

Hidden Shame

Violence against children with disabilities in East Africa



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HIDDEN SHAME

Acknowledgements.....	4
Nederlandse samenvatting.....	5
Executive summary.....	7
2. Methodology.....	11
3. Children with disabilities in East Africa.....	12
3.1 Vulnerability of children with disabilities.....	12
3.2 The context of disability in East Africa.....	13
3.3 Consequences of violence and stigmatization.....	14
4. Violence against children with disabilities.....	16
4.1 The nature of violence against children with disabilities.....	16
4.1.1. The effects of conflict.....	18
4.2 The prevalence of violence against children with disabilities.....	18
5. The protection system for children.....	20
5.1 The situation of homes for children with a disability.....	22
5.2 Gaps in protection.....	23
6. Legal protection against violence.....	25
6.1 International Conventions.....	25
6.2 Regional: The African Charter.....	
6.3 National law and policy.....	28
6.4 Gaps in legal protection.....	31
6.5 Implementation of rights.....	32
6.6 Conclusion: legal protection against violence for children with disabilities.....	35
7. Positive trends in protection and care for children with disabilities.....	36
7.1 Education.....	36
7.2 Protective facilities.....	37
7.3 Awareness raising: be heard to be helped.....	38
7.4 Area Advisory Councils: from empty shells to communication funnels.....	39
7.5 Empowerment of families.....	39
7.6 Recognizing children with disabilities as vulnerable.....	40
8. Development cooperation.....	41
8.1 Twin-track approach.....	41
8.3 Violence and disability.....	42
8.4 The Netherlands.....	42
8.4.1 Policy effectiveness not measurable.....	43
8.4.2 Twin-track approach.....	44
8.5 Other countries.....	44
9. Conclusions and Recommendations.....	46
9.1 Recommendations for Dutch policy.....	47
9.2 Recommendations for Tanzanian, Kenyan and Ugandan policy.....	47
Annex 1: Questionnaire.....	49
Annex 2: Respondent list.....	51
Annex 3: Terre des Hommes.....	54
Endnotes.....	55

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Nederlandse samenvatting

In recent onderzoek en de jeugdzorg praktijk wereldwijd zijn sterke indicaties dat kinderen met een handicap vaker slachtoffers zijn van geweld dan niet-gehandicapte kinderen. Terre des Hommes heeft gedurende drie maanden een verkennend onderzoek verricht naar geweld tegen kinderen met een handicap in de Oost-Afrikaanse landen Kenia, Oeganda en Tanzania.

De drie landen hebben naar schatting 2,85 miljoen kinderen met beperkingen. Het onderzoek bevestigt de hoge niveaus van geweld tegen kinderen met handicaps. Hoewel statistische informatie schaars is, zijn ernstige vormen van seksueel en fysiek geweld gevonden bij naar schatting 135.000 kinderen met handicaps in Kenia, 15-20% van de kinderen met een handicap in dat land. Vooral meisjes met een intellectuele handicap zijn vaak het slachtoffer van seksueel geweld. Bovendien blijkt uit het onderzoek dat de meerderheid van de kinderen met een handicap ernstige verwaarlozing meemaken, voldoende ernstig om als 'strafbaar' gekwalificeerd te worden. Gevallen van bijna-verhongering, langdurige onthouding van alle zorg en aandacht, ernstig gebrekkige en onhygiënische levensomstandigheden en verlaten op een geïsoleerde plek om te sterven hebben zich gedurende het onderzoek voorgedaan. Gevallen waarin kinderen met een handicap zijn gedood of zijn gestorven als een gevolg van geweld zijn eveneens naar voren gekomen.

Serieuze obstakels bestaan bij het aanpakken en verminderen van geweld tegen kinderen met een handicap. Het belangrijkste obstakel is dat een negatieve houding tegenover mensen met een handicap gewoon is en om te vinden dat ze geen waardig leven, zorg of aandacht verdienen. Dit maakt geweld tegen kinderen voor velen begrijpelijk en zelfs acceptabel. Het tweede obstakel is dat de conflicthanteringmethoden in de regio zich neigen buiten het justitiële traject af te spelen, door bemiddeling en informele straffen voor verkrachting en andere vormen van mishandeling. De dader is nooit veroordeeld en, even belangrijk, de autoriteiten raken nooit op de hoogte van de aard en omvang van het geweld dat kinderen met handicaps meemaken. Het derde obstakel is dat op beleidsniveau, de kennis over kinderen met handicaps minimaal is. Er is weinig beleid dat specifiek gericht is op de bescherming van kinderen met een handicap tegen geweld. Dit wordt overbodig geacht, omdat het huidige kindbeschermingsbeleid 'inclusive' genoemd wordt, maar deze term maskeert het feit dat beleid kinderen met een handicap nooit bereikt. Daarom is er ook weinig budget apart gezet voor kinderen met een handicap. Het vierde obstakel voor het aanpakken en verminderen van geweld tegen kinderen met een handicap is dat zorginstellingen onvoldoende in staat zijn om te zorgen voor, laat staan het beschermen van, kinderen met handicaps. Gerelateerd aan dit probleem is dat de faciliteiten die er zijn onbekend zijn en dat er geen organisatie is die structureel informatie over ze verspreid.

Juridisch kan een zaak onderbouwd worden om aan te tonen dat de Staten die partij zijn bij internationale verdragen die het recht op leven en de speciale zorg voor

kinderen garanderen hun verplichtingen schenden. Het Verdrag voor de Burgerlijke en Politieke Rechten (IVBPR) laten in artikelen 7 en 23 geen ruimte voor het accepteren van het geweld dat kinderen met een handicap ondergaan terwijl het nauwelijks aandacht krijgt op beleid- of uitvoerend niveau. De drie landen halen de maatstaven die neergelegd zijn in de Conventie voor de Rechten voor Mensen met een Handicap bij lange na niet.

Dit zijnde zoals het is hebben de regeringen van Tanzania, Oeganda en Kenia de laatste jaren zich ingespannen om de situatie te verbeteren. De landen hebben programma's opgesteld die zicht geven op verbetering. De belangrijkste inspanning van deze regeringen is geweest op het gebied van speciaal onderwijs. Dit programma moet significant worden uitgebreid om grote groepen kinderen met een handicap te bereiken. Een eveneens veelbelovend programma is het systeem van de Area Advisory Council – een advies en overlegorgaan voor beleid op het gebied van jeugdbescherming met een brede maatschappelijke inbreng – en haar contacten met de Landelijke Raad voor Jeugdbescherming. Het potentieel van dit initiatief is nog niet bereikt omdat het niet wordt aangestuurd en de onderwerpen die het aandraagt niet worden opgepakt op het nationale niveau.

De steun van niet-gouvernementele organisaties is momenteel een randvoorwaarde om kinderen met een handicap tegen geweld te beschermen.

De twin-track benadering van beleid voor kinderen met een handicap dient te worden gevolgd, zodat beleid niet alleen rekening houdt met de noodzaak dat kinderen met een handicap er ook voordeel van kunnen genieten, maar dat tevens specifiek beleid gemaakt wordt om kinderen met een handicap te ondersteunen. Dit geldt voor zowel de overheden van Oost-Afrika als de Nederlandse overheid, wier ontwikkelingsamenwerkingbeleid op dit gebied gedateerd is.

Het is niet vast te stellen hoe veel ontwikkelingsgeld besteed wordt aan gehandicaptenbeleid – een wat overigens ook het geval is bij beleidsprioriteiten als geweld tegen kinderen, AIDS-wezen en kinderarbeid. Effectiviteit van beleid is door het ministerie voor Ontwikkelingssamenstelling dus onmogelijk vast te stellen op een groot aantal gebieden en het is door de Tweede Kamer niet te controleren. Uitspraken van de minister voor Ontwikkelingssamenwerking dat er volgens hem wel geld naartoe gaat vanuit organisaties die niet gespecialiseerd zijn op dat gebied zijn ongefundeerd.

De internationale gemeenschap, geëngageerd om geweld tegen kinderen te beëindigen, moet ingrijpen om geweld tegen kinderen met een handicap meer politiek gewicht te geven in Oost-Afrika. Het moet hulp bieden waar het kan en waar het nuttig is om de verborgen schande van geweld tegen kinderen met een handicap naar buiten te brengen waar oplossingen gezocht kunnen worden. Om haar solidariteit met deze meest achtergestelde groep te tonen, moet Nederland de Conventie voor de Rechten van Mensen met een Handicap ratificeren en, zonder de binnenlandse noden uit het oog te verliezen, de rechten van kinderen met handicaps bevorderen in Oost-Afrika.

Executive summary

In current research and childcare practice, there are strong indications that children with disabilities are more often victims of violence than non-disabled children. Over a period of three months, Terre des Hommes has conducted an exploratory investigation into violence against children with disabilities in the East African countries of Kenya, Uganda and Tanzania.

The three countries have approximately 2,85 million children with disabilities. This report confirms the high levels of violence experienced by children with disabilities. Though statistics are rare, severe forms of physical and sexual abuse were found in an estimated 135,000 children with disabilities in Kenya, which is 15-20% of children with disabilities living in that country – totalling about 750.000. In particular, girls with mental disabilities are prone to be sexually violated. On top of that, the report finds that the majority of children with disabilities are likely to experience debilitating forms of criminal neglect - neglect that is sufficiently serious that it could lead to a criminal prosecution under local penal law. Cases of near-starvation, extreme deprivation, highly unhygienic living conditions and total abandonment were found during the course of this investigation. Cases of children with disabilities being killed or dying as a result of violence have also been recorded.

Serious obstacles have been found to addressing and reducing violence against children with disabilities. The most important obstacle is that it is common to think negatively about people with disabilities, and to believe that they are not deserving of positive attention, care or a dignified life. This causes violence against children with disabilities to be understandable and even acceptable to many. The second obstacle is that the conflict resolution conventions in the region tend to steer away from official justice systems and find a negotiated 'settlement' for the defilement or other abuse of the child in question. The perpetrator is never brought to justice and, equally importantly, the police and judiciary never officially find out what abuse children with disabilities are experiencing. The third obstacle is that, at policy level, little is known about the situation of children with disabilities. Policy is rarely devoted specifically to protecting children with disabilities from violence. This is not deemed necessary, as existing child protection policy is called 'inclusive', but this term hides the fact that policy never reaches children with disabilities. Hence, there is little budget allocated to facilities for children with disabilities. The fourth obstacle to addressing and reducing violence against children with disabilities is that inadequate care facilities are available to protect, let alone care for, a significant group of children with special needs. Related to this problem is the fact that the facilities are not known and there is no organization that structurally disseminates information about them.

Legally, a case can be made to demonstrate that the governments of Kenya, Uganda and Tanzania are in breach of their obligations under international law that guarantee the right to life to all and the special care for children. The Convention on Civil and

Political Rights, articles 7 and 23, leave no room for accepting the violence that children with disabilities are undergoing while scarcely receiving attention. The three countries can in no way live up to the standards that they have professed to adhere to with the ratification of the CRPD.

This having been said, the governments of Kenya, Uganda and Tanzania have made efforts toward improving the situation over the last years. These countries do have programmes that offer some hope for the improvement of the care of children with disabilities. The most important programme is the special needs education. This programme needs to be expanded significantly to provide education and guidance to more children with disabilities. Another promising programme is the system of the Area Advisory Council and its contacts with the National Council for Children's Services at national policy level. Its potential is not being realized because it receives no adequate direction and because subjects that it puts on the agenda are not picked up at national policy level.

The aid of non-governmental organizations is currently an absolute requirement to provide protection against violence to children with disabilities.

The twin-track approach to policy on children with disabilities must be followed, not only making all policy inclusive – applicable and accessible to children with disabilities – but also specifically targeting policy towards children with disabilities. This applies to the governments of East Africa, but also to the government of the Netherlands, whose developmental cooperation policy is dated in this respect.

It is not possible to say how much development cooperation money is spent on policy for persons with disabilities – which also goes for policy priorities such as violence against children, HIV/AIDS orphans and child labor. Effectiveness of development cooperation policy can therefore not be measured and it cannot be controlled in Parliament. Statements from the minister for Development Cooperation that he believes non-specialized development organizations are investing in projects for persons with disabilities are unfounded.

The international community, determined to end violence against children, must step in to give violence against children with disabilities increased political significance in East Africa. Furthermore, it must assist where possible and where useful in bringing the hidden shame of violence against children with disabilities out into the open, where solutions can be sought. To demonstrate its solidarity with the single most violated group, the Netherlands must ratify the CRPD and, without losing sight of its duties at home, promote the rights of children with disabilities in communities in East Africa.

1. Introduction and outline

This report focuses on violence against children with disabilities in the East African countries of Uganda, Kenya and Tanzania. Children with disabilities are human beings with special needs. If these special needs are met and their development stimulated, children with disabilities can grow up in such a way that they can participate on an equal footing with others in society.

Worldwide, especially in lesser developed nations, children often do not get any opportunity to live on equal footing with others. In developing nations, where 70-80% of children with disabilities live, 4 out of 5 disabled adults remain without work. This is due to the fact that only about 5% of children with disabilities have access to education and are discriminated in the labour force.¹ As a matter of fact, many disabled children are ostracized and victimized. They are 4 to 10 times more likely to suffer from violence than non-disabled children.² Due to their economic vulnerability, their likelihood of becoming a victim of violence increases; this is the downward spiral of disability and poverty.³

The UN Convention on the Rights of Persons with Disabilities (CRPD, see below for further details) aims to ensure the equal enjoyment of human rights by people with disabilities. These rights include accessibility to services and locations, non-discrimination, freedom from violence and abuse, and an independent life as part of the community. This is first and foremost a state obligation but, in aid of states, article 32 gives a non-exhaustive list of activities that can be undertaken to support other States Parties in achieving equality for children with disabilities. This includes including disabled people explicitly in its development programmes and providing technical and economic assistance to States Parties. The protocol to the present UN Convention provides for the right of an individual complaint to the Committee on the Rights of Persons with Disabilities.

Research indicates that children with disabilities are targeted disproportionately with regard to all forms of violence. As noted by Charlotte McClain-Nhlapo, Editorial Board of the UN Secretary-General's Study on Violence against Children: "In all countries children with disabilities continue to experience violence at equal to or higher rates than children without disabilities. They are often perceived as not worthy of dignity and respect."

