dignity.[182] Similar language is included in the 2009 Land Act.[183]

The Child Act also establishes the right to inheritance for children, both boys and girls, whether or not they are born in wedlock.[184] However, the reference to women and children's inheritance rights do not prescribe the parameters of the right, the share of the estate to which they are entitled, and the procedures through which they may defend their inheritance rights.

The Influence of customary law: In the absence of statutory law on the matter, in practice, customary law continues to opportunistically govern the distribution of deceased's estates in South Sudan. See Box 4 on the role of customary law on the realisation of inheritance rights

Box 4: The influence of customary law

Customary laws or traditions have an unflinching and unrivalled influence over written law in many African nations, to the extent that they contradict written law and sometimes override it with the complicity of society members who stick to them out of fear. All the five target countries have incorporated constitutional provisions allowing the application of customary law as an addendum to written law. However, the quantum of application is not often defined and this poses a real problem as to what standards govern applicability of customary laws.

The Constitution of Rwanda defines the scope of applicability of customary law. It defines applicable customary law as one that has passed the test of non-replacement by or no inconsistency with

181. Transitional Constitution, pt. II, § 16(5).

182. See Article 17(1) (e) and (g).

183. The Land Act states, 'Women shall have the right to own and inherit land together with any surviving legal heir or heirs of the deceased as stipulated in Article 20(5) of the Constitution." Land Act, Ch. IV, s. 13(4) (2009).

184. Child Act, Ch. II, s. 20 ("Subject to the laws of inheritance, every child has the right to a reasonable share out of the estate of a parent, whether or not born in wedlock.'). The Act also limits the rights of adopted children to inherit from their natural parents, on the assumption that they would inherit property from their adoptive families. Ibid, Ch. V, s. 93.

written law. Specifically, unwritten customary law remains applicable as long as it has not been replaced by written laws, is not inconsistent with the Constitution, laws and regulations, and does not violate human rights, prejudice public order or offend public decency and morals.[185]

The Ethiopian Constitution as supreme law provides that any 'law, customary practice or decision of an organ of state or a public official which contravenes' the Constitution is void.[186] There is no similar position in South Sudan save that its Constitution mentions custom as being subject to the Constitution. This may be read in light of the general prohibition on discrimination which prohibits any violations of rights or any gender based consideration of children's rights duly recognised under the Constitution by express enunciation of incorporation through international or regional arrangements as void. Even then, these are strenuous extrapolations which can be sometimes contested by states that encourage weak standards for the application of customary law rules.

In Ethiopia, partly due to the constitutional guarantee, customary law continues to govern intra-family relations including inheritance. This is especially true in the Muslim-dominated areas and in some other parts of the country, all of which have inheritance rights systems that differ greatly from the civil law.[187] Girl children in Ethiopia are unable to inherit equally with their siblings, despite the fact that the supreme law of the land – the FDRE Constitution - declares such customary practices as having no constitutional effect.[188] This provision notwithstanding, gender based discriminatory customary laws on inheritance persist across Ethiopia in varying degrees. In Southern Ethiopia, for example, particularly among the Dorze ethnic group, custom dictates that daughters receive only token items from their father on his death. Ideally, customary practices that discriminate children based on sex should have no legal effect as they derogate from one of the fundamental and non-derogable rights recognised under the Constitution: the right to equality.[189] This is a true representation of the different disinheritance forms in traditional Africa, and therefore, common to the cultural systems of the five countries under this review.

In Kenya, because children, in particular the girl children, face a lot of discrimination with regard to the distribution of land, the Constitution has laid out principles with regard to the use of land. Section 60 of the Constitution provides that one of the principles to be considered in the use of land is that 'land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with the following principles: elimination of gender discrimination in law, customs and practices related to land and property in land.' This provision is important because it protects women and children's inheritance rights from being violated as a result of deeply rooted cultural practices.

This constitutional dispensation eventually caught up with judicial reasoning especially in the case of *Mary Rono vs. Jane Rono and Another,* which has now informed the jurisprudence of other courts in the country on shunning gender-based discriminatory customary laws against the girl child on inheritance matters.[190] The case which was an appeal from the High Court was challenging the High Court's decision to distribute the estate of the deceased who had died intestate. The

185. Art 20.

186. See Article 9(1).

187. Debsu, D., Gender and Culture in Southern Ethiopia: An Ethnographic Analysis of Guji-Oromo Women's Customary Rights , African Study Monographs , Vol. 30(1),15-36 (2009).

188. Article 9(1) of the FDRE Constitution

189. Art 25 of the FDRE Constitution

190. Mary Rono vs. Jane Rono& Another [2005] eKLREldoret Civil Appeal 66 of 2002

High Court while taking into consideration Marakwet customary law favoured the distribution of the estate to the sons as opposed to the girls on the ground that the girls had an option to marry and would inherit further property from their new families. While the appellate court held that such distribution of the estate is contrary to the Law of Succession Act, it made reference to international human rights prohibition on discrimination and held that the estate of the deceased was to be distributed equally among the deceased's nine children with each child getting 14.4 acres.

The Sudanese Constitution is the example of a 'no standards' for applicable customary law. It employs a vague formula which does not give direction to any standards as the gauge for determining the propriety of applicable customs. In Article 16, it urges the State to encourage the society to adopt good customs and noble traditions. The language is weak implying that there is some degree of complacency with obnoxious customs and traditions so long as they have been adopted by society. Thus, the standard, if at all, is that they must have been adopted by society.

The South Sudanese Constitution instructs Government to institute a process to progressively develop and amend the relevant laws to incorporate customary rights and practices.[191] It also mandates local government to acknowledge and incorporate the role of traditional authorities and customary law in the local government system, as one of the latter's objectives.[192] Courts apply customary law subject to the Constitution.[193] The Supreme Court is the court of final judicial instance in respect of any litigation or prosecution under national or State law, including statutory and customary law.[194] This means that the regularity and conformity of customary law has the potential to be checked all the way to the highest court. The customary laws governing inheritance in South Sudan are poorly documented and not well understood. Some sources suggest that customary law affords widows and their children a share of their deceased husbands' and fathers' estate. According to a well-known restatement of Dinka customary law, for example, when a man dies intestate, the following persons may be heirs: (1) wife (or wives) and children; and (2) parents or brothers if there is no wife (or wives) and children.[195] This is in line with the principle underlying bride wealth transfers: When the man's family has made the full bride wealth payment, the woman is transferred to the husband's family and it is their duty to take care of her when her husband dies. These same rights are not available to daughters in their birth families. Daughters' inheritance rights in their birth family are typically severed when the marriage is finalised,[196] so daughters are not entitled to a share in the estate of their deceased birth relatives.[197]

In South Sudan, the practice of levirate (wife inheritance by the family of the deceased man) was a means of ensuring the patrilineal line of property conveyance. However, widespread poverty confronting South Sudanese in the current context may also cause the husband's family to be more inclined to take all of his property and exclude the widow and her children from inheriting. Since these matters are managed almost entirely at the local level, within strongly patriarchal

191. See Article 170(8).

192. See Article 165(6) (i).

193. See Article 166(2).

194. See Article 128(2) (b).

195. Id.

196. Sudanese customary law systems provide in detail for all aspects succession and inheritance. In Dinka communities the Wan Alel, a restatement of customary law from the 1950s, still carries weight in inheritance disputes and grants the daughter no share of their father's assets. Interview with Otto James Averindo.

197. USIP, Dowry and Youth, at 43.

family and clan settings, women and children are at a disadvantage when trying to adjudicate them with their deceased husband's relatives. If the matter reaches the customary courts, which tend to be controlled and attended mostly by men in the South Sudanese context, women are similarly disadvantaged. Yet, the Constitution promises that the government would enact laws to combat harmful customs and traditions which undermine the dignity and status of women.

The Religious Influence on inheritance

Inheritance by children under Islam: The boy child often inherits and girls are not allowed to inherit. In fact, where the deceased leaves only female children, the property reverts to either his family or the children of his brother(s) or sister(s). Children of communities where Islam is practised face these kinds of patterns. All the five countries have practicing Islamic communities, particularly in Sudan. Islam has reinforced gender-based discrimination in inheritance rights between Islamic instructs, in matters of sharing an inheritance estate, that a boy must inherit twice the amount of the girl child. In the Holy Koran, the sharing of the property of a deceased Muslim is based on the fourth chapter of the Holy Koran (surah An-Nisa) verse 11 which reads:

> '*Allah commands you as regards your children's inheritance. To the male, a portion equal to that of two females, if (there are) only daughters, two or more, their share is two-thirds of the inheritance, if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no child, and the parents are the (only) heirs, the mother has a third. If the deceased left brothers (or sisters), the mother has a sixth*.'
>
> What is important to note is that Islam does not accept the paternity of children born out of wedlock. In such situations, children who would normally inherit some of their deceased parent's property are denied access thereto as a result of shari'ah prescriptions. Such decisions are most detrimental to the child, especially the girl child.

