

NATIONAL LEGISLATION ON HAZARDOUS CHILD LABOUR

Minimum Age Convention, 1973 (No. 138)
and
Worst Forms of Child Labour Convention, 1999 (No. 182)

KENYA

RATIFICATIONS

| | |
|--------------------|---------------|
| Convention No. 138 | 09 April 1979 |
| Convention No. 182 | 07 May 2001 |

- 1) *Country Overview*
- 2) *Ministry of Labour and ILO project. List of Hazardous Work and Light Work by children in Kenya, 2012*

Original language: English – List of Hazardous Work (Project) – ILO Summary.

Observations: The list is going to be officially adopted and sent for printing. The stakeholders had approved a list of the types of hazardous work which would be presented to the National Board (NLB) for final approval. Before the Minister asserted to it as part of legislation, still undergoing the process of approval by the NLB and thereafter adoption by the Minister. Unofficial information indicates that a new list was published at the Kenya Subsidiary Legislation, 2014 – Fourth Schedule (currently not available).

- 3) *Children's Act, 2001 (No. 8 of 2001)*

Original language: English – [Full Official Text \(🔗 on line\)](#) – ILO Summary.

Article 7(2) stating that every child shall be entitled to free basic education.

4) ***Basic Education Act. Section 28(1); 38***

Original Language: English – [Full Official Text \(📄 on line\)](#) – ILO Summary.

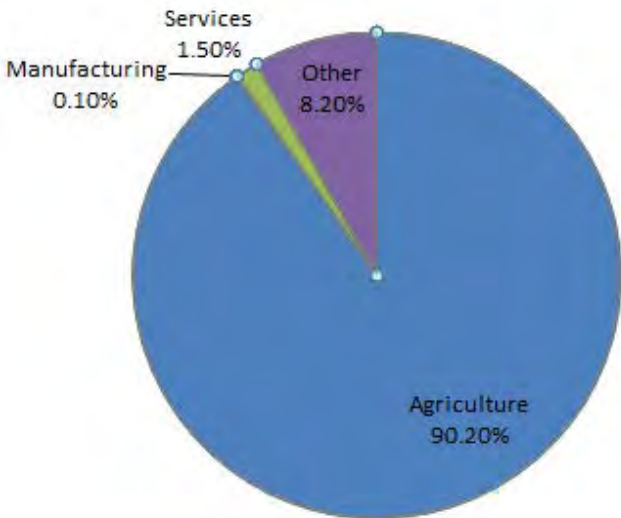
5) ***CEACR, 2013 Observation and Direct request Convention No. 138; 2012 Direct request Convention No. 182***

6) ***CRC, Concluding Observations of the Committee on the Rights of the Child, June 2007***



