Stakeholders Meeting to Share Review Findings on Laws, Policies and Programmes on Elimination of Child Labour and Violence against Children in Kenya

Date: 28 February, 2018, Venue – Nairobi Safari Club



Organised by:

African Network for the Prevention and Protection against Child Abuse and Neglect

Supported by:

Global March International

OPENING SESSION

The meeting started with self-introduction of the participants present. Mr Ahmed Hussein, former Director of Children Services in Kenya chaired the meeting. He made introductory remarks and thanked participants for turning up for the meeting to discuss the findings of the Review of Laws, Policies and Programmes on the Elimination of Child Labour and Violence against Children in Kenya.

Mr Hussein commended ANPPCAN Regional Office for conducting the review and for offering an opportunity for participants from multi-sectoral organisations to share the findings in view to addressing the emerging issues and gaps in the review. He also thanked Global March International for facilitating the review and the meeting. He said although retiring from Government service as the Director of Children's Services Kenya, he still had a passion for children issues and was glad that ANPPCAN reached out to him to chair the meeting.

The former Director invited Dr Onyango, Regional Director, ANPPCAN, to make opening remarks and welcome the consultant to present the findings of the review.

Opening Remarks

In her opening remarks, Dr Onyango, Regional Director, ANPPCAN Regional Office, highlighted several efforts by different groups in reaching out to ANPPCAN to address child labour and violence against children in Kenya. In 2014, ANPPCAN in collaboration with Chr Michelsen Institute (CMI), Norway, conducted a study in Kenya to assess the effectiveness of advocacy on child labour in Kenya. Last year ANPPCAN was invited to a forum on the Day of the African Child hosted by the Sri Lanka Embassy in Nairobi, which was held at the Riara University and the issue of implementation of laws, policies and programmes emerged.

Therefore, when Global March Against Child Labour based in New Delhi, India approached ANPPCAN to visit and revive partnership both had some years back and with the arrival of SDGs, ANPPCAN seized the opportunity to look at Kenya's situation, where so much had been done on child labour and violence, since the 90s, to ascertain factors hindering effective implementation of what the Government of Kenya had set to do. This culminated in the substantive review of laws, policies and programmes on the elimination of child labour and violence against children in Kenya with the purpose of determining their enforcement and implementation.

Dr Onyango said ANPPCAN with the support of Global March International began conducting the review by looking at various reports on child labour by development partners in Kenya, including International Labour Organisation and UNICEF. The reports indicated Kenya was making great efforts towards addressing child labour and violence against Kenya, through the development of laws, policies and programmes. These efforts saw Kenya ranked Tier 2 / 3 Watch List in the Report of Human Trafficking by the US Department of Labour in 2016.

Despite these positive actions by the Government and stakeholders to address child labour and violence against children in Kenya, the reports, for over a period of ten years, continued to show that child labour remained a problem and was in fact worsening due to other factors, such as poverty and HIV/Aids. Worse still, the reports indicated that the good practices on child labour continued to be identified over the same period, but with no commensurate efforts to implement and scale up the good practices, in order, to accelerate responses on child labour and violence against children in Kenya.

The Regional Director said ANPPCAN conducted the current review to help ascertain the status of enforcement of laws and implementation of policies and programmes on the elimination of child labour and violence against children in Kenya.

Dr Onyango said the review sought to undertake a comprehensive analysis of key government laws, policies and National Action Plans dealing with child labour, examine the extent to which the goals of child protection were being achieved, while identifying gaps that hinder effective implementation. She welcomed participants to the meeting and encouraged them to intensely deliberate on the findings and provide feedback on the findings to enrich the document for sharing with other stakeholders. She informed the audience that the report was a draft and ANPPCAN was looking for feedback from stakeholders attending the meeting to complete the task.



Participants follow proceedings during the stakeholders Meeting to Share Review Findings on Laws, Policies and Programmes on Elimination of Child Labour and Violence against Children in Kenya at the Nairobi Safari Club.