Other influence(s): the *kafalah* system and inheritance

In Islamic countries, there are fostering traditions, *kafalah*, which do not amount to adoption and are therefore not subject to adoption regulations. Children without parents for one reason or another, children born out of wedlock, abandoned children and children of unknown parentage are placed in residential care institutions, where families can come to select a child for *kafalah*, a form of voluntary long-term fostering arrangement established by law. Foster parents can give a family name to the child under their care but inheritance rights are not possible regardless of sex. Under the *kafalah* system, as an indirect form of adoption, foster parents have extensive rights over and receive benefits on behalf of the child just like natural or adoptive parents. However, these children are not allowed to inherit property. Since Islam does not recognise adoption, in accordance with the principles of the Islamic Law, foster children cannot inherit.[198] The Sudanese law seems to have resolved this problem. The *kafalah* is regulated in accordance with Islamic Law, while adoption is regulated by non-Muslim laws. The Personal Status of Muslims Act of 1991 caters for the best interests of the child in as much as it includes a provision for bequests that may be applied to foster children under Articles 315 and 316 of the Personal Status of Muslims Act.

198. Consideration of Reports submitted by States Parties under article 44 of the Convention, Periodic reports of States parties due in 1997, Committee on the Rights of the Child, CRC/C/65/Add.17 6 December 2001, paragraph 71.

This type of bequest is defined in Article 315 as 'a bequest enabling a person who is not entitled to inherit to acquire a specific share of the estate of the testator', which is unquestionably in the interests of the foster child.[199]

Judicial enforcement: General human rights instruments sometimes have clauses for equality and non-discrimination on the basis of sex. This may not be the case with respect to inheritance matters which are influenced or governed by customary laws. However, there are situations where national courts have applied international principles and standards. For example, Ethiopian courts (federal or regional) entertain many inheritance matters and render decisions based on relevant non-discriminatory laws consistent with child rights instruments, which govern succession. Accordingly, decisions passed by these courts do not discriminate when giving effect to the inheritance rights of children.

In Kenya, the courts have developed a strong jurisprudence on the recognition and enforcement of the rights of women and girls to inherit property. However, most women do not know their legal rights. Further, the cost of undertaking judicial proceedings is high and time consuming. This puts access to justice beyond many women and children. However, the case of *Mary Rono vs. Jane Rono and Another* discussed above ushers in a new era of judicial activism in the jurisprudence of the Kenya in favour of non-discrimination in inheritance rights between the boy child and the girl child. Kenyan courts have also under the new Constitutional order reinforced the laws of succession on equal distribution to the surviving children.

Rwandese courts regularly entertain child inheritance cases involving situations of attempted violations of inheritance right of a child founded on gender-based discrimination even though the law is very clear on who should inherit what and under what procedures. However, the courts have stood their ground in applying the law by not ceding to the customary law rules that promote gender-based discrimination against women. The common trend in all relevant Rwandese cases is that birth certificates, the family council decisions designating heirs, and written wills play an important role in the final outcome of cases. It must be noted, however, that the culture of writing wills in Rwanda is not prevalent. In Case RCA 0120/10/HC/MUS, decided on appeal by the High Court of Rwanda,[200] the plaintiff had been denied the right to inherit his father's property by his brothers and sisters simply because he was born out of wedlock. The court ruled in favour of the plaintiff.

In South Sudan, women typically have a lower bargaining power than men in customary court proceedings and the outcomes usually prioritise social cohesion and compromise over protecting the property rights of widows and their children.[201] The formal courts in Sudan often decide cases in favour of customary law over written law in inheritance issues. As mentioned above, customary courts are mostly controlled and attended by men thus giving them an edge when deciding issues pertaining to women and children.

199. Ibid.

200. Musanze Branch, decision made on 29 September 2011.

201. According to the Small Arms Survey (SAS), "Research shows that chiefs are more easily swayed by men's interests and points of view and that their judgments are often biased in favour of men." SAS, Women's Security and the Law in South Sudan, (n.d.), available at http://www.smallarmssurveysudan.org/pdfs/facts-figures/women-security/HSBA-women-security-law.pdf.

CHAPTER 4
CHALLENGES UNDERMINING THE EFFECTIVE IMPLEMENTATION OF LEGAL FRAMEWORKS

The findings and analysis in earlier chapters in this report indicate that there are challenges that undermine the effective implementation of the legal and policy frameworks to protect children, particularly girls, against child marriage, economic and sexual exploitation and enabling them exercise their inheritance rights. These challenges are summarised below, not in order of significance.

4.1 Ineffectiveness of legal and policy standards

The mere existence of legal and policy frameworks is not sufficient to protect children's rights; these standards must be implemented through structures and capacities in place to enforce them. The existence of national instruments may however, be indicative of a commitment and an important first steps towards adequately protecting children. The evidence, suggests that despite the fact that all the countries have instruments, their effectiveness is limited. The inadequacy of these instruments may be due to a number of factors. The national constitutions, legislations and policies in these countries, have gaps that expose their weaknesses in adequately preventing gender based discrimination and other violations.

The full implementation of gender and child rights standards implies a significant amount of resources. The five countries all have limited national budgetary allocations specifically for the implementation of laws and policies related to the thematic areas. Limited resource allocation coupled with resource prioritisation where governments face difficult decisions on allocating scare resources potentially limit the effectiveness. The CRC Committee noted in General Comment No.5 relating to the general measures on the implementation of the CRC that '[i]mplementation is whereby states parties take action to ensure the realisation of all rights in the Convention for all children in their jurisdiction.'[202] It reiterated that:

> '...in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization

202. General Comment No.5, Committee on the Rights of the Child, "General Measures of Implementation of the Convention on the Rights of the Child," Thirty-Fourth Session (2003) available at http://www.unicef-irc.org/publications/pdf/crcgencommen.pdf(Accessed on 6 July, 2012)

or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.'[203]

4.2 Poverty and general economic disempowerment

In 2004, the Declaration on Employment and Poverty Alleviation in Africa by AU Heads of States and Government noted that poverty and unemployment or underemployment compromise fundamental rights and dignity of individuals and communities and is a threat to the realisation of socio-economic rights. Poverty directly impacts on the extent of and numbers of children who are at risk of child marriage, sexual exploitation, and child labour and violation of inheritance rights. Poverty also limits access to justice due to the economic inaccessibility of legal representation and poor (physical) justice infrastructure coupled with a general under-appreciation of matters of gender and child rights.

In all countries in this study, poverty was given as the main underlying factor influencing patterns of child marriage or sexual exploitation and child labour. Child marriages and the associated incomes from dowries (bride prices) are perceived as a means to alleviate poverty and a means of economic survival. This may be voluntary by the children themselves, when it is perceived as a means to escape poverty, as in Kenya, for example. Civil war, as In South Sudan, exacerbates the impact of poverty and changes normal kinship patterns, often impacting more heavily on women.

4.3 Persistence of customary law or religious influence

Customary laws and practices continue to wield significant influence over many aspects of peoples' lives, including child marriage, economic and sexual exploitation and inheritance. Sometimes, customary law actually overrides written law and is more widely recognised by local communities. Customary laws are also more prevalent in places where majority of the people have no access to the formal justice system. In such circumstances, customary law provides a parallel justice system. Also, most women do not know their legal rights in the face of compelling customary laws.

The right to practice religion is enshrined in the constitutions of the five countries. In general, religion tends to have a coercive effect over social practice and behaviour. There are serious challenges where religion and conventional law clash. In general, in communities that are deeply religious, laws succumb to religion. Some of the practices, such as child marriage, sexual and economic exploitation and deprivation of inheritance rights are either sanctioned or reinforced by religion.