KENYA

Country Overview

| International Conventions and selected Laws on child labour and education | Working children by sector, aged 5-14 years | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|-----------------------------------|---|-----|---|---|----|--------------------------------|----|--------------------------|-----------------|----------------------------|----|-----------------------|-----|---|--------|------------|-------------|--------|-------|-------|----------|-------|---------------|-------|
| <table border="1"> <tr> <td>C138, Minimum Age</td><td>✓</td></tr> <tr> <td>C182, Worst Forms of Child Labour</td><td>✓</td></tr> <tr> <td>CRC</td><td>✓</td></tr> <tr> <td>General Minimum age for admission to employment</td><td>16</td></tr> <tr> <td>Minimum Age for Hazardous Work</td><td>18</td></tr> <tr> <td>Compulsory Education Age</td><td>Basic Education</td></tr> <tr> <td>List of hazardous work (*)</td><td>No</td></tr> <tr> <td>Free Public Education</td><td>Yes</td></tr> </table> | C138, Minimum Age | ✓ | C182, Worst Forms of Child Labour | ✓ | CRC | ✓ | General Minimum age for admission to employment | 16 | Minimum Age for Hazardous Work | 18 | Compulsory Education Age | Basic Education | List of hazardous work (*) | No | Free Public Education | Yes |  <p>A pie chart illustrating the distribution of working children aged 5-14 years across different sectors in Kenya. The largest segment is Agriculture at 90.20%, followed by Other at 8.20%, Services at 1.50%, and Manufacturing at 0.10%.</p> <table border="1"> <thead> <tr> <th>Sector</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Agriculture</td> <td>90.20%</td> </tr> <tr> <td>Other</td> <td>8.20%</td> </tr> <tr> <td>Services</td> <td>1.50%</td> </tr> <tr> <td>Manufacturing</td> <td>0.10%</td> </tr> </tbody> </table> | Sector | Percentage | Agriculture | 90.20% | Other | 8.20% | Services | 1.50% | Manufacturing | 0.10% |
| C138, Minimum Age | ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| C182, Worst Forms of Child Labour | ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CRC | ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| General Minimum age for admission to employment | 16 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Minimum Age for Hazardous Work | 18 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Compulsory Education Age | Basic Education | | | | | | | | | | | | | | | | | | | | | | | | | | |
| List of hazardous work (*) | No | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Free Public Education | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Sector | Percentage | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Agriculture | 90.20% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other | 8.20% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Services | 1.50% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Manufacturing | 0.10% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>(*) There is no officially adopted list. However, the DRAFT list of hazardous work includes: V. Any work where there is likely to be exposure to dangerous chemicals; VIII. Operating of power driven industrial machinery; Lifting/carrying of heavy loads</p> | <p>Source: Kenya, Kenya Integrated Household Budget Survey (KIHBS) 2005</p> | | | | | | | | | | | | | | | | | | | | | | | | | | |



MINISTRY OF LABOUR AND ILO PROJECT

LIST OF HAZARDOUS WORK AND LIGHT WORK BY CHILDREN IN KENYA

DECEMBER 2012

Prepared By:

J Morumbasi Mongoni

- o Validation workshop on the “List of Hazardous Work for Children and Definitions of Light Work for Children”.

4. LIST AND DEFINITIONS OF HAZARDOUS WORK FOR CHILDREN

The list mirrors the types of work performed in the various economic sectors in Kenya. The outcomes of consultations, discussions, participants' perspectives, suggestions and recommendations stakeholder forums have informed the compilation of the final list of hazardous work to which children should not be exposed to in Kenya.

Table 1: Nature and Definitions of Hazardous work

| No. | Nature of Hazardous work | Definitions/Exceptions/hazards |
|-------|---|---|
| i. | Work involving use of electrically powered tools and equipment; | Except for educational and training purposes and non-industrial electrical tools and equipment. Can cause electrical shocks, electrocution. |
| ii. | Work in rock and stone cutting, crushing and shaping. | Work that could cause eye injury from rock chippings Work that could result in musculoskeletal problems due to awkward posture and repetitive motions over long periods of time. |
| iii. | Work in processes involving hot temperatures as in furnaces and glass making. | Danger of radiant heat. Can cause serious burns. Can cause stress. |
| iv. | Work in processes involving extremely cold temperatures | Can lead to frostbite in the extremities and cold burns. |
| v. | Any work where there is likely to be exposure to dangerous chemicals. | Can cause chemical poisoning, fatality Can lead to cancers. Can cause dermatitis. Can sensitize |
| vi. | Fishing and diving offshore in deep sea or lake or dam | Can result in drowning. |
| vii. | Work in slaughterhouses | Exposure to biological hazards. Can lead to psychosocial problems including depression. |
| viii. | Operating of power driven industrial machinery, | Except for educational and training purposes. |
| ix. | Work at elevations/heights of more than 2 metres | Risk of falling, serious injury or fatality. |