FINDINGS OF THE REVIEW OF LAWS, POLICIES AND PROGRAMMES ON THE ELIMINATION OF CHILD LABOUR AND VIOLENCE AGAINST CHILDREN IN KENYA

Felishina Mumbi, Consultant

The Consultant, Ms Mumbi, started by explaining the purpose, objectives and methodology of the desk review of policies, laws and programmes on the elimination of child labour and violence against children in Kenya. She stated that the review looked at key government laws, policies and National Action Plans dealing with child labour, including its worst forms and violence against children to determine the state of implementation, implementing actors, resources allocated, role of government and how SDGs are covered in the documents. She stated that the report being shared contained information obtained from reports or documents produced by Government of Kenya, International organizations and Civil Society groups, which are online and in libraries.

The Consultant explained the provisions in the UNCRC and Sustainable Development Goals 16.2 that aim to protect children and end abuse, exploitation, trafficking and all forms of violence. This notwithstanding, thousands of children continued to be victims of violence and exploitation in many sectors, such as, agriculture, hawking in the streets, being trafficked into prostitution and domestic labour and others were subjected to physical and corporal punishment in homes and schools.

The consultant presented global estimates related to child labour below:

- 152 million children aged between 5 and 17 years (64 million girls and 88 million boys) are in child labour, (accounting for almost one in ten of all children worldwide.)
- 73 million children are in hazardous work that directly endangers their health, safety, and moral development.
- 218 million children are in employment, both child labour and other permitted forms of children's employment.

Source ILO (2017): Global Estimates of Child Labour: Results and Trends

She outlined key factors associated with child labour in Kenya, mainly poverty within families and HIV/Aids, which, she said, has rendered many children parentless. She said violence against children eroded the foundation that children needed for leading healthy and productive lives. She explained that exposure to violence during childhood increases vulnerability to a broad range of mental and physical health problems, i.e. anxiety disorders, unwanted pregnancies and depression, cardiovascular diseases and diabetes. VAC victims were also likely to be perpetrators of abuse later in life.

The Consultant explained the current situation of child labour and other forms of violence against children in Kenya as shown in the table below:

- 32.5% (some 2,943,310) of children of age 6 14 are working.
- 32.4% of children age 7 14 combine work and schooling.
- Leaving 74.9% of children of age 5 14 attending school (UNESCO, 2015).
- A large number of children working under worst forms of child labour, which includes;
 - ✓ agriculture (tea, coffee, rice, sisal, sugarcane, tobacco plantations);
 - ✓ herding;
 - ✓ fishing;
 - √ industry (construction, quarrying, mining, making bricks and sand harvesting);
 - ✓ services (domestic work, transporting goods and scavenging, working on streets as commercial sex workers),
 - ✓ ferrying illicit goods, (drugs and stolen goods).
- Most of these sectors are in informal sector (jua kali), which is not regulated by labour laws.
- Corporal punishment is still common in Kenya, both at home and in schools.
- Sexual abuse is also common in schools and drives many children from education system due to pregnancies.
- Female genital mutilation is still common in some communities in Kenya.
- Many children are trafficked within and outside Kenya into worst forms of child labour ranging from domestic work to sexual exploitation and prostitution.

The Consultant described various efforts being made to address child labour and violence against children in Kenya. She said the Government had made strides in addressing poverty through *Vision 2030* based on the Millennium Development Goals and also linked *Vision 2030* with Sustainable Development Goals under the economic, political and social pillars of the *Vision 2030* in 2016. She said the Government had ratified and domesticated the UNCRC and the African Charter on the Rights and Welfare of the Child, ILO Convention 138 on the Minimum Age, ILO Convention 182 on the Worst Forms of Child Labour, UNCRC Optional Protocol on Armed Conflict, and Protocol to Suppress and Punish Trafficking in Persons especially in Women and Children.

The Consultant said the Government had also formulated and enacted laws and policies as well as initiated programmes to enhance the protection of children. Examples of the laws include the Children Act (2001), Counter Trafficking in Persons Act (2010), Basic Education Act (2014) and Employment Act (2007).