The norms that will be used to measure the quality of care and protection for children with disabilities will be both the national law and the international legal instruments, including the CRPD that has just gone into effect. As McClain-Nhlapo continues, "We must remember that children with disabilities are first and foremost children. They, like children without disabilities, must have the right to be free from violence, they too have the right to be respected and protected. It is our legal responsibility to ensure that this happens." This research describes ways in which governments are taking

responsibility to protect children with disabilities, and areas that are not yet up to the standards to which signatories of the convention have committed themselves.

After a general description of methods of investigation in section 2 of the report, section 3 first cites literature and gives some examples found during the investigation of what it means to be a disabled child in East Africa (though a number of difficulties are universal). Section 4 lists the nature and prevalence of the violence experienced by children with disabilities found during the investigation. Section 5 names the material (in contrast to the legal) protection systems and facilities in East African countries. Section 6 goes into the legal obligations of East African countries to protect children with disabilities and ends with a conclusion on the extent to which these obligations are met. Section 7 lists a number of projects that can effectively be used to reduce the occurrence of violence against children with disabilities. Section 8 explains the developments in development cooperation in relation to people with disabilities and compares this with the current Dutch practice. Section 9 ends by summing up the results of the investigation and gives recommendations to the Ugandan, Tanzanian and Kenyan governments on improving their policy on children with disabilities.



2. Methodology

This investigation was conducted from April to July 2008. Literature and legal documents concerning the subject of violence against children with disabilities were collected throughout that period. The field work took place from 10 May to 27 May. The research method used was a qualitative analysis based on interviews with 72 people taken from the following sectors:

- Child care centres, private/NGO and public
- (Special) schools, private/NGO and public
- Children's remand homes
- Hospitals and psychiatric homes, private and public
- NGOs and parastatal organizations specialized in working on policy concerning people (children) with disabilities
- Children's officers at provincial and district levels in Nairobi and Nyanza
- Government Ministries of Education, Gender and Children's Affairs
- Provincial administration, including officers within districts, divisional locations and sub-locations
- Probation and welfare officers
- Judiciary officials
- Police officers
- Volunteers assisting CWD

The locations visited were the Nairobi and Nyanza provinces in Kenya and the Kampala and Masaka districts in Uganda. These locations were selected because they have a high concentration of disabled people as a result of being home to schools and vocational centres for people with disabilities.⁴

A list of participants and a questionnaire are enclosed.

3. Children with disabilities in East Africa

The context in which children with disabilities live in East Africa confronts them with serious challenges that complicate their lives.

3.1 Vulnerability of children with disabilities

Children are vulnerable, and children with disabilities are more vulnerable than non-disabled children. This is because children with disabilities in East Africa have generally not had the training to help them defend themselves in the way that non-disabled children can. Some of the examples given below describe how simple hazards may become great dangers to those with physical or mental disabilities who have not had special training to defend themselves. Children with physical disabilities may not be able to run from an aggressor or avoid a rowdy group. Children with hearing impairments have difficulty hearing approaching cars, warnings of danger or instructions to flee. Those with mental disabilities may not understand the dangers confronting them, and they may not understand that certain acts constitute abuse. Children with visual impairments may have difficulty finding sustenance without the aid of others. These examples may not be specific to the disability with which they are associated.⁵

Children with disabilities are also targeted more often than non-disabled children. Many studies show that a large majority of children with disabilities are violated, with up to 80% of girls having experienced sexual abuse, and 70% of all children being violated.⁶ And it is the non-disabled that are doing the abusing, to the effect that a child with a disability is far more likely to be the victim of violence than a person who is not disabled. One study indicates that it is 4 to 10 times as likely to become victimized⁷, another that it is 3.5 times as likely⁸, and yet another indicates that the chance is 70% higher⁹. These studies, it should be noted, were conducted in nations that have facilities to keep children in a safe environment and record their experiences with violence. One of the characteristics of East Africa, as we will show, is that facilities to protect and care for children with disabilities are far more limited, leading to many cases of children with disabilities being abused in their home without any institution taking any kind of action. In fact, mortality among children with disabilities may be as high as 80% in countries where under-five mortality as a whole has dropped below 20%. In some cases it seems as if children are being 'weeded out'.¹⁰

Finally, children with disabilities are more vulnerable to violence because they generally do not report violence on their own accord since they are not taken seriously by police or because the authorities cannot communicate with them.¹¹ This is known to perpetrators, who see in children with disabilities, even more so than children in general, easy targets for all sorts of abuse.¹²

3.2 The context of disability in East Africa

Bearing a child with a disability in East Africa is interpreted as a bad sign. In many cases, prevalent in rural environments, it is seen as a curse upon the family, a signal that the forefathers have been angered by the misbehaviour of earlier generations. In Uganda, this view is still common. "When a family has a disabled child, it is widely believed that they have committed a crime against their forefathers and that they are now being punished with the birth of their disabled child. This belief results in parents hiding their disabled child to avoid being laughed at by the community. Parents often feel so ashamed that they do not want their child to live with them."¹³ These feelings of deep shame and fear of being cursed are a direct source of violence against children with disabilities in Uganda. In cases occurring in Tanzania and Kenya as well, children are abandoned or dumped in boarding schools and 'forgotten'. In other cases, they may be left to die or buried alive.¹⁴

The fact that the birth of a child with a disability is burdened with the blame of misbehaviour causes great strain on the relationship of the parents. Many marriages end in divorce after the birth of a disabled child. A typical response of a husband to a child with a disability is to pronounce "I can't have made such a child!" and drive the woman from the home. At best, a father may distance himself from the child and refuse to have anything to do with it. The strain that this puts on the woman can lead to the abuse of the child, which is blamed for the misfortune.¹⁵

A child with a disability is seen as 'useless' and given derogatory names, generally according to its disability. This is done not only by children but also by village elders and teachers. This stimulates the children to take very negative attitudes toward children with disabilities. During the interviews, many cases were uncovered of children with disabilities not being able to attend appropriate levels of education because they were chased away, not allowed to attend or taunted until they left.¹⁶

People with disabilities are grossly over represented in the poverty statistics. This is the downward spiral in which disabled people are trapped: while their disability causes them to be disqualified from participating in the labour process and causes economic vulnerability, the poor have less protection against harmful situations thus heightening their vulnerability to violence and (further) disability. Poverty also makes it difficult or impossible to claim rights or aid instruments, isolating people with disabilities.¹⁷

This situation is not unique for East Africa. Studies confirm that these negative attitudes are pervasive in many societies in most continents, with the accusations ranging from incestuous behaviour, bad karma, or 'bad blood'. Children born into such communities are at risk of being subjected to physical violence, or any sort of abuse by any person in the vicinity.¹⁸ In the Netherlands, too, there are some groups that still adhere to negative attitudes about children with disabilities. Though this report

focuses on East Africa, we can find examples to identify with closer to home than we think.¹⁹

When Jen Mulama (not her real name) was born and it was clear that she was physically different and intellectually challenged, the advice given to the father was to follow the local custom and drown her in the river. When the father brought her to the river, however, he couldn't bring himself to do it and brought her back home. Jen was kept at home, since the family was ashamed of her. She 'watched the house', which meant she was tied to the table and left on the mud floor in the dark living room while her parents were out. When the community finally told the Ebuseratsi Special School about Jen, she was about 10 years old but finally able to start learning.

3.3 Consequences of violence and stigmatization

During the research period, we came across examples of children being left to die in the woods and starved, and were told of them being buried alive, being strangled and poisoned.²⁰ Also indirectly, children with disabilities were killed by forms of violence such as gang rape, leading to much blood loss, with the disabled child being unable to get to a hospital owing to its disability and dying as a result of its injuries.²¹

If a disabled child does not die, lack of proper exercise and good nutrition will worsen the disabilities. Of the children that end up in a home for disabled children, it is estimated that, with proper care, half of them could have gained independence.²² The children that do receive proper care and nutrition, even at a later stage, have a chance, whereas the children that are kept at home do not. There have been cases observed where a child with a disability was discovered only after having been taken in by a camp for internally displaced people set up to provide refuge to those fleeing from post-electoral violence. These children, many over the age of 10, had not learned to walk or clean themselves, they were not toilet trained, and they showed strongly anti-social behaviour due to having been locked away or tied up.²³ Only upon discovery did these children have any opportunity to develop.

Children with disabilities that are neglected and taunted have low self-worth, leading to dependent behaviour and emotional disturbance. The stories of those that survive emotional neglect and physical violence show grievance and depression, but also resentment and frustration.²⁴

Being born with a disability in Africa means having few opportunities to develop through education or to have meaningful social relationships. This consequence of stigmatization leads people with disabilities to be far more likely to live below the poverty line.²⁵

Nona Ngure (not her real name) is a girl of about 15 years old who was found near the forest of Kakamega without parents and going hungry. A member of the community took her to a Catholic school for the mentally disabled close by. Nona is a sensitive and somewhat slow girl. She appears a bit shy and meek, generally avoiding other people. It turns out this has to do with a long history of abuse, first by her parents, and later at the Catholic school, where, Nona says, the nuns mistreated her. Over the years, Nona has developed a mix of avoidance and violent tantrums in reaction to the mistreatment she has suffered. Not being able to stand it any more at the Catholic school, she ran away. When she was found, the school refused to take her back. She is now at a remand home for juvenile delinquents, awaiting placement in a different educational facility. At the remand home she is taunted by the other children. She requested that a place be found where she can learn something. This would give her the possibility of earning some money.

Ismail Mwikya (not his real name) was born with epilepsy to a father who refused to take care of him. At a very early age, therefore, Ismail had to beg for his income and his development became impaired through a combination of malnutrition and other deficiencies due to his homelessness. At one point, during an epileptic seizure, he fell into a cooking fire and suffered severe burns over the lower part of his body. Ismail was brought to the Ebusiratsi special school by some members of the community.

4. Violence against children with disabilities

4.1 *The nature of violence against children with disabilities*

The rights and protective measures have been implemented for good reasons. Children with disabilities are regularly confronted with criminal neglect and sexual and physical abuse.

Children need guidance, support and provision of basic needs to survive and develop. The most frequent cause for concern with children with disabilities is that they are neglected. The mildest form of neglect is that they are the last to receive anything; they eat the leftover food from the family, they get the oldest clothes, they receive the least amount of attention from the parents and they are least looked after. If their siblings go to school, they may not, or they may be the last to go. Increasingly severe forms of neglect entail withholding basic needs, such as making children sleep on the floor, in the kitchen, with the chickens or outside, not giving them nutritious food, not cleaning them or not looking after them when they are sick.

90% of the children with disabilities that are enrolled in the Ebusiratsi (Kenya) school for special needs have been taken out of such a situation or worse. The children are rarely brought by the parents, instead they are found by children's officers, a local chief, the police or other members of the community. The children are referred to the school because it is the only school of its kind – serving the needs of children with mental disabilities – in the area.

The parents of the children with disabilities enrolled in the Ebusiratsi school are not involved with the upbringing of the child, and generally struggle to survive themselves. This is a reflection of the fact that most children with disabilities in Africa are born into poor families.²⁶ The children are too great a burden for them, and they are glad that the school takes care of them. Few parents pay any boarding at all, nor do they provide any clothing or money for food. They do not collect their children when the school closes for the holidays. Parents have been observed to treat their disabled children with envy, as they felt that the rice provided to their children should also be given to them.²⁷

In Masaka (Uganda), similar cases of neglect were found in which children were left at boarding schools. Some children were severely malnourished upon arrival and had apparently been abused. Parents would refuse to take their children home when asked and would refuse to pay any tuition, in spite of evidence that they had sufficient financial resources to do so.²⁸

The Nairobi children's home regularly accepts children, only to find that the parents have given a false name and never collect the child, or children are delivered there as lost and in spite of media attention are never claimed.²⁹

Many disabled children are disowned by their parents, not being given a clan name, or they are thrown off their land by siblings when the time to receive inheritance has come.³⁰

The point where neglect becomes criminal may not always be entirely clear, but the line is observed to have been crossed by a number of these parents. When the lives of children are endangered, or when a child is locked up or chased away receiving little or no care from its parents, the police can be brought in. In both Uganda and Kenya, it has been observed that such parents were not charged with criminal neglect, but that the schools agreed to keep the children on a permanent basis in order to avoid damage to them. Examples of this include the many children that are abandoned by their parents each year. These parents are either never found, or, if they are found, they soon disappear, leaving their disabled child behind.³¹

Active forms of abuse can be divided into sexual abuse and physical abuse. Contrary to what many people may think, this kind of abuse is not the doing of excessively sick people. The perpetrators may use this as a defence ("I couldn't help myself"), but in fact the perpetrators are rather normal if sometimes ignorant people, motivated by the sense of power that abuse gives them.³² Sexual abuse is suffered mostly by girls. The sample that was found in Kenya and Uganda during this study was found to consist primarily of children that are intellectually challenged.

While some of the girls that had been sexually abused had been forced, some of them had been lured into it, making use of the low self-esteem that most children with disabilities have after years of neglect. Furthermore, those with mental disabilities, while outwardly healthy and good looking, do not understand what constitutes abuse. This abuse was only discovered after the children themselves had complained of abdominal pains or been found to be pregnant.³³ The fact that many children with disabilities are neglected and seen as unworthy increases their vulnerability.

Physical abuse can generally be seen on the children, such as bruises, scars or other kinds of wounds. The victims are beaten for a host of reasons, be it not reacting to signals as expected or begging at inappropriate times, such as during funerals. Teachers have identified many children that have been physically abused by their change of behaviour, becoming suddenly violent and detached, while they may hear elders of the village or the administration or the parents express negative attitudes about children with disabilities.³⁴ Similarly, those that have experience with disabled children that are being physically abused attribute part of the cause of the abuse to the frustration of the parent. The strain on the relationship formed by a disabled child, but also the amount of time required to perform normal tasks such as feeding or dressing, may cause frustration and aggression.³⁵



4.1.1. The effects of conflict

The already disadvantaged position of the child is aggravated when it remains in a chaotic place where the competition for attention and resources is fierce. This is the case in the camps for Internally Displaced People. During the period of investigation, there were camps in both Uganda and in Kenya due to the violent conflicts that were taking place in those nations. Besides the violence and the deplorable living conditions, the most salient characteristic of conflict is the breakdown of the social fabric and control, which includes the restraint of impulses, that comes with social norms.³⁶

The needs of all people become greater, but the run on scarce facilities cannot be kept up by children with disabilities, and they are greatly disadvantaged in obtaining food, attention and other basic services.