4.4 Complicity of society and the passive role of courts

The complicity of society, either directly or indirectly, in perpetuating child marriage, sexual and economic exploitation and deprivation of inheritance rights of children is quite evident. Society is directly complicit when cultural taboos are invoked to encourage practices like child marriage (even those, by abduction, where the abductor's act is ratified by the girl's parents) and deprivation of inheritance or when children are asked to go out and work in hazardous situations to sustain their family. Such complicity deters police investigations except in cases where third parties are involved. When cases are not reported for the necessary legal action to be taken, courts cannot play their role of rights enforcement and they cannot build any jurisprudence on enforcement of

203. Ibid.

the law in the area. It has been seen in all five countries that case law examples of enforcement are rare because matters of sexual and economic exploitation hardly go to court.

4.5 The HIV and AIDS epidemic

The HIV and AIDS epidemic has contributed to violation of gender and child rights as both a cause and consequence. The epidemic has led to a breakdown in the social stratum leaving grandparents, relatives and neighbours or the children themselves, to take up the responsibility for the upbringing of children. The gap in parental care as a result of HIV has both social and economic consequences. Limited knowledge, especially of the legal provisions and legal process limits children's benefit from inheritance after parents, guardians or other benefactors die. Even where claims of inheritance by widows or orphans have been taken to court, delays in the determination of the matters is a significant deterrent. HIV infection may also arise from cross-generational early or forced marriages and sexual exploitation of children. Girls in child marriages may also be infected by their husbands who are mostly much older and have been exposed to infection longer. Girls who engage in commercial or other exploitative sexual practices also risk infection with HIV.

4.6 Non-criminalisation and weak criminal laws

Inadequate penal systems encourage recidivism and continued violation of children's rights. Some countries have not criminalised child marriages, sexual and economic exploitation and the deprivation of inheritance right of children even where these practices are known to exist. In other instances, even if it is criminalised, the punishment is weak as in the case Kenya where the term of imprisonment whether for abetting child marriages or sexual or economic exploitation is less than a year. Besides, there are hardly any special complaint procedures or mechanisms through which child victims of anyone of the thematic areas under review may seek remedy. This state of affairs encourages victims' and parents or guardians' to remain silent and consequently to participate in promotion of recidivism of offenders.

4.7 Inadequate data and follow-up measures (monitoring)

In the five countries, there is no proof that there are monitoring mechanisms which could readily track legal and policy implementation, strategies or institutional efficiency. When there is no data showing progress or retrogression of current reforms, it is difficult to pursue or to give direction to future reform. If policy makers cannot obtain the true picture of violations, such violations could continue undeterred.

4.8 Uncertain legal standards – definition of a child

The CRC has given a margin of appreciation to States to adopt a definition of a child as their circumstances demand. The ACRWC has taken a more definite stance in adopting 18 years as the upper limit of childhood. However, it has been seen, for example, that Rwanda has provided for a higher minimum age, in case of marriage at 21 years, thereby offering higher protection than the CRC, ACRWC and the CEDAW, among other instruments. There are nevertheless variations in the definition of a child amongst the laws of the target countries, the most pronounced of which is in the context of child labour. Age brackets for protection of a child from child labour vary from

14 to 18 years. While the decision on the particular age to apply depends on the circumstances of each country, with labour migration, it is likely that children will be exploited by being moved or trafficked from one jurisdiction to another simply because of the variations in the age of legal employment.

4.9 Children's incapacity

Children are generally deemed to lack legal capacity. Children's lack of awareness on their rights further entrenches such violations and diminishes their capacity to pre-empt violations. Consequently, children are vulnerable to abuse of their rights, especially in these three areas. The lack of capacity by children also is exacerbated by the inability of governments to actively promote the participation of children in affairs that concern them. The CRC and ACRWC demand that children are given space, which they are often denied, to speak on matters that affect them. Such participation would go a long way in the development of programmes that respond to the plight of children, particularly those exposed to gender based discrimination.

CHAPTER 5
CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

In summary, this report has set out in detail the law, policy and practice on child marriage, economic and sexual exploitation of children, and inheritance at the international, regional and national levels. The report has also analysed the gaps in these frameworks and the implications of such gaps for the protection of children in the target countries from gender based discrimination. Finally, it has highlighted the challenges undermining the protection of child rights from gender based discrimination in: child marriage, economic and sexual exploitation and inheritance.

In summary, this report has established that:

Country	Status of protection	Remarks
Ethiopia	Ratified key international instruments Considerably comprehensive legislative framework Weak policy and institutional measures Weak implementation	The main causes of violations in all thematic areas are: poverty, inadequate laws and policies, ineffective implementation, absence of specialised child complaint procedures, passive judiciary; and deeply entrenched customary laws rules and traditions. The absence of comprehensive, up to date data that is disaggregated by sex in most of the target countries makes it difficult to fully understand the gender challenges present in the target countries.
Kenya	Ratified most relevant international instruments Considerably strong legislative framework Relatively strong policy framework, Weak implementation	
Rwanda	Ratified relevant instruments Has strong legal framework, including firmer criminalisation and punishment framework on child marriage and sexual and economic exploitation Insufficient policy and institutional measures Good implementation	
South Sudan	Ratified some international instruments, many more instruments yet to be ratified Weak legislative framework Poor implementation	
Sudan	Ratified most of the key international instruments Inconsistent standards in national legislation Weak implementation exacerbated by religious beliefs	

In conclusion, therefore:

- Despite the fact that the five African countries in this report have ratified the necessary international instruments, this is not adequate to protect children, particularly girls from gender-based rights violations. There are many factors

that undermine the effectiveness of these policy frameworks and a number of broader stronger socio-economic forces that exacerbate and increase the prevalence of these violations.

- The approach and methodology adopted in this study may potentially be replicated in other African countries (see Annex 1: A framework for analysing gender and child rights in Africa: promoting engendered laws and policies for the African child
- The findings of this research may well achieve meaningful and long lasting results in terms of positively impacting the protection of girls' and boys' rights if it is used as reference document for advocacy with governments. This advocacy must emphasize not only the enactment of laws, the development of policies and programmes that are gender sensitive, gender responsive, and gender accountable. Advocacy must also highlight the need to address the structural and underlying causes of gender-based violations, including the social norms and beliefs that perpetuate child marriage, economic and sexual exploitation and the violation of inheritance rights of children not only in the five target countries, but in the other African countries.

5.2 Recommendations for action

The strategic recommendations below are primarily targeted at government institutions as the primary duty-bearers in the promotion and protection of child rights in the five countries. Some recommendations indicate other stakeholders to complement and support government efforts.

1. Where not already addressed, there is need for legislative reform to constitutionalise gender non-discrimination. This is essential because constitutional provisions have greater force than legislation, and would therefore be more effective in enhancing protection of child rights in the thematic areas. There is also need for either specific provisions in national child law(s) or specific laws clearly domesticating or incorporating international and regional standards dealing with the thematic areas. The need for law reform should also extend to the harmonisation of laws with other laws in the respective countries and with international standards. Law reform should also enhance the accessibility of such laws and the enforcement mechanisms to the affected people.
2. Judicial enforcement of rights is critical to human rights protection and requires the existence of laws, procedures and an efficient and independent judiciary. There is a need for special complaint procedures for gender based violations of child rights, which can be a stepping stone for the enforcement of the rights. In addition, legal aid should be instituted to enable children, parents, guardians and other legal custodians of children to institute legal action against offenders at minimal or no financial cost. There is further need for clear criminalisation of child and forced marriages, sexual and economic exploitation and respect of children's inheritance rights within national legislation.
3. Despite the proliferation of laws on the administration of deceased estates and constitutional and legislative rights of children to inherit, most people in the study countries still do not write wills in order to safeguard their children's right to inherit. There is therefore need to promote awareness on the need to write wills, or other forms of expressing succession wishes that

safeguard children.