The Government, working in collaboration with partners, had also strengthened the protection of children from abuse and violence through the development of policies and programmes. Examples of these policies and programmes include:

- National Action Plan for Elimination of Child Labour (2004 2015)
- National Plan of Action against Sexual Exploitation of Children in Kenya (2013 2017)
- Vision 2030: Second Medium Term Plan (2013 2017),
- County Integrated Development Plans
- National Children's Policy (2010),
- National Education Sector Plan (2013 2018),
- National Plan of Action for Children in Kenya (2015-2022),
- A Framework for the National Child Protection System for Kenya (2011)

The Consultant outlined existing social protection initiatives implemented by the Government which support family economic empowerment namely the devolved funds (e.g. the Constituency Development Fund (CDF), Local Authority Transfer Fund (LATF), Bursary Fund, Youth and Women funds), *Uwezo* Fund, Women Enterprise Fund, the Social Protection Fund and the Hunger Safety Net Programme 2 (HSNP2).

She said to support implementation of the various laws and policies and programmes in child labour and violence against children in Kenya, the Government had established various structures and specialised agencies. The structures and agencies are as follows:

- ✓ The Ministry of East African Community, Labour and Social Protection. Coordinates activities to eliminate child labour through its Division of Child Labour which is based at the ministry's headquarters.
- ✓ Department of Children's Services. The Department is based at the Ministry of EAC, Labour and Social Protection
- ✓ National Police Service, where there are children desks to attend to children in need of protection.
- ✓ Anti-Trafficking Police Unit.
- ✓ The Ministry of Education, which ensures that children have access to education.
- ✓ The Ministry of Devolution and Planning, which ensures the coordination of the 47 Counties in the country.
- ✓ Office of the Director of Public Prosecution.

The Consultant explained that for the policies and programmes to be implemented effectively and for the structures above to function, the Government had established several coordination mechanisms in charge of children issues in Kenya. The coordination mechanisms in Kenya are as follows:

- National Steering Committee on Child Labour
- National Council for Children's Services

- National Labour Board
- Counter-Trafficking in Persons Advisory Committee
- Local Advisory and Child Labour Committees in the 47 Counties

The Consultant said several organisations work in partnership with and support the Government in addressing child labour and violence against children in Kenya. Key ones include Civil Society Organizations, Employers and workers unions such as Federation of Kenya Employers (FKE) and Central Organization of Trade Unions (COTU), Intergovernmental groups such as ILO and UNICEF and International NGOs such as Save the Children International, OXFAM, World Vision, Care International, Terre des Hommes, ANPPCAN, among others.

The Consultant highlighted the key gaps and a recommendation that was being proposed. The gaps included resource allocation to children which was found to be very low compared to the issues to be tackled and responded to; inconsistencies in laws e.g. in the children act and employment act in terms of a definition of child and what a child do in terms of light work. The other gaps included lack of coordination of actors, lack of data on children, especially on specific vulnerable groups of children to inform programming and allocation of resources.

The Consultant concluded by observing that the review revealed that there were enough laws and policies to protect children from the worst forms of child labour and violence against children, indicating the Government of Kenya's commitment to protect children. However, resource allocation by the Government was minimal and that the Government expected external funding, affecting effective implementation of the good intentions. Also, the well intended social protection initiatives introduced by the Government were minimal compared to the needs, leading to many children still dropping out of school and ending up in the worst forms of child labour.



Felishina Mumbi, the consultant presenting the findings of the review report at the Nairobi Safari Club

RESPONSES AND DISCUSSIONS

Christian De Angelis, US Embassy, Nairobi said the Embassy had just collected information on the child labour situation in the country and submitted the information to the Washington Office. He welcomed any other updates from the participants.

Mr De Angelis observed that it was two months into the Government's *Four Agenda* and said that areas of concern such child labour were being reviewed by funding agencies. He called on any Government departments represented in the meeting to provide insights on the place of child labour in the *Four Agenda* to inform funding priorities.