In the situation of social anarchy that accompanies the forming of a group of total strangers that have each experienced the most horrible situations, individuals do not feel as bound to norms as they normally do. The Ugandan and Kenyan camps for IDPs were the scene of numerous abusive situations.³⁷ Disabled women and girls reported high levels of sexual abuse in both countries, with unwanted pregnancies increasing the level of distress of the victims.

People with disabilities cannot make themselves heard like their non-disabled counterparts. They therefore have little access to food, clean water or sanitation, while education becomes almost impossible.³⁸

4.2 *The prevalence of violence against children with disabilities*

In the latest national count, in Kenya there were about 750.000 children with disabilities (4.5% of the total population), in Tanzania about 800.000 (also about 4.5% of the child population) and in Uganda about 1,5 million (above 7% – it's higher percentage possibly due to the war).³⁹

There are very few statistical facts about issues concerning children with disabilities, and this has been recognized by the Kenyan and Tanzanian governments as a shortcoming.⁴⁰

As will be elaborated below, not many victims or their relatives report their cases of abuse to the police or the children's officers. Informal settlement of disputes is quite common, which means that a good number of cases are left out of the statistics that are available to the police.

In the district school of Ebuseratsi, 7 to 10 cases were counted in a year. One of the police officers estimates that he hears 24 cases annually. That amounts to roughly a third of the cases in the district. In the district of Omayya, about 82 to 85 cases are counted on a yearly basis.⁴¹

If this number is extrapolated, it would mean a total of 6800 cases reported at a national level. From the research done during the political violence, it was discovered that 1 in 20 people dared to report an incident.⁴² If the same applies here, too, this would imply 135,000 cases of severe physical and sexual abuse annually. The Gender Violence Recovery Centre has indicated that children with disabilities report sexual abuse even less often than non-disabled people.

A census held in Kenya indicates that around 4.5% of children are disabled.⁴³ Absolute numbers would mean about 1.5 million, 750 thousand of whom would be under age. About 16 to 20 percent (1 in 5 to 1 in 6) children with disabilities are abused.

Another measure of abuse is the number of cases that the Gender Violence Recovery Centre receives, since this institute receives many of the cases taken to the police. Since this Centre started counting at the request of Terre des Hommes, it received 3 cases in the month of May.⁴⁴

These numbers give an estimation of active forms of abuse. They do not count the forms of criminal neglect. This is a form of neglect so severe that it violates the criminal law in the countries studied. It is also a reason to remove children from the home and place them, via a child protection officer, in a different setting, such as a children's home. The number of children found in deplorable living conditions and who had been taken from the home or given shelter accounted for a majority of the children in the programmes studied. Children are brought to the schools by members of the community or by parents who subsequently leave them there.

5. The protection system for children

The structure of the Kenyan, Ugandan and Tanzanian systems provide for three different ways in which the government can intervene if a child has been or is in danger of being violated. The Administrative intervention is done at a local level by a chief of a district or division. The chief is well known amongst the people and is generally aware, possibly through the assistant chiefs who are delegated authorities in smaller units within the community.

The LC in Uganda and the chief in Kenya have the power to arrest a person on the grounds of public disorderly conduct. They do not have judicial investigative powers, so they must hand the offender over to the police after a period of holding. The chiefs are also mediators within the community, often intervening to apply local forms of justice and thereby avoiding the police. When asked about the incidence of violence against children with disabilities, the chiefs that were interviewed replied that they had no knowledge of any incidents, even though one of the chiefs had knowledge of a case that was reported to him through the school of which he was then a board member.⁴⁵ The chiefs, as one of the police officers said, want to protect the reputation of their district.⁴⁶ Indeed, the police do not appear to be involved or even contacted by the so-called insiders of the community, who solve their local problems together with the chief rather than at the police station. The people that go to the police are relative outsiders that may not have access to this system or feel that it would not do them justice.⁴⁷ Accordingly, it is generally women and those who report cases from outside their district that go to the police.⁴⁸

The second way to report violence against children with disabilities is to go to the police. They have investigating powers, and they are charged with bringing a case to court. They have not received training that helps them understand children with disabilities or their needs.

The police get very few cases of violence against children with disabilities, neither in Uganda nor in Kenya. In an analysis, the National Union of Disabled People Uganda (Nudipu) states that, while 80% of the cases that they receive constitute legal defilement, few are reported because the police ask for bribes or for money for fuel to visit the scene of the crime; caretakers don't bother to report; the man in the house wants to keep it secret; there is some informal settlement made with the offender; the police don't take the case seriously, stating that "at least now she has someone to sleep with."⁴⁹

The police admit that asking for bribes or money for fuel occurs but go on to say that this should be reported since this corruption "is a disease".⁵⁰ They also affirm that informal settlements are mediated by the local administration and that parents stand to

gain from such an arrangement. “They can’t come to the police when all the cows they received from the settlement have been consumed.”⁵¹ This cultural barrier to reporting to the police is seen by some as one of the most important reasons why there is so little attention for the subject. “If it is not reported, there is nothing to be done.”⁵²

Due to the apparent unwillingness of the police to investigate cases of violence against children with disabilities, the number of people reporting violence is lower than it could be. The problem with resources in East African countries creates a situation in which there is no money for officers to buy petrol or pay for mobile telephone calls.⁵³ This seriously hinders their investigation possibilities. On the other hand, a family would need to invest the same amount of money to make a complaint at the police station, and this also presents an obstacle to making a complaint. Complaints don’t always lead to investigations, as police may lose the complaint before they start. This may be true since real archives are absent; it is in any case an indication of the importance that is attached to such a complaint.

The rare cases that go to court are not always successful because police have difficulties communicating with people with disabilities and have no one to help them out.⁵⁴ There is a backlog of cases due to structural staff shortages. When the case comes before the court, there are more problems with transport, as all the witnesses and the victim have to be present at the same time. With all these problems, it is no wonder that many cases are frustrated and end up in acquittal.⁵⁵

The third path that can be followed to help a disabled child that is being abused is to report the abuse to the child protection officer. The child protection officer has the authority to intervene on behalf of children in need. The provincial and district officers that were encountered did not always show awareness of problems surrounding children with disabilities. While, for example, the district officer of Kisumu did not see the need for more space for children with disabilities – “It would only encourage parents to abandon their children.” – that very afternoon a call was received to pick up an abandoned child who had been left for dead in the forest. Upon arriving at the only shelter for children with disabilities – a private initiative – it was clear that there was a dire need for more shelter space with adequate facilities, as that particular facility was not equipped to deal with so many children with disabilities. It was clear that the children’s officer had not had dealings with these facilities or had not been interested enough to wish to improve the lives of the children living there.

Other children’s officers – or probation and welfare officers, as they are called in Uganda – experience the difficulty of trying to find a place where the child will be safe. All officers that have tried to get a child placed have had difficulties placing a child in a safe place equipped with the necessary facilities.⁵⁶

The task of the children’s officer is to ensure that a child in need receives adequate care and housing. This is done by asking the court to take the child from the custody of its parents and place it in a foster home or an institution.

While the children await the court decision, they usually stay in a remand home. These homes are for children in conflict with the law, and do not have facilities to care for children with disabilities. In the remand homes, the children with disabilities are surrounded by criminals, albeit young ones. The risk of abuse is present and the children with disabilities tend to feel threatened by the non-disabled children.⁵⁷

As mentioned, it can take a very long time for a court case to be decided. It is not uncommon for children to spend over a year waiting in the remand home. During this time, the children's officer assesses the capabilities of the child, together with an officer from the Kenyan Institute for Special Education, to advise the court on where to put the child to make sure its needs are met.

Once this advice has been given and the judge has passed the verdict, it is extremely difficult to find a place for the disabled child. The child spends its time waiting in the remand home. The maximum time for staying in the remand home is 3 years, and this is occasionally met, but a child that has nowhere to go stays in the temporary prison.

Children with disabilities are not reached on a policy level. Speaking to the highest civil servant on child protection matters in Kenya, he assured us that Kenyan policy was completely inclusive: children with disabilities do not receive special treatment. They are protected equally, along with all other Kenyan children. In a special database that was originally designed to collect statistics on disabled children in need, only 2 children with disabilities were registered.⁵⁸ Inclusive policy in fact means that children with disabilities are reached by protection policy. In this sense, naming one's policy inclusive serves to hide the reality.

5.1 The situation of homes for children with a disability

Implementation of the Children's Act requires resources not only to report to child officers or other authorities such as the police, but also to ensure that the child in need is protected. Where there are no family members or other good Samaritans to take care of children with disabilities, they need to be put in facilities for housing and care. The quality of the facilities and the home is entirely dependent upon funding. This funding of government facilities is in turn dependent upon the political priority that is accorded to the protection of children with disabilities. The reason that there are not nearly enough homes in East Africa that can cater for children with disabilities is because their special needs in terms of protection and care are not seen as a priority.⁵⁹

The facilities and state of the homes that were visited varied greatly, ranging from modern facilities that gave care at the highest level of standards for developed countries to boarding schools where more than ten children lived with a family in a small home in conditions that were unclean and lacked all structure. The staff of all the programmes was generally very motivated, as they had to be to continue with few people believing in their cause. The homes that were visited generally receive

insufficient tuition and boarding fees because the majority of the parents are quite poor, and if they do have money, they would not spend it on the disabled child.

The boarding schools that were visited had not always been able to protect the children against abuse. Some of them reported that children were abused by staff. It was sometimes clear that this was due to inadequate resources to pay for professional care for the children. This raised the dilemma of whether these projects should continue knowing that there was a certain risk, versus knowing that in the homes the children with disabilities at least received basic care. In most cases, the children were in fact attended by a great and committed staff and their improvements were marked.



5.2 Gaps in protection

The most important gap in protection is the lack of response to violence against children with disabilities.⁶⁰ This is a structural problem since the lack of response gives the authorities the impression that violence against children with disabilities does not exist and therefore that there is no need to spend resources remedying the situation. Dozens of cases of abuse that had never been reported were uncovered at the schools visited. Many chose, now that it was too late, to charge the offenders. Several more reports were found of children living locked up in deplorable conditions with the

knowledge of the children's officer. These were acted upon by contacting higher authorities.

Although the description of the cases makes it clear that there is widespread and severe abuse of children with disabilities, it is not possible to get an indication of how many children with disabilities are abused annually.

The lack of involvement of the police and the courts means that there is not even a beginning of justice being done for the abused child. The informal arrangements are understandable from a cultural point of view, but there should be limits to the severity of cases that can be settled by a chief or village elder.

The priority for violence against children with disabilities is low, fitting in neither with child protection policy nor with disabled policy. Civil servants and officials – especially civil servants working in the field and confronted with practical necessity – point to other departments or even NGOs for the task of caring for children with disabilities.⁶¹

Other systemic problems occur in the failure of the government to impose its laws. This can be ascribed to lack of priority and a lack of resources. It will be further discussed in the following section.

6. Legal protection against violence

All children are protected by international law against violence and abuse. This protection will exist only on paper until civilians, organizations and governments make an effort to extend their care to the most tender of human beings.

6.1 International Conventions

Children with disabilities are internationally recognized to be in special need of protection. This is reflected in the texts of the following international human rights instruments: the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the African Charter on the Rights and Welfare of the Child (ACRWC), the Convention on the Rights of the Child (CRC) and of course the Convention of the Rights of Persons with Disabilities (CRPD).

The rights that are written up in the above conventions give rise to different obligations for nations that have ratified them. The so-called first generation rights, which are the civil and political rights, lead to the state's obligation to protect without any reserve. The difference between these and second-generation rights is that the latter rights are to be respected, but only to the extent that a country is able to, taking account of its resources and technical capacity. The rights taken up in the CCPR are generally understood to be first generation rights.⁶²

A new United Nations Convention has entered into force since enough states have ratified it: the UN Convention on the Rights of People with Disabilities (CRPD).⁶³ The purpose of the Convention, and hence the policy of all States Parties that ratify it, is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."

The CRPD is a convention that does not establish new rights; rather, it codifies existing rights and specifies them for people with disabilities. This means that the protection against violence that it mentions is a first generation right. The articles named below have their counterparts in the CCPR.

The definition of disabilities covers a spectrum of various levels of functioning at bodily level, personal level and societal level. Disability⁶⁴ denotes all of the following:

(a) impairments in bodily functions and structures

- (b) limitations in activity
- (c) restriction in participation

The purpose of the CRPD is to ensure that people with disabilities are helped to achieve their “effective participation in society on an equal basis with others.”⁶⁵

Children are covered in article 7, which restates the States Parties’ obligation to ensure equal rights and fundamental freedoms for all adults, reiterate the primary concern for the best interest of the child and demand that they be given the opportunity to express their views freely on all matters affecting them.

A number of articles refer to acts of violence.

In article 14, concerning liberty and security of person, it is stated that persons with disabilities, on an equal basis with others, are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

In article 15, which guarantees freedom from cruel and inhuman treatment, it is demanded that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Legislation is to be enacted to ensure that people with disabilities are specifically included in this guarantee.

Article 16 of the Convention aims to protect people with disabilities from exploitation, committing States Parties to take all appropriate measures to protect them from all forms of exploitation, violence and abuse, including gender-based aspects. Specifying that further, the Convention calls for gender and age-sensitive assistance in order to help recognize and report incidences of exploitation, violence and abuse. If abuse, exploitation or violence does take place, States Parties are held to promote recovery, rehabilitation and reintegration of survivors of such incidents. Finally, the States Parties promise that they will do all they can to ensure that the offenders of such crimes are investigated and prosecuted.

Article 23, sub 3 goes into preventing concealment, abandonment, neglect and segregation of children with disabilities by having States Parties give information, services and support to children with disabilities and their families.

The specific obligations that follow from the CRPD are comparable to those that follow from the CCPR, since the CCPR is an ‘inclusive’ instrument. However, the United Nations has, in developing this Convention, given the message that more is needed than ‘including’ people with disabilities; their special needs oblige nations to pay special attention.

The rights of children to be free from violence is a first generation right in so far that it obliges states to protect the right to life and protect people from cruel and inhuman treatment. These rights are taken up in the CCPR in articles 6 and 7, and the “requirement... to take steps to give effect to the Covenant rights is unqualified and of

immediate effect. A failure to comply with this obligation [to give effect] cannot be justified by reference to political, social, cultural or economic considerations within the State.”⁶⁶

States cannot be satisfied if their agents refrain from violence. As the General Comment 31 to the CCPR states: “The positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”⁶⁷ Specifically, the General Comment adds: “In article 7...States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.”⁶⁸ This is a clear reference to the family setting in which children are abused by their parents.