4. Children are often exploited under the guise of religion and custom. There is need for continuous research to identify entry points for engaging with religion and custom. There is also a need to involve religious and traditional leaders, as critical stakeholders, in national law reform processes, and to strengthen community mobilisation initiatives that would be owned by community leaders in order to shift perceptions on the exploitation of children. Customary law should consider a restorative approach, as a way of bridging the gap between customary and statutory laws. Only customary laws which are not repugnant to justice, equity, good conscience and any written law should be applied. It is necessary that the law (especially the constitution) sets out the parameters for the application of customary law.
5. Governments should work to reduce and ultimately end poverty by adopting and effectively implementing holistic strategies that take into account country specific parameters ranging from politics, finance, economics, employment and population size, etc. This is necessary in as far as poverty has been identified as the main factor underlying gender based abuse and exploitation of children in the thematic areas of this study. It is also imperative for governments to take into account the implications of gender for child rights in the allocation of national resources. This may be achieved through mainstreaming gender and child rights into sectoral budgets, costing legislation and policies prior to implementation, and coordinating with partners in sourcing revenue.
6. The protection of children from gender based violations can only be effective if there is awareness on child rights amongst key stakeholders. There is therefore need for awareness raising amongst children and communities in general to strengthen their agency as defenders of their own rights. Awareness raising is also essential for public officials such as the administrative police, investigators, the Judiciary, but also the boy child (who might end up becoming a victim of child marriage or sexual or economic exploitation or deprivation of inheritance rights), parents, religious and traditional leaders who are the custodian of these communities. Capacity building for community and religious leaders on gender non-discrimination and the rights of all children is important since child marriage and inheritance rights are associated with customary and religious practices in certain communities.
7. Governments in the five countries should improve data collection and information systems in order to identify vulnerable sub-groups of children, inform policy and programming at all levels, and track progress towards the goal of preventing violence against children. National indicators should seek to be based on internationally agreed standards, and ensure that data is compiled, analysed and disseminated to monitor progress over time. There is need to disaggregate data according to sex and ensure that data is up to date.
8. Information on the extent of violations in the thematic areas, and systematic measures to mitigate, prevent and eradicate these vices are not readily available. There is also need to establish clear linkages between the causative factors and consequences of gender based violations of child rights. All five countries should consider developing an enduring, sustainable and relevant national research agenda on gender discrimination in the thematic areas and generally on child protection.
9. There is need for institutional coordination in order to achieve effective implementation. In all target countries, issues in the thematic areas are addressed by different government organs. It

is necessary to create synergy between the departments in order to provide holistic protection of children's rights. Coordination can also be improved through monitoring and evaluation mechanisms. These mechanisms should monitor the adequacy of national and international instruments affecting the thematic areas, track legal and policy implementation strategies as well as institutional efficiency in the target countries. Coordination should also extend to the national and international levels in order to allow governments and other stakeholders to exchange knowledge and information on best practices. Stakeholders at these levels include sub-regional economic bodies, private sector institutions, INGOs and CSOs. Coordination will also promote innovative approaches to gender non-discrimination in child rights in the target countries.

10. South Sudan should move swiftly to accede to international and regional instruments addressing the protection of children's rights, particularly those that protect the rights of girls. This will solidify the basis for national measures for elimination of gender based discrimination.

11. The role of vital registration including the registration of births, and marriages cannot be overstated. Birth registration enables children to access rights. All countries in the study cited challenges with respect to centralised vital registration systems, and the prohibitive costs associated with registration. Under customary laws, it is not a requirement to register a marriage, therefore child marriages can be concluded without legal recourse. Birth registration systems need to be decentralised in order to achieve speedy and wider registration of all children.

12. Education is a useful tool in not only delaying the age of marriage but also economically empowering girls and reducing dependency.[204] Policies and programmes promoting free and compulsory education should therefore be adopted and implemented in order to ensure that children access education.[205]

13. Trafficking and abduction of children contributes to child marriage as well as sexual and economic exploitation of children. Specific anti-trafficking and anti-abduction laws with strong punitive regimes should be enacted and implemented by governments in the five countries to eliminate the practice.

14. Psychosocial support services, at state expense, should be made available to children who have left or been rescued from child marriage, sexual exploitation and child labour situations. This should include counselling services that would help the children recover from the trauma of these situations and where necessary facilitate reconciliation services with the parents where necessary. Victims of child marriage should also be encouraged to continue with their education and access essential health services (including reproductive health services).

15. The ACERWC ought to consider adopting General Comments on matters affecting child marriage, sexual and economic exploitation and inheritance rights of children.

It is necessary to conduct similar research in the remaining countries so as to harmonise the approach to the three areas at regional level.

204. It has been proven that free education has increased enrolment of girls in some countries. The option of abolishing school fees has been more beneficial than programmes that merely assist parents to overcome the burden of existing fees. As a result of abolishing fees, countries like Seychelles, Uganda, and Algeria have achieved nearly 100 % net school enrolment ratios. Malawi achieved 98 % for girls and 93 % of boys in 2004. In Uganda as well, the abolition of school fees resulted in an immediate 20 % increase in girls' enrolment overall, increasing from 46 % to 82 % among the poorest one-fifth of girls.

205. UNICEF, Child marriage: A Harmful Traditional Practice, 2005, 27-28.

ANNEX I

A FRAMEWORK FOR ANALYSING GENDER AND CHILD RIGHTS IN AFRICA: PROMOTING ENGENDERED LAWS AND POLICIES FOR THE AFRICAN CHILD

6.1 Introduction

Gender refers to the social construction of the roles and responsibilities of men and women as created by society and culture. It entails the learned roles and expectations based on the 'economic, social, political, and cultural attributes and opportunities associated with being female or male,' (RSA 2006). Usually, this results in subordination of females to males. Since these roles and responsibilities are learned, they change over time and vary within and between cultures. In terms of children's rights, an assessment of gender exposes the social construction of the roles and responsibilities, opportunities and cultural attributes of girls and boys, which oftentimes disadvantage the girl child.

For the African child, the two key instruments protecting his or her rights are the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). These two instruments broadly prescribe the rights of children and the machinery in place for the protection of those rights. Both instruments are founded on four key principles of non-discrimination; best interests of the child; respect for the views of the child; and the right to life, survival and development. Article 2 of the CRC and Article 3 of the ACRWC both prohibit all forms of discrimination of children, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property or fortune, disability, birth or other status. Children are not a homogenous group and differ on many accounts, including sex and gender.

An analysis of the legal and policy instruments in place, and their implementation, that influence gender is useful. A well-developed framework on gender and child rights can examine the general parameters for a gender-sensitive legal and policy framework for children. This Framework identifies a 3-lens approach to gender and child rights, eight (8) entry points for gender assessment of the legal and policy framework, 10 Guiding Principles, and a minimum core standard for a gender sensitive legal framework for children.

6.2 Objective

The main objective of this framework is:

- To provide systematic analysis through which national legal and policy systems can be assessed specifically with respect gender responsiveness; gender sensitivity, and gender-accountability among children.
- Inform the development and implementation of gender-sensitive and relevant policies and laws.

6.3 Context

There are many adverse factors affecting the African child that reinforce gender discrimination.

Among these are child marriage, economic and sexual exploitation, abuse, sexual and reproductive health problems, deprivation of inheritance right, migration, indigenous status, HIV and AIDS, disability, child trafficking, prenatal sex selection, female genital mutilation (FGM), lack of access to education and internal and international conflict and emergencies. These factors do affect both boys and girls, however, they have more deleterious effects on girls as a result of gender skewed attitudes and practices. Consequently, girls' prospects of self-development are often curtailed. There is therefore need to pay particular attention to these issues and the extent to which they affect girls and boys by taking into account not just girls' but also boys' needs, rights, opportunities, challenges and perspectives so as to promote gender equality in national policy, programming and funding frameworks.

Girls face intersecting forms of discrimination which force them into poverty, which in turn is a main driver of gender-based violations of rights. For example, child marriage has been described as the key factor in gender inequality, girls' abandonment of education, poor sexual and reproductive health services, high fertility (since most sexual activity among girls under the age of 18 years occurs within the context of marriage) and limited development opportunities in places where the practice is especially prevalent (UN Interagency Task Force on Adolescent Girls, 2009). There is a matrix of social and cultural norms which often de-value and actively harm girls. Where issues of inheritance are at stake, boys are more likely to inherit more or everything without due regard to the girl child in the family.

In some African societies, especially in poor families, daughters are perceived as a liability by their families, who marry them off to preserve their pre-marital sexual purity, and receive material assistance from the girl's husband, at the expense of the girls' rights and wellbeing. Otherwise, girls are sometimes perceived as the economic and social security of parents. This view is compounded by their lack of access to education which predisposes them to low wage domestic work, subsistence family farming and other harmful practices such as trafficking and prostitution (UN Interagency Task Force on Adolescent Girls, 2009). Nonetheless, it must be recognised that gender stereotypes pose restrictions and risks for boys as well, in the way that they are socialised in relation to girls, which can limit their potential to grow into affectionate, supportive, and tolerant adults or partners.