| | |
|---|--|
| x. Certain kinds of domestic work or any work in any sector involving long hours, or strenuous work | Hours of work should not exceed the statutory working hours as stipulated in various Sectoral Wages Regulation Orders. Can lead to psychosocial problems. Can lead to musculoskeletal problems. Can cause extreme fatigue and stress. |
| xi. Lifting/carrying of heavy loads | Can cause stunted growth. Can lead to musculoskeletal problems. |
| xii. Work in public transport | Can result in fatigue, corruption of morals, hearing loss due to loud music, accidents, injury, and fatality. |
| xiii. Underground work and work in mines, quarries, and confined spaces | Can result in fatigue, psychosocial trauma, depression, falls, injury, and fatality. |
| xiv. Work in security services as guards/watchmen | Can result in musculoskeletal difficulties, exposure to harassment and stress, extreme cold at night, heat during the day, risk of physical attacks/harm. |
| xv. Work in noisy places | Can lead to hearing damage/loss. Can lead to stress. |

5. LIST AND DEFINITIONS OF LIGHT WORK FOR CHILDREN

The list and definitions take into consideration the various sectors and types of work performed in Kenya. Consultations and interviews and discussions of presentations in stakeholder forums have informed the list and definitions of light work.

This is work that children may perform on condition that:

- i. It will not affect the school attendance of the child
- ii. It does not affect their participation in training programs approved by the government
- iii. It is done during the daytime, between 6.30am and 6.30pm
- iv. It is properly and adequately supervised
- v. The hours are controlled: 2 hours per day or 14 hours per week.

The table below presents the list and definitions of light work in which children may be involved.

KENYA

Ministry of Labour and ILO DRAFT of the List of Hazardous Work and Light Work by children in Kenya, 2012ⁱ

Original language

English

Abstract

Section 4 providing for the compilation of the final list of hazardous work to which children should not be exposed to in Kenya.

Text of legal provisions

➤ Section 4

“List and definitions of hazardous work for children.

The list mirrors the types of work in the various economic sectors in Kenya. The outcomes of consultations, discussions, participants’ perspectives, suggestions and recommendations stakeholder forums have informed the compilation of the final list of hazardous work to which children should not be exposed to in Kenya.

Nature of Hazardous Work

- I. Work involving use of electrically powered tools and equipment
- II. Work in rock and stone cutting, crushing and shaping
- III. Working in processes involving hot temperatures as in furnaces and glass making
- IV. Work in processes involving extremely cold temperatures
- V. Any work where there is likely to be exposure to dangerous chemicals
- VI. Fishing and diving offshore in deep sea or lake or dam
- VII. Work in slaughterhouses

- VIII. Operating of power driven industrial machinery
- IX. Work at elevations/heights of more than 2 metres
- X. Certain kinds of domestic work or any work in any sector involving long hours, or strenuous work
- XI. Lifting/carrying of heavy loads
- XII. Work on public transport
- XIII. Underground work and work in mines, quarries, and confined spaces
- XIV. Work in security services as guards,/watchmen
- XV. Work in noisy places.”

ⁱ The list is going to be officially adopted and sent for printing. The stakeholders had approved a list of the types of hazardous work which would be presented to the National Board (NLB) for final approval. Before the Minister asserted to it as part of legislation, still undergoing the process of approval by the NLB and thereafter adoption by the Minister.

KENYA

Children's Act, 2001 (No. 8 of 2001)

Original language

English

Abstract

Article 7(2) stating that every child shall be entitled to free basic education.

Text of legal provisions

- **Article 7(2)**
“Every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the United Nations Convention on the Rights of the Child.”

KENYA

Basic Education Act, 2013 (No. 14 of 2013)

Original language

English

Abstract

Articles 38 and 39 providing for free and compulsory basic education.

Text of legal provisions

➤ **Article 38**

“(1) No person shall employ a child of compulsory school age in any labour or occupation that prevents such child from attending school.

(2) Any person who employs or prevents a child who is subject to compulsory attendance from attending school is guilty of an offence and is liable to fine not exceeding five million or to a period not exceeding five years or to both.”