Eunice Kilundo, Child Fund Kenya, thanked the consultant and appreciated the spirit of the document in enhancing inter-sectoral dialogue. She drew attention of the meeting to the Children Act (2001) currently under review. She sought to know if the issues under discussion in the meeting have been addressed in the Children Bill (2017). She also sought to know the extent to which the Child Protection Information Management System (CPIMS) had addressed the issue of data of children involved in labour activities.

Larica Onam, Attorney General Office, noted concerns of child protection in the digital space, saying this can be addressed well with the Computer and Cybercrimes Act (2017).

A participant said the Local Authority Transfer Fund (LATF) which had been cited in the review as one of the social protection initiatives by the Government has since been devolved and phased out. Also, the participant wanted to know how best the team can influence planning and budgeting for children in the Kenya, especially so since the policy statement by the Government had been published.

On the allocation of funds, the participant observed that funds for children were found scattered in many areas including education, health, nutrition, etc, but very little was allocated specifically to children protection issues. She said it was difficult to state with certainty the amount of funds specifically allocated to child protection issues.

The participants explained a recent allocation of funds to ministries and departments in which the Department of Children's Services was not on the priority list. She proposed that Civil Society Organisations (CSOs) should work with DCS to determine their budget needs and share the same with the Ministry of Finance.

She also suggested, in addition to harmonising the laws and policies as had been recommended in the survey report, the need to understand how the different laws and policies relate to each other. She argued that the need for good lawyers was apparent in the understanding of how different laws and policies on child protection relate to each other and harmonise inconsistencies therein.

She reminded the meeting that Kenya reports to international obligations and instruments. She stated that it is important for stakeholders to know what the Government is doing towards a

safer environment for children, including economic empowerment for families because this is where the problem is.

In a rejoinder, Jennifer Kaberi, Mtoto News, observed the need to show that child protection is an issue on its right, and not to be integrated in other issues such as health, nutrition education, etc. She said child protection actors needed to reposition themselves well on this and have their voice heard since the president is now the UNICEF's Global Champion for Youth Empowerment.

She also noted that counties were developing county specific laws and policies and encouraged participants in the meeting to influence the laws and policies to include issues on child labour and violence against children.

Ms Kaberi also sought for a recommendation on the age of employment noting the various acts gave different ages ranging from 16 to 18 years according to the provisions of the Children Act (2001) and the Employment Act (2007). She suggested that a specific recommendation be proposed on the minimum age of employment in the review report.

Dr Kola, Creche, commented and said that whilst the harmonisation of laws is welcome, the need to address lack of knowledge amongst parents and guardians on the laws in Kenya. She proposed that resources be mobilised to create more awareness on child rights so that parents, community members understand the provisions of specific laws on child protection. She pointed out that while parents insist that children must work, children point out that it is a violation of their rights, therefore causing a conflict.

Kemunto Kenani, Ministry of Education, pointed out that the Basic Education Act expressly defines a child as any person under the age of 18. It provides for the admission of children to school at the age of 4 and for them to remain in school until the age of 18. She asked the consultant to correct the impression that the act does not define who a child is. She added that the Act provides for children to remain in school until the age of 18 and therefore be protected from any form of labour activities.

Faizah Sidi, Kenya National Commission of Human Rights, appreciated the spirit of the review report and proposed that the consultant looks at additional laws and policies which provide for the protection of children from labour and violence such as the Prevention of Torture Act 2017, Victims Protection Act, 2014, and the Prohibition of Female Genital Mutilation Act 2011.

Ibrahim Alubala, Save the Children Kenya, cited a flaw in the making of laws and policies and action plans in Kenya which has a bearing on enforcement and implementation. He pointed out that the process should start with the development of a policy, then a law and an action plan to operationalise the law. He said in Kenya the process started with a law and then a policy followed much later, sometimes after 5 to 10 years. He gave the example of the Children Act enacted in 2001 and a Children's Policy developed in 2010.