There is often limited attention to the conceptualisation of gender in the legal and policy framework for children. Apart from provisions which may prohibit discrimination on the grounds of sex or gender, in most cases, the provisions of most laws and policies refer to children as a homogeneous group, despite the fact that society is socialised into different treatment for boys and girls. It is therefore important to ensure that the rights of both girls and boys are recognised in law by legally entrenching their protection from gender-based discrimination. The law ought to specifically consider the girl child and the boy child in respect of rights pertaining to protection, provision, and participation of children. To be able to do this, this framework calls for a three-lens approach which focuses on gender sensitivity, gender responsiveness and gender accountability at both the formal level in terms of laws and policies, and the informal level in terms of customs and community based programs.

6.4 Glossary of Terms

To enable a shared understanding of concepts pertaining to gender as applied in this framework, the following definitions are provided:

- **Gender Equality** refers to the formal and substantive equal valuing by society of the similarities and the differences of girls and boys so that equal conditions for realising their full human rights and potential and for contributing to, and benefiting from economic, social, cultural, and political development apply. A gender equality perspective for children centres on understanding the causes of discrimination and unequal power relations between girls and boys in a specific context, regardless of whether such understanding is rooted in prevailing social attitudes and customary practices, or discriminatory laws and policies.
- **Gender Equity** refers to fairness to girls and boys, by providing measures to compensate for historical and social disadvantages that prevent girls and boys from operating on a level playing field. Gender equity strategies are used to eventually gain gender equality, equity being the means, and equality being the result (RSA 2006).
- **Gender Mainstreaming** is the process of assessing the implications for girls and boys of any planned action, legislation, policies or programmes, in all areas and at all levels. It is a strategy for making girls' as well as boys' concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all spheres so that girls and boys benefit equally, and inequality is not perpetuated.
- **Empowerment** is the process of raising the conscience of boys and girls by building the critical analytical skills for girls or boys to gain self-confidence in order to take control of their lives. Girls' empowerment is an essential process in the transformation of gender relations because it addresses the structural and underlying causes of subordination and discrimination.
- **Gender Analysis** is the study of socially determined inequalities between girls and boys. It entails studying "gender biases" which perpetuate gender inequalities in all sectors of society.
- **Gender Responsive Research** refers to a process of designing and implementing a gender-sensitive research agenda. This means that gender differences are taken into account in the problem identification, methodology, questions asked, who is involved, data collection and data analysis.

6.5 The three-lens approach

Laws and policies must specifically consider the protection and provision of gender sensitive child rights both formally (in terms of laws and policies) and informally (in terms of customs) The three-lens approach to this end comprises gender sensitivity, gender responsiveness and gender accountability, as over-arching concepts that must be applied.

(a) Gender-sensitivity

Gender sensitivity is an approach in terms of which the protection and enjoyment of children's rights should take into account the nuances that arise on account of their sex. International and regional human rights standards oblige states to respect, protect, promote and ensure practical realisation of the human rights and dignity of all according to the principle of non-discrimination. Thus, for

children, gender sensitivity means that the law should provide protection by paying attention to the specific issues that enable girls and boys to enjoy their rights as girls or boys. The law therefore ensures that violations of the rights of girls or boys are prevented by requiring that appropriate policies and programmes are put in place to facilitate enforcement of the specific rights for girls and boys. Gender sensitivity also pays attention to culture and religion by recognising that most of the gender-based discrimination or violations of children's rights takes place within informal social spaces. This has a role in informing, empowering and providing access to mechanisms for claiming their rights when violated on the basis of gender.

Gender sensitivity requires policy and law makers to have the necessary understanding of gender implications for girls and boys when drafting policy and budgetary frameworks. It also means that duty bearers are made aware of the human rights of girls and boys and are held accountable for their actions, in conformity with human rights standards, with the aim of transforming unequal gender relations and harmful attitudes and practices towards girls and boys. It is argued that changing the face of politics can change the course of policymaking, and that a critical mass of women in politics (30 percent or more) tends to influence public priorities.[206] Therefore the existence of women in positions of political power is critical to positioning gender equality issues for girls and boys on the public agenda, including in passing relevant laws and policies (UN Women, 2014). As such, national laws and Constitutions ought to establish minimum proportions of positions for women when establishing national institutions as this is strategic to ensuring that neither girls nor boys receive differentiated treatment on the basis of gender.

National laws must pay attention to the 2004 AU Heads of States' Solemn declaration on Gender Equality in Africa which requires 50 percent of women in decision-making positions.

(b) Gender responsiveness

Gender responsiveness refers to the creation of an environment that reflects an understanding of the realities of women and girls' lives and addresses the issues affecting them in exercise of their rights and freedoms.[207] National legal and policy frameworks on children must recognise several important differences in terms of history, circumstances of life and behaviour between male and female children and take these differences into account when designing programmes.

The world and its state of affairs are not primarily engendered. As such, most activities do not take into account gender considerations when planning, designing, implementing and coordinating the activities. A gender responsive and a human rights-based approach intentionally allow gender norms to affect and guide service delivery, so that the services match each child's needs according to his or her sex and gender. The services should create a context (through program environment and staffing) and provide content (through program approach and materials) that reflect an understanding of the realities of children's lives (Patton & Morgan, 2002).

A gender responsive approach is therefore a vision and practice of development that ensures fundamental human entitlements in ways that expand human choices, promote human well-being and empowerment. A gender-responsive approach is necessarily also a rights-based approach,

206. Inter- Parliamentary Union Equality in Politics A Survey of Women and Men in Parliaments An Overview of Key Findings, 2009 found at http://www.ipu.org/PDF/publications/equality08-overview-e.pdf last accessed 15-05-2014.

207. Bloom, Owen & Covington. Gender Responsive Strategies; National Institute of Corrections and US Department of Justice, June, 2003.

since gender discrimination is now recognised as a fundamental denial of human rights.[208] The claim to human rights therefore gives a strong moral force since human rights cannot be reduced and the states have the responsibility to fulfil them.

A gender responsive legal framework for children recognises the different needs of girls and boys and applies a human rights orientation to the issues it seeks to protect by being responsive to gender differences and disparities. For example, the legal framework must specifically require the integration of gender issues (i.e. safety measures for girls; equal participation and treatment of girls in the classroom) and human rights education into education and school policies, programmes and community mobilisation;[209] it must detail the various forms of sexual violence against girls and boys and provide for clear and stringent sanctions for sexual violence against girls and boys. It must also require the establishment of clear and systematic response mechanisms.[210] In general, national policy must provide for specific needs of adolescent girls to prevent them from child marriage, sexual abuse and violence and other harmful practices which have life-long health and developmental effects, including recurrent sexual and reproductive health problems.

Ultimately, the law must lead to the elimination of gender inequality and disadvantage in terms of protection, provision and participation of girls and boys in, among other things, education; sexual and reproductive health; time burden; property and inheritance rights; employment and wages; political participation in national and local government; and violence against women and girls.

(c) Gender accountability

Gender accountability involves adoption and adherence to instruments and structures through which the enjoyment of rights may be demanded by those adversely affected. The tools for accountability include international human rights instruments, legislation, governance structures, and other tools, some of which are relevant to all public sector services, some to gender issues alone and some to gender-specific concerns of women and girls. Governance structures include human rights institutions within the public sector and civil society; law enforcement agencies; service delivery institutions such as those working in education and health service delivery; and rights enforcement structures such as the judiciary and criminal justice process.

A gender accountable approach creates avenues and mechanisms to monitor commitments on the human rights of girls and boys. It seeks to ensure that there is adequate enforcement of the promise of equality for girls and boys. As such, all the actors in the promotion and protection of the rights of girls and boys are required to put into effect non-discrimination amongst girls and boys by ensuring that gender considerations form part of appropriate programmatic priorities and the general mode of operation. Gender accountability demands monitoring of national and local policy and funding frameworks through access to and utilisation of data and gender analysis to produce evidence-based monitoring scorecards or 'shadow' reports of progress on public policies; and skills-building in communication strategies, including how to work effectively with the media.

Engendering data collection, analysis and dissemination is an essential first step in evidence-

208. D'CunhaJ Trafficking in persons: a gender and rights perspective: Expert Group Meeting on "Trafficking in women and girls" found at http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/EP-DCunha.PDF last accessed 15-05-2014.

209. Association for the Development of Education in Africa. A toolkit for mainstreaming gender in higher education in Africa.http://www.ungei.org/resources/files/Toolkit_complete.pdf .