The nature of the special protection that should be accorded to children is further interpreted through the comments on article 24 of the CCPR. The interpretation of the pre-eminent jurist Nowak is taken as a standard against which countries are measured by the Human Rights Committee: “It is clear, in any event, that article 24, paragraph 1, is different in nature to CRC rights and obligations, being, as described by Nowak, a comprehensive duty to guarantee that all children within a State Party's jurisdiction are protected, whether through support for the family, through support for corresponding private facilities for children, or other measures. The obligation is not complete, extending only to such protective measures as required by the child's status as a minor.”⁶⁹ What this last statement means is that governments are responsible not only for keeping the child from being abused, for example within the family, but that the government is responsible for providing a setting in which this protection is possible and promoted. It goes further than having a police, but entails aiding families at risk in order that their children do not become the innocent victims of their parents' incapacities. In its General Comment 17, the Human Rights Committee elucidates what it expects of all governments: “every possible economic and social measure should be taken to ...prevent them from being subjected to acts of violence and cruel and inhuman treatment ...” and notes that governments often underestimate this obligation.⁷⁰

6.2 Regional: The African Charter

The African Charter on the Rights and Welfare of the Child devotes an article to children with disabilities. It stipulates the right of children to receive special protective measures, and states that the States Parties have committed themselves to give assistance and guarantee accessibility, subject to their resources. Article 16 provides that children be protected from abuse: “States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or

mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.”⁷¹

There have not been any communications to the Committee on the Rights and Welfare of the Child, so there is no jurisprudence to clarify the extent of the care that is intended by the drafters of the charter.⁷²

Kenya is party to all of the international human rights instruments. Uganda and Tanzania are party to all but the most recent CRPD.⁷³

A Report of The African Committee of Experts on the Rights of the Child summarized the deplorable state of affairs in 2005: “African children represent more than half of the continent’s population and their vulnerability cannot be over-emphasized. Africa’s children are most disadvantaged in many ways: their life chances are limited; they are exposed to violence; they are used as child soldiers; they are vulnerable to malnutrition and diseases, in particular the HIV/AIDS pandemic; they are deprived of education; their rights are violated; they are abused and exploited. While Africa’s children are most vulnerable, addressing their vulnerabilities and rights has not been prioritized at national level. Governments continue to overlook children issues when formulating national development policies and programmes and the Ministries responsible for implementing activities on children are not allocated sufficient budget.”⁷⁴

6.3 National law and policy

Kenya

There are three types of policy and legislation that have been investigated for the purpose of this study. The rights and protection of children, the rights and protection of people with disabilities, and penal law concerning violence against children with disabilities.

The list of laws is meant to give an indication, not a full account of the laws governing the protection of children with disabilities against violence. The same holds for the gaps that are experienced by practitioners and advocates of children’s rights. These are indications of a limited number of issues that require urgent attention, not all possible issues.

Kenya has a Children’s Act⁷⁵, providing in section 12 the requirement that the State must employ the maximum possible resources to protect and promote the rights of children.

The Children's Act is "an Act of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children's institutions; to give

effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and for connected purposes."

Under this Act, a child is "entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking, or abduction by any person." Part VI establishes Children's Courts to conduct both civil and criminal proceedings on matters involving the care and protection of children, and Section 127 makes it an offence for "any person who has parental responsibility, custody, charge or care of any child to (a) wilfully assault, ill-treat, abandon, or expose him, in any manner likely to cause him unnecessary suffering or injury to health (including injury or loss of sight, hearing, limb or organ of the body, and any mental derangement); or (b) by any act or omission, knowingly or wilfully cause that child to become, or contribute to his becoming, in need of care and protection."

Section 119 defines a child in need of care and protection as "one who has been abandoned,... who is exposed to domestic violence, who has been or is likely to be sexually abused, or who is exposed to any circumstances likely to interfere with his physical, mental and social development." Neglect has been defined in Section 127 as the "failure to provide adequate food, clothing, education, immunization, shelter and medical care."

A child being defined as needy in accordance with the above law gives children's officers the power to intervene. One of these types of children in need concerns children with disabilities that are concealed or mistreated.

The Kenyan Persons with Disabilities Act provides equal opportunities for people with disabilities and prohibits discrimination. It provides a number of ways to help people with disabilities, such as partial tax exemption, waiving of fees for court and legal aid, and it gives a National Council for Persons with Disabilities the power to implement provisions such as adjustment orders to make buildings wheelchair-accessible. The Act has an article on concealment of persons with disabilities, for which the perpetrator can be fined a maximum of 20,000 Kenyan Shillings (approximately 200 euros). It makes no other mention of violence against children with disabilities.

The Penal Code of Kenya names (attempted) defilement, (attempted) assault and murder as punishable offences. The penalties range from 3 to 20 years. Part of the penal code is the sexual offences act, which includes the provision that abuse of a person with a mental disability counts as an aggravated offence.

Uganda

Children are protected from abuse and neglect under the Children Act (2003) (which updates the 1996 Children's Statute), the Constitution (1995) and the Penal Code (amended 1990). The Children Act states that it is the duty of a parent, guardian or any person having custody of a child to "protect children from discrimination, violence,

abuse and neglect." Article 24 of the Constitution protects every person from torture, cruel, inhuman or degrading treatment or punishment. Articles 219, 222 and 235-246 of the Penal Code cover bodily harm and assault. Defilement of a person with a disability is aggravated defilement and a capital offence.

The Ugandan Children Act has an article on service provision to children. The Children Act is based on the African Charter, which puts emphasis on the responsibility of the parent.

The Ugandan Disability Act guarantees rights to people with disabilities that can be claimed in a court of law. The provision of health and education have already been used to sue the state for damages.⁷⁶

Tanzania

There is very little law protecting children (with or without disabilities) from violence. A children's law is in the making and will be discussed at the end of 2008, but it does not offer specific protection to children with disabilities.

Tanzania has the Disabled Persons Care and Maintenance Act of 1982. In the Child Development Policy the responsibility for children is divided between parents, NGOs and the government.

A problem is that legal services are lacking or very expensive. This means that they effectively do not have access to justice since they do not have the professional skills of lawyers.

The Ministry of Health takes care of children whose parents have separated, but this does not nearly cover the realm of children with disabilities that are in need of special protection. Furthermore, the social welfare workers involved only visit once to attempt to negotiate a settlement and do not follow up such cases.⁷⁷

Tanzania has begun implementing policy to improve the situation of children, notes the Committee on the Rights of the Child in 2006: "The Committee welcomes the adoption of a National Plan of Action by the Ministry of Community Development Gender and Children in 2003, aimed at combating violence against children and women. It further notes with appreciation the establishment of a Counselling Unit in Zanzibar to which neglected children can direct complaints."⁷⁸

6.4 Gaps in legal protection

Kenya

While it is true that the state of legal documents is currently in flux, at the moment there are a number of gaps in legal protection.

In the Kenyan law system, it is noteworthy that there is no protection against violence in the acts that concern people with disabilities. Furthermore, while the Sexual Offences Act is an improvement on the Penal Code, it only names people with mental disabilities as an especially vulnerable group.⁷⁹

Although the system is changing, victims of abuse and neglect tend to be handled in the criminal law system, which entails putting children in remand homes as they await their trial for placement in a home or with a different family.

Kenyan law allows for the possibility of seeing children with disabilities as vulnerable witnesses, in order that they may be represented by a third person in court. Under the Kenyan legal system, such a witness would not be allowed to give testimony because it is considered hearsay. This and other legal loopholes and inconsistencies need to be remedied to improve the capacity to prosecute offenders and protect survivors of violence.⁸⁰

The phrasing of the Kenyan law does not give enforceable rights to all citizens of Kenya, but rather asks the government to make a maximum effort to ensure that the rights named can actually be attained. This is different in Uganda, where successful claims have been made to demand for education, for example.⁸¹

Uganda

In Uganda, cases of neglect and abuse tend to be handled through the criminal law system. This means that children that are victims of abuse and neglect will be put in remand homes.⁸²

The age of consent is important for determining what constitutes abuse. For this reason, the Ugandan government has wanted to lower the age of consent in order to reduce the amount of abuse taking place.⁸³

There is only one piece of legislation protecting Ugandan children with disabilities from abuse. This is the form of aggravated defilement when the victim has a disability. Beyond that, there is no recognition in the law that children with disabilities are in need of special protection.⁸⁴



Tanzania

The Tanzanian legal system has only very recently developed any sort of legal protection for children. It had no notable protection for children at all, though a children's bill has been developed that looks to be tabled in late 2008.⁸⁵ If and in what state it will be passed in the parliament remains to be seen.

There has been a policy since 2003, but it appears not to be enacted due to a lack of resources, as noted by the Children's Rights Committee in 2006: "Nevertheless, the Committee is concerned that appropriate mechanisms for containing or preventing abuse of children are insufficient."⁸⁶

This echoes the admission of the Tanzanian government, accepted by the Committee: "The Committee acknowledges

that the economic and social difficulties facing the State Party have had a negative impact on the situation of children and have impeded the full implementation of the Convention. In particular, it notes the impact of the structural adjustment programme, high external debt payments, and increasing levels of unemployment and poverty within the State Party. The Committee further notes that the limited availability of skilled human resources also adversely affects the full implementation of the Convention."⁸⁷

Furthermore, Tanzania was strongly criticized for being slow to ratify both the UN Convention for the Rights of Persons with Disabilities as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸⁸ These omissions are seen as being contradictory to a policy to "assist disadvantaged groups" and the prohibition of "cruel, inhuman or degrading punishment and treatment," which the government professes to do in its report to the African Charter.⁸⁹

6.5 Implementation of rights

The rights accorded by the laws are implemented to varying degrees. The most commonly heard complaint of most of the respondents is that the laws and regulations are a paper reality, but that the actual implementation of them takes a tremendous

effort that is beyond the capacity of the government.⁹⁰ This is aside from the fact that many disabled people do not have the funding to go to court in the first place.⁹¹

Kenya

Examples of lack of implementation abound. In Kenya, the Persons with Disabilities Act has not been fully implemented, owing to a lack of funds. The organization that is to implement the law, the National Council for Persons with Disabilities, is both underfunded and faced with a 'lack of priority attached to persons with disabilities', and has not even finished making the rules and regulations that are necessary to implement the law, over five years after it was passed.⁹²

Even when the law is fully implemented, such as the Kenyan Children's Act and the Persons with Disabilities Act, it may not receive sufficient attention to be enforced. The system of the Children's Act works with children's officers, who target all children in need as described under the section on national legislation. At the ministerial level, however, when the subject of children with disabilities is brought up at the Children's Protection Department, it refers to the Department of Social Services.⁹³

The children's officers who are in charge of protecting children at district and provincial levels have neither the time nor the priority to work on cases of children with disabilities, referring them to the Department of Social Services. The Provincial Children's Officer of Nyanza had been involved in trying to scrap the section on children with disabilities in the review of the Children's Act of Kenya, "because we can't do everything".⁹⁴

A major hindrance to the implementation of legislation and policy is the lack of knowledge within the departments of the matter at hand. The National Council of Children's Services, the organ in charge of disseminating policy and advising on new policy, for example, was not aware of the policy that had been in place since 2004 and could therefore not answer any questions about it, only requesting a copy in order to give it to a consultant, who was hired to write a summary of all the documents regarding plans for people with disabilities and write a new action plan. At the ministry, the very same policy was seen to guide the government's activities on disabilities, although the civil servant coordinating the policy didn't actually do anything with it.⁹⁵

Similarly, the National Council for Persons with Disabilities, a parastatal organ created in the Persons with Disabilities Act, was not able to provide details on the views of the Council regarding the Persons with Disability Act, though recognizing that it was not being implemented correctly.⁹⁶

Uganda

The major weakness of the Ugandan Children Act is that resources are limited to implement its protective measures. The African Network for the Prevention and Protection of Children against Abuse and Neglect (ANPPCAN) reveals that, therefore, "Uganda remains one of the African countries with most violations of children's rights. Very few abused children receive justice or redress from the courts of law. A Reuters poll in July ranked Uganda one of the most dangerous places for children due to war, sexual abuse and work. This is partially attributed to loopholes in the law. A concept paper on the Children Act by the Uganda Law Reform Commission states that the implementation of the Act is undermined by, among others, inadequate human and financial resources in the established institutions and the negative attitudes of the society on matters of children's rights."⁹⁷

In Uganda, rights exist on paper, but are not implemented, especially concerning the disability act. The law is phrased in such a way that it provides direct and enforceable rights, which has led to a number of successful claims for provision of rights. These are not given, but the state is forced to pay damages.⁹⁸

An example serves to illustrate the above. A Probation and Welfare Officer in Uganda in charge of the Children Act of Uganda notes that she is the only one of her colleagues that works with cases of children with disabilities. The local government in Kampala has approved a budget line but will refuse to pay out when given a proposal that deals with children with disabilities. The subject of children with disabilities is never discussed unless it is brought up by a person of standing. The care is left to the NGOs.⁹⁹

Tanzania

Tanzania, which has very little legislation directed at protecting children from violence to begin with, has had great difficulty in developing mechanisms to implement it. The same holds true for policy to monitor the situation in remand homes.¹⁰⁰

In Tanzania, a government publication on disability policy reads as a long mea culpa as it notes that acts that, at that time (2004), were passed more than a decade ago had not been implemented to the degree where the government could actually provide care for people with disabilities, enforce legislation, or even provide information. Even now, legal requirements to ensure that parents take responsibility for their children are not enforced because there is no organization made responsible within the government.¹⁰¹

6.6 Conclusion: legal protection against violence for children with disabilities

Much is being done in Uganda, Kenya and Tanzania to increasingly comply with norms of international law. That having been said, the inventory of this report on the lacking in the legal systems is undoubtedly incomplete, due to the sheer size of the problems encountered by these States Parties, not in creating law, but especially in implementing it. From data gathered during the field trips and through the reports of NGOs, country reports and reports of the Children's Rights Committee, it can be deduced that Kenya is leading in both legislative protection and implementing these laws. If Kenya is measured against the standard demanded by not only the Convention on the Rights of the Child (CRC) but also the Covenant on Civil and Political Rights (CCPR), the gaps in protection leading to loss of life and severe impairment of development are too large to be in accordance with these international obligations concerning the protection of life of children with disabilities and giving them real and meaningful special protection. A breach of the CCPR can be observed in Tanzania and Uganda as well.