➤ **Article 39 (a) and (b)**

“It shall be the duty of the Cabinet Secretary to:

(a) provide free and compulsory basic education to every child;

(b) ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education.”

KENYA

COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS (CEACR) - Worst Forms of Child Labour Convention, 1999 (No.182) - Minimum Age Convention, 1973 (No. 138)

➤ 2013 Observation, Convention No. 138

- **Article 1 of the Convention and Part V of the report form - National policy and practical application of the Convention.**

The Committee previously noted from the ILO–IPEC “Tackling child labour through education” TACKLE project report that, according to the 2009 National Census, nearly 4 million children of school-going age were out of school, which implied that the number of children in or at risk of child labour could be higher than the 756,000 reported in the 2008 Child Labour Analytical Report.

In this regard, the Committee noted the various efforts taken by the Government through the county administration to ensure that children are kept in school including providing an extra budget for the purpose of strengthening the County Child Labour Committees (CCLCs) for carrying out child labour inspections. It also noted the information from the ILO–IPEC–SNAP project report that the net enrolment rate at primary level increased to 96 per cent in 2011 and the transition rate from primary to secondary school reached 72 per cent. In addition, the Committee noted from the ILO–IPEC TACKLE project report that it supported a rapid assessment on child labour in salt mines located in the Coast Province. Finally, the Committee noted the Government’s information that it was engaged in consultations with ILO–IPEC to undertake a child labour survey in Kenya which was expected to be carried out in October 2012.

The Committee notes the information provided by the Government representative of Kenya to the Conference Committee in June 2013 that Kenya has been continuing its efforts to improve the child labour situation through legislative and constitutional reforms, technical assistance and relevant projects and programmes, including TACKLE and SNAP implemented with the support of ILO–IPEC. The Government representative further stated that the rapid

assessment survey of child labour in salt mines in Coast Province, conducted by the ILO–IPEC TACKLE programme, revealed that child labour was prevalent prior to 2006, but that children no longer worked in the salt mines.

The Committee notes that the Conference Committee, while noting the various measures taken by the Government to combat child labour, expressed its deep concern at the high number of children who were not attending school and were involved in child labour, including hazardous work, in Kenya. It urged the Government to strengthen its efforts to combat child labour in the country with a view to eliminating it progressively within a defined time frame. Moreover, in light of the contradictory data on the number of children working under the minimum age, the Conference Committee urged the Government to undertake a national child labour survey in the very near future.

In this regard, the Committee notes the Government’s statement in its report that the Government is engaging development partners to assist in resource mobilization for a specific child labour survey, while the Kenya National Bureau of Statistics has scheduled a Labour Force Survey which will include a module on child labour by the end of 2014. Nevertheless, the Committee notes that, according to the findings of the ILO–IPEC Labour Market Survey carried out in the districts of Busia and Kitui in 2012, over 28,692 children were involved in child labour in the district of Busia, most of them involved in farm work, domestic work, street vending or engaged in drug trafficking. The survey report in the district of Kitui indicated that 69.3 per cent of children above five years of age were reported to be working, the majority of them between the ages of 10–14 years. Of these, 27.7 per cent were involved in farm work, 17 per cent in domestic work, 11.7 per cent in sand harvesting and 8.5 per cent in stone crushing and brick making. The Committee expresses its concern at the situation of children under 16 years of age who are compelled to work in Kenya. The Committee therefore urges the Government to strengthen its efforts to improve the situation of children under the age of 16 years and to ensure the progressive elimination of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved. The Committee also urges the Government to undertake the national child labour survey in the very near future, to ensure that sufficient up-to-date data on the situation of working children in Kenya are available and to provide a copy thereof, once completed.