210. UNICEF, UNESCO (2007) A human rights-based approach to Education for all: A framework for the realisation of children's right to education and rights within education,http://www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_All.pdf.

based advocacy, policy development and programming. It is also crucial to catalysing policy and community commitment, as well as media coverage for awareness-raising on neglected gender issues. It is imperative to incorporate a gender perspective in the data collection, analysis and dissemination exercises, including in emergency and post-emergency situations, in order to understand how, girls and boys, are affected differently by emergencies, as well as by humanitarian and recovery response.

6.6 Principles

The framework proposes principles to guide the way forward in accelerating efforts towards ending gender based discrimination. The principles should be taken into account in the design and implementation of all interventions aimed at preventing discrimination of both boys and girls. As per CRC and ACRWC, there are four guiding principles namely, the best interests of the child, non-discrimination, respect for the views of the child, and the right to life, survival and development. This framework recognises the four cardinal principals.

The framework recognises that in order for children to achieve their full potential, their lives must be free from any form of gender-based discrimination. As such, further to the four guiding principles cited above, when looking at gender and child rights, it is proposed that the general principles of protection, prevention, empowerment, transformation, responsibility and accountability ought to be considered as well.

Guiding Principles

Guiding Principle 1: *The best interests of the child*

The best interests of children must be the primary concern in making decisions that affect children. This principle must be reflected in all legislation and policy on children. Failure to incorporate the principle in all laws means that the principle is unlikely to have effect where the law is not child specific. Essentially therefore, all legislation, policy, and the relevant institutions must be framed in line with the best interests of both girls and boys.

Guiding Principle 2: *Equality and non-discrimination*

Children are socialised into specific roles, identities and social groups at a very young age. Girls and boys have the same rights but face different obstacles in realising them. This can potentially become a source of discrimination and exclusion, resulting in violation of the rights of the child, as safeguarded in the CRC, the ACRWC, and the Maputo Protocol, the CEDAW, the SADC Women's Protocol and other relevant instruments. Promoting an environment of social inclusion and protecting children from discrimination is therefore a key principle. Both boys and girls must be treated equally regardless of age, ethnicity, disability, location and other factors, and full recognition should be given to their status as rights holders. The equalisation of opportunities between boys and girls should not create a perception in boys, that girls have opportunities at the expense of boys. The clearing of this perception is critical to ensuring that boys who feel left out do not perpetuate the inequalities between males and females and also that boys do not deliberately frustrate the realisation of programmes aimed at achieving equality.

Guiding Principle 3: *Respect for the views of the child*

Respecting the views of children is directly linked to their participation and empowerment.

Unless both boys and girls are empowered and allowed to participate, it is not easy for them to express themselves and therefore have their views respected. The empowerment of children and creating the conditions for boys and girls to develop their full potential are key to breaking the intergenerational cycle of gender disparities, in which many African communities find themselves entrapped. Girls and boys have the right to take part in the decisions that affect their lives, keeping in mind their evolving capacities to understand and to contribute meaningfully. Meaningful participation contributes to building the analytical, organisational and political skills of children and helps them to be more effective in claiming their rights. The recognition of children, particularly girls, as agents of change and their participation on a regular and systematic basis must therefore underpin any process of effective planning and designing of strategic legal and policy interventions to address and eliminate gender based discrimination. Respect of the views of the child commences with a process of education, whether formal or informal, which ultimately informs the views that a child develops as they progress to adulthood. It is important therefore that education, tutoring, mentoring and counselling that a child undergoes should be engendered in order for the child to make meaningful contribution to the realisation and protection of his or her rights and those of other children.

Guiding Principle 4: *Survival and development*

Children need quality care and protection in order to develop into useful citizens of the world. Survival and development starts at conception, in terms of prenatal care for the mother and child. Protection of the mother from domestic violence, access to sexual and reproductive health services and justice, as well as protection from maternal mortality are key to the survival of the child. Children are most vulnerable to various challenges within the first five years of their life. Governments therefore need to ensure that child mortality is significantly reduced and should take steps towards its eventual elimination. As the child develops into adolescence, there is need for adequate nutrition for physical and mental health and protection from disease. There is need for participation in education including physical education and the acquisition of proper life skills and information in preparation for adulthood and sexual and reproductive transformation that a child might go through. All survival and development processes should take into account cultural and religious contexts in order to enhance the process of acquiring values that are necessary for adult life. However, respect for culture or religion ought not to be a basis for violating the rights of children on the basis of sex or gender.

6.7 General Principles

General Principle 1: *Prevention*

Legal and policy measures should be aimed at prevention and pro-activeness rather than waiting for violation of rights to occur. The cost of prevention is much lower in most instances than the cost of addressing a violation that has already taken place. Frameworks for children must be sensitive, responsive and accountable to measures that prevent both girls and boys from any form of gender-based violations of rights. Laws and policies must envisage strategies for preventing gender-based child rights violations from occurring in the first place, and when they happen, prevent them from recurring.

Principle 2: *Protection*

The protection of girls and boys from gender-based child rights violations can best be achieved by providing a holistic package of services, responses and interventions for victims and survivors that are specific to their needs as female or male. The law must deal with any gender-based barriers which could lead to a denial of access to judicial and or psycho-social remedies. Judicial and law enforcement agents should also be empowered to offer effective remedies for children whose rights have been violated. The atmosphere within which legal proceedings are conducted should also be friendly to children and governments should endeavour to create specialist courts for children to ensure child specific adaptations and responses in the context of child justice. The legal and policy framework also ought to ensure that the process of justice does not promote a culture of impunity among various players, especially sex offenders against children. As such, children should not be discouraged from seeking justice for fear of impunity, threats and intimidation from offenders.

Principle 3: Responsibility

A rights-based approach is anchored on obligations and responsibilities of actors as set out in international and regional human rights treaties, in terms of which the principal duty bearer is the State. All actors have a shared responsibility to ensure that both boys and girls are protected from gender based violations of their rights and that discriminatory practices are not sustained by a culture which condones them. The principle of responsibility also recognises that the child has duties peculiar to and consistent with childhood but this must not be used to the detriment of the child because of his or her gender.

Principle 4: Empowerment

Rights should ideally be recognised and respected. Where they cannot be given, they must be actively claimed by those who hold them. For this reason, children's individual and collective empowerment is an essential prerequisite for a rights-based approach. Empowerment is both structural and individual. Structural empowerment involves the law and policy, institutional elements and State accountability, while the individual dimension is one designed to equip individuals and groups to claim their rights. The latter entails building the skills, knowledge and abilities of girls and boys to participate in processes of social transformation and democratisation, and to promote accountability and transparency.

Principle 5: Transformation

The efforts towards realising gender equality for boys and girls must lead into transformation of the boys and girls into engendered human beings. Transformation entails the introduction of a new paradigm that will negate negative cultural and social pressures on the appreciation of gender and create a generation that will not be bound by the general gender stereotypes as they grow and may be able to pass on the transformation to future generations.

Principle 6: Accountability

Accountability means that there must be mechanisms that guarantee that the gender and child rights framework will hold accountable those who violate rights of children. These include perpetrators of rights violations, public officers who abdicate their duties and any person who deliberately or negligently places a child in a situation of vulnerability without regard to the

challenges that a child will face on account of their gender and sex.

6.8 Entry points for gender assessment in child rights

The framework identifies the following entry points based on children's rights and the international human rights framework. These entry points are critical areas for furthering a gender perspective in child related laws and policies and will enable the implementation of the framework in order to contribute to ensuring optimal results and impact. They can be used as linkages for advocacy for the rights of both girls and boys, when considering their education, health, economic empowerment, protection and participation.