The legislative part is improving rapidly, which may give the States Parties a clearer view of the path toward implementing these laws. An interesting way to achieve this is shown in Uganda, where persons have successfully sued for the rights accorded in the acts.

7. Positive trends in protection and care for children with disabilities

A number of initiatives have been developed that look promising in dealing with children with disabilities. The most important effort in all countries is the improvement of education and making it free. Initiatives to provide protection, shelter and legal aid to children who are abandoned and abused is developing at a much slower pace.

7.1 Education

In Kenya, Uganda and Tanzania, children with disabilities are included in their respective programmes for free primary education. There is indeed wide agreement that education is an important strategy to empower people with disabilities.¹⁰² As the Kenyan National Commissioner for Human Rights remarked: "Ultimately... education for children, regardless of their disabilities, made a difference in their lives.... Children with disabilities were well able to acquire skills that they would use in life to earn a living or become independent socially."¹⁰³

The Kenyan educational system is one of the more advanced government facilities. For all its shortcomings, the government has clearly made efforts to improve the facilities, and is actively involved in improving its policy of education. Education receives relatively good funding from the government, and there is also a structured system for collecting donations from governments and international organizations.¹⁰⁴

Special education is a part of the educational system. In Kenya, the enrolment of special needs primary education, now almost 50 thousand children, appears to have increased steadily.¹⁰⁵ Of an approximate 700 thousand¹⁰⁶ children with disabilities, however, there is still a long way to go to ensure universal primary education for them.

One of the hindrances to school attendance is the fact that private schools are too expensive for many parents to bring their children to, while the facilities that can be offered to children with disabilities are generally good. At the same time, there are insufficient affordable schools for children with special needs. This is an area in which donors can step in to improve school attendance. The government offers a programme called the Kenya Education Sector Support Programme (KESSP), in which centrally collected donations are distributed among 23 investment programmes, including special needs education. Other schools can be supported directly.¹⁰⁷ Insufficient information was available at the time of the investigation on the exact distribution of the money, however.¹⁰⁸

The chances of abuse diminish as soon as a disabled child enters school. Education takes children with disabilities out of the home and brings them into contact with teachers and social workers. This has important implications. The majority of the police reports are made through the intervention of a teacher or social worker.¹⁰⁹ Education is part of the formal system that can bring injustice in the form of abuse to light and ensure that it is dealt with through the formal justice system. On the other hand, the educational system is currently not equipped for that task. This is something to which more attention could be paid by training teachers for special education.

There is another contingency to the reduction of abuse, namely that mainstream education or even education among disabled peers can lead to abuse. According to interviews with teachers, this type of abuse is much less prevalent than the abuse that occurs in the home, and the environment gives the victim more opportunities to warn others about (impending) abuse.¹¹⁰ The abuse that does take place may have to do with the fact that inclusive education leads to non-disabled children taking advantage of their physical or intellectual strength to taunt or abuse children with disabilities.¹¹¹ This includes abuse that goes beyond teasing, especially when teachers do not promote accepting children with disabilities.

The Ugandan situation is similar to the situation in Kenya as regards the organization of the educational system. There appeared to be more complaints about the fact that there were too few schools to accommodate the pupils that were indicated for special needs education. Furthermore, there is no curriculum for children with intellectual disabilities.¹¹²

7.2 Protective facilities

The facilities that are used to protect children with disabilities if they are taken from their homes are not equipped to deal with children with disabilities. As described above in the section on protection systems, children who are taken from their homes through the intervention of the child protection officer are placed in remand homes for juvenile delinquents, together with the young suspects, to await the trial that will decide on their future place of living.

The remand homes in Nairobi and Kakamega still have a number of children with disabilities that stay with them although they don't belong in the criminal justice system. These children cannot be adequately cared for by the staff because the staff is not trained and because their care tends to take much more time.¹¹³ Furthermore, they have difficulty protecting themselves in the often harsh and difficult world of juvenile delinquency.

It is therefore a good idea that in Kenya there is a system to divert children in need of protection, as described in article 119 of the Child Protection law, away from the criminal justice system and put them in homes that are geared towards protection.¹¹⁴ Unfortunately, there are two problems with this system. The first and foremost problem

is that when police come into contact with children that are taken from the home, they do not first call the child protection officer. Instead, they take the child to the remand home, as if by automatism. Secondly, the remand home is often the only place available to put up the children.

This case applies to all three East African countries. One Ugandan probation officer, for example, typified the situation as follows: “When it comes to placing children with disabilities, it can get tricky, but I no longer want to take children to my own home anymore. So when I saw that 16 children were staying in the remand home too long and there was no place to put them, I decided to leave them.”¹¹⁵

On the other hand, the Kakamega remand home has introduced a policy of refusing placement of children with disabilities that are not suspected of breaking the law. Children with disabilities only stay there if it has proven impossible to find another place for them or if they are suspected of breaking the law.¹¹⁶

In Uganda, there appeared to be even fewer facilities than in Kenya, causing an even more difficult situation concerning placement of children with disabilities that need to be taken away from their home surroundings to avoid further abuse.¹¹⁷

7.3 Awareness raising: be heard to be helped

Children with disabilities are not taken as seriously as their non-disabled peers are. This is in many cases because non-disabled people do not understand what they are trying to communicate. Examples of this abound when children with disabilities come into contact with the police, teachers, or even their parents.¹¹⁸ At the same time, people with disabilities are considered worthless to many. As mentioned above, people with disabilities often suffer more from the negative attitude towards them than from their medical condition.¹¹⁹

Even when people are aware of their presence, people with disabilities often experience difficulties if they need to compete with non-disabled peers for attention. For this reason, children with disabilities are strongly disadvantaged when it comes to the division of scarce resources in IDP camps, but also in society at large. Awareness raising programmes on the plight of people with disabilities are currently small and cannot be said to have a great range.

Awareness raising programmes for people with disabilities are no novelty in Kenya, where a strong lobby used to exist when the new constitution was being drafted. As the new constitution was eventually not accepted, much of their work was lost. At the same time, the Persons with Disabilities Act stems from the same time, as a reminder that the Kenyan government was serious about implementing rights for people with disabilities. The fact that there are still insufficient government programmes that guarantee a dignified life for people with disabilities sustains their hardships and thereby confirms the prejudices of ‘being worthless’ with which they struggle.

Currently, the lobby is dispersed and incoherent. As Ms. Sinyo, state counsel and co-author of the UN Convention on the Rights of Persons with Disabilities, states, “The lobby needs to all come together so that we can convert people to include children with disabilities in the group of vulnerable children, include people from treasury so that there’s money, include people from lawmaking, so that laws can be changed.”¹²⁰

The Ugandan situation is similar in the sense that after a very fruitful period in the last decade of the last century and the first years of this one, the lobby and awareness of the issue has lost much of its prowess. There is a sense of frustration among the people working with children with disabilities that they understand the problem but are unable to unify to activate or pressurize the government.

7.4 Area Advisory Councils: from empty shells to communication funnels

Kenya possesses a community-based participation structure for safeguarding the interests of children at the local level. It is composed of the children’s officer, the district officer (in charge of justice affairs), the police, the social welfare officer (in charge of implementing the Persons with Disabilities Act), councillors, judiciary, private initiatives and NGOs that are geared toward the welfare of children.

These Area Advisory Councils (AACs) report on local activities, plans and problems to the National Council for Children’s Services (NCCS). The Children’s Act 2001 gives the mandate to establish the National Council for Children’s Services (NCCS), which supervises the planning, financing and coordination of child welfare activities and also advises the government on the subject.¹²¹

The structure of the AACs is potentially an effective structure for giving attention to children with disabilities. Not only has it failed to do this, however, the potential of the AAC structure goes unfulfilled as the NCCS does not have adequate contact with them, nor do the AACs themselves possess the quality to give impulses and direction to the local projects.¹²² One of the reasons why communication may be difficult is that there are eight organizational levels separating the child’s reality from the policy-making ministries, and seven levels to the NCCS.¹²³ It would be exceedingly difficult to communicate even the simplest ideas or messages to the national level, let alone a sensitive and less popular issue such as children with disabilities. The NCCS states that, in fact, they have no contact with the AACs.¹²⁴

7.5 Empowerment of families

“The best way to reduce the vulnerability of children with disabilities is to empower families to take care of them better. Although in urban areas the family ties may have weakened, at least in rural areas they still exist. It is better than to institutionalize the children.” The statement is from Dr. Thenya, the director of the Nairobi Women’s Hospital.¹²⁵ The fact that children with disabilities experience so much abuse, neglect

and rejection is linked to the most intimate bonds that all children have and, due to poverty, culture and ignorance, children with disability miss.

A pilot project has been started in Masaka district, Uganda, that establishes parent support groups for parents of children with disabilities. The functions of the group are to advise and support one another as necessary. The support is helpful for families that have difficulty accepting their disabled child, single parents and parents whose children have been abused.

The parent support groups start from two premises, the first being that if parents accept their disabled child, their surroundings are far more likely to do the same.¹²⁶ The second premise is that children with disabilities will almost certainly take more time and money to bring up than non-disabled children.¹²⁷ The parents that can live by these norms are found to be more successful in bringing up their disabled child.

7.6 Recognizing children with disabilities as vulnerable

The Kenyan government has a system of aiding orphans and vulnerable children (VCO) that works with a system of appraising the neediness of a child. There are three levels, the worst being without parents or support, the middle group being a child with a single parent and little income, and the third form of neediness is a child that has parents with HIV/AIDS.

The children receive a set amount of money for buying the necessities and taking care of themselves. The grant can help children with disabilities to remain independent and go to school. Research indicates that money spent on the disabled is one of the most effective ways to reduce poverty, since people with disabilities comprise a disproportionate number of the most impoverished people of the world.¹²⁸

8. Development cooperation

In its mid-term report during the Decade of Disability, the Secretary-General noted “that disability was closely linked to social and economic factors, which had impacted on progress in furthering the objectives of the Programme of Action. Its objectives could not be reached in the foreseeable future in the absence of an expansion of international cooperation programmes — both multilateral and bilateral — beyond those available during the Decade [of Disability from 1983-1992].”¹²⁹

When the Decade of Disability had ended at the end of 1992, the UN set out to adopt a successor to this policy. In December 1993 it adopted the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.¹³⁰ This is a non-binding set of rules to which all 191 nations have committed themselves.¹³¹ Rule 22 stipulates that “States will participate actively in international co-operation concerning policies for the equalisation of opportunities for persons with disabilities.” In a survey conducted from 2004-2005, 65 of these states responded that they were participating in an international aid programme.

The current article 32 of the CRPD continues to stimulate developmental cooperation. Although it does not regulate any form of cooperation, it suggests capacity building, education and including concerns for people with disabilities in all developmental aid. All forms of cooperation for capacity building and education can be beneficial to people with disabilities: the nature of the CRPD is to draw extra attention to people with disabilities. Therefore, although it is not an explicit requirement, it is within the spirit of the CRPD that programmes funded under the CRPD contain explicit references to people with disabilities and activities to specifically support them. This approach is called the twin-track approach.

8.1 *Twin-track approach*

A Programme of Action was adopted in 1982, the purpose of which was to achieve equality in the opportunities for disabled and non-disabled people.¹³² It intended to part with the view that people with disabilities should be treated as vulnerable people and instead provide them with opportunities to develop themselves by making the environment, communication and institutional arrangements more accessible to them.

The introduction of ‘inclusiveness’ – taking account of the needs of persons with disabilities in all policy matters – did not mean that people with disabilities did not merit special attention. This has seemed to be the case in some areas, however. Inclusive policy became policy that in theory accounted for persons with disabilities, but in practice did not reach them.¹³³ This has led to a more recent movement towards

“a sharper focus on disability issues, paying attention to the rights of those directly affected.”¹³⁴

The resulting policy on inclusiveness can be described as a twin-track approach: “There is a need both to mainstream disability issues across all relevant programmes and projects and to have specific projects for disabled people. This means that disability concerns should be recognised in the main EU funding programmes, such as transport and infrastructure, but also addressed through specific disability projects (including capacity building) for disabled people.”¹³⁵ This means that efforts are directed towards ensuring that the rights of people with disabilities are mainstreamed into regular policy, but also that the greater vulnerability and need for protection are recognized in policy and practice.

8.3 Violence and disability

Despite the clear link between being a victim of violence and having some form of disability, there has not been an institutional link of these subjects in any of the countries studied, nor the European Union nor the Netherlands. As described in the section on implementing rights in Kenya, child protection departments and departments charged with policy on the disabled refer to each other when asked about issues of violence against children with disabilities.

The connection of these two themes in the UN CRPD may lead to a change in this institutional divide that leaves disabled children largely unnoticed as they are abused.

8.4 The Netherlands

The Netherlands has not ratified the Convention on the Rights of Persons with Disabilities. The government has stated that it intends to ratify it before the next elections in May 2010. There is still some legislation that needs to be adapted before ratification can take place. The government has stated that it will take the provisions of the Convention into account for the formation of its policy in the coming term.¹³⁶

The Dutch government has divided the subject of violence against children with disabilities between the minister of Foreign Affairs and the minister for Development Cooperation. The ministry of Foreign Affairs has targeted violence against children as a priority in his letter. It states that it will help developing countries implement violence reducing measures.¹³⁷ The minister for Development Cooperation has committed himself to reducing child mortality and schooling.¹³⁸

The minister for Development Cooperation has announced that there is no need to adapt any of the policy for his department due to the fact that attention will not be paid to certain groups of underprivileged people, such as people with disabilities.¹³⁹ Furthermore, the minister for Development Cooperation notes the lack of priority for people with disabilities in the countries with which the Netherlands has a development

relationship. He is of the opinion that these countries should prioritize policy on persons with disabilities before he offers assistance.¹⁴⁰ He has, however, stated that being a person with disabilities is the worst possible plight in a developing nation and that he expects that there is money going to aid persons with disabilities from NGO's.¹⁴¹

8.4.1 Policy effectiveness not measurable

It is not possible to say how much money The Netherlands spends for development cooperation on children with disabilities. This is also true for aspects of policy that are priorities for the Dutch government, such as orphans of HIV/AIDS victims, stopping child labour and violence against children. It is not possible to say if the money that is spent on these subjects, if any, has any effect.