- **Article 3(2) and (3) - Determination of hazardous work and admission to hazardous work as from 16 years of age.**

The Committee previously noted the Government’s statement that the list of types of hazardous work prohibited for children under 18 years of age had been approved by the National Labour Board and was awaiting publication in the Gazette by the Ministry of Labour. It noted that the draft document entitled “Determining Hazardous Child Labour in Kenya: July 2008”, prepared by the

Ministry of Labour and Human Resources Development in consultation with the Central Organization of Trade Unions and the Federation of Kenya Employers, contained a comprehensive list of 18 types of hazardous occupations/sectors with each sector further providing a list of various activities that are prohibited to children. Furthermore, the Committee observed in its previous comments that the Government had been stating since 2005 that the regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work, referred to in section 10(4) of the Children's Act, had been issued by the Minister.

The Committee notes the Government's statement in its report that the list of hazardous work has been incorporated into the Employment Act Regulations of 2013 which will soon be adopted. It also notes the Government's indication that amendments with regard to the admission to hazardous work from the age of 16 years have been formulated and will soon be adopted. The Committee notes that the Conference Committee strongly urged the Government to ensure the adoption, in the very near future, of the necessary provisions addressing the issues of non compliance with the Convention, including the determination of the types of work prohibited to children under 18 years of age and the regulation of periods of work and establishments where children aged at least 16 years may perform hazardous work. The Committee therefore once again urges the Government to take the necessary measures to ensure that the regulation determining the types of work prohibited for children under the age of 18 years and the regulations in respect of periods of work and establishments where children aged at least 16 years may perform hazardous work are adopted in the very near future. It requests the Government to supply copies thereof once they have been adopted.

➤ **2012 Direct Request, Convention No. 182**

○ **Article 4(1) - Determination of hazardous work.**

The Committee had noted since 2005 the Government's indication that it had developed a draft list of hazardous work in consultation with social partners and stakeholders and that the list was in the process of approval.

The Committee once again notes the Government's information that the List of Hazardous Work is currently undergoing the process of adoption. The Committee expresses the firm hope that the list of types of hazardous work will be adopted in the very near future and requests the Government to supply a copy thereof as soon as it has been adopted.

○ **Article 7(2) - Effective and time-bound measures. Clauses (a) and (c) - Prevent the engagement of children in the worst forms of child labour and ensure**

access to free basic education for all children removed from the worst forms of child labour. Free basic education.

Following its previous comments, the Committee notes the Government's information that the TACKLE project along with the Ministry of Education has implemented a policy on Non-formal education (NFE) and has supported a project on NFE for nomadic children in Samburu district. The Committee notes from the IPEC TACKLE project report of 2011 that according to the mid-term review of the Kenya Education Sector Support Programme (KESSP) of 2010, there has been significant progress on access to basic education in Kenya due to the implementation of the KESSP. It notes that through the implementation of the four action programmes within the TACKLE project, a total of 1,050 children have been withdrawn from child labour and enrolled back in schools or placed in skills training through apprenticeship, in addition to the 910 children who have been prevented from dropping out of school and from entering into child labour. According to a report of the Government of Kenya on the progress in attainment of the Millennium Development Goals of 2010, available on the UNESCO website, the enrolment rate in the NFE increased from 143,409 in 2008 to 163,340 in 2009, as well as in Technical Industrial Vocational and Entrepreneurship Training centres. Through the Kenyan Education Sector Support Programme (KESSP), the Government has expanded the school infrastructure, increased the classroom capacity in primary schools as well as increased the number of primary schools and non-formal schools in the country. The Committee notes, however, that according to the 2009 census results as referred to in the ILO–IPEC TACKLE project report, 2011, nearly four million children are out of school. While noting the measures taken by the Government, the Committee expresses its concern at the high number of children who are not attending school in Kenya.

In view of the fact that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to continue to take effective and time-bound measures to facilitate access to free basic education. It requests the Government to provide information on the measures taken in this regard and the results achieved.