1. **Definition of a child** – national legal and policy instruments must establish uniform age of a child as a person below the age of at least 18 years for all purposes.
2. **Child care and protection** – care and protection of the child is paramount. Care and protection is critical in various dimensions depending on the age of the child. Protection must also include protection from mental and physical disease, and distinction of sex or gender should not be a determinant factor in providing care and protection for girls and boys.
3. **Child justice** – children will often get into contact with the law as offenders, witnesses or subjects of the court process.
4. **Alternative care of children** – there are numerous factors preventing children from enjoying the presence of one or both parents within a family environment. In cases where alternative care must be provided, the law and policy should play a critical role in governing the relationship between children and the institution of care and protection.
5. **Civil rights** – children are entitled to a number of civil rights that are critical to the realisation of their optimum development, as well as the realisation of their other rights. These rights protect the very essence of their being and include the rights to life, survival, development, name, nationality, and privacy, and the freedoms of expression, association, thought, conscience and religion.
6. **Economic, social and cultural rights for children** – the need for the enjoyment of economic, social and cultural rights of children is evident from birth and yet these rights are expensive to provide. States must be committed to ensuring that these rights are respected, protected and fulfilled.
7. **Responsibilities of the child** – the child must recognise the balance between rights on the one hand and duties and responsibilities on the other. Duties and responsibilities are owed to the family, the community and the State.
8. **Children's rights in emergency and post-emergency settings** – emergencies may be natural or man-made. Natural emergencies will include disasters such as earthquakes, floods, etc. while man-made include civil and international strife and war. In such cases, children become more vulnerable and in need of a comprehensive State response to their situation.

6.9 Emergency and post-emergency situations

Conflicts and natural disasters, and the humanitarian responses put in place for transition and recovery have varying impact on women and men, girls and boys. Integrating a gender perspective is essential for effective policy and programme development in order to foster a smooth transition from crisis to development for populations in conflict or disaster affected or prone countries. Transition and recovery situations can offer a unique opportunity for countries to be set on a path of gender equality and improved prospects for poverty reduction, lasting peace and development. This is because women play a key, though less appreciated, role in reconstructing communities and restoring the fabric of societies' economies. For example, after conflicts have ended and widows form a substantial proportion of the population, children and the elderly or disabled dependents will rely on them for their survival and well-being. Women in this context need political representation, income-earning options, reproductive health services and additional support, so as to maintain their children's education. This is especially relevant in the context of the MDGs and the post MDG framework; since humanitarian emergencies often strike countries with already high levels of poverty.

6.10 Core elements of a gendered legal framework for children

There are certain prerequisites for engendering any policy or programme. National policies, laws and budgets for boys and girls should reflect gender sensitivity as they are the first point of departure for setting the political and funding agenda at the highest levels. Table 1 below provides a reference point on the minimum standards and indicators that the legal and policy frameworks for children must require.

Table 7: Gender parameters for legal and policy frameworks for children

General parameters	Provisions in international and regional instruments giving effect to the general parameters
Inclusion of the principle of gender equality in the Constitution	Article 2(a) CEDAW, Article 2 Banjul Charter, Article 2 (AWP), Article 3 , ACRWC and Article 2 CRC
Legal recognition of affirmative action for girls	Article 4 (1) and (2) CEDAW
Strict regulation of provision of services and sanction gender discriminatory conducts	Article 2 (b), Article 2 (c) CEDAW and CEDAW Committee General Recommendation No. 19 Par. 1
Gender based violence	
Definition and strict punishment of violence against girls	Definition of Violence against women Article 1 (j) Protocol of Banjul Charter on the Rights of Women in Africa

Table 7: Gender parameters for legal and policy frameworks for children (Cntd.)	
General parameters	**Provisions in international and regional instruments giving effect to the general parameters**
Recognition and proscription of all types of violence such as sexual, psychological and physical violence	Article 19, CRC; Article 16, ACRWC
The definition of rape should expand to include the rape of boy children. Most laws classify it under indecent assault, which is a lesser degree of crime to rape	Article 19, CRC; Article 16, ACRWC
Definition of minimum age of sexual consent at the age of 18 years and/or equal with the minimum age of marriage for both girls and boys	-
Criminalisation of Female Genital Mutilation and other specific harmful practices prevalent in the society	Article 5 (b), AWP and Article 21(1), ACRWC
Employment	
The Law should encourage the participation of females to hold political office. For the reform and legislation of gender sensitive and gender responsive laws.	Article 9 (1) AWP and Article 7 (b) and (c) CEDAW
Provision of equal minimum age of employment for girls and boys, no lower than 14 years	ILO 134 Article 2(4), CRC Article 32(1)
Prohibition of employment before prescribed end of primary education	Article 11(2,d)ACRWC, ILO 138 and ILO 182
Special protections for employed children as to Employment agreement; Type of work; Time of work; Hours of work -Remuneration for work	Convention on the Worst Forms of Child Labour Convention: Article 8 (2), Article 15 ACRWC
Special protection of girls to prevent their engagement in sexual exploitation	Article 27 ACRWC; Article 16 ACRWC; Article 16, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Table 7: Gender parameters for legal and policy frameworks for children (Cntd.)	
General parameters	**Provisions in international and regional instruments giving effect to the general parameters**
Reintegration and special support for girls and boys that are victims of trafficking, prostitution and other violence	Article 16 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
Special protection of girls engaged in domestic labour	ILO 189
The national law should provide for the establishment of institutions that follow up the implementation of laws and policies in line with international standards set by the international conventions	Article 43, ACRWC and Article 44, CRC
Marriage and family relations	
Equal rights of girls (Women) and boys (men) to inheritance	Article 21AWP, Article 15(2) CEDAW
Conclusion of marriage with free and full consent of both partners	ACRWC Article 21(2), Article 6 (a) AWP, Article 16 (1) (b) CEDAW and Article 1Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.
Provision of a minimum age of marriage of no lower than 18 years for both boys and girls	Article 21 (2) ACRWC, Article 21 (6), Article 6 (b) AWP, Article 16 (2) CEDAW, Slavery Convention1957 Article 1 and 2
Criminalisation of child marriage, forced marriage and marriage through abduction	Article 5, AWP, Article 1 Slavery Convention 1957
The State should ensure the provision of vital registration organs: • Birth registration: the core mechanism to ensure all the minimum age standards are respected. • Marriage registration: to avoid polygamy and also as a mechanism to have the institutional review whether or not the requirements for a valid marriage are fulfilled; consent, minimum and fulfilment of other legal requirements.	Article 21 (2), Article 6 (d) AWP and General Recommendation No. 21 of the CEDAW Committee, Article 2 Slavery Convention 1957 and Article 3 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

Table 7: Gender parameters for legal and policy frameworks for children (Cntd.)	
General parameters	**Provisions in international and regional instruments giving effect to the general parameters**
• Death registration and awareness creation on the importance of will: a vital stepping stone to ensuring the inheritance rights of both women and children.	
Special economic, psychological and social protection and assistance to child headed households	Article 20(2), ACRWC, Article 18, Banjul Charter
To provide special support for girls in poor households since girls tend to take up the responsibility of parents in their absence or death. This increases their vulnerability for the economic and sexual exploitation.	Article 18, Banjul Charter
Education	
Basic education should be made free and compulsory under the law	Article 11 (3) (a) ACRWC and Article 28 CRC
Affirmative action for girls education	Article 11 (3) (e) ACRWC, Article 12 (2) (c) AWP
Children shall attend school at regular hours	Article 11(2,d) ACRWC and Article 28(e) CRC
Clear sanctions for the failure to put children in education	---
The law should harmonise the minimum age for the end of compulsory education that is in agreement with the age of employment under the law.	Article 11(2,d) ACRWC and Article 28(e) CRC
Education of domestic working girls	Article 4(2)ILO 189
Strict regulation of the requirement to create a conducive environment free of violence for education of girls	Article 28(2) and Article 11(5) CRC
The requirement of education of pregnant girls and teen mothers and the need to provide special support	Article 11 (6) and Article 12 (3) (d) ACRWC and Article 28 (1) (b) CRC

Table 7: Gender parameters for legal and policy frameworks for children (Cntd.)	
General parameters	**Provisions in international and regional instruments giving effect to the general parameters**
The law should provide for mother's education as it has a direct impact on the life of their children and the reduction of child and maternal mortality rate.	Article 10(f) CEDAW
The law should guarantee the right for free access to reproductive health services for girls	Article 14AWP, Article 10(h) CEDAW
The reproductive health policy: • Should provide free and friendly reproductive health services • Should cater for improved awareness to adolescents and adults (women). • The policy has to ensure the accessibility of services for girls with disability.	Article 18(4) and 25(a)CRPD, Article 10 (h) CEDAW
Child justice	
Equal minimum age of criminal responsibility for both girls and boys, of no lower than 12 years	Article 17 (4) ACRWC; General Comment 10 of the UN Committee on the Rights of the Child; Beijing Rules
Separate detention of girls	Havana Rules, Child Justice Guideline, 1990, para 52
The law should give particular attention to girls; in particular with regard to prior abuse history and special attention to their health needs	General Comment No. 10 of the CRC Committee
The law should mandate the training of officials in the justice administration on the causes of child delinquency, with a particular focus on girls, and other child justice mechanisms beyond judicial proceedings	General Comment No. 10 of the CRC Committee