Mr Alubala said the reason why there was a problem with the implementation of many laws is because the development of policies, laws and plans of action were not done in the right order. He asked the consultant to look at the section 29 and 53 and also section 43 and 260 of the Constitution of Kenya on the definition of the child and on citizenship. He also suggested a review of the Social Assistant Act (2013) which has a framework on supporting children that should have been instutionalized.

On inconsistencies in some laws, Mr Alubala said it is presumed that an act of parliament developed later repeals provisions of an early one. 'In accordance with the doctrine of implied repeal, the statute enacted later takes precedence and the one preceding the other is repealed to the extent of its inconsistency.'

For legislations being developed by the counties in Kenya, Mr Alubala proposed for a thorough review to be conducted on all the legislations noting that there are some counties that have developed legislations that contradict the laws of Kenya.

A participant from Equality Now commenting on the ongoing review of the Children Act sought to know from the consultant whether issues being raised at the forum had been addressed or not, and if yes, to what extent were these issues addressed in the Children Bill 2017.

In response to the issues raised above, Dr Onyango, ANPPCAN, said that upon the conclusion of the review on policies, laws and programmes on the elimination of child labour and violence against children in Kenya, ANPPCAN sought to host a meeting of key actors on child protection in Kenya to share the findings, receive feedback and later have the document shared with critical ministries and departments for necessary action to be taken. Dr Onyango expressed optimism that the review of the Children Act (2001) will address some of the issues raised in the review report.

Dr Onyango said ANPPCAN looked at the yearly reports to Washington and other development partners and observed that the reports highlighted lack of implementation of programmes and enforcement of laws and policies in Kenya. She observed that although the country had many laws, policies and programmes on child protection, implementation of the programmes and enforcement of laws remained a challenge. She said Kenya being a devolved system, counties should develop laws and policies which are in line and complement those by the National Government.

She expressed displeasure at the time it takes to prosecute cases of child rights violations in Kenya. She said sexual abuse cases take up to 5 years in courts. She attributed this problem to lack of proper systems for child protection in the country.

Brenda Etukei, Compassion International, lamented that resource allocation and lack of data have been perpetual problems since 2001. She regretted that until now, there were no credible systems for data on child protection in Kenya. She was of the view that the consultant

reinforces the fact that the Government is doing nothing on resource allocation and data on children.

In regard to the purpose of the study, Ms Etukei felt the review needed to have delved more deeply into the current status of implementation of the various legislations, policies and programmes in child labour and violence against children in Kenya. She said the review should have quantified the achievements in specific measures on the implementation of the laws, policies and programmes.

Ms Etukei also suggested the need to demobilize and restructure non-performing structures on child protection. She pointed out the need to restructure some of the weak structures and to empower them to execute their mandate on fighting child labour and violence against children in Kenya. On the need for good systems in place to fight child labour, she sought an interrogation of the efficiency and effectiveness of some of the systems, 'are these systems sufficient enough to respond to child labour and violence against children in Kenya'.

She paused: 'If it is resources that need to be provided to the structures to perform their role, how much of these resources are needed?'

Sophie Omutanyi, ANPPCAN, linked poverty to the escalating cases of child labour and violence against children in Kenya. She called on stakeholders to challenge the Government to provide resources to families to address poverty. Specifically, Ms Omutanyi cited the Constituency Development Fund, Women Fund, Youth Fund and wanted to know how much of these resources went into supporting the needs of children.

Mr Ahmed Hussein said the African Union had in 2017 sought to find how much funds Governments in Africa spend on children. This information is also contained in UNCRC reports. The reports indicate how much funds Governments, including Kenya, spend on areas such as education, health, nutrition, etc. He also called on the CSOs to indicate how much they were spending on children issues. He argued that by quantifying the funds being spent on children, it becomes easier to identify gaps and address them.

Joseph Matheka, IDAY, commented that the ideas in the report are for information only and too broad for advocacy. He said the Ministry of Labour has a list of hazardous work but not sure if the list has been adopted. On children being involved in performing light work, he said this was allowed and added that in some countries such as the USA, children were allowed to do light work.