This is in the first place due to the way that ministries collect information about money that they spend, whether it be through NGO's in the co-financing program (CFP), as bilateral aid or as a multilateral donation.¹⁴² The financial codes to report the amount of money that is spent are so general that they preclude the possibility of tracing either the type of program that was implemented with it or the goal that was to be achieved.¹⁴³ Programs to ban child labour, for example, are reported under the same code as employment generating projects; programs to support HIV/AIDS orphans are reported under the same code as food programs for AIDS patients; supporting children with disabilities is seen as identical as caring for the elderly and there is no information collected regarding violence against children except child soldiers, a too narrow definition. This information is not usable to show whether any progress is made in this field. Information gathered from policy evaluation, however, indicates that policy is not effective and effects are not measurable.¹⁴⁴

Often, lack of effectiveness has to do with poor definition of goals or a lack of focus on these goals.¹⁴⁵ The ministry is not prepared to add focus by focusing on a target group, such as children or persons with disabilities. He takes for granted, as he states in his policy brief, that if a group is no longer targeted, such as females, the donor interventions decrease. This decrease is then supplanted by mainstreaming. Targeting a group on the other hand increases aid to this group.¹⁴⁶ As seen with the term 'inclusion', 'mainstreaming' is little more than rhetoric, since it does not indicate material support.

The Netherlands is taking an increasingly isolated position within and outside of Europe by refusing to target persons with disabilities for development cooperation. Many European states, including the United Kingdom, Italy and Germany, the European Union, the United States, Japan and Australia all have a policy that includes special attention for persons with disabilities.¹⁴⁷

Terre des Hommes has gathered specific information for a number of project types, including those on children with disabilities, HIV/AIDS orphans and child exploitation,

and this puts the organization in a position to test whether it has achieved its goals. The ministry of Foreign Affairs, on the other hand, cannot say what support it has really given to children that are in situations of child labour, victims of violence or to HIV/AIDS orphans. This makes the remark by the minister for Development Cooperation misleading, since he knows that he will never be able to see how much money is being spent on persons with disabilities by The Dutch government. The administrative procedure that would disclose all of this information is almost identical as the current one since the figures for money spent are still entered, only into more subcategories. Bureaucracy is not a threat for obtaining more information. This makes it possible for parliament to better control how money was spent and makes an evaluation of the expenditure much simpler.

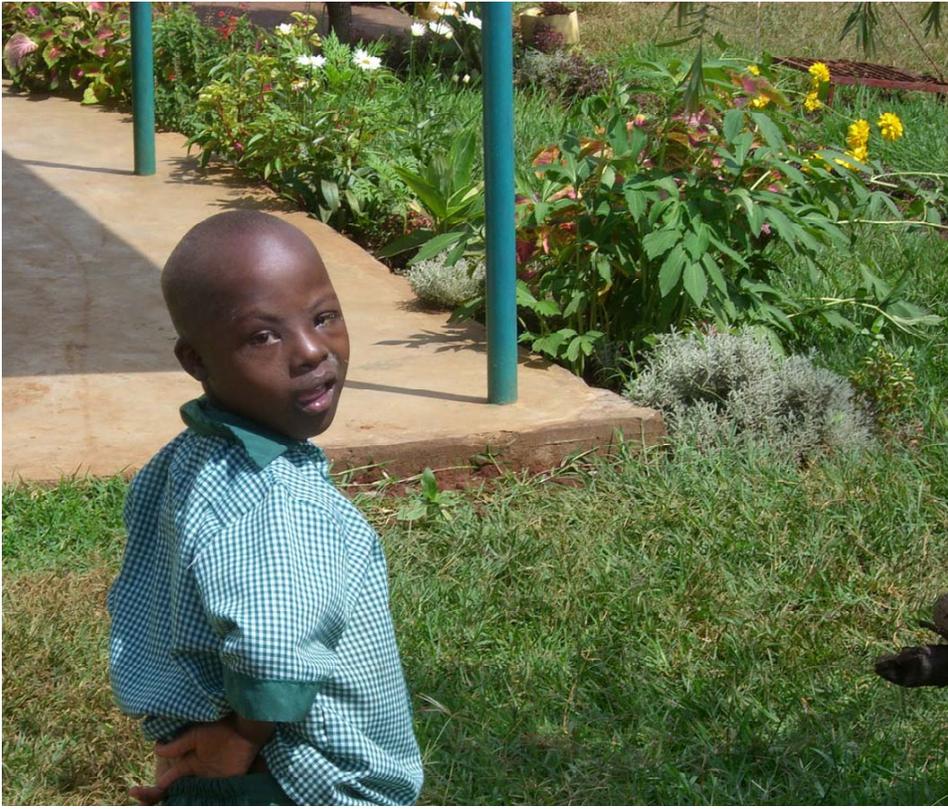
8.4.2 Twin-track approach

Just as the minister has held off targeting groups, it refuses to follow the rest of the world in adopting a twin-track approach. The minister feels that this would not fit in the approach that has been chosen in the previous years, which has been to intervene in the processes that lead to poverty, according to the minister including sustainability, good governance and security.¹⁴⁸

Interestingly enough, the minister has instructed to target females as a group. He notes that donor interventions have reduced due to the policy of mainstreaming and has instructed the embassies to target women's rights projects in bilateral aid projects.¹⁴⁹ This is a clear negation of his own policy, indicating that other groups may also become eligible to be not only mainstreamed but also targeted – the definition of the twin-track approach. Criteria that the minister has proposed in the mentioned policy brief are 1) lack of political will to follow mainstreaming up with allocating financial means and priority and 2) lack of coherent and result-oriented donor intervention. This report shows that both qualifications are fitting here, as the political will has been shown to be absent and a lack of programs – even if the individual programs are often of high quality.

8.5 Other countries

The United Kingdom has led the gradual change of policy from focusing on inclusion and mainstreaming to the twin-track approach. This is, as can be seen from the above Dutch approach, because if the focus is on mainstreaming and inclusion only, aid rarely if ever reaches people with disabilities.¹⁵⁰ Following its lead, many European countries, the United States, Japan and the European Union have decided that there is a need to focus programmes directly on the needs of people with disabilities if their rights are to improve.¹⁵¹



9. Conclusions and Recommendations

This investigation confirms that there is a high level of violence committed against children with disabilities. There are many forms of physical, sexual and emotional violence. This report focuses on criminal violence. The most prevalent form of violence is criminal neglect and abandonment. In this situation, children with disabilities are severely malnourished, never cleaned, permanently locked up or simply abandoned in an isolated place and left, literally, to die.

The culture in East Africa is conducive to this treatment, as it contains widespread belief that children with disabilities are cursed and unworthy. The difficulties in bringing up a child with a disability often lead to abusive treatment while the extra cost of the upbringing is often not seen as worthwhile.

A great number of children with disabilities in East Africa are in urgent need of shelter and care. Cases are rarely reported to police or children's officers, however. Reporting cases is not deemed worthwhile and there is often a local solution that avoids the involvement of the government. When cases are reported, police are sometimes slow to act.

The subject of violence against children with disabilities therefore never becomes a political priority and the amount of resources for the shelter and protection of children with disabilities is negligible.

The legal protection against violence is best organized in Kenya, with Uganda and Tanzania lagging, although they are catching up. Invariably, however, the implementation of these rights is marred by a lack of financial resources.

The government policy is in name 'inclusive' in the sense that it can theoretically be applied to children with disabilities. In practice, however, children with disabilities are never reached by protection policy. Disability is not a priority for support, and few resources are allocated to protection or care, even when a policy for children in need exists. This confirms that, in spite of improvements, the situation of children with disabilities can worsen - that is, that they are 'weeded out' from improvements.

The applicable conventions for violence against children are first and foremost the Covenant on Civil and Political Rights (CCPR) and the UN Convention on the Rights of Persons with Disabilities (CRPD). The latter convention does not introduce new rights, but has been written to give the necessary specific attention to the protection of the human rights of these people. These Conventions protect children with disabilities against violence and guarantee them special care.

The fact is that Tanzania, Uganda and Kenya are all party to the CCPR and their inability to protect children with disabilities against violence constitutes a breach of articles 6 and 7.

The practice of development cooperation has changed in the last decade, moving increasingly from an 'inclusive' policy to one that follows twin tracks. This means that not only is policy applicable to persons with disabilities, but development is also specifically labelled for persons with disabilities. The fact that a separate UN Convention has been designed even though the rights therein are included in other conventions underlines the fact that the United Nations is also following this twin track; countries like the United States, Japan and the United Kingdom have adopted this practice, as has the European Union. The fact that the Netherlands adheres to an inclusive policy without specifically targeting children with disabilities is not in line with international developments.

9.1 Recommendations for Dutch policy

1. Ratify the UN Convention for the Rights of Persons with Disabilities.
2. Include children with disabilities in the policy to stop violence against children. Children with disabilities are more likely to be victims of violence, girls being significantly more often the victim of sexual abuse than their non-disabled peers.
3. Earmark part of the annual budget for developmental aid for children with disabilities
 - a. Alternatively develop a target group approach identical to the one currently active for women.
 - b. Also, specify the financial codes for reporting expenditures on priorities of policy in order that count can be more easily made of effects of these investments.
4. Include children with disabilities explicitly in the External Affairs human rights protection programme.

9.2 Recommendations for Tanzanian, Kenyan and Ugandan policy

The governments of Uganda, Tanzania and Kenya have not recognized the extent of violence against children with disabilities. The first recommendation is that this is done.

1. Ratify the UN Convention on Rights of Persons with Disabilities.
2. Make sure organizations collect statistics on issues of abuse, violence and disability and collate them centrally.

3. Clarify the responsibilities at policy and executive level for the care and protection of children with disabilities such that they form a central part of the child protection system.
4. Ensure that government staff is aware of policy and developments.
5. Raise awareness in schools and with police and the general public on the rights of children with disabilities.

There is a general lack of reporting to police and child protection agencies.

6. Train police, probation officers, doctors, district officers, chiefs, church leaders and children's officers on the vulnerability of children with disabilities.
7. Form working groups in the police to collect complaints and reports.
8. Appoint more child protection officers who can act as informants to police while caring for the children.

The facilities for protecting disabled children in need are insufficient and unknown.

9. Disseminate a list of Charitable Care Institutions (CCIs).
10. Enlarge the budget for institutions that temporarily care for children with disabilities.

The families that currently have children with disabilities need to generally improve their relationship with them.

11. Set up, or where this has been done expand, the programme for parent support groups.
12. Expand the vulnerable children's fund to include children with disabilities.

Annex 1: Questionnaire

Research questions

In researching the plight of children with disabilities, the goal is to establish cause-effect relationships (in the sense of factors contributing to vulnerability to abuse or factors contributing to abuse) in the incidence of violence as well as mitigating factors in the amount of harm done to an abused child.

Context: nature and prevalence of violence against children with disabilities

- How many children with disabilities does Kenya have?
- What circumstances do they live in: shelter/accommodated living, family or street.
- What types of disabilities are recognized?
- What type of abuse takes place? What is the nature and extent of the abuse?
- How is abuse of children with disabilities recognized? Or does it go unnoticed?
- How do the UN Convention on the Rights of Persons with Disabilities and the national law affect the lives of children with disabilities?

Policy

- What place does the respondent's organization take in the 1999-2009 action plan for children with disabilities?
- Who are seen to be relevant stakeholders in making policy, and are their opinions included in policy?
- What effects has the Persons with Disabilities Act in Kenya had for children with disabilities? What has been achieved? Are the current laws adequate for dealing with the most serious problems?
- What constraints are encountered in implementing policy: financial, human resources, political, cultural (do people want the stigma of disability to persist or not)?
- What international aid is directly targeted at children with disabilities?
- Do the European Union, the Dutch government and the Kenyan government have specific policy on children with disabilities?
- Can the general public be made more aware of the nature of lives of children with disabilities?

Execution and effectiveness of programmes

- Capacity and resources of executive organizations.
- Skill level of executive personnel such as doctors, teachers, police, community workers, etc.
- Is there feedback at policy level?
- What is the effect of inclusive facilities? The new policy has some critics.
- Strong and weak points at executive level.
- Outreach programmes and the presence of information in the community on the causes of disabilities and possible ways to live with a disabled child.

- Programmes and a change in the way disabilities are perceived (are the disabled seen as worthy individuals?).
- Programmes that support families and reduce problems.
- Medical information (through prenatal care, for example).
- Early assessment centre programmes, and more children with disabilities being recognized as such.

Mitigating and individual factors

- Is there a relationship between living circumstances and abuse?
- Is there a relationship between type of impairment, sex and (type of) abuse?
- Is there a relationship between type of impairment and (lack of) support?
- Is there a relationship between training of professionals and (lack of) support?

Content of rights

- Type of facilities.
- Content of the philosophy to raise standard of life (such as content of education, tools for medical care or assessment, ideas behind raising awareness within the community, etc.),
- Which children are not reached by the current approach?

General recommendations

- Are simple and cost-effective methods available that will improve the lives of disabled children considerably?
- What cultural factors contribute to the treatment and inclusion, or the opposite (neglect and abuse), of children with disabilities?
- What prevention schemes exist (prenatal and postnatal care)? These may help to prevent disabilities or reduce the severity of a disability.

Specific recommendations

- Type of improvements needed: legal, financial, resources, political, organizational.
- To the Kenyan government.
- To the Netherlands.
- To the European Union.
- To NGOs.