Table 7: Gender parameters for legal and policy frameworks for children (Cntd.)	
General parameters	**Provisions in international and regional instruments giving effect to the general parameters**
Discriminatory criminal laws which criminalise behavioural problems of children should be abolished- either between adults and children or mostly a result of psychological or socio-economic problems. i.e. Mostly criminalising girls and street children- e.g. for roaming the streets.	Riyadh Guidelines and General Comment No. 10
Sentence for crimes should equally protect the dignity and welfare of boys and girls. Torture and inhuman treatment including corporal punishment of children in conflict with the law shall be prohibited for both boys and girls.	Article 17 ACRWC
Alternative care	
The law should give special emphasis to tackle discrimination based on the status of the child or sex of the child when providing the alternative care service	UN Guidelines for the Alternative Care of Children, 2010
Adoption should be need based and non-discriminatory to best serve the interest of the child. The trend of adopting more girl children than boy children has potential to compromise rights.	Guidelines for Inter Country Adoption, par. 61
Placement in alternative institutions should consider the vulnerability of girls to exploitation.	---
There should be more rigorous and frequent revision in the placement of girl children	---
The process of transition from parental or family care to age of majority or independence should take into consideration children's gender, age, maturity and particular circumstances and include counselling and support, notably to avoid exploitation.	UN Guidelines for the Alternative Care of Children, 2010

Table 7: Gender parameters for legal and policy frameworks for children (Cntd.)	
General parameters	**Provisions in international and regional instruments giving effect to the general parameters**
Nationality	
Children shall have the right to take after the nationality of both parents. To this effect both parents should have the right to transfer their nationality to their children.	Article 9 CEDAW, Article 6 ACRWC, and Article 7 CRC and General Comment 21 of the CEDAW Committee.
Children's rights in emergency and post-emergency settings	
The law should set 18 years as the minimum age of recruitment to the army. Children should be allowed to complete their education before entering the defence force. Measures should also be taken to ensure that children are not recruited into illegal or otherwise non-governmental armed groups.	Article 22(2) ACRWC, Article 38, CRC, OPAC
The law should specifically guarantee special protection of boys living in vulnerable areas from involvement in armed conflict.	Article 22(2) ACRWC, Article 38, CRC, OPAC
The law should provide for the right to special protection of girls in emergency settings. The law should especially require that non-militarised use of children in armed conflict, especially girls (such as domestic servitude and forced marriages) are addressed in humanitarian and post conflict measures.	Security Council Resolution 1820, Article 18(3) Banjul Charter
The law should specifically designate use of rape as a military strategy as a war crime entailing grave sanction and punishment.	Security Council Resolution 1820, Article 18(3) Banjul Charter
While a country is in a state of emergency or war, a mechanism should be devised not to use children as a shield and as a military strategy.	Article 22(3) ACRWC

6.11 Gender and child rights results categorisation

The parameters detailed in this Framework ought to indicate the gender responsiveness of laws, policy and programmes. The expected results can be categorised with a view to developing a direct and responsive programming process for each country. Table 2 below is indicative of a non-exhaustive example of results categorisation for national level intervention. The Table highlights the indicators for gender responsive laws, policies and programmes.

Table 8: Result categorisation of gender responsive laws, policies and programmes

Engendered child rights	Action	Result
1. Decision making process for boys and girls More participation of children as decision makers over matters affecting them, and in shaping the development of their societies.	1. Capacity for public participation – Increased capacity of boys and girls for advocacy and for participation in public life and decision making.	(a) Strengthened knowledge and skills of children for participation in democratic or community management bodies. (b) Increased capacity or effectiveness of children's organisations to advocate and represent children's views. (c) Strengthened children's organisations and networks. (d) Strengthened dialogue between children's organisations and Government bodies. (e) More supportive environment for children's participation on matters that affect them within themselves and with adults.
		(f) Increased influence of children and child organisations in community and public decision making.
	2. Increased representation of children in democratic processes over issues that affect them directly or indirectly.	Increased numbers or proportions of children in decision influencing positions.

Table 8: Result categorisation of gender responsive laws, policies and programmes (Cntd.)

Engendered child rights	Action	Result
2. Best interests of the boy and girl child All actions, laws, policies and institutions taking the best interests of the child into account. Access by children to basic and appropriate services that support well-being and quality of life.	3. Legislative audit for provision of the principle.	(a) Increased provisions in legislation and policy on the principle. (b) Increased awareness of the existence and implication of the principle among stakeholders. (c) Increased access to remedies for violation of the principle.
	4. Integration of the principle of the best interests of the child in access to basic amenities into.	(a) Increased safety, food security, access to water, shelter, transport, literacy, health, education by girls and women. (b) Increased access to social services; social service delivery that responds to different priorities and interests of boys and girls.
		(c) Increased capacity for child organisations to deliver services.
3. Gender and child rights Boys and girls more able to realise their full human rights.	**1. Legal system** Strengthened promotion and protection of the human rights of boys and girls in law and the implementation of this by duty bearers within the justice system.	(a) Increased use of relevant international instruments such as CEDAW, CRC and ACRWC in national legislation and policy. (b) Formulation of legislation on key gender equality issues for children.

Table 8: Result categorisation of gender responsive laws, policies and programmes (Cntd.)

Engendered child rights	Action	Result
		(c) Elimination of legal barriers to equality through legislation and legal and policy reform. (d) Increased knowledge among stakeholders in the legal and policy system in order to use the instruments equitably and professionally. (e) Improved access by children to the legal system through legal aid and removal of access barriers. (f) Timely reporting to treaty bodies on the measures taken by a State in ensuring the promotion and protection of girls' and boys'; rights both in law and practice.
	5. Public awareness Increased knowledge and recognition by the public and decision makers of human rights of boys and girls.	(a) Increased awareness of rights violations including child trafficking, child marriage, FGM and other harmful practices, disinheritance, and sexual and economic exploitation. (b) Increased awareness and participation by CSOs in advocating for gender and child rights. (c) Awareness among children of laws, policies and mechanisms protecting women's rights.

Table 8: Result categorisation of gender responsive laws, policies and programmes (Cntd.)

Engendered child rights	Action	Result
		(d) Increased awareness and support among decision makers on child rights and gender issues enabled to carry out informed debate in the issues. (e) Better media coverage of gender and child rights, (f) Changes in public attitudes about roles and entitlements of boys and girls.
	6. Response to gender-specific child rights violations Improved services and mechanisms responding to gender specific constraints on child rights or child rights violations.	(a) Improved provision or functioning of social services responding to rights violations by Government or CSOs. (b) Strengthened policy commitments, statements and programmes responding to gender-specific constraints on child rights enjoyment and violations.
	7. Institutional capacity Increased capacity of stakeholders on gender and child rights within public, civil society and private sector to design and implement policies, programmes and projects that reflect the priorities and interests of both boys and girls.	(a) Clearer institutional responsibilities, approaches to achieving national gender and child rights objectives. (b) Strengthened analytical skills, knowledge of gender and child rights with capacity to gender analyse child rights in any given sector or organisation. (c) Strengthened capacity and systems to collect and analyse data required for gender analysis of issues, policies and programmes.

Table 8: Result categorisation of gender responsive laws, policies and programmes (Cntd.)

Engendered child rights	Action	Result
		(d) Increased institutional capacity to consult with boys and girls on issues and priorities on gender and child rights. (e) Increased effectiveness of partner organisations or local Government in reaching and serving women equitably.
	8. Legal and policy reform Development or adoption of laws and policies that support gender sensitivity, gender responsiveness and gender accountability of child rights by institutions that manage development resources and benefits for boys and girls.	(a) Economic laws and policy – gender equitable macroeconomic policies. (b) Poverty reduction strategies – inclusion of measures directing resources to poorer families including single-parent and child-headed households. This is done in order to address the gender-specific constraints faced by children living in poverty.
	Laws and policies must respond to different priorities and interests of boys and girls.	(c) Social policies – adoption of policies and laws on health, education, social services and other sectors that incorporate elements to reduce gender inequality between boys and girls and promotes child rights. (d) Sectoral reforms – establishment of clear sectoral gender equality objectives for child rights and sector-wide implementation mechanisms.

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