➤ **2013 Direct Request, Convention No. 138**

○ **Article 2(3) - Age of completion of compulsory schooling.**

The Committee had previously noted that, under section 7(2) of the Children's Act, every child shall be entitled to free basic education which shall be compulsory. It had noted the Government's indication that the average age for completing free primary education is 14–16 years. The Committee had also noted the Government's statement that, in order to address the gap between the minimum age for admission to employment and the age of completion of

compulsory schooling, the Government had waived the tuition fees for the first two years of secondary schooling. The Committee had further noted the information provided by the Government representative of Kenya to the Conference Committee in June 2006 concerning the application of Convention No. 138 that it had appointed a committee to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling.

The Committee notes the statement made by the Government representative of Kenya to the Conference Committee on the Application of Standards in June 2013 that the Basic Education Act seeks to capture the requirements of the Convention and the concerns of the Government that all children, including those who commenced school after the required age or dropped in and out of school, were able to gain access to free and compulsory education and were at the same time protected against child labour.

The Committee notes that section 28(1) of the Basic Education Act of 2013 (Education Act) establishes the right of every child (defined as a person not having attained the age of 18 years) to free and compulsory basic education. Section 30 of the Education Act states that every parent whose child is born in Kenya or resides in Kenya shall ensure that the child attends regularly as a pupil at a school or such other institution as may be authorized and prescribed by the Cabinet Secretary. In addition, sections 29, 32 and 33 of the Education Act state that no child shall be required to pay tuition fees at school nor should a child be denied admission on the ground of lack of proof of age. The Committee also notes that, according to section 38 of the Education Act, no person shall employ a child of compulsory school age in any labour or occupation that prevents children from attending school. Moreover, the Education Act provides for penalties for a parent or any other person who violates the provisions of sections 30 and 38. The Committee further notes that, according to the Kenya National Bureau of Statistics Facts and Figures of 2012, the enrolment rates at the primary level and secondary level increased from 8,831,400 in 2009 to 9,857,900 in 2011 and from 1,507,500 in 2009 to 1,767,700 in 2011, respectively. Considering that education is one of the most effective means of combating child labour, the Committee encourages the Government to strengthen its efforts to increase school enrolment and attendance rates, particularly of children up to 16 years of age. The Committee requests the Government to provide information on the measures taken in this regard and on the results achieved.

KENYA

COMMITTEE ON THE RIGHTS OF THE CHILD Concluding observations 19 June 2007

➤ Definition of the child (art. 1 of the Convention)

22. The Committee notes with concern that there are various minimum ages for marriage under different laws and that they are not the same for boys and girls and welcomes the information that this concern will be addressed in a review of the Children's Act.

23. The Committee recommends that the State party expedite the review of the Children's Act, inter alia with a view to establishing a minimum age for marriage that is the same for both boys and girls and is set at the intended age of 18.

➤ Education, including vocational training and guidance

57. The Committee notes with appreciation the introduction of a policy of free primary education in 2003, which despite prevailing high rates of children unable to access education, has resulted in a significant increase of school enrolment. The Committee is concerned at the low enrolment in early-childhood care and education institutions and the disparities in the access to quality education, which particularly disadvantages girls and pastoralist and hunter-gatherer children. The Committee also notes that the rapid increase in school enrolment significantly challenges sufficient allocation of financial resources, commonly resulting in a poor physical school environment lacking adequate infrastructure, trained teachers, and appropriate water and sanitation facilities. The Committee regrets that enrolment in secondary schools is not free, and because of this may impede higher attendance. It is also concerned about the low level of vocational training available to qualify adolescents for non-academic occupations.

➤ Economic exploitation

61. The Committee notes with concern the absence of domestic regulations or policies concerning child labour, and the high number of children engaged in economic activities compounded by high poverty levels and the effects of HIV/AIDS. The Committee further notes reports of consistent and serious problems regarding the economic exploitation of children and of the number involved in work that is hazardous and negatively impacts on their right to health, education and development.