Annex 2: Respondent list

- Mr. E. Mulili, Terre des Hommes, 14 May and 29 May 2008
- Mr. Wambua, Department of special education, Ministry of Education, Science and Technology, 14 May 2008
- Ms. R. Mwikya, Ms. Esther, Childline, 14 May 2008
- Mr. A. Hussein, Department of children, Ministry of Gender and Children's Affairs, Secretary of National Council for Children's Services, 15 May 2008
- Ms. E. Njovoje, Nairobi Children's home, anonymous police officer, 15 May 2008
- Ms. A. Iraki, Every Child Counts, 15 May 2008.
- Ms. J. Kariouki, Mr. F. Jalo, Provincial child protection officer, court adviser in child protection, 15 May 2008.
- Ms. J. Kivasu, Plan 16 May 2008.
- Ms. V. Mbatia, Children's services department, Ministry of Gender and Social Affairs, 16 May 2008.
- Mr. J. Gichana, Ms. A. Akinyi, physiotherapist and social worker, Feed the children, 16 May 2008.
- Mr. Ismail Hussein, youth leader children with disabilities, Mathare Youth Sports Association, 17 May 2008.
- Ms. J. Onyonka, National Council for Persons with Disabilities, 19 May 2008
- Mr. D. Ndegwa and Mr. H. Seifert, Association for the Physically Disabled Kenya, senior staff. 19 May 2008.
- Ms. A. Ngugi and Ms. J. Wambilyanga, Women's Rights Awareness Programme, 19 May 2008.
- Mr. D. Sanoe, Mr. T. Dahou, Ms. S. Mukami, Kenyan Institute for Special Education, 20 May 2008.
- Ms. R. Ndonga (CEO), Ms. W. Kangara, Ms. G. Omweri, African Network for the Prevention and Protection Against Child Abuse and Neglect, 20 May 2008.
- Mr. W. Opuya (director), Ms. D. Mohambe, Ms. R. Amco, Mr. K. Samwe, Ms. E. Omtok, Ms. J. Ateku, Ms. N. Agote, Ms. P. Onyalo, Ms. S. Opiyayo, Ebusiratsi special school, 21 May 2008.
- Ms. M. Didonde, Mr. W. Kutwa, Mr. E. Ouyango, Mikhomo school for the deaf, Maseno school for the deaf, Nyamoye small home for the physically challenged; 21 May 2008.
- Mr. Odongo, Ms. J. Eren, Provincial Children's Officer Nyanza, District Children's Officer Kisumu, 21 May 2008.
- Mr. Geoffrey M. Cherongo, Provincial Education Director Nyanza, 21 May 2008.
- Mr. J. Norre Mulama, Chief North Bunyore, 21 May 2008.
- Mr. Nyagolo, Chief Bunyore East, 21 May 2008.
- Mr. Mr. S. Ndungu Ngare , officer in charge police Luanda, 21 May 2008.
- Mr. N. Odhiambo, Child Protection Unit- Kisumu, 21 May 2008.
- Mr. D. Bundotich, District Officer Emuhaya District, 22 May 2008.

- Mr. D. Omay, Educational Assessment Resource Centre Emuhaya, 22 May 2008.
- Ms. J. Medeva, Social Worker Emuhaya, 22 May 2008.
- Ms. R. Keya Obu, Children's officer Emuhaya division, 22 May 2008.
- Mr. M. Naftali, clinical officer Emuhaya hospital, 22 May 2008.
- Mr. N. Njuri, Mr. D. Diambo, Officer in charge and officer of child protection unit police Kisumu, 22 May 2008.
- Mr. F. Obare, director remand home Kakamega, 23 May 2008.
- Staff of the Kisumu Kids Empowerment Organization, 23 May 2008.
- Ms. P. Joseph, Ms. M. Odeny, Ms. D. Matilla, research, legal aid and child rights at Cradle, 25 May 2008.
- Ms. Teresa Omondi (program manager), J. Olago Akinyi (counsellor), Gender Violence Recovery Centre, 25 May 2008.
- J. Murogr, Assistant Director, National Council for Children's Services, 25 May 2008.
- Dr. D. Thenya, Nairobi Women's Hospital, 26 May 2008.
- Ms. J. Ragot, chief justice at the High Court, 26 May 2008.
- Staff ANPPCAN accompanying 3 Internal Displacement Camps, within IDP camps, short talks with refugees and caretaking personnel, 26 May and 18 May 2008.
- Ms. E. Koyzina (director National Union of Disabled People Uganda), Ms. Bankush (Probation and Welfare Officer Kampala), Ms. J. Misiga (director Kampala school for physically disabled), Ms. N. Kitty (senior police officer Kampala), Mr. W. Nambafu (social worker), Ms. M. Fulia (social worker Kampala police), Ms. A. Kamara (magistrate at Kampala Family and Children's Court): Uganda Society for Disabled Children network (USDC), 27 May 2008.
- Ms S. Kisitu, USDC director, Mr. Paul Ssentesa, USDC program officer, Mr. John Nsiimbi, USDC legal aid, 27 May 2008.
- Ms. N. Nakaggwa, caretaker. Ms. Nabukenya, Ms. Nakamawagi, Ms. Nanseve, Mr. N. Nicholas, Mr. Banasuula, Mr. Kaegegu., Ms. Nabakka, Ms. Lida, Ms. Caroline: deaf, 27 May 2008.
- Ms. Kaiito, teacher, caretaker and parent support group leader, 11 children, 27 May 2008.
- Mr. L. Mute, Kenyan National Commission for Human Rights, 28 May 2008.
- Ms. J. Sinyo, Kenya State Council, 28 May 2008.
- Ms. O. Munyi, Nation Newspaper, 29 May 2008.

Institutions the respondents represent:

Ministry of Education Kenya, Special Needs Education Department

Child line Kenya

Ministry of Gender and Children Affairs

Police Department

Nairobi Children's Home

Every Child Matters- Nairobi

Plan International

Ministry of Gender and Children affairs

Feed the Children
Mathare Youth Sports Association
Women Rights Awareness Program
Nairobi Women's Hospital - GVRC
Association for Physically disabled persons of Kenya
National Council for Persons with Disability- Kenya
Kenya National Commission on Human Rights
ANPPCAN-K
Kenya Law Reform Commission
Ministry of Gender and Children Affairs
Disability Network- Western Kenya
Provincial Administration
Ministry of Gender and Children Affairs
Education Aasseemnt and Resource Centre Ministry of Education
Ministry of Health
Kakamega Children Remand Home
The CRADDLE
Judiciary
National Council For Children's Services
Media
UGANDA
Uganda Society for the Disabled (USDC)
Private Homes
National union for Disbled Persons in Uganda NUDIPO
Kampala School for the Physically disabled
Judiciary
Police Department

Annex 3: Terre des Hommes

Terre des Hommes is a development organization entirely for children. The organization as a whole is active in all continents. The Dutch branch supports more than 300 locally organized and initiated projects in South Asia, Africa, Southeast Asia and South America. There are six themes that projects can focus on:

- Education
- HIV/AIDS
- Disabilities
- Health care
- Socioeconomic development
- Exploitation

Staff in Terre des Hommes supported projects take children out of abusive, exploitative or deprived situations and empowers, cares and supports them to become educated adults with a perspective on earning a living and leading a healthy life in a community that they feel a part of and that accepts them. Other projects aim to raise awareness in communities about child abuse and exploitation and give advice on how to protect all children from harm.

In all projects, Terre des Hommes tries to involve governments and local staff in order that the tasks are in due time taken over by organizations, governments and individuals of the countries in which Terre des Hommes is active.

In East Africa, Terre des Hommes has supported and set up projects for children with disabilities for over ten years. In Tanzania, Kenya and Uganda, there are multiple national awareness programs, more than 10 schools and 6 programs for children with disabilities to help them prevent vulnerable situations or recover from abuse that they have suffered.

Endnotes

- ¹ Kiarie, M.W., Education of students with visual impairments in Kenya: trends and issues. *International Journal of Special Education* 2004, Vol 19, no. 2.; Save the Children UK, Disability facts and figures, 2006.
- ² Sobsey, D., Wells, D., Lucardie, R. & Mansell, S. *Violence and disability: An annotated bibliography*. Baltimore, Brookes Publishing, 1995.
- ³ Braithewaite, J. and Mont, Disability and Poverty, February 2008, World Bank: <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172608138489/WBPovertyAssessments.pdf>; Handicap International, Making PRSP Inclusive, July 2006: <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172608138489/MakingPRSPInclusive.pdf>
- ⁴ State of Persons with Disabilities (2007) in Kenya, African Union of the Blind, p. 16.
- ⁵ Further examples can be found in *Special Needs, Equal Rights: Education for Children with Disabilities in East Africa*, Terre des Hommes Netherlands, Regional Office for East Africa, 2007, p. 54-55.
- ⁶ Lammers, M., M. Vrijlandt, L. Shepherd (ed.). *Blind voor misbruik?* Medusa Publikaties, 1993. And National Research Council (2001). *Crime victims with developmental disabilities: Report of a workshop*. Committee on Law and Justice. Joan Petersilia, Joseph Fote, Nancy A. Crowell, eds. Commission on Behavioral and Social Sciences and Education. Washington, D.C.: National Academy Press.
- ⁷ Sobsey, D., Wells, D., Lucardie, R. & Mansell, S.. *Violence and disability: An annotated bibliography*. Baltimore, Brookes Publishing, 1995.
- ⁸ Sullivan, P. and Knutson, J. Maltreatment and disabilities: a population-based epidemiological study. *Child abuse and Neglect*, 24 (10), 1257-1273.
- ⁹ American Academy of Pediatrics. 2001. Assessment of Maltreatment of Children with Disabilities. *Pediatrics*, 108:2:508-52.
- ¹⁰ *Disability, Poverty and Development*, DFID, United Kingdom, 2000, p. 8.
- ¹¹ On communication difficulties, see police interview: N.K. 27 May 2008; High Court Judge Judy Ragot, Nairobi Women's Hospital CEO Dr. Thenya 26 May 2008. On taking seriously, see for example: interview: Nudipu Esther Kyozi 27 May 2008.
- ¹² Sullivan, P.M. Violence against children with disabilities. Conference Commissioned Paper for the National Conference on Preventing and Intervening in Violence Against Children and Adults with Disabilities in 2002.
- ¹³ Human rights for Persons with Disabilities, CREATE, NCDP, NUWODU, UPDK and Los Pepitos, DCDD of the Netherlands, December 2006.
- ¹⁴ Interview with victims and, in case they were unable to speak, their caretakers: M. Kaiito, 27 May 2008; Nakagua Noreen, 27 May 2008; Esther Njovoje, anonymous, 15 May 2008; Interview country coordinator Tanzania A. Groot 7 May 2008. See also the study *Violence against Disabled Children*, Unicef, July 28, 2005.
- ¹⁵ Interview USDC network 27 May 2008, interview A. Iraki of Every Child Counts 15 May 2008. Interview teachers of Disability Network Nyanza, 21 May 2008.
- ¹⁶ Client Mary Kaiito interview, 27 May 2008; Ebusiratsi school for special needs and Disability Network Nyanza 21-22 May 2008.
- ¹⁷ Braithewaite, J. and Mont, Disability and Poverty, February 2008, World Bank: <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172608138489/WBPovertyAssessments.pdf>; Handicap International, Making PRSP Inclusive, July 2006: <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172608138489/MakingPRSPInclusive.pdf>
- ¹⁸ *Violence against Disabled Children*, Unicef, July 28, 2005.
- ¹⁹ Ms. L. La Rivière-Zijdel, 14 July 2008.
- ²⁰ Case experienced 23 May 2008 at Wijt's home; interview M. Kaiito, 27 May 2008; interview H. Scifer APDK 19 May 2008; interview Mwisigwa of Kampala school for physically disabled 28 May 2008.
- ²¹ Interview Nakagua Noreen on client who died, 27 May 2008.

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- ²² Feed the Children, Josephat Gichamer, physiotherapist, 16 May 2008.
- ²³ ANNPCAN 20 May 2008, visit to IDP camp.
- ²⁴ APDK, Mr. Duncan 19 May 2008; Nakagua Noreen cases, 27 May 2008; WRAP cases 19 May 2008.
- ²⁵ The Nation, The disabled pitch their case over continued relegation, 19 April 2008.
- ²⁶ Ms. La Rivière-Zijdel, 13 July 2008.
- ²⁷ Experience from 21-23 May 2008 at the Ebuseratsi school for special needs, which included interviews with teachers, parents, students (as far as possible).
- ²⁸ Experiences with Mary Kaiito's boarding school for mentally challenged children 27 May 2008, including visits to parents.
- ²⁹ Interview Esther Njovoje and anonymous police officer at Nairobi Children's Home 15 May 2008.
- ³⁰ Statement at the Mary Kaiito interview, 27 May 2008.
- ³¹ Experiences at Ebuseratsi, Kaiito children's home, Nairobi children's home and Wijt children's home (Kisumu).
- ³² Interview Dr. Thenya CEO 26 May 2008, Ebuseratsi staff 21 May 2008.
- ³³ Cases discussed with Ms. Mwisigwa of Kampala school for the disabled, 27 May 2008; Ebuseratsi staff 21 May 2008; Mr. Obare, Remand home Kakamega, 23 May 2008.
- ³⁴ Ebuseratsi staff 21 May 2008.
- ³⁵ Interview Esther Njovoje and anonymous police officer 15 May 2008.
- ³⁶ National Union of Disabled Persons of Uganda (NUDIPU), Persons with disabilities in the context of conflict, 2005. Pp. 3-4.
- ³⁷ For Uganda, see NUDIPU, Persons with disabilities in the context of conflict, 2005. P. 20. The Kenyan situation was investigated by visiting three IDP camps around Nairobi, interviewing the Red Cross staff there, see also Reach Out magazine of the Kenya Red Cross, Issue no. 30, January-March 2008.
- ³⁸ For Uganda, see NUDIPU, Persons with disabilities in the context of conflict, 2005. P. 20. The Kenyan situation was investigated by visiting three IDP camps around Nairobi, interviewing the Red Cross staff there.
- ³⁹ Uganda National Household Survey, 2005-2006; Uganda Bureau of Statistics, December 2006. Kenya National Survey for Persons with Disabilities, Kenya National Bureau of Statistics, March 2008). Tanzania has been estimated to have the same percentage as Kenya.
- ⁴⁰ For Kenya: Ms. Murogr of NCCS, 25 May 2008; for Tanzania: United Republic of Tanzania: National policy on disability, 2004, p. 22.
- ⁴¹ District officer D. Bundotich 22 May 2008; Police officer Luanda Samuel N. Ngure; Chief Bunyone East 21 May 2008.
- ⁴² Nairobi Women's Hospital, Mr. Thenya, 26 May 2008.
- ⁴³ Kenya National Survey for Persons with Disabilities, National Coordinating Agency for Population and Development (NCAPDP) and Kenya National Bureau of Statistics (KNBS), March 2008.
- ⁴⁴ GVRG interview staff and patients, 25 May 2008.
- ⁴⁵ Jeremia Norre Mulama, Chief of North Bunyore, 21 May 2008.
- ⁴⁶ Daniel Bundotich, District Officer Omay District, 22 May 2008.
- ⁴⁷ The phenomenon of outsiders to the legal system is described by Todd Jr., H.F., Randfiguren in het rechtsleven; from J. Griffiths, De sociale werking van het recht: een kennismaking met de rechtssociologie en de rechtsantropologie, Nijmegen 2005.
- ⁴⁸ This observation is based on the statement that most families are single families with the woman at the head by Mwisigwa 27 May 2008, many cases arriving at the police through schools from WRAP, 19 May 2008.
- ⁴⁹ Interview Ms. E. Kyoziina, Nudipu, 27 May 2008.
- ⁵⁰ A recent investigation by Transparency international uncovered that 93% of the persons interviewed had bribed the police in the last 12 months: <http://www.afriquenligne.fr/news/africa-news/social-watchdog-says-kenya-police-most-corrupt-200807179100.html>
- ⁵¹ Interview senior officer of police Nandi Kitty, Uganda, 27 May 2008.
- ⁵² Interview Justice of the Family Court of Kampala, Uganda, 27 May 2008.
- ⁵³ Police officer DD in Kisumu, 22 May 2008.
- ⁵⁴ High court, Ms. J. Ragot, 26 May 2008; and USDC Ms. Nandi Kitty, 27 May 2008.
- ⁵⁵ Esther Njovoje, anonymous police constable at the Nairobi Children's Home, 15 May 2008; Ebuseratsi staff, 21 May 2008.