Mr Matheka alluded to the child free zones in Kenya spearheaded by an Italian organisation, CEFA and other partners in Kenya and praised the results of the programme and encouraged the Government and partners to explore ways of replicating the programme to other areas in Kenya to eradicate child labour.

Mrs Wambui Njuguna commenting on the issues raised by the members in the meeting said the purpose of the document was to review the status of implementation of policies, laws and programmes on child labour and violence against children in Kenya.

Speaking on the allocation of resources to children issues, Mrs Njuguna said the Government has indeed allocated funds in various sectors such education, health and maternal care. She said this how far the Government commits resource for children. However, she was quick to point out that the Government provided very little funds on child protection issues. She emphasised that although the Government allocated funds in education, health and other areas there is need to allocate funds on child protection to address issues that prevent children from not attending school and receive health care.

Mrs Njuguna said that resources needed to be provided to child protection structures for them to function and protect children. She noted that the Area Advisory Councils cannot hold quarterly meetings as per their mandate for lack of resources. The AACs depend on CSOs for resources to hold the meetings and, often, the CSOs use the forums to push their agendas. She underscored that by providing the resources for child protection, the Government will assume its primary responsibility for child protection in country. Lack of resources also results in poor implementation of policies. She said owing to lack of funds to implement National Plans of actions, such well meaning documents remain un-implemented.

On hazardous work that children are involved in, Mrs Njuguna lauded the Government in adopting the list of hazardous work. However, she argued that much of the hazardous work were carried out in homes and private establishments with little or no inspections. She called for the need to strengthen inspection of homes and private establishments to ascertain that no children were involved in hazardous work. For data on children, she said CPIMS was a great initiative which needed to be replicated through the country in order to collect up to data on child protection issues.

A representative from Oxfam Kenya said the organisation was already implementing activities on domestic work with some partners in Kenya. He noted more work was needed to eradicate domestic work by children in Kenya.

A representative from the Attorney General's Office emphasised the need for implementation of policies, laws and programmes on child labour and violence against children in Kenya, adding this was measure of accountability of the partners. She said the lead agency for child protection needed to be bold and assertive on child protection issues for this to happen.

Hellen Mafumbo, Department of Children's Services, commended ANPPCAN for the report. She noted the Government lacked funds and yet there were laws and child protection officers, without money nothing much can be achieved on child protection.

Ms Mafumbo noted that the Department of Children Services had rebranded, with six clearly demarcated functions for efficiency and effectiveness on child protection. The sections include;

Alternative Care, counter trafficking, emergency, and others. She pointed out that child protection is immense and diverse and organisations needed to collaborate and support the Department of Children's Services in child protection.

The officer called for increased goodwill from CSOs in the implementation of programmes, policies, laws and in the submission of data for the Child Protection Information Management Systems.



Stakeholders Meeting to Share Review Findings on Laws, Policies and Programmes on Elimination of Child Labour and Violence against Children in Kenya in session at the Nairobi safari club.

CLOSING REMARKS

Wambui Njuguna, Director of Programmes, ANPPCAN

In her closing remarks, Mrs Njuguna observed that Kenya had developed many laws and policies and programmes to protect children from child labour and violence against children. She confirmed this by noting that Kenya had been ranked as the 5th most child friendly country in Africa by the African Child Policy Forum based on its robust laws, policies and programmes on child protection. She, however, pointed that these laws, policies and programmes remained largely un-implemented.

Mrs Njuguna expressed gratitude to all the participants for their active participation and feedback on the findings of the review report, adding this will greatly enrich the document for the purpose of mounting aggressive advocacy on the elimination of child labour and violence against children in Kenya. She assured the participants that their input went a long way in improving the document, provided important lessons towards addressing the gaps identified in the review and that this would ultimately enhance the enforcement and implementation of laws, policies and programmes on child protection in Kenya.

The Director thanked the consultant for conducting the review in line with the terms of reference and ANPPCAN staff for their various contributions towards making the dissemination forum a success.

She concluded by urging the Department of Children's Services in Kenya to continue providing leadership in children services in Kenya.

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ANNEX 1: LIST OF PARTICIPANTS

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