- ⁵⁶ USDC, Ms. Bankusha, 27 May 2008; Childline, 14 May 2008; Provincial child protection officer at the Provincial house, 15 May 2008; ANNPCAN, 20 May 2008.
- ⁵⁷ Remand home Kakamega, 23 May 2008.
- ⁵⁸ Hussein, 15 May, 2008.
- ⁵⁹ Josephine Jonker, the National Council for PWD on 19 May 2008. Also, there is no special programme on children with disabilities at the department of child protection in the Ministry of Gender and Children's Affairs, there are only two cases known at the department of children with disabilities.
- ⁶⁰ Several cases are given during interviews where police refused to arrest a rapist: WRAP on 19 May 2008, Kenyan Institute for Special Education on 20 May 2008, Disability Network 21 May 2008. The Provincial Children's Officer in Kisumu stated that police need more training in the area of abuse. Probably the most serious problem, however, is lack of reporting by parents and victims when they are able.
- ⁶¹ Department of Child Protection, Ministry of Gender and Children's Affairs, Mr. Hussein, 15 May 2008; Provincial Child Protection Officer Mr. F. Jalo, 15 May 2008; State Council Ms. J. Sinyo, 28 May 2008.
- ⁶² Tomuschat, C. Human Rights, between idealism and realism. Oxford, 2003. p. 38.
- ⁶³ Convention on the Rights of Persons with Disabilities and Optional Protocol (CRPD), adopted on 13 December 2006, entered into force on 3 May 2008.
- ⁶⁴ The International Classification of Functioning Disability and Health (ICF): <http://www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8whodis1.doc>
- ⁶⁵ CRPD, article 1.
- ⁶⁶ General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 26/05/2004; CCPR/C/21/Rev.1/Add.13.
- ⁶⁷ General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 26/05/2004; CCPR/C/21/Rev.1/Add.13.
- ⁶⁸ General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 26/05/2004; CCPR/C/21/Rev.1/Add.13.
- ⁶⁹ Human Rights Committee, Bakhtiyari v. Australia, 23 October 2003, para. 5.15.
- ⁷⁰ General Comment no. 17 on article 24, the rights of the child, 35th session of the Human Rights Committee, April 7, 1989.
- ⁷¹ OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999. Kenya ratified the Charter in August 2000.
- ⁷² Children's use of regional human rights instruments, Peter Newell, p. 11-12. http://www.coe.int/t/transversalprojects/children%5CSource%5CJusticePeterNewellBackground_en.doc
- ⁷³ See ratification status for the CRPD: <http://www.un.org/disabilities/default.asp?navid=18&pid=257>; Civil and Political Rights and Economic Social and Cultural Rights: <http://www.un.org/disabilities/default.asp?navid=18&pid=257>; For the Universal Declaration see its article 30 and <http://www.un.org/rights/HRToday/declar.htm>; for the African Charter on Children see: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf
- ⁷⁴ Report of the African Committee of Experts on the Rights and Welfare of the Child, Seventh Ordinary Session, Tripoli, Libya (2005). EX.CL/200 (VII), para. 3. <http://www1.umn.edu/humanrts/africa/rightsofchild-report2005.html>
- ⁷⁵ Children's Act 2001, Kenyan Laws, Chapter 586. The sections quoted below are 119, 125 and 127.
- ⁷⁶ Interview USDC, 27 May 2008.
- ⁷⁷ Ms. A. Groot, 24 July 2008.
- ⁷⁸ Human Rights Committee, 21 June 2006, CRC/C/TZA/CO/2, para 39.
- ⁷⁹ Comments by L. Mute, 27 May 2008, KNCHR and J. Sinyo, 28 May 2008, State Council.
- ⁸⁰ Interview at Cradle, 25 May 2008; interview J. Ragot High Court, 26 May 2008.
- ⁸¹ USDC, 27 May 2008.
- ⁸² Representing Children Worldwide, Yale law source, mr. P. Akayu in May 2005.
- ⁸³ USDC, 27 May 2008.
- ⁸⁴ USDC network, ms. Kamara, 27 May 2008.
- ⁸⁵ Representing Children Worldwide, Yale law source, by Mr. Makaramba of The Tanzanian Commission for Human Rights and Good Governance in November 2005.

http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/unitedrepublicoftanzana/frontpage.htm#_edn4 ; Info on the bill: Ms. A. Groot, 24 July 2008.

⁸⁶ Child Rights committee, 42nd session, 2 June 2006, final comments, Tanzania.

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/2F286CAEADC77E24C125718100403552?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/2F286CAEADC77E24C125718100403552?OpenDocument)

⁸⁷ Children's Rights Committee, 9 July 2001, CRC/C/15/Add.156, para. 9.

⁸⁸ IPPMedia, Tanzania yet to submit 8 human rights reports to African Charter March 11, 2008.

⁸⁹ IPPMedia, Tanzania yet to submit 8 human rights reports to African Charter March 11, 2008.

⁹⁰ For example, Velma Mbatl of the ministry of Gender and Social Affairs, 16 May 2008; Josephine Jonker of the National Council for PWD, 19 May 2008; Ebusiratsi staff, 21 May 2008; Provincial Children's Officer Mr. Odongo, 21 May 2008; police officer at child protection unit D.D. of Kisumu, 22 May 2008, who has difficulty upholding the law since he must pay his own taxi fare to get to the scene of the problem.

⁹¹ Ms. La Rivière-Zijdel, 13 July 2008.

⁹² Interview NCPWD, J. Jonker, 19 May 2008.

⁹³ Interview Mr. A. Hussein, 15 May 2008; interview Mr. E. Mulili, 29 May 2008.

⁹⁴ Interview Mr. Odongo Provincial Children's Officer Nyanza, 21 May 2008.

⁹⁵ Ministry of Gender and Social Affairs, Ms. Mbatl, 16 May 2008.

⁹⁶ National Council for PWD, Ms. J. Jonker, 19 May 2008.

⁹⁷ ANPPCAN Uganda, 3 December 2006.

⁹⁸ USDC, 27 May 2008.

⁹⁹ Interview with Ms. Bankusha, Probation and Welfare Officer Kampala Central Division.

¹⁰⁰ Committee on the Rights of the Child, 21 June 2006, CRC/C/TZA/CO/2, paras. 39 and 42.

¹⁰¹ United Republic of Tanzania: National policy on disability, 2004. Current status informed by Terre des Hommes Tanzania, 4 June 2008.

¹⁰² Mr. Duncan, APDK, 19 May 2008; Ms. Jonker, National Council for PWD, 19 May 2008; Mr. Sanoe, Kenya Institute for Special Education, 20 May, 2008.

¹⁰³ KNCHR, Objects of pity or individuals with rights: The right to education for children with disabilities, 2007. p. 22.

¹⁰⁴ For the policy and financial information (KESSP), see the website of the ministry of Education in Kenya. <http://www.education.go.ke/>.

¹⁰⁵ Although the Response of the Kenyan Government to the Committee of the Rights of the Child gives the strange impression that the number of children attending special schools went from 162 thousand in 2003 to less than 60 thousand in 2006, a more realistic number appears to be the current approximately 50 thousand of almost 150 thousand children diagnosed to be in need of special education. This figure is up from over 22 thousand in 2003. Unfortunately, all the sources are from the ministry of Education.

¹⁰⁶ Assuming that about half of the population is a child, the figure is 2.3% of a population of 33 million.

¹⁰⁷ For the policy and financial information (KESSP), see the website of the ministry of Education in Kenya. <http://www.education.go.ke/>.

¹⁰⁸ Provincial Education Officer Nyanza province, 21 May 2008.

¹⁰⁹ Ms. Mwikya, Childline, 14 May 2008; Ms. A. Ngugi, WRAP, 19 May 2008, states that all their cases are brought on by (volunteer) social workers and teachers; Gender Violence Recovery Centre, 25 May 2008; Ms. Misiga, Kampala school for physically disabled, 27 May 2008; Ms. Fulia, social worker Kampala, 27 May 2008.

¹¹⁰ Kenyan National High Commissioner for Human Rights, Mr. L. Mute, 27 May 2008; Ms. M. Kaiito, 27 May 2008; USDC Network interview including Ms. Misiga, Kamara and Bankusha.

¹¹¹ Terre des Hommes, Ms. A. Groot 5 May 2008; Ms. M. Kaiito, 27 May 2008 and Wrap, Ms. A. Ngugi for example.

¹¹² USDC Network, Ms. Misiga, 27 May 2008.

¹¹³ See, for example, Nairobi Children's home, Ms. E. Njovoje and anonymous police officer, 15 May 2008.

¹¹⁴ ANNPCAN, Ms. R. Odoyo, 20 May 2008.

¹¹⁵ USDC Network, Ms. Bankusha, 27 May 2008.

¹¹⁶ Remand home Kakamega, Mr. F. Obare, 23 May 2008.

¹¹⁷ Based on USDC Network, Ms. Bankusha, 27 May 2008, compared to the relatively luxurious position in Kakamega of being able to divert children in need of protection away from remand homes.

- ¹¹⁸ USDC Network, Ms. N. Kitty, 27 May, 2008; Nairobi children's home, Ms. Nakagua, 27 May 2008.
- ¹¹⁹ National Survey of persons with disabilities Kenyan Central Bureau of Statistics, page IX.
- ¹²⁰ Ms. J. Sinyo, 28 May 2008.
- ¹²¹ Kenyan Children's Act 2001.
- ¹²² Terre des Hommes, Mr. E. Mulili, 29 May 2008.
- ¹²³ Guidelines for the formation and operation of AAC's 2006, NCCS and World Vision, Annex II.
- ¹²⁴ NCCS, Ms. Murogr, 25 May 2008.
- ¹²⁵ Interview 26 May 2008.
- ¹²⁶ USDC Network, Ms. Misiga, 27 May 2008.
- ¹²⁷ Nairobi Women's Hospital, Mr. Thenya, 26 May 2008.
- ¹²⁸ Hulme, Moor, Shepherd and Grant 2004, p. 20.
- ¹²⁹ Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, New York, 16-27 June 2003, para. 11.
- ¹³⁰ UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, A/RES/48/96, 20 December 1993.
- ¹³¹ Global survey on the implementation of the Standard Rules, Special Reporter on Disabilities, December 2006.
- ¹³² General Assembly resolution 52/82.
- ¹³³ Disability and development, German ministry of Foreign Affairs, p. 7, quoting the ILO study of 31 countries on poverty reduction that acknowledge the link between disability and poverty, but fail to include persons with disabilities in their strategy.
- ¹³⁴ Disability, poverty and development, Department for International Development of the British Government, p. 11.
- ¹³⁵ Guidance note on disability and development, European Commission, 2004: http://ec.europa.eu/development/body/publications/docs/Disability_en.pdf.
- ¹³⁶ Letter from the Dutch under-minister of Health, Welfare and Sport, March 17, 2008.
- ¹³⁷ Policy brief from the Dutch minister of Foreign Affairs, 5 November 2007, p. 44-46.
- ¹³⁸ Policy brief Parliament from the Dutch minister for Development Cooperation, 31 May, 2007, pp. 7 and 10.
- ¹³⁹ Policy brief Parliament from the Dutch minister for Development Cooperation, 31 May, 2007.
- ¹⁴⁰ Policy brief Parliament from the Dutch minister for Development Cooperation, 31 May, 2007.
- ¹⁴¹ Trouw (Dutch national periodical), 5 March 2008.
- ¹⁴² The CRS codes that are used by the ministry of Foreign Affairs are used for collecting information from co-financing organizations (CFO's), they are used by embassies to report how they have spent their money and when multilateral aid is earmarked, it is also reported under a CRS code; information confirmed with the ministry of Exterior Affairs.
- ¹⁴³ The CRS codes system used by the Ministry of Foreign Affairs.
- ¹⁴⁴ Dutch Africa Policy, IOB Evaluations, no. 308, February 2008. Chatting and Playing Chess with Policymakers. IOB Evaluations no. 306, June 2007.
- ¹⁴⁵ Chatting and Playing Chess with Policymakers. IOB Evaluations no. 306, June 2007, p. 7. Also Dutch Africa Policy, IOB Evaluations, no. 308, February 2008, p. 97 on focusing.
- ¹⁴⁶ Policy brief Parliament by the minister for Development Cooperation, 16 October 2007.
- ¹⁴⁷ See below in the section on other countries.
- ¹⁴⁸ Letter to Parliament regarding the UN Convention on the Rights of Persons with Disabilities, 31 May 2007.
- ¹⁴⁹ Policy brief Parliament by the minister for Development Cooperation, 16 October 2007, p. 27.
- ¹⁵⁰ DCDD, Ms. A. Huijboom, 10 July 2008.
- ¹⁵¹ Germany: Disability and Development, November 2006, <http://www.make-development-inclusive.org/docsen/BehinderungEntENG.pdf>; Sweden: Children and adults with disabilities, December 2005, <http://www.make-development-inclusive.org/docsen/SWChildrenandadultswithdisabilities.pdf>; United States, USAID disability policy paper, September 12, 1997: http://pdf.dec.org/pdf_docs/PDABQ631.pdf; Japan, see its programmes: <http://www.jica.go.jp/english/global/dis/project.html>; European Union, Guidance Note on Disability Projects, March 2003: <http://www.make-development-inclusive.org/docsen/GuidanceNoteEng.pdf>;

Disability, poverty and development, DFID, 2000: <http://www.make-development-inclusive.org/docsen/DFIDdisabilityPovertyDev.pdf>.